

OPINION  
ON  
THE BELIZE DISPUTE

Submitted to the Government of the Republic  
of Guatemala

by

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INTRODUCTION

The Minister of Foreign Affairs of Guatemala has honored the writer with a request for an impartial and independent opinion on the various alternative courses of action which might be pursued by Guatemala in seeking a favorable settlement of the dispute with the United Kingdom relating to Belize.

This opinion has been prepared, not so much with reference to the theoretical soundness of Guatemala's contentions in the past, as with reference to the practical considerations which should determine the course to be followed by Guatemala in the future. An effort has been made to forecast the probable results of alternative procedures. The writer has felt it to be his duty to maintain a thoroughly objective approach, uninfluenced by his own personal sympathies and desires.

The opinion is submitted solely for the consideration of the Government of Guatemala, and it is not destined for publication.

I. THE SITUATION IN BELIZE PRIOR TO THE CONVENTION OF 1859

A. History of the British Settlement  
in Belize before 1821

1. The Belize question has developed through a long and tortuous history. This history naturally divides itself into three periods: the period of Spanish colonialism down to the independence of Central America achieved in 1821; the period from 1821 down to the conclusion of the Guatemalan-British Convention of 1859; and the period from 1859 to date. While a voluminous literature exists on the subject, it may be useful to attempt a fresh survey of each of these periods of history, as a preliminary to an approach to the issues of the present time.

2. The British settlement within the territory of Belize began at some time in the latter half of the seventeenth century. It owed its origin to the fact that individual buccaneers, familiar with the difficult reefs and shoals in the area, turned their attention to the profitable trade of cutting logwood within the dominions of the King of Spain. The date when such cutting began in the Belize area is uncertain; no place within the area was mentioned in a list of the principal British logwood-cutting places drawn up by a Governor of Jamaica in 1672 [1 Burdon, Archives of British Honduras, p. 53], but the impression was prevalent among Spanish officials in the eighteenth century that the cutting had started in Belize before 1670 [Calderón Quijano, Belize, pp. 61-62, note 64].

3. A treaty of peace between Spain and Great Britain was concluded at Madrid on 18 July 1670. Article 7 of this treaty [1 Abreu, Colección de los Tratados, Reynado de Carlos II, p. 507] provided for a cession by Spain to Great Britain of

"all those Lands, Regions, Islands, Colonies, and places whatsoever, being situated in the West Indies, or in any part of America, which the said King of Great Britain and his Subjects do at present hold and possess."

Spain consistently maintained that this treaty gave the British no right to cut logwood on the coasts of the Yucatan peninsula, and particularly at Belize. Great Britain at first agreed with this interpretation. The British Minister at Madrid wrote on 10/20 May 1672 [1 Burdon, Archives, p. 53]:

"these people [the Spaniards] may as justly pretend to make use of our rivers, mountains and commons, as we can enjoy any benefit of these woods."

In 1682, the British Governor of Jamaica, Sir Thomas Lynch, reported to the Lords of Trade and Plantations [1 Burdon, Archives, p. 57]:

"I have forbidden our cutting logwood in the Bay of Campeachy [Campeche] and Honduras, your Lordships having justly declared that the country being the Spaniards' we ought not to cut the wood."

The argument was later made by Great Britain, however, that the right to cut logwood had been granted by the Treaty of 1670 [1 Burdon, Archives, pp. 64-66, 68].

4. On 8 July 1702, the Governor of Yucatan, Don Martín de Ursúa y Arizmendi, reported that he had made three expeditions by land to "Zacatán" -- an old name for the district around the Belize River -- and with the loss of some of his own men had dislodged the English who were occupying that territory for the purpose of logwood cutting [Calderón Quijano, Belice, p. 93, note 1; p. 105, note 61]. This is the first recorded action of any Spanish authority with respect to the British settlement at Belize. The action of Ursúa was approved by a Royal Decree (Real Cédula) of 20 September 1702, which ordered the Viceroy of Mexico and the Governor of Yucatan to make vigorous efforts to the same end [Calderón Quijano, Belice, pp. 70, 93, notes 4 and 5; Fabela, Belice, pp. 88-89]. Apparently no new attacks were immediately undertaken, however, though on 3 October 1703 the acting Governor of Yucatan reported that a reconnaissance of the territory of "Valis" (Belize), which he understood to lie between the Bahía de la Ascensión and the Gulf of Honduras, had revealed fortifications there [2 Ancona, Historia de Yucatán, pp. 366-381]. The Spanish measures were ineffective in discouraging the English; a British account of 1705 [1 Burdon, Archives, p. 60] made mention of "the River of Bullys [Belize], where the English for the most part now load their logwood."

5. At the time of the negotiations of the treaties which put an end to the War of the Spanish Succession in 1713, Great Britain made efforts to obtain a recognition of the right to cut logwood in the Spanish dominions. Lord Lexington, the British plenipotentiary, prepared memorials and a draft of proposed articles, the third of the articles [Cantillo, Tratados de España, pp. 124-125; 1 Burdon, Archives, pp. 61-62] providing that the King of Spain

"would suffer the subjects of Her Britannic Majesty to cut logwood in the lake which is called Isla Trista, or otherwise Laguna de Término, and in the Bay of Honduras,"

upon the granting of a license by the Queen of Great Britain and upon payment of a fee to the Spanish. In Article 12 of the Preliminary Treaty of Peace signed at Madrid on 27 March 1713 [Cantillo, Tratados, p. 73], the Spanish Government promised to consider these proposals, but it eventually rejected the proposal concerning logwood cutting. The final Treaty of Commerce and Friendship between Spain and Great Britain, signed at Utrecht on 9 December 1713 [Cantillo, Tratados, pp. 127-153], confirmed the Treaty of 1670 by its first article.

6. Nevertheless, the logwood trade continued to flourish at Belize. In 1717, the Spanish were successful in dislodging the English from what had been perhaps their most important logwood site, the Laguna de Términos at the base of the west side of the Peninsula of Yucatan [Calderón Quijano, Belize, p. 80]. This, however, merely led to an increase of British operations in the territory of Belize [1 Burdon, Archives, pp. 75-77; Calderón Quijano, Belize, p. 104, note 57]. The extent of the operations was brought to the attention of the Spanish in 1723 when two expeditions sent out by the Governor of Yucatan captured English vessels engaged in the logwood trade near the mouth of the Belize River. These captures were reported on 21 June 1723 by the Governor of Yucatan to the King, who in a Real Cédula of 1724 [2 Riva Palacio, México a través de los Siglos, p. 783] approved the actions and ordered vigorous prosecution of the enterprises against the English. Consequently, in 1724, the Governor of Yucatan organized a new expedition by sea; the expedition arrived off the mouth of the Belize River on 28 April 1724, and found there a considerable number of vessels, including one warship. The English escaped in the warship and two smaller vessels, but the Spanish burned or captured the other vessels and burned huts and logwood cuttings for a space of fourteen leagues up the Belize River. The Governor of Yucatan reported these actions to the King of Spain on 24 July 1724 [2 Riva Palacio, México a través de los Siglos, pp. 767-768].

7. On 11 December 1724, Reales Cédulas were sent to the Viceroy of Mexico and the Governor of Yucatan concerning the eviction of the British logwood cutters [Fabela, Belize, pp. 74-75; Calderón Quijano, Belize, pp. 88-89, 101-102, notes 52-53]. These orders showed considerable geographical confusion, referring to

"the neighborhood of the River Valís [Belize] near the City of Mérida, capital of the said Province of Yucatan, [where] are found up to the number of 800 English, with arms and in such an order as to put themselves in a state of defense in any invasion of enemies."

The order continued:

"You will take steps with the greatest energy to evict the said English from the islands and places which they have occupied in the neighborhood of Campeche (in case this highly important measure has not yet been taken), notifying them, before putting this disposition into effect, to depart from there within the space of a month, and that if they do not do so they will be compelled to by force."



8. The Viceroy thought that the provision for a month's notice was useless and that it would only give the English time to prepare their defense; consequently, he asked the opinion of Licenciado Palacios, Fiscal of the Audiencia of Mexico, who on 8 April 1725 replied that notice was legally unnecessary [Calderón Quijano, Belize, pp. 102-103, note 55]. On 14 May 1725, the Viceroy wrote the King correcting the geographical facts as stated in the Real Cédula, and complaining of the requirement of notice [Calderón Quijano, Belize, p. 105, note 61]. The Viceroy stated that the British had no formal settlement (población formal) at Belize, that their numbers had varied considerably, and that the greatest number ashore in his time was 300 whites and 600 negroes.

9. In reply to this communication a Real Cédula was despatched to the Viceroy on 22 December 1725, stating [Fabela, Belize, pp. 77-78]:

"It has pleased me to approve (as I do) what you have done towards the extermination of the said English and the assistance which for this end you offer to give to the Governor of that Province of Yucatán, the favorable outcome of which I hope you will advise me of whenever occasion offers."

Meanwhile plans for the expedition were proceeding. In April 1726, a fleet of vessels from Mexico and Yucatan met off Cozumel Island to attack the British at Belize, but it was eventually decided to abandon the attack, and the vessels returned to their home ports [Calderón Quijano, Belize, pp. 114-115].

10. On 7 July 1727, a new order was sent to the Governor of Yucatan concerning the expulsion of the British from Belize [Calderón Quijano, Belize, pp. 116, 129, note 32]. One of the most important steps taken by the Governor against the British was the repopulation of Bacalar, a town in Yucatan on the Laguna de Bacalar, just north of the Río Hondo. The ancient settlement there had sunk into ruins because of repeated attacks by pirates in the seventeenth century. In 1727, the Governor re-established it with colonists from the Canary Islands who had been sent out for the purpose [Calderón Quijano, Belize, pp. 116-117], and thereafter the town and the port near it became the base of operations of most of the expeditions from Yucatan against the British at Belize. Also, the Governor sent his nephew on a reconnaissance of the Belize territory; the report of this reconnaissance, dated 2 August 1729, is interesting with respect to the boundaries of Yucatan and Guatemala. The report stated [Calderón Quijano, Belize, p. 130, note 35]:

"I have been surprised that these people [the English] have been found introduced into the heart of this Province [Yucatan] without its inhabitants' having any notice of the fact. On the Río Hondo they had penetrated more than fifteen leagues and on the Río Nuevo, thirty-four leagues, and by that river and at that distance they communicate with the Río Valis by land, since there the two rivers are only seven leagues apart. So that if they were to spread out a little along these two last rivers they would easily get into lands of the Kingdom of Guatemala."

11. On 9 November 1729, a Treaty of Peace, Union, Friendship, and Alliance was signed at Seville by Spain, Great Britain and France [Cantillo, Tratados, pp. 247-260]. Article 4 of this Treaty provided that the commerce of Great Britain in Europe and America should be re-established on the footing of treaties and conventions prior to 1725. Article 6 provided for the appointment of Commissioners by Spain and Great Britain to examine and decide in accordance with the treaties the respective claims of their Governments regarding the alleged abuses committed in commerce in the Indies and all other claims in America which were based on treaties. A declaration by Spain and Great Britain, annexed to the Treaty on 8 February 1732 [Cantillo, Tratados, pp. 259-260], provided in part:

"Similarly His Britannic Majesty undertakes to prohibit and effectively to prevent that under any pretext whatever the warships of His Britannic Majesty should defend, shelter, and protect vessels which are engaged in illicit trade on the coasts of the dominions of His Catholic Majesty; and that the Governors of the colonies shall neither foment nor protect invasions into the dominions of His Catholic Majesty."

12. The Commissioners provided for by the 1729 treaty met in Seville between 1730 and 1732. The British Commissioners were instructed to support vigorously the rights of the logwood cutters, and did so especially in 1732 when it was repeatedly argued by them that the right of cutting logwood was granted by the Treaties of 1670 and 1713. The Spanish remained inflexible, however, and demanded the removal of the huts on the Belize River [1 Burdon, Archives, pp. 67-68]. Meanwhile, negotiations were also being carried on directly between the Governor of Yucatan and the English at Belize. On 26 January 1733, the Governor of Yucatan reported to his King [2 Riva Palacio, México a través de los Siglos, p. 769]:

"The English inhabitants of the Río Valis have not fulfilled what they offered me under their signatures, namely, to quit that country, but instead are making more and more preparations for remaining there."

Consequently, the Governor stated that he was devoting all his efforts to their final extirpation. These efforts culminated in an attack on the English settlement at the mouth of the Belize River by combined land and sea forces under the personal command of the Governor of Yucatan on 21 February 1733 [Calderón Quijano, Belize, p. 119]. The attack was completely effective; many of the British were killed, and the rest were taken prisoners.

13. The succeeding Governor of Yucatan reported, however, that the English soon returned, bringing with them ships so numerous that the Spanish could not effectively attack them [Peniche, Historia de las Relaciones de España y México con Inglaterra sobre el Establecimiento de Belice, pp. 18-20]. The report continued:

"I have taken charge of all matters in this respect, and it seems difficult to me to exterminate the woodcutters in such a way that they will not return; I find the only means is to fortify the entrance of the Río Walix [Belize] with a fort suitable for seventy-five men, which will block the entrance..... But all this has the inconvenience that it cannot be executed by reason of the shortness of funds in the Royal Treasury here, which barely suffices for payments which must be made for current expenses. As to the aforementioned fortification of the Walix, it can only be done by charging it to the Royal Treasury of Guatemala, which collects a tax of twenty-five pesos for each pipe of wine and brandy, and twelve and a half for each pipe of vinegar, which tax is applied to coast-guards (guarda costas)."

This is apparently the first time it was suggested that Guatemala should have any responsibility with respect to Belize. Nothing came of the suggestion. In 1737, the same Governor of Yucatan made an expedition by sea against the English at Belize. The British and their slaves fled inland, but the Spanish burned some vessels, huts and logwood [Rubio Alpuche, Belice, pp. 49-50; Riva Palacio, México a través de los Siglos, p. 728].

14. In 1739, Great Britain made proposals to Spain for the settlement of outstanding differences. One of these proposals was that the British be allowed to cut logwood, and this indulgence, which the British instructions to their plenipotentiaries alleged was "reserved to them by the 1st Article of the Treaty of Commerce of Utrecht in 1713," was to be insisted on [1 Burdon, Archives, p. 69]. Spain, however, refused to agree, and war broke out in October 1739. During the course of the war, the British Government actively supported the settlers at Belize. On 14 June 1744, a British Order in Council was issued which envisaged the establishment of a Governor and Council there [1 Burdon, Archives, pp. 70-71]; but apparently nothing was done toward carrying this out. In 1745, some arms and ammunition were sent to Belize from the Island of Roatan and from Jamaica [1 Burdon, Archives, p. 73]. However, in 1747, it was reported that though some wood cutting still continued, the Belize settlers had been compelled to flee to Roatan for refuge [1 Burdon, Archives, p. 74].

15. \*The various official expeditions against Belize were supplemented by frequent descents by privateers who were granted letters of marque by the Governors of Yucatan or Honduras. One of these, Captain Felipe López de la Flor, who sailed from Honduras, captured a British ship off the coast of Belize in 1745, and paid an admiralty tax to the Royal Treasury of Guatemala. The payment was recorded as paid [Continuación del Libro Blanco, VIII, p. 411]

"By the privateer Captain Felipe López de la Flor, last year, 1745, [who] captured a prize within the Río Nuevo on the coast of the Río Valis in this Government (Gobernación)."

This is apparently the first recorded instance of a claim by Guatemala to jurisdiction over Belize. Two further expeditions against Belize were organized under López de la Flor by the Governor of Honduras in 1748 [Calderón Quijano, Belice, pp. 138, 158, note 3].

16. The war was terminated by the Preliminary Articles of Peace signed by Great Britain, France and the Netherlands at Aix-la-Chapelle on 30 April 1748 and acceded to by Spain on 28 June 1748 [Cantillo, Tratados, pp. 385-389]. Article 2 provided that the parties should restore all conquests which had been made since the beginning of the war in Europe and in the East and West Indies. The Definitive Treaty of Peace, signed at Aix-la-Chapelle on 18 October 1748 [Cantillo, Tratados, pp. 390-399], repeated this provision, and also renewed and confirmed various treaties, among them the Spanish-English treaties of 1670 and 1713.

17. The termination of the war, however, meant an intensification of the Spanish effort to evict the British from Belize. To strike at the root of the problem, the Spanish Government itself in 1750 attempted to cut and ship logwood for the European market, but the first experiment was so unsuccessful commercially that the effort was abandoned [2 Riva Palacio, México a través de los Siglos, p. 796]. On 22 September 1750, orders were issued to the Governors of Honduras, Yucatan and Nicaragua, to the Viceroy of New Spain (Mexico), and to the Presidents of Guatemala and Panama concerning the expulsion of the English and the conquest of the Zambo and Mosquito Indians, the native allies of the English in Honduras and Nicaragua [Continuación del Libro Blanco, VIII, p. 412]. These dispositions were referred to in an order of 25 April 1751 to the President of Guatemala, who was directed to put them into effect

"in case the said Governor of Yucatán or the Governor of Honduras shall not have undertaken the aforementioned expedition" [Ibid.].



18. In execution of these orders, the Governor of Yucatan sent out two privateers in 1751 [Calderón Quijano, Belice, pp. 141, 161, note 15]. In 1752, the President of Guatemala apparently sent an expedition against Belize, but upon hearing of it the Minister of the Indies, the Marqués de la Ensenada, on 24 September 1752 reprimanded him severely, reminding him that his primary duty was to exterminate the British establishments on the Río Tinto and Laguna Azul, which were within Guatemalan jurisdiction, and to leave to the Government of Campeche the establishments on its east coast [Calderón Quijano, Belice, pp. 12, 144, 164, note 26]. Also, in 1752, a new expedition was undertaken by the Governor of Yucatan, in the words of his report to the King on 24 September 1752 [2 Kiva Palacio, México a través de los Siglos, p. 797].

"with the purpose of harassing and wearing out the English logwood cutters who are found building huts in the vicinity of Balix, Sacatan, and Cosinas [all names for the area around the mouth of the Belize River], which are dominions of Your Majesty, bordering on this Province on the east."

19. The most elaborate of all the Spanish expeditions against Belize took place in 1754. It was a combined expedition by sea and land; vessels were sent from Mexico, Cuba, Yucatan and Honduras, and a considerable number of men were sent overland by Guatemala by a path which had been cut from the Peten [Rubio Alpuche, Belice, pp. 53-54; 1 Burdon, Archives, p. 80; Calderón Quijano, Belice, pp. 145-146]. The expedition was relatively unsuccessful because the British learned of it in advance and fled to the Mosquito Coast and to Jamaica [1 Burdon, Archives, p. 80].

20. In 1754, the Marqués de la Ensenada, the Spanish Minister who for the past four years had been so actively endeavoring to secure the eviction of the British from Belize, was replaced by Don Ricardo Wall as Foreign Minister and by the Bailío Frey Don Julian de Arriaga as Minister of the Indies. The new Ministers reversed the policy of Ensenada, and sought a peaceful solution of the differences with Great Britain. Accordingly, in September 1754, Royal Orders were sent to the Governors of La Habana and Yucatan, to the Viceroy of Mexico, and to the President of Guatemala ordering a suspension of all hostilities against the British [Calderón Quijano, Belize, pp. 146-148]. A copy of this order also reached the British Governor of Jamaica, who on 12 October 1754 sent it to the President of Guatemala [1 Burdon, Archivos, p. 80]; in January 1755, the Governor of Jamaica again wrote to the President of Guatemala urging that a Spanish fort which had apparently been erected at Belize should be destroyed and that the British settlers should be allowed to return there. On 26 February of the same year, the President replied that he had no jurisdiction in either matter [1 Burdon, Archivos, p. 81].

21. The British-Spanish negotiations led to no result because of the completely irreconcilable positions of the parties, and in 1756 the Minister of the Indies wrote to the Governor of Yucatan [Calderón Quijano, Belice, p. 165, note 37]:

"The King has been surprised at the interpretation which you have given to the aforementioned Order of 4 September 1754, extending the suspension which was ordered concerning the expedition being organized in which the forces of other provinces were to take part, to indifference or toleration (which have never been our policy) toward the fresh return of the English to establish themselves on the Río Valix and to continue the cutting and exportation of logwood as if on their own lands. He commands me to inform you that as that region incontestably belongs to His Majesty, and is a part of the territory of the province which has been entrusted to you, it is your duty to take all possible means for its conservation, and if you lack forces to expel the foreigners from these places, to use whatever means you have to prevent their tranquil usurpation."

As the Governor of Yucatan reported new British incursions, on 3 July 1756 the Minister of the Indies ordered him to protest

"to Engineer Johns, or to any other who claims to be Commandant in Valis, the Río Nuevo and other places within your Government (asa Gobernación)....." [Calderón Quijano, Belice, p. 167, note 49].

22. War broke out between Spain and England in 1762.

The war was terminated by the Treaty of Paris of 10 February 1763, signed by Spain, France and Great Britain, and acceded to by Portugal [Cantillo, Treatados, pp. 486-494]. Article 17 of this Treaty contained the first recognition by Spain of a British right to cut logwood. That article reads as follows:

"His Britannic Majesty shall cause to be demolished all the fortifications which his Subjects may have erected in the Bay of Honduras, and other places of the Territory of Spain in that part of the World, four months after the Ratification of the present Treaty; and His Catholic Majesty shall not permit His Britannic Majesty's Subjects or their workmen, to be disturbed or molested under any pretence whatsoever in the said places, in their occupation of cutting, loading and carrying away logwood; and for this purpose, they may build without hindrance, and occupy without interruption, the houses and magazines which are necessary for them, for their families and for their effects; and His Catholic Majesty assures to them, by this Article, the full enjoyment of those advantages and powers on the Spanish Coasts and Territories, as above stipulated, immediately after the Ratification of the present Treaty."

23. Don Felipe Remírez de Estenoz was appointed Governor of Yucatan by a Real Cédula of February 1763, and was put in charge of the execution of Article 17 of the Treaty. The Cédula pointed out the ambiguity of the wording of that article, which established no precise limits to the area for logwood cutting but mentioned only "the said places" ("dichos lugares"), presumably referring to the places where His Britannic Majesty was to demolish fortifications. There were no British fortifications in the Bay of Honduras, however, and Remírez was instructed to maintain that logwood cutting could only be carried on "in the same places on the Río Walix and Río Nuevo in which it had become established" [2 Riva Palacio, México a través de los Siglos, pp. 807-808]. Consequently, Remírez, in a note of 10 June 1764 to the Governor of Jamaica, pointed out this ambiguity, and continued [2 Riva Palacio, México a través de los Siglos, pp. 809-810; Calderón Quijano, Palice, pp. 204-205, note 33]:

".....on this information it will be permitted, until my sovereign disposes otherwise, for the subjects of His Britannic Majesty to cut and store on the Ríos Walix and Nuevo twenty leagues along said rivers measured from their mouths; and as regards the part of Guatemala on the banks of the Río Walix, they may extend four leagues from the bank for the twenty leagues along the river; and with respect to the Río Nuevo they may carry out said cutting in the land between that river and the Río Walix, similarly for twenty miles upstream from its mouth; and in no case will they be allowed to cut on the banks towards the Río Hondo, the center line of the Río Nuevo and the places referred to being the limits....."

This note seems to imply that the Belize River was the boundary between Guatemala and Yucatan.

24. Despite this restrictive interpretation, however, the British soon re-established themselves on the left bank of the Río Nuevo and on the Río Hondo [1 Burdon, Archives, p. 99]. Indeed, they apparently expanded even farther, as too rapid cutting destroyed the stands of logwood in the areas assigned to them; the Spanish complained constantly about alleged violations of the Treaty of 1763.

25. The British then proceeded for the first time to establish a legal framework for the government of the settlers at Belize. On 9 April 1765, Sir William Burnaby, Commander-in-Chief of the British Squadron at Jamaica, presented the settlers with a set of regulations, known as "Burnaby's Laws." This is the earliest legislation of British Honduras [1 Burdon, Archives, pp. 100-107]. These laws appear to have been mainly a codification of pre-existing custom [1 Burdon, Archives, pp. 30-32]. They provided for an elected body of seven inhabitants, to serve as a court, in some circumstances in conjunction with a jury of thirteen; the elected body was always known as "the Magistrates." Legislation was to be passed by a Public Meeting of "The Inhabitants of the Bay." Captains of British warships sent to Belize were authorized to enforce the laws and execute judgments of the court. In April 1766, the British Lords Commissioners of Trade and Plantations submitted to His Majesty's Advocate General the question [1 Burdon, Archives, p. 110]

"whether His Majesty may establish Any form of Civil Government or Jurisdiction among the British Subjects Residing in the Bay of Honduras consistently with the Letter and Spirit of the 17 Article of the Treaty of Paris?"

The answer was in the affirmative.

26. In 1779, war broke out again between Spain and Great Britain. On 12 April 1779, a treaty of alliance was concluded against Great Britain by France and Spain [Cantillo, Tratados, pp. 552-563]. Article 7 listed as one of the war aims

"the revocation of the privilege granted to the said English to cut logwood on the coast of Campeche,"

and in Article 8 Spain promised to grant a similar right to French subjects if the English were expelled. When Spain declared war, one of the grounds alleged was the violation of Article 17 of the Treaty of 1763 concerning logwood cutting [1 Burdon, Archives, p. 127]. By an order of 18 May 1779, the Governor of Yucatan was directed to destroy the British establishments on the coast, and

"to come to an agreement with the Governor of Guatemala, sending him a letter for the purpose, concerning the aid which you can and should give him in order that he as well may strike a blow at the enemy in the Bay of Honduras and other places in his district, conquering or destroying the nations of the Mosquito and Zambo Indians, which support the British....." [Calderón Quijano, Belize, p. 243, note 7].



27. The Governor of Yucatan then proceeded to send three hundred men from the fort of Bacalar in Yucatan to attack the principal English settlement, which was then on St. George's Key, or Cayo Cocina, off the mouth of the Belize River. The attack came as a surprise to the British, who had not learned of the outbreak of war, and the Key and all the British and slaves on it were captured without a blow on 15 September 1779. Immediately after the capture, British naval vessels arrived to notify the settlers of the opening of hostilities and to protect them; the Spanish departed immediately, taking most of their captives with them. The Spanish also evacuated their troops from the Río Nuevo [Calderón Quijano, Belize, pp. 245-246, note 10(a); 1 Burdon, Archives, pp. 128-130].

28. Preliminary Articles of Peace between Spain and Great Britain were signed at Versailles on 20 January 1763 [Cantillo, Tratados, pp. 574-576]. The fourth Article provided:

"His Catholic Majesty will not permit in the future that the subjects of His Britannic Majesty be troubled or molested under any pretext in their occupation of cutting, loading, and transporting logwood in a district whose limits shall be fixed. And for this purpose they may build without hindrance and occupy without interruption the houses and magazines which are necessary for themselves, for their families, and for their effects in the area which will be agreed on, either in the definitive treaty, or six months after the exchange of ratifications; and His Catholic Majesty assures them by this article the entire enjoyment of what is stipulated above, it being well understood that these stipulations shall not be considered as in any way derogatory to his right of sovereignty."

29. Thereupon, negotiations were begun concerning the limits of the area in which the British were to be allowed to cut logwood. In this connection, the Minister of the Indies, José de Gálvez, later Marqués de Sonora, prepared an Instruction of 8 February 1783 for the Foreign Minister, the Conde de Floridablanca, which was sent to the Spanish plenipotentiaries negotiating the treaty [Calderón Quijano, Belize, pp. 251-256, notes 27-32; 2 Riva Palacio, México a través de los Siglos, pp. 855-858]. Gálvez was well qualified on the subject, as he had visited Yucatan in the capacity of Visitador General of New Spain in 1766, and had made an extensive study of the logwood trade [Calderón Quijano, Belize, p. 188]. The Instruction is highly interesting as a summary of the Spanish viewpoint concerning Belize, and as it states clearly what was implied in some of the documents previously quoted, namely that the boundary between the Province of Yucatan and the Kingdom of Guatemala was the Belize River, at least for a long period in colonial times. The Instruction begins as follows:

"Even though the Ministry of the Indies does not know the definite date on which the English, in order to develop their manufactures and commerce, started to cut logwood on the coasts of the Province of Yucatán, it is nonetheless clear from the many documents relating to this matter that before the middle of the last century they were cutting the wood furtively or with the tolerance of our Government, which was then both weak and in need of the help of England in order to defend itself against France.

"On the basis of these antecedents and reasons the British nation argued that this toleration was authorized by Spain in the Treaty of 1670, though in general and confused terms; this, however, was enough for them to continue

more openly the cutting and enjoyment of the wood in various places on the north and south coasts of the said Province of Yucatán, until, at the beginning of this century when Spain freed itself from the Austrian domination, the Governors of Yucatán on various occasions harassed the English, notwithstanding that in the Peace of Utrecht King Philip V was obliged to make various sacrifices, among which was the confirmation of the said Treaty of the year 1670 and other treaties not less prejudicial to this monarchy, which had been concluded by its Austrian Kings.

"England continued thereafter the cutting of the wood, but was reduced to doing so on the south coast and at the extremity of the Province of Yucatán on the banks of the river Wallix, which divides that Province from the Kingdom of Guatemala, as we were successful in driving the English from the north coast of Campeche and from the Laguna de Términos, where they had established themselves by force in time of war."

The Instruction then continued its review of history, and reached the conclusion that there were three essential points, as follows:

"the first, to fix the area for woodcutting, and the precise limits of its extent; the second, that the marking out be done and agreed on as soon as possible; and the third,..... that the English evacuate the Río Tinto and all other places on the coasts, keys, and islands of the Gulf of Honduras.....

"As to the first point concerning the fixation of the area for woodcutting and the precise limits of its extent, it must be borne in mind that both by reason of prior constant acts by the English and by reason of the nature and circumstances of the territories which produce the so-called logwood trees, no other district can or should be marked out than that included in the extremity of the south coast of the Province of Yucatán, between the three rivers Wallix [Belize], Nuevo, and Hondo.....

"As to the second point, that the marking out be done and agreed on as soon as possible, you must take notice that the British at Jamaica, as soon as they receive the news that a peace has been concluded, will do what they did in the year '63 and will send out merchants and woodcutters to the three rivers Wallix, Nuevo, and Hondo and perhaps to other places; and on this supposition and on the supposition

that orders of His Majesty will be communicated to our Governors of Yucatán and Guatemala to order all the British who are found scattered in their respective Provinces to go to the aforementioned district and to withdraw to the area between the Walix and Nuevo, by this means the fixation of the area agreed on will be hastened and the only thing which will remain for the Governor of Yucatán to look after later will be the marking of permanent limits in the interior of the country, which as has been stated should be at twenty leagues measured from the mouths of the said rivers."

With respect to the eastern boundary of Guatemala north of the Belize River, it is interesting to note that the Instruction states that "the Walix has its origin in the Province of Peten Itza."

30. After protracted negotiations, the Definitive Treaty of Peace was signed by Spain and Great Britain at Versailles on 3 September 1783 [Cantillo, Tratados, pp. 586-590]. Article 6 provided:

"The intention of the two High Contracting Parties being to prevent as much as possible, all the causes of complaint and misunderstanding heretofore occasioned by the cutting of wood for dyeing, or logwood; and several English settlements having been formed and extended under that pretence, upon the Spanish Continent; it is expressly agreed that His Britannic Majesty's Subjects shall have the right of cutting, loading, and carrying away logwood, in the District lying between the River Wallis or Belize, and the River Hondo, taking the courses of the said two Rivers for unalterable boundaries, so that the navigation of them shall be common to both Nations, to wit: by the River Wallis or Belize, from the sea, ascending as far as opposite to a lake or inlet which runs into the land and forms an isthmus, or neck, with another similar inlet, which comes from the side of the Rio Nuevo, or New River; so that the line of separation shall pass straight across the said isthmus, and meet another lake formed by the water of the Rio Nuevo or New River at its current. The said line shall continue with the course of the Rio Nuevo, descending as far as opposite to a river, the source of which is marked in the map between Rio Nuevo and Rio Hondo, and which empties itself into the Rio Hondo; which river shall also serve as a common boundary as far as its junction with the Rio Hondo, and from thence descending by Rio Hondo to the sea, as the whole is marked on the map which the Plenipotentiaries of the two Crowns have thought proper to make use of, for ascertaining the points agreed upon, to the end that a good correspondence may reign between the two Nations, and that the English workmen, cutters, and labourers may not trespass, from an uncertainty of the boundaries. The respective Commissaries shall fix upon convenient places in the territory above marked out, in order that His Britannic Majesty's Subjects employed in the felling of logwood, may, without interruption, build therein houses and magazines necessary for themselves, their families, and their effects; and His Catholic Majesty assures to them the enjoyment of all that is expressed in the present Article; provided that these stipulations shall not be considered as derogating in any wise from his rights of sovereignty. Therefore all the English, who may be dispersed in any other parts, whether on the Spanish Continent, or in any of the Islands whatsoever, dependent on the aforesaid Spanish Continent, and for whatever reason it may be,

without exception, shall retire within the District which has been above described, in the space of eighteen months, to be computed from the exchange of Ratifications; and for this purpose Orders shall be issued on the part of His Britannic Majesty; and on that of His Catholic Majesty, his Governors shall be ordered to grant to the English dispersed every convenience possible for their removing to the settlement agreed upon by the present Article, or for their retiring wherever they think proper. It is likewise agreed that if any fortifications should actually have been heretofore erected within the limits marked out, His Britannic Majesty shall cause them all to be demolished, and he will order his Subjects not to build any new ones. The English Inhabitants who shall settle there for the cutting of logwood shall be permitted to enjoy a free Fishery for their subsistence on the Coasts of the District above agreed on, or of the islands situated opposite thereto, without being in any wise disturbed on that account; provided they do not establish themselves in any manner on the said Islands."

31. A map was annexed to the treaty, showing the boundary of the concession granted to Great Britain [Libro Blanco, Cartografía de Felice]. This map bears the legend "ULTIMO DE LA PROVINCIA DE YUCATAN" ("last of the Province of Yucatan") north of the Río Hondo and nearly on a level with Bacalar. Below it at a bend in the Río Nuevo is a legend in the same style of lettering reading "PROVINCIA DEL PETEN ITZA"; at the bottom of the map a similar legend reads "PROVINCIA DE GOATEMALA." This map has been adduced to show that the Río Hondo was the boundary between Yucatan and the Peten; but it is suggested that the phrase "ultimo de la Provincia de Yucatán" refers to the title of the map, which appears in the margin to the left. The title states that the map shows "... the situation of the Royal Presidio of S. Felipe de Bacalar, the road which goes from it to the Capital of Merida, the Lake of Peten Itza, and a part of the road to it, unpopulated as far as the last settlement in Yucatan" ("despoblado hasta el ultimo pueblo de Yucatan"). If this supposition is correct, the phrase "ultimo de la Provincia de Yucatán" on the map refers to the town of Concepción or Chinchaja, the southernmost towns in Yucatan which are shown by the map; the style of lettering would seem to be the same as in "Provincia del Peten Itza" and "Provincia de Guatemala" merely because the phrase is the only indication on the map of the location of Yucatan.

32. The parties to the Treaty of 1783 proceeded promptly to the demarcation of boundaries. The Governor of Jamaica, apparently uncertain as to what Spanish authority was in charge of demarcation, wrote a letter on 23 November 1783 to the President of Guatemala concerning the meeting of the boundary Commissaries provided for in the treaty [Calderón Quijano, Belice, pp. 265-266, note 52]. The President reported this letter to the Minister of the Indies on 12 January 1784, stating:

".....as in my opinion that marking out must be undertaken by the Governor of Yucatán, as all the territory included within said demarcation is a part of Yucatán, I replied to him to that effect....." [Calderón Quijano, Belice, p. 266, note 53].

During the course of the demarcation, the Spanish Commissary, the Governor of Yucatan, granted to the British certain minor privileges not expressly stipulated in the Treaty. The English and Spanish Commissaries signed a report on 27 May 1784 [2 Riva Palacio, México a través de los Siglos, pp. 859-861].



33. The British settlers at Belize were highly discontented with the terms of the Treaty of 1783, and as soon as they learned its terms, on 29 September 1783 they composed a Memorial to the British Secretary of State for the Home Department [1 Burdon, Archives, pp. 138-140]. This Memorial was forwarded by the Governor of Jamaica on 23 January 1784, with the comment that the claims made were reasonable [1 Burdon, Archives, p. 141]. Consequently, in 1784, the British Government undertook new negotiations with Spain to revise and amplify the terms of the Treaty of 1783. The British propositions were considered by the Spanish Ministry of the Indies, which on 11 November 1785 gave an Opinion (Dictamen) that many of the British requests could properly be granted [Calderón Quijano, Belize, pp. 306-308, notes 19-21].

