

MEXICO : FEBRUARY 2, 1848

Treaty of Guadalupe Hidalgo. Treaty of Peace, Friendship, Limits, and Settlement (with additional and secret article which was not ratified), with Map of the United Mexican States¹ and with Plan of the Port of San Diego, signed at Guadalupe Hidalgo February 2, 1848. Originals of the treaty and additional and secret article in English and Spanish.

Treaty and additional and secret article submitted to the Senate February 23, 1848. (Message of February 22, 1848.) Map of the United Mexican States and Plan of the Port of San Diego submitted to the Senate March 7, 1848. Resolution of advice and consent, with amendments (including the striking out of the additional and secret article), March 10, 1848. Ratified by the United States March 16, 1848. Ratified by Mexico May 30, 1848. Ratifications exchanged at Querétaro May 30, 1848. Proclaimed July 4, 1848.

The editorial notes contain a statement and explanation of the Senate amendments and of the differences between the text of the treaty as signed and as it went into force.

Following the treaty text is a reproduction of the Plan of the Port of San Diego, and in a pocket inside the back cover of this volume is a reproduction of the Disturnell Map, authenticated copies whereof were, as stated in Article 5, added to the treaty.

In the name of Almighty God: En el nombre de Dios Todo-Poderoso.

The United States of America, Los Estados-Unidos mexicanos
and the United Mexican States, y los Estados-Unidos de América,
animated by a sincere desire to animados de un sincero deseo de
put an end to the calamities of poner término á las calamidades
the war which unhappily exists de la guerra que desgraciadamente
between the two Republics, and existe entre ambas Repúblicas, y
to establish upon a solid basis de establecer sobre bases sólidas
relations of peace and friendship, relaciones de paz y buena amistad,
which shall confer reciprocal bene- que procuren recíprocas ventajas

¹ These six words are from the title ascribed to the map in the English version of the treaty, Article 5; the title of the map is "Mapa de los Estados Unidos de Méjico".

fits upon the citizens of both, and assure the concord, harmony and mutual confidence, wherein the two peoples should live, as good neighbours, have for that purpose appointed their respective Plenipotentiaries: that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic; who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of Peace, arranged, agreed upon, and signed the following.

Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns and people, without exception of places or persons.

ARTICLE II.

Immediately upon the signature of this Treaty, a convention shall be entered into between a Commissioner or Commissioners appointed by the General in Chief

á los Ciudadanos de uno y otro pays, y afianzen la concordia, armonia y mútua seguridad en que deben vivir, como buenos vecinos, los dos pueblos; han nombrado á este efecto sus respectivos Plenipotenciarios; á saber, el Presidente de la República mexicana á Don Bernardo Couto, Don Miguel Atristain y Don Luis Gonzaga Cuevas, ciudadanos de la misma República; y el Presidente de los Estados-Unidos de América á Don Nicolas P. Trist, ciudadano de dichos Estados; quienes despues de haberse comunicado sus plenos poderes, bajo la proteccion del Señor Dios Todo-poderoso, autor de la paz, han ajustado, convenido y firmado el siguiente

Tratado de Paz, Amistad, Límites y Arreglo definitivo entre la República mexicana y los Estados-Unidos de América.

ARTÍCULO I.

Habrá paz firme y universal entre la República mexicana y los Estados-Unidos de América y entre sus respectivos países, territorios, ciudades, villas y pueblos, sin escepcion de lugares ó personas.

ARTÍCULO II.

Luego que se firme el presente Tratado habrá un convenio entre el comisionado ú comisionados del Gobierno mexicano, y el ó los que nombre el General en Gefe de

of the forces of the United States, and such as may be appointed by the Mexican Government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present treaty by the Government of the United States, orders shall be transmitted to the Commanders of their land and naval forces, requiring the latter, (provided this treaty shall then have been ratified by the Government of the Mexican Republic and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican Republic, to points, that shall be selected by common agreement, at a distance from the sea-ports, not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay; the Mexican Government hereby binding itself to afford every facility in it's power for

las fuerzas de los Estados-Unidos, para que cesen provisionalmente las hostilidades, y se restablezca en los lugares ocupados por las mismas fuerzas el órden constitucional en lo político, administrativo y judicial, en cuanto lo permitan las circunstancias de ocupacion militar.

ARTÍCULO III.

Luego que este Tratado sea ratificado por el Gobierno de los Estados-Unidos, se expedirán órdenes á sus comandantes de tierra y mar previniendo á estos segundos (siempre que el Tratado haya sido ya ratificado por el Gobierno de la República mexicana y cangeadas las ratificaciones) que inmediatamente alcen el bloqueo de todos los puertos mexicanos, y mandando á los primeros (bajo la misma condicion) que á la mayor posible brevedad comiencen á retirar todas las tropas de los Estados-Unidos que se halláren entonces en el interior de la República mexicana, á puntos que se elegirán de comun acuerdo, y que no distarán de los puertos mas de treinta leguas: esta evacuacion del interior de la República se consumará con la menor dilacion posible, comprometiéndose á la vez el Gobierno mexicano á facilitar, cuanto quepa en su arbitrio, la evacuacion de las tropas aneri-

rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner, orders shall be despatched to the persons in charge of the Custom Houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican Government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such Custom Houses, or elsewhere in Mexico, by authority of the United States, from and after the day of ratification of this treaty by the Government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican Government, at the City of Mexico, within three months after the exchange of ratifications.

The evacuation of the Capital of the Mexican Republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month

canas; á hacer cómodas su marcha y su permanencia en los nuevos puntos que se elijan; y á promover una buena inteligencia entre ellas y los habitantes. Igualmente se librarán órdenes á las personas encargadas de las Aduanas marítimas en todos los puertos ocupados por las fuerzas de los Estados- Unidos, previniéndoles (bajo la misma condicion) que pongan inmediatamente en posesion de dichas Aduanas á las personas autorizadas por el Gobierno mexicano para recibirlas, entregándoles al mismo tiempo todas las obligaciones y constancias de deudas pendientes por derechos de importacion y exportacion, cuyos plazos no estén vencidos. Ademas se formará una cuenta fiel y exacta que manifieste el total monto de los derechos de importacion y exportacion recaudados en las mismas Aduanas marítimas ó en cualquiera otro lugar de México por autoridad de los Estados- Unidos desde el dia de la ratificacion de este Tratado por el Gobierno de la República mexicana; y tambien una cuenta de los gastos de recaudacion: y la total suma de los derechos cobrados, deducidos solamente los gastos de recaudacion, se entregará al Gobierno mexicano en la ciudad de México á los tres meses del cange de las ratificaciones.

La evacuacion de la capital de la República mexicana por las tropas de los Estados- Unidos, en consecuencia de lo que queda estipulado, se completará al mes de

after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican Republic, as about to be established by the following Article, shall be definitively restored to the said Republic, together with all the artillery, arms, apparatus of war, munitions and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the Government of the Mexican Republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions or other public property. The City of Mexico, within the inner line of intrenchments surrounding the said City, is comprehended in the above stipulations, as regards the restoration of artillery, apparatus of war, &c.

recibirse por el comandante de dichas tropas las órdenes convenidas en el presente artículo, ó antes si fuere posible.

ARTÍCULO IV.

Luego que se verifique el cange de las ratificaciones del presente Tratado, todos los castillos, fortalezas, territorios, lugares y posesiones que hayan tomado ú ocupado las fuerzas de los Estados-Unidos, en la presente guerra, dentro de los límites que por el siguiente artículo van á fijarse á la República mexicana, se devolverán definitivamente á la misma República, con toda la artillería, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública existente en dichos castillos y fortalezas cuando fueron tomados, y que se conserve en ellos al tiempo de ratificarse por el Gobierno de la República mexicana el presente Tratado. A este efecto inmediatamente despues que se firme, se expedirán órdenes á los oficiales americanos que mandan dichos castillos y fortalezas para asegurar toda la artillería, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública, la cual no podrá en adelante removerse de donde se halla, ni destruirse. La ciudad de Mexico dentro de la línea interior de atrincheramientos que la circundan queda comprendida en la precedente estipulación en lo que toca á la devolución de artillería, aparejos de guerra ect^a

The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner, if possible: the Mexican Government hereby engaging, as in the foregoing Article, to use all means in it's power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican Ports on the Gulf of Mexico; in such case a friendly arrangement shall be entered into between the General in Chief of the said troops and the Mexican Government, whereby healthy and otherwise suitable places at a distance from the ports not exceeding thirty leagues shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to, as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.

La final evacuacion del territorio de la República mexicana por las fuerzas de los Estados-Unidos quedará consumada á los tres meses del cange de las ratificaciones, ó antes si fuere posible, comprometiendose á la vez el Gobierno mexicano, como en el articulo anterior, á usar de todos los medios que estén en su poder para facilitar la tal evacuacion, hacerla cómoda á las tropas americanas, y promover entre ellas y los habitantes una buena inteligencia.

Sin embargo si la ratificacion del presente Tratado por ambas partes no tuviere efecto en tiempo que permita que el embarque de las tropas de los Estados-Unidos se complete, antes de qui comience la estacion malsana en los puertos mexicanos del golfo de México; en tal caso se hará un arreglo amistoso entre el gobierno mexicano y el General en jefe de dichas tropas, y por medio de este arreglo se señalarán lugares salubres y convenientes (que no disten de los puertos mas de treinta leguas) para que residan en ellos hasta la vuelta de la estacion sana las tropas que aun no se hayan embarcado. Y queda entendido que el espacio de tiempo de que aquí se habla, como comprensivo de la estacion malsana, se extiende desde el dia primero de Mayo hasta el dia primero de Noviembre.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following Article, the Government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of it's deepest branch, if it should have more than one branch emptying directly into the sea; from thence, up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called *Paso*) to it's western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then, to the

Todos los prisioneros de guerra tomados en mar ó tierra por ambas partes se restituirán á la mayor brevedad posible despues del cange de las ratificaciones del presente Tratado. Queda tambien convenido que si algunos mexicanos estuviéren ahora cautivos en poder de alguna tribu salvage dentro de los límites que por el siguiente artículo van á fijarse á los Estados-Unidos, el Gobierno de los mismos Estados-Unidos exigirá su libertad y los hará restituir á su pays.

ARTÍCULO V.

La línea divisoria entre las dos Repúblicas comenzará en el golfo de México tres leguas fuera de tierra frente á la desembocadura del rio Grande, llamado por otro nombre rio Bravo del Norte, ó del mas profundo de sus brazos, si en la desembocadura tuviere varios brazos: correrá por mitad de dicho rio, siguiendo el canal mas profundo, donde tenga mas de un canal, hasta el punto en que dicho rio corta el lindero meridional de Nuevo-México; continuará luego hácia occidente por todo este lindero meridional (que corre al Norte del pueblo llamado *Paso*) hasta su término por el lado de occidente: desde allí subirá la linea divisoria hácia el Norte por el lindero occidental de Nuevo-México, hasta donde este lindero esté cortado por el primer brazo del rio Gila; (y si no está cortado

point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence, across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this Article, are those laid down in the Map, entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised Edition. Published at New York in 1847 by J. Disturnell.*" of which Map a Copy is added to this treaty, bearing the signatures and seals of the Undersigned Plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line, drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the Port of San Diego, according to the plan of said port, made in the year 1782 by Don Juan Pantoja, second sailing mas-

por ningun brazo del rio Gila, entonces hasta el punto del mismo lindero occidental mas cercano al tal brazo, y de allí en una línea recta al mismo brazo): continuará despues por mitad de este brazo y del rio Gila hasta su confluencia con el rio Colorado; y desde la confluencia de ambos rios la línea divisoria, cortando el Colorado, seguirá el límite que separa la Alta de la Baja California hasta el mar Pacífico.

Los linderos meridional y occidental de Nuevo-México, de que habla este artículo, son los que se marcan en la Carta titulada: *Mapa de los Estados-Unidos de México, segun lo organizado y definido por las varias Actas del Congreso de dicha República y construido por las mejores autoridades: Edicion revisada que publicó en Nueva-York en 1847 J. Disturnell*, de la cual se agrega un ejemplar al presente Tratado, firmado y sellado por los Plenipotenciarios infrascriptos. Y para evitar toda dificultad al trazar sobre la tierra el límite que separa la Alta de la Baja California, queda convenido que dicho límite consistirá en una línea recta tirada desde la mitad del rio Gila en el punto donde se une con el Colorado, hasta un punto en la costa del mar Pacífico, distante una legua marina al Sur del punto mas meridional del puerto de San Diego, segun este Puerto está dibujado en el plano que levantó el año de 1782 el segundo

ter of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*: of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the Boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both Republics, as described in the present Article, the two Governments shall each appoint a Commissioner and a Surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the Port of San Diego, and proceed to run and mark the said boundary in it's whole course, to the Mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result, agreed upon by them, shall be deemed a part of this Treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The Boundary line established by this Article shall be religiously respected by each of the two Republics, and no change shall ever be made therein, except by the express and free consent of both

Piloto de la Armada española Don Juan Pantoja, y se publicó en Madrid el de 1802 en el atlas para el viage de las goletas *Sutil* y *Mexicana*; del cual Plano se agrega copia firmada y sellada por los Plenipotenciarios respectivos.

Para consignar la linea divisoria con la precision debida en mapas fehacientes, y para establecer sobre la tierra mojones que pongan á la vista los límites de ambas Repúblicas, segun quedan descritos en el presente artículo, nombrará cada uno de los dos Gobiernos un comisario y un agrimensor que se juntarán antes del término de un año contado desde la fecha del cange de las ratificaciones de este Tratado, en el Puerto de San Diego, y procederán á señalar y demarcar la expresada linea divisoria en todo su curso hasta la desembocadura del rio Bravo del Norte. Llevarán diarios y levantarán planos de sus operaciones: y el resultado convenido por ellos se tendrá por parte de este Tratado, y tendrá la misma fuerza que si estuviése inserto en él; debiendo convenir amistosamente los dos Gobiernos en el arreglo de cuanto necesiten estos individuos, y en la escolta respectiva que deban llevar, siempre que se crea necesario.

La linea divisoria que se establece por este artículo será religiosamente respetada por cada una de las dos Repúblicas, y ninguna variacion se hará jamás en ella, sino de expreso y libre consenti-

nations, lawfully given by the General Government of each, in conformity with it's own constitution.

ARTICLE VI.

The Vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the River Colorado below it's confluence with the Gila, to and from their possessions situated north of the Boundary line defined in the preceding Article: it being understood, that this passage is to be by navigating the Gulf of California and the River Colorado, and not by land, without the express consent of the Mexican Government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal or railway, which should, in whole or in part, run upon the river Gila, or upon it's right or it's left bank, within the space of one marine league from either margin of the river, the Governments of both Republics will form an agreement regarding it's construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of

miento de ambas naciones, otorgado legalmente por el Gobierno general de cada una de ellas, con arreglo á su propia constitucion.

ARTÍCULO VI.

Los buques y ciudadanos de los Estados- Unidos tendrán en todo tiempo un libre y no interrumpido tránsito por el golfo de California y por el rio Colorado desde su confluencia con el Gila para sus posesiones y desde sus posesiones situadas al Norte de la linea divisoria que queda marcada en el artículo precedente; entendiéndose que este tránsito se ha de hacer navegando por el golfo de California y por el rio Colorado, y no por tierra sin expreso consentimiento del Gobierno mexicano.

Si por reconocimientos que se practiquen se comprobáre la posibilidad y conveniencia de construir un camino, canal ó ferrocarril que en todo ó en parte corra sobre el rio Gila ó sobre alguna de sus márgenes derecha ó izquierda en la latitud de una legua marina de uno ó de otro lado del rio, los Gobiernos de ambas Repúblicas se pondrán de acuerdo sobre su construccion á fin de que sirva igualmente para el uso y provecho de ambos paises.

ARTÍCULO VII.

Como el rio Gila y la parte del rio Bravo del Norte que corre bajo el lindero meridional de

New Mexico, being, agreeably to the fifth Article, divided in the middle between the two Republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right: not even for the purpose of favouring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments.

The stipulations contained in the present Article shall not impair the territorial rights of either Republic, within it's established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to

Nuevo-Mexico se dividen por mitad entre las dos Repúblicas, segun lo establecido en el artículo quinto, la navegacion en el Gila y en la parte que queda indicada del Bravo será libre y comun á los buques y ciudadanos de ambos paises, sin que por alguno de ellos pueda hacerse (sin consentimiento del otro) ninguna obra que impida ó interrumpa en todo ó en parte el ejercicio de este derecho, ni aun con motivo de favorecer nuevos métodos de navegacion. Tampoco se podrá cobrar (simo en el caso de desembarco en alguna de sus riberas) ningun impuesto ó contribucion bajo ninguna denominacion ó título á los buques, efectos, mercancías ó personas que naveguen en dichos rios. Si para hacerlos ó mantenerlos navegables fuere necesario ó conveniente establecer alguna contribucion ó impuesto, no podrá esto hacerse sin el consentimiento de los dos Gobiernos.

Las estipulaciones contenidas en el presente artículo dejan ilesos los derechos territoriales de una y otra República dentro de los límites que les quedan marcados.

ARTÍCULO VIII.

Los mexicanos establecidos hoy en territorios pertenecientes antes á México y que quedan para lo futuro dentro de los límites señalados por el presente Tratado á los Estados-Unidos, podrán perma-

continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please; without their being subjected, on this account, to any contribution, tax or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty: and those who shall remain in the said territories, after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.

necer en donde ahora habitan, ó trasladarse en cualquier tiempo á la República mexicana, conservando en los indicados territorios los bienes que poseen, ó enagenándolos y pasando su valor á donde les convenga, sin que por esto pueda exigírseles ningun género de contribucion, gravámen ó impuesto.

Los que prefieran permanecer en los indicados territorios, podrán conservar el título y derechos de ciudadanos mexicanos, ó adquirir el título y derechos de ciudadanos de los Estados-Unidos. Mas la eleccion entre una y otra ciudadanía deberán hacerla dentro de un año contado desde la fecha del cange de las ratificaciones de este Tratado. Y los que permaneciéren en los indicados territorios despues de transcurrido el año, sin haber declarado su intencion de retener el carácter de mexicanos, se considerará que han elegido ser ciudadanos de los Estados-Unidos.

Las propiedades de todo género existentes en los expresados territorios, y que pertenecen ahora á mexicanos no establecidos en ellos, serán respetadas inviolablemente. Sus actuales dueños, los herederos de estos, y los mexicanos que en lo venidero puedan adquirir por contrato las indicadas propiedades, disfrutarán respecto de ellas tan amplia garantia, como si perteneciesen á ciudadanos de los Estados-Unidos.

ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

[One of the amendments of the Senate struck out Article 10.]

ARTICLE XI.

Considering that a great part of the territories which, by the present Treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive controul of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme; it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States, whensoever this may be necessary; and

ARTÍCULO IX.

Los Mexicanos que, en los territorios antedichos, no conserven el caracter de ciudadanos de la República Mexicana, segun lo estipulado en el artículo precedente, serán incorporados en la Union de los Estados Unidos, y se admitirán en tiempo oportuno (á juicio del Congreso de los Estados Unidos) al goce de todos los derechos de ciudadanos de los Estados Unidos conforme á los principios de la constitucion; y entretanto serán mantenidos y protegidos en el goce de su libertad y propiedad, y asegurados en el libre ejercicio de su religion sin restriccion alguna.

ARTÍCULO XI.

En atencion á que una gran parte de los territorios que por el presente Tratado van á quedar para lo futuro dentro de los límites de los Estados-Unidos se halla actualmente ocupada por tribus salvages, que han de estar en adelante bajo la exclusiva autoridad del Gobierno de los Estados-Unidos, y cuyas incursiones sobre los distritos mexicanos serian en extremo perjudiciales; está solemnemente convenido que el mismo Gobierno de los Estados-Unidos contendrá las indicadas incursiones por medio de la fuerza

that when they cannot be prevented, they shall be punished by the said Government, and satisfaction for the same shall be exacted: all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within it's own territory against it's own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States, to purchase or acquire any Mexican or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two Republics, nor to purchase or acquire horses, mules, cattle or property of any kind, stolen within Mexican territory by such Indians.

And, in the event of any person or persons, captured within Mexican Territory by Indians, being carried into the territory of the United States, the Government of the latter engages and binds itself in the most solemn manner, so soon as it shall know of such captives being within it's territory, and shall be able so to do, through the faithful exercise of it's influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican Government. The Mexican Authorities will, as far as practicable,

siempre que así sea necesario; y cuando no pudiese prevenir las, castigará y escarmentará á los invasores, exigiéndoles ademas la debida reparacion: todo del mismo modo y con la misma diligencia y energia con que obraria, si las incursiones se hubiesen meditado ó ejecutado sobre territorios suyos ó contra sus propios ciudadanos.

A ningun habitante de los Estados-Unidos será lícito bajo ningun pretesto comprar ó adquirir cautivo alguno, mexicano ó extranjero residente en México, apresado por los indios habitantes en territorio de cualquiera de las dos Repúblicas, ni los caballos, mulas, ganados, ó cualquiera otro género de cosas que hayan robado dentro del territorio mexicano.

Y en caso de que cualquier persona ó personas cautivadas por los indios dentro del territorio mexicano sean llevadas al territorio de los Estados-Unidos, el Gobierno de dichos Estados-Unidos se compromete y liga de la manera mas solemne, en cuanto le sea posible, á rescatarlas, y á restituirlas á su pays ó entregarlas al agente ó representante del Gobierno mexicano, haciendo todo esto, tan luego como sepa que los dichos cautivos se hallan dentro de su territorio, y empleando al efecto el leal ejercicio de su influencia y poder. Las autoridades

give to the Government of the United States notice of such captures; and it's agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the mean time, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the Government of the United States, before receiving such notice from Mexico, should obtain intelligence through any other channel, of the existence of Mexican captives within it's territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for it's being settled by citizens of the United States; but on the contrary special care shall then be taken not to place it's Indian occupants under the neces-

mexicanas darán á las de los Estados-Unidos, segun sea practicable, una noticia de tales cautivos; y el agente mexicano pagará los gastos erogados en el mantenimiento y remision de los que se rescaten, los cuales entre tanto serán tratados con la mayor hospitalidad por las autoridades Americanas del lugar en que se encuentren. Mas si el Gobierno de los Estados-Unidos antes de recibir aviso de México, tuviere noticia por cualquiera otro conducto de existir en su territorio cautivos mexicanos, procederá desde luego á verificar su rescate y entrega al agente mexicano, segun queda convenido.

Con el objeto de dar á estas estipulaciones la mayor fuerza posible, y afianzar al mismo tiempo la seguridad y las reparaciones que exige el verdadero espíritu é intencion con que se han ajustado, el Gobierno de los Estados-Unidos dictará sin inútiles dilaciones, ahora y en lo de adelante las leyes que requiera la naturaleza del asunto, y vigilará siempre sobre su ejecucion. Finalmente el Gobierno de los mismos Estados-Unidos tendrá muy presente la santidad de esta obligacion siempre que tenga que desalojar á los indios de cualquier punto de los indicados territorios, ó que establecer en él á ciudadanos suyos; y cuidará muy especialmente de que no se ponga á los indios que

sity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ocupaban antes aquel punto, en necesidad de buscar nuevos hogares por medio de las incursiones sobre los distritos mexicanos, que el Gobierno de los Estados-Unidos se ha comprometido solemnemente á reprimir.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth Article of the present Treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen Millions of Dollars.

Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions, from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same

ARTÍCULO XII.

En consideracion á la estension que adquieren los límites de los Estados-Unidos, segun quedan descritos en el artículo quinto del presente Tratado, el Gobierno de los mismos Estados-Unidos se compromete á pagar al de la Republica mexicana la suma de quince millones de pesos.

Inmediatamente despues que este Tratado haya sido ratificado por el Gobierno de la República mexicana, se entregará al mismo Gobierno por el de los Estados-Unidos, en la ciudad de Mexico, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Los doce millones de pesos restantes se pagarán en México, en moneda de plata ú oro del cuño mexicano, en abonos de tres millones de pesos cada año, con un rédito de seis por ciento anual: este rédito comienza á correr para toda la suma de los doce millones el dia de la ratificacion del presente Tratado por el Gobierno mexicano, y con cada abono anual de capital se pagará el rédito que corresponda á la suma abonada. Los plazos para los abonos de capital corren desde

day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic, under the conventions¹ between the two Republics severally concluded on the eleventh day of April eighteen hundred and thirty-nine, and on the thirtieth day of January eighteen hundred and forty three: so that the Mexican Republic shall be absolutely exempt for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty: which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the Board of Commissioners provided

el mismo dia que empiezan á causarse los réditos.

ARTÍCULO XIII.

Se obliga ademas el Gobierno de los Estados-Unidos á tomar sobre sí, y satisfacer cumplidamente á los reclamantes, todas las cantidades que hasta aquí se les deben y cuantas se venzan en adelante por razon de las reclamaciones ya liquidadas y sentenciadas contra la República mexicana conforme á los convenios¹ ajustados entre ambas Repúblicas el once de Abril de mil ochocientos treinta y nueve, y el treinta de Enero de mil ochocientos cuarenta y tres; de manera que la República mexicana nada absolutamente tendrá que lastar en lo venidero, por razon de los indicados reclamos.

ARTÍCULO XIV.

Tambien exoneran los Estados-Unidos á la República mexicana de todas las reclamaciones de ciudadanos de los Estados-Unidos no decididas aun contra el Gobierno mexicano, y que puedan haberse originado antes de la fecha de la firma del presente Tratado. Esta exoneracion es definitiva y perpetua, bien sea que las dichas reclamaciones se admitan, bien sea que se desechen por el tribunal

¹ Documents 89 and 100.

for in the following Article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding Article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of Dollars. To ascertain the validity and amount of those claims, a Board of Commissioners shall be established by the Government of the United States, whose awards shall be final and conclusive: provided that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth Articles¹ of the unratified convention, concluded at the City of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favour of any claim not embraced by these principles and rules.

If, in the opinion of the said Board of Commissioners, or of the claimants, any books, records or

de Comisarios de que habla el artículo siguiente, y cualquiera que pueda ser el monto total de las que queden admitidas.

ARTÍCULO XV.

Los Estados-Unidos exonerando á México de toda responsabilidad por las reclamaciones de sus ciudadanos mencionadas en el artículo precedente, y considerándolas completamente canceladas para siempre, sea cual fuere su monto, toman á su cargo satisfacerlas hasta una cantidad que no exceda de tres millones doscientos cincuenta mil pesos. Para fijar el monto y validez de estas reclamaciones, se establecerá por el Gobierno de los Estados-Unidos un Tribunal de Comisarios, cuyos fallos serán definitivos y concluyentes, con tal que al decidir sobre la validez de dichas reclamaciones, el tribunal se haya guiado y gobernado por los principios y reglas de decision establecidos en los artículos¹ primero y quinto de la convencion, no ratificada, que se ajustó en la ciudad de México el veinte de Noviembre de mil ochocientos cuarenta y tres: y en ningun caso se dará fallo en favor de ninguna reclamacion que no esté comprendida en las reglas y principios indicados.

Si en juicio del dicho tribunal de Comisarios, ó en el de los reclamantes se necesitáre para la

¹ For the text of those articles, see the editorial notes.

documents in the possession or power of the Government of the Mexican Republic, shall be deemed necessary to the just decision of any claim, the Commissioners or the claimants, through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records or documents, so specified, which shall be in their possession or power, (or authenticated Copies or extracts of the same) to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said Board of Commissioners: provided that no such application shall be made, by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within it's territory, it may judge proper so to fortify, for it's security.

justa decision de cualquier reclamacion algunos libros, papeles de archivo ó documentos que posea el Gobierno mexicano, ó que estén en su poder; los Comisarios, ó los reclamantes por conducto de ellos, los pedirán por escrito (dentro del plazo que designe el Congreso) dirigiéndose al Ministro mexicano de Relaciones exteriores, á quien transmitirá las peticiones de esta clase el Secretario de Estado de los Estados-Unidos: y el Gobierno mexicano se compromete á entregar á la mayor brevedad posible, despues de recibida cada demanda, los libros, papeles de archivo ó documentos, así especificados, que posea ó estén en su poder, ó copias ó extractos auténticos de los mismos, con el objeto de que sean transmitidos al Secretario de Estado, quien los pasará inmediatamente al expresado Tribunal de Comisarios. Y no se hará peticion alguna de los enunciados libros, papeles ó documentos, por ó á instancia de ningun reclamante, sin que antes se haya aseverado bajo juramento ó con afirmacion solemne la verdad de los hechos que con ellos se pretende probar.

ARTÍCULO XVI.

Cada una de las dos Repúblicas se reserva la completa facultad de fortificar todos los puntos que para su seguridad estime convenientes en su propio territorio.

ARTICLE XVII.

The Treaty¹ of Amity, Commerce and Navigation, concluded at the city of Mexico on the fifth day of April A.D. 1831, between the United States of America and the United Mexican States, except the additional Article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops, previous to the final evacuation thereof, although subsequently to the restoration of the Custom Houses at such ports, shall be entirely exempt from duties and charges of any kind: the Government of the United States hereby engaging and pledging its faith to establish, and

¹ Document 70.

ARTÍCULO XVII.

El Tratado¹ de Amistad, Comercio y Navegacion concluido en la ciudad de Mexico el cinco de Abril del año del Señor 1831, entre la República mexicana y los Estados-Unidos de América, exceptuandose el artículo adicional y cuanto pueda haber en sus estipulaciones incompatible con alguna de las contenidas en el presente Tratado, queda restablecido por el periodo de ocho años desde el dia del cange de las ratificaciones del mismo presente Tratado, con igual fuerza y valor que si estuviese inserto en él; debiendo entenderse que cada una de las partes contratantes se reserva el derecho de poner término al dicho Tratado de Comercio y Navegacion en cualquier tiempo luego que haya expirado el periodo de los ocho años, comunicando su intencion á la otra parte con un año de anticipacion.

ARTÍCULO XVIII.

No se exigirán derechos ni gravámen de ninguna clase á los artículos todos que lleguen para las tropas de los Estados-Unidos á los puertos mexicanos ócupados por ellas, antes de la evacuacion final de los mismos puertos y despues de la devolucion á México de las Aduanas situadas en ellos. El Gobierno de los Estados-Unidos se compromete á la vez, y sobre esto empeña su fé, á

vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles, other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican Authorities at the respective ports, any attempts at a fraudulent abuse of this stipulation, which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto: and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

With respect to all merchandise, effects and property whatsoever, imported into ports of Mexico whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

establecer y mantener con vigilancia quantos guardas sean posibles para asegurar las rentas de México, precaviendo la importacion, á la sombra de esta estipulacion, de cualesquiera artículos que realmente no sean necesarios, ó que excedan en cantidad de los que se necesiten para el uso y consumo de las fuerzas de los Estados-Unidos mientras ellas permanezcan en México. A este efecto todos los oficiales y agentes de los Estados-Unidos tendrán obligacion de denunciar á las autoridades mexicanas en los mismos puertos qualquier conato de fraudulento abuso de esta estipulacion que pudiéren conocer ó tuvieren motivo de sospechar; así como de impartir á las mismas autoridades todo el auxilio que pudiéren con este objeto. Y cualquier conato de esa clase, que fuére legalmente probado, y declarado por sentencia de tribunal competente, será castigado con el comiso de la cosa que se haya intentado introducir fraudulentamente,

ARTÍCULO XIX.

Respecto de los efectos, mercancías y propiedades importados en los puertos mexicanos durante el tiempo que han estado ocupados por las fuerzas de los Estados-Unidos, sea por ciudadanos de cualquiera de las dos Repúblicas, sea por ciudadanos ó subditos de alguna nacion neutral, se observarán las reglas siguientes:

I. All such merchandise, effects and property, if imported previously to the restoration of the Custom Houses to the Mexican Authorities, as stipulated for in the third Article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

II. The same perfect exemption shall be enjoyed by all such merchandise, effects and property, imported subsequently to the restoration of the Custom Houses, and previously to the sixty days fixed in the following Article for the coming into force of the Mexican tariff at such ports respectively: the said merchandise, effects and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following Article.

III. All merchandise, effects and property described in the two rules foregoing, shall, during their continuance at the place of importation, or upon their leaving such place for the interior, be exempt from all duty, tax or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

IV. All merchandise, effects and property, described in the first and second rules, which shall have been removed to any place in the

I. Los dichos efectos, mercancías y propiedades siempre que se hayan importado antes de la devolución de las Aduanas á las autoridades mexicanas conforme á lo estipulado en el artículo tercero de este Tratado, quedarán libres de la pena de comiso aun cuando sean de los prohibidos en el arancel mexicano.

II. La misma exencion gozarán los efectos, mercancías y propiedades que lleguen á los puertos mexicanos, despues de la devolución á México de las Aduanas marítimas y antes de que expireñ los sesenta dias que van á fijarse en el artículo siguiente para que empieze á regir el arancel mexicano en los puertos; debiendo al tiempo de su importacion sujetarse los tales efectos, mercancías y propiedades, en cuanto al pago de derechos, á lo que en el indicado siguiente artículo se establece.

III. Los efectos, mercancías y propiedades designados en las dos reglas anteriores quedarán exentos de todo derecho, alcabála ó impuesto, sea bajo el título de internacion, sea bajo cualquiera otro, mientras permanezcan en los puntos donde se hayan importado, y á su salida para el interior; y en los mismos puntos no podrá jamás exigirse impuesto alguno sobre su venta.

IV. Los efectos, mercancías y propiedades designados en las reglas primera y segunda que hayan sido internados á cualquier

interior, whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

V. But if any merchandise, effects or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties, which, under the Mexican laws, they would be required to pay in such cases, if they had been imported in time of peace through the Maritime Custom Houses, and had there paid the duties conformably with the Mexican tariff.

VI. The owners of all merchandise, effects or property, described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost or contribution whatever.

With respect to the metals, or other property exported from any Mexican port, whilst in the occupation of the forces of the United States, and previously to the restoration of the Custom House at such port, no person shall be required by the Mexican Authorities,

lugar ocupado por fuerzas de los Estados-Unidos, quedarán exentos de todo derecho sobre su venta ó consumo, y de todo impuesto ó contribucion bajo cualquier título ó denominacion, mientras permanezcan en el mismo lugar.

V. Mas si algunos efectos, mercancías ó propiedades de los designados en las reglas primera y segunda se trasladáren á algun lugar no ocupado á la sazón por las fuerzas de los Estados-Unidos; al introducirse á tal lugar, ó al venderse ó consumirse en él, quedarán sujetos á los mismos derechos que bajo las leyes mexicanas deberian pagar en tales casos si se hubiéran importado en tiempo de paz por las Aduanas marítimas, y hubiesen pagado en ellas los derechos que establece el arancel mexicano.

VI. Los dueños de efectos, mercancías y propiedades designados en las reglas primera y segunda, y existentes en algun puerto de México, tienen derecho de reembargarlos, sin que pueda exigírseles ninguna clase de impuesto, alcabála ó contribucion.

Respecto de los metales y de toda otra propiedad exportados por cualquier puerto mexicano durante su ocupacion por las fuerzas Americanas y antes de la devolucion de su Aduana al Gobierno mexicano, no se exigirá á ninguna persona por las autoridades

whether General or State, to pay any tax, duty or contribution upon any such exportation, or in any manner to account for the same to the said Authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the Custom Houses, conformably with the stipulation in the third Article, in such case, all merchandise, effects and property whatsoever, arriving at the Mexican ports after the restoration of the said Custom Houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such Custom Houses, at the time of the restoration of the same. And to all such merchandise, effects and property, the rules established by the preceding Article shall apply.

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the Governments of the two Republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to

de Mexico, ya dependan del Gobierno general, ya de algun Estado que pague ningun impuesto, alcabála ó derecho por la indicada exportacion, ni sobre ella podrá exigírsele por las dichas autoridades cuenta alguna.

ARTÍCULO XX.

Por consideracion á los intereses del comercio de todas las naciones queda convenido que si pasáren menos de sesenta dias desde la fecha de la firma de este Tratado hasta que se haga la devolucion de las Aduanas marítimas, segun lo estipulado en el artículo tercero; todos los efectos, mercancías y propiedades que lleguen á los puertos mexicanos desde el dia en que se verifique la devolucion de las dichas Aduanas hasta que se completen sesenta dias contados desde la fecha de la firma del presente Tratado, se admitirán no pagando otros derechos que los establecidos en la tarifa que esté vigente en las expresadas Aduanas al tiempo de su devolucion, y se extenderán á dichos efectos, mercancías y propiedades las mismas reglas establecidas en el artículo anterior.

ARTÍCULO XXI.

Si desgraciadamente en el tiempo futuro se suscitáre algun punto de desacuerdo entre los Gobiernos de las dos Repúblicas, bien sea sobre la intelijencia de alguna estipulacion de este Tratado, bien

any other particular concerning the political or commercial relations of the two Nations, the said Governments, in the name of those Nations, do promise to each other, that they will endeavour in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship, in which the two countries are now placing themselves: using, for this end, mutual representations and pacific negotiations. And, if by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression or hostility of any kind, by the one Republic against the other, until the Government of that which deems itself aggrieved, shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of Commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two Republics, they do

sobre cualquiera otra materia de las relaciones políticas ó comerciales de las dos Naciones, los mismos Gobiernos á nombre de ellas se comprometen á procurar de la manera mas sincera y empeñosa allanar las diferencias que se presenten y conservar el estado de paz y amistad en que ahora se ponen los dos payses, usando al efecto de representaciones mútuas y de negociaciones pacíficas. Y si por estos medios no se logrará todavía ponerse de acuerdo, no por eso se apelará á represalia, agresion ni hostilidad de ningun género de una República contra otra hasta que el Gobierno de la que se crea agraviada haya considerado maduramente y en espíritu de paz y buena vecindad si no seria mejor que la diferencia se terminára por un arbitramento de Comisarios nombrados por ambas partes, ó de una nacion amiga. Y si tal medio fuere propuesto por cualquiera de las dos partes, la otra accederá á él, á no ser que lo juzgue absolutamente incompatible con la naturaleza y circunstancias del caso.

ARTÍCULO XXII.

Si (lo que no es de esperarse, y Dios no permita) desgraciadamente se suscitáre guerra entre las dos Republicas, estas para el

now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules: absolutely, where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible.