34. Hence, on 14 July 1786, Spain and Great Britain signed at London a Convention to Explain, Amplify, and Make Effective Article 6 of the Definitive Treaty of Peace of 1783 respecting Colonial Possessions in America [Cantillo, Tratados, pp. 614-617]. Article 1 of this Convention provided for the evacuation by the British of "the countries of the Mosquitos, and likewise the continent in general and the adjacent islands, without exception," situated outside the area described later in the Convention. Article 2 stated:

"The Catholic King, to prove, on his side, to the King of Great Britain, the sincerity of his sentiments of friendship towards his said Majesty, and the British nation, will grant to the English more extensive limits than those specified in the last treaty of peace: and the said limits of the lands added by the present convention shall for the future be understood in the manner following.

"The English line, beginning from the sea, shall take the center of the river Sibún or Jabón, and continue up to the source of the said river; from thence it shall cross in a straight line the intermediate land, till it intersects the river Wallis; and by the center of the same river, the said line shall descend to the point where it will meet the line already settled and marked out by the commissaries of the two Crowns in 1783: which limits, following the continuation of the said line, shall be observed as formerly stipulated by the definitive treaty."

Article 3 granted, in addition to the right of cutting logwood granted by the Treaty of 1783,

".....the liberty of cutting all other wood, without even excepting mahogany, as well as gathering all the fruits, or produce of the earth, purely natural and uncultivated....."

but it continued to the effect that the British should never establish there

"any plantation of sugar, coffee, cacao, or other like articles, or any fabric or manufacture"

except sawmills. Article 4 granted the British the right of occupying Cayo Casina or St. George's Key, but specified that it should never be fortified nor any troops or artillery kept there.

"In order to verify with good faith the accomplishment of this condition sine qua non (which might be infringed by individuals, without the knowledge of the British Government) a Spanish officer or commissary, accompanied by an English commissary or officer, duly authorized, shall be admitted, twice a year, to examine into the real situation of things."

Article 5 provided that the British might use a certain area south of St. George's Key for refitting merchant ships, but on the condition that fortifications should not be built nor troops or warships stationed there. Article 6 granted the British a right of fishing off the coast of the area assigned to them. Article 7 stated:

"All the restrictions specified in the last treaty of 1783, for the entire preservation of the Spanish sovereignty over the country, in which is granted to the English only the privilege of making use of the wood of the different kinds, the fruits and other produce, in their natural state, are here confirmed; and the same restrictions shall also be observed with respect to the new grant. In consequence, the inhabitants of those countries shall employ themselves simply in the cutting and transporting of the said wood, and in the gathering and transporting of the fruits, without meditating any more extensive settlements, or the formation of any system of government, either military or civil, further than such regulations as their Britannic and Catholic Majesties may hereafter judge proper to establish, for maintaining peace and good order amongst their respective subjects."

The remaining nine articles of the Convention made detailed provisions concerning its execution.

35. In 1783, the British settlers at Belize had petitioned for the establishment of a system of government and the appointment of a Superintendent, suggesting Colonel Despard, later appointed British Boundary Commissary, for the post [1 Burdon, Archives, pp. 136-137]. On 1 December 1784, Colonel Despard was accordingly appointed by the King of Great Britain

"to regulate and superintend His Affairs within the District which by the late Treaty of Peace has been allotted for the Logwood Cutters upon the coast of Yucatan" [1 Burdon, Archives, p. 149].

This was the first occasion on which the British Government appointed an official to take part in the administration of Belize, though previously Commissioners on the Mosquito Coast, appointed by the Governor of Jamaica, had played some slight role in its affairs [1 Burdon, Archives, pp. 47, 69, 78]. Colonel Despard arrived to take up his post in June 1786 [1 Burdon, Archives, p. 153], and thereafter the post was filled continuously except for an interval between 1791 and 1797 [1 Burdon, Archives, p. 46]. The superimposition of a Superintendent on the constitutional system established by Burnaby's Laws in 1765 led to much uncertainty as to his powers, which caused an almost permanent state of friction between the Superintendent and Magistrates.

36. On 18 August and 24 September 1786, three Royal Orders were sent to the Governor of Yucatan concerning the fulfillment of the new Convention [Calderón Quijano, Belize, p. 319, note 45]. The Governor was unable to participate personally in the boundary demarcation, so he ordered the Commandant of Campeche, Don Enrique de Grimarest, to execute the Orders. The Spanish authorities in Guatemala took no part in the demarcation of boundaries, even though it had been officially stated in 1783 that the territory south of the Belize River was part of Guatemala. The formal act of delivery of possession was carried out by the boundary Commissaries, Grimarest and Colonel Despard, the British Superintendent of Belize, on 8 July 1787, and the Commissaries signed a report on 20 August 1787 [Peniche, Historia, pp. 77-79; Calderón Quijano, Belize, pp. 327-329, note 54]. An official map showing the limits of the British concession was also prepared by the Commissaries [reproduced in Tratados y Convenciones concluidos y ratificados por la República Mexicana, opposite p. 510]. This map is entitled

"Plan of a portion of Land in the Eastern part of the Province of Yucatan in which are included the Rios Hondo, Nuevo, Walix and Sibun: the district formerly occupied by the English Nation and that which has recently been marked out for them, the situation of Bacalar, the Salt Marshes, Lagoons, Islands and Channels with soundings which show the Vessels to which they are accessible."

37. The visits of Spanish Commissaries to Belize under Article 4 of the Convention of 1786 continued until 1796, when the last visit was made by Don Juan O'Sullivan [Peniche, Historia, pp. 56-57, 62]. All the Spanish Commissaries were appointed by the Governor of Yucatan [Calderón Quijano, Belice, pp. 337-352]. These visits often failed to receive the cooperation of the British authorities in Belize, especially in 1790 and 1791, when Spanish-British relations were tense [Calderón Quijano, Belice, pp. 345-347]. The Spanish Commissaries frequently reported violations of the Convention, particularly with regard to the demilitarization provisions and the provision of Article 7 forbidding the establishment of any system of government except by joint regulations of Spain and Great Britain. Upon protest by the Spanish Commissary, on 30 May 1789 the British Superintendent, Despard, ordered the dissolution of the courts and relinquishment of office by the elected magistrates at Belize, but on 10 June of the same year the same Superintendent established a new and somewhat different system of government. Despard, however, was dismissed from his post by the British Government and the Burnaby system was reinstated [1 Burdon, Archives, pp. 172-181].

38. On 18 August 1796, an alliance between Spain and the Directoire of France against Great Britain was signed [Cantillo, Tratados, pp. 673-676], and hostilities broke out on 6 October of that year [Calderón Quijano, Belize, p. 352]. The Governor of Yucatan, Don Arturo O'Neill de Tirone, at once began making preparations for an expedition to evict the British from Belize. The Spanish forces were defeated in a sea battle off St. George's Key on 10 September 1798 [3 Molina Solís, Historia de Yucatán, pp. 342-346; 1 Burdon, Archives, pp. 252-263], and were unable to accomplish anything during the remainder of the war.

39. The war was concluded by the Treaty of Amiens, signed on 27 March 1802 by Spain, France, the Batavian Republic, and Great Britain [Cantillo, Tratados, pp. 702-706]. Article 3 of this Treaty provided:

"His Britannic Majesty restores to the French Republic and to its Allies, to wit: to His Catholic Majesty and to the Batavian Republic, all the possessions and colonies which belonged to them respectively, and have been occupied or conquered by the British forces during the course of the war, with the exception of the Island of Trinidad and of the Dutch possessions on the Island of Ceylon."

40. The Treaty of Amiens was bitterly attacked by the opposition party in the British Parliament in May 1802, one of the principal grounds being that it failed to renew former British political and commercial treaties with France and Spain, including the Treaty of 1783 and the Convention of 1786 with Spain concerning Belize. It was argued that these treaties, not having been expressly revived, had lapsed because of the war, and that the British had therefore lost their rights under them [36 Parliamentary History of England (1801-1803), pp. 573, 594, 771]. The speakers for the Government, however, while conceding as a general rule that treaties lapse after a war unless expressly revived, expressed the opinion that British rights in Belize remained intact. The Prime Minister, Addington, stated on 3 May 1802 that [Ibid., p. 583]

"We had, for a long series of years, by an established practice, entitled ourselves to very valuable privileges [at Belize], which we had exercised uninterruptedly during war, as well as enjoyed during peace; and this was not disputed by that power which was most interested in making a case against us."

On 13 May 1802, in the House of Lords, Lord Auckland invoked the principle

"that treaties or compacts, the exercise of which are not interrupted by the course of the war, remain in full effect on the return of peace" [Ibid., p. 706].

and the Lord Chancellor, Lord Eldon, stated [Ibid., p. 727]:

"As little danger of our losing the right to cut logwood in the bay of Honduras was to be apprehended..... Let it be held in mind, that Honduras became the rightful property of Great Britain by conquest, and was never ceded to Spain, without an acknowledgment, on the part of the court of Madrid, of our



undoubted right to cut logwood. In proportion as the right of conquest was paramount to the effect of treaties, in which that right was not specifically abandoned and resigned, our right to cut logwood in the bay of Honduras remained more secure and free from challenge, than it could have done, if it had been mentioned in the definitive treaty [of Amiens]."

The argument was somewhat differently put by the Foreign Secretary, Lord Hawkesbury, in the House of Commons on the same day. He stated [Ibid., p. 763]:

"Gentlemen seem also to misconceive the nature of our right to cut logwood, &c. in the Bay of Honduras. The fact is, that right was ceded to us by the Spaniards in 1787, in return for some lands that we gave them on the Musquito shore; therefore, it is a settlement which we possess of right, and to which the Spaniards were as much bound to refer in the treaty as we were: it was, in truth, on our part no omission."

41. War broke out again between Spain and Great Britain at the end of 1804. The Spanish made no major effort against the British at Belize, but Spanish privateers (guarda costas) were active in 1805 and 1806 [1 Burdon, Archives, pp. 82, 90]. On 15 March 1805, the Governor of Yucatan reported that he had tried to plan an expedition against Belize with the Viceroy of Mexico and the President of Guatemala, but that neither of those officials replied to his communications [Calderón Quijano, Belize, pp. 400-401, note 46]. The war was concluded by a Spanish-British Treaty of Peace, Amity, and Alliance, signed at London on 14 January 1809 [Cantillo, Tratados, pp. 719-721]. The first article provided for

"a Christian, lasting, and inviolable peace, and a perpetual and sincere friendship, and a close alliance during the war with France, as well as an entire and complete oblivion of all hostile acts committed by either of the two parties in the course of the late wars in which they have been engaged."

42. After the Treaty of 1809, the Spanish Commandant of Bacalar was unwilling that the British should return to their woodcutting in the northern part of the area fixed by the Treaties of 1783 and 1786. On 17 July 1810, he requested the Superintendent of Belize not to allow the inhabitants of his settlement to go beyond Rocky Point and Punta de Calentura, thus excluding them from the Ríos Nuevo and Hondo. The Superintendent replied that he would inform his Government of the request, and in the meantime things would remain as they were [2 Burdon, Archives, p. 139; Peniche, Historia, p. 63]. On 26 June 1811, however, the Superintendent stated that works in the Ríos Hondo and Nuevo were within his jurisdiction and protection, the right of cutting having never been given up by the British Government [2 Burdon, Archives, p. 146].

43. On 17 February 1812, it was reported at Belize that a Spanish vessel had entered the Río Nuevo and forbidden the British to cut there [2 Burdon, Archives, p. 150]. Two British vessels were sent from Belize to the Río Nuevo, and forced the Spanish detachment there to retire. This action was protested by the Commandant of Bacalar on 28 February 1812, in a note which stated [Peniche, Historia, p. 63]:

"Neither the Captains General of Yucatán nor the Governors of Bacalar, since a declaration of war abolished the Treaty of Peace of 1783 and the Convention of 1786, have believed that British subjects could extend to the area within the said points [Rocky Point and Punta de Calentura]....."

The Superintendent then made an arrangement with the Commandant of Bacalar that there would be no obstruction of cutting on the Río Nuevo pending the decision of the matter by the Spanish and British Governments [2 Burdon, Archives, p. 152]. On 7 August 1812, the Commandant of Bacalar sent a note to the Superintendent in which he argued at great length that the British had no rights whatever in the territory of Belize [Peniche, Historia, pp. 63-67]. One argument made was

"The cutting and extraction of wood..... was a favor conceded by His Catholic Majesty in Article 6 of the Peace Treaty of 3 September 1786, with however the strict condition sine qua non, set out in Article 4, that there should be no fortifications, troops, or artillery; wherefore from the instant that there was a battery, a cannon, or a soldier (all of which are now present in your Settlement) the Treaty and the Convention were reduced to nothing tamquam si non essent numquamque fuissent....."

44. The Commandant of Bacalar seems to have been quite correct in his statement that British troops and fortifications were continuously maintained in the Belize settlement after the conclusion of the Treaty of 1809. An order was apparently issued in June 1809 for the withdrawal of the British troops, but it was not carried out [2 Burdon, Archives, pp. 11-14, 129]. A British sloop was usually stationed off the coast, and in 1812 the existing fortifications were repaired [2 Burdon, Archives, pp. 153, 155-156]. However, the Spanish Government did not take the view of the Commandant of Bacalar that the Treaties of 1783 and 1786 had been nullified; it merely protested in 1813 against felling of timber by the British outside the boundaries granted to them by those treaties. As a result of this protest, the British Secretary of State for the Colonies ordered the Superintendent to take steps to stop this practice [2 Burdon, Archives, p. 165]. The steps taken were apparently insufficient, as Spain complained again of cutting on the north bank of the Rio Hondo and the south bank of the Sibun in 1814; in response to the second Spanish protest, the inhabitants of Belize in Public Meeting asked that the boundaries of their area be extended southward to the River Moho [2 Burdon, Archives, p. 167].

45. On 5 July 1814, Spain and Great Britain signed a Treaty of Peace, Friendship, and Alliance at Madrid, and on 28 August 1814 signed additional articles to this Treaty [Oantillo, Tratados, pp. 732-733]. The first of these additional articles provided:

"It is agreed that pending the negotiation of a new treaty of commerce Great Britain shall be allowed to trade with Spain under the same conditions as existed prior to the year 1796. All treaties of commerce which were at that time in force between the two nations are for the present ratified and confirmed."

It has been argued [for example, Ireland, Boundaries, Possessions and Conflicts in Central and North America and the Caribbean, p. 124] that this had the effect of reviving the Treaties of 1783 and 1786.

46. The British apparently regarded the Treaties of 1783 and 1786 as still in force, despite their maintenance of troops, warships and fortifications at Belize. The Magistrates and Superintendent of the settlement cited the treaties in their controversies with one another [2 Burdon, Archives, pp. 126, 155]. and on 8 August 1818 the Secretary of State for the Colonies informed the Superintendent that the Lords of the Committee for Trade considered that the proposed growing of cotton in British Honduras would be an infringement of the terms of the Treaties [2 Burdon, Archives, p. 209].

47. One of the most pressing problems created by the anomalous status of Belize was the problem of punishment of serious criminal offenses. On 8 July 1815, the Secretary of State for the Colonies informed the Superintendent that [2 Burdon, Archives, p. 180]

"His Majesty having no Territorial Rights and consequently no power to establish tribunals,"

the only sanction which could be imposed on Spaniards within Belize was expulsion. On 27 June 1817, however, the British Parliament passed an act entitled "An Act for the more effectual Punishment of Murders and Manslaughters committed in Places not within His Majesty's Dominions" [57 Geo. III, c. 53]. The act began;

"Whereas grievous Murders and Manslaughters have been committed at the Settlement in the Bay of Honduras in South America, the same being a Settlement, for certain Purposes, in the Possession and under the Protection of His Majesty, but not within the Territory and Dominion of His Majesty....."

and continued:

"all Murders and Manslaughters committed or that shall be committed on Land at the said Settlement in the Bay of Honduras by any Person or Persons residing or being within the said Settlement.... shall and may be tried in any of His Majesty's Islands, Plantations, Colonies, Dominions, Forts or Factories, under or by virtue of the King's Commission or Commissions....."

48. The question whether this Act gave power to the courts of Belize to try murder and manslaughter cases was referred by the Colonial Secretary to the Law Officers of the Crown. The Law Officers replied in 1818 that

"the self created Courts of Honduras, not having been established or confirmed by His Majesty, nor by the British Parliament, cannot have legal Jurisdiction to try Offenders,"

and also stated that the Belize settlers

"must be considered as a number of Individuals residing by Permission in the Territory of a Foreign State" [2 Burdon, Archives, pp. 211-212].

Apparently Spain also took an interest in the question of the courts at Belize. In 1817, she requested the Superintendent to furnish a Spanish Captain General with the records of the trial of certain British subjects in 1815; but this request was refused by the Superintendent with the approval of the Colonial Secretary [2 Burdon, Archives, p. 206].



49. When the Belize settlers heard of the opinion of the British Law Officers, on 10 August 1818 they drew up a petition to the Prince Regent urging the establishment of a system of judicature [2 Burdon, Archives, pp. 210-213]. This petition argued that the Treaty of 1783 had been a relinquishment of sovereignty by Great Britain which had been rendered void by Spanish violation of that Treaty in attacking the settlers on the outbreak of war in 1796. The petition further set out the circumstances of the repulse of the Spanish forces in 1798, and continued:

"Your humble Petitioners presume that from that period, the Colony has assumed a new aspect and character -- it is His Majesty's by Right of Conquest! which has justified His Majesty in garrisoning it with Troops, defending it by Fortification, and certainly no less empowers His Majesty to direct Justice to be administered for the preservation of its internal tranquillity, and for the Protection of its peaceable Inhabitants."

This is apparently the first occasion on which the argument of conquest in 1798, later repeated by British officials and writers, was emphasized.

50. The Colonial Secretary, Lord Bathurst, replied to this petition on 7 November 1818, stating that His Majesty having no territorial rights it was beyond the power of the British Government to grant the settlers' request, but that the Spanish Government had been asked to assist [2 Burdon, Archives, p. 214]. Apparently nothing came of the negotiations with Spain, however. On 21 June 1819, the British Parliament passed an Act to amend the Act of 27 June 1817 [59 Geo. III, c. 44]. The new Act referred to the Act of 1817, and continued:

".....Whereas Doubts have arisen whether in the Said Settlements in the Bay of Honduras, there be a Fort or Factory to which a Commission may issue for the Trial of Offences under the said last mentioned Act."

The Act then provided that all murders, manslaughters, rapes, robberies and burglaries committed within the Settlement might be tried within the Settlement, under the King's Commission, by Commissioners having the same powers as Commissioners appointed for the trial of offences committed on the seas.

51. About this time the British began to take more active concern in the affairs of Belize. On 2 January 1821, the Colonial Secretary, Lord Bathurst, notified the Superintendent of the removal of a prohibition on the export of coffee and sugar to Belize which had been imposed on the ground that Belize was not a British possession. The reason given for the raising of the prohibition was that it was expedient to place the Settlement as far as possible on the footing of a British Colony [2 Burdon, Archives, p. 237].

52. In conclusion, it is necessary to examine the legal position of the British settlement just before the date of Central American independence in 1821, to determine whether the occupation of Belize still rested on the basis of the Treaties of 1783 and 1786 or had found some new basis. The Treaties of 1783 and 1786 were in no sense treaties of territorial cession, but merely granted certain carefully limited economic rights. These treaties without question continued in force down to the outbreak of war in October 1796. It was repeatedly argued by the British, and became the official position of the British Government in the controversy with the United States over the Clayton-Bulwer Treaty, that after 1798 British rights in the Belize territory rested on conquest, and not on the treaties with Spain. But this argument is wholly untenable in view of the provision of the Treaty of Amiens of 1802 for British restoration to Spain of all the Spanish possessions which

"have been occupied or conquered by the British forces during the course of the war."

The British therefore gained no rights to Belize which they had not possessed at the outbreak of hostilities.

53. The question arises, however, whether they may not have lost what rights they had previously possessed, and whether they continued in Belize as mere usurpers. Down to the middle of the nineteenth century, the opinion was very widespread that war automatically and permanently terminated all pre-existing treaties between the belligerents [Harvard Research, The Law of Treaties, p. 1184; McNair, The Law of Treaties, pp. 532-533], though in 1815 the United States argued that a right of fishing granted by the treaty of peace with Great Britain of 1783 -- an economic right similar to the right involved here -- survived the War of 1812 [5 Moore, Digest of International Law, p. 383], and United States and British courts held in 1823 and 1830 respectively that the provisions of an Anglo-American treaty of 1794 concerning the private right of ownership of property survived the same war [Society for the Propagation of the Gospel v. New Haven, 8 Wheaton 464; Sutton v. Sutton, 1 Russell and Mylne 662]. The British Government, however, despite the view of international law prevailing at the time, did not admit that it had lost its rights in Belize, as is shown by the debates in Parliament in 1802, and Spain did not protest the continuance of the British settlement. As under the provisions of the Treaty of Amiens the war could not increase British rights, it seems necessary to conclude that the situation created by the treaties of 1783 and 1786 was revived.

54. The war which broke out between Spain and Great Britain in 1804 was terminated by the Treaty of London of 1809, which provided for "an entire and complete oblivion of all hostile acts." This treaty also prevented the British from acquiring any greater rights than they had held at the outbreak of the war.

55. Thereafter, both parties generally acted as though the treaties of 1783 and 1786 were still in force. The British consistently violated the provisions of the treaties for demilitarization of Belize and prohibiting the establishment of a civil government, and the Spanish did not exercise their right of inspection. Yet Spain did not protest the continuance of the British settlement, merely protesting in 1813 and 1814 against British expansion beyond the treaty limits. The British Government, on the other hand, repeatedly recognized the treaties as being in force, and continued to do so down to as late as 1846. In view of this conduct, it seems possible to say that if the treaties did not survive the two wars, they were tacitly revived after the re-establishment of peace in 1809.

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56. It has been contended that the provision of the Treaty of 1814 ratifying and confirming all treaties of commerce in force in 1796 between Spain and Great Britain had the effect of reviving the Treaties of 1783 and 1786. The validity of this argument is questionable, as it seems difficult to fit the two treaties into the category of treaties of commerce; though an economic right was granted to Great Britain, the treaties did not deal with reciprocal trade between the parties. Yet in view of the conduct of the parties it is unnecessary to find an express provision reviving the treaties; under the law as it then existed there may have been some doubt as to whether it was necessary for the parties to continue to recognize themselves as bound by their stipulations, but as they continued to do so any doubt on the subject was resolved.

57. The conclusion must be that at the time of the independence of Central America in 1821 the legal status of the British Settlement was that established by the Spanish-British Treaties of 1783 and 1786.

B. Guatemala's Succession to Spanish  
Sovereignty over Belize

58. Almost without exception, the States of Central and South America have based their territorial claims on succession to Spain or Portugal, and in locating the boundaries of their territories they have relied on the uti possidetis of 1810 or 1821. Despite the general acceptance of the uti possidetis as a formula, however, no general agreement has come to exist upon the meaning to be given to it in application.

59. Useful discussions of the uti possidetis formula are the following:

- E. Ayala, "Le Uti Possidetis et le Règlement des Questions Territoriales en Amérique," Séances et Travaux de l'Académie Diplomatique Internationale, 30 November 1931, pp. 249-255.
- B. Checa Drouet, La Doctrina Americana del Uti Possidetis de 1810.
- C. C. Hyde, International Law, I, pp. 498-510.
- P. de Lapradelle, La Frontière, pp. 76-87.
- J. B. Moore, Memorandum on Uti Possidetis.

60. One view of the formula is that taken by the Swiss Federal Council in its award of 24 March 1922 in the Colombian-Venezuelan boundary arbitration, to the effect that [1 United Nations Reports of International Arbitral Awards, p. 228]

"When the Spanish colonies of Central and South America proclaimed themselves independent in the second decade of the nineteenth century, they adopted a principle of constitutional and international law to which they gave the name of uti possidetis juris of 1810, with the effect of laying down the rule that the boundaries of the newly created Republics should be the frontiers of the Spanish Provinces for which they were substituted. This general principle offered the advantage of establishing an absolute rule that there was not in law in the old Spanish America any territory without a master; while there might exist many regions which had never been occupied by the Spaniards and many unexplored or inhabited by uncivilized natives, these regions were deemed to belong in law to each of the Republics which had succeeded to the Spanish Province to which those territories were attached by virtue of the old royal ordinances of the Spanish mother-country. These territories, though not occupied in fact, were by common accord considered as occupied in law from the outset by the new Republic. Encroachments and untimely attempts at colonization from the other side of the border, as well as de facto occupations, became without importance or without legal consequences. This principle had also the advantage of suppressing, as it was hoped, boundary disputes between the new States. Finally, this principle excluded the attempts of European colonizing States on territories which they might have sought to proclaim res nullius. The international situation of Spanish America was from the beginning entirely different from that of Africa, for example. This principle later received a general consecration under the name of the Monroe Doctrine, but had long been the basis of South American public law."



61. On the other hand, Brazil has consistently taken a different attitude toward the uti possidetis. For example, the Brazilian Minister for Foreign Affairs, in reporting to the President on the negotiation of the boundary treaty of 8 September 1909 between Brazil and Peru, stated [Brazil, O Tratado de 8 de Setembro de 1909 entre os EE. UU. do Brasil e a Republica do Peru, pp. 9-10]:

"The Brazilian plenipotentiary refused both proposals, stating that he could not agree to frontiers other than those determined by the effective or real uti possidetis..... The so-called uti possidetis juris of the moment of independence of the South American nations was a misbegotten invention of publicists and diplomats of Spanish origin, who, in boundary discussions with Brazil, sought to take as the basis for them the invalid preliminary Treaty of 1777. 'The uti possidetis of the epoch of the emancipation of the Spanish colonies' -- the famous juriconsult D. Andres Bello wrote from Lima on 11 September 1857 -- 'was the natural possession of Spain, what Spain possessed really and effectively, with some title or without title; not what Spain had the right to possess and did not possess'."

62. A persuasive exposition of the uti possidetis of 1821, and of the types of evidence bearing on it, was given by the Guatemala-Honduras Special Boundary Tribunal in its opinion and award of 23 January 1933 [2 United Nations Reports of International Arbitral Awards, pp. 1307, 1324-1325] as follows:

"The expression 'uti possidetis' undoubtedly refers to possession. It makes possession the test.... Prior to independence, each colonial entity being simply a unit of administration in all respects subject to the Spanish King, there was no possession in fact or law, in a political sense, independent of his possession. The only possession of either colonial entity before independence was such as could be ascribed to it by virtue of the administrative authority it enjoyed. The concept of 'uti possidetis of 1821' thus necessarily refers to an administrative control which rested on the will of the Spanish Crown. For the purpose of drawing the line of 'uti possidetis of 1821' we must look to the existence of that administrative control. Where administrative control was exercised by the colonial entity with the will of the Spanish monarch, there can be no doubt that it was a juridical control, and the line drawn according to the limits of that control would be a juridical line. If, on the other hand, either colonial entity prior to independence had asserted administrative control contrary to the will of the Spanish Crown, that would have been mere usurpation, and as, ex hypothesi, the colonial regime still existed and the only source of authority was the Crown.... such usurpation could not confer any status of 'possession' as against the Crown's possession in fact and law.....

"In ascertaining the necessary support for that administrative control in the will of the Spanish King, we are at liberty to resort to all manifestations of that will, -- to royal cedulas, or rescripts, to royal orders, laws and decrees, and also, in the absence of precise laws or rescripts, to conduct indicating royal acquiescence in colonial assertions of administrative authority. The Crown was at liberty at all times to change its royal commands or to interpret them by allowing what it did not forbid. In this situation the continued and unopposed assertion of administrative authority by either of the colonial entities,

under claim of right, which is not shown to be an act of usurpation because of conflict with a clear and definite expression of the royal will, is entitled to weight and is not to be overcome by reference to antecedent provisions or recitals of an equivocal character. Statements by historians and others, of repute, and authenticated maps, are also to be considered, although such descriptive material is of slight value when it relates to territory of which little or nothing was known and in which it does not appear that any administrative control was actually exercised.....

"It is manifest that, in determining this question, the action of these States in establishing their independent governments and in formally describing the extent of the territory to the sovereignty over which they regarded themselves as succeeding, is significant....."

63. It must be emphasized, however, that the Guatemala-Honduras Tribunal gave this explanation only as an interpretation of the terms of the Treaty of Arbitration of 16 July 1930, and not as a statement of a definition established by custom. The Tribunal stated [2 United Nations Reports of International Arbitral Awards, p. 1323] that

"Both Parties invite attention to the historic utilization of the phrase 'uti possidetis' in Latin American settlements. But an examination of these, and of the views of eminent jurists bearing upon that use of the phrase, fails to disclose such a consensus of opinion as would establish a definite criterion for the interpretation of the question...."

64. As a principle, uti possidetis would seem to have become established in the law of the Americas [A. Alvarez, Le Droit International Américain, p. 65].

65. It has also been applied in cases between American and European States. An example is the case of the Island of Aves between the Netherlands and Venezuela, decided on 30 June 1865 by an arbitral award of the Queen of Spain [2 La Pradelle and Politis, Recueil des Arbitrages Internationaux, pp. 404-421; 5 Moore, International Arbitrations, pp. 5037-5041]. The Island of Aves, a small island incapable of permanent habitation, lies isolated in the Caribbean, about 200 kilometers west of Guadeloupe, the nearest sizable island, and about 650 kilometers from the nearest point on the mainland coast of Venezuela. The only persons who habitually visited it were inhabitants of the Dutch islands of Saba and Saint Eustatius, who went there periodically to fish for turtles and to gather birds' eggs. In 1854, a Venezuelan Colonel accompanied by a few soldiers went to Aves and occupied it in the name of his country. The arbitral award, given by the Queen of Spain with her Council of Ministers and with the advice of her Council of State, provided in part:

"Whereas on its part Venezuela principally bases its right on the right of Spain before that Republic was constituted as an independent State, and although it is clear that Spain did not materially occupy the territory of the Island of Aves it is indubitable that the island belonged to Spain as a part of the West Indies, which were under the dominion of the Kings of Spain according to Law 1, Title 15, Book 2 of the Recopilación de Indias.

"Whereas the Island of Aves must have formed part of the territory of the Audiencia of Caracas when that Audiencia was created on 13 June 1786, and when Venezuela constituted itself an independent Nation it did so with the territory of the Capitanía General of that name, declaring afterwards that all provisions adopted by the Spanish Government down

to 1808 were in force in the new State, and therefore the Island of Aves may be considered to be part of the Spanish Province of Venezuela."

The award held that title to the Island belonged to Venezuela, but that Venezuela would be obliged to pay an indemnity to the Netherlands if Dutch subjects were deprived of the right of fishing there.

66. In its dispute with Brazil over the location of the boundary of French Guiana, France never questioned that Brazil had inherited all of the legal rights of Portugal. The French-Brazilian treaty for arbitration of the boundary, signed at Rio de Janeiro on 10 April 1897 [La Fontaine, Passicrisie Internationale, pp. 563-564], referred to arbitration by the Swiss Federal Council principally the question of what river had been described as "the Japoc, or Vincent Pinson" by Article 8 of the Treaty of Utrecht of 11 April 1713 between France and Portugal. In its award of 1 December 1900, the Swiss Federal Council stated:

"After Brazil separated itself from Portugal in 1822 to become an independent State, and had been recognized as such by the powers, it was with respect to France, as regards the subject-matter of the dispute, in the same situation as Portugal had been until then. No disagreement exists on this point between the parties" [La Fontaine, Passicrisie Internationale, p. 577].

67. The United States has also argued that the Republics of Central and South America succeeded to the territory within their colonial boundaries, and that this principle is binding on European States. For example, in the controversy with Great Britain over the Clayton-Bulwer Treaty, the United States Secretary of State instructed the Minister in London on 26 July 1856 [7 Manning, Inter-American Affairs, p. 146].

"The United States regard it as an established principle of public law and of international right, that when a European Colony in America becomes independent, it succeeds to the territorial limits of the Colony as it stood in the hands of the parent country. This is the doctrine which Great Britain and the United States concurred in adopting in the negotiations of Paris, which terminated this country's war of Independence. It has been followed by Spain and Portugal in regard to their former Colonies in America and by all those Colonies as between one another and the United States. No other principle is legitimate, reasonable, or just. When a Colony is in revolt, and before its independence has been acknowledged by the parent Country, the colonial territory belongs, in the sense of revolutionary right, to the former, and in that of legitimacy, to the latter. It would be monstrous to contend that in such a contingency, the colonial territory is to be treated as derelict, and subject to voluntary acquisition by any third nation. That idea is abhorrent to all the notions of right, which constitute the international code of Europe and America."

68. Accepting the principle of the uti possidetis of the date of independence as governing controversies between the Republics themselves, Great Britain has maintained that this principle is not binding upon other States unless the ordinary conditions of international law regarding the acquisition of territory have been fulfilled [1 Smith, Great Britain and the Law of Nations, p. 372]. The British Foreign Secretary, Canning, wrote in a dispatch of 18 March 1826 concerning a dispute between Brazil and the State of Buenos Aires [1 Webster, Britain and the Independence of Latin America, pp. 140-141], that

"unless by a general tacit agreement the States of the New World be admitted to stand towards each other in respect to geographical rights and limits exactly as they stood when Colonies, questions of the utmost perplexity will infallibly arise out of their rival and conflicting pretensions, and the whole Continent of America, whether Spanish or Portuguese, will ultimately be laid open to the designs of any enterprising adventurers who may think fit to carve out for themselves new dominions."

69. Great Britain has never admitted, however, that Guatemala and Mexico succeeded to Spain's sovereignty within their colonial limits in the territory of Belize. The Mexican-British Treaty of 26 December 1826 [Mexico, Tratados y Convenciones concluidos y ratificados, pp. 432-433] would seem not to recognize such succession. In the controversy over the Mosquito Coast, Britain denied Nicaragua's rights of succession. For example, the British Foreign Secretary, Lord Palmerston, stated in a note to the Nicaraguan agent in London on 16 July 1849 [1 Smith, Great Britain and the Law of Nations, p. 378].

"The People of each of the revolted Districts of the Spanish American Provinces, established their own Independence and their own Right of self-government within the Territory which they had actually occupied, but nothing more. If these revolted Provinces had imagined that they acquired by their Revolt all the rights of Spain, besides determining among each other in what manner those Rights were to be apportioned between them, they must also by necessity have considered themselves bound by all the obligations of Spain. But they neither acknowledged those obligations nor were called upon by other States to adopt them."



70. An issue of the same character arose in the dispute between Great Britain and Venezuela over the British Guiana boundary. In urging Great Britain on 20 July 1895 to consent to arbitration, the United States assumed that Venezuela had succeeded to the territory in question, and argued that the Monroe Doctrine as a legal principle prevented acquisition by European States of new territory in America after its first promulgation in 1823 [87 British and Foreign State Papers, pp. 1064-1088]. On 26 November 1895, Great Britain denied Venezuela's rights of succession to Spain, and the legal force of the Monroe Doctrine [87 British and Foreign State Papers, pp. 1096-1107]. The issue of Venezuela's succession was settled in Great Britain's favor by the British-Venezuelan Treaty of Arbitration, signed at Washington on 2 February 1897 [89 British and Foreign State Papers, pp. 57-65], which contained a provision that adverse holding or prescription during a period of fifty years should make good title.

71. Another dispute between Great Britain and an American State was that with Brazil over the boundary of British Guiana, arbitrated by the King of Italy under a Treaty of Arbitration signed at London on 6 November 1901 [Descamps and Renault, Recueil International des Traités du XX<sup>e</sup> Siècle, 1901, p. 149]. The award rendered on 6 June 1904 [Descamps and Renault, Recueil, 1904, pp. 169-173] held:

"That to acquire sovereignty over regions which are not in the dominion of any State, it is indispensable to effectuate an occupation in the name of the State which intends to acquire dominion over them;

"That occupation cannot be held to have been accomplished except by an effective, uninterrupted and permanent possession, in the name of the State; and mere affirmation of rights of sovereignty, or the manifest intention of a will to make the occupation effective, is not sufficient;

"That effective possession of a part of a region, though it may be held effective to acquire the sovereignty of the whole of a region which constitutes a single organism, cannot be effective to acquire the sovereignty over the whole of a region which, by reason of its extent or its physical configuration, cannot be deemed a de facto organic unity;

"That therefore, everything justly considered, it cannot be held that Portugal first, and Brazil later, have accomplished an effective taking of possession of the whole of the territory in dispute; but it may only be recognized that those States put themselves in possession of certain places in the territory, and that they have exercised their sovereign rights there."