I. The merchants of either Republic, then residing in the other, shall be allowed to remain twelve months (for those dwelling in the interior) and six months (for those dwelling at the sea-ports) to collect their debts and settle their affairs; during which periods, they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects, without molestation or hindrance: conforming therein to the same laws, which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artizans, manufacturers and fishermen, unarmed and inhabiting unfortified towns, villages or places, and in general all persons whose occupations are

caso de tal calamidad se comprometen ahora solemnemente, ante sí mismas y ante el mundo á observar las reglas siguientes de una manera absoluta si la naturaleza del objeto á que se contraen, lo permite; y tan exstrictamente como sea dable en todos los casos en que la absoluta observancia de ellas fuére imposible.

I. Los comerciantes de cada una de las dos Repúblicas que á la sazón residan en territorio de la otra, podrán permanecer doce meses los que residan en el interior, y seis meses los que residan en los puertos para recoger sus deudas y arreglar sus negocios; durante estos plazos disfrutarán la misma protección y estarán sobre el mismo pié en todos respectos, que los ciudadanos ó súbditos de las naciones mas amigas; y al expirar el término, ó antes de él, tendrán completa libertad para salir y llevar todos sus efectos sin molestia ó embarazo, sujetándose en este particular á las mismas leyes á que estén sujetos y deban arreglarse los ciudadanos ó súbditos de las naciones mas amigas. Cuando los ejércitos de una de las dos naciones entren en territorios de la otra, las mujeres y niños, los eclesiásticos, los estudiantes de cualquier facultad, los labradores, comerciantes, artesanos, manufactureros, y pescadores que estén desarmados y residan en ciudades, pueblos ó lugares no fortificados, y en general todas

for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed: nor their cattle taken, nor, their fields wasted, by the armed force; into whose power, by the events of war, they may happen to fall; but if the necessity arise to take any thing from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

II. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers

las personas cuya ocupacion sirva para la comun subsistencia y beneficio del género humano, podrán continuar en sus ejercicios sin que sus personas sean molestadas. No serán incendiadas sus casas ó bienes, ó destruidos de otra manera; ni serán tomados sus ganados, ni devastados sus campos por la fuerza armada en cuyo poder puedan venir á caer por los acontecimientos de la guerra; pero si hubiere necesidad de tomarlos alguna cosa para el uso de la misma fuerza armada, se les pagará lo tomado á un precio justo. Todas las iglesias, hospitales, escuelas, colegios, librerías y demas establecimientos de caridad y beneficencia serán respetados; y todas las personas que dependan de los mismos, serán protegidas en el desempeño de sus deberes y en la continuacion de sus profesiones.

II. Para aliviar la suerte de los prisioneros de guerra, se evitarán cuidadosamente las prácticas de enviarlos á distritos distantes, inclementes ó malsanos, ó de aglomerarlos en lugares estrechos y enfermizos. No se confinarán en calabozos, prisiones ni pontones; no se les aherrójará, ni se les atará, ni se les impedirá de ningún otro modo el uso de sus miembros. Los oficiales quedarán en libertad bajo su palabra de honor, dentro de distritos convenientes, y tendrán alojamientos cómodos; y los soldados rasos se colocarán en

shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for it's own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner shall forfeit so much of the benefit of this Article as provides for his liberty on parole or in cantonment. And if an officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles as are allowed either in kind or by commutation, to officers of equal rank in it's own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in it's own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such ac-

acantonamientos bastante despejados y extensos para la ventilacion y el ejercicio, y se alojarán en cuarteles tan amplos y cómodos como los que use para sus propias tropas la parte que los tenga en su poder. Pero si algun oficial faltare á su palabra saliendo del distrito que se le ha señalado; ó algun otro prisionero se fugare de los límites de su acantonamiento despues que estos se les hayan fijado, tal oficial ó prisionero perderá el beneficio del presente artículo por lo que mira á su libertad bajo su palabra ó en acantonamiento. Y si algun oficial faltando así á su palabra, ó algun soldado raso saliendo de los límites que se le han asignado fuere encontrado despues con las armas en la mano antes de ser debidamente cangeado, tal persona en esta actitud ofensiva será tratada conforme á las leyes comunes de la guerra. A los oficiales se proveerá diariamente por la parte en cuyo poder estén, de tantas raciones compuestas de los mismos artículos como las que gozan en especie ó en equivalente los oficiales de la misma graduacion en su propio ejército: á todos los demas prisioneros se proveerá diariamente de una racion semejante á la que se ministra al soldado raso en su propio servicio: el valor de todas estas suminstraciones se pagará por la otra parte al concluirse la guerra, ó en los periodos que se convengan entre sus respectivos comandantes, precediendo

counts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a Commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which Commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this Article. On the contrary the state of war is precisely that for which it is provided; and during which it's stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII.

This Treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate

una mútua liquidacion de las cuentas que se lleven del mantenimiento de prisioneros: tales cuentas no se mezclarán ni compensarán con otras; ni el saldo que resulte de ellas, se reusará bajo pretesto de compensacion ó represalia por cualquiera causa real ó figurada. Cada una de las partes podrá mantener un Comisario de prisioneros nombrado por ella misma en cada acantonamiento de los prisioneros que esten en poder de la otra parte: este Comisario visitará á los prisioneros siempre que quiera; tendrá facultad de recibir, libres de todo derecho ó impuesto, y de distribuir todos los auxilios que pueden enviarles sus amigos, y libremente transmitir sus partes en cartas abiertas á la autoridad por la cual está empleado.

Y se declara que ni el pretesto de que la guerra destruye los tratados, ni otro alguno, sea el que fuere, se considerará que anula ó suspende el pacto solemne contenido en este artículo. Por el contrario el estado de guerra es cabalmente el que se ha tenido presente al ajustarlo, y durante el cual sus estipulaciones se han de observar tan santamente como las obligaciones mas reconocidas de la ley natural ó de gentes.

ARTÍCULO XXIII.

Este Tratado será ratificado por el Presidente de la República mexicana, previa la aprobacion de su Congreso General; y por el Pre-

thereof; and by the President of the Mexican Republic, with the previous approbation of it's General Congress: and the ratifications shall be exchanged in the city of Washington or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty of Peace, Friendship, Limits and Settlement, and have hereunto affixed our seals respectively. Done in Quintuplicate at the city of Guadalupe Hidalgo on the second day of February in the Year of Our Lord one thousand eight hundred and forty-eight.

N. P. TRIST. [Seal]
 LUIS G. CUEVAS [Seal]
 BERNARDO COUTO [Seal]
 MIG^l ATRISTAIN [Seal]

sidente de los Estados- Unidos de América con el consejo y consentimiento del Senado; y las ratificaciones se cangearán en la ciudad de Washington ó donde estuviere el gobierno Mexicano á los cuatro meses de la fecha de la firma del mismo Tratado, ó antes si fuere posible.

En fé de lo cual, nosotros los respectivos Plenipotenciarios hemos firmado y sellado por quintuplicado este Tratado de Paz, Amistad, Límites y Arreglo definitivo; en la ciudad de Guadalupe Hidalgo el dia dos de Febrero del año de Nuestro Señor mil ochocientos cuarenta y ocho.

BERNARDO COUTO [Seal]
 MIG^l ATRISTAIN [Seal]
 LUIS G. CUEVAS [Seal]
 N. P. TRIST. [Seal]

NOTES

The Treaty of Guadalupe Hidalgo, as signed, comprised four papers; these are the treaty proper, the additional and secret article, the authenticated Disturnell Map, and the authenticated Plano del Puerto de S. Diego (see Article 5 of the treaty). The additional and secret article was not ratified on either part and did not go into force.

In the final clause of the treaty proper and also in the final clause of the additional and secret article are the words, "Done in Quintuplicate". It seems that three of the five examples were for the Government of the United States and two for the Government of Mexico.

In the treaty file there are two originals of each of those two papers, the treaty proper and the additional and secret article. One original of each instrument is embodied in the original proclamation of July 4, 1848, to which is attached the duplicate United States instrument of ratification of March 16, 1848, to which is in turn attached the attested Senate resolution of the previous March 10. The other original of the treaty proper and the other original of the additional

Escala de 5, millas marítimas.

Mision de S. Diego

PLANO
del Puerto
DE S. DIEGO
EN LA COSTA SETENT. DE CALIFORN.
Levantado por el 2.º Piloto de la
Armada D. Juan Pantoja.
Año 1782.



Boundary Line

Línea Divisoria

This is the Plan of the Post of San Diego, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals; at Guadalupe Hidalgo, this second day of February, one thousand eight hundred and forty-eight.

A. P. Trist.



Este es el plan del Puerto de San Diego, a que se refiere el artículo quinto del tratado de paz, amistad, límites y arreglo definitivo entre la República mexicana y los Estados Unidos de América, firmado en este día. Y para que conste, lo firmamos y sellamos en la Ciudad de Guadalupe Hidalgo el día de febrero de mil ochocientos cuarenta y ocho.

Bernardo Couzo

Mig. A. Estrada
Luis J. Cuevas

and secret article are separate papers in the treaty file. In each of these instruments the English version is written in the left of the two columns.

There are also originals of each instrument, the treaty proper and the additional and secret article, in the Trist Papers in the Library of Congress; these are described below.

The Disturnell Map and the Plan of the Port of San Diego were, it seems, signed and sealed by the respective Plenipotentiaries in duplicate only; the treaty file contains one original example of the map and one of the plan.

The other papers in the treaty file now to be mentioned are the original instrument of ratification on the part of Mexico of May 30, 1848 (more particularly described below); the act of exchange of ratifications of the same date at Querétaro, which is in customary form, written in the two languages, the English on the left pages; and two originals of the protocol of May 26, 1848. The last-mentioned instrument is also written in English and Spanish, the former in the left columns; it is stated in its text that it was signed and sealed in quintuplicate. The protocol is printed and discussed below.

THE PRINTED TEXT

Following the headnote is printed the text of the treaty proper, in English and Spanish; the text so printed is not, however, as to five of the twenty-two articles which remained¹ in the treaty, the text as signed, but the text as amended. The changes made pursuant to the Senate resolution of advice and consent are set forth in the respective instruments of ratification and are incorporated in the printed text. Accordingly, while the print here has been collated primarily with one of the two signed originals in the treaty file, the collating has, of necessity, taken into account the changes made in Articles 3, 9, 11, 12, and 23, which are described in detail below, under the heading "The Senate Amendments".

The signed original of the treaty proper which has been used for the collating is that which is a separate paper in the treaty file (called generally hereinafter, the "first" original), and not that which is embodied in the original proclamation (the "second" original). There is more than one reason for the choice made. It was the first original which was received at Washington on February 19, 1848, and which was sent to the Senate with the presidential message of February 22. The second original did not reach the Department of State until February 28. The Spanish version of the first original is, on the whole, the more correct of the two. The second original, however, and not the first, was the source for the text of this treaty printed in 9 and 18 Statutes at Large and in United States treaty collections generally.

As between the two originals of the treaty proper, the variances in matters of capitalization, spelling, abbreviation, accents, etc.,

¹ The signed treaty contained twenty-three articles; one of these, Article 10, was deleted.

need not be considered. Those of punctuation, mostly commas omitted or inserted, are fairly numerous, some forty-six in the English version and fifty-two in the Spanish; but none appears to present any arguable point of construction. In the English version two variances of wording have been noticed: after "place of importation", in Article 19, rule 3, the first original has "or" and the second "and"; in Article 22, rule 2, the fifth sentence begins "And if an officer" in the first original and "And if any officer" in the second. The variances of wording in the Spanish version are listed¹ in the following table, the second column of which gives the wording as here printed and the third column that of the second original:

Article or clause	First original	Second original
Art. 5, par. 1-----	al tal brazo, y de allí en una línea recta al mismo brazo): continuará	al tal brazo): continuará
Art. 11, par. 4-----	que ocupaban antes-----	que habitaban antes
Art. 15, par. 2-----	documentos, así especificados, que	documentos que
Art. 21-----	juzgue absolutamente incompatible	juzgue incompatible
Art. 22, rule 1-----	comerciantes, artesanos, manufactureros	comerciantes, manufactureros
Art. 22, rule 2-----	prisioneros: tales----- y libremente transmitir-----	prisioneros: y tales y podrá libremente transmitir

The first original, with which the text above printed has been collated, has the four seals of the Plenipotentiaries not only opposite the respective signatures in each column, but also arranged in a line across the foot of the same page, holding a ribbon which at one time, no doubt, bound the sheets of the instrument together.

Following the printed text of the treaty proper (facing p. 236) is a reproduction of the Plan of the Port of San Diego mentioned in Article 5 of the treaty, of the size of the original. That original is now imperfect in its lower right-hand corner; the seals of the Mexican Plenipotentiaries are lacking; and as the writing of the signed certificate is not entirely clear, it is printed here:

This is the Plan of the Port of San Diego, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals, at Guadalupe Hidalgo, this second day of February, one thousand eight hundred and forty-eight.

N P TRIST. [Seal]

Este es el plan del Puerto de San Diego, á que se refiere el artículo quinto del tratado de paz, amistad, límites y arreglo definitivo entre la República mejicana y los Estados Unidos de América, firmado en este día. Y para que conste, lo firmamos y sellamos en la Ciudad de Guadalupe Hidalgo el dos de Febrero de mil ochocientos cuarenta y ocho.

BERNARDO COUTO
MIG¹ ATRISTAIN
LUIS G. CUEVAS

¹ Except one in a deleted paragraph of Article 12, noticed hereafter.

It is also stated in Article 5 of the treaty that there was signed and sealed by the Plenipotentiaries and added to the treaty a copy of a map of the United Mexican States (los Estados-Unidos de México) wherein were laid down the "southern and western limits of New Mexico, mentioned in this Article". Attached to the treaty copy by a ribbon running under the seals is the following certificate:

This is the Map referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals, at Guadalupe Hidalgo, this second day of February one thousand eight hundred and forty-eight.

N. P. TRIST. [Seal]

Este es el mapa á que se refiere el artículo quinto del tratado de paz, amistad, límites y arreglo definitivo entre la República mejicana y los Estados Unidos de América, firmado en este día. Y para que conste lo firmamos y sellamos en Guadalupe Hidalgo el dos de Febrero de mil ochocientos cuarenta y ocho.

BERNARDO COUTO [Seal]

MIG^l ATRISTAIN [Seal]

LUIS G CUEVAS [Seal]

A facsimile reproduction of the Disturnell Map that was added to the United States original of the treaty will be found in a pocket inside the back cover of this volume. This reproduction, in the original size, is made by photolithography, matching the colors of the treaty map in its present state as closely as possible. The original tone of the paper itself, as changed by the lapse of time, but without color, is represented on the facsimile by a light buff overprint that covers the entire area of the treaty map, the limits of which may thus be seen outside the printed map margin; absence of this tint within the facsimile, in places where the paper remains white, is due to the loss of those portions of the treaty map, chiefly on account of earlier folding thereof. The treaty map, since the facsimile was made, has been remounted and crepelled (1936) and is now filed flat.

No express reference either to the Plan of the Port of San Diego or to the Disturnell Map is made in either instrument of ratification, in the act of exchange of ratifications, or in the proclamation.

THE THIRD ORIGINALS

It has been mentioned that there are originals of the treaty proper and of the additional and secret article, signed and sealed by the Plenipotentiaries, in the Trist Papers in the Library of Congress (29 : 61340-66); photostats thereof are in the treaty file; for convenience they are herein called "third" originals. The Trist papers include no example of the Disturnell Map or of the Plan of the Port of San Diego.

As in the first and second originals of each instrument, the text of the third originals is written in parallel columns, the English version at the left; and the text is wholly in the hand of Edward Thornton, then of the staff of the British Minister to Mexico and later Sir Edward Thornton, Minister at Washington from 1868 to 1881.

Aside from matters of capitalization, spelling, abbreviation, accents, etc., and an occasional singular for a plural, or vice versa, the vari-

ances between the first original of the treaty proper as signed and the third original thereof are mostly in punctuation, chiefly commas omitted or inserted. There are some 35 variances of punctuation in the English version and 117 in the Spanish; but none of them appears to be at all material. No variances of wording have been noticed in the English version; those in the Spanish are listed in the following table, the second column of which gives the wording here printed¹ and the third column that of the third original:

Article or clause	First original	Third original
Preamble.....	nombrado á este efecto sus respectivos Plenipotenciarios	nombrado Plenipotenciarios
Art. 2.....	el General en Gefe.....	el Gefe
Art. 3, par. 1.....	y que no distarán.....	y no distarán
Art. 4, par. 4.....	brevedad posible despues.....	brevedad despues
Art. 5, par. 1.....	luego hácia occidente por todo.....	luego por todo
Art. 6, par. 2.....	de ambos paises.....	de los habitantes de los dos paises
Art. 7, par. 1.....	alguna de sus riberas.....	alguna de las riberas
Art. 8, par. 1.....	permanecer en donde.....	permanecer donde
Art. 9, par. 3.....	señalados por el presente Tratado á la República	señalados á la República
Art. 10, par. 1.....	territorios que pertenecieron.....	territorios que pertenecian
	señalados en aquellas.....	señalados á aquellas
Art. 10, par. 2.....	obligatorias para el Estado.....	obligatorias al estado
Art. 12, par. 2.....	nuevo plazo que.....	nuevo periodo que
Art. 15, par. 2.....	El capital de.....	El capital del
	documentos, así especificados, que	documentos que
Art. 21.....	juzgue absolutamente incompatible	juzgue incompatible
Art. 22, rule 1.....	comerciantes, artesanos, manufactureros	comerciantes, manufactureros
Art. 22, rule 2.....	prisioneros: tales.....	prisioneros: y tales
	y libremente transmitir.....	y podrá libremente transmitir

The text of the additional and secret article is printed later in these notes, collated with the first original. There are variances between the first and third originals of that article in matters of capitalization, punctuation, spelling, and accents; and there is one trifling difference of wording in the English version; the first original has "at" and the third "in" preceding "the city of Guadalupe Hidalgo" in the testimonium clause. Only one other difference is worthy of mention; the punctuation of the Spanish version in the third original gives a reading closer to the English than that of the first original, by having a comma instead of a semicolon after "veinte y tres", and thereafter a semicolon in lieu of a comma, following "mexicana".

¹ The comparison is between the two instruments as signed; so the context of the variances listed in Articles 9, 10, and 12 appears only in the text thereof printed in these editorial notes.

THE SENATE AMENDMENTS

By the amendments of the Senate resolution of advice and consent of March 10, 1848 (Executive Journal, VII, 337-38, 340), the articles of the treaty proper as signed were proposed to be altered in various respects; the text so amended was that which went into force, as the Senate amendments were accepted by the Government of Mexico; it is that definitive text which follows the headnote.

In the opening lines of Article 3 there were inserted in the first parenthesis the words "and the ratifications exchanged" ("y cangeadas las ratificaciones") following "Mexican Republic" ("República mexicana"). The effect of the amendment was to make the exchange of ratifications (and not merely ratification by the two Governments) a condition precedent to the giving of orders for the raising of the blockade and the commencement of evacuation; in the event, both the ratification on the part of Mexico and the exchange took place on the same day, May 30, 1848.

For Article 9, the Senate amendment was a new text, adapted from Article 3 of the Treaty for the Cession of Louisiana (Document 28), which, indeed, was the basis of the first paragraph of the article as originally written; as signed, Article 9 read thus (collated with the first original):

ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding Article, shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens of the United States. In the mean time, they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws. With respect to political rights, their condition shall be on an equality with that of the inhabitants of the other territories of the United States; and at least equally good as that of the inhabitants of Louisiana and the Floridas, when these provinces, by transfer from the French Republic and the Crown of Spain, became territories of the United States.

The same most ample guaranty shall be enjoyed by all ecclesiastics and religious corporations or communities, as well in the discharge of the offices of their ministry, as in the enjoyment of their property of every kind, whether individual or corporate. This guaranty

ARTÍCULO IX.

Los mexicanos que en los territorios antedichos no conserven el carácter de ciudadanos de la República mexicana según lo estipulado en el precedente artículo, serán incorporados en la Union de los Estados-Unidos y se admitirán lo mas pronto posible conforme á los principios de su constitucion federal al goze de la plenitud de derechos de ciudadanos de dichos Estados-Unidos. En el entretanto serán mantenidos y protegidos en el goze de su libertad, de su propiedad y de los derechos civiles que hoy tienen según las leyes mexicanas. En lo respectivo á derechos políticos su condicion será igual á la de los habitantes de los otros territorios de los Estados-Unidos, y tan buena á lo menos, como la de los habitantes de la Luisiana y las Floridas, cuando estas Provincias por las cesiones que de ellas hicieron la República francesa y la Corona de España pasaron á ser territorios de la Union Norte-Americana.

Disfrutarán igualmente la mas amplia garantia todos los eclesiásticos, corporaciones y comunidades religiosas tanto en el desempeño de las funciones de su ministerio, como en el goze de su propiedad de todo género, bien pertenezca esta á las personas en particu-

shall embrace all temples, houses and edifices dedicated to the Roman Catholic worship; as well as all property destined to it's support, or to that of schools, hospitals and other foundations for charitable or beneficent purposes. No property of this nature shall be considered as having become the property of the American Government, or as subject to be, by it, disposed of or diverted to other uses.

Finally, the relations and communication between the Catholics living in the territories aforesaid, and their respective ecclesiastical authorities, shall be open, free and exempt from all hindrance whatever, even although such authorities should reside within the limits of the Mexican Republic, as defined by this treaty; and this freedom shall continue, so long as a new demarcation of ecclesiastical districts shall not have been made, conformably with the laws of the Roman Catholic Church.

Article 10, as signed, was wholly stricken from the treaty, without substitution of new matter; it read as follows (collated with the first original):

ARTICLE X.

All grants of land made by the Mexican Government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid, if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty: in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this Article.

lar, bien á las corporaciones. La dicha garantia se extenderá á todos los templos, casas y edificios dedicados al culto católico-romano, así como á los bienes destinados á su mantenimiento y al de las escuelas, hospitales y demás fundaciones de caridad y beneficencia. Ninguna propiedad de esta clase se considerará que ha pasado á ser propiedad del Gobierno Americano ó que puede este disponer de ella ó destinarla á otros usos.

Finalmente las relaciones y comunicacion de los católicos existentes en los predichos territorios, con sus respectivas autoridades eclesiásticas serán francas, libres y sin embarazo alguno, aun cuando las dichas autoridades tengan su residencia dentro de los límites que quedan señalados por el presente Tratado á la República mexicana, mientras no se haga una nueva demarcacion de distritos eclesiásticos, con arreglo á las leyes de la Iglesia católica-romana.

ARTÍCULO X.

Todas las concesiones de tierra hechas por el Gobierno mexicano, ó por las autoridades competentes en territorios que pertenecieron antes á Mexico y quedan para lo futuro dentro de los límites de los Estados-Unidos, serán respetadas como válidas, con la misma extension con que lo serian si los indicados territorios permanecieran dentro de los límites de México. Pero los concesionarios de tierras en Tejas, que hubieren tomado posesion de ellas, y que por razon de las circunstancias del pays desde que comenzaron las desavenencias entre el Gobierno mexicano y Tejas, hayan estado impedidos de llenar todas las condiciones de sus concesiones, tendrán la obligacion de cumplir las mismas condiciones, dentro de los plazos señalados en aquellas respectivamente, pero contados ahora desde la fecha del cange de las ratificaciones de este Tratado; por falta de lo qual las mismas concesiones no serán obligatorias para el Estado de Tejas en virtud de las estipulaciones contenidas en este artículo.

The foregoing stipulation in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfilment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void.

The Mexican Government declares that no grant whatever of lands in Texas has been made since the second day of March one thousand eight hundred and thirty six; and that no grant whatever of lands in any of the territories aforesaid has been made since the thirteenth day of May one thousand eight hundred and forty-six.

From the second paragraph of Article 11, these concluding words (which followed a semicolon) were stricken: "nor to provide such Indians with fire-arms or ammunition by sale or otherwise" (in the Spanish version, "ni en fin venderles ó ministrarles bajo cualquier título armas de fuego ó municiones").

The deletions from Article 12 by the Senate amendments will be seen from the following text, which is that of the article as signed, with the stricken clauses in italics and bracketed (collated with the first original):

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth Article of the present Treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen Millions of Dollars, *in the one or the other of the two modes below specified. The Mexican Government shall, at the time of ratifying this treaty, declare which of these two modes of payment it prefers; and the mode so elected by it shall be conformed to by that of the United States.*

[First mode of payment: Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three Millions of Dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. For the remaining twelve millions of dollars, the United States shall create a stock, bearing an interest

La anterior estipulacion respecto de los concesionarios de tierras en Tejas, se extiende á todos los concesionarios de tierras en los indicados territorios fuera de Tejas, que hubieren tomado posesion de dichas concesiones; y por falta de cumplimiento de las condiciones de alguna de aquellas dentro del nuevo plazo que empieza á correr el dia del cange de las ratificaciones del presente Tratado, segun lo estipulado arriba, serán las mismas concesiones nulas y de ningun valor.

El Gobierno mexicano declara que no se ha hecho ninguna concesion de tierras en Tejas desde el dia dos de Marzo de mil ochocientos treinta y seis; y que tampoco se ha hecho ninguna en los otros territorios mencionados despues del trece de Mayo de mil ochocientos cuarenta y seis.

ARTÍCULO XII.

En consideracion á la estension que adquieren los límites de los Estados Unidos, segun quedan descritos en el artículo quinto del presente Tratado, el Gobierno de los mismos Estados Unidos se compromete á pagar al de la Republica mexicana la suma de quince millones de pesos, *de una de las dos maneras de pago prefiere; y á la que así elija, se arreglará el Gobierno de los Estados Unidos al verificar el pago.*

[Primera manera de pago.—Inmediatamente despues que este Tratado haya sido ratificado por el Gobierno de la Republica mexicana, se entregará al mismo Gobierno por el de los Estados Unidos en la ciudad de Mexico, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Por los doce millones de pesos restantes los Estados Unidos crearán un fondo

of six per centum per annum, commencing on the day of the ratification of this Treaty by the Government of the Mexican Republic, and payable annually at the city of Washington: the principal of said stock to be redeemable there, at the pleasure of the Government of the United States, at any time after two years from the exchange of ratifications of this treaty; six months public notice of the intention to redeem the same being previously given. Certificates of such stock, in proper form, for such sums as shall be specified by the Mexican Government, and transferable by the said Government, shall be delivered to the same by that of the United States.

Second mode of payment:] Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions, from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid. [Certificates in proper form, for the said instalments respectively, in such sums as shall be desired by the Mexican Government, and transferable by it, shall be delivered to the said Government by that of the United States.]

público que gozará rédito de seis por ciento al año, el cual rédito ha de comenzar á correr el día que se ratifique el presente Tratado por el Gobierno de la República mexicana, y se pagará anualmente en la ciudad de Washington. El capital de¹ dicho fondo público será redimible en la misma ciudad de Washington en cualquiera época que lo disponga el Gobierno de los Estados-Unidos, con tal que hayan pasado dos años contados desde el cange de las ratificaciones del presente Tratado, y dándose aviso al público con anticipación de seis meses. Al Gobierno mexicano se entregarán por el de los Estados-Unidos los Bonos correspondientes á dicho fondo, extendidos en debida forma, divididos en las cantidades que señale el expresado Gobierno mexicano, y enagenables por este.

Segunda manera de pago—] Inmediatamente despues que este Tratado haya sido ratificado por el Gobierno de la República mexicana, se entregará al mismo Gobierno por el de los Estados-Unidos, en la ciudad de Mexico, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Los doce millones de pesos restantes se pagarán en México, en moneda de plata ú oro del cuño mexicano, en abonos de tres millones de pesos cada año, con un rédito de seis por ciento anual: este rédito comienza á correr para toda la suma de los doce millones el día de la ratificación del presente Tratado por el Gobierno mexicano, y con cada abono anual de capital se pagará el rédito que corresponda á la suma abonada. Los plazos para los abonos de capital corren desde el mismo día que empiezan á causarse los réditos. [El Gobierno de los Estados-Unidos entregará al de la República mexicana pagarés extendidos en debida forma, correspondientes á cada abono anual, divididos en las cantidades que señale el dicho Gobierno mexicano, y enagenables por este.]

The Senate amendment to Article 23, which provided for the exchange of ratifications "in the city of Washington", inserted after the quoted words "or at the seat of government of Mexico" (in the Spanish, "ó donde estuviere el gobierno Mexicano").

The Senate resolution of advice and consent made no specific reference to the Spanish version of the treaty; but in respect of the

¹ The second original has "del".

amended articles no textual question of importance arises; no Spanish version of the amended text appears in any of the formal instruments except the Mexican ratification; with that instrument the Spanish version of the text here printed following the headnote has, to the limited extent necessary, been collated; in respect of two articles (11 and 12) the Senate amendments were partial deletions, requiring merely the omission of equivalent words of the Spanish; Article 10 was wholly stricken; the new matter inserted in two articles (3 and 23) was but a few words; for Article 9 a new text was written in English in the Senate resolution and in Spanish in the Mexican ratification; for the English of Article 9 the source is the attested Senate resolution in the treaty file. It might almost equally well be the duplicate United States instrument of ratification, for in this regard the two are precisely the same except that the latter has brackets in lieu of parentheses.

THE ADDITIONAL AND SECRET ARTICLE

The additional and secret article of the Treaty of Guadalupe Hidalgo is one of few instances of a secret article of a treaty signed on behalf of the United States (see Documents 7 and 69). The additional and secret article was stricken out pursuant to the resolution of the Senate, was not ratified on either part, and did not go into force; it provided for a more extended term for the exchange of ratifications than that written in Article 23 of the treaty proper (eight months instead of four); less than four months elapsed between signature and exchange (February 2 and May 30, 1848); this became possible because of the amendment to Article 23, which permitted the exchange to take place "at the seat of government of Mexico".

The text of the additional and secret article is as follows, collated with the first of the two originals in the treaty file; it is to be said that there are no variances between those two papers except in matters of capitalization, accents, and one quite immaterial comma in the English version:

Additional and Secret Article

Of the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, signed this day by their respective Plenipotentiaries.

In view of the possibility that the exchange of the ratifications of this Treaty may, by the circumstances in which the Mexican Republic is placed, be delayed longer than the term of four months fixed by its twenty-third Article for the exchange of ratifications of the same; it is hereby agreed that such delay shall not, in any manner, affect the force and validity of this Treaty, unless it should exceed the term of eight months, counted from the date of the signature thereof.

Artículo adicional y secreto

Del Tratado de Paz, Amistad, Límites y arreglo definitivo entre la Republica mexicana y los Estados Unidos de América firmado hoy por sus respectivos Plenipotenciarios.

En atencion á la posibilidad de que el cange de las ratificaciones de este Tratado se demore mas del término de cuatro meses fijados en su artículo veinte y tres; por las circunstancias en que se encuentra la Republica mexicana, queda convenido que tal demora no afectará de ningun modo la fuerza y validez del mismo Tratado, si no excediere de ocho meses contados desde la fecha de su firma.

This Article is to have the same force and virtue as if inserted in the treaty to which it is an Addition.

In faith whereof, we, the respective Plenipotentiaries have signed this Additional and Secret Article, and have hereunto affixed our seals respectively. Done in Quintuplicate at the City of Guadalupe Hidalgo on the second day of February, in the year of Our Lord one thousand eight hundred and forty-eight.

Este artículo tendrá la misma fuerza y valor que si estuviese inserto en el Tratado de que es parte adicional.

En fé de lo cual, nosotros los respectivos Plenipotenciarios hemos firmado y sellado este artículo adicional y secreto. Hecho por quintuplicado en la Ciudad de Guadalupe Hidalgo el dia dos de Febrero del año de Nuestro Señor mil ochocientos cuarenta y ocho.

N. P. TRIST. [Seal]
 LUIS G. CUEVAS [Seal]
 BERNARDO COUTO [Seal]
 MIG¹ ATRISTAIN [Seal]

BERNARDO COUTO [Seal]
 MIG¹ ATRISTAIN [Seal]
 LUIS G. CUEVAS [Seal]
 N. P. TRIST. [Seal]

THE SENATE PROCEEDINGS

The first original of the Treaty of Guadalupe Hidalgo reached Washington during the evening of Saturday, February 19, 1848, seventeen days after its signature. In the entry for that date in the Diary of James K. Polk (hereinafter cited as "Polk's Diary") is this statement (III, 345):

After night a messenger arrived from Mexico bearing despatches from the army, and a Treaty of peace entered into on the 2nd Inst. by Mr. Trist with mexican plenipotentiaries appointed for that purpose. This messenger was Mr. Freanor,¹ who has been with the army for some time in the capacity of a correspondent of the New Orleans *Delta*, over the signature of Mustang. About 9 O'Clock Mr. Buchanan called with the Treaty. He read it. Mr. Trist was recalled in October last, but chose to remain in Mexico and continue the negotiation. The terms of the Treaty are within his instructions which he took out in April last, upon the important question of boundary and limits. There are many provisions in it which will require more careful examination than a single reading will afford. Mr. Trist has acted very badly, as I have heretofore noted in this diary, but notwithstanding this, if on further examination the Treaty is one that can be accepted, it should not be rejected on account of his bad conduct. Mr. Buchanan left the Treaty with me.

The treaty had been signed without authority on the part of the Plenipotentiary of the United States; some months before the date of the treaty all instructions to Nicholas P. Trist to act on behalf of the United States had been revoked and he had been recalled.

The question presented to the President and his advisers was whether the treaty should be sent to the Senate; and, while it was later argued in the Senate that the instrument was "utterly void and ineffectual" (see the elaborate resolution of Senator Houston in Executive Journal, VII, 304-5), there can be no doubt that the President had the power to adopt and confirm the unauthorized acts and signature of Trist, insofar as he wished to do so. Indeed, even regarding the signature of Trist as an utter nullity, the treaty was, at the very least, a proposal from the Mexican Government; the President was clearly entitled to send the treaty to the Senate; the question before him was wholly one of discretion and not at all one of power.

¹ James L. Freaner.

There was lengthy discussion of the subject in Cabinet (Polk's Diary, III, 345-51, *passim*); the presidential decision was definite by February 21, these reasons being given (*ibid.*, 347-48):

I made known my decision upon the Mexican Treaty, which was that under all the circumstances of the case, I would submit it [to] the Senate for ratification, with a recommendation to strike out the 10th article. I assigned my reasons for my decision. They were, briefly, that the treaty conformed on the main question of limits & boundary to the instructions given to Mr. Trist in April last; and that though, if the treaty was now to be made, I should demand more territory, perhaps to make the Sierra Madra the line, yet it was doubtful whether this could be ever obtained by the consent of Mexico. I looked, too, to the consequences of its rejection. A majority of one branch¹ of Congress is opposed to my administration; they have falsely charged that the war was brought on and is continued by me with a view to the conquest of Mexico; and if I were now to reject a Treaty made upon my own terms, as authorized in April last, with the unanimous approbation of the Cabinet, the probability is that Congress would not grant either men or money to prosecute the war. Should this be the result, the army now in Mexico would be constantly wasting and diminishing in numbers, and I might at last be compelled to withdraw them, and thus loose the two Provinces of New Mexico & Upper California, which were ceded to the U.S. by this Treaty. Should the opponents of my administration succeed in carrying the next Presidential election, the great probability is that the country would loose all the advantages secured by this Treaty. I adverted to the immense value of Upper California; and concluded by saying that if I were now to reject my own terms, as offered in April last, I did not see how it was possible for my administration to be sustained.

The message submitting the treaty to the Senate was dated February 22, 1848, and was then sent to the Senate; but that body had adjourned at an early hour because of the "extreme illness" of ex-President John Quincy Adams (*ibid.*, 351); the message was read in the Senate on February 23, as follows (Executive Journal, VII, 302-3):

I lay before the Senate, for their consideration and advice as to its ratification, a treaty of peace, friendship, limits and settlement, signed at the city of Guadalupe Hidalgo, on the second day of February, 1848, by N. P. Trist, on the part of the United States, and by plenipotentiaries appointed for that purpose on the part of the Mexican Government.

I deem it to be my duty to state that the recall of Mr. Trist as Commissioner of the United States, of which Congress was informed in my annual message, was dictated by a belief that his continued presence with the Army could be productive of no good, but might do much harm by encouraging the delusive hopes and false impressions of the Mexicans; and that his recall would satisfy Mexico that the United States has no terms of peace more favorable to offer. Directions were given that any propositions for peace which Mexico might make should be received and transmitted by the commanding general of our forces to the United States.

It was not expected that Mr. Trist would remain in Mexico, or continue in the exercise of the functions of the office of Commissioner after he received his letter of recall. He has, however, done so, and the plenipotentiaries of the Government of Mexico, with a knowledge of the fact, have concluded with him this treaty. I have examined it with a full sense of the extraneous circumstances attending its conclusion and signature, which might be objected to, but conforming, as it does, substantially, on the main questions of boundary and indemnity, to the terms which our Commissioner; when he left the United States in April last, was authorized to offer; and animated, as I am, by the spirit which

¹The House of Representatives.

has governed all my official conduct towards Mexico, I have felt it to be my duty to submit it to the Senate for their consideration, with a view to its ratification.

To the tenth article of the treaty there are serious objections, and no instructions given to Mr. Trist contemplated or authorized its insertion. The public lands within the limits of Texas belong to that State, and this Government has no power to dispose of them or to change the conditions of grants already made. All valid titles to land within the other territories ceded to the United States will remain, unaffected by the change of sovereignty; and I therefore submit that this article should not be ratified as a part of the treaty.

There may be reason to apprehend that the ratification of the "additional and secret article" might unreasonably delay and embarrass the final action on the treaty by Mexico. I therefore submit whether that article should not be rejected by the Senate.

If the treaty shall be ratified as proposed to be amended, the cessions of territory made by it to the United States as indemnity, the provision for the satisfaction of the claims of our injured citizens, and the permanent establishment of the boundary of one of the States of the Union are objects gained of great national importance, while the magnanimous forbearance exhibited towards Mexico, it is hoped, may insure a lasting peace and good neighborhood between the two countries.

I communicate herewith a copy of the instructions given to Mr. Slidell in November, 1845, as envoy extraordinary and minister plenipotentiary to Mexico; a copy of the instructions given to Mr. Trist in April last, and such of the correspondence of the latter with the Department of State, not hitherto communicated to Congress, as will enable the Senate to understand the action which has been had with a view to the adjustment of our difficulties with Mexico.

John Quincy Adams died "in the Speaker's Room in the Capitol a few minutes past 7 O'Clock this evening" (Polk's Diary, III, 356, February 23, 1848); there was no executive session of the Senate until the following Monday, February 28; the treaty was then reported by the Committee on Foreign Relations "without amendment" (Executive Journal, VII, 304); that committee (of five) had first resolved, by the votes of all its members¹ except the chairman, to recommend the rejection of the treaty and the appointment of "three or five persons belonging to both political parties" to conduct new negotiations (Polk's Diary, III, 364); this course was vigorously and successfully opposed by Polk, who commented on it in these scathing terms (*ibid.*, 364-66, February 28, 1848):

Mr. Sevier said they did not object to the terms of the Treaty, with the modifications I had recommended in its ratification, but to Mr. Trist's authority to make it after his recall as commissioner. Mr. Sevier informed me that he had waited on me, with the knowledge of the committee, to inform me of what had been done, and to ascertain my views on the subject with a view to communicate them to the committee and to the Senate. He informed me also that both Mr. Webster and Mr. Benton had requested him to say to me that it would be well for me to be casting about for the commissioners, that the commission should be composed of distinguished men of both political parties, who should be appointed immediately after the action of the Senate should take place, and proceed forthwith to Mexico. I remarked to Mr. Sevier that the course proposed was an extraordinary proceeding, and one which I could not approve. I told him that if

¹ The committee was composed of three Democrats, Ambrose H. Sevier, of Arkansas, Chairman; Thomas H. Benton, of Missouri; and Edward A. Hannegan, of Indiana; and two Whigs, Willie P. Mangum, of North Carolina; and Daniel Webster, of Massachusetts. In the final vote in the Senate, three of the five favored the treaty, with Benton and Webster opposed.

he deemed it necessary to say anything, as coming from me, to the committee or to the Senate, it would be that upon full deliberation I had submitted the Treaty to the Senate with my recommendation that with certain modifications it should be ratified, and that I had not changed my opinion; but that, if the Senate chose to recommend a different course, I would co-operate with them as far as in my judgment the public interests would permit. I told him I condemned the insubordinate & insolent conduct of Mr. Trist, but that the Treaty itself was the subject for consideration and not his conduct, and that if the provisions of the Treaty were such as could be accepted, it would be worse than an idle ceremony to send out a grand commission to re-negotiate the same Treaty. I told him, also, that if the Senate advised me to send out such a commission, I hoped they would advise me also what terms they would accept. I consider the course of the committee of the Senate weak, if not factious, and cannot doubt that the object of Mr. Webster is to defeat any Treaty, clamorous as the Whig party profess to be for peace, until after the next Presidential election. Indeed, Mr. Sevier informed me that Mr. Webster said he wanted *no* territory beyond the Rio Grande, and that he said also that if he voted for this Treaty and Mexico should not ratify it, he would be bound to vote for men and money to carry on the War, a position which he did not wish to occupy. I do not wonder at his course, but I am surprised at that of Mr. Hannegan and Mr. Benton. Extremes sometimes meet and act effectively for negative purposes, but never for affirmative purposes. They have done so in this instance. Mr. Webster is for *no* territory and Mr. Hannegan is for *all* Mexico, and for opposite reasons both will oppose the Treaty. It is difficult, upon any rational principle, to assign a satisfactory reason for anything Col. Benton may do, especially in his present temper of mind, wholly engrossed as he seems to have been for some months past with the case of his son-in-law, Col. Fremont. The truth is the approaching Presidential election absorbs every other consideration, and Senators act as if there was no country and no public interests to take care of. The factions are all at work, and votes are controlled, even upon a vital question of peace or war, by the supposed effect upon the public mind. If the Treaty in its present form is ratified, there will be added to the U.S. an immense empire, the value of which 20 years hence it would be difficult to calculate, & yet Democratic and Whig Senators disregard this, and act solely with the view to the elevation of themselves or their favourites to the Presidential office.

In a message of February 29, responding to a request of the Senate for papers, Polk made this further statement of his reasons for submitting the treaty and of his position in favor of its ratification with the amendments suggested (Executive Journal, VII, 306-7):

In compliance with the resolution of the Senate passed in "executive session" on yesterday, requesting the President "to communicate to the Senate, *in confidence*, the entire correspondence between Mr. Trist and the Mexican commissioners, from the time of his arrival in Mexico until the time of the negotiation of the treaty submitted to the Senate; and also the entire correspondence between Mr. Trist and the Secretary of State in relation to his negotiations with the Mexican commissioners; also all the correspondence between General Scott and the Government and between General Scott and Mr. Trist since the arrival of Mr. Trist in Mexico, which may be in the possession of the Government," I transmit herewith the correspondence called for. These documents are very voluminous, and presuming that the Senate desired them in reference to early action on the treaty with Mexico submitted to the consideration of that body by my message of the 22d instant, the originals of several of the letters of Mr. Trist are herewith communicated, in order to save the time which would necessarily be required to make copies of them. These original letters it is requested may be returned when the Senate shall have no farther use for them.

The letters of Mr. Trist to the Secretary of State, and especially such of them as bear date subsequent to the receipt by him of his letter of recall as commissioner, it will be perceived, contain much matter that is impertinent irrelevant, and highly exceptionable. Four of these letters, bearing date respectively the

29th December, 1847, January 12th, January 22d, and January 25th, 1848, have been received since the treaty was submitted to the Senate. In the latter it is stated that the Mexican commissioners who signed the treaty derived "their full powers, bearing date on the 30th December, 1847, from the President *ad interim* of the Republic (General Anaya), constitutionally elected to that office in November by the Sovereign Constituent Congress" of Mexico. It is impossible that I can approve the conduct of Mr. Trist in disobeying the positive orders of his Government contained in the letter recalling him, or do otherwise than condemn much of the matter with which he has chosen to incumber his voluminous correspondence. Though all of his acts since his recall might have been disavowed by his Government, yet Mexico can take no such exception. The treaty which the Mexican commissioners have negotiated with him, with a full knowledge on their part that he had been recalled from his mission, is binding on Mexico.

Looking at the actual condition of Mexico, and believing that if the present treaty be rejected the war will probably be continued, at great expense [of] life and treasure, for an indefinite period, and considering that the terms, with the exceptions mentioned in my message of the 22d instant, conform substantially, so far as relates to the main question of boundary, to those authorized by me in April last, I considered it to be my solemn duty to the country, uninfluenced by the exceptionable conduct of Mr. Trist, to submit the treaty to the Senate with a recommendation that it be ratified, with the modifications suggested.

Nothing contained in the letters received from Mr. Trist since it was submitted to the Senate has changed my opinion on the subject.

The resolution also calls for "all the correspondence between General Scott and the Government since the arrival of Mr. Trist in Mexico." A portion of that correspondence, relating to Mr. Trist and his mission, accompanies this communication. The remainder of the "correspondence between General Scott and the Government," relates mainly, if not exclusively, to military operations. A part of it was communicated to Congress with my annual message, and the whole of it will be sent to the Senate if it shall be desired by that body. As coming within the purview of the resolution, I also communicate copies of the letters of the Secretary of War to Major-General Butler in reference to Mr. Trist's remaining at the headquarters of the Army in the assumed exercise of his powers of commissioner.

The authenticated Disturnell Map and the authenticated Plan of the Port of San Diego mentioned in Article 5 of the treaty, with the covering despatch of Trist of February 12, 1848, which had been received at the Department of State on March 6, were transmitted to the Senate on March 7 (*ibid.*, 328); but one hundred copies of the Disturnell Map had been ordered purchased for the use of the Senate on February 28 (*ibid.*, 306).

Debate in the Senate went on daily (except on Sunday, March 5) from February 28 to March 10, when the final vote was had. There was some hostility to the treaty on account of Trist's lack of authority; but Webster's motion for further negotiations was laid on the table without division (Executive Journal, VII, 311); slavery "in the territories hereby ceded" was the subject of one proposal (*ibid.*, 330); another would have required the assent "of the people and governments" of California and New Mexico (*ibid.*, 336); on the major question of the boundary there were, as observed by Polk in his diary for February 28 (quoted above), Senators who favored a larger cession and others who urged one of more limited extent; the extreme proposal of Houston (not pressed to a vote) would have required a cession of Lower California and have drawn the line thence eastward from 25° north latitude to the Gulf of Mexico so as to

include in the United States San Luis Potosí and Tampico (*ibid.*, 304-5); the amendment offered by Jefferson Davis, of Mississippi, would have changed the boundary so as to acquire from Mexico most of the States of Tamaulipas and Nuevo León, all of Coahuila, and a large portion of Chihuahua; this was rejected by 44 votes to 11 (*ibid.*, 322-23; the lines proposed by Houston and Davis are shown in Paullin, Atlas of the Historical Geography of the United States, plate 94A; and see the text in that work, pp. 65-66); the views of those who opposed the territorial acquisition as too large were put forward in the motion of John J. Crittenden, of Kentucky, to recommit with instructions to draft "a cession which should have for its principal objects a satisfactory establishment of the boundary of Texas and the acquisition of the bay and harbor of San Francisco", which was defeated by 30 votes to 18 (Executive Journal, VII, 326-28); the motion of George E. Badger, of North Carolina, to strike out the boundary description in Article 5 (defeated by 35 votes to 15; *ibid.*, 329), had substantially the same object as that of Crittenden (see Rives, The United States and Mexico, II, 635).

In the presidential message of submission it had been recommended that Article 10 and the additional and secret article be rejected; the final Senate votes to the same effect were unanimous (Executive Journal, VII, 332, 333); the wording, though not the principle, of Article 9 as signed was deemed by a decided majority of the Senate to be objectionable, and there was difficulty in the redrafting; but the final proposal, adapted from Article 3 of the Treaty for the Cession of Louisiana (Document 28), was accepted by 44 yeas to 5 nays (*ibid.*, 323, 324-26, 330-32); the amendments to Articles 3 and 23 were hardly contentious (*ibid.*, 326, 333, 334); the striking out of the concluding words of the second paragraph of Article 11, regarding the sale of arms and ammunition to the Indians, was a minor point on which a majority of the Senate voted both pro and con at different times (*ibid.*, 314, 332-33).

More important were the deletions from Article 12. By that article as signed, the Mexican Government had the right to choose one or the other of two methods for the payment by the United States of \$12,000,000. The first method was the issuance of Government stock payable at Washington at the pleasure of the United States after two years and bearing 6 percent interest. The second method was by annual instalments of \$3,000,000 each, payable in coin at Mexico City with like interest, the instalments to be evidenced by transferable certificates. One amendment of the Senate struck out the first method of payment prescribed. Another struck out from the second method of payment the provision for transferable certificates. The effect of the two amendments, taken together, was to leave simply a treaty obligation for the four annual instalments of \$3,000,000 each, running from Government to Government and without negotiable or transferable instruments of the debt. It was in respect of the amendments to Article 12 that a minority of the Senate had their way, owing to the rules of voting then prevailing.

By those rules, which had been adopted on January 6, 1801 (Executive Journal, I, 365), and which were not changed in this regard until 1868 (Senate Report No. 56, 40th Congress, 2d session, serial 1320, rule 38; see Congressional Globe, XXXIX, pt. 3, 2094, March 25, 1868), a motion to amend a treaty by striking out a portion thereof was put in the reverse form, as, for example, "Shall these words stand as part of the treaty, to wit?" That motion required a two-thirds majority for adoption or, in other words, for retaining in the treaty the words proposed to be stricken. Consequently, a minority of the Senate, if more than one third of those voting, could under those rules include in the text of the resolution of advice and consent finally to be voted on, provisions for the striking out of such portions of a treaty as the minority saw fit.

In the case here considered of the amendments to Article 12 of the treaty, the vote on the motion to strike out the first method of payment showed 28 in favor of retaining the provision and 22 opposed; accordingly, it was deleted (Executive Journal, VII, 335-36); the vote in favor of retaining the certificate provision in the second method of payment was 34, with 19 opposed, and later, on reconsideration, 30, with 18 opposed (*ibid.*, 335, 337); so the certificate clause was also deleted; each of those motions to strike was by Jefferson Davis, of Mississippi; and a motion by Reverdy Johnson, of Maryland, to add to Article 12 a certificate clause for the first two instalments was negatived, although favored by 33 Senators with 18 opposed (*ibid.*, 338-39).

The fate of the treaty had been at first thought to be doubtful (Polk's Diary, III, 367-69, February 29-March 1, 1848); but the resolution of advice and consent (including the amendments made) was adopted by more than the requisite two-thirds majority; the vote was 38 yeas to 14 nays, with four Senators¹ not recorded (Executive Journal, VII, 340; for an analysis of the vote by parties and States, see Rives, *op. cit.*, II, 636-37).

The papers communicated, some with the treaty and a much larger number subsequently at the request of the Senate, were voluminous; they included all the instructions given to Trist (except one of December 21, 1847) and most of his correspondence not only with the Secretary of State but also with the Mexican Commissioners and with General Scott, as well as other material; and with the exception of certain portions of the despatches of Trist, which were marked for omission by the Committee on Foreign Relations, they were printed at the time (see Executive Journal, VII, 303, 307, 308, 311, 313, 328, 334; also Senate Confidential Documents Nos. 7, 8, and 9, 30th Congress, 1st session, Regular Confidential Documents, XXIII, 183-494, and the Senate document cited in the following paragraph).

Following an unauthorized publication of the treaty and the amendments, contempt proceedings against John Nugent, a newspaper correspondent, his commitment to the custody of the Sergeant at

¹ John M. Clayton, of Delaware; Samuel Houston, of Texas; James A. Pearce, of Maryland; and Samuel S. Phelps, of Vermont.

Arms of the Senate, and his discharge (see Executive Journal, VII, 353-404, *passim*), the injunction of secrecy was removed from the messages, documents, proceedings, debates, and papers, and they were printed as a public document (*ibid.*, 422, 423, May 31 and June 2, 1848), but with the same omissions from the despatches of Trist as when previously printed in confidence; that public print is Senate Executive Document No. 52, 30th Congress, 1st session, serial 509 (that document is hereinafter generally cited as "serial 509"; certain of the papers cited therefrom are also printed in House Executive Document No. 60 of the same session, serial 520).

PUBLICATION OF THE TREATY

In the New York Herald of Saturday, February 26, 1848, appeared a Washington letter of February 24 giving a generally accurate summary of the chief provisions of the treaty proper; in the issue of the same newspaper of March 13 was printed the English version of the treaty and additional article as signed (omitting the words deleted from Article 11 pursuant to the Senate resolution); the treaty was stated to have been withheld from publication for nearly two weeks, "from a regard to the public interests"; the print included a summary of the amended Article 9 and stated the effect of the other Senate amendments except that to Article 3; and the vote in the Senate was listed in detail.

At Mexico City the Washington letter of February 24 was quoted on March 15 in the Daily American Star, which gave the news of the Senate amendments on April 7. Other summaries of the provisions of the treaty were printed in that paper on April 3 and in *El monitor republicano* on April 9. The newspaper last mentioned printed on April 10 a Spanish translation of the English version of the treaty and additional article, together with the Senate amendments. This was followed on April 12 and 13 by a similar publication in the Daily American Star.

EXPLANATION OF THE AMENDMENTS

In connection with the proceedings had in the Senate and the amendments to the treaty which were voted, is to be read the following note of Buchanan to the Minister of Foreign Relations of the Mexican Republic dated March 18, 1848, which was delivered prior to the consideration of the treaty by the Mexican Congress (D.S., 2 Communications to Foreign Sovereigns and States, 51-62):

To His Excellency, the MINISTER OF FOREIGN RELATIONS of the Mexican Republic.

SIR: Two years have nearly passed away since our Republics have been engaged in war. Causes which it would now be vain if not hurtful to recapitulate, have produced this calamity. Under the blessing of a kind Providence, this war, I trust, is about to terminate, and, hereafter, instead of the two nations doing each other all the harm they can, their mutual energies will be devoted to promote each other's welfare by the pursuits of peace and of commerce. I most cordially congratulate you on the cheering prospect. This will become a reality as soon as the Mexican Government shall approve the treaty of peace between the two

nations concluded at Guadalupe Hidalgo on the 2d February, last, with the amendments thereto which have been adopted by the Senate of the United States.

The President, in the exercise of his constitutional discretion, a few days after this treaty was received, submitted it to the Senate for their consideration and advice as to its ratification. Your Excellency is doubtless aware that under the Constitution of the United States, "the advice and consent of the Senate" is necessary to the validity of all treaties and that this must be given by a majority of two thirds of the Senators present. Every Treaty must receive the sanction of this august Executive Council in the manner prescribed by the Constitution, before it can be binding on the United States.

The Senate commenced their deliberations on this Treaty on the 23d February, last, and continued to discuss its provisions until the 10th instant (March) when they finally advised and consented to its ratification by a majority of 38 to 14. Your Excellency will perceive that a change of 4 votes taken from the majority and added to the minority would have defeated the Treaty.

I have now the honor to transmit you a printed copy of the Treaty with a copy, in manuscript, of the amendments and final proceedings of the Senate upon it. This is done to hasten with as little delay as practicable the blessed consummation of peace by placing in the possession of the Mexican Government at as early a period as possible all the information which they may require to guide their deliberations.

In recurring to the amendments adopted by the Senate, it affords me sincere satisfaction to observe that none of the leading features of the Treaty have been changed. Neither the delineation of the boundaries between the two Republics,—nor the consideration to be paid to Mexico for the extension of the boundaries of the United States,—nor the obligation of the latter to restrain the Indians within their limits from committing hostilities on the territories of Mexico nor, indeed, any other stipulation of national importance to either of the parties, has been stricken out from the Treaty by the Senate. In all its important features, it remains substantially as it was when it came from the hands of the negotiators.

The first amendment adopted by the Senate is to insert in Article 3 after the words "Mexican Republic" where they first occur, the words, "*and the Ratifications exchanged*".

Under this article, as it originally stood, the blockades were to cease and the troops of the United States were to commence the evacuation of the Mexican territory immediately upon the ratification of the Treaty by both Governments. The amendment requires in addition that these ratifications shall have been first exchanged.

The object of this amendment doubtless was to provide against the possibility that the American Senate and the Mexican Congress might ratify the Treaty, the first in its amended and the latter in its original form: in which event peace would not thereby be concluded. Besides, it was known that this amendment could produce no delay, as under the amendment of the Senate to the 23d article, the ratifications of the Treaty may be exchanged at the seat of Government of Mexico the moment after the Mexican Government and Congress shall have accepted the Treaty as amended by the Senate of the United States.

The second amendment of the Senate is to strike out the 9th Article and insert the following in lieu thereof.

[Here follows the English version of Article 9]

This article is substantially the same with the original 9th article; but it avoids unnecessary prolixity and accords with the former safe precedents of this Government in the Treaties by which we acquired Louisiana from France and Florida from Spain.

The Louisiana Treaty of the 30th April, 1803 [Document 28], contains the following article.

ARTICLE 3.

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights,

advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Again, in the Florida Treaty of 22nd February, 1819 [Document 41], the following articles are contained.

ARTICLE 5.

"The inhabitants of the ceded Territories shall be secured in the free exercise of their religion, without any restriction; and all those who may desire to remove to the Spanish Dominions, shall be permitted to sell or export their effects, at any time whatever, without being subject, in either case, to duties."

ARTICLE 6.

"The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this Treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States."

Under these Treaties with France and Spain, the free and flourishing States of Louisiana, Missouri, Arkansas, Iowa and Florida have been admitted into the Union; and no complaint has ever been made by the original or other inhabitants that their civil or religious rights have not been amply protected. The property belonging to the different churches in the United States is held as sacred by our Constitution and laws as the property of individuals; and every individual enjoys the inalienable right of worshipping his God according to the dictates of his own conscience. The Catholic Church in this country would not, if they could, change their position in this particular.

After the successful experience of nearly half a century, the Senate did not deem it advisable to adopt any new form for the 9th Article of the Treaty; and surely the Mexican Government ought to be content with an article similar to those which have proved satisfactory to the Governments of France and Spain and to all the inhabitants of Louisiana and Florida, both of which were Catholic provinces.

I ought perhaps here to note a modification in the 9th article, as adopted by the Senate, of the analogous articles of the Louisiana and Florida Treaties. Under this modification, the inhabitants of the ceded territories are to be admitted into the Union, "at the proper time (to be judged of by the Congress of the United States") &c.

Congress, under all circumstances and under all Treaties are the sole judges of this proper time, because they and they alone, under the Federal Constitution; have power to admit new States into the Union. That they will always exercise this power as soon as the condition of the inhabitants of any acquired territory may render it proper, cannot be doubted. By this means the Federal Treasury can alone be relieved from the expense of supporting territorial Governments. Besides, Congress will never lend a deaf ear to a people anxious to enjoy the privilege of self government. Their application to become a State or States of the Union will be granted the moment this can be done with safety.

The third amendment of the Senate strikes from the Treaty the 10th Article. It is truly unaccountable how this article should have found a place in the Treaty. That portion of it in regard to lands in Texas did not receive a single vote in the Senate. If it were adopted, it would be a mere nullity on the face of the Treaty, and the Judges of our Courts would be compelled to disregard it. It is our glory that no human power exists in this country which can deprive one individual of his property without his consent and transfer it to another. If grantees of lands in Texas, under the Mexican Government, possess valid titles, they can maintain their claims before our Courts of Justice. If they have forfeited their grants by not complying with the conditions on which they were made, it is beyond the power of this Government, in any mode of action, to render these titles valid either against Texas or any individual proprietor. To resuscitate

tate such grants and to allow the grantees the same period after the exchange of the ratifications of this Treaty to which they were originally entitled for the purpose of performing the conditions on which these grants had been made, even if this could be accomplished by the power of the government of the United States, would work manifold injustice.

These Mexican grants, it is understood, cover nearly the whole sea coast and a large portion of the interior of Texas. They embrace thriving villages and a great number of cultivated farms, the proprietors of which have acquired them honestly by purchase from the State of Texas. These proprietors are now dwelling in peace and security. To revive dead titles and suffer the inhabitants of Texas to be ejected under them from their possessions, would be an act of flagrant injustice if not wanton cruelty. Fortunately this Government possesses no power to adopt such a proceeding.

The same observations equally apply to such grantees in New Mexico and Upper California.

The present Treaty provides amply and specifically in its 8th and 9th Articles for the security of property of every kind belonging to Mexicans, whether acquired under Mexican grants or otherwise in the acquired territory. The property of foreigners under our Constitution and laws, will be equally secure without any Treaty stipulation. The tenth article could have no effect upon such grantees as had forfeited their claims, but that of involving them in endless litigation under the vain hope that a Treaty might cure the defects in their titles against honest purchasers and owners of the soil.

And here it may be worthy of observation that if no stipulation whatever were contained in the Treaty to secure to the Mexican inhabitants and all others protection in the free enjoyment of their liberty, property and the religion which they profess, these would be amply guaranteed by the Constitution and laws of the United States. These invaluable blessings, under our form of Government, do not result from Treaty stipulations, but from the very nature and character of our institutions.

The fourth amendment of the Senate is to strike from the 11th Article, the following words: "nor to provide such Indians with fire arms or ammunition, by sale or otherwise."

This amendment was adopted on a principle of humanity. These Indians must live by the chase; and without fire arms they cannot secure the means of subsistence. Indeed, for the want of such arms, the extremity of hunger and suffering might drive them to commit the very depredations which the Treaty seeks to avoid, and to make incursions for food either upon the Mexican or American settlements. This Government possesses both the ability and the will to restrain the Indians within the extended limits of the United States from making incursions into the Mexican territories, as well as to execute all the other stipulations of the 11th article. We believe, however, that whilst to deprive them of fire arms and ammunition would be cruel, it would at the same time have a tendency to increase rather than to diminish their disposition to make hostile incursions.

The fifth amendment of the Senate to the twelfth article adopts the second mode of payment of the remaining \$12,000,000, after the payment of the first \$3,000,000, in exclusion of the first mode pointed out by the Treaty. The amended article as it stands is as follows.

[Here follows the English version of Article 12]

It is not apprehended that the Mexican Government will have any difficulty in agreeing to this amendment. It is true that in case they should find it convenient to anticipate the receipt of the whole or any part of the \$12,000,000, they might do this more readily were a stock to be created and transferable certificates issued for small and convenient sums; but yet no doubt is entertained that capitalists may be found who will be willing to advance any amount that might be desired upon the faith of a Treaty obligation solemnly entered into by the Government of the United States.

The sixth amendment of the Senate is to insert in the twenty third article after the word, "Washington", the words "or at the seat of Government of Mexico". The object of this amendment is to hasten the final conclusion of

peace between the two Republics. Under it, should the President and Congress of Mexico agree to the Treaty as it has been amended by the Senate of the United States, the ratifications may be immediately thereafter exchanged at Queretaro and the happy consummation be at once accomplished.

The seventh and last amendment of the Senate is to strike out the additional article. This was done from the conviction that the period of four months from the date of the Treaty, the time allowed by the 23d Article for the exchange of ratifications, would be abundantly sufficient for this purpose: and this more especially as the ratifications may now, under the amendment of the Senate, be exchanged in Mexico. Besides, the idea of postponing the final conclusion of peace and keeping the present Treaty pending between the two governments until the 2nd October, next, could not be entertained by the Senate.

The President, by and with the advice and consent of the Senate, has appointed the Honorable Ambrose H. Sevier of the State of Arkansas and the Honorable Nathan Clifford of the State of Maine, Commissioners to Mexico with the rank of Envoy Extraordinary and Minister Plenipotentiary. Mr Sevier has for many years been a distinguished Senator of the United States, and for a considerable period has occupied the highly responsible station of Chairman of the Committee on Foreign Relations; and Mr Clifford is an eminent citizen of the State of Maine, is Attorney General of the United States and a member of the President's cabinet. They will bear with them to Mexico a copy of the Treaty with the amendments of the Senate duly ratified by the President of the United States; and have been invested, either jointly or severally, with full powers to exchange ratifications with the proper Mexican authorities. That this final act may be speedily accomplished and that the result may be a sincere and lasting peace and friendship between the two Republics, is the ardent desire of the President and people of the United States.

I avail myself of this occasion to offer to Your Excellency the assurance of my most distinguished consideration.

JAMES BUCHANAN

DEPARTMENT OF STATE,
Washington, 18th March, 1848.

P.S. I regret to inform Your Excellency that Mr Sevier has been seized with a sudden illness which renders him unable to depart immediately upon his mission. The two Commissioners, however, have been invested with full and equal powers to execute their instructions severally, as well as jointly, and the acts of the one will be of equal validity with the acts of both. No delay can therefore be experienced on this account. It is expected that Mr Sevier will be able to leave for Mexico in a week or ten days.

THE RATIFICATIONS

There is nothing unusual in the form of the duplicate United States instrument of ratification, which is part of the treaty file; it is to be noted that it recites the amendments in English only; but on the date of the ratification there was doubtless no Spanish equivalent of such of them as required a Spanish version; the wording of the instrument follows:

James K. Polk, President of the United States of America,

To all and singular who shall see these presents, Greeting:

Whereas a Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, together with an additional and secret article, was concluded and signed at the City of Guadalupe Hidalgo on the second day of February last past, which Treaty and additional and secret article, are hereunto annexed;

And whereas, the Senate of the United States, by their Resolution of the tenth instant—two thirds of the Senators present concurring—did advise and consent to the ratification of the Said Treaty, with the following “Amendments:—

[Here follow the amendments as in the Senate resolution]

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, in pursuance of the aforesaid advice and consent of the Senate, do hereby ratify and confirm the said Treaty, as amended by the Senate of the United States, and every article and clause thereof.

In testimony whereof, I have caused the Seal of the United States to be hereunto affixed.

Given under my hand, at the City of Washington, the sixteenth day of March, in the year of Our Lord one thousand eight hundred and forty-eight; [Seal] and in the seventy-second year of the Independence of the United States of America.

JAMES K. POLK

By the President:

JAMES BUCHANAN
Secretary of State.

The Mexican instrument of ratification is written in Spanish and includes the treaty text in both languages, the Spanish in the left columns, and similarly includes a statement of the amendments. The form of the instrument is as follows (omitting various texts):

[Translation]

Manuel de la Peña y Peña Presidente
interino de los Estados Unidos
Mexicanos

Manuel de la Peña y Peña, President
ad Interim of the United Mexican
States

A todos los que las presentes vieren
sabad:

To all to whom these presents may
come, be it known:

Que en la Ciudad de Guadalupe Hidalgo se concluyó y firmó el día dos de Febrero del presente año, un tratado de paz, amistad, límites y arreglo definitivo entre los Estados Unidos Mexicanos y los Estados Unidos de América por medio de Plenipotenciarios de ambos Gobiernos autorizados debida y respectivamente para este efecto, cuyo tratado y su artículo adicional son en la forma y tenor siguiente.

That in the city of Guadalupe Hidalgo there was concluded and signed on the second day of February of the present year a Treaty of Peace, Friendship, Limits, and Definitive Settlement between the United Mexican States and the United States of America, by Plenipotentiaries of both Governments duly and respectively thereunto authorized, which treaty and its additional article are of the following form and tenor:

[Here follow the texts of the treaty and the additional and secret article, as signed, in Spanish and English]

Y que este tratado recibió en diez de Marzo de este año en los Estados Unidos de América las modificaciones ¹ siguientes:

And that this treaty received on March tenth of this year in the United States of America the following amendments: ¹

Se insertará en el artículo III despues de las palabras “República Mexicana”, donde primero se encuentren, las palabras—“y cangeadas las ratificaciones.”
Se borrará el artíco IX del tratado, y en su lugar se insertará el siguiente

¹ The English of the amendments is omitted.

Se suprime el artículo X del Tratado.

Se suprimen en el artículo XI del Tratado las palabras siguientes:

"ni en fin, venderles ó ministrarles bajo cualquier título armas de fuego ó municiones."

Se suprimen en el artículo XII las palabras siguientes:

Se insertarán en el artículo XXIII despues de la palabra "Washington" las palabras siguientes:

"ó donde estuviere el gobierno Mexicano."

Se suprime el artículo adicional y secreto del Tratado.

Visto y examinado dicho Tratado y las modificaciones hechas por el Senado de los Estados Unidos de América, y dada cuenta al Congreso general conforme á lo dispuesto en el párrafo XIV del artículo 110. de la Constitución federal de estos Estados-Unidos, tuvo á bien aprobar en todas sus partes el indicado Tratado y las modificaciones; y en consecuencia, en uso de la facultad que me concede la Constitución acepto, ratifico y confirmo el referido tratado con sus modificaciones y prometo en nombre de la República Mexicana cumplirlo y observarlo, y hacer que se cumpla y observe.

Dado en el Palacio federal de la ciudad de Santiago de Querétaro, firmado de mi mano, autorizado con el gran sello nacional y refrendado por el Secretario de Estado y del despacho de relaciones interiores y exteriores á los treinta dias del mes de Mayo del año del Señor de mil ochocientos cuarenta y ocho y de la Independencia de la República el vigésimo octavo.

[Seal]

MANUEL DE LA PEÑA Y PEÑA

LUIS DE LA ROSA

Secret. de Estado y de Relaciones.

The said treaty and the amendments made by the Senate of the United States of America having been noted and examined, the General Congress, having been advised thereof in conformity with the provisions of section XIV of Article 110 of the Federal Constitution of these United States, saw fit to approve the said treaty in all its parts and the amendments thereto; and consequently, exercising the powers granted me by the Constitution, I accept, ratify, and confirm the treaty referred to, with its amendments, and I promise in the name of the Mexican Republic to fulfil it and observe it and cause it to be fulfilled and observed.

Done at the Federal Palace of the city of Santiago de Querétaro, signed by my hand, authenticated by the great seal of the nation, and countersigned by the Secretary of State and of Domestic and Foreign Relations on the thirtieth day of the month of May of the year of our Lord one thousand eight hundred and forty-eight and of the independence of the Republic the twenty-eighth.

[Seal]

MANUEL DE LA PEÑA Y PEÑA

LUIS DE LA ROSA

Secretary of State and of Relations.

THE PROCLAMATION

The original proclamation in the treaty file is written so as to provide that in printed copies thereof the amended English and Spanish versions would appear as a running text; it is in this form:

By the President of the United States of America.

A PROCLAMATION:

Whereas a Treaty of Peace, Friendship, limits, and settlement between the United States of America and the Mexican Republic, was concluded and signed at the City of Guadalupe Hidalgo, on the second day of February, one thousand eight hundred and forty-eight, which Treaty, as amended by the Senate of the

United States, and being in the English and Spanish languages, is word for word as follows:

[Here follow the second originals of the treaty and the additional and secret article]

And whereas the said Treaty, as amended, has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Querétaro, on the thirtieth day of May last, by Ambrose H. Sevier and Nathan Clifford, Commissioners on the part of the Government of the United States, and by Señor Don Luis de la Rosa, Minister of Relations of the Mexican Republic, on the part of that Government:

Now, therefore, be it known, that I, James K. Polk, President of the United States of America, have caused the said Treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this fourth day of July, one thousand eight hundred and forty-eight, and of the Independence of the United States [Seal] the seventy-third.

JAMES K. POLK

By the President:

JAMES BUCHANAN
Secretary of State.

The treaty, with sundry papers, was communicated to Congress with the presidential message of July 6, 1848, recommending legislation in aid of the execution of the treaty (Richardson, IV, 587-93); and with the presidential message to the House of Representatives of July 24 (*ibid.*, 594-600), in response to a request of that body, information regarding several points of inquiry, one of which was the "proper limits and boundaries of New Mexico and California", was communicated; the messages and accompanying papers are printed, respectively, in House Executive Documents Nos. 99 and 70, 30th Congress, 1st session, serial 521; the list of papers in the former of those two documents (at p. 33) is incomplete; the same material as that therein contained is also in Senate Executive Document No. 60 of the same session, serial 509.

THE INSTRUCTIONS

The statute which recognized the existence of a state of war between the United States and Mexico became law on May 13, 1846 (9 Statutes at Large, 9-10), following the presidential message of May 11 (Richardson, IV, 437-43). The annual presidential message of the following December 8 (*ibid.*, 471-506), was in large part devoted to the war and relations with Mexico; it was stated that military possession had been acquired "of the Mexican Provinces of New Mexico, New Leon, Coahuila, Tamaulipas, and the Californias" (*ibid.*, 493); and the recommendation previously made (to the Senate August 4, and to Congress August 8, 1846; *ibid.*, 456-57, 459-60) for "an appropriation to provide for any expenditure which it may be necessary to make in advance for the purpose of settling all our difficulties with the Mexican Republic" was renewed (*ibid.*, 494-95).

An act appropriating \$3,000,000 "to enable the President to conclude a treaty of peace, limits, and boundaries with the Republic of Mexico, to be used by him in the event that said treaty, when signed by the authorized agents of the two governments, and duly ratified by Mexico, shall call for the expenditure of the same", became law on March 3, 1847 (9 Statutes at Large, 174).

Between the two Governments there had been earlier correspondence (initiated by the United States) regarding the conclusion of peace; but the overtures of the United States had led to no result (the American note of July 27, 1846, a translation of the Mexican note of August 31, 1846, and the American note of September 26, 1846, are printed in Senate Document No. 1, 29th Congress, 2d session, serial 493, pp. 42-45; the American note of January 18, 1847, and a translation of the Mexican note of February 22, 1847, are printed in Senate Executive Document No. 1, 30th Congress, 1st session, serial 503, pp. 36-38).

Following the victory of General Zachary Taylor at Buena Vista (February 22-23) and the taking of Veracruz (March 29), it was decided in Cabinet to make a further effort for a treaty by "having a commissioner vested with Plenipotentiary powers, who should attend the head-quarters of the army ready to take advantage of circumstances as they might arise to negotiate for peace" (Polk's Diary, II, 465, April 10, 1847). The reasons for the choice made are thus stated (*ibid.*, 466-67):

The embarrassment in carrying it out consisted in the selection of a suitable commissioner or commissioners who would be satisfactory to the country. This was a great difficulty. Such is the jealousy of the different factions of the Democratic party in reference to the next Presidential Election towards each other that it is impossible to appoint any prominent man or men without giving extensive dissatisfaction to others, and thus jeopardizing the ratification of any Treaty they might make. In this also the Cabinet were agreed. I stated that I preferred that the Secretary of State should be the sole commissioner to negotiate the Treaty, & that I would have no hesitation in deputing him on that special service if the Mexican authorities had agreed to appoint commissioners on their part, but as they had refused to do this he could not attend the head-quarters of the army for an indefinite period of time and with no assurance whether the Mexican authorities would agree to negotiate. Mr. Buchanan expressed his entire concurrence in this view. He said he would be willing to go in person if there was any assurance that negotiations would be speedily opened, but under existing circumstances & with our present information he could not, of course, think of going. Mr. Buchanan then suggested that Mr. N. P. Trist, the chief clerk of the Department of State, might be deputed secretly with Plenipotentiary powers to the head-quarters of the army, and that it might be made known that such a person was with the army ready to negotiate. Mr. Trist, he said, was an able man, perfectly familiar with the Spanish character and language, & might go with special and well defined instructions. The suggestions struck me favourably. After much conversation on the subject it was unanimously agreed by the Cabinet that it would be proper to send Mr. Trist, and that he should take with him a Treaty drawn up by the Secretary of State & approved by the Cabinet, which he should be authorized to tender to the Mexican Government, and to conclude with them if they would accept it; but that if they would not accept it, but would agree to appoint commissioners to negotiate, that Mr. Trist should in that event report the fact to his Government, when Mr. Buchanan could go out as the commissioner.

Accordingly, on April 15, 1847, Nicholas P. Trist, Chief Clerk of the Department of State, was appointed "Commissioner of the United States to the Mexican Republic"; to him on that date were given a full power (the text of which appears elsewhere in these notes) and a letter of credence (D.S., 3 Credences, 213), and also instructions, which, with the draft of a proposed treaty, were as follows (D.S., 16 Instructions, Mexico, 46-62):

Since the glorious victory of Buena Vista and the capture of Vera Cruz and the Castle of San Juan d'Ulloa by the American arms, it is deemed probable that the Mexican Government may be willing to conclude a Treaty of Peace with the United States. Without any certain information, however, as to its disposition, the President would not feel justified in appointing public Commissioners for this purpose and inviting it to do the same. After so many overtures rejected by Mexico, this course might not only subject the United States to the indignity of another refusal, but might, in the end, prove prejudicial to the cause of peace. The Mexican Government might thus be encouraged in the mistaken opinion which it probably already entertained respecting the motives which have actuated the President in his repeated efforts to terminate the war. He deems it proper, notwithstanding, to send to the Head Quarters of the Army a confidential agent fully acquainted with the views of this Government and clothed with full powers to conclude a Treaty of Peace with the Mexican Government, should it be so inclined. In this manner he will be enabled to take advantage, at the propitious moment, of any favorable circumstances which might dispose that Government to peace. The President, therefore, having full confidence in your ability, patriotism and integrity, has selected you as a Commissioner to the United Mexican States to discharge the duties of this important mission, and for your services in this character, you will be allowed the outfit and salary of a Chargé d'Affaires.