The award continued by reciting the acts of sovereignty performed in the area by the Dutch and their successors, the British, and stated that British sovereign jurisdiction was gradually accepted by the native

tribes in the area, "who could not be regarded as under the effective dominion of Portuguese, or later, Brazilian, sovereignty." The conclusion was arrived at, however, that the limits of the territory over which the sovereign rights of either party had been established could not be fixed with precision, and consequently the territory was equitably divided along natural frontiers.

72. In ascertaining the line of the uti possidetis juris in the Belize territory, it is necessary to look first for Spanish laws bearing directly on the question of boundaries. The Spanish code of colonial legislation, the Recopilación de Leyes de los Reinos del las Indias, promulgated by Charles II in 1681, contained a special section dealing with boundaries [Lib. 5, Tit. 1, Ley 1; 5th ed. (Madrid, 1841), Vol. II, pp. 164-166]. This law ordered and commanded Viceroy, audiencias, governors, corregidores, and alcaldes mayores to keep to and observe the limits of their jurisdiction, as indicated to them by the Recopilación itself, by the titles of their offices, the provisions of the superior government of the provinces, "or by usage and custom legitimately introduced." This law is significant in that it shows that under ordinary circumstances officials could not act outside their jurisdictions, and that customs and usage had legal effect in determining boundaries. Though the Recopilación itself in general made only the vaguest determination of boundaries, it provided [Lib. 2, Tit. 15, Ley 6; 5th ed., Vol. I, p. 210] that the Audiencia of Guatemala

"shall have as its district the said province of Guatemala, and the provinces of Nicaragua, Chiapas, Higueras, Cabo de Honduras, Vera-Paz and Soconusco, with the Islands of the Coast, bounded on the east by the Audiencia of Tierra-Firme [Panama]; on the west by that of Nueva Galicia; on the north by that Audiencia and by the Northern Sea; and on the south by the Southern Sea."

73. The next great body of colonial legislation was the Real Ordenanza para el establecimiento é instrucción de Intendentes de Ejército y Provincia en el Reino de la Nueva España, of 5 December 1786. This Ordinance made great changes in the administrative organization of New Spain, and in some cases it established new boundaries. However, the boundaries still remained vague; an annex to the Ordinance provided that the district of the Intendency of Mérida in Yucatan

"shall consist of the whole Province of that name, with in addition the Laguna de Términos, the Province of Tabasco, Villa-Hermosa, Acapala, Chiltepeque, Escobar, and Cupilco."

By Article 57 of the Ordinance the newly-created Intendents were ordered to have engineers draw up maps of their provinces on which the boundaries were to be marked. If such a map was made by the authorities in Guatemala or Yucatan, it would have the greatest significance in the present case; but no mention of such a map has been found in available sources.

74. The Spanish Constitution of 19 March 1812 provided in Article 10 that Spanish territory included the Peninsula of Yucatan and Guatemala, and in Article 11 that

"A more suitable division of Spanish territory will be made by a constitutional law, when the political circumstances of the nation permit" [Spain, Congreso de los Diputados, Constituciones y Reglamentos, pp. 3-4].

Apparently no such division was ever made.

75. The report made to the Mexican Senate by the Mexican Foreign Secretary, C. Ignacio Mariscal, in 1893, concerning the Mexican-British Honduras boundary treaty of 8 July 1893, stated [Informe del C. Ignacio Mariscal, p. 44]:

"Finally, on the establishment of the intendencias (1787), boundaries were fixed between Mexico and Guatemala, including in the latter the territory from 7°54' to 17° 49' N. lat....."

The source of this statement was a Memoria presented by the Mexican Secretario de Fomento to the Mexican Congress in 1857, which quoted notes prepared by one José Gómez de la Cortina. Gómez did not cite any specific documents to support his allegation. Mariscal apparently asserted in the course of boundary negotiations between Guatemala and Mexico in 1882 that this demarcation was made by means of a real cédula. The Chief of the Guatemalan Commission observed in his report [Memoria sobre la Cuestión de Límites entre Guatemala y México Presentada al Señor Ministro de Relaciones Exteriores por el Jefe de la Comisión Guatemalteca, p. 176, quoted in Fabela, Belize, p. 186]:

"Also the affirmation of señor Mariscal that the parallel of 17°49' was decreed by a real cédula of 1787 which set the boundaries of the Intendencias, and quotations from various authors presented to señor Herrera by señor García Cubas to the effect that that was the boundary set, must have had weight in the mind of señor Herrera. As it was not explained how a limit as precise as 17° 49' was fixed at a time when calculations were ordinarily not made with precision instruments, in an almost deserted terrain and between provinces or intendencias which belonged to a single nation, I have searched for some author to explain it to me, but unfortunately I have not found any."

Judge Fabela, a Mexican writer, has stated that he has carefully examined the collection of reales cédulas in the Mexican national archives and has

not found the cédula mentioned by Mariscal nor any other bearing on the question [Fabela, Belice, p. 187]. No such cédula is mentioned by Calderón Quijano, a Spanish writer who has examined various Spanish archives, including the Archive of the Indies at Seville. It seems somewhat doubtful, therefore, whether the cédula mentioned by Mariscal ever existed.

76. The distinguished Guatemalan historian, don Domingo Juarros, whose work, the Compendio de la Historia de la Ciudad de Guatemala, based on original sources, was written between 1808 and 1818, stated [1 Juarros, Historia (3rd ed.), pp. 11-12]:

"The said Kingdom [Guatemala] extends from 282° to 295° of longitude [sic], and from 8° to 17° of north latitude.... The Kingdom of Guatemala borders on the Intendency of Oaxaca in New Spain to the west, and to the northwest on the Intendency of Yucatan in the same Kingdom.... Therefore the jurisdiction of the Royal Chancellery of Guatemala extends from the coast of Wallis [Belize] in the Bay of Honduras to the Escudo de Veraguas, on the Atlantic side, and on the Pacific side from the Barra del Paredon, in the Province of Soconusco, to the mouth of the River Boruca, in the Province of Costa-Rica; and by land from the Chilillo, in Oaxaca, to the Partida de Chiriquí, in the Province of Veraguas."

As the latitudes and longitudes given are the best approximations, perhaps they can be left out of account. It is significant, however, that Juarros, whose researches in the archives were very extensive, had apparently never heard of a real cédula establishing the boundary between Guatemala and Yucatan at 17° 49' North latitude.

77. Spanish legislation, then, apparently made no detailed delimitation of the colonial boundary of Guatemala in the Belize territory, and any effort to ascertain it must largely rely, in the words of the Guatemala-Honduras Special Boundary Tribunal, on "conduct indicating royal acquiescence in colonial assertions of administrative authority." It is clear, however, that if the uti possidetis juris were applied to the Belize territory, it could not redound to British advantage.

78. The frequent exercise of authority by colonial officials of Yucatan in the area defined by the Spanish-British treaties of 1783 and 1786 and the statements and orders of the Spanish Government in colonial times might be put forward to bolster a Mexican claim to part of the territory of Belize, if the uti possidetis juris alone were being applied. However, one hundred and thirty years of later history of relations between Guatemala, Mexico and Great Britain must be taken into account, and Guatemala's claims in Belize do not have to be rested on uti possidetis alone.



C. History of Belize from 1821 to 1859

79. On 15 September 1821, Guatemala declared its independence of Spain by an Act of Independence [1 Pineda de Mont, Recopilacion de las Leyes de Guatemala, p. 11]. The Guatemalan Captain General apparently made overtures to the Superintendent of the Belize Settlement concerning a commercial treaty, but the British Colonial Secretary wrote on 16 March 1822 that it would be better for the Belize merchants quietly to avail themselves of the friendly disposition of the Captain General without the formality of a commercial treaty, which would be a departure from the British policy of neutrality in the revolutionary conflict [2 Burdon, Archives, p. 255]. It was later stated by a Central American diplomatic representative to the United States that in 1821 a Commissioner from the Captain General of Guatemala had also demanded that the British stay within the limits granted by the Convention of 1786 [United States, 32nd Congress, 2d Sess., Senate Executive Document No. 27, pp. 8-10; 3 Manning, Inter-American Affairs, p. 88].

80. After the fall of the Mexican Emperor Agustín Iturbide, Central America declared its independence from Mexico on 1 July 1823. This Act of Independence stated [1 Pineda de Mont, Recopilacion, pp. 24-27]:

"Secondly: Whereas on the other hand:... the said attachment [to the Mexican Empire] is contrary to the interests and sacred rights of the peoples who are our constituents; it is opposed to their will, and a concurrence of such weighty and irresistible circumstances demand that the provinces of the former Kingdom of Guatemala should set them up by themselves, separately from the Mexican State:

"We, therefore, the representatives of said provinces, .....solemnly declare:

"1. That the said provinces represented in this assembly are free and independent from old Spain, from Mexico, and from any other power, either in the Old or the New World; and that they are not nor ought to be the patrimony of any person or family."

The difficulties of the new states in America led the British to consider the possibility of getting a cession of the Belize territory. On 15 December 1823, the Superintendent of the Belize Settlement wrote to the Colonial Secretary that the moment was favorable for obtaining a cession from Spain, but that it would be undesirable to do so, as the new nations would consider this prejudicial to themselves; he was of the opinion that the new nations would cede the Belize territory in return for recognition [2 Burdon, Archives, p. 279].

On 9 October 1823, Britain informed France

"That the British Government absolutely disclaimed, not only any desire of appropriating to itself any portion of the Spanish Colonies, but any intention of forming any political connexion with them, beyond that of Amity and Commercial Intercourse" [11 British and Foreign State Papers, p. 50].

81. On 22 November 1824, the first constitution of the Federal Republic of Central America was promulgated. This Constitution provided in article 5 [Colección de las Constituciones Políticas que la República de Honduras se ha decretado, p. 10]:

"The territory of the Republic is the same as was formerly included in the old Kingdom of Guatemala, with the exception for the present of the Province of Chiapas."

On 6 February 1825, as soon as the new government was organized, the Superintendent of the British Settlement sent a mission to Guatemala to arrange for the surrender of fugitive slaves, whose escape in considerable numbers had created a serious problem for the Settlement [2 Burdon, Archives, p. 284]. On 2 July 1825, the Colonial Secretary authorized the Superintendent to inform the Central American Government that if they directly or indirectly encouraged the desertion of slaves it would indispose Great Britain to early recognition [2 Burdon, Archives, p. 285]. In response to these British representations, the lower house of the Central American legislature in March passed a decree for the surrender of the slaves. The commission of the lower house which dealt with the matter stated [1 Webster, Britain and the Independence of Latin America, p. 332]:

"....We do not here pretend either to protect or extenuate the barbarous traffic in slaves, but to respect the rights of a neighboring State, over which we have no authority;.... and above all, as there is no existing treaty with the English Government, it is clear that our law cannot apply with respect to the slaves of Colonies belonging to that nation...."

However, the decree did not become law through failure of the Central American Senate to approve it [1 Webster, Britain and the Independence of Latin America, p. 335; 2 Burdon, Archives, p. 287].

82. At the same time, the British Government was giving serious consideration to the uncertain status of Belize. On 7 May 1825, the Superintendent of the Settlement was requested to transmit a map showing the boundaries as then claimed; the map sent by the Superintendent on 8 July 1825 showed the Sarstoon River as the de facto southern boundary, and suggested that the town of Petén, or Flores, be taken as the western boundary [2 Burdon, Archives, p. 369]. A previous letter to the Colonial Office from a private settler at Belize had agreed that the Settlement extended as far south as the latitude of the Sarstoon, but had made more moderate claims as to the western boundary [2 Burdon, Archives, p. 368].

33. There had undoubtedly been much mahogany cutting outside the limits of the Treaty of 1786, and probably as far south as the Sarstoon. In 1816, for instance, the Public Meeting at Belize had stated that Great Britain's subjecting wood cut outside the treaty limits to a foreign duty would ruin three-quarters of the inhabitants of the Settlement [2 Burdon, Archives, pp. 184-185]. There had been frequent exercise of jurisdiction before 1810 at the Mullins River, south of the Sibun [2 Burdon, Archives, pp. 83, 100, 101, 120], and in 1821 the Public Meeting decided to pay the salary of a permanent constable there [2 Burdon, Archives, p. 239]. In August and September 1823, the authorities at Belize received a considerable number of British refugees from an unsuccessful settlement on the Mosquito Coast, and settled them as farmers in the Stann Creek district, even farther to the south [2 Burdon, Archives, pp. 275-277]. Acting on behalf of the British Crown, the Superintendent of Belize frequently made grants of land in the area between the Sibun and the Sarstoon [3 Burdon, Archives, pp. 184-185].

84. On 8 July 1825, a British Law Officer of the Crown, consulted by the Colonial Secretary, gave the opinion on the basis of the Spanish-British Treaties of 1802, 1809, and 1814 that the Treaties of 1783 and 1786 were still in force [Williams, Anglo-American Isthmian Diplomacy, p. 32]. This did not alter the position of the Colonial Secretary, who on 23 September 1825 wrote that in any treaty with Central America the boundaries of the Settlement as they existed de facto should be secured to Great Britain [2 Burdon, Archives, p. 369]. The position was consistently maintained by the British after 1825 that the Sarstoon should be the southern boundary. A sketch map dated 29 April 1826, attached to a letter from the London Agent of the Belize settlers to the British Foreign Secretary and later included in an official memorandum on the boundary question [reproduced in 2 Burdon, Archives, opposite p. 292], also showed the southern limit of British occupation as the Sarstoon.

85. On 11 October 1825, the State of Guatemala, one of the component states of the Central American Republic, adopted a constitution. As to the northern boundary, this constitution provided in Article 35 [1 Pineda de Mont, Recopilacion, pp. 463-464]:

"The territory of the state includes: to the north, all the towns (Pueblos) of the Partido de Chiquimula with Izabal and the Fort of San Felipe in the Golfo Dulce, Vera-paz and the Peten....."

86. Meanwhile, Great Britain was pursuing its effort to obtain recognition of its rights to Belize from the new Latin American governments. A treaty of friendship, commerce and navigation between Mexico and Great Britain, signed at Mexico City on 6 April 1825, provided in Article 15 [Tratados y Convenciones celebrados y no ratificados por la República Mexicana, p. 313]:

"The stipulations agreed to by the sixth article of the Treaty of Versailles of the 3d. September 1783, shall remain in full force and vigor between His Britannic Majesty and the United States of Mexico, with respect to that portion of the Mexican territory which they embrace, as shall also those of the convention signed in London on the fourteenth of July 1786, for explaining, enlarging, and rendering effective the stipulations of the above mentioned article."

The British Government, however, refused to ratify this treaty, which so clearly dealt with Mexico as the successor to Spain's rights over at least a part of Belize. The British Foreign Secretary, referring to Article 15 of the treaty, gave as a reason for non-ratification [Defensa del Tratado de Límites entre Yucatán y Belice, p. xxxiv]:

"The territory occupied by H. M.'s subjects in Campeche [sic!] is occupied by virtue of a treaty with Spain. To refer to that treaty in the present one would be to admit a new and exclusive title on the part of Mexico, and by admitting it, ipso facto to decide on a de jure question which would be highly offensive to the Crown of Spain....

".... England cannot take upon itself to pronounce as arbiter between two de jure claims.

"Nonetheless it appears to be doing so, by the terms of this article, since it cedes in favor of Mexico a title which it has received from Spain, and by this cession pronounces on the de jure question in which, as has already been said, it has no right to intervene."

87. Continued negotiations between Great Britain and Mexico led on 26 December 1826 to the signature of a treaty at London which was duly ratified by the parties. Article 14 of this treaty provided [Tratados y Convenciones concluidos y ratificados por la República Mexicana, pp. 432-433]:

"The Subjects of His Britannick Majesty, shall, on no account or pretext whatsoever, be disturbed or molested in the peaceable possession and exercise of whatever rights, privileges and immunities they have at any time enjoyed within the limits described and laid down in a Convention, signed between His said Majesty and the King of Spain, on the 14th of July 1786; whether such rights, privileges and immunities shall be derived from the stipulations of the said Convention or from any other concession which may, at any time, have been made by the King of Spain or His Predecessors to British Subjects and Settlers residing and following their lawful occupations within the limits aforesaid; the Two Contracting Parties reserving, however, for some more fitting opportunity, the further arrangements on this Article."

This treaty was ratified by Mexico in 1827, notwithstanding the criticism by the Committees on Foreign Affairs and Finance of the Mexican Senate of the change in wording from that of 1825 in the article concerning Belize. The Committees stated [Defensa del Tratado de Límites entre Yucatán y Belice, p. xxxvi]:

".....It is clear that in the first treaty (of 1825) attention was paid to the honor of the Nation, as the Nation's right was recognized to stipulate concerning a territory included within the demarcation laid down in the General Constitution. In the second (of 1826), such right is cut off....."



88. Shortly after the British rejection of the Mexican Treaty of 1825, a Minister from Central America arrived in London to conclude a treaty of friendship and commerce, containing an article concerning Belize similar to the one in the treaty of 1825 with Mexico [Vela, Nuestro Belice, pp. 61-62]. The British Government postponed the negotiations with Central America until an agreement could be reached with Mexico, intending to pattern the Central American treaty on the Mexican one [1 Webster, Britain and the Independence of Latin America, pp. 346-347]. After the treaty with Mexico was signed in 1826, negotiations with Central America were not resumed because of the death of the British Foreign Secretary, Canning, and because an outbreak of civil strife in Central America made the time unpropitious. Further negotiations were carried on in London after the restoration of tranquillity in Central America in 1830, but no treaty was concluded [Ibid.].

89. In November 1827, Mexico notified the British Superintendent of Belize that it intended to send Commissioners to inspect the boundaries as established by the Spanish-British Convention of 1786, and proposed to invite the British Government to appoint a Commission to carry into effect the fourteenth article of the Mexican-British Treaty of 1826. In reporting this notification to the Colonial Secretary, the Superintendent stated that he regarded it as an assertion of Mexican territorial rights south of the Rio Hondo, and restated the claim of British conquest of the area as far south as the Sarstoon River [2 Burdon, Archives, p. 297]. The British Consul in Mexico persuaded the Mexican Government not to disturb the British settlers, "notwithstanding their encroachments of above 20 leagues from the limits fixed by Treaty" [2 Burdon, Archives, p. 370].

90. Central America also displayed fresh interest in Belize. On 1 December 1827, the Superintendent of Belize reported that a Guatemalan cruiser threatened to drive away any British vessel found loading to the south of the River Sibun, and requested the protection of the British Admiral Commanding at Jamaica [2 Burdon, Archives, pp. 297, 370]. These circumstances apparently moved the British Foreign Office to consult the King's Advocate, who reported on 13 February 1828 that in his opinion the British Government was justified in retaining possession of the territory acquired in the war of 1798, beyond the limits of the Treaties of 1783 and 1786. The King's Advocate argued that though these treaties were renewed at the end of the war, they would admit of interpretation to include possession of the extra land, which had been held for so many years and through two successive wars, and was not mentioned in the Treaties of Amiens and Paris; he also considered that despite the Treaties of 1783 and 1786, Britain had acquired a possessory right over the land [3 Burdon, Archives, pp. 155-156].

91. In 1829, a reported threat by North Americans to settle in the region between the Sibun and the Sarstoon caused the British Prime Minister to prepare a memorandum on the whole Belize question. He was of the opinion that Spain's rights in the territory were undeniable, and that it ought to be determined whether she would not relinquish her claims; if not, it might be well to regard the territory as a part of the state of Guatemala, and to offer the Central American Government an earlier recognition in return for the cession of it [Williams, Anglo-American Isthmian Diplomacy, pp. 32-33]. On 20 October 1829, however, the British Foreign Office declined to acknowledge that Belize was part of Guatemala, but stated that the British Government, never having treated with Central America as an independent State, could not admit the right of that country to interfere with British settlers in any portion of territory occupied by them, and that attempts to interfere should be resisted by force if necessary [2 Burdon, Archives, pp. 370-371]. On 22 August 1829, the Legislative Assembly of Guatemala gave an order that

"the Government should take measures to check the clandestine cutting of wood by the English on the North coast, for which purpose a coast-guard vessel [buque guardacostas] may be purchased" [Vela, Nuestro Belice, p. 68].

92. In 1830, Central America, having attained a measure of tranquillity, turned its attention to the Belize question. In a message on the opening of the Federal Congress on 12 April 1830, the President of the Republic stated [18 British and Foreign State Papers, p. 942]:

"This Government must, however, on the other hand, seriously protest against the daily encroachments made upon our Territory by the Establishment at Belize, and insist upon the fulfillment of the Treaty between Great Britain and Spain, with regard to the limits and conditions of that Establishment."

The subject was also dealt with in the Report of the Secretary of State for Finance to the Congress on 30 April 1830, which stated that proposals respecting Belize would later be submitted to the Congress [12 British and Foreign State Papers, p. 1262]. These developments were reported to the Foreign Office on 1 May 1830 by the British Consul at Guatemala, who commented [1 Webster, Britain and the Independence of Latin America, pp. 343-345]:

"I am aware upon this point [Belize] there exists a considerable jealousy. It appears that for a length of time the limits of the Belize territory as laid down by the treaty with Spain have been exceeded by the British Settlers cutting mahogany up the rivers as far south as the Sarstoon, and which has hitherto been the case without any representation to the contrary..... Whenever the adjustment of territorial limits shall be a question, it will be very important that the Sarstoon river be made the southern boundary line."

93. In 1832, the Acting British Consul at Guatemala reported that that government had imposed a five per cent duty on all goods imported from Belize, and that the Minister of War had announced to the Congress that Belize was a great danger to Guatemala, as it represented a manifest usurpation of Guatemalan territory, and that encroachments were daily becoming more serious [2 Burdon, Archives, p. 339]. At about the same time the Central American Government also demanded through diplomatic channels that the British settlers should withdraw north of the Sibun River, the southern limit fixed by the Treaty of 1786 [Williams, Anglo-American Isthmian Diplomacy, p. 33]. When informed of these events, the Superintendent of the Belize Settlement wrote the Colonial Secretary on 30 January 1833 [2 Burdon, Archives, pp. 344-345], stating:

"After having by a British Act of Parliament established a right of British Judicature in this country. Built Barracks -- quartered Soldiers, raised Fortifications, carried on open hostilities with and beat off the Spaniards when they attacked this place with a strong Military and Naval Force in 1798, the Treaties of 1783 and 1786 can be considered but of little avail..... The sooner it [Belize] is benefitted by being placed on a footing with other Colonies the better."

94. On 26 June 1833, the Superintendent again wrote to the Colonial Secretary, stating that though the boundary was fixed by treaties at the Sibun, "the British have for very many years claimed and occupied the Country for near a hundred miles further to the Southward" [2 Burdon, Archives, p. 347]. The Central American Government's demand led the British Foreign Secretary to oppose a suggestion for a settlement of the Belize question by a treaty and to instruct the British Consul in Guatemala to avoid all discussion of boundaries, lest the Central American Government be given reason to think the British considered the question to be one with which Central America had any concern [Williams, Anglo-American Isthmian Diplomacy, p. 33]. In February 1834, the British Government, suspicious over the wording of a treaty between Central America and Colombia concluded in 1825 [Rodríguez Cerna, Colección de Tratados, Vol. 2, Part 1, pp. 462-467], demanded a declaration from each State that neither made territorial claims which might clash with British possessory rights in Belize [Williams, Anglo-American Isthmian Diplomacy, p. 31]; but such declarations were refused.

95. On 28 August 1833, the British Parliament passed an Act for the Abolition of Slavery throughout the British Colonies. This Act provided as follows concerning Belize [3 & 4 Wm. IV, c. 73, §62]:

"And whereas in the Settlements in the Occupation of His Majesty and of His Majesty's Subjects in Honduras, no Law is in force for the Registration of Slaves, and Doubts might be entertained respecting the Authority of His Majesty, with the Advice of His Privy Council, to make Laws binding on His Majesty's Subjects therein; be it therefore declared and enacted, That it is and shall be lawful for His Majesty, by any Order or Orders to be by Him for that Purpose made with the Advice of His Privy Council, to establish a Registry of Slaves for the Purposes of this Act within the said Settlement; and all Laws made by His Majesty for the Government of His said Subjects shall, for the Purposes of this Act, be as valid and effectual as any Laws made by His Majesty in Council for the Government of any Colonies subject to the Legislative Authority of His Majesty in Council are or can be."

Slavery was abolished in Belize by virtue of this Act. The Superintendent inquired on 29 October 1833 whether Special Justices to be appointed under the Act would have jurisdiction in the area between the Sibun and Sarstoon Rivers, "the whole of which has for years been in our occupancy, though by the Treaties of 1783 and 1784 [sic] the former River is named as our Boundary to the Southward" [2 Burdon, Archives, p. 350].



96. On 15 November 1833, the Superintendent wrote to the Colonial Secretary forwarding and recommending a memorial requesting the removal of the restrictions, imposed by a previous Colonial Secretary in accordance with the Treaties of 1783 and 1786, preventing the Superintendent from making grants of land for the purpose of cultivation. The Superintendent remarked [2 Burdon, Archives, pp. 350-351]:

"With respect to the Court of Spain, I will only add that the Treaties of 1783 and 1786 have long and long been acted in opposition to in every instance, except those of denominating this a Settlement and not a Colony and in the point now petitioned for."

The Colonial Secretary replied on 15 April 1834, leaving the restrictions in force and stating that it was not a favorable moment to discuss the question with Spain [2 Burdon, Archives, p. 351].

97. On 29 April 1834, the Legislative Assembly of the State of Guatemala passed a decree organizing a company of colonization, industry, commerce, and agriculture to develop the Department of Verapaz [1 Pineda de Mont, Recopilación, pp. 820-822]. Article 4 of this decree provided:

"The company shall enjoy for twenty years the exclusive benefit, with respect to foreigners, of cutting wood, bushes, and other fruits on the seashore, on the Río Polochic, on the Río de la Pasión and the lands which lie between the Gulf of Honduras and the Gulf of Mexico, from the settled regions of Verapaz to the Province of Yucatán, without interfering with the private property of towns and persons in the district of the Petén."

Article 9 provided:

"The said company shall enjoy the exclusive benefit for twelve years of fishing for turtles and turtle-shell on all the rivers and seashores from Polochic to the boundaries of the settlement of Belize."

This concession was apparently supplemented in August 1834 by a grant to the company of title to the lands in the same area, which were shown by a map prepared by the company in 1841 to have covered 14,000,000 acres, and to have lain between the Río Hondo and the Motagua [reproduced in 3 Manning, Inter-American Affairs, opposite p. 175]. The grant overlapped the territory into which the British settlers had been expanding; hence in September 1834, Colonel Juan Galindo, the Commander-in-Chief of the Troops of Central America, who was apparently connected with the company, notified the Superintendent of Belize that the grant had been made. The Superintendent at once convoked a meeting of the Magistrates, who decided that representations should be made to the British Consul at Guatemala [2 Burdon, Archives, pp. 356-357].

98. The Superintendent transmitted the information to the Consul on 13 September 1834, stating that the effect of the grant would be to restrict the area of the Settlement to the boundaries laid down by the Treaty of 1786, and that it was an unfriendly act as the British had been in possession of the area claimed by the grant for thirty-six years without protest from Spain [2 Burdon, Archives, p. 357]. In November 1834, a meeting of the Judges and Magistrates of the Settlement, assembled as a Council with the Superintendent, purported to declare the boundary of the Settlement to be a line running north and south from Garbutt's falls on the Belize River to the Rio Hondo and the Sarstoon, and thence down those two rivers to the sea; it was claimed that this was the limit of undisturbed British possession at the date of the declaration of Central American independence [2 Burdon, Archives, p. 358]. It was decided that an agent should be sent from Belize to England to urge the establishment of the Settlement on a more regular footing, and the Superintendent drew up for the agent's use a long memorandum of points to be discussed [2 Burdon, Archives, pp. 360-362].

99. At the same time, the British Minister to Central America proposed the conclusion of a commercial treaty, which had been drafted in London and apparently provided that Central America should relinquish all claims of sovereignty as far south as the Sarstoon River [2 Burdon, Archives, p. 372]. Central America refused, and demanded that the treaty include an article like the fourteenth article of the Mexican-British Treaty of 1826, which provided merely that the British should not be disturbed within the limits established by the Treaty of 1786 [United States, 32d Cong., 2d Sess., Senate Executive Document No. 27, pp. 8-10; 3 Manning, Inter-American Affairs, p. 174]. The Central American Government then began to seek a means for making good its claims. In late 1834, it decided to send Colonel Galindo to Washington bearing a note of 30 December 1834 from the Central American Minister of Foreign Affairs requesting the United States to support the Central American claims and to act as mediator in the dispute with Great Britain [United States, 32d Cong., 2d Sess., Senate Executive Document No. 27, pp. 3-4; 3 Manning, Inter-American Affairs, pp. 85-86]. At the same time, Guatemala sought the support and mediation of France [Vela, Nuestro Belice, p. 69].

100. Colonel Galindo arrived in the United States in May 1835 and stated the Central American claim very fully in a series of communications to the American Secretary of State, alleging among other things that the Rio Hondo had been the boundary between Guatemala and Yucatan in colonial times [United States, 32d Cong., 2d Sess., Senate Executive Document No. 27, pp. 4-10; 3 Manning, Inter-American Affairs, pp. 87-89]. The British Minister in Washington convinced the Secretary of State of the United States that he should not listen to the representations of Colonel Galindo, whose mission consequently failed [Williams, Anglo-American Isthmian Diplomacy, p. 34]. Galindo then went to London, where the corporation to which the State of Guatemala had granted the lands had its headquarters [2 Burdon, Archivos, p. 366]; his mission there was equally unsuccessful, as the British Government refused to receive him in any diplomatic character on the ground that he was an Irishman by birth and hence a British subject [United States, 32d Cong., 2d Sess., Senate Executive Document No. 27, pp. 12-13].

101. Meanwhile, in March 1835, Great Britain undertook to secure from Spain the cession of the sovereignty of the Belize territory. An agent of the Belize settlers who had come to London was sent to Madrid to carry instructions to the British Ambassador there, and to assist in the negotiations [2 Burdon, Archives, p. 375]. The Ambassador took the position that Great Britain was asking the transfer of sovereignty more as a matter of courtesy than from any opinion that the Spanish Government had a right to interfere. The Ambassador apparently received some initial encouragement from the Spanish, but negotiations dragged on without result.

102. In late 1836, the British Government took a public stand on the question of the boundaries of Belize. The Under-Secretary of State for the Colonies, replying in a letter of 23 November 1836 to an inquiry concerning those limits, stated [British Parliamentary Papers, 1856, Vol. 44, No. 391, "Belize," p. 1]:

"The territory claimed by the British Crown, as belonging to the British settlements in the Bay of Honduras, extends from the River Hondo in the North to the River Sarstoon in the South, and as far West as Garbutt's Falls on the River Hondo on the North, and the River Sarstoon on the South. The British Crown claims also the waters, islands, and cays lying between the coast defined and the meridian of the easternmost point of Lighthouse Reef."

103. On 28 December 1836, Spain concluded a treaty of peace and friendship with Mexico, which provided in its first article [Tratados y Convenciones concluidos y ratificados por la República Mexicana, p. 397]:

"Her Majesty the Queen Regent of Spain, in the name of her August Daughter Doña Isabel II, recognizes the Mexican Republic as a free, sovereign, and independent nation, composed of the states and countries specified in its Constitutional Law, to wit: the territory included in the Viceroyalty formerly called Nueva España, that which was called the Capitanía General of Yucatan, that of the Commandancies formerly called the Internal Provinces of the East and West, that of Lower and Upper California and the annexed lands and adjacent islands of which the said Republic is at present in possession in both Oceans. And Her Majesty renounces both for Herself and for Her Heirs and Successors all claim to the government, ownership, and territorial right over such states and countries."

In 1838, the British Ambassador to Spain thought it inexpedient to press the negotiations for a cession of sovereignty and the British Foreign Secretary decided it was best to "let the Spaniards quietly forget it," and to permit whatever interest and claims they had to lapse [Williams, Anglo-American Isthmian Diplomacy, pp. 35-36].

104. Early in 1835, the British Government sent warships to Belize, with the result that Central America did not impose a prohibitive duty on goods from Belize, which had been contemplated as a retaliatory measure against the British for their transgressions beyond the limits of the Convention of 1786 [2 Burdon, Archives, pp. 364, 376]. Thereafter, there was some lessening of tension, though there were minor local incidents. The energies of Central America were increasingly engaged in the civil war which led to the final break-up of the Federation in 1839. In 1839, the State of Guatemala convoked a constitutional convention, and the Legislature of the State invited the settlers of Belize "as inhabitants of that State [Guatemala] to send deputies to the Constituent Assembly." Pressure was brought by the British Government, however, and the invitation was rescinded [2 Burdon, Archives, p. 406].

105. On 17 April 1839, Guatemala declared its independence by a decree, the first article of which provided [1 Pineda de Mont, Recopilación, p. 47]:

"The State of Guatemala, composed of the departments of Guatemala, Sacatepequez, Verapaz, and Chiquimula, is free, sovereign, and independent."

The Superintendent of the Belize Settlement reported on 8 February 1842 that the new Guatemalan Government had granted lands including most of the territory of the Settlement to a corporation called "The Central American Commercial and Agricultural Company," but apparently nothing ever came of this grant [3 Burdon, Archives, p. 54].



106. In 1841, Daniel Webster, then Secretary of State of the United States, instructed a United States Special Agent to Central America to discover the causes of the failure of Colonel Galindo's mission to Great Britain in 1835, and to ascertain the state of the controversy over the boundaries of Belize. Webster stated that in 1835 Central America had requested United States mediation in an effort to restrain British trespasses in territory beyond the limits laid down in the Treaties of 1783 and 1786,

"Central America, so far as its territory was embraced by the limits mentioned in those covenants, having, of course, succeeded to all the rights of Spain" [3 Manning. Inter-American Affairs, pp. 29-30].

107. In reply, the Special Agent prepared a report on Belize on 20 January 1842 [3 Manning, Inter-American Affairs, pp. 163-164]. With reference to the territorial extent of jurisdiction exercised by the British, he stated:

"As I passed up the coast from Belize and along the Dulce to Ysobal or Isabal I had an opportunity of seeing some of the British Negroe Settlement; These Negroes are from Jamaica and other Islands and are called 'Carrib's,' and their Settlements or Towns, are called 'Carrib Towns.'

"Their Huts thatched with Palmleaf, are to be seen at the mouth of every fresh water river, inlet or bay, from the Belize to the Gulf of Honduras, and the Dulce. Over all these Towns or settlements, the Colonial Government, at Belize claims, and exercises unlimited jurisdiction. Having military stations at the most important of these Settlements. All causes of a criminal, and I believe of a civil Nature, arising in these Towns or Settlements, are taken to Belize, to be tried in the Queens Court, whenever the Government at Belize deems it proper to do so....

"The power to sell and convey the Lands in the Islands, and along the Coast, and bordering on the Rivers, where the best lands are to be found, is also claimed and Exercised by the Colonial Government at Belize."

108. In 1846, the Belize merchants petitioned the British Government that goods from Belize be admitted at British ports free from the discriminating duty charged upon foreign goods; the Colonial Office replied that the sovereignty of the Belize territory rested not in Great Britain, but in Spain, under the Treaties of 1783 and 1786, and therefore the petition could not be granted [Williams, Anglo-American Isthmian Diplomacy, p. 36]. This seems to have been the last occasion on which Great Britain disclaimed sovereignty over Belize by virtue of those treaties with Spain.

109. In 1847, a British Parliamentary Paper was published setting out the British claim to Belize [British Parliamentary Papers, 1847, Vol. 64, pp. 13-21]. As to the boundaries of the settlement, it was stated [p. 13]:

"It is separated from Yucatan by the Rio Hondo, and its southern boundary is formed by the river Sarstoon, which falls into the Gulf of Honduras, not more than twenty miles west of the mouth of the Rio Dulce."