You are herewith furnished with the *Projet* of a Treaty (marked A,) embraced in eleven articles and founded upon just and liberal principles towards Mexico, which, together with your instructions, you may communicate confidentially to Major General Scott and Commodore Perry.

Should a Mexican Plenipotentiary meet you, duly authorized by his Government to conclude a Treaty of Peace, you will, after a mutual exchange of your full powers, deliver him a copy of this *Projet* with the sum in blank contained in the 5th article, as a consideration for the extension of our boundaries, and inform him that you are prepared to sign it on behalf of the Government of the United States, as soon as the sum with which the blank is to be filled shall be agreed upon by the parties. This sum ought to be as much below the fifteen millions mentioned in the article, as you can accomplish. Considering the heavy expenses and sacrifices of the war on our part, and the brilliant success of our arms, as well as the large amount which, under the *projet*, this Government has assumed to pay our own citizens for claims due to them by Mexico, justice would seem to require that the Treaty should not stipulate for the payment of any very large sum. You may in conversation with him ascertain what change in the terms of the *projet* the Mexican Government would require: and if this should become indispensable to attain the object, you may modify these terms, including the amount to be paid to Mexico, in the following particulars.

1. Instead of fifteen millions of dollars stipulated to be paid by the fifth article for the extension of our boundary over New Mexico and Upper and Lower California, you may increase the amount to any sum not exceeding thirty millions of dollars, payable by instalments of three millions per annum; provided the right of passage and transit across the Isthmus of Tehuantepec secured to the United States by the eighth article of the *projet*, shall form a part of the Treaty.

2. Whilst it is of the greatest importance to the United States to extend their boundaries over Lower California as well as New Mexico and Upper California, you are not to consider this as a *sine qua non* to the conclusion of a Treaty. You will, therefore, not break off the negotiation if New Mexico and Upper California can alone be acquired. In that event, however, you will not stipulate to pay more than twenty millions of dollars for these two Provinces, without the right of passage and transit across the Isthmus of Tehuantepec.

3. You are authorized to stipulate for the payment of any sum not exceeding twenty five millions of dollars for New Mexico and Upper California, without Lower California, provided the stipulation securing the right of passage and transit across the Isthmus of Tehuantepec shall be retained in the Treaty or if this should be stricken out, you are authorised to stipulate for the payment of the like sum of twenty five millions of dollars for Lower California in addition to New Mexico and Upper California.

Should Lower California not be embraced in the Treaty, then it will become necessary to change the delineation of boundary contained in the fourth article of the projet in the following manner: Instead of the concluding words "to the Pacific Ocean", let it read, "to a point directly opposite the division line between Upper and Lower California; thence, due West, along the said line which runs north of the parallel of 32° and South of San Miguel to the Pacific Ocean: and the vessels and citizens of the United States shall in all time to come have free and uninterrupted access to and from the ocean through the Gulf of California from and to their possessions north of the said division line."

You will not fail to observe that the sums of thirty, twenty and twenty five millions of dollars, respectively, which you are authorized to offer, are all maximums; and you will not go to the extent of either, unless you shall find this absolutely necessary to the conclusion of a Treaty. You will not exceed the fifteen millions of dollars contained in the fifth article of the Projet until you shall have good reason to believe that the Mexican Government would break off the negotiation unless it should be increased; and in departing from this sum, you will go as little beyond it as practicable.

Whilst it would be most convenient for the Treasury of the United States to pay any sum for which you may stipulate in annual instalments of three millions each; yet this is not indispensable. If necessary, therefore, to the conclusion of the Treaty, you may agree that, for the remainder of the sum, above the three millions of dollars to be paid upon its ratification by Mexico, the Government of the United States shall create a six per cent stock, similar to that created for the purchase of Louisiana, to be transferred to the Government of Mexico, the interest on the same to be payable annually at the City of Washington, and the principal to be redeemable there at the pleasure of this Government any time after two years from the exchange of ratifications.

Should this stock not be created, then if insisted upon by the Mexican Government, each of the annual instalments may bear an interest of six per cent, but the interest on each instalment to be payable only when the principal shall be paid.

If you can obtain the postponement of the payment of the whole or any part of the three millions of dollars stipulated to be paid by the projet immediately after the ratification of the Treaty by Mexico until the ratifications shall have been exchanged, this would be highly satisfactory to the President.

The rights of the persons and property of the inhabitants of the territory over which the boundaries of the United States shall be extended, will be amply protected by the Constitution and laws of the United States. An article, therefore, to secure these rights has not been inserted in the projet: but should this be deemed necessary by the Mexican Government, no strong objection exists against inserting in the Treaty an article similar to the third article of the Louisiana Treaty. It might read as follows: "The inhabitants of the territory over which the jurisdiction of the United States has been extended by the fourth article of this Treaty, shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."

In the event of the insertion of this article, it would be proper to add to it the following: "Provided that all grants or concessions whatever of any lands, made or issued by the Mexican Government, since the thirteenth day of May, one thousand eight hundred and forty six, within the said territory, shall be absolutely null and void." The date might if necessary be changed from the day when Congress recognized the existence of the war, to the month of September, 1846, when the American forces took possession of California.

The extension of our boundaries over New Mexico and Upper California for a sum not exceeding twenty millions of dollars, is to be considered a *sine qua non* of

any Treaty. You may modify, change or omit the other terms of the Projet, if needful, but not so as to interfere with this ultimatum.

If you should not succeed in accomplishing the chief object of your mission, you are authorized to make the necessary preliminary arrangements with the Mexican Government for the conclusion of a Treaty of Peace by Commissioners to be appointed by both parties, according to the proposition contained in my note of the 18th January, last, to the Mexican Minister of Foreign Relations: provided a reasonable prospect shall exist that such Mexican Commissioners will agree to the ultimatum which I have specified.

So rapidly does revolution follow revolution in Mexico, that it would be difficult to conjecture what form of Government you may find in existence over that ill fated country, on your arrival at the Head Quarters of the Army. The constitution of 1824 may then have been abolished and a dictatorship be again existing in its stead. You will not hesitate, however, to conclude a Treaty with whatever Government you shall find there upon your arrival, provided it presents a reasonable prospect of being able to maintain itself. Should a Dictator be established who has subverted the Constitution of 1824 and acquired the supreme power, his ratification of the Treaty will be sufficient without the previous approbation of the General Congress. Were this Government to refuse to conclude a Treaty of Peace until the Mexican Government shall assume any permanent constitutional form, the war might yet continue for many years to come.

If the contingency shall occur on the happening of which, as provided by the third article of the proposed Treaty, hostilities are required to be suspended, you will, without delay, communicate this fact to the commanders of our land and naval forces respectively; the Secretaries of War and the Navy having already issued orders to them for the suspension of hostilities upon the receipt of such a notice from yourself.

You will herewith receive a certificate from the Secretary of the Treasury that your draught in favor of the Mexican Government for the whole or any part of the three millions of dollars appropriated by the Act of Congress of the 3d March, 1847, entitled "An Act making further appropriation to bring the existing war with Mexico to a speedy and honorable conclusion", will be duly honored. You will be exceedingly careful not to draw for any part of this sum until the conditions required by that Act shall have been fully complied with and the Treaty which you may sign with the authorized agent or agents of the Mexican Government has been "duly ratified by Mexico". As the disbursement of so large a sum is a matter of great importance, you should use every precaution to be certain that your draughts shall be drawn in favor of the proper functionary of the Mexican Government and the whole business transacted in such a manner that no difficulty can hereafter arise on the subject. You will take receipts in triplicate for any draught or draughts which you may draw, which ought, if possible, to be signed by the President of Mexico and countersigned by the Minister of Finance.

A. Projet.

The United States of America and the United Mexican States, desirous of terminating the war which has unhappily subsisted between the two Republics, and of restoring peace, friendship and good understanding between them, have, for that purpose, appointed their respective Plenipotentiaries, that is to say; the President of the United States has appointed Nicholas P. Tris, &c. &c. &c. and— who, after a reciprocal communication of their respective full powers, have agreed upon the following articles.

ARTICLE I.

There shall be a firm and universal peace between the United States of America and the United Mexican States, and between their respective countries, territories, cities, towns and people, without exception of places or persons. All hostilities, both by sea and land, shall definitively cease, so soon as the ratifications of this Treaty shall have been exchanged by the parties.

ARTICLE II.

All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable after the exchange of the ratifications of this Treaty.

[And it is further agreed that if any Mexican citizens should now be held as Captives by the Comanches or any other savage tribe of Indians within the limits of the United States as established by this treaty the Government of the United States will require the release of said Captives and their restoration to liberty and to their homes in Mexico.]¹

ARTICLE III.

So soon as the present Treaty shall have been duly ratified by the United Mexican States, this fact shall be made known with the least possible delay to the military and naval commanders of both parties, whereupon a suspension of hostilities shall take place, both by land and by sea, as well on the part of the military and naval forces of the United States as on the part of those of the United Mexican States, and the said suspension of hostilities shall be inviolably observed on both sides. Immediately after the exchange of the ratifications of the present Treaty, all the forts, territories, places and possessions whatsoever taken by the United States from the United Mexican States during the war, except such as are embraced within the limits of the United States as defined by the fourth article of this Treaty, shall be restored without delay, and without causing any destruction or carrying away of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this Treaty. And in like manner, all the forts, territories, places and possessions whatsoever taken by the United Mexican States from the United States during the war; and, also, all such forts, territories, places and possessions embraced within the limits of the United States under the fourth article of this Treaty, shall be restored, evacuated and delivered over to the United States without delay, and without causing any destruction or carrying away any of the artillery or other public property from the said forts or places and which shall remain therein upon the exchange of the ratifications of this Treaty.

ARTICLE IV.

The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land opposite the mouth of the Rio Grande, from thence up the middle of that river to the point where it strikes the Southern line of New Mexico, thence Westwardly along the Southern boundary of New Mexico to the South Western corner of the same, thence Northward along the Western line of New Mexico until it intersects the first branch of the River Gila, or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch and thence in a direct line to the same and down the middle of said branch of the said River until it empties into the Rio Colorado, thence down the middle of the Colorado and the middle of the Gulf of California to the Pacific Ocean.

ARTICLE V.

In consideration of the extension of the boundaries of the United States as defined by the last preceding article, the United States agree to pay to the United Mexican States at the City of Vera Cruz, the sum of fifteen millions of dollars, in five equal annual instalments, each of three millions of dollars, the first instalment to be paid immediately after this Treaty shall have been duly ratified by the Government of the United Mexican States.

¹ The words in brackets are from Trist Papers, 23:59980; subjoined is this memorandum, initialed by Trist: "The day preceding my departure from Washington, this paper was placed in my hands by Mr Buchanan, who said that it had been proposed by Mr Walker in cabinet, & assented to. Mr. B desired me to insert it in the treaty if I found it would promote the object." Trist left Washington on his mission on April 16, 1847.

ARTICLE VI.

As a further consideration for the extension of the boundaries of the United States as defined by the fourth article of this Treaty, the United States agree to assume and pay to the claimants all the instalments now due or hereafter to become due, under the Convention [Document 100] between the two Republics concluded at the City of Mexico on the 30th day of January, 1843 "further to provide for the payment of awards in favor of claimants under the Convention between the United States and the Mexican Republic of the 11th April, 1839". And the United States also agree to assume and pay to an amount not exceeding three millions of dollars, all claims of citizens of the United States not heretofore decided against the Government of the United Mexican States, which may have arisen previous to the thirteenth of May, 1846, and shall be found to be justly due by a Board of Commissioners to be established by the Government of the United States, whose awards shall be final and conclusive: provided, that in deciding upon the validity of these claims, the Board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified Convention concluded at the City of Mexico, on the 20th day of November, AD 1843; and, in no case, shall an award be made in favor of any claim not embraced by these principles and rules. And the United States do hereby forever discharge the United Mexican States from all liability for any of the said claims, whether the same shall be rejected or allowed by the said Board of Commissioners.

ARTICLE VII.

If in the opinion of the said Board of Commissioners, or of the claimants, any books, records or documents in the possession or power of the Government of the United Mexican States shall be deemed necessary to the just decision of any of said claims, the Commissioners, or the claimants through them, shall within such period as Congress may designate, make a demand in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the said books, records, or documents in their possession or power, which shall be specified, to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said Board of Commissioners: Provided that no such demand shall be made at the instance of any claimant, until the facts which it is expected to prove by such books, records or documents, shall first have been stated, under oath or affirmation.

ARTICLE VIII.

The Government of the United Mexican States hereby grant and guarantee forever to the Government and citizens of the United States, the right to transport across the Isthmus of Tehuantepec, from sea to sea, by any modes of communication now existing whether by land or water, free of any toll or charges whatever, all and any articles, the growth, produce or manufacture of the United States or of any foreign country belonging to the said Government or citizens; and also the right of free passage over the same to all citizens of the United States: And the Government of the United Mexican States, also, grant and guarantee to the Government and citizens of the United States the same right of passage for their merchandize and articles aforesaid as well as for such citizens over any rail road or canal which may hereafter be constructed across the said Isthmus by the Government of the United Mexican States or by its authority, paying no more than fair and reasonable tolls for the same: and no higher tolls and charges shall be levied and collected upon any of the before mentioned articles and merchandize belonging to the Government or citizens of the United States or upon the persons of such citizens, for passing over the said rail road or canal, than shall be levied and collected upon like articles and merchandize belonging to the Government or citizens of Mexico, being the growth, produce and manufacture of Mexico or of any foreign country, or upon the persons of such citizens. And none of the

said articles whatever belonging to the Government or citizens of the United States, thus passing in transit over the said Isthmus from sea to sea, either by the existing modes of communication or over any rail road or canal which may hereafter be constructed, in either direction, for the purpose of being transported to any port of the United States or of any foreign country, shall be liable to any import or export duty whatever. The two Governments hereby engage, with as little delay as possible, mutually to agree upon such regulations as may be necessary to prevent fraud and smuggling, in consequence of the right of passage thus granted and perpetually guaranteed to the Government and citizens of the United States.

ARTICLE IX.

All goods, wares or merchandize which shall, during the war, have been imported into any of the ports or places of either party whilst in the military occupation of the other, by the citizens of either, or by the citizens or subjects of any neutral Power, shall be permitted to remain exempt from confiscation, or from any tax or duty upon the sale or exchange of the same, or upon the withdrawal of the said property from the country: and the owners thereof shall be permitted to sell and dispose of the said property in the same manner in all respects whatever, as if it had been imported into the country in time of peace and had paid the duties under the laws of either party, respectively.

ARTICLE X.

The Treaty of Amity, Commerce and Navigation [Document 70] concluded at the City of Mexico on the 5th day of April, AD 1831, between the United States of America and the United Mexican States, and every article thereof, with the exception of the additional article, are hereby revived for the period of eight years from the day of the exchange of the ratifications of this Treaty, with the same force and virtue as if they made part of the context of the same; it being understood that each of the contracting parties reserves to itself the right at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XI.

This Treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the United Mexican States, with the previous approbation of their General Congress: and the ratifications shall be exchanged in the City of Washington within six months from the date of the signature hereof, or sooner if practicable.

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

Done in Duplicate at the day of
AD one thousand eight hundred and forty seven.

With the instructions and draft of April 15, 1847, is to be read the following communication of the same date from Secretary of State Buchanan to the Mexican Minister of Foreign Relations, of which Trist was the bearer (D.S., 2 Communications to Foreign Sovereigns and States, 28-32):

To His Excellency, The MINISTER OF FOREIGN RELATIONS of the Mexican Republic.

DEPARTMENT OF STATE,
Washington, 15th April, 1847.

SIR: I have the honor to acknowledge the receipt of Your Excellency's note of the 22nd February, last, in answer to mine of the 18th of January, proposing on the part of the President of the United States immediately to "despatch

either to the Havana or Jalapa, as the Mexican Government may prefer, one or more of our most distinguished citizens as Commissioners clothed with full powers to conclude a Treaty of Peace with similar Commissioners on the part of Mexico, as soon as he shall be officially informed that the Mexican Government will appoint such Commissioners."

The President deeply regrets the refusal of the Mexican Government to accede to this friendly overture, "unless the raising of the blockade of our [the Mexican] ports and the complete evacuation of the territory of the Republic by the invading forces shall be previously accepted as a preliminary condition."

The President has instructed me to inform you that this "preliminary condition" is wholly inadmissible. Such a condition is neither required by the honor, nor sanctioned by the practice, of nations. If it were, this would tend to prolong wars, especially between conterminous countries, until the one or the other power was entirely subdued. No nation which, at the expenditure of blood and treasure, has invaded its enemy's country, and acquired possession of any considerable portion of his territory, could ever consent to withdraw its forces as a preliminary condition to the opening of negotiations for peace. This would be at once to abandon all the advantages it had obtained in the prosecution of the war, without any certainty that peace would result from the sacrifice. Nay more, should such a negotiation prove unsuccessful, the nation which had thus imprudently withdrawn its forces from the enemy's territory, might not be able to recover, without a cost of blood and treasure equal to that first expended, the advantageous position which it had voluntarily abandoned.

Fortunately for the cause of peace and humanity, the history of nations at war affords no sanction to such a preliminary condition. The United States are as jealous of their national honor as any power on the face of the earth; and yet it never entered into the contemplation of the great statesmen who administered our Government during the period of our last war with Great Britain, to insist that the latter should relinquish that part of our territory of which she was in actual possession before they would consent to open negotiations for peace. On the contrary, they took the initiative and appointed Commissioners to treat for peace whilst portions of our country were held by the enemy, and it is a remarkable fact that the Treaty of Ghent was concluded by the Plenipotentiaries of the two Powers whilst the war was raging on both sides; and the most memorable of the conflicts to which it gave rise, took place upon our own soil after the negotiators had happily terminated their labors. History is full of such examples. Indeed, so far as the Undersigned is aware, there is not to be found, at least in modern times, a single case except the present, in which it has been considered a necessary preliminary that an invading army should be withdrawn before negotiations for peace could commence between the parties to the war.

It would, also, be difficult to find a precedent for the course pursued by the Mexican Government in another particular. The President, anxious to avoid the war now existing, sent a Minister of Peace to Mexico, for this purpose. After the Mexican forces had attacked the army of General Taylor on this side of the Rio Grande and thus commenced the war, the President, actuated by the same pacific spirit, made repeated overtures to the Government of Mexico, to negotiate for its termination. And although he has, from the beginning, solemnly declared before the world that he desired no terms but such as were just and honorable for both parties, yet the Mexican Government, by refusing to receive our Minister in the first place and afterwards by not acceding to our overtures to open negotiations for peace, has never afforded to this Government even the opportunity of making known the terms on which we would be willing to settle all questions in dispute between the two Republics. The war can never end whilst Mexico refuses even to hear the proposals which we have always been ready to make for peace.

The President will not again renew the offer to negotiate, at least until he shall have reason to believe that it would be accepted by the Mexican Government. Devoted, however, to honorable peace, he is determined that the evils of the war shall not be protracted one day longer than shall be rendered absolutely necessary by the Mexican Republic. For the purpose of carrying this determination into effect, with the least possible delay, he will forthwith send to the headquarters of

the army in Mexico, Nicholas P. Trist, Esq, the officer next in rank to the Undersigned in our Department of Foreign Affairs, as a Commissioner, invested with full powers to conclude a definitive Treaty of Peace with the United Mexican States. This gentleman possesses the entire confidence of the President and is eminently worthy of that of the Mexican Government.

The Undersigned refrains from all comment upon the concluding paragraph, as well as some other portions of Your Excellency's note; because the strong sense which he entertains of their injustice towards the United States could not be uttered in the friendly tone which he desires to preserve in the present communication. He turns from these, therefore, to dwell, as he does with unfeigned pleasure, upon the sentiment contained in an early part of the same note, where the Mexican Government expresses how painful it is "to see disturbed the sincere friendship which it cultivated with your [our] Republic, whose continued progress it has always admired, and whose institutions have served it as a model."

This feeling is most cordially reciprocated by the President, whose earnest desire it is, that the United Mexican States, under institutions similar to our own, may protect and secure the liberty of their people, and maintain an elevated standing among the nations of the earth.

The Undersigned embraces this occasion to offer to Your Excellency the assurance of his most distinguished consideration.

JAMES BUCHANAN.

In June and July the instructions to Trist were modified; excerpts from the later instructions follow (D.S., 16 Instructions, Mexico, 62-74):

[Instruction No. 2, June 14, 1847, excerpt]

Enclosed, I transmit you a copy of the orders issued on the 11th instant by the President to the Secretaries of War and of the Navy upon the Report of the Secretary of the Treasury of the day preceding in relation to the Mexican Tariff. From these you will perceive it has been announced to the world that the Government intend to provide by the Treaty with Mexico, that goods imported into any of the ports of that country whilst in our military possession, shall be exempt from any new import duty or charge after the conclusion of peace. This will render it necessary for you to insist upon the insertion of the 9th article of the *Projet* of the Treaty. Indeed, you may consider this as a *sine qua non*.

[Instruction No. 3, July 13, 1847, excerpt]

According to the suggestion in your despatch N^o 6, you are authorized to modify the boundary contained in your instructions so as to make it read "up the middle of the Rio Grande to the 32nd degree of North Latitude, thence due west to a point due south of the south western angle of New Mexico, thence due north to the said angle, thence northward along the western line of New Mexico." &c. &c. &c. This modification, which would embrace the Paso del Norte within the limits of the United States, is deemed important: still you are not to consider it as a *sine qua non* nor suffer it to delay the conclusion of a Treaty.

I would suggest another and more important modification of the line; and this is to run it along the 32nd parallel of North Latitude from the Rio Grande to the middle of the Gulf of California and thence down the middle of the Gulf to the Pacific Ocean: or if this cannot be obtained, to run it due west from the southwest angle of New Mexico to the middle of the Gulf. Either of these lines would include within our limits the whole course of the Gila. From information derived from Major Emory,¹ the valley of that river presents a favorable route for a rail road to the Pacific; but this would sometimes pass on the one side and sometimes on the other of the bed of the stream. For this reason it is deemed important that the whole valley of that river should be included within the boundary of the

¹ William Hemsley Emory, of the Topographical Engineers, later Major General of Volunteers.

United States. You are therefore, authorized and instructed to make the first, or if this cannot be obtained, the second modification above suggested in the line; but still with the understanding that neither of these two changes is to be considered a *sine qua non*, nor is it to delay the conclusion of a Treaty.

In case lower California cannot be obtained, then the line might be run on the parallel of 32° or due West from the South West corner of New Mexico to the Pacific Ocean. If the latter line should be adopted, care must be taken that San Miguel shall be included within our limits.

[Instruction No. 4, July 19, 1847, excerpt]

The more I reflect upon the subject, the better am I convinced of the importance of running the boundary line between the Rio Grande and the Gulf of California along the thirty second parallel of North Latitude. We cannot learn that the boundaries of New Mexico have ever been authoritatively and specifically determined; and difficulties might hereafter arise between the two Governments in ascertaining where the south western angle of New Mexico is situated. A conversation with Major Emory since the date of my last despatch, has convinced me still more of the importance of this modification.

You will therefore in the copy of the projet of a Treaty which you are instructed to present to the Mexican Plenipotentiary, if this be not too late, substitute the following, instead of the 4th article.

ARTICLE IV.

The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from the land, opposite the mouth of the Rio Grande, from thence up the middle of that river to the thirty second parallel of North latitude, from thence due west along this parallel of latitude to the middle of the Gulf of California, thence down the middle of the same to the Pacific ocean.

It is not intended that you shall make the parallel of 32°, instead of the River Gila, a *sine qua non*; but yet it is deemed of great importance that you should obtain this modification, if it be practicable.

If lower California cannot be obtained, then the line on the parallel of 32° might be extended to the Pacific ocean, taking care, in that event, to secure to our citizens, in accordance with your original instructions, "in all time to come, a free and uninterrupted access to and from the ocean through the Gulf of California from and to their possessions north of the said division line."

Major Emory, whilst in California,¹ has accurately ascertained the latitude of two important points in that country. The latitude of the town of San Diego is 32°, 44', 59". The harbor is some miles south of the town. The latitude of the mouth of the Gila where it empties into the Colorado, is 32°, 43'.

For the lines of boundary proposed in the various instructions to Trist, see Paullin, *op. cit.*, plate 94A and pages 64-65.

The range of discretion given to Trist by the instructions of April 15, 1847, was wide. The territorial cessions and rights desired by the Government of the United States were four: New Mexico, Upper California, Lower California, and the right of transit across the Isthmus of Tehuantepec. For the whole, Trist was authorized to agree to the payment of \$30,000,000; for New Mexico and Upper

¹ Lieutenant Colonel Emory in 1846-47 had made a military reconnaissance from Fort Leavenworth to San Diego; his elaborate "Notes" thereon, extending to 416 pages, with plates and maps, are in Senate Executive Document No. 7, 30th Congress, 1st session, serial 505.

California, which were a *sine qua non*, \$20,000,000; and for those two regions, plus either Lower California or the right of transit across Tehuantepec, \$25,000,000, each of the foregoing sums being a maximum.

In those instructions Trist was authorized, but not directed, to "communicate confidentially to Major General Scott and Commodore Perry" the terms of the proposed treaty and of his instructions. This proved to be a most unfortunate and ill-advised provision, as knowledge of the instructions and of the draft was, in fact, withheld from General Scott for about two weeks after the arrival of Trist at Veracruz. Trist was to proceed to the headquarters in Mexico of the Army which was under the command of Major General Winfield Scott. The American forces in Mexico were in a foreign country, remote from Washington in distance and in time of communication; they were actively engaged in hostilities; that negotiations for peace under such circumstances could be there conducted without the fullest knowledge and cooperation of the commander of the Army was almost impossible; and, if possible, was almost incredibly dangerous.

It is to be added that the orders of the War Department to General Scott (April 14, 1847) were drawn so as admirably to conceal the real intention of the authorities at Washington. As written, they stated that, in a certain undescribed contingency, a written notice from Trist was to be regarded as a direction from the President to suspend military operations. The language used was this (serial 509, pp. 118-19):

The signal successes which have attended our military operations since the commencement of the present war, would seem to justify the expectation that Mexico will be disposed to offer fair terms of accommodation. With a view to a result so desirable, the President has commissioned Nicholas P. Trist, esq., of the State Department, to proceed to your head-quarters, or to the squadron, as to him may seem most convenient, and be in readiness to receive any proposals which the enemy may see fit to make for the restoration of peace.

Mr. Trist is clothed with such diplomatic powers as will authorize him to enter into arrangements with the government of Mexico for the suspension of hostilities. Should he make known to you, in writing, that the contingency has occurred in consequence of which the President is willing that further active military operations should cease, you will regard such notice as a direction from the President to suspend them until further orders from this department, unless continued or recommenced by the enemy; but in so doing you will not retire from any place you may occupy, or abstain from any change of position which you may deem necessary to the health or safety of the troops under your command; unless, on consultation with Mr. Trist, a change in the position of your forces should be deemed necessary to the success of the negotiation for peace. Until hostilities, as herein proposed, shall be intermitted, you will continue to carry on your operations with energy, and push your advantages as far as your means will enable you to do.

Mr. Trist is also the bearer of a despatch to the secretary of foreign affairs of the government of Mexico, in reply to one addressed to the Secretary of State here. You will transmit that despatch to the commander of the Mexican forces, with a request that it may be laid before his government, at the same time giving information that Mr. Trist, an officer from our department for foreign affairs, next in rank to its chief, is at your head-quarters or on board the squadron, as the case may be.

You will afford Mr. Trist all the accommodation and facilities in your power to enable him to accomplish the objects of his mission.

Of course, the "contingency" upon which military operations were to be suspended was in fact a reasonable one, for the conditions precedent were, according to the instructions to Trist and the treaty draft, the signing of a treaty of peace and its ratification on the part of Mexico; but anyone reading the War Department order by itself and without other information of the authority of Trist might reasonably conclude (as General Scott did) that Trist was empowered to direct a truce or armistice prior to negotiations; and authority such as that, if granted to a civilian at the headquarters of a commander of an independent army in the field, would have made the position of the latter impossible and would have invited disaster.

The mission of Trist was intended to be a complete secret; but within less than a week it became published news, greatly to the chagrin of the administration. Efforts to discover who was responsible for the disclosure were fruitless (Polk's Diary, II, 482-87, April 21-22, 1847; see the *New York Herald*, April 20, 1847).

DELIVERY OF THE AMERICAN NOTE OF APRIL 15, 1847

The original despatches from Trist (with their enclosures) which are in the archives of the Department of State are bound in 14 Despatches, Mexico. Those despatches, except two, of May 25 and July 31, 1847, which are unnumbered and marked "private", are printed (more than half of them incomplete textually and some with enclosures in whole or in part omitted) in serial 509, pages 95-105, 150-384.

Trist arrived at Veracruz on May 6, 1847, and at once made plans to leave on May 8 for the headquarters of the Army. Scott was then at Jalapa; Puebla was occupied by American forces under Brevet Major General William J. Worth on May 15; Scott joined Worth on May 28. Points on the road from Veracruz to Mexico City are shown on the inset map in the lower left-hand corner of the Disturnell Map; and there is a profile of the route just to the right of that inset.

The most elementary considerations of common sense should have led Trist to await a conference with General Scott and the necessary valuable information which would thus have been made available to him, before taking any steps for the accomplishment of his mission. On the afternoon of the day of his arrival at Veracruz, however, Trist sent forward a letter¹ to General Scott, communications to him from the Secretary of War, and also, for delivery, the note (printed above) of April 15, 1847, from the Secretary of State to the Mexican Minister of Foreign Relations; that note was sealed; and Trist wrote that he "had no time to take a copy" of his own letter to Scott (D.S., 14 Despatches, Mexico, May 7, 1847, and the letter of Scott to Trist of the same day, a copy of which is with despatch No. 4, of May 21, 1847).

The answer of Scott was written from the headquarters of the Army at Jalapa on May 7. At the time the only papers available to Scott regarding the mission of Trist were the War Department order of

¹ The text of that letter of May 6, 1847, is not available.

April 14, 1847 (quoted above), and Trist's letter of May 6, which was probably brief, as Scott called it a "note" Scott wrote in these terms (*ibid.*):

I have just received your note of yesterday, accompanied by communications to me from the Secretary of War & one (sealed!) from the Department of State to the Minister of foreign affairs of the Republic of Mexico.

You are right, in doubting, whether there be a government, even *de facto*, in this Republic. General Santa Anna, the nominal president, has been, until within a day or two, in the neighborhood of Orizaba, organizing bands of rancheros, banditti or guerillas, to cut off stragglers of this army, &, probably, the very train, all important to us, which you propose to accompany into the interior—the safety of which train has detained me here & caused me a high degree of solicitude. Hence I regret that Colonel Wilson, commanding at Veracruz, has allowed himself, a second time, to be persuaded, to detach, to bring up despatches (for your accommodation) a material portion of the force I had relied upon, as the escort of that train. The other detachment, to which I allude, came up, some days ago to escort Lieutenant Semmes, of the Navy, duly accredited, by Commodore Perry, to the Mexican Minister of foreign affairs, to negotiate the exchange of Passed Midshipman Rogers, now a prisoner of war. That matter, also, seems to have been considered too important to be intrusted to my agency!

But to return to the actual government of Mexico. Señor Anaya, is, I believe, President *ad interim*. But you may have learned that the Congress, after hearing of the affair of Cerro Gordo, passed many violent decrees, breathing war, to the uttermost, against the U. States—declaring that the executive has no power, & shall have none, to conclude a treaty, or even an armistice, with the U. States, & denouncing, as a traitor, any Mexican functionary who shall entertain either proposition. I have communicated a copy of those decrees to the War Department, &, until further orders, thereupon, or until a change of circumstances, I very much doubt whether I can so far commit the honour of my government as to take any direct agency in forwarding the sealed despatch you have sent me from the Secretary of State of the U. States.

On this delicate point, however, you will do as you please, & when, if able, I shall have advanced near to the capital, I may, at your instance, lend an escort to your flag of truce; & it may require a large fighting detachment to protect even a flag of truce against the rancheros & banditti who now infest the national road all the way up to the capital.

I see that the Secretary of War proposes to degrade me, by requiring that, I, the Commander of this army, shall defer to you, the Chief Clerk of the department of State, the question of continuing or discontinuing hostilities.

I beg to say to him & to you, that here, in the heart of a hostile country, from which, after a few weeks, it would be impossible to withdraw this army, without a loss, probably, of half its numbers, by the *vomito*;—which army, from necessity, must soon become a *self-sustaining machine*—cut off from all supplies & re-inforcements from home; until, perhaps, late in November,—not to speak of the bad faith of the government & people of Mexico;—I say, in reference to those critical circumstances, this army must take *military* security for its own safety. Hence the question of an armistice, or no armistice is, most peculiarly, a *military* question, appertaining of necessity, if not of universal right in the absence of direct instructions, to the commander of the invading forces. Consequently, if you are not clothed with military rank over me, as well as with diplomatic functions, I shall demand, under the peculiar circumstances, that, in your negotiations, if the enemy should entertain your overtures, you refer that question to me, & all the securities belonging to it. The safety of this army demands no less, & I am responsible for that safety, until duly superseded or recalled. Indeed, from the nature of the case, if the enemy, on your petition, should be willing to concede an armistice, he would, no doubt, demand the military guaranty of my signature for his own safety.

Should you, under the exposition of circumstances I have given, visit the moveable head quarters of this army, I shall receive you with the respect due to a functionary of my government; but whether you would find me here, at Perote, Puebla, or elsewhere, depends on events changeable at every moment.

The sealed despatch from the Department of State, I suppose you to desire me to hold until your arrival, or until I shall hear farther from you.

While the language used by Scott was perhaps unduly outspoken, there was nothing unreasonable in the substance of his attitude; in view of the wording of the War Department order to him, Scott, at the very least, was entitled to await the arrival of Trist at his headquarters and a disclosure of the program before sending to the enemy a sealed communication of the contents of which Scott was ignorant.

The interpretation which Scott gave to the War Department order of April 14, 1847, appears in his despatch to the Secretary of War of May 20 as follows (serial 509, pp. 124-27):

I understand your letter to me of the 14th ultimo as not only taking from me, the commander of an army under the most critical circumstances, all voice or advice in agreeing to a truce with the enemy, but as an attempt to place me under the military command of Mr. Trist; for you tell me that "should he make known to you, in writing, that the contingency has occurred in consequence of which the President is willing that further active military operations should cease, you will regard such notice as a direction from the President to suspend them until further orders from this department."

That is, I am required to respect the judgment of Mr. Trist here on passing events, purely military, as the judgment of the President, who is some two thousand miles off!

Trist, however, was enraged;¹ he arrived at Jalapa on May 14 and refrained from calling on Scott, to whom he wrote two violent letters (dated May 9 and 20), in all some eight thousand words; these were both delivered on the morning of May 21, as Scott was leaving for Puebla; in the letter of earlier date Trist gave some account of his instructions, particularly regarding the "contingency" on which hostilities were to be suspended; in the latter he absurdly presumed to deliver a detailed "message" as "the will, order, and command of the President of the United States" (D.S., 14 Despatches, Mexico, No. 4, May 21, 1847, enclosures; about half of the letter of May 9 and the whole of that of May 20 are printed in serial 509, pp. 159-68). All possibility of cooperation between the General and the Commissioner was ended for the time. The answer of Scott, of May 29, was couched in harsh and bitter terms. Two paragraphs referring to the War Department order of April 14, 1847, are excerpted (Trist Papers, 23 : 60068-69; printed in serial 509, pp. 172-73):

You tell me that you are authorized to negotiate a treaty of peace with the enemy—a declaration which, as it rests upon your own word, I might well question; & you add that it was not intended, at Washington, that I should have

¹ General Scott later attributed the tone of the letters of Trist to the fact that Trist "fell ill at Vera Cruz, and was obliged to take much morphine to save life" (Memoirs, II, 579; see also Scott to Marcy, July 25, 1847, in serial 509, p. 135); but this appears to be mistaken. Trist wrote to his wife on May 8 from Veracruz that he was "in *superlative* health", on May 15 from Jalapa that he had reached there "in perfect health", and on May 21, June 3, and June 14 that he was "perfectly well" (Trist Papers, 23 : 60018, 60037, 60048, 60073, 60096). It seems, however, that he was seriously ill "for several weeks" during the latter part of June and early part of July (*ibid.*, 24 : 60156, 60160-61, 60164; D.S., 14 Despatches, Mexico, No. 9, July 23, 1847, postscript of July 25).

any thing to do with the negotiation. This I can well believe, & certainly have cause to be thankful to the President for not degrading me by placing me in any joint commission with you.

From the letter of the Secretary of War, to me, of the 14th ultimo, I had supposed you to be simply authorized to propose or to concede to the enemy, the truce or armistice, which usually precedes negotiations for a peace; & my letter to you was written on that supposition. If the terms of military conventions are left to me, the commander of this army, I have nothing more to desire or to demand for its safety.

Scott returned the original American note of April 15, 1847, to Trist at Jalapa not later than May 20. On June 6, Trist wrote from Puebla to Charles Bankhead, British Minister to Mexico, informing him of his mission and inquiring whether Bankhead would receive and deliver the American note to the Mexican Minister of Foreign Relations, stating that of course an open copy would be given to Bankhead for his perusal. The latter at once sent Edward Thornton, of the staff of his Legation (later Sir Edward Thornton, Minister at Washington from 1868 to 1881), from Mexico City to Puebla, a journey then of some risk. Arriving there on June 10, Thornton interviewed separately both Scott and Trist, who were not yet on speaking terms. The American note of April 15 was entrusted to Thornton for Bankhead and was transmitted by the latter about June 15 to the Minister of Foreign Relations of Mexico, Domingo Ibarra (the three letters of Trist to Bankhead of June 6, 7, and 11, 1847, are printed in serial 509, pp. 181-85; see Rives, *op. cit.*, II, 440-42).