As to the nature of British rights there, the paper continued [p. 15]:

"How far Yucatan can pretend to any right over Belize, or Central America to the Mosquito Shore, is a question for public jurists to decide -- we deny any such right; Spain has relinquished all sovereignty, and Great Britain is the only European power which has ever occupied Belize and the Mosquito Shore; that too, not by conquest, but with the original consent of the primitive occupants. The right to Belize by occupation, and possession is, therefore, undoubtedly vested in the British crown."

The claims of Central America to Belize were also referred to, but the opinion was expressed that Britain would continue to hold the territory [pp. 20-21].

110. On 25 June 1847, a treaty of amity, commerce and navigation between Guatemala and Great Britain was signed at Guatemala, but it never entered into force [3 Rodríguez Cerna, Colección de Tratados, pp. 137-144]. This treaty did not mention Belize, but nonetheless on 8 July 1847 Guatemala transmitted a note [Libro Blanco, pp. 66-67].

"In order to record expressly the understanding on which we have proceeded and are proceeding, considering that the treaty signed on 25 June in no way involves or affects the rights of the Republic of Guatemala in the matter of the boundary respecting the concessions in the territory of Belize, to which the Treaty of 1783 and the Convention of 1786 between His Britannic Majesty and His Catholic Majesty relate."

The note also denied that Mexico had any rights in the Belize territory. The British Consul General's reply of 19 July 1847 was non-committal, stating merely that [Libro Blanco, p. 67]

"Without instructions I can give no opinion on this subject. Nevertheless I may so far comply with your wish as to say that I conceive that the Treaty of Amity, Commerce and Navigation which we lately signed on the part of our respective Governments need not affect any arrangement which the Government of this Republic may desire to conclude at a future time with Great Britain respecting boundaries."

111. On 20 February 1849, Guatemala and Great Britain signed another Treaty of Friendship, Commerce and Navigation at Guatemala, ratifications of which were exchanged at London on 16 June 1849 [3 Rodríguez Cerna, Colección de Tratados, pp. 145-151]. The text of this treaty differed only slightly from that of the unratified treaty of 1847. Like the treaty of 1847, it made no specific reference to Belize; it invariably spoke of the British "territories, dominions, or settlements" in reference to the territorial application of its provisions. In connection with this treaty, Guatemala made no specific reservation of her rights to Belize.

112. On 23 February 1852, the Public Meeting of the Belize Settlement passed an act for the extradition of certain types of offenders from the Settlement to Guatemala [59 British and Foreign State Papers, pp. 292-293]. This Act was to take effect on proclamation by the Superintendent that the Guatemalan Legislature had enacted reciprocal provisions for the apprehension of offenders from Belize. The text of the Belize Act was communicated to Guatemala, and on 29 January 1853 the Guatemalan House of Representatives approved a draft decree [6 Gaceta de Guatemala, No. 40 (25 February 1853), p. 1]. On 10 June 1853, the President of Guatemala accordingly issued a decree which, after reciting that

".....it is a duty of the Republic to contribute on its part to expedite the course of the administration of justice in those neighboring countries which fulfill a similar obligation with respect to Guatemala,"

provided in its single article that

"All the obligations contracted by the authorities of the British Settlement of Belize by virtue of the decree of 23 February 1852 for the extradition and surrender of those guilty of certain crimes to the authorities of Guatemala, shall be held in the future as having been contracted by the Republic with respect to the authorities of Belize....." [1 Pineda de Mont, Recopilación, pp. 362-363].

The decree then set out a Spanish translation of the Belize Act.

113. Meanwhile, British-Mexican relations had not been proceeding smoothly. In 1838, Mexico alleged that the British were encroaching on the Mexican frontier, and proposed a joint survey of the disputed territory with reference to the limits laid down by the Treaties of 1783 and 1786 [Rubio Alpuche, Belize, p. 146; 2 Burdon, Archives, p. 400]. The British Colonial Secretary concurred in the proposal for a joint Commission on 11 March 1840 [2 Burdon, Archives, p. 409]; but the Mexican Commissioner appointed never reached Belize, and the dispute lay dormant for several years. In 1848, the sanguinary Indian revolt called the War of Castes broke out in Yucatan, and Mexican-British relations were embittered by the fact that some of the settlers at Belize sold arms and ammunition to the Indians [3 Burdon, Archives, p. 126]. In August 1849, the British Superintendent, who had officially been holding to a policy of neutrality, was accepted by the Mexican Government as mediator between itself and the revolted Indians, but his efforts were ultimately unsuccessful. In connection with the mediation, the Superintendent was directed not to acknowledge any claim "on the part of Mexico founded on the treaty with Spain of 1786" [3 Burdon, Archives, p. 122]. In November 1849, the British Colonial Secretary stated that treaties made between Great Britain and Spain could have no bearing on relations between Great Britain and Mexico [3 Burdon, Archives, p. 127].



114. Another difficulty between Mexico and Great Britain was over the sovereignty of Ambergris Cay, a large cay off the northern coast of the Belize Settlement which was not within the limits established by the Treaties of 1783 and 1786. The Mexican claim was first advanced in September 1851 [3 Burdon, Archives, p. 150]. In connection with this claim, the Governor of Jamaica wrote the British Chargé d'Affaires in Mexico that to establish the British claim it was only necessary to point out that Ambergris Cay was in effective British possession prior to the date at which Great Britain acknowledged Mexico to be a State [3 Burdon, Archives, p. 151]. In December 1851, the British Colonial Secretary approved the Superintendent's resistance to the Mexican claims, and made arrangements for naval protection if required [3 Burdon, Archives, p. 152]. In view of this determined British attitude, the Mexican Government in May 1852 gave assurances that it would not dispute the ownership of the Cay [3 Burdon, Archives, p. 156].

115. During the period between 1821 and 1859, the legal organization of Belize gradually changed in the direction of more direct control by the authorities in Great Britain. In 1830, it was established that acts of the Public Meeting of the Settlement required royal assent in order to come into force [2 Burdon, Archives, p. 318]: in 1832, the Colonial Office began to appoint minor administrative officials as well as the Superintendent [2 Burdon, Archives, pp. 335-337, 340]. In 1840, the Superintendent proclaimed that the law of England should be the law of the Settlement, and that all local customs and laws should be null and void [2 Burdon, Archives, p. 411]. In 1844, it was decided by the Colonial Office that the Foreign Jurisdiction Act of 1843 [6 & 7 Vict. c. 94], regulating the exercise of British jurisdiction in countries outside the British dominions, should not be put into force in Belize [3 Burdon, Archives, p. 78], thus negating the extraterritorial character of jurisdiction in Belize. In 1846, the Magistrates, a body created by Burnaby's Laws in 1765, were abolished, and their judicial powers were turned over to the Superintendent [3 Burdon, Archives, p. 93]. In 1853, an act was passed by the Public Meeting of the Settlement to amend the system of government, apparently establishing a partly elected Legislative Council [3 Burdon, Archives, pp. 163, 171].

116. In summary, it must be said that after much vacillation the British laid claim, over the period of some twenty years, to the territory of Belize as it was delimited in the 1859 Convention with Guatemala; that after 1846 British policy proceeded independently of the treaties with Spain of 1783 and 1786; and that progressive steps were taken to regularize the government of the territory as a British possession, without effective opposition from the Governments of other States.

D. The Belize Dispute in connection with  
the Clayton-Bulwer Treaty

117. On 19 April 1850, the United States and Great Britain, desirous of settling their disagreements concerning a projected Atlantic-Pacific ship canal and of putting an end to their rivalries in Central America, signed the so-called Clayton-Bulwer Treaty at Washington. The first article of this treaty provided [5 Miller, Treaties of the United States, pp. 671-672]:

"The Governments of the United States and Great Britain hereby declare, that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said Ship Canal; agreeing, that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have, to or with any State or People for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito Coast or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any State or Government through whose territory the said Canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to commerce or navigation through the said Canal, which shall not be offered on the same terms to the citizens or subjects of the other."

118. The text of this article was the result of prolonged and difficult negotiations, resulting in a lack of clarity. It provided that neither party should "occupy..... any part of Central America," but it did not define the limits of "Central America," and it failed to provide expressly that Great Britain should withdraw from those parts she then occupied. These points were to prove a source of frequent conflict during the ensuing ten years.

119. The United States Senate, which advised and consented to the ratification of the treaty on 22 May 1850, seems to have been under the impression that the terms of the first article involved a promise of some withdrawal on the part of Great Britain [Williams, Anglo-American Isthmian Diplomacy, pp. 98-99]. This impression was apparently shared by the British Government, which, seemingly fearing that the United States would attempt to use the treaty to force the British out of Belize, on 8 June 1850 instructed its Minister in Washington to make a declaration at the time of the exchange of ratifications that Great Britain did not understand the engagements of the Convention as applying to Belize [British Parliamentary Papers, 1856, Vol. 60, No. 2052, pp. 59-60]. This declaration, made on 29 June 1850 [5 Miller, Treaties, p. 681] stated that

"Her Majesty does not understand the engagements of that Convention to apply to Her Majesty's settlement at Honduras or to its Dependencies."

The declaration greatly dissatisfied the United States Secretary of State, Clayton, who for a time seems to have abandoned the intention of exchanging

ratifications [Williams, Anglo-American Isthmian Diplomacy, p. 103].

On 4 July 1850, however, the Chairman of the Senate Foreign Relations Committee wrote Clayton [5 Miller, Treaties, p. 684] that

"The Senate perfectly understood that the Treaty did not include British Honduras."

When the ratifications were exchanged on 4 July 1850, the United States made a counter-declaration to prevent any claim that the United States acknowledged British title to Belize; the declaration stated [5 Miller, Treaties, p. 683]:

"To this settlement [Belize] and these islands, the treaty we negotiated was not intended by either of us to apply. The title to them it is now and has been my intention, throughout the whole negotiation, to leave, as the treaty leaves it, without denying, affirming, or in any way meddling with the same, just as it stood previously."

In a note of 4 July 1850, the British Minister replied to this declaration [5 Miller, Treaties, pp. 684-685] that

"I understand the purport of your answer to the declaration dated the 29th June which I was instructed to make to you in behalf of Her Majesty's Government to be -- That you do not deem yourself called upon to mark out at this time the exact limits of Her Majesty's settlement at Honduras, nor of the different Central American States, nor to define what are or what are not the dependencies of the said settlement; but that you fully recognise that it was not the intention of our negotiation to embrace in the Treaty of 19th April whatever is Her Majesty's settlement at Honduras, nor whatever are the Dependencies of that settlement, and that Her Majesty's title thereto subsequent to the said Treaty will remain just as it was prior to that Treaty, without undergoing any alteration whatsoever in consequence thereof."

120. These declarations and notes were not made public at the time and were not laid before the United States Senate until 1853; they did not clear up the situation. In the words of the standard historical work on the subject [Williams, Anglo-American Isthmian Diplomacy, p. 109].

"Just what either government thought would be the effect of the treaty upon British occupation of Belize and the Bay Islands, it is impossible to say, for no expression of opinion upon this point seems to have been recorded at this time. It seems fair to presume, however, that, after the British declaration regarding Belize had been exchanged for the American counter-declaration, both governments were uncertain as to what had actually been lost or won by the transaction; but that both were determined to get the most possible out of the arrangement in the execution of their respective policies."

121. On 26 March 1852, British Letters Patent were issued declaring Roatan, Bonacca (Guanaja), and four other islands in the Bay of Honduras to be the Colony of the Bay Islands, and placing the new colony under the authority of the Governor of Jamaica and the Superintendent of Belize [7 Manning, Inter-American Affairs, p. 516]. This action caused profound feeling in the United States; it appeared to be an expansion of British territory in Central America, and consequently the United States turned its attention to the meaning of the 1850 treaty. The Senate requested the President to communicate to it the diplomatic correspondence with respect to Central America and the Clayton-Bulwer Treaty.

122. The President's message transmitting the correspondence was referred to the Senate Committee on Foreign Relations, which submitted its report on 11 February 1853 [United States, 32d Cong., 2d Sess., Senate Report No. 407]. This report is highly interesting with regard to Guatemalan rights to the Belize territory. It first strongly supported the Latin American republics' rights as successors of Spain, reaching the conclusion [p. 9] that

"Whatever rights England may have held in subordination to the old sovereignty of the [Spanish] monarch, would now be held in like subordination to the new sovereignty of the people [of the republics]."

The report continued by examining the question whether the Belize territory lay within Guatemala or Mexico. It admitted that there was considerable doubt on the subject, the available evidence being scanty, largely unofficial, and almost entirely later than 1821; but the question was resolved in favor of Guatemala. The conclusion of the report [p. 17] was

"The committee, from the information before them, entertain a decided opinion that the British settlements at Belize, as defined by the treaties with Spain, lie within the territory of the republic of Guatemala, and so equally constitute a part of 'Central America'. Should such be the fact, whilst the committee are not prepared to say, that the engagements of the treaty of 1850 would require that those settlements shall be abandoned and discontinued on the part of Great Britain, yet this government would have just cause of complaint, against any extension of the limits of those settlements beyond those prescribed by Spain, or as further allowed by the republics where they may be found; and that in any manner to enlarge or change the character of those settlements, by any mode of jurisdiction, would be in violation of said treaty.

"And in the event of its being ascertained hereafter, that these British settlements on Honduras bay,



lie in whole or in part, north and west of the proper boundaries of Guatemala, though they would not in such case form any part of Central America, and thus not within the strict engagements of the treaty; yet that any colonies, or other permanent establishments there by Great Britain, or any European power, must necessarily excite the most anxious concern of this government, and would, if persisted in, lead to consequences of the most unpleasant character."

123. Thereafter long discussions and negotiations ensued between the United States and Great Britain, on three subjects: the Belize territory, which the United States wished to have restricted to the limits established by the Spanish-British Treaties of 1783 and 1786, or given up altogether; the Bay Islands, which the United States wished to be given back to Honduras; and the British protectorate over the Mosquito Indians, which the United States wished to have abolished. The dispute will only be traced here insofar as it related to Belize.

124. On 2 July 1853, the United States Secretary of State gave instructions to the United States Minister in London, James Buchanan [7 Manning, Inter-American Affairs, pp. 84-95], as follows:

"The object which it is hoped you may be able to accomplish, is to induce Great Britain to withdraw from all control over the Territories and Islands of Central America, and, if possible, over the Balize also, and to abstain from inter-meddling with the political affairs of the Governments and people in that region of the world.....

"It is true she has some rights as I have before stated, in the Balize; but when restricted to proper limits, no part of it is in Central America. These rights are however very few..... To enter into the country upon such conditions, for the single purpose granted [woodcutting], the British right cannot be well questioned; but this right is understood to be now of very little value; and possibly, as a matter of interest and good policy, Great Britain may be willing to renounce it entirely. But her pretensions beyond this right cannot be regarded in any other light than as encroachments which ought to be abandoned."

On 12 September 1853, the substance of these instructions was repeated to Buchanan, and it was further stated that the United States would regard any assertion of full British sovereignty over the Belize territory as an infringement of the Monroe Doctrine [7 Manning, Inter-American Affairs, p. 100].

125. In taking up the question with the British Foreign Secretary, Lord Clarendon, Buchanan put forward the United States position in two long and able statements of 6 January and 22 July 1854 [7 Manning, Inter-American Affairs, pp. 518-529; 556-577]. It was argued that the first article of the Clayton-Bulwer Treaty required the British to withdraw from the area between the Sibun and Sarstoon Rivers, from the Bay Islands, and from the Mosquito Coast. The obligation of that article not to "occupy.... any part of Central America" was interpreted to require a withdrawal from territories occupied at the date of the conclusion of the treaty, as well as to forbid any future expansion of British territories there. The rights of Guatemala to the area between the Sibun and the Sarstoon as a successor to Spain was vigorously supported, and the Mexican-British Treaty of 1826 concerning Belize was adduced as an instance of British recognition of the rights of succession of the Latin American Republics.

"Whether the former Spanish Sovereignty over Belise, subject to the British usufruct, reverted of right to Mexico or to Guatemala may be seriously questioned; but in either case, this recognition by Great Britain is equally conclusive."

It was urged that there existed no justification for British expansion south of the Sibun into territory which was part of the Guatemalan province of Verapaz. The United States' counter-declaration, made in connection with the exchange of ratifications of the Clayton-Bulwer Treaty, was stated to refer only to the Belize territory within the limits of the Treaty of 1786.

126. In reply, Lord Clarendon set out the British position in a statement of 2 May 1854 [7 Manning, Inter-American Affairs, pp. 537-552]. As this statement is the clearest expression of the British position in the course of the controversy, it merits considerable attention. It began by a denial of the rights of the Latin American republics as successors of Spain, either to territory within their colonial boundaries or to Spanish rights under treaties with Britain. It was further argued that the first article of the Clayton-Bulwer Treaty did not require any withdrawal from territory occupied at the time it was concluded, and that Belize as mentioned in the British declaration at the time of the exchange of ratifications had been intended to mean the settlement within the limits it then possessed [p. 549].

"Her Majesty's Government at once states this, because it perceives Mr. Buchanan restricts the said settlement within the boundaries to which it was confined by the Treaty of 1786: whilst Her Majesty's Government not only has to repeat that the Treaties with old Spain cannot be held, as a matter of course, to be binding with respect to all the various detached portions of the old Spanish American Monarchy, but it has also to observe that the Treaty of 1786 was put an end to by a subsequent state of war between Great Britain and Spain: that during the war the boundaries of the British settlement in question were enlarged: and that when peace was reestablished between Great Britain and Spain no Treaty of a political nature or relating to territorial limits revived those Treaties between Great Britain and Spain which had previously existed."

127. There ensued a long impasse, during which both parties refused to yield in their interpretations of the Clayton-Bulwer Treaty. Great Britain proposed arbitration, but the United States refused to arbitrate the main issue, the legal question of the interpretation of Article 1 [7 Manning, Inter-American Affairs, pp. 131-132]. Finally, as Great Britain indicated a willingness to yield considerably with respect to the Bay Islands and the Mosquito Protectorate, the parties, laying aside their legal arguments, settled down to negotiate a political compromise. On 26 July 1856, the United States Secretary of State instructed Dallas, the Minister to Great Britain, concerning the negotiation of a treaty [7 Manning, Inter-American Affairs, pp. 141-153]. After setting out the previous United States position concerning Belize, the Secretary of State continued:

"In a commercial or political point of view it is not of very much moment to the United States, whether the British tenure at the Belize be enlarged or not; but it is in a military point of view, a thing of importance alike to the Central American States, to the Mexican Republic and to the United States.

"Nevertheless if serious obstacles occur to obstruct the negotiation on other points either of interest or feeling, the President might consent that you should, in the last resort, make concessions on this point, as the means of reconciling Great Britain to other acts which she may be disposed to regard as concessions to the United States."

In other words, as Belize was less important to the United States than the Bay Islands and Mosquito Coast, it was to be used as a bargaining point to obtain the United States' objectives with regard to those other questions.

128. The so-called Dallas-Clarendon Treaty was signed at London on 17 October 1856, after the text had been approved by the President of the United States; it provided in the second of its Separate Articles [7 Manning, Inter-American Affairs, p. 691] that

".....It is mutually agreed and understood

"1. That Her Britannic Majesty's settlement called the Belize or British Honduras, on the shores of the Bay of Honduras, bounded on the North by the Mexican Province of Yucatan; and on the South by the River Sarstoon, was not and is not embraced in the treaty entered into between the Contracting Parties on the 19th day of April 1850: -- and that the limits of the said Belize, on the West, as they existed on the said 19th of April 1850, shall, if possible, be settled and fixed by treaty between Her Britannic Majesty and the Republic of Guatemala, within two years from the exchange of the ratifications of this instrument; which said boundaries and limits shall not at any time hereafter be extended."

129. The Dallas-Clarendon Treaty never entered into force. In consenting to its ratification on 12 March 1857, the United States Senate made a number of proposed amendments [7 Manning, Inter-American Affairs, pp. 692-693]; but none of them related to Belize. Great Britain agreed to all of the proposed amendments except the most important one, that concerning the Bay Islands, on which it proposed a new text; this new text was rejected by the United States on 29 May 1857 [7 Manning, Inter-American Affairs, pp. 696-700, 168-171]. In consequence, ratifications were never exchanged.

130. In October 1857, President Buchanan told the British Minister in Washington that the British should confine themselves to the limits of the Treaty of 1786 in the Belize territory [7 Manning, Inter-American Affairs, p. 728]; this was apparently the last time on which the United States took such a position.

131. Great Britain later decided to endeavor to conclude, with the assent of the United States, a series of treaties with the interested Central American countries embodying essentially the same principles as those in the Dallas-Clarendon Treaty as proposed to be amended by the Senate. Instructions were issued by the British Foreign Secretary on 30 October 1857 to Sir William Gore Cuseley, concerning treaties to be negotiated with Guatemala, Honduras and Nicaragua. The boundaries proposed to be secured for Belize were set out in a memorandum by a former Superintendent of the Settlement, which was annexed to the instructions. This memorandum stated [British Parliamentary Papers, 1860, Vol. 68, No. 2748, pp. 48-51, 51-52]:

"The boundary between the British possessions and Guatemala is the River Sarstoon, from its mouth to Gracias á Dios Falls, on the same river, and a line drawn from Gracias á Dios to Garbutt's Falls, on the River Belize, and a continuing line drawn from Garbutt's Falls due north.

"All to the north of the Sarstoon, and to the east of such lines, belong to the British possessions.

"All to the south of the Sarstoon, and to the west of such lines, belong to Guatemala.

"And neither Contracting Party has any claim to the territory herein admitted to be within the limits of the other."



132. On 6 April 1858, the United States, though somewhat grudgingly, assented to the Ouseley mission [7 Manning, Inter-American Affairs, pp. 177-186]. This was in effect a second surrender on the Belize question, though the subject was not mentioned in the United States note, and the mission was spoken of as fulfilling the American construction of the Clayton-Bulwer Treaty. Thereafter, Ouseley proceeded to Central America to negotiate treaties with Guatemala, Honduras and Nicaragua. Negotiations went slowly because of a temporary cooling in British-United States relations which led to delays on the part of Great Britain, and later because of Ouseley's constant illness and incompetence.

133. Finally, impatient at his slowness, the British Government on 16 February 1859 sent instructions to Charles Lennox Wyke, an experienced diplomat who had spent several years in Central America, to conclude the treaty with Guatemala on the boundaries of Belize [British Parliamentary Papers, 1860, Vol. 68, No. 2748, pp. 171-172]. The Convention signed with Guatemala on 30 April 1859 was the first of the three treaties to be concluded. On 12 August 1859, the United States complained that while the part of the settlement favorable to Great Britain had been executed, the parts requiring surrenders of rights to Honduras and Nicaragua had not [7 Manning, Inter-American Affairs, pp. 216-218]. The United States' note, pressing for early conclusion of the other two treaties, stated,

"It will be hard to understand that where Great Britain was to acquire, the negotiation was easy, but where she was to cede, the negotiation was impracticable."

The British Government recalled Ouseley and put Wyke in full charge of the negotiations, with the result that a treaty surrendering the Bay Islands to Honduras was signed on 28 November 1859, and a treaty relinquishing the Mosquito Protectorate to Nicaragua was signed on 28 January 1860 [British Parliamentary Papers, 1860, Vol. 68, No. 2748, pp. 308-310, 315-318]. The United States expressed itself as satisfied with the settlement, and the first phase of disputes over the Clayton-Bulwer Treaty was at an end.

134. The conclusion must be that the controversy between the United States and Great Britain over the Clayton-Bulwer Treaty is important as a background to the Guatemalan-British boundary convention of 30 April 1859, and it was mainly responsible for British insistence that that convention should not be worded in terms of territorial cession. Though the United States strongly supported Guatemalan rights in the Belize territory for a time, this position was ultimately abandoned through the working out of a compromise solution of the controversy. The United States accepted British expansion south to the Sarstoon River in return for British withdrawal from areas where the United States considered herself to be more vitally concerned. This solution, being a political one between two foreign States, had no effect on the legal rights of Guatemala.

## II. NEGOTIATION OF THE CONVENTION OF 1859

### A. The Negotiations of 1857

135. In January 1857, a few months after the signature of the Dallas-Clarendon Treaty between the United States and Great Britain and before it had become clear that that Treaty would not be ratified, the Government of Guatemala instructed its Minister to Great Britain, Juan de Francisco Martín, to negotiate a boundary convention to define the limits of the Belize settlement [Libro Blanco, p. 72]. The Minister proceeded to London in May and started the negotiations, which were conducted on behalf of the British by the Superintendent of Belize, Mr. Stevenson. From the outset, Guatemala was apparently willing to accept the boundaries for Belize desired by the British, but it insisted that certain advantages should be conceded in return. On 16 June, the Guatemalan Minister wrote his Government [Libro Blanco, p. 75]

"I shall try to obtain all possible advantages, one of them being, if it is attainable, to obtain the aid of Her Britannic Majesty's Government to prevent with her naval vessels in both seas the incursion of filibusters."

136. As Guatemala did not resist the British claims, agreement was speedily reached as to boundaries. On 24 June 1857, Stevenson stated the results of his negotiations in a letter to the British Foreign Secretary [British Parliamentary Papers, 1860, Vol. 68, No. 2748, p. 173]:

"I reduced to writing the lines which were acquiesced in, subject to some collateral understanding, with which, I informed Don Francisco Martin, I could not deal, but which he was to take some other occasion for bringing before your Lordship.

"The general outline of boundary so arranged, is as follows, viz.:--

"East, from the Hondo to the Sarstoon, on the shores of the Bay of Honduras, including all the cays and islets off the mainland within the same latitude;

"South, from the mouth of the Sarstoon to the Gracias á Dios Falls on that river (Señor Martin tells me these Falls have some other known name);

"West (south of the River Belize), on a line drawn from Gracias á Dios to Garbutt's Falls, on the River Belize, and (north of the River Belize) on a continuing line drawn due north until it either intersects the Blue Creek branch of the Hondo, or reaches a point in the same parallel as the source or head of Blue Creek, as actual survey will determine; and

"North, from such point of intersection, or of parallel, down Blue Creek to its confluence with the Hondo, and thence down to the mouth of the Hondo.....

"I may also mention that I have introduced a stipulation that the State of Guatemala is confined to the defined limits of the British possessions in so far as it binds [sic] thereon; and that all claim on the part of Guatemala to any part of such British occupations is entirely abandoned."

137. On 2 July 1857, the Guatemalan Minister was instructed by his Government to endeavor to include in the convention a clause obligating the parties never to alter their laws abolishing slavery [Libro Blanco, pp. 76-77]. The Guatemalan Minister prepared a preliminary project of a convention on 17 July 1857, stating the Guatemalan position in the negotiations [Libro Blanco, pp. 78-80]. After observing that Great Britain did not have complete title to Belize and that Guatemala held paramount rights to the territory, the project continued:

"Nevertheless, the Government of Guatemala relinquishes from now on the discussion of principles raised by these points; declares itself convinced of the expediency of accepting the accomplished facts; is honored and satisfied to have as a neighbor a nation so powerful and enlightened; is pleased to recognize the community of interests which arise from the said proximity between England and Guatemala and congratulates itself in thinking that because of such plausible motives, it may obtain advantages, which would be worth as much perhaps to it, under the present circumstances, as restitution to it of possession and sovereignty over all the territory, which is the subject of the present negotiation. Of course, the Government of Guatemala hopes that, taking into consideration its renunciation and its keen desires to please the great British Nation, the Government of Her Majesty the Queen will not refuse to offer it some compensation.

"The Government of Guatemala would agree in such case to recognize the present boundaries of the Settlement of Belize as definitive, offering its cooperation to determine them geographically.

"For its part, the Government of Her Majesty would indemnify the Republic, for its renunciation of the sovereignty which legally belongs to it over all the territory which formerly formed the concessions made by the King of Spain in 1783 and 1786, as well as for the encroachments which Her Britannic Majesty's subjects, employed in selling and cutting timber in said establishment, have been making successively and especially for the considerable encroachments made after the independence of Central America."

The project continued by stating that the compensation might be monetary, but that Guatemala would prefer a guaranty of protection against filibusters.

138. The Minister's project was approved by the Guatemalan Government in September 1857 [Libro Blanco, p. 82]. It soon became apparent, however, that Great Britain was not willing to grant any compensation whatever in return for Guatemala's recognition of the boundaries claimed for Belize. In commenting on this British reluctance, the Guatemalan Foreign Minister, Aycinena, wrote [Libro Blanco, p. 86]:

"If it does not seem to the British Government that these territories are of importance, she could simply return them, keeping what Spain ceded to her."

On 14 November 1857, the British Government positively refused to offer any compensation for the fixation of boundaries, as in Britain's opinion it was

"advantageous for Guatemala to fix them once for all by a public treaty to avoid the making of new encroachments in the uncultivated and almost deserted interior, which would in time give a right of possession to those who penetrated into those places" [Libro Blanco, pp. 90-91].

Thereupon the negotiations in London were discontinued, and the subject was not taken up again by the two governments until 1859.

139. The attitude of the British Government was doubtless due to the current dispute with the United States over the Clayton-Bulwer Treaty. The British felt themselves impeded from giving any appearance of expanding the territory of the Belize settlement; hence, they were precluded from offering any compensation for the agreement on boundaries.



B. Instructions to the British Plenipotentiary in 1859

140. The assent of the United States to the despatch of Sir William Gore Ouseley to Central America cleared the way for the opening of British negotiations with Guatemala, Honduras and Nicaragua. On 16 February 1859, the British Foreign Secretary removed the negotiations with Guatemala from the hands of Ouseley and sent instructions to Charles Lennox Wyke [British Parliamentary Papers, 1860, Vol. 68, No. 274B, pp. 171-172]. These instructions stated that the British Government had communicated the general nature of the agreement it proposed to the Guatemalan Minister to London in 1857, and that consequently the Guatemalan Government would be prepared for the proposals to be made by Wyke. The instructions continued:

"Her Majesty's Government are desirous that the limits of British Honduras should be established on the basis of the actual British occupations, as defined in the inclosed Draft of Convention. The proposed line of boundary would commence at the mouth of the River Sarstoon, in the Bay of Honduras, and proceed up the mid-channel of that river to Gracias á Dios Falls; it would then turn northward, and continue by a line drawn direct from Gracias á Dios Falls to Garbutt's Falls on the River Belize; and from Garbutt's Falls due north until it strikes the Mexican frontier.

"It will be necessary that you should be exceedingly careful not to accept any part of the proposed boundary as a cession from the Republic of Guatemala, or to accept, as it were, a title to any part of the British occupation from the Republic. It has been contended by the Government of the United States that the tract of territory between the Rivers Sibun and Sarstoon forms part of Central America, as having been included in the ancient Kingdom of Guatemala; and that as it is stipulated by the Treaty between Great Britain and the United States of April 19, 1850, commonly called the Bulwer-Clayton Treaty, that neither party shall occupy, fortify, colonize, or assume

or exercise dominion over any part of Central America, Great Britain is, by that Treaty, bound to withdraw from the district in question, without reference to her title to it, whether good or bad.

"Her Majesty's Government cannot acquiesce in this view of the case, because, at the time of the ratification of the Bulwer-Clayton Treaty, they expressly declared to the Government of the United States that the British Government did not understand the engagements of that Treaty to apply to Her Majesty's Settlement at Honduras, or to its dependencies; and Mr. Clayton, the American Secretary of State, stated, in reply, that the Treaty was not intended by either negotiator to apply to the Settlement of Honduras, the title to which was intended to be left just as it stood previously. But in order to show that in the adjustment of the boundary now contemplated Her Majesty's Government seek for nothing whatever beyond what was in their occupation at the time of the signature of the Bulwer-Clayton Treaty, and is, therefore, covered by the declaration made on the exchange of the ratifications of that Treaty, it is placed on record in the first paragraph of the Draft Convention that the boundary thereafter defined, is such as existed previously to and on the 1st of January 1850, that is, previously to the conclusion of the Bulwer-Clayton Treaty. It is, in short, absolutely necessary that the line of boundary to be established by the proposed Convention should be therein described, not as involving any cession or new acquisition from the Republic of Guatemala, but as it is in fact, simply as the definition of a boundary long existing, but not hitherto ascertained.....

"In proposing the Draft of Convention to the Government of Guatemala, you will not fail to point out to them that the definitive settlement of the boundary, besides being desirable for the interests of Central America generally, would be productive of great advantage by putting a stop to encroachments and trespasses, by removing the chances of squabbles and collisions on the frontier, and by thus inducing habits of peace and order among the people of either nation inhabiting or resorting to the country upon the border.

"Her Majesty's Government confidently trust that the Government of Guatemala, in view of these considerations, and from a feeling of friendship for Great Britain, will be disposed to conclude the arrangement which you are instructed to propose to them."

141. Enclosed with the foregoing instructions were the report made on 24 June 1857 by Stevenson concerning his negotiations with the Guatemalan Minister in London, and a draft boundary convention which will be discussed later. Another instruction of the British Foreign Secretary to Wyke, also dated 16 February 1859, explained the difference between the description of the boundary in Stevenson's report and the description contained in the draft convention [British Parliamentary Papers, 1860, Vol. 68, No. 2748, pp. 175-176]. The Foreign Secretary stated that it was deemed unnecessary to describe in a treaty with Guatemala the sea frontier or any more of the land frontier than related to the territory of Guatemala.

C. The British Draft of the Convention of 1859

142. The draft convention drawn up by Great Britain and annexed to the instructions of the British plenipotentiary was identical in every particular with the convention signed on 30 April 1859, except that a few blanks were filled in, and a new article which became Article 7 was added. The preamble stated [British Parliamentary Papers, 1860, Vol. 68, No. 2748, p. 174]:

"Whereas the boundary between Her Britannic Majesty's Settlement and Possessions in the Bay of Honduras, and the territories of the Republic of Guatemala, has not yet been ascertained and marked out; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Guatemala, being desirous, with a view to improve and perpetuate the friendly relations which happily subsist between the two countries, to define the boundary aforesaid, have resolved to conclude a Convention for that purpose....."

The first article defined the boundary as follows:

"It is agreed between Her Britannic Majesty and the Republic of Guatemala, that the boundary between the Republic and the British Settlement and Possessions in the Bay of Honduras, as they existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time, was, and is as follows:--

"Beginning at the mouth of the River Sarstoon in the Bay of Honduras, and proceeding up the mid-channel thereof to Gracias a Dios Falls; then turning to the right, and continuing by a line drawn direct from Gracias á Dios Falls to Garbutt's Falls on the River Belize, and from Garbutt's Falls due north until it strikes the Mexican frontier.

"It is agreed and declared between the High Contracting Parties that all the territory to the north and east of the

line of boundary above described, belongs to Her Britannic Majesty; and that all the territory to the south and west of the same belongs to the Republic of Guatemala."

Article 2 provided for the appointment by the parties of Commissioners to designate and mark out the described boundaries. Article 3 made provision for the meeting of the Commissioners, and for their naming an Arbitrator or Umpire to act in cases where the Commissioners disagreed. Article 4 stipulated that the Commissioners should make a joint report, accompanied by certified maps. Article 5 related to records to be kept by the Commissioners and by the Arbitrator or Umpire, and to the payment of their salaries and expenses. Article 6 provided for the free navigation by the vessels of both parties of the River Sarstoon, the water-line of boundary described in Article 1, and for the allocation of any islands in that river to the party on whose side of the main navigable channel they might be situated. Article 7 of the draft, which became Article 8 of the convention as signed by reason of the insertion of a new Article 7, provided for ratification and exchange of ratifications.

D. Origin of Article 7

143. The negotiation of the 1859 Convention was conducted by Charles Lennox Wyke, the British Plenipotentiary, and the Guatemalan Minister for Foreign Affairs, Don Pedro de Aycinena, both having full powers for the purpose [Libro Blanco, pp. 95, 96]. From the outset, the position of Guatemala was unchanged from that taken in the negotiations of 1857. Though willing to renounce all claims to the territory between the Sibun and Sarstoon, Guatemala insisted on receiving some compensation. As this position was resolutely maintained by Aycinena, Wyke drafted a new article in the hope that it would be approved by his Government. This became Article 7 of the final text of the Convention.

144. The text of Article 7 of the Convention as signed and ratified is as follows [Libro Blanco, pp. 102-103]:

"With the object of practically carrying out the views set forth in the preamble of the present Convention, for improving and perpetuating the friendly relations which at present so happily exist between the two High Contracting Parties, they mutually agree conjointly to use their best efforts, by taking adequate means for establishing the easiest communication (either by means of a cart-road, or employing the rivers, or both united, according to the opinion of the surveying engineers), between the fittest place on the Atlantic Coast, near the settlement of Belize, and the capital of Guatemala; whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future."