By the middle of June the authorities at Washington were very imperfectly informed of the correspondence between Trist and Scott. Copies of none of the three letters from the former to the latter (of May 6, May 9, and May 20) were at hand. Scott had sent to the Secretary of War a copy of his letter to Trist of May 7. The same letter was an enclosure to Trist's despatch of May 21; but only the original of the despatch last mentioned, and not the duplicate, had been received; it was the latter which contained copies of the letters of Trist of May 9 (in part) and of May 20. On the basis of that limited material, the comments made were critical of Scott rather than of Trist; but to Trist were given specific though rather belated directions to communicate to Scott his instructions and the treaty draft (see Polk's Diary, III, 57-59, 61-63, June 12 and 14-15, 1847; also the following in serial 509: Buchanan to Trist, June 14, 1847, pp. 112-13; the first sentence of Buchanan to Trist, July 13, 1847, p. 113; Scott to Marcy, May 7, 1847, pp. 119-20; Marcy to Scott, May 31, 1847, pp. 121-24; the same to the same, June 15, 1847, pp. 127-29).

A month later there were other communications available, namely, the letters of Trist to Scott of May 9 (in part) and May 20 and the answer of Scott of May 29, although the opening letter of the entire correspondence (that of Trist of May 6) had not been and apparently was not at any time later received either by the Department of State or by the War Department. Official criticism now extended to Trist as well as to Scott; even the recall of both was discussed; but action

went no further than reproof; and in the admonitions written by the Secretary of State and the Secretary of War it was recognized that it was unfortunate that Scott had not from the outset been made fully acquainted with the character and objects of the mission of Trist and it was said that such had been the intention and expectation of the Government. What had been lacking three months earlier was neither expectation nor intention but specific direction and order (see Polk's Diary, III, 76-79, 82-85, July 9 and 12-13, 1847; also the following in serial 509: Buchanan to Trist, July 13, 1847, pp. 113-17; Marcy to Scott, July 12, 1847, pp. 131-35).

In the meantime, relations between Scott and Trist had become cordial. In his despatch of July 23 from Puebla (D.S., 14 Despatches, Mexico, No. 9) Trist wrote that his official intercourse with General Scott, with reference to the mission of Trist, had been commenced by a letter of Trist of June 25 and the reply thereto; copies of these had been sent by Trist with his despatch No. 8, of July 7, in which he wrote that with the reply of Scott had come a message evincing "much good feeling" (No. 8 was not received at the Department of State; for it and the letter of Trist to Scott of June 25, 1847, see Trist Papers, 24 : 60164, 60117-18); Trist in his despatch No. 9 (printed in part in serial 509, p. 302) eulogizes in high terms the character and conduct of General Scott. Scott wrote on July 25 that he had found Trist "able, discreet, courteous, and amiable" (*ibid.*, 135-37); and each suggested with approval the suppression of their earlier correspondence.

THE MEXICAN NOTE OF JUNE 22, 1847

The answer to the American note of April 15 was dated June 22, 1847. That answer was delivered to Trist at Puebla by the hands of Thornton, of the British Legation (see Rives, *op. cit.*, II, 442). It was in these terms (D.S., 4 Notes from the Mexican Legation, translation with the original):

To His Excellency the SECRETARY OF STATE of the United States of America

FEDERAL PALACE, June 22, 1847

The undersigned, Minister of Internal and Foreign Relations, had the honor to receive Your Excellency's note, dated 15th of April last, in which you declare that His Excellency the President of the United States intends to despatch, as a commissioner to the headquarters of the Army, operating in Mexico, Nicholas P. Trist, Esq., the officer next in rank to Your Excellency, with full powers to conclude a definitive treaty of peace with the United Mexican States; and the most Excellent President *ad interim* of this Republic, to whom the undersigned immediately made known the contents of Your Excellency's said official note, has determined that you should be informed in reply that the decision on the affair in question, being reserved to the sovereign Congress of the nation, Your Excellency's said note is transmitted by him to that body in order that it may determine what should be deemed most proper on the subject. Its resolution shall be communicated in due time to Your Excellency by the department under the charge of the undersigned, who leaves for that occasion the answer to the points embraced in Your Excellency's said note.

The undersigned avails himself of this opportunity to offer to Your Excellency the assurances of his distinguished consideration

DOMO IBARRA

The question of peace was thus referred to the Mexican Congress (see, in *ibid.*, the translation of the message of Ibarra to "the Most Excellent Secretaries of the Sovereign Congress" dated June 22, 1847). A quorum of that body did not assemble until July 13. Antonio Lopez de Santa Anna, General in Chief and President *ad interim*, was in Mexico City; but there were legal and practical obstacles to negotiations.

Immediately following the Battle of Cerro Gordo (April 18), the Mexican Congress, on April 20, had passed a law which gave to the Executive broad powers but deprived him of authority to negotiate peace with the United States; indeed, by that statute peace negotiations would have been treason (Dublan y Lozano, *Legislacion mexicana*, V, 267-68). By the "Acta de reformas constitucionales" of May 18, 1847 (*ibid.*, 275-79), the constitutive act of January 31, 1824 (*ibid.*, I, 693-97), and the constitution of October 4, 1824 (*ibid.*, 719-37), were reaffirmed, subject to the "reformas" or amendments; it was a matter of debate and doubt whether the limitations of the law of April 20 were in force in view of the later enactment (see the summary of the message on behalf of Santa Anna dated July 16, 1847, signed by José Ramon Pacheco, who had succeeded Ibarra, in serial 509, pp. 302-5); but no decision on the point was reached (see Roa Bárcena, *Recuerdos de la invasion norte-americana, 1846-1848*, 284, and Smith, *The War with Mexico*, II, 393); indeed, it seems that the Mexican Congress did not meet to consider the message of July 16 (D.S., 14 Despatches, Mexico, No. 9, July 23, 1847); in that same despatch of July 23, Trist reported that Congress and the President had been "engaged in bandying between them the responsibility of the question presented by your note to the Minister of Foreign Relations"; and Thornton, of the British Legation, wrote to Trist on July 29 to the same effect regarding "the mutual endeavours of Congress & Santa Anna to put the responsibility of entering into negotiations upon each other" (*ibid.*, No. 10, July 31, 1847, enclosure).

It was during this period (July 1847) that proposals were made for a treaty on the basis of money, \$10,000 to be paid down to one official and \$1,000,000, upon the ratification of the treaty, "probably to be divided among many" (see Smith, *op. cit.*, II, 132-33, 390-91, and the writings there cited); Trist asked the cooperation of Scott in this plan by letter of July 16, and Scott wrote his assent on the next day (Trist Papers, 24:60202-8); the \$10,000 was paid by Scott, but otherwise the plan wholly failed; nothing of it was known to Polk or his Cabinet until December 11, 1847 (see Polk's Diary, III, 245-46, 251-53, 262-63), although statements in the press on the subject had appeared during the previous two or three weeks (*ibid.* and Smith, *op. cit.*, II, 391); no report from General Scott regarding the scheme was received at Washington until February 19, 1848 (Polk's Diary, III, 340-41, 345-46); the communications of Trist to the Department of State contain no allusion to the proposals; the theory has been advanced that a letter from Trist to Thornton of July 3, 1847, a copy of which was enclosed with Trist's despatch No. 8, of July 7, 1847, should have suggested to Buchanan that "something

peculiar was afoot" (Smith, *op. cit.*, II, 391); the text of that letter of Trist to Thornton (Trist Papers, 24:60158-59) would surely at the time have caused some wonder as to what was meant by the "suggestion upon certain points" which General Scott had offered to carry into effect; but neither Trist's despatch No. 8 (copy in *ibid.*, 60164) nor its enclosure is in the archives of the Department of State, and it seems certain that they were not received at Washington (see D.S., 16 Instructions, Mexico, 79-83, October 25, 1847, where it is said that Trist's No. 8 had not been received; also House Executive Document No. 60, 30th Congress, 1st session, serial 520, p. 830, footnote).

NEGOTIATIONS FOLLOWING THE ARMISTICE

As a result of the military operations of August 20, 1847, which were called by Scott the Battle of Mexico but which are now generally known as the Battles of Contreras (or Padierna) and Churubusco, the American forces were in a position to occupy the capital. Scott thus reported on the situation and on the events of the next few days in his despatch from Tacubaya of August 28, 1847 (Senate Executive Document No. 1, 30th Congress, 1st session, serial 503, pp. 306-15, at p. 314):

After so many victories, we might, with but little additional loss, have occupied the capital the same evening [August 20]. But Mr. Trist, commissioner, &c., as well as myself, had been admonished by the best friends of peace—intelligent neutrals and some American residents—against precipitation; lest, by wantonly driving away the government and others—dishonored—we might scatter the elements of peace, excite a spirit of national desperation, and thus indefinitely postpone the hope of accommodation. Deeply impressed with this danger; and remembering our mission—to conquer a peace—the army very cheerfully sacrificed to patriotism—to the great wish and want of our country—the *eclat* that would have followed an entrance—sword in hand—into a great capital. Willing to leave something to this republic—of no immediate value to us—on which to rest her pride, and to recover temper—I halted our victorious corps at the gates of the city, (at least for a time,) and have them now cantoned in the neighboring villages, where they are well sheltered and supplied with all necessaries.

On the morning of the 21st, being about to take up battering or assaulting positions, to authorize me to summon the city to surrender, or to sign an armistice with a pledge to enter at once into negotiations for peace—a mission came out to propose a truce. Rejecting its terms, I despatched my contemplated note to President Santa Anna—omitting the summons. The 22d, commissioners were appointed by the commanders of the two armies; the armistice was signed the 23d, and ratifications exchanged the 24th.

All matters in dispute between the two governments have been thus happily turned over to their plenipotentiaries, who have now had several conferences, and with, I think, some hope of signing a treaty of peace.

The meeting of August 21 was at the village of Coyoacán; the proposal for a truce which General Scott rejected was made by General Mora y Villamil and was, it seems, verbal; it was for "an armistice of twelve months" (see Hitchcock, *Fifty Years in Camp and Field*, 279-80, 284, and Senate Executive Document No. 65, 30th Congress, 1st session, serial 510, pp. 450, 460); the previous admonitions "against precipitation" which Scott mentioned as coming from "intelligent neutrals and some American residents" are imperfectly reported (see Rives, *op. cit.*, II, 494-97, 502, and the writings there cited).

At the same time there was delivered to Trist, with two covering notes from Bankhead, the following communication from the Mexican Minister of Foreign Relations to the Secretary of State (D.S., 14 Despatches, Mexico, No. 12, August 22, 1847, translation, somewhat revised; the Spanish text of the Mexican note of August 20 is printed in serial 509, pp. 189-90; copies of the two notes from Bankhead to Trist of August 20 and 21 are, respectively, enclosures 2 and 1 to the despatch last cited; they are printed, with unimportant omissions, in Rives, *op. cit.*, II, 497, 498):

PALACE OF THE FEDERAL GOVERNMENT
Mexico, August 20, 1847

To His Excellency the MINISTER OF FOREIGN AFFAIRS of the United States of America.

The undersigned, Minister of Domestic and Foreign Relations, has instructions from His Excellency the President *ad interim* of the Republic to say to His Excellency Mr. Buchanan, Minister of Foreign Affairs of the United States of America, that success in battles does not always accompany the justice of the cause for which they have been fought; in view of this fact and no other, if there be any other to consider, the Chief of the United Mexican States has fought until, because of events which it is unnecessary to recount, the troops of the said United States of America are within the gates of the capital; giving heed, therefore, to other duties which are also his, as First Magistrate of his country, and in the exercise of the powers which devolve on him under its Constitution, he has decided that the proposals which Mr. Nicholas Trist, appointed by the Government of the United States, may have to make should be heard, provided they be advantageous to both nations and safeguard the honor of the Mexican Republic, as has been continually said in the Congress at Washington and as the North American Minister assured the Government of Great Britain, and with the understanding that the Mexican Government will agree to the opening of preliminaries of peace, a treaty to be concluded within the period of a year thereafter, the same to be submitted, in accordance with the Constitution of the country, to the approval of the authority to which the Constitution assigns this power.

The nature of this communication does not permit of going into the details thereof, and the undersigned believes that what has been said is a sufficient reply to the note of His Excellency Mr. Buchanan of April 15 last, to whom on this occasion he presents the assurance of his distinguished consideration.

J. R. PACHECO

The offer of Scott to sign "a short armistice" was made by letter to Santa Anna dated at Coyoacán August 21, 1847, and was accepted the same day (serial 509, pp. 192-93, 308-9). The armistice was signed in English and Spanish at Tacubaya on August 23 by Major General John A. Quitman and Brigadier Generals Persifor F. Smith and Franklin Pierce, appointed by Scott, and by Brigadier Generals Ignacio de Mora y Villamil and Benito Quijano, appointed by Santa Anna, and was finally ratified by the two commanders on August 24 (for the English version,¹ see Senate Executive Document No. 65, 30th Congress, 1st session, serial 510, pp. 518-20; for the Spanish, serial 509, pp. 352-54; the English in *ibid.*, 310-13, is a translation from the Spanish; it will be seen from the prints of the text that the *alternat* was duly observed; Scott's proposed articles, which included a clause for the withdrawal of the Mexican forces from Chapultepec,

¹ The date in Article 16 of this print is erroneously August 22 instead of August 23, 1847.

are in serial 510, pp. 543-44). As signed, the armistice contained sixteen articles, one of which, the ninth, was eliminated. The preamble and Articles 1 and 2 read as follows (*ibid.*, 518):

The undersigned, appointed, respectively, the three first by Major General Winfield Scott, commander-in-chief of the armies of the United States, and the two last by his excellency D. Antonio Lopez de Santa Anna, president of the Mexican republic and commander-in-chief of its armies, met with full powers, which were duly verified, in the village of Tacubaya, on the 22d day of August, 1847, to enter into an armistice, for the purpose of giving the Mexican government an opportunity of receiving propositions for peace from the commissioner appointed by the President of the United States, and now with the American army, when the following articles were agreed upon:

ART. 1. Hostilities shall instantly and absolutely cease between the armies of the United States of America and the United Mexican States, within thirty leagues of the capital of the latter States, to allow time to the commissioner appointed by the United States and the commissioners to be appointed by the Mexican republic to negotiate.

2. This armistice shall continue as long as the commissioners of the two governments may be engaged in negotiations, or until the commander of either of the said armies shall give formal notice to the other of the cessation of the armistice, and for forty-eight hours after such notice.

Just before the peace negotiations which ensued, Trist was very optimistic and completely mistaken regarding the outcome; he wrote on August 24 from the headquarters of the Army at Tacubaya: "The negotiation of a treaty I look upon as next to certain. The difficulty—and a most serious difficulty it threatens to prove—will lie in the ratification. . . . I have but little doubt of the practicability of negotiating a more favorable one than I shall dare to venture upon, keeping in view the ratification and the fact that without this nothing will have been done" (D.S., 14 Despatches, Mexico, No. 13; much of this despatch, including the words quoted, is omitted from the print in serial 509, pp. 190-91).

Following some preliminary correspondence between Trist and Pacheco (August 25 and 26; *ibid.*, 193-94), the first meeting of Trist and the Commissioners on the part of Mexico was held at the village of Atzacapotzalco, about eight miles from Tacubaya, on August 27, "late in the afternoon". Santa Anna had found some difficulty in the selection of the Mexican Commissioners (see *ibid.*, 317-25, 357-64). Those who were finally named were General of Division José Joaquín de Herrera, José Bernardo Couto, Brigadier General Ignacio de Mora y Villamil, and Miguel Atristain. Their full powers, of August 27, were very limited, authorizing them merely "to go to the town of Atzacapotzalco to receive and transmit to me the proposals mentioned which the said Mr. Nicholas Trist is to make" (D.S., 14 Despatches, Mexico, No. 14, August 29, 1847, enclosure, translation; the text of the full powers is printed in serial 509, p. 365, with a translation at pp. 325-26).

One relevant circumstance is of special interest. The gist of the instructions given to Trist, insofar as they concerned the boundary, was well known to the Mexican Government. When the negotiations

now under consideration terminated (on September 6), Trist received the original of the instruction to him from Secretary of State Buchanan dated July 13, 1847, which is quoted in part above. That original instruction had been intercepted near Veracruz and was sent to Trist "open" by the Minister of Foreign Relations of Mexico (D.S., 14 Despatches, Mexico, No. 16, September 27, 1847, postscript dated September 28; the facts are noted by Trist on the original instruction in the Trist Papers, 24:60180). To read that instruction was to read a summary of the authority of Trist to treat regarding the line; in particular, it disclosed that Lower California was not a *sine qua non*.

At the first meeting of the Commissioners, Trist presented the project of a treaty which formed part of his instructions¹ of April 15, 1847, including (slightly revised) the clause added to Article 2 regarding Mexican citizens captured by Indian tribes (the text of the project is hereinbefore printed; see serial 509, pp. 326-30, 366-69). The Mexican Commissioners had very strict instructions to refrain from any discussions at the first meeting (*ibid.*, 325, 364). Trist's report of this meeting is in his despatch of August 29, as follows (D.S., 14 Despatches, Mexico, No. 14):

At the first meeting our respective Powers were exhibited, and I remarked upon their (the Mexican Commissioners) being restricted to the mere receiving of my propositions for transmission to the President for his consideration: observing that my powers authorized me to confer only with persons having the like authority. Nevertheless, I would deliver to them the propositions I had to make, which had been put in the form of a treaty) in the expectation that when we met to discuss the subject their powers would correspond to mine. I determined upon this course because it was obvious that if the sight of our propositions was to have the effect of preventing them from proceeding in the negotiation, this could take place just as well after they had received their full powers as before. This was, therefore, a point of mere etiquette, and I sacrificed it to the substantial advantage of gaining time, and of pleasing the other party by not taking a stand against their mode of proceeding at the first step.

The account of the Mexican Commissioners of the meeting of August 27 is in their report dated September 7 (serial 509, pp. 383-84). From the translation (*ibid.*, 344-46), the relevant paragraph is excerpted:

On the afternoon of the 27th August last, we met for the first time in the town of Atzacapotzalco. On the exchange of powers, we found those of Mr. Trist most ample to settle all existing differences between Mexico and the United States, to fix the limits of both countries, and adjust definitively a peace. Ours were restricted to receive the propositions of his Government, if they were reduced to writing; and, if made verbally, to reduce them to writing, with his approval. As Mr. Trist made some observations upon the limitation of our powers, we satisfied him by observing that when the time came to treat, we would present a complete authority. He immediately delivered to us the project of a treaty, which we that same night placed in the hands of the President. In conclusion, Mr. Trist proposed to us to select for the place of our future meeting a country house, of which he spoke, situated in the vicinity of Chapultepec, less distant from Tacubaya, where he resided, and from Mexico, where we were. We promised to take notice of the place designated, and adjourned to meet again the following day.

¹The modifying instruction of July 19 was not received by Trist until September 27.

The second conference (General Herrera being absent because of illness), which was held at the same place on August 28, was unimportant; the subject of discussion was the future place of meeting, and a residence about two miles from Tacubaya was agreed on. Trist thought that the third conference was to be held on Monday, August 30, but this was not the case (*ibid.* and despatch No. 14, of August 29, 1847, cited above).

Points of discussion to serve as a basis for the Mexican Commissioners had been drawn up on August 24 (serial 509, pp. 313-15, 355-56), but these were not very real and were laid aside. At a Cabinet meeting of Santa Anna and his ministers on August 29, fresh instructions were drafted, and the full powers of the Mexican Commissioners were extended under date of August 30 so as to authorize them to treat upon the contents of the propositions of Trist, "subject to the approval and ratification required by the Constitution"; but the Mexican Commissioners on August 31 declined to act under those instructions, which were thereupon amplified in general terms (*ibid.*, 330-35, 369-73).

The third and fourth conferences of the Commissioners were held on September 1 and 2. The Mexican Commissioners thus reported upon them (*ibid.*, 345, 383):

On Wednesday we exhibited to him the full powers conferred upon us by the Supreme Government, and we entered into a long and calm discussion with Mr. Trist upon the capital points of the *projet*, which was continued all through the next day (Thursday). We have given to the Supreme Government the details. The point on which the negotiations then rested was this: Mr. Trist showed himself disposed to abandon his first pretensions upon Lower California and upon a part of the Upper, in order that Lower California might be able to communicate by land with Sonora. He then offered, if no other point of difference remained to conclude a peace than that relative to the territory between the Bravo and Nueces, he would consult his Government—not without hope of a good exit. This step would cost a delay of more than forty days in the negotiation. But the cession of New Mexico on our part was a condition from which he could not depart, not even to submit it to a new consultation in Washington, for he was fully certain that his Government considers it as a condition *sine qua non* of peace. The other points touched upon in the *projet* appeared to us reconcilable, if both parties should adopt terms of accommodation; such, at least, was the judgment we formed during the conferences.

Trist's report of the third and fourth conferences is contained in his despatch No. 15, of September 4, which includes a reasoned justification of the course that he took; while that despatch refers specifically only to the meeting of September 2, it is obvious that the proceedings of that and the previous day were together one discussion.

Trist first went to the limit of his instructions by yielding the demand for Lower California (there is no more than an incidental allusion to the proposed rights over the Isthmus of Tehuantepec; the subject seems to have been tacitly, though not formally, abandoned after the explanation made orally by the Mexican Commissioners, referring to the concession known as the Garay Grant; see serial 509, p. 337, and the "exposición" of the Mexican Commissioners dated

March 1, 1848, in *Tratados y convenciones concluidos y ratificados por la Republica Mexicana*, 228-50, at p. 235; on the Garay Grant and its history, see Rippey, *The United States and Mexico*, 48-67, and Garber, *The Gadsden Treaty*, 41-63).

The line proposed by Trist was as written in the instruction of April 15, 1847, following the Disturnell Map in respect of the boundary between the two Californias; a Spanish version of that offer is quoted in *Exposición*, 234.

Not being able to reach agreement within the terms of his instructions, Trist went beyond them; he proposed that the Mexican Government should submit an offer of boundary, the important departures of which from Trist's authority were the leaving under Mexican sovereignty (but as "neutral ground" and not to be settled) of the region between the Nueces and the Rio Grande and the running of the line from the Colorado to the Pacific along the 33d parallel; this last was for the purpose of giving communication by land between Lower California and Sonora; Trist wrote (seemingly as an expression of his own view) that it "is perfectly obvious" that "the possession of the land communication makes no practical difference whatever"; but he gives no reason why the land communication between Lower California and Sonora should be extended so as to include San Diego; that part is not even mentioned. If such an offer as that put forward by Trist were formally made on behalf of Mexico, the armistice was to be extended for about six weeks, so as to permit reference of the offer to Washington. For the line of that proposed offer, see Paullin, *op. cit.*, plate 94A, with relevant text at page 65. The text of Trist's report here printed is from the duplicate of his despatch No. 15, the text of the proposed offer being therewith (D.S., 14 Despatches, Mexico; that duplicate was not received at Washington until November 18; the original, now lacking, not until October 21; see Polk's Diary, III, 196-97, and the instruction to Trist of October 25, 1847, quoted below):

The conference between the Mexican Commissioners & myself, on the 2^d inst, resulted in my saying, that if they would submit to me a formal proposition paper, (Enclosure N^o 1.) I would transmit it to Washington, and would propose to Gen^l Scott to consent to the continuation of the armistice until the answer of our Government should be received: the calculation being, that this would require from forty to forty-five days, sending expresses both to Tampico & Vera Cruz. The idea had been thrown out by one of them (not without his being interrupted by the others, to remind him that their instructions did not in any way warrant any such proposition or intimation on their part, but just the reverse) that, provided I should agree to the other parts of a boundary nearly coinciding with the one above referred to, they might possibly obtain permission to relinquish New Mexico. This, he said, was the utmost possible extent to which they could go, in the way of sacrifice to the cause of peace; and supposing that they should succeed in obtaining the consent of the government to its being made, which was exceedingly doubtful, it would then remain more doubtful still whether the Government could maintain itself in a position so highly perilous with reference to the sentiment of the country, and affording so great advantage to those disposed to assail it, as well as to those who, independently of this motive, were banded together as opponents of all negotiation, ready to brand as a traitor every man who manifested a different sentiment. In a word, the practicability

of carrying the thing through was problematical in the extreme. Nevertheless, the Government might possibly be induced to venture upon it. If, however we insisted upon more, the war must go on. Their reverses would probably continue. Well! if it must be so, it could not be helped; and at least we should have to content ourselves with possessing no other title to any of their territory, than that by conquest, in all its nakedness, and subject to all the odium & to all the insecurity that inseparably attach to it.

These remarks were made by Gen! Mora after I had quieted the objections of his associates, to his proceeding, by stating that every thing said by him or either of them would be regarded by me as a confidential expression of their individual views, and as merely an evidence of their own sincere & strong inclination to peace, unless the character of a formal proposition were expressly given to it by themselves. After this, he was allowed to proceed; and the conversation became very unreserved on the part of all, and was extended to considerable length. In the course of it, their concurrence in his suggestion, and in the convictions expressed by him, was manifested in ways which left no doubt on my mind, (indeed, it was already free from any) as to their being most sincerely disposed to go all practicable lengths, to restore peace; and also in regard to their being fully & conclusively satisfied, that they could venture no further; that it was the utmost possible extent to which the Government could go, with any hope of thereby advancing the cause. A single step beyond it, and this cause would inevitably be prejudiced; as could not but be the consequence of placing it upon grounds rendering the consummation of the measure impossible. This was, beyond doubt, their honest conviction. My own is, that it rests upon the most solid grounds; and that they were perfectly correct in saying, as one of them did, (and he was echoed by the rest, in tones & looks showing that they were most unaffectedly & anxiously impressed with the force & momentousness of the truth uttered by him,) "if we are to succeed in accomplishing a peace, herein does it lie": his finger, as he spoke, running over the territory comprehended between the Nueces & the Bravo, on the map before us.

My concurrence in this conviction is, as I have already stated, entire: I can see no reason whatever to hope for the possibility of any nearer approximation to our ultimatum; I believe that the alternative presented to us by the state of things in this country, actual and prospective,—supposing that a full and perfect knowledge of every fact and every circumstance pertinent to the subject were possessed at Washington—would be clearly seen to be, to accept this approximation or to relinquish for an indefinite period all idea of a treaty. At any rate, this is, beyond all doubt, the state of the case at the present moment; and knowing it to be so, although I deemed it in very highest degree improbable that our Government could assent to this modification of the boundary proposed by it, (and I so stated to the Commissioners) I made the offer above mentioned: this being the only course left me except that of announcing that their non-assent to the ultimatum prescribed to me put an end to the negotiation, and with it to the armistice; thus scattering to the winds all hopes of bringing the war to a close, by breaking up at its very inception the *peace-party*, a nucleus for which had been formed, from the moment that the Commissioners on the part of Mexico had been prevailed upon to accept the appointment; particularly Gen! Herrera and Señor Couto, (Gen! Mora, having long been a decided & pronounced friend to negotiation, even before the war commenced; whilst the fourth member, Señor Aristain, though respectable, is a man of far less note & weight) whose committal to the cause of pacification was a point of immense value: for, down to that moment, it was predicted by all Santa Anna's opponents, (among whom they both are, as highly distinguished members of the *moderado* party) and universally believed, that he would not be able to prevail on any but his own *creatures* to take upon themselves the responsibility of having any thing to do with the business.

I had, at the beginning of this conference, formally laid our ultimatum before them, so far as regards the line of boundary; remarking, as I handed them the paper, that they would find in it a confirmation of what I had said the day previous, respecting the slightness of the difference between the boundary proposed in the projet and that which I was bound to insist upon; whilst, on the other hand, it would make a great difference in the amount which I could offer in consideration of their acceding to that boundary. This amount I had not made known to

them, because no suitable occasion had presented itself for so doing; and on the present, from the turn which the question took, I could not, without manifest indelicacy, and without the certainty of wounding & offending their national pride, bring forward, as being calculated to exercise a preponderating influence with them, a consideration which it was evident that they attached no sort of consequence to, as compared with others. This was a fact, of which I could not affect to be unconscious or forgetful, without danger of greatly impairing the confidence which I had, I believe, inspired in my plain dealing: for, not only was it perfectly apparent in all that had passed between us, but it was also made obvious by a collateral incident, to which they could not be supposed not to have become privy, and which was as follows: two days previously, at a very critical moment, in the confidential councils of Santa Anna of which I am kept as fully informed, for all useful purposes, as if I were present at them; as well those which are got up for effect, as those in which the secrets of his heart are laid bare, when the balance was trembling, and every reason existed to apprehend that the strongest friends of peace were about to abandon the cause, upon becoming apprised of our territorial demands, universally considered as extravagantly extortionate, I had, after advising with Genl Scott, come to the determination at once to turn the scale if possible, by making known to Santa Anna, as I did through a confidential channel, that, in order to secure the boundary defined in the project, together with the right of passage across the isthmus, I was authorized & willing to go as high as _____ (the highest sum named in my instructions), and that moreover, it would be put in a shape that would enable the Mexican Government to convert the entire amount into cash, without loss, & probably at a considerable premium, immediately upon the exchange of ratifications.

I was much encouraged by the effect produced by this intimation upon the person through whom I made it; whose expectations were evidently far exceeded by the amount named by me, (I had, on a previous occasion, told him that I might go as high as _____ the sum first named in my instructions; and *that* had evidently been very agreeable to him) and who, besides the very deep stake he has in the restoration of peace, in consequence of the influence it would have upon his business & affairs generally, had a very well grounded expectation that he would be profitably concerned in the management & disposal of the stock to be issued by our government under the treaty. But my hope was disappointed, the intimation was not attended with the desired effect. Straitened as the Government is for pecuniary means, and indispensable as it is, that it should obtain some money under the treaty, in order to sustain itself, the amount is not by any means, a primary consideration. The great object with those who have ventured to commit themselves by taking a stand as friends to peace, is, to reduce as low as possible the extent of territory which Mexico shall part with; and this is the first, great object with them, independently of what may be their individual convictions in regard to the importance of retaining this or that part of her territory: their chance for sustaining themselves, and carrying a treaty, will be in inverse ratio to the number of square miles parted with; and this, not arithmetical but geometrical ratio: for, there is a limit, beyond which there will be no such chance, no such possibility.

Under this general head comes, first of all & paramount to all, the retention of the country between the Nueces & the Bravo: the latter river being considered as the *boundary* proper, and that space of country as a *barrier* for its protection. This barrier, besides its importance in the military point of view, is regarded as indispensable to secure them against, 1st new difficulties between the two Governments, and new incroachments on our part; 2nd the utter destruction, by smuggling along the whole extent of the Bravo, of their maritime commerce & of the revenue thence derived, to say nothing of the injury to their manufacturing interests. In a word, it is with them a *sine qua non*, which they *cannot* abandon, however disposed they might be to do so; and no treaty is to be hoped for, except upon this basis.

Next in importance to the retention of this barrier, comes that of New Mexico. Both honour & interest, they say, forbid them to surrender it. They could not, without ignominy "sell" a portion of the population of the country who have given such striking proofs of fidelity to the Republic, and of their determination to retain the character of Mexican Citizens. On the other hand, interest

required them to hold on to that part of the Republic, as one of its main dependencies for meat to feed its inhabitants. Upon these grounds, set forth in considerable detail, rested the special objection to parting with new Mexico. They could, at the utmost, give us but a portion of it—the less peopled part: beginning the boundary line on the Pacific, at latitude $36^{\circ} 30'$, and running it due east until it passed Santa Fé; then down southward some distance, and again eastward, so as to strike the head of the Nueces.¹ To these objections I replied by pointing out the examples of Louisiana & Florida, in proof of the great enhancement in value, which the property of the citizens of New Mexico would experience; and which, if it was their pleasure to relinquish the quiet and safety secured to their country by the transfer, would enable them, with the proceeds of sale of their present possessions, to remove to the adjacent parts of Mexico, and there to acquire property of double, treble or quadruple the value now attached to the former. As to the supplies now drawn from the pastures of New Mexico, they would, under the influence of american enterprise & management, soon be afforded in greater abundance, of a better quality, and at a far less price; and this dependence (as they objected that it would be) of Mexico upon a foreign country, for a primary want, was altogether ideal & fallacious, since the reality of the matter would be, a mutual dependence of the two parties for a supply & for a market: a relation which could not fail to foster between the two countries, as far as its influences, direct & indirect, should reach, a spirit of good fellowship & an aversion to any falling out.

Finally, this second *sine qua non*—as it at first seemed likely to prove, and as it yet may turn out to be—was conditionally abandoned by the Commissioners, to the extent, & in the sense, stated at the commencement of this communication: that is to say, they agreed to lay my offer before their Government, for such new instructions as it might decide to give. In order to preclude mistake, the boundary contemplated in this offer, was written down by me: in the first instance, by commencing on the Pacific, as had been suggested by them; and afterwards by beginning on the Atlantic, because I found greater prolixity occasioned by the former starting point than by the latter. In tracing this boundary, two points will catch your attention: the first, that I have left out the Paso del Norte; the second, that I have left out part of Upper California. In regard to the first point, although I am convinced, as you are aware, of the importance of the Paso del Norte to us, or at any rate that it is very desirable to us to hold it; yet its importance did not seem to me sufficient to warrant the risk attendant upon the multiplication of the grounds of clamour against the treaty, which risk would have been incurred by running the line south of the Paso: for this would have been to “dismember a state”; that post being, so far as could be judged, within Chihuahua. With respect to the lower part of Alta California, the Commissioners had insisted upon the absolute necessity of their possessing an overland passage to Lower California; and although, they were, I believe, forcibly struck with the truth which I pointed out to them, that their possessing the lower part of the Colorado would inevitably give rise, in a very short time, to the old Mississippi question over again; yet, they are so completely mastered by the *need of the moment* (to part with the least possible amount of territory) that it outweighs every consideration, the force of which admits of being staved off. This, I believe, was the only reason for their catching up at once my remark, that my instructions did not require me to insist upon Lower California, and their setting down the abandonment of this part of our pretension as a settled point; regardless of the curtailment of the pecuniary compensation which I told them would necessarily result therefrom. In their hearts, they were convinced of the truth of what I said: (nay, it was expressly assented to) that no benefit whatever resulted to Mexico from the possession of Lower California, whereas she would derive great advantage from the influence exercised over her Sea-Coast opposite to the inner shore of that peninsula, by the flourishing commercial towns which would, in a very short time, spring up under the American flag. But, this conviction had no influence, nor could it be expected to have any influence, over the determination of minds preoccupied by the one overwhelming consideration to which I have adverted.

Their retention of Lower California being decided upon, it followed (so they said) as a matter of course, that they must reserve also a land-passage to that

¹ For this line, see Paullin, *op. cit.*, plate 94A, and text at p. 65.

portion of their territory: though I believe that here also, their real motive was, to save appearances, more than any thing else, and to avoid exposing themselves and the treaty into which they might enter, to the clamour, that they had insulated Lower California, and by so doing had placed it at the mercy of our maritime power. That the possession of the land communication makes no practical difference whatever, under the existing circumstances & prospects of the two Countries, is perfectly obvious.

Among the points which came under discussion, was the exclusion of slavery from all territory which should pass from Mexico. In the course of their remarks on the subject, I was told, that if it were proposed to the People of the United States to part with a portion of their territory, in order that the *Inquisition* should be therein established, the proposal could not excite stronger feelings of abhorrence than those awakened in Mexico by the prospect of the introduction of Slavery in any territory parted with by her. Our conversation on this topic was perfectly frank, & no less friendly; and the more effective upon their minds, inasmuch as I was enabled to say with perfect sincerity, that, although their impressions respecting the practical fact of Slavery, as it existed in the United States, were, I had no doubt, entirely erroneous; yet, there was probably no difference between my individual views & sentiments on slavery, considered in itself, and those which they entertained. I concluded by assuring them, that the bare *mention* of the subject in any treaty to which the U.S. were a party was an absolute impossibility; that no President of the U.S. would dare to present any such treaty to the Senate; and that if it were in their power to offer me the whole territory described in our projet, increased ten fold in value, and, in addition to that, covered a foot thick all over with pure gold, upon the single condition that Slavery should be excluded therefrom, I could not entertain the offer for a moment, nor think even of communicating it to Washington. The matter ended in their being fully satisfied that this topic was one not to be touched, and it was dropped with good feeling on both sides.

In regard to all matters of subordinate consequence, I gave every proof which the nature of the subject permitted, of the strongest disposition on our part to spare their national pride, and to save their pecuniary interests. For instance, in regard to Artillery & the armament of the country generally, they proposed that their fortifications should be restored in the state in which they had been taken. This, I declined to accede to, saying that we had exercised, & would continue to exercise, the right universally recognized, to retain trophies. But, I added, this right would be exercised with moderation; and I related a conversation recently had between Gen^l Scott & myself on this subject, which showed that his views & disposition in regard to it were liberal & generous in the extreme: extending even to the restoration of their *field* artillery, (with the exception of a very limited number of trophies) on the ground that he had no desire to strip the country of her means of defence, and wished, not only that peace should take place, but that it should be "a *healing* peace". They were evidently touched with this, and enquired if there would be any objection to the field artillery being included in the Stipulation: to which I replied that I could not engage to enter into such a Stipulation without the express consent of Gen^l Scott, although I had no doubt that it would be cheerfully given. (and it was given, so soon as I informed him of the conversation).

In view of the extreme destitution of the Government, and the urgent need in which it will stand, now more than ever, of pecuniary resources, to *maintain itself*, should a treaty be negotiated; I offered, simultaneously with the *signature* of a treaty; to enter into an agreement, subject to the approval of the President, that their custom houses shall be restored to them forthwith, & that they shall have the entire management & controul of duties upon imports: this agreement, to embrace all duties upon previous importations, not actually collected at the time when the President's order shall be received at the respective ports. This offer had a most marked effect, not only as an evidence of the general disposition on our part towards them, but because of the importance of the pecuniary relief, of which it affords a promise. I beg leave to suggest, that the subject be taken into consideration as early as practicable; and that if my offer be approved, the order (modified so as to exempt our Army supplies from all duty or inspection) be despatched at once, to come into effect upon a notification from me that a treaty has been

signed. The influence of such an order, or its *fruits* rather, will be highly important towards procuring the ratification of a treaty; and, even if we should fail now, it cannot but prove a strong card in my hands, so long as any prospect whatever may exist of negotiating one.