145. In his report of 30 April 1859 addressed to the British Foreign Secretary, Wyke gave the following account of the origin of this article [British Parliamentary Papers, 1860, Vol. 68, No. 2748, pp. 250-251]:

"It became evident that my negotiations must fail, unless I could hit upon a plan whereby the Government of Guatemala would find some inducement for agreeing to my terms.

"Now, as the commerce of this State with Belize, and the Atlantic coast generally, has been falling off rapidly of late years, owing to the communication with the Pacific coast being so much easier from the existence of a good carriage-road between this city and the port of San José, it struck me that the compensation they claimed might in some sort be afforded if we aided them in the construction of a practicable cart-road to the port of Isabal, on the Atlantic coast, whereby the old commercial relations with Belize would be renewed, and both Contracting Parties mutually benefited, without either appearing to receive a favour from the other.

"As we are rapidly losing the carrying trade of this Republic, which the American steamers on the Pacific and the Panama Railway are depriving us of, it becomes, of course, important, if possible, to turn the course of trade again into its old channels; and when, by so doing, we could, at the same time, establish the limits of our Settlement of Belize, it appeared to me I should be justified in somewhat exceeding my instructions if, by so doing, I could bring about so positive a good."



146. In a letter of 3 May 1859 addressed to the Guatemalan Minister to Great Britain, the Guatemalan Foreign Minister, Aycinena, gave the following account of the negotiations [Libro Blanco, pp. 99-100]:

"Mr. Wyke confidentially showed me his instructions, by which I learned Her Majesty's desire that this matter be settled in such terms that they could not give rise to difficulties and complications with other Governments. For that purpose, H. E. Lord Malmesbury stated that he had confidence in the friendship of our Government for Great Britain. Mr. Wyke received at the same time a draft of the Convention which they desired to conclude. As the Government of H.B.M. could not agree to speaking in the Treaty of cession of territories, which would have given rise to questions with another nation, we were asked for a simple recognition of the statu quo with respect to the boundaries between the Republic and the Settlement of Belize.

"As Your Excellency must suppose, I made all the pertinent observations to Mr. Wyke, setting forth at length the justice of our rights and asking at least some compensation for their abandonment. Mr. Wyke's instructions were in such terms that he did not believe himself to be authorized, despite his desires, to admit my suggestions. After many meetings, we came to agree on the addition of Article 7 to the Convention, which was not in the draft sent to Mr. Wyke, and which, as Your Excellency will observe, contains a compensation for the abandonment of our rights over territories unlawfully occupied by the settlers of Belize."

E. Signature and Ratification of the Convention of 1859

147. The boundary convention, whose text consisted of Spanish and English versions, was signed at Guatemala on 30 April 1859, by Don Pedro de Aycinena on behalf of Guatemala and by Charles Lennox Wyke on behalf of Great Britain. On the following day, 1 May 1859, the Guatemalan ratification was effected by the Executive [3 Rodríguez Cerna, Colección de Tratados, p. 153], after the majority of the Council of State had voted in favor of ratification [Gaceta de Guatemala, 4 May 1859, p. 2]. When the text of the convention was received by the British Foreign Office on 16 June 1859 [British Parliamentary Papers, 1860, Vol. 68, No. 2748, pp. 250-251], a cabinet change was taking place in Great Britain. The Conservative cabinet of Lord Derby, in which Lord Malmesbury was Foreign Secretary, fell on 19 June 1859; it was replaced by a Liberal cabinet headed by Lord Palmerston, in which Lord John Russell was Foreign Secretary. With no previous approval by the British Parliament, the British ratification was effected on or before 30 June 1859 [British Parliamentary Papers, 1860, Vol. 68, No. 2748, p. 257]. The ratifications were exchanged at Guatemala City on 12 September 1859.

148. In the instructions given by Lord John Russell on 30 June 1859, concerning the exchange of ratifications, he directed Mr. Wyke:

"You will also state that Her Majesty's Government entirely approve of the Article admitted into the Convention by Mr. Wyke, at the desire of the Guatemalan Government, whereby the two parties engage to co-operate for the establishment of a line of communication between the capital of the Republic and the coast of the Atlantic, at or near Belize; and they would be glad to be made acquainted with the views of the Guatemalan Government as to the best means of giving effect to that Article" [Libro Blanco, p. 124].

149. Subsequent to the exchange of ratifications, the Convention was submitted to the Guatemalan House of Representatives, where it aroused some opposition. A minority of the Committees of the Interior and Foreign Relations voted against approval on the ground that the Convention was a territorial cession and hence ratification was an act of a legislative and constitutional nature, for which the previous concurrence of the House of Representatives and of the people was required [Libro Blanco, pp. 108-110]. Similar arguments had been made in the Council of State before Guatemala ratified the Convention, and doubt had been expressed that Great Britain would comply with Article 7 [Libro Blanco, pp. 111-117]. Notwithstanding further opposition [Libro Blanco, pp. 119-122], the Guatemalan House of Representatives voted on 30 January 1860 that the Convention was beneficial and expedient for the interests of the Republic and based on principles of a sound policy [Libro Blanco, p. 143].

F. Protest of the Minister of the United States of America

150. It seems that the United States Minister to Guatemala, Beverly L. Clarke, had not been informed by his Government of the signing of the Dallas-Clarendon Treaty in 1856 nor of the United States-British negotiations of 1858 in which the United States gave its consent to the expansion of the British settlement in Belize south to the Sarstoon River [Williams, Anglo-American Isthmian Diplomacy, p. 263]. When he learned of the conclusion of the boundary convention of 30 April 1859, Clarke protested vigorously, in accordance with the earlier attitude of the United States. The protest [4 Manning, Inter-American Affairs, pp. 773-779; Libro Blanco, pp. 132-137], dated 1 October 1859, argued that the convention was a territorial cession by Guatemala and denied the statements of the convention that an existing boundary was being defined, stating

"....within the boundary she [Guatemala] confesses are immense tracts of country which Great Britain never had nor ever did possess, own and occupy up to and before April 30th 1859, but, on the contrary, there are extensive regions between the Sibun and the Sarstoon extending inland to Gracias a Dios Falls, which have never been explored and as late as 1824 Indians in a wild and savage state were roaming through these forests;...."

The Minister protested against the convention as a violation of the Clayton-Bulwer Treaty, and against the concealment of its negotiation by which he had been deprived of an opportunity of protecting the interests of his Government. The Guatemalan Foreign Minister replied to the protest on 18 October 1859, stating that as Guatemala was not a party to the Clayton-Bulwer Treaty any protest should be directed to Great Britain rather than to Guatemala [4 Manning, Inter-American Affairs, pp. 797-798].

151. The United States Minister reported his action to the Secretary of State on 15 October 1859 [4 Manning, Inter-American Affairs, pp. 783-789]. The Secretary of State's reply of 18 February 1860 informed him that the Department of State

"regrets exceedingly that your understanding of the precise relations between this Government and that of Great Britain in regard to Central American questions was so inexact as to permit you to adopt a line of conduct different from that which the accord of those governments would have indicated as the most consistent with their mutual views, and to lead you to protest against negotiations which were in harmony with the understanding of the subject entertained here and at London" [4 Manning, Inter-American Affairs, pp. 165-166].

152. On 21 February 1860, the United States informed Great Britain that

"this Government does not approve either the protest which he [Clarke] presented against the negotiation or some of the language employed in it, yet his zeal for the interests of his country, and the peculiar state of things in which he was placed, excuse, if they did not warrant the measures, which he thought it his duty to take" [7 Manning, Inter-American Affairs, p. 322].

153. On 9 July 1860, the Guatemalan Minister in Washington inquired whether Clarke's protest represented the views of the United States Government [4 Manning, Inter-American Affairs, pp. 908-911]; he received a reply of 12 July 1860 quoting the despatch to Clarke [4 Manning, Inter-American Affairs, p. 173].

154. In his annual message of 3 December 1860, President Buchanan informed the United States Congress that

"The discordant constructions of the Clayton and Bulwer treaty between the two Governments, which at different periods of the discussion bore a threatening aspect, have resulted in a final settlement entirely satisfactory to this Government" [5 Richardson, Messages and Papers of the Presidents, p. 639].

III. EXECUTION OF THE CONVENTION OF 1859

A. Survey of a Proposed Line of Communications,  
1860-1861

155. At the exchange of ratifications of the 1859 Convention on 12 September 1859, Great Britain inquired as to the views of Guatemala on the best means of giving effect to Article 7 of the Convention. The Foreign Ministry of Guatemala replied on 17 September 1859 that [Libro Blanco, p. 125]

"it would be desirable that measures should be taken for immediately sending out an engineer of intelligence, accompanied by another well versed in the practical part of road-making, in order that they may begin in November or December next (the season most favorable for so doing), the survey and design of the line of communication, in such directions as may be deemed the most fitting for the object; with the understanding that on our part every help and facility will be afforded that may be deemed necessary. When the survey is made, this Government will hasten to convey to that of Her Majesty their ideas upon the manner in which the work for forming the road can be carried into execution."

156. In pursuance of this suggestion, early in 1860 Great Britain sent a party headed by Captain, later Major, Henry Wray of the Royal Engineers to Guatemala to survey the line of communications provided for in Article 7, and to make an estimate of its cost [Libro Blanco, p. 144]. Captain Wray completed the survey about November 1860, and his report, containing an estimate of the cost, was received in London early in 1861. The route favored by Captain Wray ran from the Guatemalan town of Izabal, on the Golfo Dulce, to the city of Guatemala. The estimated cost came as an unpleasant surprise to both Governments; they had apparently supposed at the time of signing the Convention that the entire route could be built for between £80,000 and £100,000. Instead, the total cost estimated by Wray was £145,465, of which £121,315 was necessary for local labor and materials, and £24,150 for the expense of technical supervision and skilled workmen [Libro Blanco, p. 168].



B. First Boundary Commission, 1861

157. The Boundary Commission provided for by the Convention was formed on 26 November 1860, as soon as Captain Wray, the British engineer, had completed his survey of the line of communications. Don Manuel Cano Madrazo was Guatemalan Commissioner, Captain Wray was British Commissioner, and Don Manuel Pérez de Lasala was chosen by them as Arbitrator or Umpire. The Commission first proceeded to Gracias á Dios Falls on the Sarstoon River, where it determined the latitude and longitude of the point mentioned in the Convention and erected a stone marker. Then the Commission went to Garbutt's Falls on the Belize River, where it likewise determined the latitude and longitude and erected a marker. The boundary line was surveyed to a distance of 6.09 miles south of Garbutt's Falls and 22.53 miles north of that point. The work of the Commission terminated on 23 April 1861, when the British Commissioner received orders from his Government to suspend the boundary demarcation. The report of the Commission, to which was annexed a list of 29 markers which it had erected, was signed at Belize on 13 May 1861 [Libro Blanco, pp. 178-182]. It was later stated by the Guatemalan Minister to the United States that the British refusal to continue the boundary demarcation was the result of finding that their compatriots had trespassed beyond the boundary [Libro Blanco, p. 318].

C. Second Boundary Commission, 1928-1929

158. After the cessation of the work of the first Boundary Commission in 1861, only sporadic efforts at boundary demarcation were made by the parties, acting individually or jointly, though incursions were reported from time to time. In 1908, the British unilaterally marked part of the boundary near Garbutt's Falls. Upon Guatemala's inquiry as to why this had been done without previous advice to the Government of the Republic, she was informed that the demarcation had been made in connection with the sale of lands near the frontier, and that Guatemala had not been informed through an oversight; the matter was closed after these explanations were given [Mendoza, Inglaterra y sus Pactos, p. 233].

159. In 1916, there was a serious frontier incident in which British colonial troops trespassed beyond the border and a skirmish with Guatemalan troops resulted. Great Britain thereupon proposed a joint demarcation of the boundary, and Guatemala consented. The engineers appointed by the two Governments marked part of the line near Garbutt's Falls, and signed a report on 21 May 1917 establishing that the skirmish had occurred in Guatemalan territory [Mendoza, Inglaterra y sus Pactos, pp. 233-234].

160. In 1921, engineers named by the two Governments to make a further demarcation met at Punta Gorda, but accomplished nothing [Mendoza, Inglaterra y sus Factos, p. 235]. Guatemala proposed proceeding with the demarcation in 1923, but the British then refused. In 1924, however, Great Britain proposed completing the demarcation; in reply, Guatemala suggested that British engineers should carry out the work, and that Guatemalan engineers should inspect it before approval by the two Governments. This arrangement was embodied in a British memorandum in 1925, providing that the survey was to be made at the sole cost of the Government of British Honduras. In 1926, Guatemala suggested certain modifications in this memorandum, including the participation of Guatemalan engineers in the survey, and the insertion of a clause that

"The significance and scope of the present agreement are limited exclusively to the demarcation of the line referred to" [Mendoza, Inglaterra y sus Factos, p. 238].

Guatemala in 1927 accepted in principle a revised memorandum prepared by the British, embodying some of the Guatemalan modifications.

161. By notes of 28 December 1928 and 3 January 1929, Guatemala and Great Britain finally arranged for the meeting of Commissioners to demarcate the boundary [Mendoza, Inglaterra y sus Factos, p. 239]. The British later implied that they regarded these Commissioners to have been reappointed under the terms of the Convention of 1859, but the provisions of that Convention were not precisely followed; no Arbitrator or Umpire was appointed. Fernando Cruz was Guatemalan Commissioner, and Fred W. Brunton was British Commissioner. In January 1929, the Commission met for the first time, and thereafter inspected the markers erected by the first Boundary Commission in 1860 and 1861 at Gracias á Dios on the Sarstoon River and at Garbutt's Falls on the Belize River. In May 1929, the markers at both Falls were replaced by concrete monuments. The Commission then prepared a report, which was signed on 29 May 1929 [128 League of Nations Treaty Series, p. 429]. The work of the Commission was accepted by Guatemala and Great Britain in an exchange of notes of 25-26 August 1931. The Guatemalan note of 26 August 1931 stated:

"The Government of Guatemala agree to accept the concrete monuments erected at Garbutt's Falls and the Rapids of Gracias á Dios which were set up by the commissioners.....

"The monuments, thus determined, form part of the boundary line between British Honduras and the Republic of Guatemala."

162. This exchange of notes, with the English version of the Convention of 1859 as an appendix, was registered with the League of Nations Secretariat by Great Britain on 29 April 1932, and the notes, report, and Convention were reproduced in the League of Nations Treaty Series [Vol. 128, pp. 427-438].

D. Dispute as to the Interpretation of Article 7

163. One of the first questions to arise with respect to the application of Article 7 of the Convention of 1859 was that of the Atlantic terminus of the proposed line of communications. It was assumed by Wyke, the British negotiator, that the terminus would be Izabal. This port is situated, not on the Atlantic coast, but on the Golfo Dulce, which is connected with the Atlantic by the Rio Dulce. Wyke stated in his report of 30 April 1859, addressed to the British Foreign Secretary [British Parliamentary Papers, 1860, Vol. 68, No. 2748, p. 251]:

"It struck me that the compensation they claimed might in some sort be afforded if we aided them in the construction of a practicable cart-road to the port of Izabal, on the Atlantic coast."

164. It was important to the British that the terminus should be Izabal, rather than a port on the Atlantic which would be accessible to ocean-going vessels. If Izabal were chosen, trade and passenger traffic with Guatemala from the Atlantic side would continue as before to proceed to Belize and transship there to a small steamer capable of navigating the Rio Dulce, while the choice of a port directly on the Atlantic would altogether remove the Guatemalan trade from the hands of the British at Belize.

165. In a private letter of 16 May 1860 to Aycinena, the Guatemalan Foreign Minister, Wyke stated that opposition to Izabal might be disastrous to the whole project [Libro Blanco, pp. 151-152]. Accordingly, when the British Chargé d'Affaires by a note of 23 June 1860 formally stated the opinion of the British Government that Izabal should be the terminus [Libro Blanco, p. 155], the Guatemalan Foreign Minister replied on 2 July 1860 [Libro Blanco, p. 156] that

".....the Government of Guatemala, without failing to recognize the advantages which would be offered to direct commerce with Europe by the Bay of Santo Tomás at present, in accordance with the state of our commercial relations, is of an opinion in conformity with the desires of Her Majesty's Government and consequently is willing that the port of Izabal be taken as the terminus of the road on the Atlantic....."

In the course of his survey in 1860, the British engineer, Captain Henry Wray, recommended Izabal as the terminus.

166. A difference of opinion early arose between Guatemala and Great Britain as to the proportion of the expense of building the line of communications to be borne by each of the parties under Article 7 of the Convention; and this difference became more serious as soon as it was ascertained from Major Wray's report that the expense would be far heavier than anticipated.

167. The position of Guatemala concerning the understanding of Article 7 by the parties at the time of signing the Convention was first stated in a despatch of 2 January 1860 from the Guatemalan Foreign Minister to the Guatemalan Minister to Great Britain [Libro Blanco, pp. 141-142]; it was set forth most clearly in a memorandum of the Foreign Minister, Aycinena, of 2 September 1861 [Libro Blanco, pp. 172-175]. The memorandum stated that Article 7 was included in the Convention as compensation to be made by Great Britain to Guatemala for the latter's implied cession of its rights to the territory over which British sovereignty was recognized in Article 1. It was understood between Aycinena and Wyke, according to Guatemala, that the cost of the road would be between £80,000 and £100,000, that Great Britain would furnish all the technical direction and all the funds to pay the laborers, and that Guatemala's contribution to the enterprise was to be limited to providing such materials as could be found in the country and to providing laborers to work for the wages usual in public works in Guatemala. In support of the contention that the contributions of the parties were to be unequal, it was observed that the Convention obligated both parties to use their "best efforts," and the means at the disposal of Great Britain were far greater than those of Guatemala. It was stated that Guatemala had desired that the obligations of Great Britain should be specified with greater clearness in the Convention; but that Wyke had insisted that Article 7 should be left as he had drafted it, in order to avoid giving the Convention the appearance of a purchase of territory by Great Britain, which would be



a violation of the Clayton-Bulwer Treaty with the United States. Aycinena stated that he yielded and allowed Article 7 to stand as it was on Wyke's representations "that he would make the explanations necessary and that the British Government would know how to respond generously to Guatemala's confidence."

158. The British position varied somewhat during the course of the dispute, but the British steadfastly maintained that the treaty did not obligate them to bear as much of the expense as Guatemala contended. Early in 1860, the Foreign Office argued that Britain's obligation was limited to sending out road engineers and directors, and that all other expenses should be paid by Guatemala [Libro Blanco, p. 148]. This was clearly not the understanding of the negotiators, and on 7 February 1860, Wyke wrote Lord John Russell explaining that in his opinion the two Governments were to carry out the work jointly, and consequently the British Government would be responsible for part of the expenditures made [Libro Blanco, p. 158]. This resulted in a change of attitude on the part of the British. On 7 April 1860, the British Chargé d'Affaires in Guatemala was instructed [Libro Blanco, p. 302]:

"Mr. Wyke has also informed me that it was distinctly understood by him and by the negotiator on the part of Guatemala that the expense was to be shared as to materials and labour by the two Governments.

"I have to instruct you to inform the Guatemalan Government that whatever view Her Majesty's Government may have taken of the meaning and intention of the 7th article of the Treaty, and however onerous and unusual may be the stipulation that Great Britain should contribute to the expense of constructing a road, no part of which, it is believed, will pass through British territory, Her Majesty's Government have no desire to recede from an engagement, which it appears was accepted on their behalf by the British Plenipotentiary."

Neither Wyke nor the British Government ever admitted the correctness of the Guatemalan contention that Great Britain was to bear the whole of the expense.

E. Non-execution of Article 7

169. In view of the differing interpretations placed by the two Governments on Article 7 of the Convention of 1859, it became clear that a subsidiary convention, to fix with greater clearness the obligations of the parties, would be desirable. On 7 February 1862, the British Minister transmitted to the Guatemalan Government a copy of Major Wray's report on the survey of the line of communications; and he requested Guatemala to make known its views on the manner of making the road, in order that a special agreement on the subject might be drawn up, establishing the mode of construction and the share of the cost to be borne by each Government [Libro Blanco, pp. 189-190]. Guatemala replied on 17 May 1862 with a further insistence that Great Britain was to bear most of the cost [Libro Blanco, pp. 192-193]. On 20 June 1862, the British Minister informally made certain proposals for a convention to implement Article 7, including a provision that the cost to be borne by Great Britain, in addition to the costs of superintendence (estimated by Major Wray at £23,950), should not exceed £50,000. Thereafter, the Governments attempted to work out a compromise.

170. The Guatemalan Government made three alternative proposals. On 28 June 1862, it proposed that Great Britain should bear all the expense of technical supervision and two-thirds of the cost of local labor [Libro Blanco, p. 196]; on 2 July 1862, that Guatemala would accept £50,000 from Great Britain as a substitute for the obligation of Article 7 [Libro Blanco, p. 211]; and on 5 July 1862, that Guatemala was to pay for the materials and Great Britain for the technical supervision, and that other expenses were to be divided equally between the two Governments; but that Great Britain should lend Guatemala its share of the expense at moderate interest [Libro Blanco, p. 215]. These proposals were referred to his Government by the British Minister, the last being recommended by him [Libro Blanco, pp. 216-217]. All three were rejected by the Foreign Office [Libro Blanco, p. 220].

171. On 27 January 1863, the British Minister transmitted to the Guatemalan Government a draft of a convention to implement Article 7, providing that each Government should pay down £25,000 toward the expense of constructing a road, and that Great Britain should bear the expense of supervision and Guatemala should bear that of the materials. In summarizing the history of the dispute, the British Minister agreed that Article 7 had been intended as compensatory, stating:

"The uninhabited tract of land in dispute was, it is said, not only claimed by British Honduras and by Guatemala, but also by Mexico, and lastly by Spain; my predecessor [Wyke], however, agreed with Your Excellency upon the insertion of the 7th article, as I apprehend, in a compensatory view, and although his action had been unauthorized and unexpected by Her Majesty's Government, they acquiesced in it" [Libro Blanco, p. 220].

172. The Guatemalan Government rejected the British draft convention, and thereafter the scene of discussions was transferred to London [Libro Blanco, pp. 224-228]. There, after a succession of abatements of Guatemalan demands, a convention concerning the implementation of Article 7 was signed on 5 August 1863. This subsidiary convention was signed by the Guatemalan Minister to London, José de Francisco Martín, sub spe rati only; it was signed by Sir Charles Lennox Wyke on behalf of Great Britain [Libro Blanco, pp. 241-244].

173. The terms of the 1863 Convention were as follows.

Great Britain agreed to recommend to Parliament the appropriation of £50,000 to be paid in instalments to the Government of Guatemala to enable it to undertake the construction of a line of communications between the City of Guatemala and the Atlantic Coast, by land, by the River Motagua, "or by any other route best calculated to communicate with the British Possessions in Belize" (Article 1). The first instalment of £10,000 was to be paid after the money had been voted by Parliament; the second, of like amount, when the first fourth of the route had been begun; the third, when the first fourth had been completed and the second fourth begun; and so on. The line of communications was to be completed within four years. The £50,000 was to be a full discharge of Great Britain's obligations under Article 7 of the Convention of 1859. Ratifications were to be exchanged at London or Paris within six months.

174. Thereafter ensued a difficult period of war between Guatemala, El Salvador and Honduras, during which the President of Guatemala, General Carrera, was obliged to be much in the field. For whatever reason, Guatemala failed to ratify the Convention of 1863 within the six months stipulated. However, on 5 May 1864, the Guatemalan Minister to London, according to a later note which he wrote to the British Foreign Secretary, was told by Lord Russell that notwithstanding the period for exchange of ratifications had passed, if Guatemala later ratified the convention, Great Britain would also do so [Libro Blanco, p. 264]. On 24 July 1865, ratification of the convention was proposed to the Guatemalan legislature, and on 9 November 1865 such ratification was authorized by the Council of State, but with two adjoined declarations which made minor changes in the obligations of the Convention [Libro Blanco, p. 258]. By that time, however, Lord Russell was out of office, and Lord Stanley had become Foreign Secretary. When the Guatemalan Minister proposed an exchange of ratifications, Lord Stanley informed him on 30 July 1866 that the Convention of 1863 had lapsed through failure of exchange of ratifications within the stipulated period, and that in any case the modifications contained in the Guatemalan ratification rendered it unacceptable [Libro Blanco, pp. 259-260].

175. The Guatemalan Minister at once proposed that a new convention, in exactly the same terms as that of 1863, should be concluded [Libro Blanco, pp. 263-265]; but Lord Stanley replied on 29 August 1866 that "this matter has arrived at a stage which may induce a wholly new aspect of it." The note continued by stating that the British Government had used its best efforts to discover what adequate means could be found for executing the Convention of 1869, but

"the cost of making such a line of road would be far beyond that which was originally anticipated, and wholly disproportionate to any commercial benefit which might be expected to arise from it when made."

Consequently, Lord Stanley proposed that the parties should abandon the project by mutual consent [Libro Blanco, pp. 267-268]. This proposal was rejected by Guatemala.



176. Finally, after further exchange of correspondence, on 3 January 1867, Lord Stanley wrote the Guatemalan Minister stating that it was the view of the British Government that it had done everything that was incumbent upon it to fulfill the engagement of the Convention of 1859, and was now released from the obligation of that Convention. Lord Stanley's note began with a denial that Article 7 was intended as compensation for a territorial cession. He stated:

"Her Majesty's Government did not accept and never would have accepted the definition of the boundary as involving any cession, or as conferring any title, on the part of Guatemala; nor is there a syllable in the Convention which can lead to such a conclusion. In fact, the instructions of Sir Charles Wyke, who negotiated that Treaty, expressly prohibited him from admitting into it any thing which might bear that construction" [Libro Blanco, p. 286].

Lord Stanley continued with a review of the Convention of 1863, and stated that failure of ratification by Guatemala within the time set had rendered it a dead letter. He then pointed out that the obligation of the Convention of 1863 was not to pay, but to recommend to Parliament the appropriation of £50,000, and that in the time which had elapsed since 1863 the state of things had so changed that Parliament would never vote the money. He attributed the failure of the Convention of 1863 to Guatemala, and argued that Great Britain, having been ready to ratify it within the time set, had completely fulfilled the Convention of 1859. The British Government, Lord Stanley stated,

"regret this termination of the affair less than they would do, since they are persuaded that the cost of the contemplated road would be much greater, and its benefit to the two countries much less, than was supposed at the time of the conclusion of the Convention of 1859" [Libro Blanco, p. 287].

177. The Guatemalan Government endeavored to persuade the British to reverse this decision. Guatemala in various communications on 15 May 1867 [Libro Blanco, pp. 295-298], 26 October 1867 [Libro Blanco, pp. 300-304], 24 September 1869 [Libro Blanco, pp. 305-312], and 30 June 1880 [Libro Blanco, pp. 319-328] repeatedly argued to successive British Foreign Secretaries that the 1859 Convention was still in force, without going into the question of how much of the expense was to be borne by each party, which had previously caused so much difficulty. The notes argued that Article 7 was intended to be compensatory, adducing various British documents in support of the argument; that hence, the utility of the road to Great Britain had no bearing on the matter; that the failure of ratification of the Convention of 1863 had no effect on the obligation of the Convention of 1859. On 30 June 1880, the Guatemalan Minister proposed submission of "this difference to the impartial decision of the head of some friendly state" [Libro Blanco, pp. 327-328]. But the British Government maintained its position that the obligation of Article 7 of the Convention of 1859 had terminated, and on 18 August 1880 the British Foreign Minister stated that his Government could not admit that there was any ground for submitting the question to arbitration [Libro Blanco, p. 330].

178. On 5 April 1884, Guatemala again protested the violation of its rights, stating [Libro Blanco, p. 337]:

"In fact, either the Treaty of 1859 is in force or it has lapsed. If it is in force, nothing prevents the two Governments from proceeding with its execution, and in this case Your Excellency will recognize the advantage of interpreting Article 7 in its most practical sense. If the Treaty had lapsed, matters will return to their former status, and consequently, the two contracting parties will be released from the obligations which they then contracted. But what the Government of Guatemala cannot accept and does not accept, is that the consent favorable to Great Britain, granted by it in Article 1 of the Treaty of 1859, remains in force, so long as the compensatory articles are not executed."

The note concluded as follows:

"Therefore, the Minister for Foreign Affairs of Guatemala has instructed me, by order of the President, to present to Her Britannic Majesty's Government, with the most respectful deference, but at the same time with the greatest clarity, the solemn protest which it makes against the recent de facto occupation on the part of Great Britain of an integral part of Guatemalan territory, declaring that while an absolute agreement on this point does not exist between the two countries, said occupation cannot prejudice Guatemala's rights at any time."

On 5 June 1884, the British Foreign Office replied that the Guatemalan representations would be considered by Her Majesty's Government [Libro Blanco, p. 342].

179. On 10 July 1884, the Foreign Secretary submitted the case to the Law Officers of the Crown, the facts being stated in two memoranda drawn up by Sir Edward Hertslet. Two questions were put, as follows [Sir A. D. McNair, The Law of Treaties, p. 513]:

"1. Whether Articles II, III, IV, and V of the Convention of 1859, which related to the recognition by Guatemala of the boundary of British Honduras, were invalidated by the non-fulfilment of Article VII of that Convention, which related to the construction of a road from Guatemala to Belize, under the circumstances mentioned in Sir E. Hertslet's Memoranda.

"2. Whether, in the event of a Parliamentary vote for the purpose of carrying out Article VII of the Convention of 1859 being applied for and refused, Great Britain would be released from all obligation under that Article without prejudice to the other provisions of the Convention."

The report of the Law Officers, Henry James, Farrer Herschell, and J. Parker Deane, was made on 12 August 1884. In answer to the first question, it was stated [McNair, The Law of Treaties, pp. 513-514]:

"That in our opinion, Articles II, III, IV, and V of the Convention of 1859 are not invalidated by the non-fulfilment of Article VII.

"The latter Article is, so far as the terms of the Convention are concerned, an entirely independent stipulation. And the former Articles are explicit and absolute in their terms, and in no way made conditional upon the carrying out of Article VII.

"We observe, however, that M. de Medina [the Guatemalan Minister] states in his letter [of 5 April 1884, quoted previously] that Article II 'began to be fulfilled,' and he appears to connect its not being further carried into effect with the controversy which arose under Article VII.

"We are not aware what are the facts in relation to this, or whether it was with the assent of Her Majesty's Government that the proceedings provided for by Article II and the following Articles were abandoned.

"It appears advisable that this should be inquired into.

"We may add that, assuming the obligation created by Article VII to be still in force, it would, of course, be open to Guatemala to insist that, as there had been a breach of it by the British Government, she would retaliate by refusing to observe the other provisions of the Convention, even though they were unconnected with Article VII."

The answer to the second question was:

"Article VII clearly imposes an absolute obligation on the British Government. The undertaking is only to use their best efforts. If they did this by proposing and using all due efforts to carry a vote of money, we think their obligation under Article VII, would be fulfilled."

180. Guatemala did not exercise her right, conceded by the Law Officers,

"to insist that.... she would retaliate by refusing to observe the other provisions of the Convention."

On 4 December 1872, the Guatemalan Minister in Washington had informed the United States that his Government considered the Convention of 1859 as terminated [Libro Blanco, p. 318]; but thereafter Guatemala made many attempts to induce the British to comply with the Convention. Not until 1939 or later was Great Britain informed that Guatemala did not recognize the obligations of the Convention. The controversy over the Convention of 1859 was completely dormant between 1884 and 1933.

#### IV. LATER NEGOTIATIONS CONCERNING BELIZE

##### A. Belize Made a British Colony, 1862

181. On 7 March 1861, the Legislative Assembly of Belize again petitioned the Queen that the settlement should be made a British Colony, reciting

"That your Majesty now exercises complete Sovereignty over this Settlement; in proof whereof we may observe, that under Treaties with the adjacent State of Guatemala, a joint Commission is now engaged in determining our Territorial Boundaries; that grants of Lands are made by your Majesty's Representatives; that full Legislative powers are vested in the Superintendent and Assembly, and all the Royal Prerogatives of the Crown are invariably recognised, admitted, and enforced" [3 Burdon, Archives, p. 235].

On 4 July 1861, the Colonial Secretary replied, expressing sympathy with the proposal but expressing a fear that there might be difficulty in thus unequivocally expressing the real character of the British possessions [3 Burdon, Archives, pp. 241-242]. Nonetheless, on 12 May 1862, a proclamation was issued creating the Colony of British Honduras and the office of Lieutenant Governor, who was made subordinate to the Governor of Jamaica [3 Burdon, Archives, p. 25].

B. Guatemalan-Spanish Treaty, 1863

182. Spain maintained no diplomatic relations and concluded no treaties with the Federal Republic of Central America, or after the break-up of the federal union, with Guatemala, until 1863. On 29 May 1863, Guatemala and Spain signed at Madrid a treaty of recognition, peace and amity [3 Rodríguez Cerna, Colección de Tratados, pp. 69-72]. The first article of this treaty provided:

"Her Catholic Majesty recognizes as a free, sovereign and independent nation the Republic of Guatemala, composed of all the provinces mentioned in its constitution in force and of the other territories which legitimately belong to it or in the future shall belong to it; and, using the power which is granted her by virtue of the decree of the Cortes Generales of the Kingdom of 4 December 1836, she renounces in every way and forever for herself and her successors the sovereignty, rights, and claims which belonged to her over the territory of the aforesaid Republic."

The Guatemalan Constitution of 19 October 1851, which was then in force, included no description of the territory of the Republic [5 Gaceta de Guatemala, No. 70 (25 October 1851), p. 1].

C. Imperial Mexican Decrees of 1864 and 1865

183. On 19 September 1864, the Imperial Commissioner of the Peninsula of Yucatan, appointed by the government of the Emperor Maximilian, issued a decree claiming for Mexico the entire territory of Belize occupied by the British [3 Ancona, Colección de Leyes, Decretos, y Ordenes de Yucatán, pp. 98-100]. The decree provided concerning the boundary:

"1. ....it will continue through the center of the River Usumacinta or its deepest affluent until it meets the boundary of the Empire with the Republic of Guatemala. From this point it will follow eastward the boundary line with the said Republic of Guatemala, leaving within the Empire the Lacandon tribes. It will follow the undulations and necessary directions of said boundary line, and leaving to the Empire the territory of the Peten, it will continue in the same manner until it meets the River Sarstun. And it will follow the course of this river until it empties into the Gulf of Honduras.....

"3. The small area in which some English have permission to cut wood, toward the east of the peninsula and around Belize or Wallix, is the same as that granted by the treaties concluded with Spain and Mexico by His Britannic Majesty."

On 3 March 1865, the Emperor Maximilian issued a decree on the boundaries of his Empire, establishing those on the east as

"the Gulf of Mexico, the Sea of the Antilles, and the settlement of Walize, possessed by the English in conformity with the rights conceded to them by the Treaty of Versailles,"

and providing that on the south the boundaries with Guatemala should be those to be definitively marked by a special treaty [4 Segura, Boletín de las Leyes del Imperio Mexicano, p. 234]. The decree also provided that the Department of Yucatan bounded

"on the south with the Territory of Belize, Wallix or Walize, and with the Republic of Guatemala, from which it is separated by the River Sarstun."



184. On 6 March 1865, the British Minister to Mexico protested against the imperial decree of 19 September 1864 [Fabela, Belize, p. 239], and Maximilian's Foreign Minister replied on 9 March 1865 that there must have been some mistake, as Mexico had never made claims to any British territory [Fabela, Belize, p. 240]. On 20 March 1865, the British Minister referred to the imperial decree of 3 March 1865, stating that Guatemala considered that all the territory to the west of the boundary established by the Guatemalan-British Convention of 1859 belonged to her, and that all that had still to be determined between Mexico and Great Britain was the northern boundary from the Atlantic along the Rio Hondo, and thence to the frontier with Guatemala. It was proposed that this boundary should be settled by an agreement containing no terms of cession, but rather making simply a declaration of a previously existing but undetermined frontier [Fabela, Belize, pp. 241-242].