Yesterday, a cabinet council was held, to which the Commissioners were summoned. They were invited to express their views upon my offer, and declined doing so, on the ground that they had come to receive instructions, and not to frame them. But, being pressed they declared themselves in favor of accepting. In this the Ministers generally concurred, except Pacheco, the Secretary of State, backed by General Tornel. Gen^l Tornel (a man notorious for rank cowardice & shameless venality) has recently acquired a good deal of influence over Santa Anna, (who has lost much of his former decision of character) obtruding himself, without a shadow of official right, upon the cabinet councils, and taking a most active part as an enemy of peace. On this occasion some scathing remarks were levelled at him & his confederate by Gen^l Mora, who, together with Herrera & Couto, are men of the highest standing for probity.

Should my offer be accepted, this will go by quadruplicate: two by Vera Cruz, and two by Tampico, under the security afforded by double passports

[Enclosure 1]

The boundary line between the two Republics shall commence at a point in the Gulf of Mexico, three leagues from Land, opposite to the middle of the Southernmost inlet into Corpus Christi Bay; thence, through the middle of said inlet, & through the middle of said bay, to the middle of the mouth of the Rio Nueces; thence up the middle of said river to the Southernmost extremity of Yoke Lake or Laguna de las Yuntas, where the said river leaves the said Lake, after running through the same; thence by a line due west to the middle of the Rio Puerco, and thence up the middle of said river to the parallel of latitude six geographical miles north of the Fort at the Paso del Norte on the Rio Bravo; thence due west, along the said parallel, to the point where it intersects the western boundary of New Mexico; thence northwardly along the said boundary, until it first intersects a branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said boundary nearest to the first branch thereof, and from that point in a direct line to such branch) thence down the middle of said branch & of the said River Gila, until it empties into the Rio Colorado, and down or up the middle of the Colorado, as the case may require, to the thirty third parallel of latitude; and thence due west along the said parallel, into the Pacific Ocean. And it is hereby agreed and stipulated, that the territory comprehended between the Rio Bravo and the above defined Boundary, from its commencement in the Gulf of Mexico up to the point where it crosses the said Rio Bravo, shall for ever remain a neutral ground between the two Republics, & shall not be settled upon by the citizens of either; no person shall be allowed hereafter to settle or establish himself within the said territory for any purpose or under any pretext whatever; and all contraventions of this prohibition may be treated by the Government of either Republic in the way prescribed by its laws respecting persons establishing themselves in defiance of its authority, within its own proper & exclusive territory.

The final decision ¹ of Santa Anna was to reject the proposals of Trist; the fifth and last meeting of the Commissioners, held on September 6, recorded the failure of the negotiations; Trist made no report of it until his despatch of September 27 (D.S., 14 Despatches, Mexico, No. 16), from which the following is excerpted:

On the 5th inst, I received a visit from the Secretary of the Mexican Commissioners, who came to make an appointment for a meeting at the usual place, on the following day. I was there at the hour named, (10 o'Clock) and officers were there

¹ For Trist's later comments on the course of Santa Anna, see serial 509, pp. 250-52.

to receive me; but the Commissioners did not make their appearance until the hour of one. Apologies were not wanting on their part, but they were not needed by me; for I understood their position perfectly: the whole time since our last meeting had been employed in cabinet consultations & discussions, and they were now just from the last of these, to bring me the final result. Of the complexion of this, I could have judged from their looks, even if I had not previously been informed of what it was, in all likelihood, to be.

After an enquiry, (evidently made without any expectation on their part that it could be answered otherwise than by the negative which I gave) whether the question of the transfer of New Mexico could not be left to its inhabitants, they produced the rough draughts of two papers, which, after being read to me, were placed in the hands of clerks who had been brought out from the Secretary of State's office, to make copies for signature. Copies of these papers, and of my reply are herein enclosed, numbered from 1 to 3.

Two of the papers referred to by Trist are the note of the Mexican Commissioners of September 6 and the counterproject therewith, which would have left to Mexico all of Upper California south of 37° north latitude and all of New Mexico, as well as the region between the Rio Grande and the Nueces (serial 509, pp. 335-41, 375-80; see also the instructions of September 5, signed by Pacheco, in *ibid.*, 342-44, 373-75; the line of the counterproject is charted in Paullin, *op. cit.*, plate 94A, with relevant text at p. 65); in the Trist Papers (24:60340-52) are the original of the note of the Mexican Commissioners of September 6, the original of the counterproject (each marked by Trist as received on September 6 "late in the afternoon"), and a translation of the note, written by Thornton. The reply of Trist, dated September 7, is printed in serial 509, pp. 214-22; but that reply was not transmitted until October 20 (see *ibid.*, 212-13, and Trist's added "note" of October 28, pp. 222-26).

Termination of the armistice followed (see Scott to Santa Anna, September 6, 1847, and the latter to the former, of the same date, in *ibid.*, 346-48, 381-82); hostilities were at once resumed; and following the Battles of Molino del Rey (September 8) and Chapultepec (September 13), the American forces occupied Mexico City on September 14, 1847.

THE RECALL OF TRIST

The decision to recall Trist was reached at Washington by October 4 (Polk's Diary, III, 185); the record of the day following includes this paragraph (*ibid.*, 186):

The unofficial information received shows that Mexico has refused to treat for peace upon terms which the U.S. can accept; and it is now manifest that the war must be prosecuted with increased forces and increased energy. We must levy contributions and quarter on the enemy. This is part of the object of the letter to Gen'l Scott. Mr. Trist is recalled because his remaining longer with the army could not, probably, accomplish the objects of his mission, and because his remaining longer might, & probably would, impress the Mexican Government with the belief that the U.S. were so anxious for peace that they would ultimately conclude one upon the Mexican terms. Mexico must now first sue for peace, & when she does we will hear her propositions.

There was then available no report from Trist later than that of August 29 (cited above); his despatches of September 4 and 27 (cited

above) were received at Washington on October 21 (*ibid.*, 196; and see the instruction of October 25, 1847, quoted below); the originals of those two despatches left Mexico City on September 28 "by the monthly British Courier" (see D.S., 14 Despatches, Mexico, No. 17, October 1, 1847); the information at hand regarding the negotiations which had followed the armistice was (almost certainly) derived exclusively from the printed pamphlet cited in the instruction of October 6, 1847, the text of which follows (D.S., 16 Instructions, Mexico, 75-79):

On the 2nd instant there was received at this Department from Vera Cruz, a printed document¹ in Spanish consisting of eight quarto pages and entitled "Contestaciones habidas entre el Supremo Gobierno Mexicano, el General en Jefe del ejército Americano, y el Comisionado de los Estados Unidos." This purports to give a history, in detail of the origin, progress and unsuccessful termination of your negotiations with the Mexican Commissioners. The counter project of the Mexican Government is indeed, under all the circumstances, a most extraordinary document. Its extravagance proves conclusively that they were insincere in appointing Commissioners to treat for peace, and that the armistice and subsequent negotiations were intended merely to gain time. They must have known that the Government of the United States never would surrender either the territory between the Nueces and the Rio Grande or New Mexico or any portion of Upper California; never would indemnify Mexican citizens for injuries they may have sustained by our troops in the prosecution of the present just and necessary war; and never could, without dishonor, suffer the Mexican Government to levy new duties on goods imported into ports now in our actual possession which had already paid duties to the United States. To propose such terms was a mere mockery. And here I ought to observe in justice to yourself, that we do not believe there is any truth in the assertion of the Mexican Commissioners that you had proposed, if the other terms of the Treaty were made satisfactory, to refer to your Government, "with some hope of a good result", the question of surrendering to Mexico that portion of the sovereign State of Texas between the Nueces and the Rio Grande, or any part of Upper California.

Your original instructions were framed in the spirit of forbearance and moderation. It was hoped that after the surrender of Vera Cruz and the Castle of San Juan d'Ulloa, the Mexican Government would be willing to listen to the counsels of peace. The terms, therefore, to which you were authorized to accede were of the most liberal character considering our just claims on Mexico and our success in the war. New Mexico, the Californias, several of the Northern States and most of the important ports of Mexico were then in our possession: and yet we were at that time willing freely to surrender most of these conquests and even to make an ample compensation for those which we retained. Circumstances have entirely changed since the date of your original instructions. A vast amount of treasure has since been expended, and what is of infinitely more value, the lives of a great number of our most valuable citizens have been sacrificed in the prosecution of the war.

In the annals of history never has there been a war conducted in the same manner by invading forces. Instead of levying military contributions for the support of our armies in the heart of the enemy's country, we have paid fair and even extravagant prices for all the supplies which we have received. We have not only held sacred the private property of the Mexicans, but on several occasions have fed their famishing soldiers and bound up their wounds. And what has been the return? Treachery and cruelty have done their worst against us. Our citizens have been murdered and their dead bodies mutilated in cold

¹ A copy of that pamphlet of thirty-six pages, with notations by Trist, is in D.S., 14 Despatches, Mexico, following No. 17, of October 1, 1847, and marked as an enclosure to No. 16, of September 27, 1847; the pamphlet is reprinted in serial 509, pp. 349-84, with a translation at pp. 307-48.

blood by bands of savage and cowardly guerrillas, and, the parol of honor, sacred in all civilized warfare, has been habitually forfeited by Mexican officers and soldiers. Those paroled at Vera Cruz have fought against us at Cerro Gordo; and those paroled at Cerro Gordo have doubtless been in the ranks of the enemy in the battles so glorious to our arms at and near the City of Mexico.

After the battle of Cerro Gordo, the President entertained serious thoughts of modifying your instructions at least so far as greatly to reduce the maximum sums which you were authorized to pay for portions of the Mexican territory; but wishing to afford to the world an example of continued moderation and forbearance in the midst of victory, he suffered them to remain unchanged. And what has been the consequence? After a series of brilliant victories, when our troops were at the gates of the capital and it was completely in our power, the Mexican Government have not only rejected your liberal offers, but have insulted our country by proposing terms the acceptance of which would degrade us in the eyes of the world and be justly condemned by the whole American people. They must attribute our liberality to fear, or they must take courage from our supposed political divisions. Some such cause is necessary to account for their strange infatuation.

In this state of affairs, the President, believing that your continued presence with the army can be productive of no good, but may do much harm by encouraging the delusive hopes and false impressions of the Mexicans; has directed me to recall you from your mission and to instruct you to return to the United States by the first safe opportunity. He has determined not to make another offer to treat with the Mexican Government, though he will be always ready to receive and consider their proposals. They must now first sue for peace. What terms the President may be willing to grant them will depend upon the future events of the war and the amount of the precious-blood of our fellow citizens and the treasure which shall in the meantime have been expended.

Should the Mexican Government desire hereafter to open negotiations or to propose terms of peace, their overtures will be immediately transmitted to Washington by the commanding General, where they will receive the prompt consideration of the President.

Should you have concluded a Treaty before this despatch shall reach you, which is not anticipated, you will bring this Treaty with you to the United States for the consideration of the President; but should you, upon its arrival, be actually engaged in negotiations with Mexican Commissioners, these must be immediately suspended, but you will inform them that the terms which they may have proposed or shall propose, will be promptly submitted to the President on your return. You are not to delay your departure, however, awaiting the communication of any terms from these Commissioners for the purpose of bringing them to the United States.

On the same date a War Department order to General Scott laid down the new policy that the "burden of sustaining our forces in Mexico must be thrown, to the utmost extent, upon the people of that country", informed him of the sending of increased forces of "about 15,000", and included these passages (serial 509, pp. 138-40):

With this augmentation of strength it is hoped that you will be able to accomplish not only the objects before indicated, (should you deem them preferable to others,) but to carry on further aggressive operations; to achieve new conquests; to disperse the remaining army of the enemy in your vicinity, and prevent the organization of another. Left as you are to your own judgment as to your military operations, the fullest confidence is entertained that you will conduct them in the most effective way to bring about the main and ultimate object of the war: namely, to induce the rulers and people of Mexico to desire and consent to such terms of peace as we have a right to ask and expect.

The views of the government in relation to propositions and negotiations for concluding a peace, are disclosed in a despatch from the Department of State to Mr. Trist, a copy of which accompanies this communication. By it you will perceive that he is recalled. You will embrace a proper occasion to notify the Mexican authorities of this fact.

Should they offer through you terms of accommodation, or propose to enter on negotiations, the President directs that such propositions be forwarded without delay to him; but it is not expected that your movements or measures for carrying on hostilities will be thereby relaxed, or in anywise changed.

Upon the receipt of Trist's despatches of September 4 and 27 (the latter with a postscript of September 28), the decision to recall him remained unchanged; Polk thus stated his views in his record for October 21, 1847 (Polk's Diary, III, 196-97):

By the Southern Mail this evening despatches were received from Mr. Trist from Mexico, of as late date as the 28th of Sept., giving an account of his negotiations with the Mexican Commissioners which had resulted in a failure to come to any agreement with them. Mr. Trist had exceeded his instructions, and had suggested terms to the Mexican commissioners which I could not have approved if they had agreed to them. I can never approve a Treaty or submit one to the Senate, which would dismember the State of Texas, and Mr. Trist's suggestion, if agreed to, would have done [this] by depriving that State of the country between the Nueces and the Rio Grande. Mr. Trist in other respects had in his conferences departed from his instructions and the simple duty with which he was charged, which was to submit and enforce the ultimatum of his Government. He had no right to depart from his instructions, and disapprove his conduct in doing so. He proposed, it is true, if they agreed to his suggestions, to submit it to his Government before he would enter into a Treaty, but in this he has committed himself and embarrassed future negotiations. His course is much to be regretted.

When the despatches were read in Cabinet, the comment was more harsh, including the statement that Trist had "managed the negotiation very bunglingly and with no ability"; Buchanan was directed to prepare an instruction "expressing in strong terms my disapprobation, and to repeat his order of the 6th Instant for his immediate recal" (*ibid.*, 199-201); this instruction of censure followed on October 25 (D.S., 16 Instructions, Mexico, 79-83):

Your despatches, either in original or duplicate, to N^o 16, inclusive, with the exception of N^o 5 & 8, have been received at this Department.

From your N^o 15, of the 4th September, received on the 21st instant, it appears that you had offered to the Mexican Commissioners that if they would propose to you to establish the boundary between the two Republics by a line by which the United States would surrender that portion of the State of Texas between the Rio Grande and the Nueces, and also that portion of Upper California "South of the thirty third parallel of latitude between the Colorado and the Pacific Ocean, you would transmit such a proposition proceeding from them to Washington, and would propose to General Scott to continue the then existing armistice until you should receive the answer of your Government.

You will have learned from my despatch N^o 5, of the 6th instant, that we did not believe there was any truth in the statement of the Mexican Commissioners that you had made such a proposal. As this fact is now placed beyond a doubt, the President has instructed me to express to you his profound regret that you should have gone so far beyond the carefully considered ultimatum to which you were limited by your instructions.

The State of Texas is in the exercise of peaceable and undisturbed jurisdiction over the country between the Nueces and the Rio Grande. She has made extensive grants of land within its limits, divided it into counties which have been represented in her Convention and Legislative assemblies; established Courts of Justice therein; and, in short, has exercised the same sovereign rights over it as over any other portion of her territory.

Congress, acting upon these incontestable facts, as well as upon the clear right of Texas to extend to the Rio Grande, in December, 1845, created a port of de-

livery West of the Nueces at Corpus Christi and in May, 1846, established Post Routes between those two rivers. This region also constitutes a part of one of the Congressional Districts of Texas, and its people are now represented in the Congress of the United States.

Under these circumstances, the President could not for a single moment entertain the question of surrendering that portion of Texas, even if this were practicable. But such is not the case. Considering the enterprising and energetic character of the American people, it would be impossible to expel by force the inhabitants between the Nueces and the Rio Grande from their possessions and to convert this territory into a desert for the security of the Mexican frontier.

The President has, also, directed me to express his regret that you should have been willing to entertain the question of surrendering any portion of Upper California to Mexico. By running the division line from the Colorado to the Pacific, along the thirty third parallel of latitude, the bay and harbor of San Diego would be restored to the Mexican Republic. This port, being nearly five degrees further South, is for every commercial purpose of nearly equal importance to the United States with that of San Francisco. It was to secure to us the bay and harbor of San Diego beyond all question and to prevent the Mexican Government from hereafter contesting the correctness of the division line between Upper and Lower California as delineated on the map which you carried with you, that your original instructions directed that if you could not obtain Lower California, the 4th article of the Project should in terms fix this line as running "north of the parallel of 32° and South of San Miguel to the Pacific Ocean."

To have arrested our victorious army at the gates of the Capital for forty or fifty days, and thus to have afforded the Mexicans an opportunity to recover from their panic, to embody their scattered forces and to prepare for further resistance, in order that in the mean time you might refer such proposals to your Government would, in the President's opinion, have been truly unfortunate.

With these considerations in view, the President has directed me to reiterate your recall.

The date of the last despatch received at the War Department from General Scott, is the 4th June. The President is now becoming apprehensive that he may not receive despatches from him before the meeting of Congress.

I transmit herewith a copy in triplicate of my despatch N^o 5.¹

With the instruction of October 25 Buchanan sent a brief letter to Trist saying that he was "extremely sorry to be obliged to write" that instruction and signing himself "Ever yr friend" (Trist Papers, 26 : 60618); and on October 27 Buchanan wrote another letter, which was forwarded by the British Legation in Washington, to be carried "by the British Courier from Vera Cruz to Mexico", as it was feared that all other means of communication might fail; therein the substance of the two instructions of October 6 and 25 was briefly stated; it was said that four copies of the earlier instruction had been sent by different channels, meaning, it seems, an original, duplicate, and triplicate by Veracruz, and a letter of October 24 (giving the gist of the instruction of October 6) sent by way of Tampico with despatches of the War Department (see *ibid.*, 60581-82); the letter of October 27 was not received by Trist until December 12, 1847 (*ibid.*, 60621).

RESUMPTION OF NEGOTIATIONS

Subsequent to the occupation of Mexico City by the American forces (September 14), there was a period of partial disorganization of the Mexican Government, followed by more stable conditions. Santa Anna resigned as President on September 16; the duties of the

¹ The instruction of October 6, 1847, quoted above.

Presidency were taken over by Manuel de la Peña y Peña, then senior judge of the Supreme Court of Justice, who appointed Luis de la Rosa Minister of Foreign Relations; the seat of government was fixed at Querétaro; a quorum of Congress assembled there early in November; on November 11 General Pedro María Anaya was elected President *ad interim* until January 8, 1848; Peña y Peña then became Minister of Foreign Relations (see D.S., 14 Despatches, Mexico, No. 16, September 27, to No. 21, November 27, 1847, *passim*; also Rives, *op. cit.*, II, 584-92; for a discussion by Trist of the constitutional difficulties which arose upon the resignation of Santa Anna, see serial 509, pp. 280-81).

On October 20 Trist sent to the Mexican Minister of Foreign Relations, Luis de la Rosa, his reply of September 7 to the Mexican Commissioners (cited above); the text of Trist's covering note appears not to have been received at the Department of State; but there is a copy in the Trist Papers (25 : 60568-69, October 20, 1847), from which this paragraph is excerpted:

It will be recollected, that a few hours only intervened between the delivery of the note, to which the one now transmitted is a reply, and the renewal of hostilities. But for this, it would have been sent in immediately; and notwithstanding those hostilities, all delay in its transmission would have been avoided, by means of a special flag of truce, if the state in which the question of peace was placed by the last communication on the part of Mexico, had left any ground whatever for the hope, that aught proceeding from him could be attended with the effect of arresting the calamities of war. As yet, however, the Full Powers, which it would have been to him so great a happiness to use for this purpose, stand unrevoked; and so long as this shall be the case, he will continue anxiously to cherish the wish that they may not have been conferred in vain.

In his answering note of October 31 (original in *ibid.*, 26 : 60631-32, marked as received November 5) the Minister stated that in the course of a few days he would communicate the names of the Commissioners to be appointed to continue the negotiations, with "instructions for the previous adjustment of an armistice" (see serial 509, pp. 212-13, 227-28); this and subsequent correspondence was carried on through the medium of Thornton,¹ of the British Legation.

On November 16 Trist received the two instructions from Washington of October 6 and October 25 respectively (quoted above), recalling him from his mission; in acknowledging these in his despatch No. 21, of November 27, with some defense of his course, Trist stated that he had privately advised the leading men of the Mexican "peace party" of the instructions which he had received, and that for several days he had been implored to remain in the country, but that he had turned a deaf ear to those entreaties and was leaving early in December; his final paragraph was this (D.S., 14 Despatches, Mexico; printed in part in serial 509, pp. 228-30):

I recommended to the peace men to send immediately through Genl Scott whatever propositions they may have to make, or to despatch one or more Commissioners with me. After full conversations on the subject, however, I became thoroughly

¹ Thornton was Chargé d'Affaires from October 19 to December 11, 1847. From the earlier date until April 18, 1850, Bankhead was absent on leave.

satisfied of the impracticability of either plan: it would, to a certainty, have the effect of breaking them down. The only *possible* way in which a treaty can be made is, to have the work done on the spot: negotiation & ratification to take place at one dash. The complexion of the new Congress, which is to meet at Queretaro on the 8th of January, is highly favourable. This will be the last chance for a treaty. I would recommend, therefore, the immediate appointment of a Commissioner on our part.

By the date of that despatch (November 27) there had been further official correspondence, which was enclosed therewith, namely, the note of Peña y Peña of November 22 (D.S., 14 Despatches, Mexico, duplicate original bound following the enclosures to despatch No. 27) announcing the appointment of four¹ Commissioners on the part of Mexico and a draft copy of the reply of Trist of November 24, which gave formal notice of the revocation of his powers. The texts of those two notes follow, the former in translation and the latter from the original in the Trist Papers (26 : 60715-16):

[*Mr. Peña y Peña to Mr. Trist*]

[Translation]

QUERÉTARO, November 22, 1847

The undersigned, Minister of Foreign Relations of the Mexican Government, has the honor to address this note to His Excellency Mr. Nicholas Trist, Commissioner of the United States of the North, advising His Excellency that the Provisional Government of the President of the Supreme Court of Justice of Mexico having been terminated by the election of General Pedro María Anaya as President *ad interim* of the Republic, and the undersigned having been appointed by His Excellency to the office of this Ministry of Foreign Relations, the new President immediately took up the matter of acquainting himself with the latest replies exchanged between His Excellency Mr. Trist and this Ministry.

Seeing therein the ardent desire shown by His Excellency Mr. Trist to put an end to the calamities of the war which unhappily divides the two Republics and that the appointment of Commissioners to this end by Mexico was pending, as the President of the Supreme Court did not make such appointment because of the said provisional character of his Government, the President has decided to select again the same two gentlemen who had previously been appointed, Mr. Bernardo Couto and Mr. Miguel Atristain; and as Messrs. José Joaquín Herrera and Ignacio de Mora y Villamil could not continue on this mission, the former because of most serious illness and the latter because of his being given the Ministry of War, he has appointed, to replace the said two individuals, General Manuel Rincón and Mr. Luis Gonzaga Cuevas, to whom the corresponding communications have been made through the undersigned.

But, as these gentlemen are in different places in the Republic, although not very far from this city, they have been notified to come here immediately to receive the instructions concerning this commission, and on receipt of such instructions they will so advise His Excellency Mr. Trist, in order that, with the due requisites, the conferences which were left pending may be continued and result happily in an honorable and advantageous peace.

The undersigned sincerely joins His Excellency Mr. Trist in desiring that the powers conferred may not be useless or in vain, and so takes pleasure in offering to His Excellency the assurances of his very distinguished consideration.

MANUEL DE LA PEÑA Y PEÑA

His Excellency Mr. NICOLAS TRIST,
Commissioner of the Government of the United States of the North.

¹ One of these, General Manuel Rincón, did not serve.

[Mr. Trist to Mr. Peña y Peña]

MEXICO, Nov. 24. 1847.

To His Excellency Dñ MANUEL DE LA PEÑA Y PEÑA,
Minister of Relations of the Mexican Government.

The Undersigned has the honour to acknowledge the receipt of the note, under date the 22^d inst., of His Excellency, Dñ Manuel de la Peña y Peña, Minister of Relations of the Mexican Government, acquainting him of the appointment of the Commissioners therein named, to negotiate for the restoration of Peace. The Undersigned regrets to say in reply, that the Powers conferred upon him for that purpose have been revoked, and that, agreeably to the instructions received by him, he is under the necessity of returning without delay to the United States. At the same time, he has been instructed to say, that any communication from the Mexican Government, having for its object the opening of negotiations or the restoration of peace, will be immediately transmitted by the Commanding General of the United States forces in this Republic, to Washington, where it will receive the prompt consideration of the President.

The Undersigned still cherishes, therefore, the hope that the signature of the Treaty which has been reserved for an other hand than his, is destined to take place at an early day. In this hope, he tenders to His Excellency Dñ Manuel de la Peña y Peña, the assurance of his most distinguished consideration.

N. P. TRIST.

Ten days later Trist changed his mind; his decision to remain in Mexico and to negotiate and sign a treaty of peace, if possible, notwithstanding his lack of authority and his instructions to return to Washington, was reached on December 4;¹ it was communicated in a letter of that date to Thornton, from which the following is excerpted (D.S., 14 Despatches, Mexico, No. 22, December 6, 1847, enclosure; printed in serial 509, pp. 266-68):

I am now resolved, & committed, to carry home with me a Treaty of Peace, if the Mexican Government feel strong enough to venture upon making one, on the basis, as regards boundary, of the *Projet* originally presented by me, modified according to the memorandum which I subsequently gave to one of the Commissioners: that is to say, running up the middle of the Rio Bravo from its mouth to the thirty second degree of latitude, and thence along that parallel to the Pacific Ocean; with free access to and from the ocean, through the gulf of California, from & to our possessions.

If they feel able to make and carry through a treaty on this basis—it would be utterly idle to talk or to think for an instant of any other, & I cannot listen to a single word on the subject—let them say the word, & the treaty shall be made.

If they do not feel thus able, let them surrender at once to the Puros, & dismiss for ever all thought of a treaty; for it is the last chance that Mexico can have for one equally favourable to her, or indeed for one which any party in this country can accept. I am fully persuaded, that its terms would not, by any means, meet the views *now* entertained by my government. So decided is my belief on this point, that, even if I were clothed with discretionary powers to make *any* treaty *which I deemed compatible with those views*, I could not, consistently with this limitation, offer the terms I now propose; and I should not now make the offer, but for my clear & perfect conviction on these three points: *first*, that peace is still the desire of my government; *secondly*, that, if the present opportunity be not seized *at once*, all chance for making a treaty *at all* will be lost for an indefinite period, probably for ever; *thirdly*, that this is the utmost point to which the Mexican Government can, by any possibility venture.

¹ December 4 is the date given by Trist; but perhaps he was committed one or more days earlier (see Roa Bárcena, *op. cit.*, 589-90).

A copy of that letter of December 4 was enclosed to the Secretary of State in Trist's despatch No. 22, of December 6, a communication of more than fifty pages. In that despatch Trist elaborated on the three points mentioned in his letter to Thornton and on a further point, namely, that the determination of his Government to withdraw the offer to negotiate had been taken under a misapprehension of the actual state of affairs in Mexico; and a portion of the paper was devoted to a defense of his previous course; except for the opening-paragraph, which follows, the despatch is printed in serial 509, pp. 231-66:

Referring to my previous despatches, in regard to the political state of this country, & to the enclosed copy of a confidential letter, under date the 4th instant, addressed by me to a friend at Queretaro, (Mr Thornton) to whose able & indefatigable cooperation in the discharge of the trust committed to me I have, from the very outset, been greatly indebted; I will here enter at greater length into the considerations by which I have been brought to a resolve so fraught with responsibility to myself; whilst, on the other hand, the circumstances under which it is taken are such as to leave the Government at perfect liberty to disavow my proceeding, should it be deemed disadvantageous to our country.

The decision of Trist to remain at Mexico City and sign a treaty, if he could, was heartily approved by General Scott (Memoirs, II, 576) and by Thornton in his letter to Trist of December 11, 1847 (Trist Papers, 27 : 60846-47).

THE PRESIDENTIAL MESSAGE OF DECEMBER 7, 1847

The annual presidential message of December 7, 1847 (Richardson, IV, 532-64), dealt at length with relations with Mexico. The instructions given to Trist and the terms proposed by the United States were summarized, as were also the terms finally put forward by the Mexican Commissioners in the negotiations following the armistice. No mention was made of the course taken by Trist during those negotiations or of his recall. It was said that New Mexico and the Californias "should never be surrendered to Mexico" and that there was "no good reason why the civil jurisdiction and laws of the United States should not at once be extended over them"; but the fact (already generally known, following the negotiations of August-September) that the cession of Lower California had not been within the "ultimatum" of the instructions, was stated; the policies announced included the prosecution of the war "with increased energy and power in the vital parts of the enemy's country"; the levying of "contributions in every form consistently with the laws of nations", and "encouragement and assurances of protection to the friends of peace in Mexico in the establishment and maintenance of a free republican government of their own choice, able and willing to conclude a peace which would be just to them and secure to us the indemnity we demand"; the text of the message was available at Mexico City by December 25 (D.S., 14 Despatches, Mexico, No. 25, December 29, 1847).

INSTRUCTIONS TO THE MEXICAN COMMISSIONERS

Trist had been informed by a letter of Thornton of December 5 (received December 7), which recounted a conversation with General Mora y Villamil, that the Mexican Government "would be glad to have" peace "on the terms of your Project" (Trist Papers, 27 : 60836-37); the decision of Trist to disregard his recall, and also the terms on which he was willing to treat, became known almost immediately thereafter; there was obvious need of haste, in view of the irregular position of Trist; despite this, there was delay.

It was at first thought that the appointment of the Mexican Commissioners must be confirmed either by the Senate or by the Council of Government before they could act; the idea that it might be possible to obtain British interposition or perhaps a guaranty by Great Britain of the treaty of peace survived until it was laid to rest by the British Secretary of Legation, Percy W. Doyle,¹ who arrived at Mexico City on December 11 and produced a note on the subject of as late a date as October 7 from Viscount Palmerston, British Secretary of State for Foreign Affairs, to the Mexican Minister at London (see Rives, *op. cit.*, II, 598-602).

One formal step taken was the following note from Trist to Peña y Peña dated December 26, 1847 (Trist Papers, 27 : 60892). This note was written in substitution for Trist's note of November 24 (quoted above) announcing his recall. That note of November 24 was withdrawn and was returned; the original thereof is in the Trist Papers (26 : 60715-16):

MEXICO, December 26. 1847.

To His Excellency Dñ MANUEL DE LA PEÑA Y PEÑA,
Minister of Relations of the Mexican Government.

Referring to the note, under date the 22nd ultimo, addressed to him by His Excellency Señor de la Peña y Peña, acquainting him of the appointment by His Excellency the President *ad interim*, Dñ Pedro María Anaya, of the Commissioners therein named, and that the said Commissioners, being at various points of the Republic, had been summoned to Queretaro, in order that they might receive the instructions of the President, relative to the Treaty of Peace, for the negotiation of which they have been chosen: the Undersigned has the honour to inform H.E. Señor de la Peña y Peña, that he is ready to enter upon the negotiation, so soon as the Commissioners on the part of the Mexican Republic, having received their instructions and Full Powers, shall be prepared to meet him.

Trusting that no further delay will occur in reopening the negotiation; and praying most fervently, that it may, this time, speedily terminate by arresting, the calamities of war and laying the foundation for a friendship between the two nations which shall know no end; the Undersigned tenders to His Excellency Dñ Manuel de la Peña y Peña, the assurance of his most distinguished consideration.

N. P. TRIST

The instructions to the Mexican Commissioners were given at Querétaro on December 30, 1847, the date of their full powers. The following translation of the twenty-three primary articles of the instructions is from the text in *Algunos documentos sobre el Tratado de Guadalupe*, 106-14:

¹ Chargé d'Affaires in the absence of Bankhead.

Instructions which, by decision and order of His Excellency the President ad interim of the Mexican Republic, Pedro María Anaya, and in accordance with the vote of its Ministers, are sent to its Commissioners at Mexico City, General of Division Manuel Rincón and Senalors Bernardo Couto, Miguel Atristain, and Luis Gonzaga Cuevas, for the purpose of terminating the war now existing between our Republic and that of the United States by means of a treaty of peace to which the former Republic has again been invited by Mr. Trist, commissioned for the specific purpose by the Government of the latter.

1. The Commissioners shall endeavor to provide that the Army of the United States should retire to the north of the River Bravo and of the Gila; and, having evacuated all the rest of the Mexican Republic, the claims of those States shall be submitted to the decision of an American Congress composed of the representatives of the independent powers of America, and that the obligation be undertaken of standing and abiding by its decision.

2. That if they should not wish to submit the differences to the decision of that Congress, the Commissioners shall endeavor to submit them under the same terms to the arbitration of some friendly nation, being authorized to provide in the case covered by this article as well as in the case covered by the foregoing article, that until the decision is made the United States may keep, as it were in sequestration, the lands to the north of the rivers indicated in the foregoing article.

3. If the evacuation of the Republic cannot be effected by any one of the means proposed in the foregoing articles, an endeavor shall be made that in the settlement of boundaries they may be natural and in no case pass beyond the following description.

4. The dividing line between the two Republics shall begin in the Gulf of Mexico at a distance of three leagues from the land at a point opposite the mouth of the Rio Bravo del Norte. Thence it shall follow along the middle of the river to a point two leagues to the north of the town called Paso del Norte; thence it shall follow to the west a parallel up to the summit of the Sierra de los Mimbres, whence it shall follow along the same summit, northward, up to the height of the source of the Gila River or one of its branches nearest to the said Sierra; it shall continue along the middle of this branch or along the Gila River to its outlet into the Colorado, whence a parallel shall be drawn to the Pacific Ocean; if this parallel should cut the town of the port of San Diego, then it shall be understood that the boundary must be delimited at the latitude corresponding to two leagues north of the said town of San Diego. The vessels and citizens of the United States shall at all times have free and uninterrupted transit from its possessions and the said boundary line to the Pacific Ocean by way of the Gulf of California when such transit is effected precisely by way of the mouth of the Colorado River and by navigation through that river and the Gila River, the above-mentioned transit in no case being understood as being overland without the express knowledge of the Mexican Government. And although this is the greatest discretion allowed to the Commissioners, they must make every endeavor to diminish the loss and prevent the cession in any way of land belonging to any of the sovereign States of the Federation. An endeavor shall be made to the end that, whatever boundaries may be fixed, the said boundaries are guaranteed by some nation which is friendly and commands respect.

5. That the navigation of the rivers which may be fixed as a boundary shall be free and common to both countries without either one of them being allowed, without the consent of the other one, to construct works or do things that may impede wholly or in part the exercise of this right, even under the pretext of favoring new methods of navigation. Neither shall duties be collected on any grounds except in the case of disembarkation on one of the shores, not even on the ground of maintaining the navigability of the river, for, if some duties should be necessary or desirable, the two countries shall proceed by common agreement. This does not prejudice the territorial rights of the said countries.

6. An endeavor shall be made to the end that the lands ceded shall have the status of sovereign States or territories in the future, provided that it is not in conflict with the Constitution of the United States.

7. All churches, houses, and edifices dedicated to acts or exercises of the Catholic religion in territories formerly belonging to the Mexican Republic and

which under Article 4 of this treaty remain in the future within the limits of the United States, shall continue to be dedicated to the said acts and exercises of the Catholic religion without any variation, and under special protection of the laws. The same shall be the case with movable or immovable property which within the said lands is dedicated to the maintenance of the Catholic religion or to the maintenance of schools, hospitals, and other establishments of charity or social welfare. Finally, the relations and communication of the Catholics now in the said territories with their respective ecclesiastical authorities shall be free, open, and without any obstacle, even though the said authorities have their residence within the boundaries assigned to the Mexican Republic in this treaty, as long as a new delimitation of ecclesiastical districts is not made in accordance with the laws of the Catholic Church.

8. Mexicans residing in territories belonging formerly to Mexico and which are now within the limits assigned to the United States can at any time move to the Mexican Republic, keeping in the said territories the possessions which they may have, or alienating them and transferring their value wherever they may see fit, without the United States being authorized on this account to demand from them any kind of tax, charge, or levy. If the persons in question prefer to stay in the places which they now inhabit, they may retain the title and the rights of Mexican citizens; or immediately acquire the title and rights of citizens of the United States if they so desire. In any case, however, they and their properties shall enjoy the most ample protection.

9. All concessions of lands made by Mexican authorities in places formerly belonging to the Republic and by this treaty placed for the future within the limits of the United States are valid and in effect and shall always be maintained and guarded by the Government of the said United States.

10. The indemnity which may be provided for shall be paid at Mexico City to the satisfaction of the Mexican Government, which may exclude all compensation due to a debt antecedent to this treaty or interest on such debt, whatever may be the origin thereof.

11. Furthermore, the Government of the United States shall obligate itself to assume and to satisfy in full all amounts which are due up to the present to claimants and whatever amounts may fall due in the future by reason of the claims already liquidated and adjudged against the Mexican Republic, in accordance with the agreements made between the two Republics on April 11, 1839, and January 30, 1843 [Documents 89 and 100], so that the Mexican Republic shall have absolutely nothing to pay in the future by reason of the said claims.

12. Also, the Government of the United States obligates itself to assume and to settle in full all claims of its citizens which have not yet been decided against the Mexican Republic, whatever may be the title or reason on which they are based or on which the said claims may be founded, so that before the date of the exchange of the ratifications of the present treaty the accounts of every kind which exist or which may be assumed to exist between the Mexican Government and the citizens of the United States may be settled definitively and forever.

13. In order that the Government of the United States may satisfy, pursuant to the foregoing article, the as yet unsettled claims of its citizens against the Mexican Republic, the latter consents to the establishment by the Government of the said United States of a court of commissioners, the decisions of which shall be definitive and conclusive, provided, however, that, in making a decision on the validity of any claim, the principles and rules which were established in Articles 1 and 5 of the unratified agreement signed at Mexico City on November 20, 1843 [D.S., Unperfected H2], are followed; and in no case shall a decision not in accordance with the rules referred to above be given in favor of any claim. If the court of commissioners should consider it necessary for the proper decision of any claim to have before it any books, registers, or documents held by the Mexican Government, the Government of the United States shall request them from the Mexican Government, and they shall be furnished either in the original or as authenticated for the purpose of transmittal to the said court, it being well understood that the Government of the United States shall make no request for the said books, registers, or documents before the facts which it is intended to prove by such books, registers, or documents have been specified in every case under oath or under solemn affirmation by the plaintiff in the claim.

14. All prisoners of war taken by the two parties either on land or on the sea shall be immediately returned after the signature of the present treaty. It is further agreed that if there are now any Mexicans held captive in the power of any savage tribe within the boundaries which under Article 4 are to be assigned to the United States, the Government of the said United States shall demand their delivery and their restitution to liberty and to their homes in Mexico.

15. Immediately after the exchange of ratifications of this treaty, there shall be returned to the Mexican Republic all forts, lands, places, and possessions which may have been taken from it or occupied in the course of the present war, within the boundaries which are to be fixed for the said Republic in Article 4. Likewise, there shall be returned to it the artillery, equipment, and munitions which were in the castles and fortified places when the latter fell into the possession of the troops of the United States. With regard to the artillery taken from the said castles and fortified places, that held by the troops of the United States at the date of the signature of this treaty shall be returned to Mexico.

16. The Republic of the United States formally undertakes not to permit in the future the addition thereto of any district, territory, or place comprised within the boundaries that are indicated for the Mexican Republic by the present treaty. This formal undertaking has the character of a condition for the territorial cessions which Mexico now makes to the Republic of North America.

17. At the same time, an effort shall be made to the end that if some part of Mexican territory which is now transferred to the United States should be inhabited by barbarous tribes and the latter should be later expelled from the said lands, the Republic of the United States obligates itself to the effect that their expulsion be effected in such a manner as not to cause the said tribes thus expelled to pass over into Mexican territory; and that the United States should not protect directly or indirectly or in any manner whatever the incursions of such tribes across our frontiers; that neither the North American Government nor any one of its subjects, whoever they may be, shall purchase the articles which the barbarians may steal from our nationals; that they shall not provide them with arms, munitions, or other articles with which they may attack us; and, finally, that they shall in no way prevent our Republic or any one of its States or territories from using their right to settle their own lands, which may belong to them under any title, nor that they should secure and fortify their frontiers. In order to determine these points, our Commissioners shall bear in mind the protest which the Legislature of Chihuahua has just made, which is sent to them herewith for the purpose. Article 33 of the treaty of 1831 [Document 70], which is ratified in all its parts, shall be scrupulously carried out.

18. An endeavor shall be made to stipulate that if, at any time, there should be points on which the two nations cannot agree through the peaceful channel of negotiations, before attempting that of arms recourse shall be had to the arbitration of a friendly power. If, even in the future, the idea of a Congress of American powers can be promoted, the Government again recommends this idea.

19. An endeavor shall also be made to stipulate, for the case of war, articles similar to those of the treaty of 1785 between the United States and Prussia, which read literally:

[Here follow, in Spanish translation, from the treaty mentioned (Document 13), the clauses of Articles 23 and 24 thereof, except the concluding sentences of Article 23, beginning "And all merchant".]

20. An endeavor shall be made to stipulate that within the italicized words of Article 23 ["all others whose occupations are for the common subsistence and benefit of mankind"] there be expressly included the establishments of instruction, charity, and religion and, if possible, the judicial and municipal authorities and the property and dependents of all those referred to, so that the conqueror may not obtain other rights over all these things except those which belonged to the Government of the nation to which they belong according to its own laws.

21. The Commissioners shall endeavor to bring it about that as soon as the treaties are signed by them, the cities of Mexico, Puebla, Jalapa, Saltillo, Monterrey, and any other which the North American troops now occupy may be evacuated, the said troops being restricted to the cantonments which may be

suitable to them; and also that, at the same time, the maritime customhouses be left free and the blockade of the ports be lifted.

22. It is urgently recommended to the Commissioners that they most firmly insist on preserving the territory between the River Bravo and the Nueces, with the understanding that the navigation of the Bravo can be granted to the United States under the most ample conditions if that country is interested in it.

23. Lastly, in case the Commissioners for any reason cannot bring about an honorable peace, they shall endeavor to regulate the war by the articles contained in this paragraph and other analogous paragraphs.

With the foregoing were two additional articles of instructions; by the first, the territory between the Rio Grande and the Nueces was not to be ceded unless the treaty could not otherwise be signed; by the second, the minimum of the indemnity was fixed at \$30,000,000; there was also a secret article of instructions to the effect that the Mexican Government could receive such indemnity in bonds of the English debt "of those last converted", up to 10 percent more than their real average value on the London market during the last six months (Carreño, *México y los Estados Unidos de América*, 224-25; Roa Bárcena, *op. cit.*, 597).

REPORTS OF TRIST ON THE FINAL NEGOTIATIONS

Trist's despatches (after No. 22, of December 6, 1847) prior to that of January 25, 1848 (No. 27), include very little about the negotiations that followed his decision to remain at Mexico City (see D.S., 14 Despatches, Mexico, No. 23, December 20, 1847, to No. 26, January 12, 1848, inclusive; printed in serial 509, pp. 268-80); on December 29 (No. 25) he told of the discouraging effect of the presidential message of December 7 but thought that there was every probability that a treaty would be signed in the course of a week; on January 12, 1848, he wrote (No. 26):

Tomorrow, I am to have a meeting with the Mexican Commissioners, at which, every thing will, I believe, be agreed upon between us: &, allowing a day for making out the papers to be transmitted to Queretaro, & five or six for the return of the courier, from the time of his departure hence, the signing of the Treaty will probably take place towards the close of next week [January 22].

The Boundary (which has been agreed upon, subject to the approval of the Executive at Queretaro) will be the one defined in the *Projet* which I brought out, with a slight variation at its western extremity. The reasons which have governed me in this, as well as in not insisting (as I had at first determined to do) upon the parallel of 32°, from the Rio Bravo, will be fully explained hereafter: time not permitting me to do so now.

The Mexican Commissioners endeavoured, at the outset, & as a preliminary condition to their entering upon the negotiation, to obtain a promise that such suspension of hostilities should take place, *upon the signing of the treaty*; &,—independently of the general & obvious reasons, supplied by the common sentiment of humanity, against war going on, after a treaty of peace has been signed, in the very midst of the forces engaged in it,—they gave special reasons, reasons of policy, connected with the position of the Government, as being the Government of the Peace party, for wishing that this Government may not be placed in the alternative of resisting the further advance of our troops, or affording grounds for the changes which a contrary course would justify, even to the extent of that of treasonable connivance. But, all I could say in reply was, "General Scott is totally without discretion on the subject. His instructions are, to push the war

with all possible vigour, & to occupy the country as speedily as his means permit. He cannot enter into any agreement of the sort,—not even if we sign the treaty—without disobeying orders. But, let us get it ready for signature; & then, I will lay it before him, stating that its being signed depends upon his engaging to suspend further movements, until he can receive instructions from Washington.”

By January 25 the negotiators had reached an agreement which was complete in substance, although even then the drafting of certain articles had not been finished; and the approval of the Mexican Government of certain major features of the treaty was still lacking. Trist's despatch of that date¹ opens with the following paragraph (D.S., 14 Despatches, Mexico, No. 27; printed in serial 509, pp. 280–94):

The Treaty agreed upon between myself and the Mexican Plenipotentiaries will, according to every probability, be signed immediately upon the return of an express which has just been despatched to Queretaro. Every arrangement has been made here and upon the road between this and Vera Cruz, and a confidential order has gone forward to Genl Twiggs at that place, for its instant departure hence, and to ensure its rapid transmission to and from Vera Cruz. Although closely engaged in the preparation of the copies (Quintuplicate) for signature, I shall find some intervals of time for writing this by snatches.

After a brief statement regarding the full powers of the Mexican Commissioners and some pages on other topics, the despatch mentioned has the following description of the treaty and its negotiation:

I will now enter upon the subject of the Treaty itself. The negotiation has been an exceedingly laborious one, and has occupied me, without intermission for several weeks, during as many hours of every twenty-four as could possibly be given by me to work; and at no other period of my life, so strong has my health become, could I have undergone the same amount of labour.

Independently of the desirableness, that the treaty should be a good one, the very peculiar posture of affairs in this Country required that it should be such as to *protect itself* against the tempest of objections, ready gathered to burst upon it, as the last resource for overwhelming and overturning the Government, in order that the object may be accomplished of compelling our Country into an amalgamation with this, by rendering peace impossible in any other way. In order that it might so protect itself, it was requisite, not merely that the Treaty should present the fewest possible features that could be objected to, but that it should, with reference to the fears, the suspicions and even the prejudices of the Mexican people, carry upon its face as many positive recommendations as the nature of the subjects stipulated upon rendered practicable.

The plan upon which I proceeded, to arrive at such a result was, in the first place, to request the Mexican Commissioners to take the *Projet* of the United States as a basis, and to suggest such modifications as might seem to them desirable. The result of this request was, an entire new draught from them; in which but very little of our *Projet* was retained, and in which I found very little that could be acceded to, at least without material changes, either as to substance or as to form. It answered, however, as a basis for me to work upon, in preparing substitutes for the articles contained in their draught: governing myself by our *Projet*, by my instructions, and where these did not touch the subject, by the Treaties which have been entered into by our Country. Where these resources all failed, I had to rely upon such knowledge as I possess of her

¹ This despatch was sent from Mexico City on February 9 and was received at Washington on February 28; with it were the second originals of the treaty and additional and secret article; of its three stated enclosures, only “C” was then transmitted; “A” was forwarded somewhat later; and “B” seems to have been planned but not written.

principles and policy, with respect to the various topics that presented themselves. My substitutes led to discussions, in which I had to explain why that which had been proposed by them was inadmissible, wherein consisted the difference between it and the proposed substitute, and why this presented the only way, and the only degree, in which the object could be attained. In this manner, modifications and remodifications succeeded each other, with reference to every topic which the Treaty contains; until finally its various stipulations were agreed upon, both as to substance and as to form. As this was done, the Articles were written anew by me, translated by one of the Commissioners; (Señor Cuevas, who reads English very well, although he does not speak it or understand it when spoken) and then, the phraseology changed, in one or the other version, or in both: so that the idiom of both languages might be preserved, whilst at the same time the Treaty should present in both a correspondence of expression as well as a perfect identity of sense. In this I had to indulge the gentlemen on the other side, (whose language is more peremptory than ours, in its requirements for a correct style) by allowing them to put into what they considered idiomatic Spanish, the meaning of the articles draughted by me, varying the structure as far as they deemed necessary; and then myself writing the articles over again in English, so as to make them conform to the Spanish. As the result of this labour, the Treaty, whilst it is both English and Spanish, and not, on either side, a mere literal translation from the other, will be found to exhibit a correspondence in the two languages, which is by no means common in those which have come under my examination.

Some things which were proposed and strongly insisted upon, on the part of the Mexican Government, were of a nature to admit of nothing but a positive refusal. Among these were the distinct proposals, that the Treaty should be made under the guaranty of neutral powers; and that it should stipulate absolutely for the submission of all future differences to arbitration. The stipulation on the latter subject, as modified by me, will be found in Article 21. In that shape, whilst it serves to strengthen the Treaty in this Country, it can do no harm, but may do good, as a formal recognition of the general expediency and duty of using every endeavour to settle differences otherwise than by a resort to the *ultima ratio*. Besides the two proposals just stated, the negotiation commenced with one, to enter into a Convention which, leaving us in possession of the territory comprehended within our proposed boundary, should submit the whole question between the two Countries to arbitration.

The *Boundary* [Article 5] is the one defined in the *Projet*, with a slight variation at its western extremity: an explanation on which point will be found in the accompanying paper marked A [printed elsewhere in these editorial notes]. The one marked B. [lacking and seemingly not written], relates to the parallel of 32°, as a boundary. Upon entering on the negotiation, I had, in pursuance of the views presented in your Despatch of the 19th July, determined to insist upon that parallel, from the Rio Bravo across to the Pacific, as a *sine qua non*. Although there told that it was not then intended that I should do so, I presumed that the dispositions entertained by the President at the present time required that I should do so now. But, in forming the determination to insist upon this line, I had not adverted to the fact, that it constituted an insuperable obstacle to the negotiation of a Treaty, no matter what its terms might be in other respects. This was the case, even if the difference, between the territory which that line would give us and that comprehended in the boundary of the *Projet*, should be ever so inconsiderable. It mattered not whether it was ten miles or ten feet in width, the effect would be all the same: to render a treaty impracticable.

The States of Sonora and Chihuahua, which adjoin New Mexico, had solemnly protested against the transfer of a single foot of their territory, and against the validity of any such transfer, if made. This was, therefore, a *sine qua non* with the Mexican Government; and one which it was absolutely impossible that it should depart from, even if it was ever so strongly disposed to do so: because it would have rendered the ratification of the Treaty an impossible thing. Not only would the delegations of those States have opposed it, but it could not have obtained a single vote in its favour. If there be in this Country one sentiment more universal and decided than any other (and this, with especial-reference

to our Country, and the design imputed to her) it is the one which denies the possibility of a valid transfer by the General Government, of any portion of the territory of one of the Sovereign States. The argument on this subject is unanswerable. It is set forth with great clearness by the Puros (or war-until-annexation party) in the Manifesto referred to in my Despatch of the 26th December, as constituting "the last stand made by them, in the character of members of the expiring Constituent Congress, against the consummation of the measure, (a Treaty of Peace) upon which the Government is known to them, and to every one, to be intent". Nor does it avail to urge against this denial of authority in the Genl Government, *the supreme law of necessity*: for it is fortified at this point also. It says, If the Union, after having exhausted all its means in the defence of its members, finds itself incapable, in regard to any one or more, of protecting them; in such case, let the portion of the Republic, with respect to which the impossibility of defence exists, be *abandoned* for the time. But, this inability gives no right to the Union to *alienate* any portion of any State; whether it be for the purpose of purchasing peace for the rest, or any purpose whatever. No such alienation can be valid.

Thus insurmountable was the obstacle to the adoption of the parallel of 32° as the boundary. The only particular, in respect to which it was practicable to overstep, this limitation to the transfer of territory, is the small portion of the State of Tamaulipas, lying north of Rio Bravo, and running a short distance up that river: which strip of country (extending either to the Nueces or as far as the San Antonio—I do not recollect which, and have not the references at hand) just as certainly constituted a part of that State, and not of Texas, at the time when the latter declared her independence, as it is certain that the Counties of Accomack and Northampton do now constitute a part of the State of Virginia, and not of Maryland. Tamaulipas, however, has not made any protest on the subject; and it is believed that the boundary will be silently acquiesced in by her, and that, in view of the extreme peculiarity of the case under every aspect, this departure from the principle will not be made a point of by those in favour of peace.

The declaration with which the Article on the boundary concludes, was a *sine qua non* on the part of the Mexican Government. I entertain no doubt whatever of its great importance in respect to the ratification of the Treaty; and my mind is far from being satisfied—such is the state of the public mind on this point—that the ratification would have been practicable without the aid which it gives. It was proposed, that it should form an Article apart, in terms that were inadmissible. In its present form and place, it is the result of repeated conversations, and was offered by myself: after which, several modifications of phraseology were proposed from the other side; a part of which were acceded to, and the rest not.

The *Indemnity*, or amount to be paid by the United States, is Five millions less than the sum I was authorised by my instructions to pay for the same Boundary, and which a compliance with those instructions would have required me to agree to pay, if necessary to secure that boundary, had a treaty been made in September last; or indeed, at any time prior to the receipt of the counter-instructions, which (the *triplicate* thereof) first came to hand on the 16th of November, as the Department was advised at the time. Taking into consideration, on the one hand, the time when the offer of Twenty millions for the same boundary was made by the United States, (not formally or upon paper, but by an intimation from me, which was just as binding) and the period during which that offer had remained in force; and on the other hand, the contents of the Despatches received by me in November, and those of the President's message, as regards the increased expenditure of blood and treasure attending the prosecution of the war, in connection with the continued disposition of our Government not to exact more than a fair compensation for that expenditure: taking all these things into consideration, and taking also those twenty millions as the standard for my government, in estimating the deduction which should be made from it, to bring the sum into accordance with those views, I have deemed it my duty to strike off five millions and, at the same time not to reduce the sum any lower. I made the offer of the Fifteen millions, at once, announcing that it was the highest point to which I could go. I was not at the time aware that the Mexican Plen-

potentiaries had had their hands tied against accepting anything less than thirty millions. This was the case, however; and it has continued to be the case down to this moment. The copies of the Treaty for signature, now being made, must stop at the 12th Article, until the Government at Queretaro shall have consented to accept the fifteen millions, upon learning that I have remained inflexible upon that point, even at the risk of the Treaty being lost, and shall have made its election as to the mode of payment.

With regard to the *Discharge and Assumption* of claims, explanations will be found in the accompanying paper, marked C [for those lengthy "explanations" of Articles 13 to 15, see serial 509, pp. 294-301; the print omits two sentences of the quoted statement by Couto].

The condition of the inhabitants of the ceded or transferred territory is the topic upon which most time has been expended, in the modes stated at the commencement of these remarks. It constituted a subject upon which it was all-important that the Treaty should be guarded at all points, and should recommend itself as strongly as possible. Every thing proposed on the other side in regard to it was inadmissible or objectionable, in substance or form; and the Articles, as they now stand [Articles 8 and 9; the latter was recast in the Senate], are the result of draughts prepared by myself, and were repeatedly amplified and otherwise altered, to meet the wishes of the Mexican Commissioners. The stipulations regarding the incorporation of the inhabitants into our Union were restricted to the *Mexican* inhabitants, because, as the Mexican Commissioners stated, their Government has no right to enter into such stipulations in regard to the foreigners who may be residing in the transferred territory. The right of Mexicans residing there, to continue there, retaining the character of Mexican citizens, would follow, as a necessary consequence, from the right secured to such Citizens by the Treaty of Commerce, to go and reside there. On this point, and for the right secured to such citizens, resident or non resident, to retain the landed property they may now own there, a precedent was afforded by our British Treaty of 1794. (Articles 2 and 9 [of Document 16]). The liberty to "grant, sell or devise the same to *whom they please*", I qualified by restricting the right of purchase to *Mexicans*. This stipulation is particularly important to landholders on the Rio Bravo, and especially so, to the Citizens of Tamaulipas, the estates of some of whom, situated south of the Bravo, are dependent in some respects for their value, upon lands on the north of that river, which are used as pastures.

With respect to grants of land made by the Mexican authorities, the *proviso* contained in my instructions was strenuously objected to, upon a point of national honour and decorum. No such grants had been made since the 13th May 1846. This they knew; and consequently the *proviso* could have no practical effect. But it implied that they have been made, or might have been made, and that nevertheless the Government committed the injustice of revoking them; which, in fact, it had authority to do. Moreover, it involved an acknowledgement, that, from the day when hostilities broke out on the north of the Rio Bravo, the Mexican Government had lost the right to make grants of land in any part of its territory subsequently occupied by us. Feeling the force of these objections, I requested them to make sure of the fact stated by them; and, also, in regard to no grants having been made in Texas since the revolution, which had been incidentally mentioned by one of them. And this having been done, in a manner which left no shade of doubt on their minds, the declaration which will be found at the end of Article 10, was agreed upon in lieu of the *proviso* [Article 10 was deleted].

The stipulation respecting grantees who had been prevented from fulfilling the Conditions of their grants, was taken from the Florida Treaty:¹ that precedent being modified to meet the necessity of distinguishing between lands in Texas

¹ Cf. the first paragraph of Article 10 of the signed treaty with Article 8 of the treaty with Spain of February 22, 1819 (Document 41); Trist had no instructions to treat regarding land grants in Texas; it seems that he was not informed on the subject; and the clauses regarding such grants that were written in the treaty were naturally and properly regarded as impossible by both President Polk and the Senate.

and those situated elsewhere, and of respecting her authority over the subject. This did not permit the declaration that the grants within their limits shall be null & void; as she might have seen fit, or might see fit hereafter, to adopt a different determination. Nor did it permit the declaration, that they shall not be obligatory upon her, (as I had at first written it) except with the qualification, "in virtue of the stipulations contained in this article". On the other hand, the right of the United States to stipulate with Mexico, in regard to grants of land in Texas, seemed to me, beyond the possibility of question, to be involved in the transfer from Texas to the United States, of the authority to make a Treaty of peace between her and Mexico.

The stipulations respecting the Indians inhabiting the transferred territory [Article 11], independently of their justice, were indispensable to make the Treaty acceptable to the northern states, or to any who take the proper interest in their security: in a word, to any one who has the feelings of a Mexican Citizen, or the least respect for the obligations which a Federal Union imposes. Excepting only the specific prohibition [which was deleted] against supplying the Indians with firearms and ammunition, (if, indeed, this can justly be deemed an exception) those stipulations contain nothing which is not expressed or plainly implied in the Treaty of Amity, Commerce and Navigation (Article 31 [33 of Document 70]) which is revived in the present Treaty of Peace. But, to make the Article what it must be to satisfy the public mind of this country, it was necessary that those implied obligations should be set forth in detail, and expressed in the most unequivocal manner. Upon examining the old Treaty, I found that it imposes absolutely, & without any saving or qualification whatever, as to the practicability of the thing, the obligation "to *restrain*" by force all hostilities and invasions" and, "not to *suffer* their Indians to *attack*;" and also, in regard to captives made by Indians, "to return them to their Country, as soon as they know of their being within their respective territories". I found also, that the last sentence is so worded as to restrict the prohibition against the purchase of captives, in a manner which could not possibly have been intended. In the new Treaty the obligations above referred to are expressed with the qualifications demanded by the nature of the subject, in order that they may have the character of a practical law, agreed upon and established, upon serious consideration of its requirements, and in the *bona fide* intention that these shall be fulfilled: an intention which stands exposed to serious doubt, when engagements entered into "in the most solemn manner", are found expressed in a manner so loose, that their exact fulfilment, as expressed, involves impossibilities.

The stipulations [Articles 19 and 20] concerning merchandise imported into the Country during our occupation of its ports, required to be put into their present form, in order that they might not have the effect of placing such merchandise, with respect to its introduction into places not occupied by our troops, on a *better* footing than if imported in time of peace: which, even if it could have been demanded consistently with justice, was, in a practical point of view, impossible by reason of its incompatibility with the execution of the State and Municipal laws regarding this subject. To discriminate, in this regard, between merchandise imported through ports occupied by us, and other merchandise, would have been practicably impossible, owing to the temptation and facilities it would have afforded to frauds, and the endless controversies, complaints and claims to which it would have given rise. For the same reason, the right to reship was restricted to goods *in the ports*: otherwise, it would have put it in the power of any one, under the pretext of going to a port of reshipment, to traverse the Republic with goods, passing through whatever places he pleased, and dropping them on the way.

The last article [Article 22], is founded on one [Articles 23 and 24 of Document 13] contained in our Treaty with Prussia, of 1785, (which bears the signatures of Benjamin Franklin, Thomas Jefferson, and John Adams). In the first draught presented by the Mexican Commissioners, the Article had been copied from the Prussian Treaty. After making in it such modifications as seemed to me desirable, it was agreed upon in that shape.

The preamble also, after a few modifications, was adopted from the draught of the Mexican Commissioners.

THE FINAL DISCUSSIONS

There is abundant material on the final negotiations, apart from the despatches of Trist; his papers in the Library of Congress are illuminating; there are valuable accounts in Rives, *op. cit.*, II, 598-613, and in Smith, *op. cit.*, II, 233-40, 462-68 (of those two authors, only the latter examined the Trist Papers); an important official paper is the "exposición" of the Mexican Plenipotentiaries dated March 1, 1848 (Tratados y convenciones concluidos y ratificados por la Republica Mexicana, 228-50; that paper is hereinafter cited as "Exposición"); the work of Roa Bárcena, published in 1883 (Recuerdos de la invasion norte-americana, ch. 34), is of real interest; that writer had available the papers of Bernardo Couto, one of the Mexican Plenipotentiaries.

Throughout the proceedings of January 1848, Doyle, of the British Legation, was in close touch with the negotiation; Thornton constantly aided Trist as translator and as scrivener; he translated and wrote in English the articles of the Mexican proposals (Trist Papers, 28: 61092-95, 61088-89); on January 20 he wrote to Trist asking for "more to do" (*ibid.*, 61172; see also 61170); of the three signed originals of the treaty which are now in Washington, two are partly, and one wholly, in his hand.

The duties of secretary to the Mexican Commissioners were performed by Alejandro Arango y Escandon, a friend of Couto (Roa Bárcena, *op. cit.*, 597, footnote 2).

Various drafts of Trist antedate the first official conference; one (Trist Papers, 27:60913-19) contained a preamble and two additional articles relating to Tehuantepec; this was given to Ewen Clark Mackintosh,¹ the British consul and a prominent banker of Mexico City, on December 21, 1847, but the subject was not pressed; another, written January 1, 1848, contained a preamble and three secret articles in guaranty of the Constitution of Mexico (*ibid.*, 61005-6), but this was subsequently declined (on those two points, see Smith, *op. cit.*, II, 466); and by the same date Trist had written drafts (Trist Papers, 27:60921, 61004) of clauses regarding Indians (Article 11 of the treaty) based on Article 33 of the treaty of 1831 (Document 70).

During the negotiations, Trist was guided by his interpretation of the instructions given to him regarding treaty terms and, on subjects not thereby covered, by previous treaties and general principles; as between Trist's instructions, as he read them, and those of the Mexican Commissioners, the points of essential difference were the boundary and the amount of compensation to be paid by the United States.

The opening official conference had by the Mexican Commissioners with Trist was held at Mexico City (the place of all their meetings prior to the signing of the treaty) on Sunday, January 2, 1848; but the discussions of that day were limited to suggestions which Trist was not expected to entertain, such as an armistice antecedent to a

¹ As to the interest of Mackintosh in the Tehuantepec concession known as the Garay Grant, see Rippey, *The United States and Mexico*, 48 *sqq.*

treaty and arbitration (Trist Papers, 27:61009, minute of the first conference; Roa Bárcena, *op. cit.*, 597).

Six days later, the Mexican administration again changed; the term of General Anaya as President *ad interim* expired on January 8; as there was no quorum of Congress assembled, the duties of the Presidency again devolved upon Peña y Peña; and Luis de la Rosa became once more Minister of Foreign Relations.

The second conference was held on January 3; the boundary was considered; it was agreed to deem it the first and chief question (Roa Bárcena, *op. cit.*, 598); the boundary discussions are treated later in these editorial notes; they ended about ten days later, except as between the Mexican Commissioners and their Government.

The amount of indemnification to be paid by the United States was hardly within the field of negotiation; Trist had fixed on \$15,000,000 as the sum; the Mexican Commissioners had no authority to accept less than \$30,000,000; new instructions were necessary (Trist Papers, 28:61023, proposal of Trist of January 4, 1848; for the relevant remarks on that and the following day, see Roa Bárcena, *op. cit.*, 599).

A few other subjects were touched on at the conference of January 3 (see *ibid.*, 598); Trist's journal of the meetings ends with the record for that day, as he found that time lacked to write it up (Trist Papers, 27:61010-11); he drafted and delivered on January 4 an article regarding the rights of the inhabitants in the ceded territories and land grants (*ibid.*, 28:61024); but on January 5 the Mexican Commissioners proposed to write a project of the treaty, in order to limit and simplify the discussions; for this purpose and in order that the Mexican Commissioners might report to Querétaro, the conferences were, it seems, intermitted until January 13, except for one of January 7, on the boundary (see Roa Bárcena, *op. cit.*, 599-600; also Trist's despatch No. 26, of January 12, 1848, heretofore quoted in part).

The Mexican draft in a preamble and twenty articles was presented to Trist on January 9, 1848 (on January 10 according to Roa Bárcena, but the date written twice by Trist must be taken as correct). The text of that project is available in the form of a "hurried" translation made by Thornton. That translation, except for Article 5 on the boundary (printed below under the heading "The Boundary Proposals") follows; Trist noted that the original, with references made thereon to separate notes and modifications made by him, was presented to the Mexican Commissioners for them to work upon and that it remained in their hands (Trist Papers, 28:61092-95, 61088-89):

In the name of the Most Holy Trinity. The Government of the Mexican Republic and that of the United States of America, animated by a sincere desire to put an end to the calamities of the war which has unhappily existed between the two Republics and to establish upon solid bases relations of peace and good friendship which may procure reciprocal advantages to one and the other country and may ensure the concord, harmony, and mutual security in which the two peoples ought to live like good neighbors, have named as their Plenipotentiaries, namely, as the Plenipotentiary of the Mexican Republic, N. N. y N., and as the Plenipotentiary of the United States of America, N., who, their full powers having been exhibited and examined, which were found sufficient and in due form, under

the protection of God Almighty, the author of peace, have arranged, agreed upon, and signed the following Treaty of Peace and Amity between the Mexican Republic and that of the United States of America.

ARTICLE 1. There shall be firm and universal peace between the Mexican Republic and the United States of America and between their respective countries, territories, cities, towns, and villages, without exception of places or persons.

ARTICLE 2. All hostilities, as well by sea as by land, between the two Republics shall be suspended at once, and this suspension of hostilities shall be inviolably observed by one and the other party. To this end, the respective orders shall be issued to the commanders of the sea and land forces of the two Republics.

ARTICLE 3. Immediately after the ratification of the present treaty by the Government of the Mexican Republic, the land forces of the United States shall retire from all the places which they occupy in the interior of the Mexican Republic and shall place themselves at the points which shall be chosen in common and which shall not be farther than thirty leagues from the ports. The blockade imposed upon the Mexican ports in the one and the other sea by the naval forces of the United States shall likewise cease, and the customhouses of the said ports shall immediately remain at the disposal of the Mexican Government.

ARTICLE 4. Immediately after the exchange of the ratifications of the present treaty, all the fortresses, territories, places, and possessions which may have been taken or occupied by the North American forces in the present war within the limits which are about to be fixed in the fifth article for the Mexican Republic, shall be definitively returned to the said Republic. The artillery and ammunition which existed in the castles or fortresses when they fell into the power of the troops of the United States, shall likewise be restored. With respect to the artillery taken without the said castles and fortresses, that which may exist in the power of the troops of the United States at the date of the signature of the present treaty shall be restored to Mexico.

All the prisoners taken from one or the other army, as well by sea as by land, shall likewise be restored at the exchange of the ratifications of the present treaty. Further, it is agreed that if there be now any Mexicans captives in the power of any savage tribe within the limits which are about to be fixed for the United States by the following article, the Government of the said United States shall require their delivery and that they be restored to their liberty and to their homes in Mexico.

ARTICLE 6. The ships and citizens of the United States shall have at all times a free and uninterrupted transit by the Gulf of California to their possessions and from their possessions to the north of the dividing line, which is marked in the preceding article, it being understood that this transit is to be effected by the Gulf of California and by the River Colorado, and not by the land road except with the express consent of the Mexican Government.

If, by surveys which may be made, the possibility or expediency of constructing a railroad shall be proved, which in whole or in part shall run along the River Gila or upon one of its banks, right or left, within the distance of a maritime league from the one or the other side of the river, the Governments of the two Governments shall concert upon its construction in order that it may serve equally for the advantage and the use of the inhabitants of both countries.

ARTICLE 7. In the Rivers Gila and Bravo del Norte, which, according to the preceding article [Article 5], are divided in the middle between the two Republics, the navigation shall be free and common to the ships and citizens of both countries, without it being in the power of either of them to construct (without the consent of the other) any work which may hinder or interrupt, in whole or in part, the exercise of this right, not even under the pretext of favoring new modes of navigation. Neither shall any impost be collected, under any title or denomination, except in case of debarkation on either of the banks. If, in order to render

the said rivers navigable or to keep them so, it should be necessary or expedient to establish any impost, this cannot be done without the consent of the two Governments. The stipulations contained in the present article do not prejudice the territorial rights of the one or the other Republic within the limits which are now marked out for them.

ARTICLE 8. All the temples, houses, and edifices dedicated to acts or exercises of the Catholic worship in territories belonging formerly to the Mexican Republic and which, by the fifth article of this treaty, remain for the future within the limits of the United States, shall continue to be dedicated to the same acts and exercises of the Catholic worship without any variation and under the especial protection of the laws. The same shall happen with regard to the movable or immovable property dedicated to the maintenance of the Catholic worship or to that of schools, hospitals, and other charitable or benevolent establishments. Finally, the relations and communication of the Catholics existing in the said territories with their respective ecclesiastical authorities shall be unfettered, free, and without any hindrance, although the said authorities may have their residence within the limits which are marked out in this treaty for the Mexican Republic, until a new distribution of the ecclesiastical districts be made in conformity with the laws of the Catholic Church.

ARTICLE 9. The Mexicans residing in territories formerly belonging to Mexico, and who are now within the limits marked out for the United States, may at any time pass over to the Mexican Republic, preserving in the said territories the property which they possess or alienating them and transferring their value to wherever it may suit them, without its being in the power of the United States to exact from them on this account any sort of contribution, burden, or impost. If the persons in question prefer to remain in the territories which they now inhabit, they may preserve the title and the rights of Mexican citizens; or immediately acquire the title and rights of citizens of the United States, if they should so wish. But in every case they and their property shall enjoy the most ample guaranty.

ARTICLE 10. The territories of New Mexico and of Upper California formerly belonging to the Mexican Republic, and which by the present treaty remain within the limits of that of the United States, shall be elevated into States similar to others which form the North American Confederation as soon as they shall have the population required for that purpose by the laws of the United States. And until this shall happen the inhabitants of the said territories shall continue to be ruled by the Mexican laws as far as regards the condition of the persons, contracts, wills, successions *ab intestato*, and other acts of civil law.

ARTICLE 11. All concessions of lands made by Mexican authorities in territories formerly belonging to the Republic and which by this treaty remain for the future within the limits of the United States, are valid and subsisting and shall be supported and observed in all times by the Government of the said United States.

ARTICLE 12. In consideration that a great part of the territories which by the present treaty are about to remain within the limits of the United States, is actually occupied by savage tribes whose incursions upon the Mexican districts might be extremely prejudicial, it is solemnly agreed that the Government of the United States of America shall take all measures and shall dictate and put in execution the necessary laws in order that, on the above-mentioned territories being populated by their citizens, the said tribes may neither be driven nor may make incursions upon the Mexican lands. It is likewise agreed that the same Government of the United States shall immediately and at all times adopt the precautions necessary to hinder the said tribes from making incursions upon the lands of the Mexican Republic or from committing hostilities of any kind upon its inhabitants, as well as to forbid and prevent the inhabitants of the United States of America from providing them with arms and ammunition. And if, in spite of all these precautions, it should still happen that some incursions of the said savage tribes should take place, it is likewise agreed that the Government of the United States shall cause the invaders to be exemplarily punished and dispersed, that the damage caused by them be repaired, and that the persons or

things which they may have robbed in Mexican territory shall be restored to Mexico as speedily as possible, bona fide and without costs of any kind.

ARTICLE 13. In due compensation for the extension which is acquired according to the fifth article of this treaty by the ancient boundaries of the United States, the Government of the said United States obliges itself to deliver to the Mexican Republic the sum of _____ in this form:

ARTICLE 14. The Government of the United States further obliges itself to take upon itself and fully to satisfy to the claimants all the sums due to them up to the present time and which may hereafter become due on account of the claims already liquidated and sentenced against the Mexican Republic, in conformity with the conventions agreed upon between the two Republics on the 11th of April, 1839, and the 30th January, 1843 [Documents 89 and 100], so that the Mexican Government will have absolutely nothing to pay for the future on account of the above-mentioned claims.

ARTICLE 15. The Government of the United States likewise obliges itself to take upon itself and fully to pay all the claims of their citizens as yet not decided against the Mexican Republic, from whatever title or cause the said claims may proceed or on what they may be founded, so that up to the date of the exchange of the ratifications of the present treaty, the accounts of every kind which exist or may be supposed to exist between the Government of Mexico and the citizens of the United States remain definitively and forever settled.

ARTICLE 16. In order that the Government of the United States may satisfy, in accordance with the preceding article, the claims of their citizens as yet not decided against the Mexican Republic, the Government of the said United States shall establish a tribunal of commissioners, whose decisions shall be definitive and conclusive, always provided that the decision upon the validity of any claim be made in conformity with the principles and rules which were established in Articles 1 and 5 of the unratified convention¹ which was celebrated in Mexico on the 20th day of November, 1843, and in no case shall sentence be given in favor of any claim which be not in conformity with the before-mentioned rules. If the tribunal of commissioners shall deem it necessary for the just decision of any claim to have the inspection of any books, registers, or documents which exist in the power of the Government of Mexico, the Government of the United States shall ask for them from the former, and they shall be transmitted to it in original or in attested copies in order that they may be laid before the said tribunal, it being well understood that no request shall be made by the Government of the United States for the said books, registers, or documents until the asking party in the claim shall have specified in each case, on oath or judicial affirmation, the facts which he may pretend to prove by the said books, registers, or documents.

ARTICLE 17. Each of the two Republics reserves to herself full power to fortify all the points in her own territory which she may deem expedient for her safety.

ARTICLE 18. If, unhappily, any point of disagreement should hereafter arise between the Governments of the two Republics, either upon the meaning of any one or more articles of this treaty or upon any other point whatever of the political or commercial relations of the two nations, the said Governments in their name bind themselves from this time to endeavor in the most sincere and earnest manner to adjust the differences which may present themselves and to preserve the state of peace in which the two countries now place themselves, making use to that end of mutual representations and pacific negotiations. And if, by these means, it shall not yet be possible to arrange any difference which may arise, an appeal shall not on that account be made to aggression or to hostilities of any kind on the part of one Republic against the other, but the difference shall be submitted to the bona fide arbitration of commissioners named by both parties or to that of a friendly nation.

¹ D.S., Unperfected H2; see the notes to Document 100.

ARTICLE 19. And if (which it is to be hoped will not be the case) it should unfortunately happen that any war should come into existence between the two Republics, in this event they remain formally bound to observe the following rules:

1. The merchants of one of the states residing in the other shall have permission to remain there nine months for the purpose of collecting their active debts and arranging their affairs, after which they shall have full liberty to depart and to take with them all their effects without hindrance or molestation. Priests, women and children, men of letters of all classes, laborers, artisans, manufacturers, and fishermen, who are not armed and who dwell in cities, villages, or unfortified places, and in general all those whose calling conduces to the subsistence and to the common advantage of the human race, shall have the liberty of continuing their respective professions and shall not be molested in their persons, nor their houses or their effects burned or in any other way destroyed, nor their lands laid waste by the armies of the enemy into whose power they may fall by the events of the war; but if the necessity should arise of taking any part of their property for the use of the enemy's army, its value shall be paid at an equitable price.