185. The discussion was suspended until 2 August 1865, when the British Minister to the Imperial Government complained that an Indian cacique, apparently misled by the terms of the decree of 19 September 1864 of the Imperial Commissioner, was threatening to invade British Honduras with armed force. The Minister requested an explicit and public renunciation of the claims to British territory made by the decree [Fabela, Belice, pp. 242-244]. The Mexican Government, replying on 14 August 1865, refused to make such a renunciation and supported its rights as successor to Spain under the treaties of 1783 and 1786, but expressed willingness to conclude a boundary convention "on decorous and reasonable bases" [Fabela, Belice, pp. 244-250]. The British Minister replied on 22 August 1865 that his Government was willing to negotiate, but did not admit that Mexico had any right to dispute the title of Great Britain to the area which it occupied; he also requested a cessation of discussion of sovereignty until he could receive instructions on the matter [Fabela, Belice, pp. 250-253].

186. A British note to the Imperial Mexican Government on 1 December 1865 [Fabela, Belize, pp. 254-257] resumed the discussion concerning the sovereignty of Belize. This note has significance because it put the British arguments in a somewhat new form. The note stated:

"During the dominion of the Spanish Crown in America, the rights of Great Britain to the possession of Belize rested on the treaties with Spain of 1783 and 1786, in which were specified the boundaries of the Colony to the North, South, East, and West, as well as the privileges and immunities to be enjoyed by the settlers.

"In the year 1796, the rights granted by Spain to Great Britain by the aforesaid treaties were, it is certain, solely rights of occupation and not of sovereignty. At that time, nonetheless, when Spain was in the power of the revolutionary Government of France and had declared war against Great Britain, a Spanish flotilla made an attack on the Colony of Belize in 1798, and was then beaten off by British troops and by the settlers.

"It was after the beginning of hostilities that the Spanish commissioners who had formerly visited the Colony from time to time to ensure the observance of the treaties, ceased to do so, and then the settlers extended their occupation southward to the River Sarstún, as well as in a westerly direction.

"When relations between Great Britain and Spain were re-established, the treaties of 1783 and 1786 were not specially renewed, nor did any question arise with respect to restoring the Colony or keeping it within its original limits: in other words, Spain, from which we received the Colony and with which we made the treaties of 1783 and 1786, took no steps after the peace to secure its rights to the territory occupied by Great Britain, notwithstanding that the augmentation of the occupied territory took place while Spain was exercising its sovereignty on that Continent, and consequently before the independence of the American Republics.

"Spain, in effect, tacitly recognized the rights of Great Britain over and above those granted by the treaties of 1783 and 1786.

"But even admitting for the sake of argument that Spain reserved its right over the British Colony after the close of the war, it is a great mistake to suppose as a matter of course that the Spanish-American Republics inherited any right which Spain might have had in those regions.

"Any acquisition of rights of sovereignty by those republics, insofar as they acquired them, was not by grant or conveyance by Spain, but by their own efforts, and such rights were based on the principle of conquest and of de facto possession; in summation, based on the same principle which gives to Great Britain the right of sovereignty over its possessions in British Honduras.

"Great Britain has been in uninterrupted possession of the Colony; none of the adjacent States has ever been in possession of it; and its inhabitants, remaining under the sovereignty of Great Britain, exercised, in making themselves independent of the Spanish Government, the same right as the inhabitants of the Spanish possessions who constituted themselves into independent States."

The note concluded by denying that the Mexican-British Treaty of 1826 constituted a recognition of Mexico's rights of succession, stating that the treaty was

"clearly only a provisional agreement in which Great Britain deferred the assertion of its rights until, by means of a final investigation, their extent would be duly ascertained and defined."

187. The Imperial Foreign Minister replied on 9 December 1865 [Fabela, Belice, pp. 257-262], arguing that the provision for the restitution of conquests in the Treaty of Amiens of 1802 prevented any acquisition of sovereignty by Great Britain as a result of the war, that by the jus postliminii the situation after the war would revert to its prior status in the absence of express stipulations to the contrary, that Mexico had claimed territorial succession to Spain from the beginning and that such succession had been expressly recognized by the Mexican-Spanish Treaty of 1838, and that the Mexican-British Treaty of 1826 constituted British recognition of it.

188. The British Minister replied on 19 December 1865 [Fabela, Belize, pp. 262-269], stating that Great Britain could not consent that any power should call into question British sovereign rights to Belize. The note continued:

"With respect to the Treaty of Amiens, the undersigned must state, that the British Settlement of Honduras was not and could not be included in the possessions which were to be restored to Spain after the war. Naturally it was not included in the category of conquests referred to in that treaty, in view of the fact that during the war of 1796-1798 all that Great Britain did was to defend against a hostile attack by Spain a territory of which it had been in possession for many years before the outbreak of war.

"In consequence, the Treaty of Amiens does not allude to the British Colony of Honduras, and as Great Britain at that time had acquired and exercised sovereignty in the Colony and has continued since then to exercise it, without Spain's disputing those rights either during the domination of its Crown in that Continent or afterwards, it is not to be supposed that Mexico could now claim what Spain never questioned, or that Spain in any treaty with Mexico intended to cede to the latter rights which Spain itself did not claim.

"The additional articles signed in Madrid on 28 August 1814, to which Señor Castillo alludes, do not work in any way against the rights of sovereignty exercised by Great Britain in the British Colony of Honduras. Great Britain exercised that sovereignty without interruption during the twelve years which elapsed between the ratification of the Treaty of Amiens in 1802 and the ratification of the Treaty of 1814. Therefore, in alluding to the commerce of England with Spain while negotiation of a new treaty of commerce was pending, it is clear that Spain referred to Great Britain and its dependencies, one of which was Honduras, and neither intended to reassume its rights to possession nor to place Great Britain, with respect to them, on the same footing as before the war of 1796-1798."

With respect to the Mexican-British Treaty of 1826, the note continued:

"Though it is true that in the Treaty of 1826 allusion is made to the treaty concluded with Spain in 1786, it must be

borne in mind that in 1826 Great Britain was in possession with rights of sovereignty of the territory known and held as British Honduras, and that then it not only possessed the limited territory mentioned in the treaties of 1783 and 1786, but also a region which extended beyond the limits specified in those treaties.

"The treaty of 1786 between Great Britain and Spain was mentioned in the treaty with Mexico because in fact it was the latest which made any reference to the British possessions of Honduras, and it was adopted as a means of designating them which would serve as a point of departure; however, in reality the two aforementioned treaties, considered as obligations between Great Britain and Spain, had ceased to have anything other than historical value, and since then the rights of Great Britain have rested on the actual uti possidetis, never questioned by Spain."

The note went on to urge the speedy conclusion of a boundary convention in order to prevent the British settlers from extending their possessions even further, for which Her Majesty's Government could not hold them responsible.

189. On 27 October 1866, the Imperial Government of Mexico and the Government of Great Britain signed at Mexico a Treaty of Friendship, Commerce and Navigation, which was never ratified presumably because of the disorders preceding the fall of Maximilian's regime in May 1867. Article 23 of this treaty provided [Tratados y Convenciones celebrados y no ratificados por la República Mexicana, p. 399]:

"This Treaty, when ratified, shall be substituted for the Treaty and additional articles concluded between Great Britain and the Government of Mexico, on the 26th of December 1826; and, as regards the question of Belize or the Colony called the British Colony of Honduras, the High Contracting Parties undertake to come to an arrangement, either by means of an especial Treaty or by arbitration."



D. Mexican Note concerning Belize, 1878

190. On 2 December 1872 began a long exchange of correspondence, conducted directly between the British Foreign Secretary and the Mexican Minister of Foreign Affairs, diplomatic relations having been suspended, concerning Mexican responsibility for depredations committed by the Icaiché Indians in the Belize territory. In a note of 23 May 1878 [Mexico, Correspondencia Diplomática cambiada entre el Gobierno de la República y el de Su Majestad Británica, 1872-1878, pp. 20-52]. Mexico again raised the question of British sovereignty to the Belize territory. The note, after setting out the historical antecedents at great length, arrived at the conclusion that

"As on the one hand Mexico succeeded to Spain in the territorial rights which the latter had in Belize, and on the other Mexico has granted to England only the enjoyment of the rights of usufruct which have been spoken of, under the Convention of 14 July 1786, it is a thoroughly logical conclusion from these premises, demonstrated above, that Belize is Mexican territory merely granted in usufruct to England; that the sovereignty of Belize belonged and belongs to Mexico; and that Great Britain has neither right nor reason to claim there more than the limited rights of usufruct granted to her by the aforesaid treaties. On these solid foundations Mexico bases her rights to the sovereignty of Belize and her protest against the claim that a British territory exists there."

191. The British reply of 8 June 1878 [Fabela, Belice, pp. 288-290] stated merely that

"Her Majesty's Government have no desire at the present time to enter into any discussion of the Right of Sovereignty of Great Britain over British Honduras, which has been fully established by conquest subsequent to the treaties of 1783 and 1786 and long before the existence of Mexico as an independent State."

This note put an end to discussions between the two Governments on the subject.

E. Guatemalan-Mexican Boundary Settlement, 1877-1895

192. On 7 December 1877, Guatemala and Mexico, seeking to settle their boundary, signed a convention for the appointment of a Mixed Commission of engineers to give to both Governments the necessary data to enable them mutually to settle and fix the boundary line between the two Republics [Rodríguez Cerna, Colección de Tratados de Guatemala, Vol. 2, Part 1, pp. 567-569]. Article 3 provided:

"With the object of proceeding definitively in the shortest possible time to establish the boundary line between both Republics, the study of the frontier will be divided into two sections, the first including the part between the Pacific Ocean and the range of Izbul, and the second the entire remainder of the frontier as far as the Atlantic....."

Article 5 provided:

"In the second section of the frontier, the Commission, starting from the said range of Izbul, will continue its studies following the course of the present boundary line until the limits of the district [partido] of Bacalar, in the State of Yucatan, are ascertained insofar as is possible; the Commission may fix the astronomical positions of the points it thinks suitable."

Article 6 provided that the Commission would complete its work on the first section of the line within eight months of the exchange of ratifications. On 10 December 1880, the study of the first section had not been completed, and Guatemala refused to grant a further extension of time [Ireland, Boundaries, Possessions and Conflicts in Central and North America and the Caribbean, p. 107].

193. There ensued a period of tension between Guatemala and Mexico, but the United States induced the two countries to agree to preliminary bases for a boundary treaty at New York on 12 August 1882 [Rodríguez Cerna, Colección de Tratados, Vol. 2, Part 1, pp. 572-574]. Articles 1 and 2 of this agreement provided for abandonment by Guatemala of her claims to Chiapas and Soconusco, and Article 5 provided that as a general rule actual possession would be the basis for demarcation of the boundary; yet the parties might by common agreement depart from this basis in order to follow natural lines or for any other reason, and in such cases a system of mutual compensation would be adopted.

194. A definitive Boundary Treaty between Guatemala and Mexico was signed at Mexico on 27 September 1882 [Rodríguez Cerna, Colectión de Tratados, Vol. 2, Part 1, pp. 574-576]. The Treaty provided in Article 3 that the boundary at its eastward extremity should be

"(7) This meridian [the meridian which passes at one-third the distance between the centers of the plazas of Tenosique and Sacluc, counting such third part from Tenosique], from its intersection from the previous parallel to latitude 17° 49'.

"(8) The parallel of 17° 49' from its intersection with the previous meridian indefinitely eastward."

Mexico later contended that the parties intended the parallel of 17° 49' to constitute the boundary only as far as the boundary of Belize established by the Guatemalan-British Convention of 1859, and that the provision that the parallel should be continued "indefinitely eastward" did not constitute a renunciation by Mexico of her claims to the Belize territory south of 17° 49'. The Mexican Foreign Minister, D. Ignacio Mariscal, who negotiated and signed the treaty, stated in 1893 that the question of the boundaries of Mexico and Guatemala in the Belize territory

"was not resolved by the treaty with our neighbor to the South concluded on 27 September 1882. As the object of that convention was to settle the controversies concerning the boundaries with Guatemala, and not with Great Britain, who did not take part in the negotiation, the part which might affect Belize was indicated only in a way which was vague and susceptible of any interpretation, in accordance with what might be advantageous in negotiating a settlement with Great Britain" [Defensa del Tratado de Límites entre Yucatán y Belice, p. 14].

Article 4 of the Treaty provided for the appointment by both Governments of scientific commissions

"to trace the boundary line with due precision on trustworthy maps, and to erect on the terrain monuments which will make visible the limits of both Republics, as they are described in the preceding article."

195. On 14 September 1883, Guatemala and Mexico signed at Mexico a subsidiary Convention on the Manner of Tracing the Boundary Line [Rodríguez Cerna, Colección de Tratados, Vol. 2, Part 1, pp. 577-578]. Article 6 of this Convention provided:

"The geodesic lines and parallels of latitude indicated by the Treaty, as far as the parallel of  $17^{\circ} 49'$  indefinitely eastward, will be marked with monuments....."

The instructions given to the Chief of the Mexican Commission on 8 October 1883 stated [Amador, Memoria de la Cuestion de Límites entre México y Guatemala, p. 115]:

"12th. The tracing of the parallel of  $17^{\circ} 49'$  will be carried out only as far as the road of the Petén or a little farther, and will not reach the lands occupied by the United Kingdom."

Eventually, however, the entire parallel as far east as the meridian of Garbutt's Falls was surveyed, and a series of points marking it was accepted by the Chiefs of the two Commissions in an Act signed on 26 November 1895 [Amador, Memoria, pp. 464-468]. It would seem that there was some uncertainty in Mexico as to whether the Treaty of 1882 established a boundary in the Belize territory; a map prepared by Antonio Garcia Cubas in 1889 showed the line of  $17^{\circ} 49'$  N. latitude as continuing eastward to the sea, while an official Mexican map of 1890 showed the boundary as bending southeastward at about  $89^{\circ} 25'$  W. longitude, reaching the sea at the mouth of the Sibun River [Amador, Memoria, map opposite p. 416].

F. The United States Effort to Abrogate  
the Clayton-Bulwer Treaty, 1882-1896

196. In 1882, the United States in a series of notes to Great Britain made a vigorous effort to secure modification in her favor of the terms of the Clayton-Bulwer Treaty of 1850. As this effort was unsuccessful, on 8 May 1882 the United States Secretary of State sent instructions to the Minister in London, arguing that the Clayton-Bulwer Treaty was voidable at the pleasure of the United States [United States Foreign Relations, 1882, p. 276]:

".....the parties to the [Clayton-Bulwer] treaty jointly agreed not to exercise dominion over, or fortify or colonize Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America. Great Britain, however, exercises dominion over Belize or British Honduras.....

"Such dominion seems to be inconsistent with the provision of the treaty which prohibits the exercise of dominion by Great Britain over any part of Central America. This makes it proper for me to say that the English privileges, at the time of the conclusion of the Clayton-Bulwer treaty, in what has been known as the Belize, were confined to a right to cut wood and establish saw-mills in a territory defined by metes and bounds. These privileges were conferred by treaties, in which Spanish sovereignty was recognized. On the successful revolution, the rights of Spain vested in the new republics, and had not been materially changed when the Clayton-Bulwer treaty was concluded..... In 1859 Great Britain entered into a treaty with Guatemala, in which what had been called the settlement in the declaration made on the exchange of the ratification of the Clayton-Bulwer treaty was styled 'Her Britannic Majesty's settlement and possessions'.

"In the treaty with Guatemala the boundaries were defined, and it was agreed that all on one side of the defined boundaries 'belongs to Her Britannic Majesty'.

It is further understood that when the commissioners met to mark the boundary in accordance with the agreement it was found that the subjects of Great Britain had occupied so much more of Guatemala than was supposed that the commissioner on the part of Her Majesty's Government refused to proceed, and this large area of land has since remained practically in the possession of Great Britain.

"The United States have never given their assent to this conversion of the British 'settlement' in Central America under Spanish-American sovereignty into a British 'possession' with British sovereignty. There is a vast difference between a settlement subject to the sovereignty of the Central American republic and a colony controlled by Great Britain.

"Under the treaty of 1850, while it is binding, the United States have not the right to exercise dominion over or to colonize one foot of territory in Central America. Great Britain is under the same rigid restriction. And if Great Britain has violated and continues to violate that provision, the treaty is, of course, voidable at the pleasure of the United States."



197. Great Britain replied to these arguments in an instruction given by the Foreign Secretary to the British Minister in Washington on 30 December 1882, a copy of which was given to the Secretary of State. With reference to the United States arguments concerning Belize, the Foreign Secretary set out the declarations made at the time of the exchange of ratifications of the Clayton-Bulwer Treaty, and continued [United States Foreign Relations, 1883, p. 488]:

"It would seem, then, to be opposed to all sound principle that the United States should now claim to abrogate the treaty of 1850 by reason of the existence of a state of things which has prevailed, to their knowledge, before as well as since its ratification, to which the treaty was never intended to apply, and notwithstanding the known existence of which they have more than once recognized the treaty as subsisting.....

"It is true that, during the middle of the last century, the British settlement at Belize owed its existence to the permission of Spain, and that the colonists were gradually allowed to occupy the territory now called British Honduras, for the purpose only of cutting logwood and exporting mahogany; but it is also a matter of history that, when England and Spain were subsequently at war, an attack made by the forces of the latter on the British settlement was successfully repulsed; and, in consequence, from that time British Honduras remained under the dominion of the British Crown.

"When peace was signed most of the British conquests from Spain were restored to her; but the settlement in Honduras, like that of the Falkland Islands, was not given up, and continued on the same footing as any other possession under the British Crown.

"At the time of the abandonment by Spain of all her possessions in South America she made no protest against the rights which the British Crown had acquired over Belize and British Honduras.

"It is therefore clear that the sovereignty of British Honduras was acquired by conquest, and was possessed by this country long prior to the time of the Clayton-Bulwer treaty."

The Foreign Secretary then alluded to a United States-British postal convention of 11 August 1869 [59 British and Foreign State Papers, p. 374], which mentioned "the colony of British Honduras," and contended that this convention constituted a formal recognition of British sovereignty.

198. The United States replied on 5 May 1863, stating that the terms of the Clayton-Bulwer Treaty and of the declarations made on the exchange of ratifications did not constitute a recognition of British sovereignty, and continued [United States Foreign Relations, 1883, p. 420]:

"The date of the conquest of Belize, alluded to by Lord Granville, is not stated, but the incident to which he refers is supposed to be the repulse, by a ship of the Royal Navy and the settlers, of an attempt, in 1798, on the part of Spain to take possession of Honduras. As the British settlers held under grants from Spain, it seems hardly necessary to consider whether the successful resistance of a tenant to an attempt to oust by force changes the tenure to one of full possession.

"His lordship, however, meets this point by a plea of possession through abandonment.....

"By the third article of the treaty of Amiens of 1802, Great Britain engaged to restore all Spanish possessions occupied or conquered by British forces. Belize was not given up because it was not a conquest, but a settlement under Spanish grants and Spanish sovereignty. The parallel with the Falkland Islands does not seem convincing..... By Spain they were..... ceded absolutely to Great Britain in 1771.....

"As to Belize, however, there was no cession. If the sovereignty of Spain was annulled by conquest in 1798, it was restored by the treaty of Amiens in 1802; and while after this treaty, and during the Bonaparte occupation, hostilities were renewed, the treaty of 1809 provided that there should be peace between Spain and Great Britain, and 'also an entire obliteration of all hostilities committed during the late war.' Since the conclusion of this treaty Spain and Great Britain have been at peace, and it is not imagined that Earl Granville will seek to show that a lawful possession could be thereafter created for Great Britain by a violation of that treaty in time of peace. No conquest of any part of Honduras is known to have occurred after 1802; but if there were, the perpetuation of this conquest would hardly comport with the reciprocal engagement of 1809 to restore the status quo ante bellum.....

"If Great Britain has turned the 'settlement' maintained for the cutting of logwood and mahogany into an organized British colony -- and this is admitted -- or if that settlement has encroached beyond the line occupied by the settlers in 1850 -- and the reports from Guatemala and Mexico tend to show this has been done -- the action has been done, the action has been taken, in contravention of the Clayton-Fulwer treaty, and in violation of one of its most important provisions."

The Secretary of State then denied that the postal convention of 11 August 1869 constituted a recognition of British sovereignty to Belize. The discussion of the question was terminated by the British Foreign Secretary on 17 August 1883 with the statement that his Government saw no reason to alter its views [United States Foreign Relations, 1883, p. 531].

199. This correspondence was published by Great Britain in two Parliamentary Papers in 1882 and 1884 [British Parliamentary Papers, 1882, Vol. 80, p. 85: United States No. 5 (1882), C. 3446, and ibid., 1884, Vol. 87, p. 21: United States No. 1 (1884), C. 3834], and was brought to the attention of Guatemala by the Guatemalan Minister to Great Britain on 20 March 1883 [Libro Blanco, p. 333]. Guatemala apparently made no effort to avail itself of the new attitude of the United States.

200. In 1896, the United States abandoned the contention that it had the option to regard the Clayton-Bulwer Treaty as not binding. The Secretary of State, Olney, wrote in a memorandum [3 Moore, Digest of International Law, pp. 207-209]:

"Mr. Frelinghuysen's [the Secretary of State's] second proposition is that the treaty is 'voidable' because the Belize district (so-called) has been transformed by Great Britain into an organized colony. But in the first place, the transformation has taken place pursuant to the treaty with Honduras [*sic!*], which was accepted by the United States in 1860 as a satisfactory compliance with the provisions of the Clayton-Bulwer Treaty. In the next place, the Belize colony was organized in 1862 and, until the time of Mr. Frelinghuysen, its organization was never made a cause of complaint by the United States. In the third place, if the organization of the Belize colony is to be deemed an infraction of the Clayton-Bulwer Treaty, the United States has acquiesced therein too long to claim that the treaty has thereby become null and void. If not altogether estopped to treat the colony as a grievance, its only remedy is to give notice that it will regard the future maintenance of the colony as a violation of the treaty and, if its remonstrance is not heeded, to then take such further steps in the matter for the abrogation of the treaty, or otherwise, as it may deem expedient. But, that the existence of the Belize colony gives any present right to deal with the treaty as a nullity can not be maintained for a moment.....

"In no instance have the former [Secretaries of State] failed to deal with the treaty as a binding obligation -- in no instance, when occasion justified it, has this Government failed to call upon Great Britain to comply with its provisions -- while, during the first ten years of the life of the treaty, when it might have been abrogated, either for violations by Great Britain or with the latter's consent, the United States steadily insisted upon holding Great Britain to its obligations. Under these circumstances, upon every principle which governs the relations to each other, either of nations or of individuals, the United States is completely estopped from denying that the treaty is in full force and vigor."

The Hay-Pauncefote Treaty, signed at Washington on 18 November 1901 [1 Malloy, Treaties of the United States, p. 782], by an express provision in its first article, superseded the Clayton-Bulwer Treaty, which thereafter ceased to be in force.

G. Mexican-British Boundary Settlement, 1886-1897

201. In 1886, Mexico and Great Britain began negotiations for the settlement of the boundaries of Belize. By a despatch of 27 July 1886, the British Minister to Mexico was authorized to inform that Government that [Fabela, Belize, p. 292]

"Her Majesty's Government will be disposed to negotiate with the Government of Mexico concerning the bases on which the boundaries between Mexico and British Honduras will be fixed, it being previously clearly understood that no question will be raised with respect to the sovereign rights of this country over that Colony."

In the middle of 1887, the Mexican Foreign Minister informed the British Minister in a conversation that [Fabela, Belize, p. 294]

"The Mexican Government does not consider it unsuitable to acknowledge as a matter of course, in the negotiation which might be undertaken, the sovereignty of Great Britain over the territory which, having belonged to Guatemala, was ceded to Great Britain by that Republic when the existence of the colony was recognized and the boundaries with that Republic were fixed by the treaty concluded on 30 April 1859."

202. A Mexican-British Boundary Treaty was signed at Mexico on 8 July 1893 [Mexico, Tratado de Límites entre los EE. UU. M. y Honduras Británica]. The preamble of this treaty set out the full text of Article 1 of the Guatemalan-British Convention of 30 April 1859, and continued:

"[Considering] that on the 27th September, 1882, the Mexican Republic negotiated a Treaty of Limits with that of Guatemala, and, on fixing the dividing line between both countries in the Yucatan Peninsula, they determined as such the parallel of 17° 49' north, which should run indefinitely towards the east;

"That it is of manifest advantage for the preservation of the friendly relations which happily exist between the High Contracting Parties to define with all clearness what is the Mexican frontier to which Guatemala referred in its Treaty concerning its limits with the British possessions in the Bay of Honduras, and what are in consequence the boundaries of those possessions with Mexico."

By Article 1 of the treaty the parties agreed that the boundary "was, and is" a line which began at the Atlantic, left Ambergris Cay to Great Britain, proceeded along certain meridians and parallels across the Bay of Espíritu Santo to the mouth of the River Hondo, continued up that river and up Blue Creek to the meridian of Garbutt's Falls and then south along that line, terminating at 17° 49' N. latitude. In 1949, the Mexican Government argued [Informe de la Comisión Americana de Territorios Dependientes, pp. 404, 407] that because Great Britain refused to allow any discussions of the question of the sovereignty of Belize during the negotiations, such sovereignty was in no way affected by the treaty, and consequently Mexican rights remain intact.

203. The Treaty of 1893 was submitted to the Mexican Senate, accompanied by a report of the Secretary for Foreign Affairs, Don Ignacio Mariscal [Defensa del Tratado de Límites entre Yucatán y Belice, pp. 1-30]. The report began by a brief summary of the history of the British settlement, after which the various arguments made by British official sources and writers in support of British rights in Belize were set out, without any assessment of their validity. The principal legal point made by the report was that according to the best data known to Mariscal the boundary between the Capitanías Generales of Yucatan and Guatemala in the Belize territory had been somewhere between  $17^{\circ} 49'$  and  $18^{\circ}$  N. latitude at the date of independence; consequently, the conclusion was arrived at that

"We have seen, on the other hand, that a controversy like the one described above [over the sovereignty of Belize], which would be interminable even if the British Government were willing to enter into it, could not, in case it were concluded in our favor, give any other result than the declaration that there belongs to us a small portion of the territory occupied by the colony, not the whole of it as has been groundlessly believed, since the greater part of that territory belonged, at least from 1787 to the end of the vice-regal government, to the Capitanía General of Guatemala, and the Guatemalan Republic ceded it in fact to England in their treaty of 1859."

Apart from this legal argument, the practical advantages of the treaty were discussed at length.



204. On 29 May 1894, the Mexican Foreign Ministry requested the Senate Committee on Foreign Relations to suspend reporting on the treaty until the Executive could communicate whether the British Government had accepted an addition to the treaty proposed by Mexico. There ensued a period of nearly three years during which the treaty was the subject of extended debate in the Mexican press and among the public. The additional article, guaranteeing to Mexican merchant vessels in perpetuity full freedom of navigating the strait between Ambergris Cay and the mainland, and of navigating the territorial waters of British Honduras, was signed on 7 April 1897, and the Mexican Senate Committee made its report five days later [Mexico, Tratado de Límites entre los EE. UU. M. y Honduras Británica, pp. 21-34]. This report did not repeat the arguments of the Foreign Minister, Mariscal, concerning the location of the boundary line between the Captaincies General of Yucatan and Guatemala at the date of independence, but stated [pp. 29-30]:

"It is unquestionable that when Mexico gained its independence from Spain, that noble nation did not exercise over Belize any act of dominion or sovereignty; and as it was impossible for Mexico, its former colony, to acquire as a result of its independence what the mother-country did not have, it is evident that the Republic did not acquire any right over Belize, derived from its independence. It is certain, as has been seen, that the treaties between England and Spain recognized the latter's sovereignty over that establishment; but this sovereignty was not manifested by acts signifying a single one of the attributes which constitute it.....

"It is true that when England and the nascent Republic concluded their Treaty of 1826, reference was made to the

previous treaties with Spain, as if they were in force;..... but we nonetheless believe that the text of the treaty of 1826 mentioned those with Spain, not to declare them in force, but to take from them the demarcation of the limits of the British settlement and the description of the rights which its inhabitants were peacefully to enjoy there.....

"This must have been the constant conviction of the successive Governments of the Republic, since they never attempted to send the representatives who were to exercise surveillance every six months over the observation of the restrictions, and this was the only act which Spain reserved for herself to execute as a signification of its sovereignty, when, with the knowledge and toleration of the whole world, such restrictions were violated so that already hardly the memory of them existed....."

On 19 April 1897, the Secretary of Foreign Affairs submitted to the Senate a further report concerning the treaty, recapitulating all the legal and practical arguments in its favor [Mexico, Tratado de Límites entre los EE. UU. M. y Honduras Británica, pp. 35-44]. The treaty was approved by the Senate, and ratifications were finally exchanged on 21 July 1897.

V. RENEWAL OF THE BELIZE DISPUTE AND PROPOSED  
METHODS OF SETTLEMENT

205. The controversy over the Guatemalan-British Convention of 1859, dormant after 1884, was revived by Guatemala in 1933. After the Guatemalan-British exchange of notes of August 1931, the demarcation of the boundary between Guatemala and Belize was suspended; apparently the Guatemalan Government's engineers were occupied with the boundary dispute between Guatemala and Honduras. In January 1933, however, the Guatemalan Minister of Foreign Affairs proposed that the boundary with Belize should be demarcated unilaterally by British engineers, and if the boundary as thus demarcated were found by Guatemalan engineers to be a direct line between the two points established by the Commissioners in 1929, Guatemala would accept it as the definite frontier [Libro Blanco, pp. 371, 373-374]. This arrangement was formally proposed by the British Minister on 21 February 1933, in a note which was intended to be part of an exchange of notes placing on record the understanding reached [Libro Blanco, p. 371]. In its reply of 4 March 1933, Guatemala raised the question of Article 7 of the Convention of 1859 as follows [Libro Blanco, p. 372]:

".....to consider the suggestions to which Your Honor's note, dated February 21, refers, it [the Guatemalan Government] would desire to be informed by His Britannic Majesty's Government, whether, in compliance with the Convention of April 30, 1859, it would be prepared to put into due effect the bilateral stipulations contained in Article 7 of said Convention."

206. On 25 March 1933, the British Minister replied that the question of Article 7 would be carefully examined by his Government, but he presumed it was not the intention of Guatemala to defer the conclusion of the arrangement for boundary demarcation during the time Article 7 of the Convention was receiving consideration [Libro Blanco, pp. 372-373]. On 3 April 1933, Guatemala replied, stating that it would deal with the question of boundaries after it received word of the British decision concerning Article 7 [Libro Blanco, p. 376]. The British Minister replied on 7 April 1933, stating [Libro Blanco, pp. 377-378]:

".....His Majesty's Government in their desire to comply with the wishes of the Guatemalan Government are prepared to give most careful study to any practical proposals which the latter may put forward for the execution of the bilateral stipulations contained in Article VII of the Convention of April 30th, 1859, notwithstanding that in the view of His Majesty's Government subsequent developments, such as the construction of a railway from Guatemala City to the Atlantic Coast of the Republic, have fulfilled for many years past the needs which Article VII was intended to satisfy and thus have rendered its stipulations inapplicable to present conditions. The means of communication contemplated by Article VII would have to benefit both the Colony of British Honduras and the Republic of Guatemala; would have to be economically sound and would have to be constructed at the joint expense of both parties."

The note continued by urging Guatemala to proceed to an exchange of notes to enable the demarcation of the frontier to be made without further delay. Guatemala on 1 May 1933 agreed to the unilateral demarcation of the boundary by the British, as the British Government was prepared to consider with the Government of Guatemala the form to give to early compliance with Article 7 [Libro Blanco, p. 384].

207. In the meantime, on 17 April 1933 Guatemala put forward a suggestion as to the execution of Article 7 [Libro Blanco, p. 380], that Great Britain should pay a "proportionate and equitable" share of the cost of the railroad which the Guatemalan Government had built to the Atlantic Coast, which construction fulfilled the Guatemalan obligations under Article 7. This suggestion was rejected by Great Britain on 12 June 1933 on the ground that the construction of the railway had not been previously agreed to by the British Government, as was required by Article 7; that a railway was not "a cart-road or.....rivers" as stipulated in Article 7; and finally that the railway was not specifically beneficial to the "commerce of England" [Libro Blanco, p. 386]. However, Great Britain remained willing to study "any practical scheme which the Government of Guatemala may be able to devise."

208. On 27 June 1933, Guatemala proposed that it [Libro Blanco, p. 389]:

".....would be willing to construct said highway between a point near the Colony of Belize and the Capital of the Republic, provided that His Majesty's Government agreed thereto..... If His Majesty's Government should not desire to construct the part of the road corresponding to it, according to the opinion of the Government of Guatemala, this Government would be disposed to carry out the work alone, provided that His Majesty's Government furnish the sums corresponding to the section which it should construct."

On 23 August 1933, Guatemala repeated this suggestion, adding that Great Britain might cede to Guatemala a group of uninhabited small islands, the Zapotilla Islands, at the entrance of Amatique Bay, in order to repress smuggling and thereby increase Guatemala's "material prosperity" in accordance with Article 7 [Libro Blanco, p. 392].

209. On 21 October 1933, Great Britain replied to the Guatemalan proposals, stating [Libro Blanco, p. 394]:

"Notwithstanding the fact that, for the reasons stated, His Majesty's Government cannot consider this railway as fulfilling the requirements of article 7 of the Convention, its existence, as has already been pointed out in Mr. Lee's note of the 7th April, radically modifies the situation which obtained at the time of the conclusion of the Convention of 1859, and renders it doubtful whether the construction of a means of communication of the nature specified in article 7 of the Convention would at this date be economically sound or beneficial both to the colony of British Honduras and to the Republic of Guatemala, and so fulfill the purposes contemplated by that article. If, however, the Guatemalan Government are nevertheless able to show to the satisfaction of His Majesty's Government that the construction of such a means of communication would in fact redound to the mutual benefit of both parties, as evidently contemplated by the terms of article 7 of the Convention, His Majesty's Government are still, as stated in Mr. Lee's Note No. 57 of the 12th June, ready to give the most careful study to such a scheme."

210. Thereafter, discussion of the Belize question between the two Governments continued in connection with two separate matters: Guatemalan proposals for an agreement concerning the repression of smuggling on the Sarstoon River, made on 20 November 1933 [Libro Blanco, pp. 395-396], and the unilateral demarcation of the frontier by British engineers. The proposals concerning smuggling failed because Guatemala refused to yield to British insistence that the agreement contain a clause recognizing the River Sarstoon as the boundary [Libro Blanco, pp. 409-410]. Guatemala consistently refused to recognize the boundary which had been demarcated by British engineers, on the ground that nothing could be done about a boundary until the two Governments reached agreement about the implementation of Article 7 [Libro Blanco, pp. 398, 401-402, 403-405, 409, 410-412].



211. On 13 November 1934, Great Britain put forward a proposal for the solution of the controversy, stating it to be the British view that it was the only solution which could satisfy the requirements of Article 7. The proposal was as follows [Libro Blanco, p. 407]:

"His Majesty's Government propose that the Government of British Honduras should construct a road from Belize to the frontier of Peten and that the necessary continuation on the Guatemalan side should be constructed by the Guatemalan Government. By providing a valuable outlet for the produce of Peten, such a road should be of substantial benefit to both countries. His Majesty's Government consider, as an essential condition to this proposal, that the Guatemalan Government should remove the existing ban on the export of produce from Peten through British Honduras and should refrain in the future from imposing vexatious administrative barriers."

212. This proposal was rejected by Guatemala on 17 November 1934 on the ground that [Libro Blanco, p. 412]

".....this not only would favor only Belize, absorbing in its entirety the Peten commerce, but would greatly prejudice Guatemala, which would be isolated from the largest of its departments. As to the administrative barriers which Your Excellency calls 'vexatious' I must inform you that Guatemala in exercise of her sovereignty must protect her economic interests in the form which she deems proper, although, very much to her regret, they may be vexatious for Your Excellency's Government."

In the same note Guatemala proposed that Britain should pay Guatemala one-half of the cost of the road agreed on in 1859, with interest since that date.

213. On 16 September 1936, Guatemala made further proposals for settlement, contained in two memoranda [Libro Blanco, pp. 416-418]. The proposals of the first Memorandum were that Great Britain should return the territory of Belize to Guatemala as the successor of Spain, and receive as compensation from Guatemala the sum of £400,000, of which £200,000 should be paid on exchange of ratifications, and the rest on terms to be agreed on; or if this proposal was unacceptable, that Great Britain should pay Guatemala £400,000 and cede to her a strip of land at the parallel of 16° 8' 39", including the mouth of the Rio Grande, Punta Gorda, and the Zapotillo Keys in the strip, to give the Peten access to the sea. The second Memorandum proposed that Great Britain pay Guatemala £50,000 with interest at four percent annually since 30 April 1859, and cede the same strip of territory defined in the first Memorandum. These proposals met with no success.

214. On 21 July 1937, Guatemala proposed submission of issues arising out of the Convention of 1859 to arbitration by the President of the United States. On 17 August 1937, the British Foreign Secretary replied, agreeing to arbitration, but stating that his Government could only accept arbitration by the Permanent Court of International Justice. This position was said not to be based on any objection to the principle of a single arbitrator in a suitable case, and still less to the President of the United States, but because [Libro Blanco, p. 418]:

"The issues in the present case are essentially of a legal character involving difficult questions of law and interpretation which could not satisfactorily be decided by any tribunal other than a legal tribunal of high standing, and of all possible legal tribunals the Hague Court by reason of the authority of its judges and the length and nature of its experience is, in the opinion of His Majesty's Government, by far the most suitable to decide a question of this kind."

215. Guatemala replied on 22 September 1937 [Libro Blanco, pp. 419-420]:

"I regret to have to inform Your Excellency that the Government of Guatemala is convinced that in the pending controversy there must be taken into consideration also aspects of a different character, aside from that of law and legal interpretation.....

"The Government of Guatemala must express first the profound respect and consideration which it has for the Permanent Court of International Justice at The Hague, the competence and integrity of which are beyond discussion; but at the same time, it considers it necessary to set forth its conviction that the questions at issue are not merely of a juridical order and therefore depart from the somewhat rigid regulations of that tribunal, which is exclusively de jure, with strict legal rules to which it must adhere in its decisions."

The note terminated with a request to reconsider the refusal to accept arbitration by the President of the United States.

216. Great Britain replied on 3 March 1938 [Libro Blanco, p. 422]:

"His Majesty's Government for their part remain of the opinion that the issue is essentially legal in character, and for this reason regret that they cannot see their way to reconsider their attitude in the sense desired by the Guatemalan Government.

"In these circumstances His Majesty's Government consider that it will serve no useful purpose to pursue the matter further and that they have, therefore, no option but to treat the present boundary of British Honduras..... as constituting the correct boundary."

In a reply of 9 March 1938, the Guatemalan Government stated [Libro Blanco, p. 424]:

".....the Government of Guatemala renews its demand for integral compliance with the Convention of 1859, maintains the reservation of its rights, and rejects responsibilities for the consequences of non-compliance with a treaty, respect for which has been continuously solicited precisely by the Government of Guatemala."

217. In June 1939, the State Department of the United States sent similar memoranda to the Governments of Guatemala and Great Britain concerning the Belize question [Guatemala, Memoria de las Labores del Ejecutivo en el Ramo de Relaciones Exteriores, 1939, pp. 12-14]. The memorandum to Guatemala stated:

"On numerous occasions the attention of the Government of the United States has been directed to the controversy which unfortunately has existed for many years between the United Kingdom and the Republic of Guatemala, on matters relative to the frontier between that country and Belize. It is understood that the controversy concerns in the first place the application and interpretation of the treaty of 1859 between the two Governments, in connection with which it is recalled that representatives of the Governments of the United Kingdom and of Guatemala settled in 1863 on an agreement to bring into effect some of the provisions of that treaty; but it was never ratified by either of the parties.....

"The Government of the United States naturally does not desire to express any opinion with respect to the merits of the pending matter, nor as to possible methods of settlement. Nonetheless, it has much legitimate interest in the friendly solution of any dispute whose existence might disturb the cordial relations which now prevail in this hemisphere, and in consequence it could not but view with the deepest satisfaction the initiation of practical negotiations toward the solution of the present problem.

"Notable progress has been made during recent years in the settlement of boundary disputes in the New World.....

"The Government of the United States would look with special satisfaction on the renewal of efforts on the part of Great Britain and Guatemala, toward obtaining a satisfactory adjustment of problems relative to the Belize-Guatemalan frontier, and it is the most fervent hope of the Government of the United States that steps will soon be taken in this direction. An amicable solution of this broad controversy would be a conspicuous example, particularly opportune in view of the present condition of the world, of the value of the pacific method of settlement of international differences."

218. On 20 September 1939, Great Britain informed Guatemala that "His Majesty's Government.....are earnestly and sincerely desirous that a settlement of the question should be effected," and

"propose, as soon as ever the war situation permits, to re-open negotiations on the basis of new proposals which were already forming the subject of the most careful study for a considerable time before the war broke out" [Continuación del Libro Blanco, III, pp. 130-131].

Guatemala replied to this note on 21 September 1939, stating [Continuación del Libro Blanco, III, p. 132]:

"The Government of Guatemala is gratified to express to the Government of His Majesty, through His Excellency, Mr. Leche, that it awaits with pleasure the expected proposals which in equity and justice ought to bring soon a definitive solution to the question which both Governments endeavored to settle in the lapsed Convention of 30 April 1859."

This reference to "the lapsed Convention" ("la caducada Convención") is cited in later Guatemalan official documents -- notably the Congressional Decree of 9 April 1946, confirming the invalidity of the Convention of 1859 [La Controversia, 1946, pp. 17-19] -- as the first occasion in the present century on which Guatemala expressed the view that the Convention was caduc.

219. The promised British proposals were made on 29 January 1940 [Continuación del Libro Blanco, III, pp. 133-137]. The British began by stating they failed to understand Guatemala's refusal to submit the case to the Permanent Court of International Justice:

"His Majesty's Government would point out, however, that if the two parties to a dispute agree to such a procedure, article 38 of its statute enables the Court to take questions of equity into consideration when giving its final decision. In the event of the Guatemalan Government signifying their willingness to reconsider their attitude His Majesty's Government for their part would be happy to agree to the Court proceeding under this article."

If Guatemala still refused to go to the Court, however, Great Britain would be prepared to consider arbitration by the procedure laid down in Chapter 4 of the Hague Convention of 1907 for the Pacific Settlement of International Disputes; arbitrators appointed under such procedure would be

"fully qualified to deal with the equitable as well as the legal aspects of international disputes of the character now under consideration."

If Guatemala objected to any form of tribunal connected with The Hague, the British Government

"would be prepared to accept reference to an ad hoc tribunal composed of three international lawyers, one member to be nominated by either party with a third as umpire who would be selected by the President of the United States of America."

The note continued with a statement of three issues which the British were prepared to submit to any of the three proposed forms of arbitration. The issues were stated as follows:



"(1). Is there still any practical method by which the original obligations laid down in Article 7....[here the text of the article was set out in full] can be effectually carried out?

"(2). If the answer to (1) above is in the negative, whether and if so to what extent, His Majesty's Government are responsible for failure to carry out the mutual obligations under Article 7?

"(3). Having regard to any responsibility which may devolve on His Majesty's Government for failure to carry out mutual obligations imposed by Article 7, by what method, applying all relevant legal and equitable principles, shall His Majesty's Government now discharge their obligation under that Article?"

The note concluded with the statement that the British proposals for arbitration were conditional upon Guatemala's consent to a final delimitation and marking of the boundary between British Honduras and Guatemala, to take place in a mutually convenient manner immediately after the Tribunal as selected by the parties had pronounced its final award.

220. Guatemala replied on 3 February 1940, accepting an ad hoc Tribunal composed of three international lawyers, two to be nominated by the parties and one by the President of the United States [Continuación del Libro Blanco, III, pp. 138-141]. The British statement of the issues, however, was not satisfactory to Guatemala. The Guatemalan note stated in part:

".....in the opinion of the Government of Guatemala it is not now any more a question whether there is still an effective way for Great Britain to comply with the obligations stipulated in Article 7 of the Convention of 1859....."

"The Government of Guatemala believes that because of the situation arising from the non-fulfillment of the obligations on the part of Great Britain, it has the right to regain possession of the territories ceded to Great Britain when adjusting the boundaries referred to in the Convention of 1859.

"She also considers that the non-compliance with the obligations on the part of Great Britain has caused to the Republic material and intangible damages because of the loss of advantages which the country would have derived from its development and from its foreign trade, if the expected highway to the Atlantic coast had been constructed. The British occupation of British Honduras cut off all maritime communication with the department of Peten, closing it off thereby by orographic and political barriers that have prevented its progress and development.

"In the opinion of the Government of Guatemala, the Tribunal of Arbitration should consider all these phases, not alone limiting itself to the simple interpretations of Article 7....."

This was apparently the first occasion on which Guatemala clearly and unmistakably treated the Convention of 1859 as having lapsed because of non-fulfillment, instead of merely insisting on compliance with Article 7.

221. Thereafter, the discussion centered around an alleged British plan to colonize British Honduras with European refugees. On 23 February 1940, the British Minister, replying to a protest in this connection, stated [Continuación del Libro Blanco, III, p. 144]:

".....His Majesty's Government cannot admit either that any territory was ceded to Great Britain by Guatemala as a result of the agreement of 1859, or that the said agreement has lapsed as a result of the alleged non-fulfillment of article 7 thereof by Great Britain, or that the sovereignty over such territory.....is sub judice."

222. The final step at this stage of the controversy was a Guatemalan note of 24 April 1940, summarized in the final paragraph as follows [Guatemala, Memoria, 1939, p. 161]:

"I believe I have demonstrated with an abundant supply of persuasive testimony from official British sources that the British-Guatemalan Convention of 1859 was par excellence a treaty of territorial cession, and, as by virtue of British non-fulfillment this Convention has failed, the Republic of Guatemala has full right to claim the territory of Belize."

In early June 1940, the controversy entered a stage of temporary suspension by reason of the war, and Guatemala did not press the question [Guatemala, Memoria, 1940, p. 16].

223. On 11 March 1945, the Guatemalan Constituent Assembly decreed a new constitution, the first article of whose transitory provisions declared [Ministerio de Gobernación, Constitución de la República (1948), p. 120]:

"Guatemala declares that Belize is part of her territory, and considers that the efforts towards obtaining its effective reincorporation into the Republic are of national interest."

On 13 March 1945, the British Foreign Secretary protested against the provision [La Controversia sobre Belice durante el Año de 1945, pp. 3-4], and on 21 March the protest was rejected by Guatemala on the ground that the Convention of 1859 was null and void [La Controversia, 1945, pp. 4-6].

224. On 24 September 1945, Guatemala formally reopened the diplomatic campaign, stating that "now that the war has successfully ended by the victory gained by the United Nations over the forces of totalitarianism, the reason has disappeared which prompted this Government to halt their claims on this matter" [La Controversia, 1945, p. 30].

235. On 10 October 1945, the Guatemalan Foreign Ministry issued a declaration, which is in part as follows [La Controversia, 1945, p. 31]:

"Paragraphs I and II of Article VI of the Constitution declare that all individuals born in the territory of the Republic are natural born Guatemalan citizens. Article I of the transitory resolutions of the same Constitution declares that Belize is part of Guatemalan territory.

"Therefore, the Government of the Republic consider that, in accordance with said constitutional resolutions, every person born within the territory of Belize has the right to Guatemalan citizenship.

"Therefore, the Ministry of Foreign Affairs declares that every person born in the territory of Belize should be considered as a Guatemalan citizen, whether residing in Belize or in any other part of the national territory, who has declared it to be his will to be a Guatemalan citizen, expressly renouncing any other nationality that he may have at present. Such statement may be declared before a Guatemalan authority at Belize."

This declaration was protested by Great Britain, whose Minister stated on 21 December 1945 that [La Controversia, 1945, p. 32]:

"His Majesty's Government cannot of course recognize that this announcement can in any way affect the existing status of any persons concerned."

The provisions of the Constitution have continued to be given effect by Guatemala, however, and in the administrative year of 1947 sixty-four natives of British Honduras accepted Guatemalan nationality [52 Diario de Centro América, pp. 1220, 1235]; in the administrative year of 1948, twelve such persons accepted Guatemalan nationality [56 Diario de Centro América, p. 594].

236. In September 1945, there was submitted to the Guatemalan Congress a draft decree approving the declarations of the Ministry of Foreign Affairs that the Convention of 1859 was null and void [La Controversia, 1945, pp. 21-22]. This draft was passed by the Congress with minor alterations on 9 April 1946 [La Controversia, 1946, pp. 17-19]. The text of this decree as passed by the Congress may be reproduced in full because of its importance in defining Guatemala's position:

"THE CONGRESS OF THE REPUBLIC OF GUATEMALA,

"WHEREAS:

"The British Government have systematically evaded for more than eighty years to comply with the compensatory clause of the treaty signed by the Government of Guatemala and Her Britannic Majesty on the 30th of April, 1859, which, although called a treaty 'of boundaries', was in reality the only title which Great Britain has possessed over the territory of Belize, and was, therefore, a treaty of territorial cession subject to a compensatory clause; a title granted by this Republic under pressure of the circumstances prevailing at that time;

"WHEREAS:

"Besides of the above mentioned non-compliance, the Government of His Britannic Majesty on various occasions, especially by the note of Lord Stanley, dated the 3rd of January, 1867, and by the communication of the 3rd of March, 1938, of Mr. J. H. Stophord Birch, the resident Minister in Guatemala, have declared by their own accord to exonerate themselves from the compensatory obligation contracted in Article VII of that convention.

"WHEREAS:

"In a note addressed on the 5th of April, 1884, to Her Britannic Majesty's Principal Secretary of State, Lord Granville, Guatemala's Minister to Great Britain pointed out the caducity of the convention of 1859, due to the non-compliance

of the compensatory clause by the British Government, and emphatically reserved the rights of the Republic, so that these might not be affected at any time by the de facto occupation of that territory.

"WHEREAS:

"It is an internationally accepted doctrine, defended by British jurists and legal writers, that the non-compliance of a contractual article by one of the contracting parties, grants to the other party the right to release herself from complying with the integral convention, and that the Government of Guatemala, basing their decision on this doctrine and on the attitude assumed by the British Government have declared that the convention of the 30th of April, 1859, is null and void and absolutely without value of any kind, in notes dated the 21st of September, 1939; February 3rd, March 7th, April 14th and 24th, 1940; March 21st, July 11th, and December 27th, 1945, as well as in other documents and official publications.

"THEREFORE

"IT DECREES:

"Single article.--It approves and confirms the declaration made by the Ministry for Foreign Affairs in diplomatic correspondence and other official documents, that the convention of territorial cession, subject to a compensatory clause, and which is known as 'of boundaries', agreed to by Guatemala and Great Britain on the 30th of April, 1859, is declared to be null and void" [La Controversia, 1946, pp. 17-18].

227. Meanwhile, the text of the draft had been studied by the British Government. As a result of this study, and in reply to the Guatemalan note of 24 September 1945, on 14 January 1946 Great Britain made its first post-war proposal for the settlement of the controversy [La Controversia, 1945, pp. 38-40]. The British note read in part:

"The Charter of the United Nations which has been ratified both by the United Kingdom and by Guatemala and came into force on the 24th October 1945 provides in Article Thirty-Six (three) that legal disputes should be referred by parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The claim of the Guatemalan Government as set out in the draft Decree referred to above is based on legal grounds which are contested by His Majesty's Government. There is therefore clearly a legal dispute within the meaning of Article Thirty-Six (three) of the Charter. Consequently in accordance with both the letter and the spirit of the Charter this dispute should be decided by the new International Court of Justice whose Statute is annexed to the Charter."

The note continued by stating that as soon as the Court was constituted the British Government would make a declaration under Article 36 (2) of its Statute accepting for five years the compulsory jurisdiction of the Court

"in all legal disputes concerning the interpretation, application or validity of any Treaty relating to the boundaries of British Honduras, including all questions resulting from any conclusions which the Court may reach with regard to any such Treaty."

The note concluded by saying:

"Now that the Charter has come into force His Majesty's Government are prepared that the dispute should be settled in the manner which the Charter prescribes. Your Excellency will note that this procedure will not require any special agreement settling the terms of reference of the Court over which difficulty has been found in the past."



228. Guatemala replied to the British note on 22 January 1946, accepting the proposal in principle, but requesting that the Court be empowered to decide the case ex aequo et bono under Article 38 (2) of the Statute, in order that

"the judges might comprehend and take into consideration without any restriction or limitation whatsoever, all and every one of the aspects of the controversy from its most remote origins" [La Controversia, 1945, pp. 40-41].

This proposal received no reply until October 1946. Meanwhile, on 13 February 1946, Great Britain made the following declaration under Article 36 (2) of the Statute of the Court [1 United Nations Treaty Series, p. 3]:

"I, Ernest Bevin, His Majesty's Principal Secretary of State for Foreign Affairs, declare on behalf of His Majesty's Government in the United Kingdom in accordance with paragraph 2 of Article 36 of the Statute of the International Court of Justice that for a period of five years from the date of this declaration they accept as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras, and over any questions arising out of any conclusion which the Court may reach with regard to such treaty."

This declaration was supplementary to the British declaration of 28 February 1940 under the Statute of the Permanent Court of International Justice, which recognized the compulsory jurisdiction of the Court only "over all disputes arising after February 5th, 1930, with regard to situations or facts subsequent to the same date," and with certain other restrictions [P. C. I. J., Series E, No. 16, pp. 339-340]. On 11 March 1946,

Great Britain informed Guatemala that the declaration under the Statute of the Court had been made, stating [La Controversia, 1946, p. 5]:

"The Guatemalan Government are now free to decide whether or not they desire to take advantage of the jurisdiction which the declaration of His Majesty's Government will confer on the International Court of Justice to pronounce upon the dispute. If the Guatemalan Government should decide to take this step it will be for the Court to interpret the declaration of His Majesty's Government and to decide in what manner the Court's jurisdiction can be exercised. In these circumstances His Majesty's Government consider that it will be improper for them to attempt further to discuss the terms of their declaration or the manner in which the Court should proceed."

229. On 13 June 1946, Guatemala again insisted that if the case were to go to the Court, the Court should be empowered to decide ex aequo et bono, as

"there are some antecedents and circumstances which the tribunal must value equitatively and take them fully into consideration to solve this question with a fair verdict" [La Controversia, 1946, p. 7].

The British reply, received on 10 October 1946, rejected the proposal that the case should be decided ex aequo et bono. The note stated in part [La Controversia, 1946, p. 11]:

"The points concerning British Honduras on which our two Governments are unhappily not in agreement are thus legal points and the claims which your Government has advanced have been put forward on a legal basis.

"The declaration which His Majesty's Government have already made regarding their acceptance of the jurisdiction of the International Court gives the Court full jurisdiction to take into consideration and to pronounce a binding judgment upon all the claims which the Guatemalan Government have made with regard to British Honduras and with regard to the Treaty of 1859..... Consequently, His Majesty's Government see no reason to vary the declaration which they have made so as to confer on the Court a quite exceptional jurisdiction (ex aequo et bono), a jurisdiction which, it may be remarked, has never yet been conferred on the Hague Court by any parties to a dispute, although the possibility for so doing has existed ever since the Statute of the former Permanent Court came into force."

230. British rejection of a proceeding ex aequo et bono brought about the deadlock which still persists; the parties have maintained the positions they took in 1946. Further correspondence has, however, led the parties to state the reasons for their positions more clearly. In a note of 9 March 1948, Great Britain in repeating her refusal of a proceeding ex aequo et bono, stated [56 Diario de Centro América, p. 531]:

"There can be no justification to pass over the legal rights of the two interested Governments, when the problems which have arisen from the claims of the Government of Guatemala are entirely juridical.

"In addition, the proposals of the Government of Guatemala also involve the possibility that the desires of the inhabitants of British Honduras may be ignored. Except on the basis of a judgment of the Court, declaring that the territory is Guatemalan as a matter of legal right, my Government could never accept such an eventuality, as those inhabitants have expressed the clearest desire to remain within the British Commonwealth."

231. In a note of 19 November 1948, Guatemala repeated the reasons for desiring a proceeding ex aequo et bono [56 Diario de Centro América, p. 529]:

"It is certain that the controversy has firm juridical foundations, and on these the Guatemalan claim is principally based; but it is impossible for an impartial tribunal to pronounce a judgment which would do full honor to justice if foundations of other natures which reenforce the juridical aspects and which, in our concrete case, are determinative of them, are underestimated.

"Your Excellency well knows that the problem is highly complex, that historical facts are bound up with juridical situations, and that the political situation itself of the epoch in the relations of the great powers with weak countries constitutes a most important circumstance, which it is impossible to ignore if it is sought to solve justly a controversy of this nature.

"It would not be just to apply strictly legalistic rules to the relations between Great Britain and Guatemala during the past century, putting aside the circumstances -- entirely unfavorable for this Republic -- which surrounded those relations. Neither can such rules be applied with justice to find the true meaning of a treaty, agreed on by two parties, whose drafting was obliged to conform to particular conveniences, and whose real interpretation was ingenuously confided to the good faith and the gentlemanliness of the negotiator. It would be neither logical nor just to interpret the terms of that treaty while ignoring the profound inequality between the parties and the circumstances attending upon its conclusion, and forgetting that it is inadmissible to suppose that a State would gratuitously lend itself to the alienation of its territory."

232. On 10 February 1947, Guatemala made a declaration under Article 36 (2) and (3) of the Statute of the Court [1 United Nations Treaty Series, p. 49], recognizing the compulsory jurisdiction of the Court in all legal disputes for a period of five years in relation to any other State accepting the same obligation, but not covering

"the dispute between England and Guatemala concerning the restoration of the territory of Belize, which the Government of Guatemala would, as it has proposed, agree to submit to the judgment of the Court, if the case were decided ex aequo et bono, in accordance with Article 38 (2) of the said Statute."

233. An acute stage was reached early in 1948, when on 26 February the British Admiralty ordered the cruisers Sheffield and Devonshire to proceed to Belize

"with the object of safeguarding British interests threatened by irresponsible mobs incited by Guatemala" [53 Diario de Centro América, p. 1113].

This step was taken, in the words of the British Minister in a note of 3 March 1948, because [56 Diario de Centro América, p. 521]

"during the last few days rumors have been arriving in London that certain irresponsible elements were preparing to create an incident against British Honduras. These rumors were reinforced by recent articles appearing in the Guatemalan press and by a motion presented to the Guatemalan Congress on 23 February advocating that British Honduras should be immediately invaded."

The British action was immediately protested by Guatemala, which emphatically rejected the imputation of inciting irresponsible mobs and stated that the sending of the ships was an unjustified provocation and an affront to Guatemalan dignity [52 Diario de Centro América, p. 1114]. On 24 March 1948, Guatemala pointed out that the Guatemalan press was free and that the President of the Congress had refused to accept the motion advocating the invasion of British Honduras, repeated its protest, and demanded immediate withdrawal of the armed forces which had disembarked at Belize [56 Diario de Centro América, p. 522]. This protest was rejected by Great Britain [Ibid., pp. 522-523]. The news of the despatch of the cruisers created a great public commotion in Guatemala. On 2 March 1948, a large crowd demonstrated before the Chancellery of the British Legation. These actions were protested on the same day by the British Minister [Ibid., p. 525]. Guatemala replied on 4 March, regretting the occurrences but accepting no responsibility [Ibid., pp. 525-526].

234. On 15 July 1948, Guatemala endeavored to break the deadlock which was having such an unfavorable effect on the relations between the two countries, proposing that the Governments should agree to invite jointly the mediation of the Government of the United States [56 Diario de Centro América, p. 527]. This proposal was rejected by Great Britain on 26 October 1948, on the ground that the dispute was a purely legal one and hence under the United Nations Charter should go to the International Court of Justice [Ibid., pp. 527-528]. Further correspondence on the subject ensued; on 19 November 1948, Guatemala again proposed mediation by the United States or a proceeding ex aequo et bono before the Court, and also suggested that the British Government might propose some other new means of solution, to which the Government of Guatemala would give its fullest consideration [Ibid., pp. 529-530]. Apparently the British Government did not reply to these proposals.



235. Since 1945, various British activities in British Honduras have been causing grave concern to Guatemala. The principal difficulty has been over steps taken by the British towards a union of all of their Caribbean possessions, including British Honduras, into a single self-governing federation. The idea of a closer federation originated as early as 1921, but nothing substantial was done about it until on 14 March 1945 the British Secretary of State for the Colonies, Colonel Oliver Stanley, suggested in a despatch that the various West Indian Legislatures should debate the issue of federation, and that if all were then to declare themselves in favor, a conference of West Indian delegates might be summoned to consider the formulation of proposals to that end [British Parliamentary Paper, Cmd. 7120, pp. 16-18]. In due course the Legislatures of all the Colonies concerned except the Bahamas -- including British Honduras -- expressed their readiness to send representatives to such a conference; and in a despatch of 14 February 1947, the Secretary of State for the Colonies, Arthur Creech Jones, proposed convening a conference in Jamaica in September 1947 [British Parliamentary Paper, Cmd. 7120, pp. 3-5]. A memorandum accompanying this despatch contained an outline of proposals concerning the form of a federal government [British Parliamentary Paper, Cmd. 7120, pp. 12-15].

236. The Conference duly met at Montego Bay in Jamaica between 11 and 19 September 1947; British Honduras was represented by three delegates elected by the Legislative Council, with two advisers [British Parliamentary Paper, Cmd. 7291, p. 12]. The Conference adopted fifteen resolutions, the first accepting "the principle of a federation," and the sixth recommending the constitution of a Standing Closer Association Committee, composed of seventeen delegates appointed by the Legislatures of the Colonies (including two from British Honduras), to consider and make recommendations concerning various topics relating to closer political and economic association [British Parliamentary Paper, Cmd. 7291, pp. 7-11]. Guatemala protested at every stage of these proceedings insofar as they concerned British-Honduras, on the ground that while the British-Guatemalan controversy remained unresolved nothing should be done to alter the status of the territory [La Controversia, 1945, pp. 23-24, 68-69; 52 Diario de Centro América, p. 1116; 56 idem, pp. 532-533]. These protests were consistently rejected by Great Britain.

237. During 1947, Guatemala also made several protests against British investigations and plans concerning immigration into British Honduras [La Controversia, 1946, pp. 24-26; 53 Diario de Centro América, pp. 1115-1116; 56 idem, pp. 532-533]; these protests were rejected by the British. The West Indian Conferences in 1944 and 1946 made recommendations regarding the need for study of the Guianas and British Honduras as an aid to the solution of the problem of over-population in the West Indian island territories and of the problem of persons displaced as a result of the World War. As a result, a British Guiana and British Honduras Settlement Commission was created in 1947 under the Chairmanship of Sir Geoffrey Evans. The Commission visited British Guiana and British Honduras between August and November 1947, and its report was presented by the Secretary of State for the Colonies to Parliament in September, 1948 [British Parliamentary Paper, Cmd. 7533]. The Commission arrived at the conclusion that if extensive plans for economic development were carried out, "it should be possible over a period of some ten years for the two Colonies to absorb about 100,000 men, women and children, including about 25,000 adult workers" [p. 2]. European settlement was thought to be feasible in the Cayo District of British Honduras if undertaken gradually and with caution [p. 189].

238. The most recent British action to arouse Guatemalan concern was the granting of a concession to the Bahamas Exploration Company, a subsidiary of the Gulf Exploration Company of the United States, to explore for petroleum in the whole territory of British Honduras, including adjacent submarine areas. The concession is for a period of two years, but may be prolonged; it gives the company the right to obtain an exploitation concession in case oil is found, to remain in force for thirty years, with a possibility of prolongation. This action was protested by Guatemala on 3 January 1960 with the statement that

"this Government does not recognize and will not recognize at any time or for any reason a right of any kind which foreign companies claim to acquire or to have acquired in the territory of Belize as a result of concessions granted by those [British] authorities."

VI. THE BELIZE QUESTION BEFORE INTERNATIONAL ORGANIZATIONS

A. International American Conferences, to 1948

239. The First Consultative Meeting of the Minister of Foreign Affairs of the American Republics, held at Panama between 23 September and 3 October 1939, adopted the so-called Declaration of Panama, establishing a sea zone to be free from the commission of any hostile act by any non-American belligerent nation [Conferencias Internacionales Americanas, Primer Suplemento, p. 125]. The zone was to consist of

"all waters comprised within the limits set forth hereafter except the territorial waters of Canada and of the undisputed colonies and possessions of European countries."

The Guatemalan delegation made a declaration and reservation with respect to Belize [Ibid., p. 126]. This was Guatemala's first assertion of sovereignty over Belize in an international conference.

240. At the Second Consultative Meeting of the Ministers of Foreign Affairs of the American Republics, held at Habana between 21 July and 30 July 1940, Guatemala proposed a draft resolution expressing the desire of the American countries for a settlement of the Belize question and providing that in case of a change in the situation maintained by Great Britain in Belize, Guatemala should assume the administration of that territory until, the circumstances giving rise to the situation having passed, it might become possible to bring the rights in question before a satisfactory tribunal [Guatemala, Memoria, 1940, p. 61]. The second part of the draft resolution was opposed by Mexico on the ground that if British dominion over Belize were to disappear, Mexico would have rights to assert [Informe de la Comisión Americana de Territorios Dependientes, p. 410]. The second part of the draft was withdrawn by Guatemala upon the insertion in the Convention on the Provisional Administration of European Colonies and Possessions in the Americas, signed at Habana on 30 July 1940, of an article (Article 18) that none of its provisions referred to territories or possessions which were the subject of dispute or claims between European powers and one or more of the American Republics [Guatemala, Memoria, 1940, p. 63; Conferencias Internacionales Americanas, Primer Suplemento, p. 168]. By the first part of the Guatemalan draft resolution as adopted, the Meeting resolved

"To express the keen desire and wishes of the American countries in favor of a just, peaceful, and prompt solution of the question of Belize between Guatemala and Great Britain" [Conferencias Internacionales Americanas, Primer Suplemento, p. 153].

241. The Third Consultative Meeting of the Ministers of Foreign Affairs of the American Republics, held at Rio de Janeiro from 15 to 28 January 1942, resolved (No. XXXV)

"To take note of the contents of the Atlantic Charter and to express to the President of the United States of America its satisfaction at the inclusion in that document of those principles which form part of the American juridical patrimony in conformity with the Convention on Rights and Duties of States proclaimed in the Seventh Pan American Conference at Montevideo in 1933" [Conferencias Internacionales Americanas, Primer Suplemento, p. 212].

On the ground that her claim to Belize could not be overcome by a plebiscitary vote [Guatemala, Memoria, 1941, p. 11], Guatemala made a reservation to this resolution insofar as the principles of the Atlantic Charter might affect her rights to that territory [Conferencias Internacionales Americanas, Primer Suplemento, p. 216].

242. The Inter-American Conference on Problems of War and Peace, held at Mexico City from 21 February to 8 March 1945, adopted a resolution (No. XII) declaring

"That the Governments of America reaffirm their adherence to the principles and purposes of the Atlantic Charter" [Unión Panamericana, Serie sobre Congresos y Conferencias, No. 47, p. 38].

The delegation of Guatemala made a reservation to this resolution

"with respect to the point relating to the self-determination of peoples, insofar as this principle may interfere with the rights of the Republic of Guatemala over the Territory of Belize" [Ibid., p. 83].

243. The Inter-American Treaty of Reciprocal Assistance, signed at the Inter-American Conference for the Maintenance of Continental Peace and Security at Rio de Janeiro on 2 September 1947, defined a region within which an armed attack by any State against an American State would be considered an attack against all the American States. In connection with this provision, Guatemala made a declaration stating [52 Diario de Centro América, p. 1117]:

"Guatemala wishes to place on record that it does not recognize any right of legal sovereignty of Great Britain over the Territory of Belize, called British Honduras, included within the Security Zone, and that once again, it expressly reserves its rights, which are derived from the Constitution of the Republic, historical documents, juridical arguments and principles of equity which have on appropriate occasions been laid before the universal conscience."

The following declaration was made by Mexico [Pan American Union, Congress and Conference Series, No. 53, p. 74]:

"Only because the Delegation of Guatemala has seen fit to make the preceding declaration, the Delegation of Mexico finds it necessary to reiterate that, in case there should occur a change in the status of Belize, there cannot fail to be taken into account the rights of Mexico to a part of the said territory, in accordance with historical and juridical precedents."



B. United Nations Conference on International Organization,  
San Francisco, 25 April - 26 June 1945

244. Provisions relating to the trusteeship system were elaborated by Committee 4 of Commission II of the San Francisco Conference. In this Committee, Guatemala proposed an amendment to the provision which later became Article 77 (1)(c) of the Charter of the United Nations; the text of the amendment, first proposed on 17 May 1945 [10 Documents of the United Nations Conference on International Organization, p. 463] and revised on 18 May 1945 [Ibid., p. 465], was as follows:

"The Trusteeship System shall not be applied to territories in dispute, concerning which there is pending any question, claim, controversy, or litigation, between States members of the International Organization."

The reasons given by Guatemala for this amendment stated:

"Thus, in so far as concerns the Republic of Guatemala, which maintains a controversy with Great Britain in relation to Guatemalan sovereignty over Belize (British Honduras), it could in no case admit that such territory be placed under the trusteeship system, because this would imply a change in the status of Belize, in such a manner that it might complicate Guatemala's action toward regaining this territory."

245. The Guatemalan amendment was discussed at two sessions of the Committee on 23 and 24 May 1945. It was opposed on the ground that the protection sought was already afforded by other provisions, and that, if adopted, it would leave the way open for the removal from the trusteeship system of any territory over which a dispute might arise in the future [10 Documents of UNCIO, p. 470]. The Guatemalan amendment was rejected by a vote of eighteen to thirteen [10 Documents of UNCIO, p. 476]. As a result, the Guatemalan Delegate on 26 May 1945 made the following statement, asking that it be made a matter of record [10 Documents of UNCIO, p. 485]:

"The Delegation of Guatemala makes an express reservation with regard to Section B, paragraph 3 (c) [the present Article 77 (1)(c) of the Charter], concerning the system of territorial trusteeship. This reservation is to the effect that such a system cannot be applied to any territories belonging to the Republic of Guatemala, even if these territories are the subject of claim or controversy or are at present in the possession of another state."

The statement that Guatemala had made an express reservation was included in the report by the Rapporteur of the Committee [10 Documents of UNCIO, p. 602].

246. On 21 June 1945, the Chief of the Guatemalan Delegation wrote to the Secretary General of the Conference requesting that the reservation be included in the text of the Charter [Guatemala, La Controversia, 1945, p. 18]; the Delegation was advised that no reservation of any kind would be admitted in the text of the Charter. On 23 June 1945, the Guatemalan Delegation presented a memorandum requesting from the Secretariat written confirmation that no reservation was admissible, and that the reservation included in the records of the Committee could be effectively invoked by Guatemala [Guatemala, La Controversia, 1945, p. 19]. On the same day, the Secretary General of the Conference replied, stating [Guatemala, La Controversia, 1945, p. 20]:

"I am confident, on the basis of my official relations with the delegations participating in the Conference, that the signing of the Charter will not be accompanied by the attachment of reservations by any delegations on behalf of any countries and it is, therefore, not thought that such action by the Guatemalan Delegation would accord with the practice of others.

"I believe that your interests are amply protected in the statement by the Guatemalan Delegation which is recorded in the proceedings and report of the Committee. This report having been adopted by the Committee itself and later by Commission II is of course an official document of the Conference which might be cited with regard to those portions of the Charter to which it refers."

In an effort to protect itself still further, the Guatemalan Delegation requested to be the last to sign the Charter, and its request was granted [Guatemala, La Controversia, 1945, p. 20].

C. The United Nations

247. On 29 June 1946, the Secretary General of the United Nations requested information from the member Governments concerning non-self-governing territories. Guatemala replied, calling attention to her express reservation made at San Francisco [Guatemala, La Controversia, 1946, p. 31].

248. On 8 December 1946, the Fourth Committee of the General Assembly adopted a resolution taking note of the reports on non-self-governing territories submitted by member Governments. Guatemala abstained from voting on the resolution because Belize had been mentioned among the British possessions reported on [General Assembly, Official Records, First Session, Second Part, Fourth Committee, Part 1, p. 127]. There ensued some discussion of the question between the British and Guatemalan representatives.

249. On 14 December 1946, at a Plenary Meeting of the General Assembly at which the report of the Fourth Committee was discussed, Guatemala called attention to her abstention in the Committee, and the reasons for it. The representative of the United Kingdom again replied, stating that he hoped the question could be settled amicably, but that he saw no reason why it should be referred to the International Court for a decision ex aequo et bono [General Assembly, Official Records, First Session, Second Part, Plenary Meetings, pp. 1360-1361].

250. During the Second Session of the General Assembly, reports on non-self-governing territories made under Article 73 (a) of the Charter were again brought before the Fourth Committee. In the meeting of the Committee on 3 October 1947, Guatemala protested the allegation of sovereignty over Belize in the British report; the Chairman of the Committee stated that in his opinion the Committee was not concerned with territorial claims [General Assembly, Official Records, Second Session, Fourth Committee, p. 34]. In the same Committee, India proposed a draft resolution expressing the hope that more non-self-governing territories would be placed under trusteeship agreements. Guatemala obtained the inclusion in the Committee's draft report of a statement that Guatemala had supported the Indian proposal, but with the reservation made at the San Francisco Conference concerning the territory of British Honduras [General Assembly, Official Records, Second Session, Fourth Committee, pp. 106-107].

251. During the same session of the General Assembly, its Third Committee discussed the question of international cooperation for the prevention of immigration which is likely to disturb friendly relations between nations. In giving reasons for his abstention from voting on an amendment proposed by the United Kingdom, the Guatemalan representative mentioned rumors of British plans to colonize Belize with European immigrants. He stated that Guatemala reserved the right to determine the legality or illegality of such a plan, and that carrying out such a plan without Guatemala's consent might well be considered an act of aggression and treated as such [General Assembly, Official Records, Second Session, Third Committee, p. 222].

252. In the Sixth Committee of the General Assembly, when proposals were made concerning the need for greater use of the International Court of Justice, Guatemala drew attention to its accession to the optional clause, and to its desire for a solution of the Belize question by a decision of the Court ex aequo et bono [General Assembly, Official Records, Second Session, Sixth Committee, p. 49].

253. At the fourth part of the First Preparatory Session of the International Refugee Organization, also in 1947, Guatemala made a declaration repeating its protest concerning possible British plans to colonize Belize [52 Diario de Centro América, p. 1117].

254. On 27 February 1948, on the occasion of Great Britain's sending cruisers to Belize, allegedly to protect British interests "threatened by irresponsible mobs incited by Guatemala," Guatemala sent a protest to the Secretary General of the United Nations expressing a hope for "action by the United Nations in defense of justice" [52 Diario de Centro América, p. 1114]. No action was taken by the United Nations.

255. During the First Part of the Third Session of the General Assembly, the Fourth Committee discussed the report of a Special Committee charged with the examination of information transmitted under Article 73 (e) of the Charter. On 11 October 1948, the representative of Guatemala stated that as his country had sovereign rights to Belize, his delegation's approval of the Committee's report would not cover the part bearing on that territory [General Assembly, Official Records, Third Session, First Part, Fourth Committee, p. 23].



256. During the Fourth Session of the General Assembly, on 3 November 1949 the representative of Guatemala made a further extensive statement on the Belize question in the Fourth Committee, again in connection with discussion of information from non-self-governing territories [General Assembly, Official Records, Fourth Session, Fourth Committee, pp. 125-126]. He alluded to the creation of the American Committee on Dependent Territories and expressed the hope that Guatemala and the United Kingdom would be able to find a formula for a free and just understanding on the matter.

D. Ninth International Conference of American States,  
Bogotá, 30 March - 2 May 1948

257. Before the opening of the Ninth International Conference of American States, held at Bogotá in March 1948, Guatemala submitted a draft declaration to the American Governments [52 Diario de Centro América, pp. 1132-1133], declaring

"That it is a just aspiration of the American Republics that colonialism subsisting in the Continent should be brought to an end."

During the debate at the Conference, the representative of Mexico repeated the position of his Government that in case of a change in the status of Belize Mexico would have rights to assert [Informe de la Comisión Americana de Territorios Dependientes, p. 411]. The Guatemalan draft declaration, with extensive additions and modifications made by a special Sub-Committee on Colonies, was adopted by the Conference as Resolution XXXIII of its Final Act, as follows:

"That it is a just aspiration of the American Republics that the occupation of American territories by extra-continental countries shall be brought to an end."

The Conference also resolved to create an American Committee on Dependent Territories, to be composed of one representative of each member of the Organization of American States. The Committee was to be convoked as soon as fourteen representatives had been appointed, and was directed

"to centralize the study of the problem of the existence of dependent and occupied territories, in order to find an adequate solution to that question."

The functions of the Committee were to centralize information, to study

the situation of colonies, possessions, and occupied territories in America with a view to seeking pacific means of eliminating both colonialism and the occupation of American territories by extra-continental countries, and to make a report to the Council of the Organization of American States. The "Whereas" clauses and the declaration were adopted in the Conference by eighteen affirmative votes, with the United States, the Dominican Republic, and Brazil abstaining; the resolution establishing the Committee was adopted by seventeen votes, with Chile joining the other three States who abstained in the vote on the declaration. The Delegation of Brazil inserted a declaration in the Final Act, stating its reasons for non-adherence to the resolution. The Delegation of Mexico made a declaration in the Conference stating that the position of his country with respect to the rights which it would invoke in case the territorial status of Belize were to be modified, had been expressed with complete clarity on numerous occasions, and he repeated it to the Conference [Informe de la Comisión Americana de Territorios Dependientes, p. 411].

E. The American Committee on Dependent Territories,  
Habana, 15 March - 21 July 1949

258. Fourteen American States nominated representatives on the American Committee on Dependent Territories which met for the first time in Habana on 15 March 1949; only thirteen States participated in the sessions, as the representative nominated by Venezuela did not attend. The Committee divided into five subcommittees, including the Subcommittee on Occupied Territories, to which the Belize question was assigned. The First Period of Plenary Sessions ended on 29 March 1949, and thereafter the subcommittee continued their work. Guatemala submitted a report on Belize on 21 April 1949, giving a summary of the arguments previously used in diplomatic correspondence and official publications to support her claims to the Belize territory [Informe de la Comisión, pp. 355-371].

259. On 30 May 1949, the representative of Mexico submitted a report advancing the claims of his Government to the Belize territory [Informe de la Comisión, pp. 373-412]. This was the first occasion in the present century on which Mexico officially set out a reasoned statement of her position on the question. The report began by an examination of the history of the Belize settlement, reaching the conclusions that Great Britain had never acquired sovereignty by conquest, and that the whole of the territory as defined in the Convention of 1786 -- that is, the area between the Hondo and Sibun Rivers -- formed part of the territory of the Captaincy-General of Yucatan during the colonial period. On this basis it was argued that Mexico succeeded to the rights of Spain to Belize upon Mexico's attainment of independence in 1810. The Mexican-British Treaty of 1826 was said to be a recognition of this successorship, as was the Mexican-Spanish Treaty of 1836. The Mexican Imperial boundary decrees of 1864 and 1865 were cited as having kept the rights of Mexico alive. It was argued that the Guatemalan-Mexican boundary treaty of 1882, which provided that the boundary should run along the parallel of 17° 49' indefinitely toward the east, meant only that the boundary should run as far east as the longitude of Garbutt's Falls, the western boundary of Belize recognized by Guatemala in the Guatemalan-British Convention of 1859. The Mexican report further contended that the Mexican-British boundary treaty of 1893 did not constitute a cession of Mexican rights, as it was distinctly agreed by the parties during the negotiations that no question with regard to sovereignty over Belize would be raised; consequently the treaty did not affect Mexican sovereignty. The report concluded with a recital of actions taken by Mexico since 1932 with respect to the Belize question.

260. On 6 June 1949, the representative of Guatemala submitted a further communication and report, in which the contentions made by Mexico were examined at length [Informe de la Comisión, pp. 413-439]. The main effort of the Guatemalan report was directed toward disproving that the Belize territory had formed part of Yucatan in colonial times; and prior Mexican declarations, in particular a Mexican note of 34 March 1939 to Guatemala, expressing support of Guatemala's claims, were cited as admissions of Mexico's lack of rights to the territory. On the same day that this Guatemalan report was submitted, the Subcommittee on Occupied Territories unanimously approved a motion stating that it was not within the competence of the Committee to pronounce a judgment on rights adduced by American States to the same piece of territory [Informe de la Comisión, p. 441]. Consequently Mexico in a further communication addressed to the Committee on 20 June 1949 merely maintained its position, without engaging in further discussion [Informe de la Comisión, pp. 441-442].

261. The Subcommittee thereafter drew up and unanimously approved a draft Accord [Acuerdo] taking note of the Guatemalan and Mexican communications and reports and including them in the Committee's report, and a draft Recommendation urging Great Britain to submit the difference existing between herself and Guatemala to the International Court of Justice for a decision ex aequo et bono, in accordance with Article 38 (2) of the Court's Statute. The draft recommendation also stated that Mexico might participate in the case under Article 62 of the Court's Statute [Memoria de la Comisión, p. 59].

262. These two drafts were reported to the plenary sessions of the Committee, held from 11 to 21 July 1949. The Accord [Acuerdo] was approved unanimously. The Recommendation was voted on by sections; the "Whereas" clauses and the Recommendation as far as the exhortation to Great Britain were approved, but the clause referring to possible participation by Mexico in the proceedings before the Court was rejected by a vote of four to four, with five abstentions. Honduras, El Salvador, Guatemala, and Costa Rica voted against the clause [Memoria de la Comisión, pp. 66-67]. Thereupon the Mexican delegation indicated its decision to withdraw from the Committee, as it considered that the decision to reject the clause injured the rights of Mexico. The Committee at once suspended voting on the Recommendation and appointed a Conciliation Group to find a formula of conciliation which could meet with the approval of all the delegations. A formula was eventually found to which both Guatemala and Mexico could agree, and it was embodied in the Fourth Resolution of the Final Act of the Committee [Informe de la Comisión, pp. 632-633]. The operative portion of the resolution stated:

"The American Committee on Dependent Territories

"Resolves

"To express its sympathy for all just and legitimate claims of any American nation, to reaffirm the principles of the emancipation of America consecrated in International American Conferences and to establish as a watchword the pacific solution of all controversies by the means of justice and International Law."



VII. ADVISABILITY OF REFERENCE TO THE INTERNATIONAL COURT OF JUSTICE FOR JUDGMENT UNDER ARTICLE 36 (1) OF THE STATUTE

263. Guatemala has no obligation to refer the Belize dispute to the International Court of Justice. In various communications to the Government of Guatemala, the United Kingdom has referred to Article 36 (3) of the Charter of the United Nations as if it obligated the parties to the Belize dispute to refer it to the Court. For example, in its communication of 14 January 1948, the United Kingdom stated that there is

"clearly a legal dispute within the meaning of Article Thirty-Six (three) of the Charter. Consequently in accordance with both the letter and the spirit of the Charter this dispute should be decided by the new International Court of Justice whose Statute is annexed to the Charter" [La Controversia, 1945, p. 39].

264. It is enough to refer to the precise text of Article 36 (3) of the Charter to refute the implicit suggestion that Guatemala has an obligation to refer the dispute to the Court. The Spanish text is:

"Al hacer recomendaciones de acuerdo con este Artículo, el Consejo de Seguridad deberá tomar también en consideración que las controversias de orden jurídico, por regla general, deben ser sometidas por las partes a la Corte Internacional de Justicia, de conformidad con las disposiciones del Estatuto de la Corte."

The English text is even clearer in negating any obligation:

"In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."

The French text reads as follows:

"En faisant les recommandations prévues au présent article, le Conseil de Sécurité doit aussi tenir compte du fait que, d'une manière générale, les différends d'ordre juridique devraient être soumis par les parties à la Cour Internationale de Justice conformément aux dispositions du Statut de la Cour."

265. The provision in Article 36 (3) of the Charter is applicable only to recommendations made by the Security Council. Even the Security Council is not rigidly bound; it is only to "take into consideration." The goal is stated "as a general rule," and it is qualified by a reference to "the provisions of the Statute of the Court" which in themselves impose no obligation to refer a dispute to the Court.

266. Attention is to be given, however, to the possible methods by which the Belize dispute may be referred to the International Court of Justice, and to the advisability of such a course for Guatemala.

267. By a declaration of 13 February 1946 [1 United Nations Treaty Series, p. 3], the United Kingdom accepted the jurisdiction of the Court

"in all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras, and over any questions arising out of any conclusion which the Court may reach with regard to such treaty."

This acceptance was only for a period of five years from 13 February 1946, and it will therefore expire on 13 February 1951.

268. Moreover, the acceptance was only "in relation to any other State accepting the same obligation." Guatemala's declaration of 27 January 1947, recognizing the Court's compulsory jurisdiction, does not accept "the same obligation"; yet it seems possible that if in reliance on the United Kingdom declaration the Government of Guatemala should make an application to the Court, the Government of the United Kingdom would not contest the jurisdiction. Until 13 February 1951, therefore, it would seem to be possible for Guatemala to go to the Court by an application against the United Kingdom. This would unquestionably be possible were Guatemala to make an additional declaration under Article 36 (1) of the Statute of the Court, accepting precisely the same obligation as that undertaken by the United Kingdom. In either event, the ex aequo et bono clause in Article 38 (2) of the Court's Statute could not be invoked.

269. There is also a possibility for Guatemala to enter into a special agreement (compromis) with the United Kingdom for referring the dispute to the Court for judgment. This would require a statement of the issues in the compromis, and it seems doubtful that Guatemala could induce the British to agree upon a statement broader than that in the United Kingdom declaration of 13 February 1946.

270. The writer cannot advise the Government of Guatemala to seek to bring the whole dispute to the Court for judgment. This view is based on the writer's fear that it is highly improbable that the Court would give a judgment in Guatemala's favor.

271. Appearing before the Court, the Agent of Guatemala might have some difficulty in persuading the Court that the Convention of 1859 was, in effect, a treaty of cession. It would first be necessary to show that Guatemala, as successor to Spain, was vested with the Spanish rights in Belize subject to the British rights granted by Spain. In the period from 1821 to 1850 or 1859, there is little evidence available of actual de facto possession by Guatemala of the area within the boundary of the territory of Belize as fixed in 1859. In the absence of such evidence, a favorable decision by the Court on the issue of Guatemala's succession to Spain as territorial sovereign is by no means certain.

272. As a matter of fact, the British position in Belize was greatly extended after the Spanish treaties of 1783 and 1786, and the encroachments were maintained from 1821 to 1850 or 1859 without effective opposition from Guatemala.

273. The Convention of 1859 was studiously drafted to negative the appearance of a treaty of cession. The British felt themselves compelled to insist on this course, because of their relations with the United States of America. Such drafting does not necessarily lead to the conclusion that no cession was intended. Cessions of territory are frequently effected as boundary delimitations, for example, in the Treaty of Peace of 1848 between Mexico and the United States, and in the Peace Treaty of Versailles of 1919.

274. Yet it is difficult to overcome the very explicit language of the Convention of 1859. The preamble states that the boundary has "not yet been ascertained and marked out." Article 1 proceeds to formulate an agreement between the parties that, as their respective territories "existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time," the boundary "was, and is" as traced. It is then declared that the territory to the north and east of the line "belongs to Her Britannic Majesty," and that the territory to the south and west of the line "belongs to the Republic of Guatemala." This language is so definite, and so cast in terms of the years preceding the signature of the Convention, that the Court would probably be reluctant to disregard it.

275. The date "1st of January 1850" was selected by the British because of their obligations under the Clayton-Bulwer treaty with the United States of April 19, 1850; the British thus sought to make it appear that before the Clayton-Bulwer Treaty was signed they were in actual occupation of the territory within the line established by the Convention of 1859.

276. It may not be too difficult to show the historic inaccuracy of the statement in Article 1 of the Convention of 1859. For it seems most doubtful that prior to 1859 the British were in effective occupation of more than the coast line of the territory which Article 1 stated to belong to the British. Yet the Court would probably be inclined to say that the formal constatation by the parties cannot be overcome by proof of historical inaccuracy.

277. Even if Guatemala should succeed in convincing the Court that the Convention of 1859 was a treaty of cession, it would be very difficult to show conclusively that the cession is not today effective. Acquisitive prescription finds but precarious support in international law, but some seventy years elapsed between the British repudiation of Article 7 of the Convention of 1859 and the denunciation of the Convention by Guatemala, and on several occasions during these seventy years Guatemala seems to have acknowledged British sovereignty within the boundary as fixed in 1859. These facts would almost certainly be taken into account, and the Court might thus be disposed to say that the cession has not been nullified.



278. Of course, Guatemala may rely on the compensatory character of Article 7 of the Convention of 1859. The view of Guatemala, as expressed by the Foreign Minister's despatch of 3 May 1859, was that Article 7 was included in the Convention as "a compensation for the abandonment of our rights over territories unlawfully occupied by the settlers of Belize." The despatches of the British negotiator (Wyke) show that the British also considered Article 7 as compensatory. Despite the opening and concluding clauses in Article 7, the substance of the Article should be deemed to be of a compensatory character. Yet if the Convention be viewed as a treaty of cession, the compensation afforded by Article 7 was little more than trivial.

279. Treating Article 7 as compensatory, however, the Court probably would not fail to place emphasis on the terms of the parties' undertaking in Article 7, and these terms leave much to be desired in the way of definitive commitment. The parties

"mutually agree conjointly to use their best efforts, by taking adequate means for establishing the easiest communi- (either by means of a cart road, or employing the rivers, or both united according to the opinion of the surveying engineers), between the fittest place on the Atlantic Coast near the settlement of Belize and the capital of Guatemala."

The terms underscored leave so many factors to the appreciation of the parties that the commitment is sadly lacking in definitive character.

280. Nor did the subsequent negotiations arrive at a definitive agreement on "establishing the easiest communication." The Convention of 5 August 1863, which would have placed the parties' obligations under Article 7 within defined limits, was not brought into force, and this failure was not wholly due to the British as Guatemala did not ratify the Convention of 1863 within the period stipulated. Desultory negotiations may be said to have been continued to 1884, and new negotiations were undertaken in 1933; but no agreement was ever reached which would have given definiteness to the undertakings of the two parties as embodied in Article 7 of the Convention of 1859.

281. On these facts, it is to be concluded that, in its compensatory aspect, Article 7 proved to be illusory. Even if this outcome be attributed entirely to the failure of the British to live up to the obligation to cooperate with Guatemala in building a road, the legal consequences of the conclusion are not free from doubt; and the doubt becomes more difficult to dissipate if the changes in the whole situation as to communications -- particularly the establishment of rail connections between the city of Guatemala and Puerto Barrios, and of air routes leading from the City of Guatemala to the Atlantic -- are taken into account.

282. It cannot confidently be hoped that the Court would reach the conclusion that the failure of Article 7 operated to render the Convention of 1859 wholly void. Not only do the indefinite terms of Article 7 militate against that conclusion, but also the respect which both parties gave to the Convention as an accomplished settlement of boundary problems during the greater part of the ninety years which have elapsed since 1859. Note has to be taken, also, of the demarcation of the 1859 boundary made by commissioners appointed by the parties as late as 1928, and agreed to by the Governments' exchange of notes of 25-26 August 1931 [128 League of Nations Treaty Series, pp. 427-438].

283. It may be contended that in consequence of the failure of Article 7 Guatemala had a right to denounce the Convention of 1859. The report by Law Officers of the British Crown of 12 August 1884 [McNair, Law of Treaties, p. 513] can be cited to support this contention. This contention would lead to the necessity of saying when Guatemala became entitled to exercise the right of denunciation, and whether the right was exercised with due expedition. Little discussion of Article 7 was conducted between the two Governments between 1886 and 1933 -- a period of forty-seven years. If the right of denunciation became exercisable upon the British repudiation of Article 7 in 1867, Guatemala's denunciation in 1939 or later would seem to have been tardy for the purpose of putting an end to the situation created by the Convention of 1859.

284. In opposition to the existence of Guatemala's right of denunciation, an argument might also be made to the Court, based upon the doctrine of rebus sic stantibus, that the conditions which called for the inclusion of Article 7 in the Convention of 1859 had essentially and materially changed after the construction of the railway linking the city of Guatemala and Puerto Barrios. A hint of this argument was given in the British note of 21 October 1933 [Libro Blanco, p. 394]. The argument would seem to be without merit, but it might have influence on the Court.

285. On 9 April 1946, the Congress of Guatemala adopted a Decree, published in the Diario de Centro América of 26 April 1946, approving and confirming the declaration of caducity of the Convention of 1859, previously made by the Government through the Ministry of Foreign Affairs. On 22 April 1946, a copy of the Decree was transmitted to the Minister of the United Kingdom.

286. The recitals in the Decree of 9 April 1946 refer to the Guatemalan notes of 5 April 1884, 21 September 1939, 3 February, 7 March, and 14 and 24 April 1940, 21 March, 11 July, and 27 December 1945, and other official documents and publications. The note of 5 April 1884 was not very definite on this question, and after that date Guatemala continued its insistence on British compliance with Article 7 of the Convention of 1859. Though the note of 21 September 1939 referred to "the lapsed Convention of 30 April 1859," it was not a denunciation. The note of 3 February 1940 and later notes are somewhat more forthright. At the present time it is hardly necessary to attempt to place the precise date of Guatemala's first denunciation. The Decree of 9 April 1946 is clear and unambiguous, and it constitutes a definitive denunciation by Guatemala.

287. Assuming the effectiveness of the denunciation made by Guatemala, in determining its legal consequences a distinction may have to be made between different provisions of the Convention of 1859. Certain provisions of the Convention remained executory after the Convention was brought into force and throughout its duration; for example, the first provision in Article 8 as to channels remaining free and open to navigation was clearly executory. The denunciation by Guatemala terminated such executory provisions. With respect to those provisions of the Convention which were fully executed, in the sense that they called for no continuing performance, the view might be taken that the situation created by these provisions was not disturbed by the denunciation. The Court might take the view that Article 1, regarded as a cession of territory, was fully executed upon the entry into force of the Convention, and the conclusion might then be drawn that a denunciation effected long after the entry into force of the Convention would not destroy the effect of Article 1.

288. In the situation which now obtains, there would seem to be little reason for entertaining a hope that the Court would come to the conclusion that the failure of the provision in Article 7 and Guatemala's denunciation on the ground of that failure, obliterated the boundary fixed by Article 1 of the Convention of 1859.

289. The question arises, however, whether if the matter were presented to it the Court might declare Guatemala to be entitled to reparation because of the United Kingdom's failure to implement Article 7 of the Convention of 1859.

290. For several years after 1859, though the parties were at variance as to the extent of the obligations under Article 7, the British Government did not contest its obligation to bear a substantial part of the financial burden involved in the construction of a road. The unratified Convention of 5 August 1863 recited in its preamble the desire of the parties "to fix in detail the obligation of each Government with regard to the construction of the said road"; and it provided in Article 1 for steps to be taken which might lead to payment by the British Government of £50,000 "in order to fulfil the obligation contracted" by Her Majesty in Article 7 of the Convention. In 1867, after the failure of the Convention of 1863, the British Government contended that

"by signing the Convention of 1863, and being ready to ratify it in 1864 at the time appointed for that purpose, they have done all that was incumbent upon them to fulfil the engagement of the Convention of 1859, and are now released from the obligation of the latter Convention by the conduct of the Guatemalan Government itself."

That argument does not hold water, for the signing of the Convention of 1863 did not fulfil the British obligation. As late as 7 April 1933, the British were willing to entertain "practical proposals" for constructing means of communication "at the joint expense of both parties."



291. On these facts, a legal basis exists for a claim by Guatemala to compensation from the United Kingdom. If the case were brought before the Court at The Hague, it could be hoped that such a claim would be upheld by the Court on legal grounds. Yet if this single phase of the dispute were put before the Court by a special agreement (compromis) entered into by Guatemala and the United Kingdom, the result might be construed as a tacit abandonment by Guatemala of its claim to the territory of Belize.

292. It is difficult to forecast the nature of the reparation which the Court would decree. It seems hardly possible to expect that the Court would award damages for Guatemala's loss of profit or advantage, though the Permanent Court showed some hospitality to a claim for lucrum cessans in 1928 in the Chorzów Case, Series A, No. 17, p. 53.

VIII. ADVISABILITY OF REFERENCE TO THE INTERNATIONAL COURT OF JUSTICE FOR DECISION EX AEUO ET BONO UNDER ARTICLE 38 (2) OF THE STATUTE

293. Assuming that the Government of Guatemala would not wish to take the Belize dispute to the International Court of Justice for a judgment under Article 36 (1) of the Statute of the Court, the writer will now consider the advisability, from the point of view of Guatemala, of a reference for a decision ex aequo et bono, under Article 38 (2) of the Statute of the Court. Such a reference could be made only "if the parties agree thereto."

294. The possibility of such a reference was first adumbrated, though not too clearly, in a communication addressed to the Government of Guatemala by the United Kingdom on 29 January 1940 [Continuación del Libro Blanco, III, p. 134]. It was there stated:

"His Majesty's Government would point out, however, that if the two parties to a dispute agree to such a procedure, article 38 of its statute enables the Court to take questions of equity into consideration when giving its final decision. In the event of the Guatemalan Government signifying their willingness to reconsider their attitude His Majesty's Government for their part would be happy to agree to the Court proceeding under this article."

On 22 January 1946, the Government of Guatemala seized upon the tendence of this statement and gave it greater clarity, by agreeing to a reference to the Court for a decision "ex aequo et bono" under Article 38 (2) of the Court's Statute.

295. In its declaration of 27 January 1947 [1 United Nations Treaty Series, p. 49], the Government of Guatemala stated that the declaration

"does not cover the dispute between England and Guatemala concerning the restoration of the territory of Belize, which the Government of Guatemala would agree to submit to the judgment of the Court, if the case were decided ex aequo et bono, in accordance with Article 38 (2) of the said Statute [of the Court]."

296. At the present time, it does not seem probable that the United Kingdom will agree to go to the Court ex aequo et bono. The United Kingdom communication to Guatemala of 10 October 1946 referred to such jurisprudence as "quite exceptional." Yet the situation in which Guatemala would find itself, in the event that it should do so, may usefully be explored.

297. The first question to be considered relates to the significance of the Court's power to decide ex aequo et bono. As parties to a dispute have never conferred such power on the Court, its jurisprudence, to date, throws little light on this question. The references to it, made in the Free Zones Case in 1929 and 1932 [P. O. I. J., Series A, No. 24, p. 10; Series A/B, No. 46, p. 212] are without much importance.

298. Perhaps the most extensive jurisprudence ex aequo et bono is that of the Brazilian-Peruvian Arbitral Tribunal, acting under a Convention signed at Rio de Janeiro on 12 July 1904. The Tribunal was empowered to adjudicate on claims against each of the parties to the Convention, "according to law or ex aequo et bono" [97 British and Foreign State Papers, p. 692; 15 Boletin del Ministerio de Relaciones Exteriores (Peru), p. 61]. The rules adopted by the Tribunal also provided for the Tribunal's proceeding ex aequo et bono. Many of the awards, published in the four volumes of reports of the Tribunal, were expressly given ex aequo et bono; yet the awards were held within a narrow range [Tribunal Arbitral Brasileiro-Peruano, Introduccao e Actas -- Sentencas 1-91 (Rio de Janeiro, 1916), 4 vol.].

299. No general consensus of opinion exists as to what is meant by a power to decide ex aequo et bono. The matter is discussed in Habicht's Power of the International Judge to Give a Decision "Ex Aequo et Bono", London, 1935; in Hudson's Permanent Court of International Justice, 1920-1942, pp. 620-621; and in Aycinena Salazar's El Procedimiento Ex Aequo et Bono y la Controversia Angloguatemalteca sobre Belice, Guatemala, 1949.

300. The writer's view of the question has been stated as follows:

"In a case where the parties are agreed that it may decide ex aequo et bono, the provision in the Statute would seem to enable the Court to go outside the realm of law for reaching its decision. It relieves the Court from the necessity of deciding according to law. It makes possible a decision based upon considerations of fair dealing and good faith, which may be independent of or even contrary to the law. Acting ex aequo et bono, the Court is not compelled to depart from applicable law, but it is permitted to do so, and it may even call upon a party to give up legal rights. Yet it does not have a complete freedom of action. It cannot act capriciously and arbitrarily. To the extent that it goes outside the applicable law, or acts where no law is applicable, it must proceed upon objective considerations of what is fair and just. Such considerations depend, in large measure, upon the judges' personal appreciation, and yet the Court would not be justified in reaching a result which could not be explained on rational grounds." [Hudson, Permanent Court of International Justice, 1920-1942, p. 621].

301. On this view, the Court could go beyond the law applicable to consider elements of equity and fairness in the Belize dispute, not adequately taken into account by the law. What such elements can be put forward by Guatemala?

302. Guatemala might ask the Court acting ex aequo et bono to say that because of the inequality of the parties when they concluded the Convention of 1859, the Convention was either void ab initio, or to be interpreted in Guatemala's favor; that in the Charter of the United Nations the United Kingdom has recognized the "sovereign equality" of Guatemala; and that, acting ex aequo et bono the Court should take the whole existing situation into account to declare the caducity of the Convention, and should proceed either to allocate the territory of Belize to Guatemala, or to divide the territory between the parties in such a way as to meet the social and economic needs of the population and to make the resources of the whole area of the Peten and Belize available to the commerce of the world. The writer cannot entertain any hope that the Court acting ex aequo et bono would uphold such contentions by Guatemala. Moreover, such contentions might be countered by insistence that the paramount interests of the inhabitants of the disputed territory give them the right of self-determination.

303. To sustain its claim to the territory of Belize, Guatemala might contend that the recitals in the Convention of 1859 were contrary to the actual facts, that the British encroachments in Belize had been illegal, and that despite the euphemistic terms used in the Convention the cession of the territory of Belize, and not a fixation of frontiers, was the object of that instrument. The further contention could be made that the Convention was of a transactional nature, Article 7 being a compensatory provision, and that the non-execution of Article 7 led to a failure of the compensation which Guatemala rightfully expected, with the result that the cession itself became subject to denunciation by Guatemala; and that in accordance with principles of equity, upon the denunciation by Guatemala the status quo ante was restored, so that Guatemalan sovereignty over Belize was re-instated. The reply will probably be made to these contentions that during many years Guatemala did not claim the invalidity of the cession; that at various times, and as late as 1931, Guatemala cooperated with the British in efforts to delimit the boundaries provided for in the Convention of 1859; and that in equity the British possession of the territory of Belize for almost a hundred years should not be disturbed. The writer can entertain little hope that acting ex aequo et bono the Court would decline to be moved by this reply.

304. Guatemala may also contend that British occupation of the territory of Belize cuts off the rich territory of the Peten from direct access to the sea, and that as this territory is isolated by a range of mountains from the rest of Guatemalan territory, the development of the Peten is seriously impeded, so long as the territory of Belize is under British control. The reply would probably be made that this whole matter is not in any way covered by the Convention of 1859; that it is not a part of the Court's function, even when it acts ex aequo et bono, to remake a map which has stood for ninety years; and that any relief of the Peten situation is to be obtained by Guatemala by negotiations with the States interested. It could also be replied that when in 1934 the British advanced the proposal that a road should be built from the Peten across the Belize territory, it was rejected by Guatemala on the ground that such a road would favor Belize to the prejudice of Guatemala [Libro Blanco, pp. 407, 412]. The writer cannot bring himself to be convinced that the Court, acting ex aequo et bono, would disregard such replies.



305. Guatemala may advance the contention that the failure of the British to carry out in good faith the obligation which they assumed in Article 7 of the Convention of 1859 gives to Guatemala a right to reparation, and that the Court acting ex aequo et bono should declare this right and should determine what reparation is to be made. A reply attributing to Guatemala the responsibility for the failure of the Convention signed on 5 August 1863, would probably not be convincing to the Court, and the contention by Guatemala might be upheld by the Court acting ex aequo et bono. If this view were taken by the Court, it is difficult to foresee the nature of the reparation it would decree; taking into account the present state of communications, it would probably search for some substitute for a road, and it might decree only a money compensation. Demands for equitable payments were made by Guatemala on 17 November 1934 and 16 September 1936 [Libro Blanco, pp. 412, 416].

306. On the whole, the writer can see little advantage for Guatemala in going to the Court for a decision ex aequo et bono, over going to the Court for an ordinary judgment. Neither of these courses seems, under the circumstances, to be very promising for Guatemala.

307. It would seem to be a part of the writer's function, therefore, to enquire into other possible courses of action which Guatemala might adopt.

IX. OTHER POSSIBLE COURSES OF ACTION

A. Arbitration ad hoc

308. Each of the parties to the Belize dispute has at one time or another proposed arbitration of the dispute by an ad hoc tribunal. There was, for example, the Guatemalan proposal of 22 September 1937 for arbitration before the President of the United States with power to decide "in justice and equity"; and the British proposal of 29 January 1940 for reference of the dispute as to Article 7 of the 1859 Convention "both in its legal and equitable aspects," to a tribunal composed of three members, one appointed by each party and an umpire appointed by the President of the United States.

309. While it might not be too difficult for the parties to agree on the constitution of an ad hoc tribunal, serious difficulty would almost certainly be encountered in obtaining agreement on the statement of the issues to be arbitrated at the present time. The views of the parties are so divergent that it seems inopportune for Guatemala to make a further attempt to refer the dispute to arbitration ad hoc. No hope can exist for the success of such an attempt so long as the British are adamant in their insistence on going to the International Court of Justice.

310. If changes should come about to make a reference to arbitration ad hoc possible, the chance of Guatemala's obtaining a favorable award of anything more than reparation for the damages caused by the failure of Article 7 would seem to be highly doubtful.

B. Resort to the United Nations

311. The Government of Guatemala may wish to consider a possible reference of the Belize dispute to the United Nations. In this event, the first question to arise would be, what is the competent organ of the United Nations to which a reference may be made?

312. It may be possible for Guatemala to bring the dispute to the attention of the Security Council under Articles 35 and 37 of the Charter; but it would be necessary for Guatemala to take the view that the continuance of the dispute "is likely to endanger the maintenance of international peace and security." Little advantage would be likely to accrue to Guatemala from this course. The Security Council is in the grip of the vetoes of the permanently represented States, though under Article 27 of the Charter the United Kingdom would be required to abstain from voting.

313. A more promising step would be for Guatemala to bring the dispute to the General Assembly under Article 11 (2) of the Charter. Guatemala might there count upon a considerable support from the States of Central and South America, but it is possible that Mexico would be in opposition. Possibly, also, Guatemala could enlist the support of the Soviet Union and the States which usually vote with it, and of the States of the Arab League. Even without the support of influential States like the United States and France, it seems possible that the necessary vote of two-thirds could be obtained for a recommendation by the General Assembly under Article 11 (2).

314. Yet a reference to the General Assembly might easily lead to a request for an advisory opinion of the International Court of Justice. In such an event, Guatemala might be in a more favorable position before the Court than if the dispute were there for a judgment or for a decision ex aequo et bono. An advisory opinion would not have binding force. Much would depend, however, on the precise statement of the question or questions on which the opinion would be requested, and with complete uncertainty on this point Guatemala would run a very serious risk in taking the dispute before the General Assembly.

C. Appeal for the Support of the International  
Conference of American States

315. Guatemala's claims have been viewed with some hospitality by various other American States, as in the resolution XXXIII adopted at Bogota in 1948. Possibly the International Conference of American States would be willing to take some more definite stand on the Belize dispute. It seems doubtful, however, that this would have much influence on the Government of the United Kingdom, and hence it might be of little advantage to Guatemala.

316. If such a course were contemplated by Guatemala, it would be decidedly advantageous if some previous agreement could be concluded with Mexico as to the latter's claims to part of the territory of Belize; in this connection, some consideration might be given to Article III (8) of the Guatemalan-Mexican treaty of 27 September 1882. If a definite agreement could not be reached with Mexico, consideration might be given to a formula such as that embodied in the Argentine-Chilean Joint Declaration on the Antarctic of 4 March 1948 [Argentine Republic, Boletín del Ministerio de Relaciones Exteriores y Culto, March 1948, p. 11] in which the two Governments agreed to make common cause in pursuing their rights even in advance of an accord on their respective claims.

D. Appeal to the Government of the United States

317. If the active support of the Government of the United States could be enlisted by Guatemala, this might have considerable influence toward weakening the insistences of the United Kingdom Government. In the present political situation, however, it would seem to be unlikely that the Government of the United States would take a firm position with the Government of the United Kingdom in relation to the dispute. The history of the American-British negotiations from 1850 to 1896 would militate against such a firm position, and with the present cleavage between East and West the Government of the United States would probably be most reluctant to take up an active opposition to the continuance of British occupation of Belize. On the whole, therefore, an appeal to the United States would seem to offer little promise of advancing a settlement of the dispute.



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