2. In order to alleviate the condition of prisoners of war and not to expose them to be sent to distant and rigorous climates or confined in close or unwholesome habitations, the two contracting parties solemnly bind themselves, the one with respect to the other and in the presence of the universe, not to adopt any of these practices: that the prisoners which the one may make from the other shall not be transported either to the East Indies or to any country of Asia or of Africa, but that asylums situated in a wholesome air shall be assigned to them in the respective territories of the contracting parties; that they shall not be consigned to dungeons nor to prisons nor to galleys; that they shall not be put into chains nor bound nor in any other manner deprived of the use of their limbs; that the officers shall remain at liberty, under their word of honor, within the limits of certain districts which shall be assigned to them, and that commodious lodgings shall be granted to them; that the common soldiers shall be distributed in cantonments sufficiently open and extensive to take air and exercise, and that they shall be lodged in quarters as commodious and spacious as those of the troops of the power in whose hands they are prisoners; that this power shall cause to be furnished daily to the officers as many rations, composed of the same articles and in the same quantity, as those which the officers of the same rank in its own service enjoy in kind and in equivalence; that it shall likewise furnish to all other prisoners a ration similar to that which is granted to the soldier of its own army. The amount of their expenses shall be paid by the other power according to the liquidation of the account, which shall be reciprocally arranged for the maintenance of the prisoners, at the end of the war; and these accounts shall not be confounded or compensated with other accounts, nor shall the pay which may be due be retained by way of compensation or reprisals for any other article or for any other real or supposed claim. It shall be permitted to each one of the powers to maintain a commissioner of its own election in each one of the cantonments of the prisoners who are in the power of the other. These commissioners shall have the right of visiting the prisoners whenever they choose; they may likewise receive and distribute the succors sent to them by the relations and friends of the prisoners; finally, they shall be at liberty to send their reports in open letters to those who have commissioned them; but if an officer should break his parole, or any other prisoner should go out of the limits assigned to his cantonment, such officer or prisoner shall be deprived individually of the advantages stipulated in this article, as far as regards his liberty or parole or as far as regards his cantonment. The two contracting powers have further declared that the neither the pretext that war annuls treaties nor any other cause whatever shall be considered to annul or suspend this article, but on the contrary the time of war is precisely that for which it has been stipulated and during which it shall be observed as religiously as the articles more universally recognized by the law of nature and of nations.

ARTICLE 20. The present treaty shall be ratified, etc.

It will be observed that the draft treaty presented by the Mexican Commissioners covers all the subjects of the treaty as signed except for Articles 17 to 20 thereof, regarding revival of the treaty of 1831 and importations during the military occupation.

It was on the basis of the Mexican draft that the discussions proceeded from January 13; the Mexican Commissioners were corresponding regarding major issues with their Government, whose final instructions thereon were deferred; in the meantime, the negotiators worked on the text of the treaty article by article, a task of much more labor as to both substance and form than Trist had anticipated; in the Trist Papers (27, 28, and 29) will be found much material on the details of the drafting (see, for example, the draft of Article 4 in Trist Papers, 28 : 61141, showing a suggestion by General Scott on January 16 which was written into the third paragraph of that article of the treaty).

As late as January 22, the Mexican Minister of Foreign Relations, Luis de la Rosa, wrote from Querétaro refusing to yield San Diego (Roa Bárcena, *op. cit.*, 601); by January 25 Trist and the Mexican Commissioners had reached an agreement which was complete in principle and nearly complete textually; the work of writing out for signature the instruments of the treaty had been commenced, although the final wording and comparison of some of the later articles was not finished until January 31 (see Trist Papers, 28 : 61158-59, 61206-7; 29 : 61273-79, 61316-17); but instructions from Querétaro of January 26, while accepting the boundary clauses as written, insisted that, following the signing of the treaty, the capital should be evacuated, the Mexican Government should be placed in control of all its revenues, and cash advances should be made; the instruction of January 27 left to the Mexican Commissioners the amount of the indemnity but maintained as an essential condition the matter of cash advances (Roa Bárcena, *op. cit.*, 604-5; and see, in Trist Papers, 29 : 61254-55, 61258, January 28, 1848, a draft of a loan agreement with an unnamed third party).

The negotiations had reached a stage where delay in the signing of the treaty was putting at risk the whole plan. Besides the quite anomalous position of Trist, there was the military situation to consider. No hostilities were in progress, but General Scott had orders of October 6, 1847, "to carry on further aggressive operations; to achieve new conquests; to disperse the remaining army of the enemy in your vicinity, and prevent the organization of another" (serial 509, pp. 138-40); and, when reinforcements arrived on January 22, the Mexican Commissioners were told by Doyle that Scott could no longer suspend movements for military occupation of the country unless he had complete assurance that the treaty would be signed; these statements had been communicated to the Mexican Government by the Commissioners (see their despatch of January 23, 1848, quoted in Roa Bárcena, *op. cit.*, 602).

Late in the evening of January 28 (Friday) Trist informed Doyle that there could be no further delay (Rives, *op. cit.*, II, 609). On the next day Trist wrote formally to the Mexican Commissioners

terminating the negotiations, but at the same time promised that his note would be withdrawn if authority for the Mexican Commissioners to sign the treaty were received by the following Tuesday, February 1 (Trist Papers, 29 : 61283-84, 61267-70). On the same date, January 29, Doyle wrote a private note to Rosa giving an account of a recent conversation he had had with General Scott, in which Scott had explained, according to Doyle, the orders he had received from Washington, the fact that he was politically opposed to the administration, and the wish of some of his officers for a forward movement; that he would be compelled to send troops into the interior of the country unless a treaty of peace were signed; and, further, that "his orders were most peremptory to march upon Querétaro, and not to allow the general Government an opportunity of establishing itself in any other point of the Republic" (Rives, *op. cit.*, II, 609-10); and at the same time the Mexican Commissioners wrote most urgently to their Government at Querétaro (Roa Bárcena, *op. cit.*, 602-4).

The result was that on January 31 the Mexican Commissioners were instructed that they might sign the treaty in the form agreed upon with Trist; during the night of February 1 those instructions were delivered to the Mexican Commissioners at Mexico City, 120 miles away; and the treaty was signed at six o'clock in the afternoon of February 2 at the neighboring city of Guadalupe Hidalgo. It seems that Trist suggested the place of signature (see Roa Bárcena, *op. cit.*, 605-7). It is now called "Villa Gustavo Madero".

It is likely that all the examples of the various treaty papers were not completed at the time of signature; with an undated note received on March 3, 1848, Couto sent to Trist "the last example of the treaty, corrected and signed" (Trist Papers, 30 : 61504-5, translation).

THE BOUNDARY PROPOSALS

By the instructions to Trist of April 15, 1847 (printed above), the acquisition of Lower California, while "of the greatest importance", was not a *sine qua non*; and, on the basis that Lower California was not embraced in the treaty, the instructions precluded Trist from agreeing to any boundary article less advantageous to the United States than the following:

The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues¹ from land opposite the mouth of the Rio Grande, from thence up the middle of that river to the point where it strikes the Southern line of New Mexico, thence Westwardly along the Southern boundary of New Mexico to the South Western corner of the same, thence Northward along the Western line of New Mexico until it intersects the first branch of the River Gila, or if it should not intersect any branch of that river: then to the point on the said line nearest to such branch and thence in a direct line to the same and down the middle of said branch of the said River until it empties into the Rio Colorado, thence down the middle of the Colorado and the middle of the Gulf of California to a point directly opposite the division line between Upper and Lower California; thence, due West, along the said line which runs north of the parallel of 32° and South of San Miguel to the Pacific Ocean.

¹ See the Texas act of December 19, 1836, quoted in vol. 4, p. 136. See also Manning, Diplomatic Correspondence of the United States, 1831-1860, VII, 31-32, 294.

A proper understanding of the meaning of that description of the line to its author requires that it should be read with the Disturnell Map, which was before the Secretary of State, James Buchanan, when the instruction was drafted (Trist Papers, 28:61025-29).

On July 13 and 19, 1847, further instructions to Trist regarding the boundary were written (printed in part above); those modifications were not peremptory and to some extent were alternative; the modification last written, which (on the same basis that Lower California was not within the treaty) was "deemed of great importance", was to this effect:

The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from the land, opposite the mouth of the Rio Grande, from thence up the middle of that river to the thirty second parallel of North latitude, from thence due west along this parallel of latitude to the Pacific ocean.

It was this which Trist put forward as his proposal at the conference with the Mexican Commissioners of January 3, 1848 (Trist Papers, 27:61010-11; the lines of Trist's instructions of April 15 and July 19, 1847, are charted in Paullin, *op. cit.*, plate 94A, with relevant text at pp. 64-65); and in his letter to Thornton of December 4, 1847 (quoted previously), Trist had laid down this same basis for a boundary and had said: "it would be utterly idle to talk or to think for an instant of any other, & I cannot listen to a single word on the subject".

The instructions to the Mexican Commissioners of December 30, 1847, have been printed above. They were authorized to agree to a boundary (*ibid.*, 65; and plate 94A)—

to follow the Rio Grande to a point two leagues north of the town of Paso del Norte, thence run westward along a parallel to the Sierra de los Mimbres, thence northward along that ridge of mountains as far as the height of the source of the Gila River, or of that branch nearest the Sierra, thence along the Gila River to the Colorado River, and thence along a parallel to the Pacific Ocean, unless that parallel cut the village of the port of San Diego, in which case it should run along the parallel two leagues north of San Diego.

The line proposed by the Mexican Commissioners at the conference of January 3 was to—

start on the Pacific, two or three leagues north of the port of San Diego; thence, in a straight line to the confluence of the Gila & the Colorado; thence, in a line parallel with the Gila, & one league distant from its north or right bank, continuing said line to the top of the Sierra de los Mimbres; thence, southwardly, along the top of the said ridge or chain, to a point eight or ten leagues (one day's travel) north of the latitude of the Paso del Norte, on the Rio Bravo del Norte; thence, due east, across the Rio Bravo, to a point one league distant from its north or right [left] bank; thence in a line parallel with the said bank, to the sea.

The minute made by Trist of the second conference (from which the foregoing is excerpted; Trist Papers, 27:61010-11) includes this account of the discussions:

Their reasons for wishing to establish this line, are, not that they attach any value to the territory between this line & the 32nd parallel of latitude, proposed by me, nor to the port of San Diego (which, according to the latest information, is worthless); but 1st to retain a land communication with Lower California;

2^{dly} to avoid parting with any portion of the territory of a State,¹ which is impossible for the Federal Govt to do. (The line by the 32nd parallel would cut off a part of the sovereign States of Chihuahua & Sonora, both of which have solemnly protested against any such cession.) 3^{dly} to have the Rio Bravo, the whole river, as their boundary.

The second of these points was *indispensable* to the possibility of the treaty's obtaining ratification, and to its being entered into; and the other points would greatly promote the object; which, at best, was exceedingly difficult to effect. I recognised the force of the reason in regard to this point, and that it inclined me to consent to make *the middle of the Gila* the boundary, instead of insisting upon our having both its banks, as the communications received by me from my Govt prior to my recall, had determined me to do. For the same reason, I was disposed to adopt the Sierra de Mimbres, down to the southern boundary of New Mexico. But, I could recede no further. I could give up *no part* of Upper California; and, as to any other boundary than the middle of the Rio Bravo, it would be a waste of words to talk of it.

They seemed to acquiesce, in regard to the Bravo; but informed me, that the land passage to Lower California (including the port of San Diego) constituted a part of the ultimatum to which they were *absolutely* restricted. Some conversation ensued, in which they enforced the necessity of this to the possibility of carrying the treaty. Finding them fixed upon this point, I said that I would reexamine the communications received by me, and give my definitive answer tomorrow. This will be, to read to them the passages relating to this point, and to state the absolute impossibility of my departing from what is there laid down.

One result of that conference of January 3, 1848, was that Trist abandoned his insistence on the 32d parallel as the boundary for the *entire* distance from the Rio Grande; but the Mexican Commissioners yielded their position only to the extent of accepting the course of the Rio Grande itself (instead of one league distant from its left bank) to a point one day's journey ("jornada") north of Paso del Norte. This appears from a memorandum written by Couto and presented at the close of the conference in question (Trist Papers, 27 : 61014). Accordingly, on the day following, January 4, Trist proposed a modified boundary article keeping to the line of the 32d parallel west of the Sierra de los Mimbres but not east thereof, written in these terms (*ibid.*, 28 : 61022):

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande; from thence, up the middle of that river to the point where it is intersected by the southern Boundary of New Mexico; thence Westwardly along the said southern boundary to the highest point in the chain of Mountains called the Sierra de los Mimbres; thence southwardly, along the top of said chain, to the thirty-second degree of North latitude; thence, along the said parallel of latitude to the Pacific Ocean.

There is a report of the conference of January 4 in Roa Bárcena, *op. cit.*, 598, which may be thus paraphrased: Trist stated that he could not change the line fixed by him between Upper and Lower California because his instructions required that it should be drawn

¹ The Gila was considered to be the northern limit of Sonora; the boundaries of New Mexico were somewhat indefinitely declared; but Chihuahua, to the south of New Mexico, was deemed to include Paso del Norte, which, by Disturnell's Map, was north of the 32d parallel, though actually at approximately 31°44' north latitude (see Exposición, 238-39). The name of Paso del Norte was changed to Ciudad Juárez in 1888 by a decree of the Legislature of the State of Chihuahua.

from the port of San Diego to the mouth of the Colorado in the Gulf of California. The Mexican Commissioners pointed out that with such a line Lower California would be entirely separated from the Republic; that it was necessary to have some stretch of territory for communication between Sonora and Lower California; that in their opinion the port of San Diego had always belonged to Lower California and not to Upper California; finally, that in this respect they could not go beyond their instructions and would have to obtain authorization. Various maps and observations of travelers regarding the situation of the port were examined, and it was agreed that San Diego really belonged to Lower California. Trist said, therefore, that at the next conference he would propose a new line which would obviate this objection.

With the report just cited is to be read Trist's own account of the conference of January 4 (which lasted "about five hours"); this is included in his uncompleted memorandum of that date, written "Tuesday night" (Trist Papers, 28 : 61025-29); the contrast between the remark attributed to Trist regarding a new line to be proposed by him and his own statement of his position is quite striking; the opening pages of Trist's memorandum of January 4 follow:

Memorandum.

TUESDAY NIGHT, January 4th 1848.

In my original instructions, under date April 15th 1847, the following passage occurs:

"Should *Lower California* not be embraced in the Treaty, then it will become necessary to change the delineation of boundary contained in the fourth article of the projet in the following manner:

"Instead of the concluding words, 'to the Pacific Ocean', let it read 'to a point directly opposite the *division line* between *Upper* and *Lower California*; thence, due West, *along the said line*, which runs north of the parallel of 32° and South of San Miguel, to the Pacific Ocean."

In the despatch of the Secretary of State, of the 25th October 1847, the following passage occurs:

"The President has, also, directed me to express his regret that you should have been willing to entertain the question of surrendering *any portion* of *Upper California* to Mexico. By running the *division line* from the Colorado to the Pacific, along the thirty-third parallel of latitude, the bay & harbor of *San Diego* would be restored to the Mexican Republic. This port, considering that it is nearly five degrees further south, is, for every commercial purpose, of nearly equal importance to the United States with that of San Francisco. It was *to secure to us the port & harbor of San Diego beyond all question*, and to prevent the Mexican Government from hereafter contesting the correctness of the *division line* between *Upper & Lower California*, as delineated on the map which you carried with you, that, in my original instructions, I directed, that if you could not obtain *Lower California*, the 4th Article of the *Projet* should, in terms, fix this line as running 'North of the parallel of 32°, & south of San Miguel, to the Pacific Ocean'."

These passages now constitute what I have every reason to believe, and do firmly believe, to be the *only* obstacle to the immediate conclusion of a Treaty, in accordance with my original instructions, and such as was then *most earnestly* desired by our Government. The nature of the difficulty is as follows:

The map referred to by the Secretary of State as the one which I brought with me, is the "Revised Edition" of the one published at New York, in 1847 (forty seven) by J. Disturnell. 102 Broadway, and bearing, in spanish, the following title: "Map of the United States of Mexico, as organized & defined by various acts of the Congress of said Republic, and constructed according to the best authorities."

Now, as traced upon this map, the dividing line between Upper & Lower California, does, as is stated by the Secretary of State, (who had the map before him when he wrote the words) run straight across the Californian peninsula, "north of the parallel of 32°, and south of *San Miguel*, to the Pacific Ocean". But, an examination of a variety of authorities renders it exceedingly doubtful whether *San Miguel* is not, itself, south of the 32° of latitude. So that, if this should hereafter prove to be the case, the words which I am here instructed to insert in the treaty, would call for a due east & west line which should at the same time be north of the 32nd parallel and south of the same parallel. For, this line, as traced on the map which I am instructed to make a part of the treaty, is itself parallel to that parallel of latitude.

Here, then, would be a ground for future controversy; and this is one objection, made, on the part of Mexico, to the proposed definition of boundary. But, this is not the only objection, nor the most important.

In the above passage of my original instructions, the words which I am instructed to insert in the Treaty, as part of the definition of boundary, *assume*, that the line referred to on the map and described "in terms" as running "north of the parallel of 32° and south of *San Miguel*", is the established "division line between Upper and Lower California". Now, this is denied on the part of Mexico. Her Commissioners affirm, that no such division line as this, between those two provinces, has ever been heard of in Mexico. They aver, that the town of San Diego, situated a few miles north of the port of the same name, has always formed part of *Lower California*, always been embraced within the jurisdiction of its government. They offer to produce an unbroken chain of authorities, to establish this fact. They do produce the recent work of Monsieur de Mofras, published at Paris in 1844, (forty-four) two years before the war began. In the atlas to this work, which is the fruit of great labour and minute research, and a very costly publication, defrayed by the French Government, as a purely scientific one; and which, consequently, is a very different thing in point of authority, from a map got up by a bookseller or engraver to meet the demand of the hour in our country: in this atlas, the boundary between the two Californias is laid down in exact conformity with what the Mexican Commissioners aver to be the *true* "division line"; that is to say, as running from the point of junction of the river Gila with the Colorado, across to the Pacific Ocean, in such a manner as to embrace the town & harbour of San Diego within *Lower California*.

All this could be got over, by adopting a different definition of boundary from the one prescribed to me, and (without referring at all, to what really is, or may have been, "the division line between Upper & Lower California") making the new boundary between the United States & Mexico, such as to leave both San Diego & *San Miguel* within the territory of the former.

This, I have endeavoured to effect. I have gone so far as to state, that unless it be acceded to, we must at once abandon all thought of making a treaty, and forthwith break off the negotiation. To show the *absolute impossibility* of my giving way upon this point, or allowing myself to be influenced in any degree, by any reasons, no matter what they might be, I read to them the above extract from the Secretary of State's despatch of the 25th October. In so doing, I acted in pursuance of a resolve which I thought that *nothing* could change.

The Mexican Commissioners replied by exhibiting to me the part of their instructions which relates to boundary; and in which, as a part of the *ultimatum* of their Government, they are expressly forbidden to agree to any boundary which shall not leave San Diego within the territory of Mexico.

My answer to this was, to repeat what I had previously said, & to express my regret that the negotiation should be broken off. But, if it must be so, I could not help it. They saw the position in which I was placed by my Government; and we must, at once, give up all idea of a treaty, unless they could obtain a modification of their instructions.

This, they said, was impossible. They *knew* it to be so. They knew that the Government *could* not accede to it, because it would render the ratification of the treaty *impossible*. Although I had told them, that, in the position in which I was placed with regard to this point, *reasons* were things which I had nothing to do with, they went over the reasons which they had previously stated, and concluded by saying, "Is it *possible*, that, after all our efforts & labours, efforts which are not unknown to you, and in presence of the immense sacrifice which we have made up our minds to, the cause of Peace, when at the very moment of triumphing, should be prostrated for such an object as this? An object, which, while it is one of utter insignificance to your Government, as an addition to the immense acquisitions it will make, is, in itself, of the utmost importance to us, independently of its indispensableness to the treaty's obtaining ratification. Bowing to the law of necessity, we give up to you an empire; we give up our *whole* territory, *all* that we possess, & *can* part with. For, our Government has no right to alienate any portion of one of the States; and, beyond the territory of the States, *all* that will be left to us will be *Lower California*: a district, in itself, of no value to us; and which, if it were five hundred miles distant from our main coast, instead of being, as it is, but fifty or sixty, you should be most welcome to take, together with the rest. But, we are compelled to retain it, because its retention is the only means of preventing our country from being inundated with smuggled goods, and to avoid the endless complaints & international misunderstandings which such a system of smuggling could not but give rise to. Thus compelled to retain it, all we ask is, to be allowed to retain it *entire*, by your not insisting upon cutting off from it the little piece of ground, lying between the division line, as it is *erroneously* laid down in your map, and that same division line, as it is accurately & truly laid down in the French map."

Among the reasons stated by them, were the following:

The line, as laid down in our map, throwing San Diego on our side, leaves all that part of Lower California *without a single port*. Moreover, it completely *insulates* the Peninsula with respect to Mexico, by depriving her of the land passage to it. For these two reasons, the adoption of that line as the boundary with a foreign nation—even if it had been the true dividing line between upper & lower California, whilst both constituted but parts of the territory of one & the same nation—would, to all practical intents, be equivalent to an abandonment of the entire peninsula. This, considered in itself, would operate most prejudicially against the treaty. And the injurious effect thus produced could not but be vastly augmented by the consideration which would infallibly be urged by the opponents of the treaty, that our inflexibility in demanding that little piece of ground, when the value of it to us was so infinitely small when compared with its importance to them, admitted of no other explanation than a design on our part to possess ourselves of the peninsula, and to pursue to an indefinite extent the projects of territorial aggrandisement which we are here so universally believed to be intent upon.

Still, I gave the same reply. Shylock himself was not more inexorable. I had nothing to do with *reasons*. All I could do was, to conform to the determination of my Government, announced in the positive & peremptory manner they had heard. If the restoration of peace was to be prevented by this little difference, it would certainly be much to be deplored; but it was altogether beyond my power to obviate this. I could therefore but repeat that we must give up all idea of making peace, or they must obtain a modification of their instructions. Meanwhile, let us proceed with the other articles of the Treaty.

No: so long as this article remained unsettled, they could do nothing. It would be useless to ask for a modification of their instructions on this point, because a treaty which should surrender it could not be carried through. It would be the only point of serious difficulty between us; and until it was disposed of, they could do nothing.

Thirdly, after a conference of about five hours, I left them, saying, that I would consider of the subject; but I had not the least idea that it was possible for me to depart from what I had said.

The port of San Diego was definitely within the *sine qua non* of the instructions to Trist; it would be absurd to regard that portion of the instructions as the "accident" which Trist called it; San Diego was well known as a valuable harbor; it was (rightly) thought to be within Upper California because of the reliance placed on the Disturnell Map, which Buchanan had before him when the instructions were written; but one major purpose of the instructions was the inclusion of San Diego within the territory of the United States; the naming of Upper California was a means to that end. In the later of the two instructions recalling Trist, that of October 25, 1847 (printed above and quoted by Trist in his memorandum of January 4, 1848), emphatic disapproval was expressed of the suggestion that San Diego might be left south of the boundary to be agreed upon; and the same thought is in the letter of Buchanan to Trist of October 27 (Trist Papers, 26: 60621-22).

Trist, however, reached the strange conclusion that the important question was where the southern line of Upper California legally ran. This to him was the vital point. If the line as theretofore fixed between Upper and Lower California left San Diego in the former, then he obtained San Diego, but otherwise not. The idea of the administration was to secure another port on the Pacific coast south of San Francisco. Trist made this mean that the line was to run wherever it had previously been run between the two Californias by the Mexican Government or by the Spanish Government.

The arguments used by Trist to convince himself that his instructions regarding San Diego were the result of "pure accident" and to support the idea of leaving San Diego south of the boundary are very interestingly disclosed in the unfinished memorandum last cited, written by Trist during the night of January 4 and leading up to his proposal of January 5; following the portion of that memorandum which has been quoted are these paragraphs:

Under these circumstances, the question presents itself, *What course am I to pursue?* Supposing this to be the only obstacle to the immediate restoration of Peace, must I allow such an opportunity to be lost, merely on account of an object which, compared with the immediate magnitude of the entire subject, with the absolutely incalculable importance of all the considerations which demand peace, is certainly of minute consequence, whatever the value of the port of San Diego may be? And, as I have fully explained in my despatches, the question is not between this treaty *now*, & a better treaty, three months, or six months, or twelve months hence. The question is between *this treaty now*, and *no treaty*, for an indefinite time to come, perhaps *for ever*. This is the question. For, let the present Government—a Government built up by the friends of peace, solely for the purpose of making peace; and so built up against a thousand odds against their being able to succeed: let this Government once go down, as go down it must, unless the object for which it has been formed be speedily accomplished, and the chance for peace, the chance for a treaty of any kind, is gone for the present, is gone perhaps *for ever*: most certainly & unquestionably, gone *for a period* that *no one* here pretends to be able to assign a limit to.

This is the question which now forces itself upon me. What answer am I to give? What answer do my Instructions give; together with the communications subsequently received by me?

Properly speaking, they give *no* answer to *this* question. They *cannot* give an answer to *it*. For, they were written without any reference to it: without any knowledge of the state of things, in which it presents itself to me; without any

reference to the possibility of such a state of things. They give no indication, that any such thing was dreamed of. The only indications of this nature which they do afford consist of proofs of an entire misconception of all that has passed here, or is passing here, or *can* take place here, with respect to the question of peace. They afford no indication, that the question has ever presented itself to our Government. How it would decide, *if* the restoration of peace, or the indefinite protraction of the war, depended solely upon our insisting upon having the port of San Diego. The only indication bearing upon the subject, which they afford, is, that, *without any reference, whatever to such dependence*, this port is embraced, *as a part*—and, comparatively speaking, a very minute & insignificant part—in an exceedingly comprehensive demand of territory. It is true that this *whole* demand is laid down as the *ultimatum* of our Government. But still, this determination was originally taken without any reference to the question which now presents itself in regard to this minute part. It is true likewise, that, since this determination was originally taken with reference to the whole, it has been taken again with reference to this very part. But still, here again, this occurred without reference to the question that now presents itself.

Thus much is certain. But this is not all. The fact, that the port of San Diego is included in our ultimatum, has its origin in *accident*, in pure accident: the accident of the Secretary of State's having before him one map instead of another. That map was the one just published at New York, as an engraver's speculation, to meet the demand which put it into the hands of every body. In making the definition of boundary, with this map before him, his eye was caught by the fact, that the division line between the two Californias, as there laid down, runs a few miles south of the port of San Diego and just south of a little place called San Miguel; and seeing this, he, in order to preclude dispute as to the exact position of this line, wrote the words which I have quoted. His object was, to make a clear & indisputable definition of the future boundary between the United States & Mexico; a part of which boundary was to be the southern limit of Upper California: it was to give that province to the United States, the *whole* of it, but no part of *Lower* California. This was his object; and, in accomplishing this object, he was thus led to make mention, a purely incidental mention, of San Miguel. Had the map before him happened to be the one contained in the atlas to the recent work of Monsr de Mofras, or had he consulted Humboldt, or any map following Humboldt, the words "which runs north of the parallel of 32° and south of *San Miguel*" would never have formed part of the definition: for according to those high authorities "the division line," which it was his sole object to define in words, runs *north* of, not only San Miguel but San Diego also. According to them the *Presidio* and port of San Diego forms part of "Old or Lower California", as contradistinguished from "New or Upper California"; and the division line between them runs just north of the *Presidio*, which is a few miles north of the port.

That this is the

In his next proposal, presented at the conference of January 5, Trist abandoned the 32d parallel for any part of the boundary; and, perhaps convinced for the time being, or perhaps merely assuming, that San Diego was in Lower California, he ran the line from the mouth of the Gila to a point on the Pacific one league *north* of the Bay of San Diego. It will be seen that the boundary described in the January 5 proposal is the boundary of the treaty from the Gulf of Mexico to the confluence of the Gila and the Colorado; the straight line thence westward has, by the treaty, its terminal point on the Pacific one league *south* of the port of San Diego.

That draft of January 5 is noted by Trist as "proposed for *consideration*" and "not, as being definitely agreed to" by him; the article as written included a paragraph for religious observance of the boundary established (Trist Papers, 28 : 61070-71); it described

the line as running up the Rio Grande to the southern boundary of New Mexico and continued thus:

thence, westwardly, along the southern boundary of New Mexico to the South-western corner of the same; thence, northward, along the western boundary of New Mexico, until it intersects the first branch of the river Gila; (or, if it should not intersect any branch of that river, then, to the point on the said line nearest to such branch, and thence in a direct line to the same) thence down the middle of said branch, and of the said river Gila, until it empties into the Rio Colorado; thence, across the said Rio Colorado to the Pacific Ocean, following the established division line between Upper and Lower California; and, lest any difficulty should hereafter occur in tracing the said division line upon the ground, it is agreed that it shall consist of a straight line drawn from the middle of the mouth of the river Gila to a point on the shore of the Pacific one geographical league due north of the northernmost point of the Bay of San Diego. And the vessels and citizens of the United States shall, in all time to come, have & enjoy without any hindrance restriction or condition whatever, free and uninterrupted access to and from the Ocean, through the Gulf of California, and down & up the Rio Colorado below its junction with the Gila, from and to their possessions north of the said division line.

The foregoing proposal of Trist appears to have been deemed by the Mexican Commissioners to be definitive, for it was sent by them on the following day to their Government; it seems that there was no conference on that day (see Roa Bárcena, *op. cit.*, 599); but at least there were conversations; and Trist received on January 6 a draft of a boundary article which the Mexican Commissioners had written in the precise wording of Article 4 of their instructions of December 30, 1847, omitting only the last sentence thereof regarding a guaranty (Trist Papers, 28 : 61050; the Mexican instructions are set forth above).

On January 7 Trist changed his mind; he had now concluded that San Diego was in Upper California; but his next proposal was to divide the port so that the northern portion thereof, including the entrance, should be American and the southern portion Mexican; and in return the United States was to acquire a square league of territory on the western bank of the Colorado, below the mouth of the Gila. Textually, the draft presented by Trist on January 7 described the line in the same words as that of January 5 as far as the confluence of the Gila with the Colorado, and continued thus (Trist Papers, 28 : 61068; this is the fair copy; with slight differences of wording, the changes from the January 5 draft of Trist are shown also in *ibid.*, 61070-71):

thence, across the said Rio Colorado, to the Pacific Ocean, following a straight line drawn to the point on the shore of the Port of San Diego, on the southern bank of the creek or inlet, on the north bank of which creek is the settlement called Rancheria de las Choyas,¹ which point is about equidistant from the northern and southern extremities of said Port, thence, due Southwest, across the said port, and across its outer shore, to the Pacific Ocean: and the vessels & citizens of Mexico shall, in all time to come, have & enjoy, without any hindrance, restriction or condition whatever, free and uninterrupted access to & from the ocean, through the mouth of said port, from & to the portion thereof, south of the aforesaid southwest line. In the same manner, the vessels & citizens of the United States shall, in all time to come, have and enjoy without any hindrance,

¹ See the Plan of the Port of San Diego, facing p. 236.

restriction or condition whatever, free & uninterrupted access to and from the ocean, through the Gulf of California, and down & up the Rio Colorado below its junction with the Gila, from and to their possessions north of the said Boundary line. A suitable piece of ground, one league square, on the western bank of the Rio Colorado, below the mouth of the Rio Gila, shall be assigned to the United States, as a place for discharging & loading their vessels & depositing their merchandise; which piece of ground shall be under the exclusive jurisdiction of the United States of America. Should the State of Sonora, one of the United Mexican States, whose territory is bounded on the north by the river Gila, hereafter agree to cede to the United States of America, for the purpose of making thereon a road, railway or canal, a strip of her said territory, along the margin of said river and one marine league in width, the consent of the United Mexican States is hereby given to such cession; and the same, when made, in virtue of an act of the Congress or Legislative Body of said State, shall forthwith vest the entire Sovereignty over such strip of territory in the United States of America.

The discussions of January 7 are to some extent reported (Roa Bárcena, *op. cit.*, 599-600). Trist withdrew his proposal of January 5; he said that from a subsequent examination of the matter he had found that Baron von Humboldt, Mofras, and other geographers assigned San Diego to Upper California and therefore he could not agree that it should be without the limits of the United States. The Mexican Commissioners, who already had doubts resulting from recent investigations, pointed out that the opinion of Mofras was not of great importance, as it did not appear that he had taken astronomical observations to fix the latitude; it was even observed that the text of his work was not in conformity with the atlas, and that, while the opinion of Humboldt was worthy of respect, one might oppose thereto that of Clavijero, who assigned San Diego to Lower California; but nevertheless they would examine further material. Trist replied that he was not at liberty to yield and that exclusion of San Diego from the treaty would prevent its approval by the President of the United States and its acceptance by the Senate.

The Mexican Commissioners declined to accept the article of January 7 as framed by Trist and wrote again to their Government at Querétaro (*ibid.*); they were wholly unwilling to give up a square league of territory on the western or right¹ bank of the Colorado (see their comment in *Exposición*, 237); the question left was the future of San Diego. Trist deemed that the United States was demanding "to retain the whole of *Upper California*, but asking no part of *lower*"; he was now finally (and rightly) convinced that San Diego was within the former; as his proposed division of the port for a supposed equivalent was unacceptable, the line running to the south of San Diego was the necessary and only alternative, if his demand was to be met; and in the next proposal the line was described in accord with the latest views of Trist.

¹As the Colorado from its confluence with the Gila to the Gulf of California flows in the general direction of north to south, it was assumed that "western" and "right" bank meant the same; but obviously the right bank, at a bend, might be the northern, southern, or even eastern bank of the river; in fact, as afterwards appeared, the Colorado took a course about west-northwest from the mouth of the Gila, making the right the northern bank. See the map facing p. 416.

While the Mexican Commissioners were awaiting word from their Government, they prepared their project of a treaty; this was delivered to Trist on January 9; the line of its boundary article, which follows in translation (cited above), is almost that of the treaty; and in this draft article is the first specific mention of the Plan of the Port of San Diego of Juan Pantoja (Trist's draft of January 7 shows that the plan had been previously examined):

ARTICLE 5. The dividing line between the two Republics shall commence in the Gulf of Mexico three leagues from land in front of the mouth of the Rio Bravo del Norte, or of the deepest of its arms should it have various arms at its mouth; it shall run along the middle of this river in its entire course till the point where it strikes the southern boundary of New Mexico; it shall then follow along the same southern boundary and along the western boundary of New Mexico until it strikes on this last the first branch of the River Gila; it shall then continue along the middle of this river to its confluence with the Colorado; and from the point of confluence of the two rivers the dividing line shall run straight to the westward to three leagues from land opposite the Punta de Arena on the coast of the Pacific Ocean to the south of the Bay of San Diego, as the said Punta de Arena is marked in the Plan of the Port of San Diego which was published in Mexico in the year 1825 and of which copy is annexed to this treaty, signed and sealed by the Plenipotentiaries who have celebrated it.

In order to lay down this line with due precision in attested maps and to establish upon land landmarks which may render evident the boundaries of the two Republics as they are described in the present article, each of the two Governments shall name a commissioner and a geometer who shall meet, before the term of counted from the date of the ratification of this treaty, at the Punta de Arena on the coast of the Pacific and shall proceed to notify and to mark the said boundary along its entire course to the mouth of the Rio Bravo del Norte. They shall keep journals and make plans of their operations, and the result agreed upon by them shall be held as a part of this treaty and shall have the same force as if it were inserted in it; the two Governments having to agree amicably upon the arrangement of whatever may be necessary for these individuals and for the respective escort which they must take with them, always provided it be deemed necessary.

The two Republics promise in the most solemn manner before God and all nations that the dividing line established by this article shall be religiously respected by each of them and that no variation shall in future be made in the said dividing line, except by the express and free consent of both nations lawfully given by the supreme Government of each of them in conformity with their own Constitutions.

It does not appear that any further conference was held until January 13; in Trist's despatch of January 12 he wrote that he believed that "every thing" would "be agreed upon between us" on the following day, and he had this to say on the boundary question (D.S., 14 Despatches, Mexico, No. 26):

The Boundary (which has been agreed upon, subject to the approval of the Executive at Queretaro) will be the one defined in the Projet which I brought out, with a slight variation at its western extremity. The reasons which have governed me in this, as well as in not insisting (as I had at first determined to do) upon the parallel of 32°, from the Rio Bravo, will be fully explained hereafter: time not permitting me to do so now.

The foregoing is not to be read as meaning that the drafting of the boundary article of the treaty had then been completed, but rather that there was an accord in principle on the basis of Article 5 in the

Mexican project of January 9; it seems that approximately the final wording of Article 5 of the treaty was written by January 16 (see Carreño, *Mexico y los Estados Unidos de America*, 229); on that day the Mexican Commissioners wrote to Querétaro enclosing the boundary article as drafted; they said that during the time when it was in some degree doubted by Trist whether the port of San Diego belonged to Upper or to Lower California they were able to obtain from him a line terminating on the west at a point one league to the north of that port; that as the instructions to Trist did not permit him to give up any part of Upper California, they, in order to retain San Diego, had relied solely on the authority of a certain ancient writer who extended the peninsula of Lower California up to that town; but that against this authority Trist had then assembled and presented various data already known to them to show that San Diego since its founding in 1769 had incontestably belonged to Upper California; that his conviction on the point was so strong and his instructions so precise that every effort to induce him to give way was of no avail; that no variation in the line of the article as written could be obtained; that peace or war depended on accepting or rejecting it; and that in the crisis which the negotiation had reached it would not be possible for them even to continue the peace discussions without taking as a basis the acceptance of the proposed article (*ibid.*, 228-29; Roa Bárcena, *op. cit.*, 600-1); but the Government at Querétaro, which had refused (January 14) even the Trist proposal of January 5, declined (January 22) to yield in respect of San Diego (*ibid.*); and not until January 26 was authority sent to the Mexican Commissioners by their Government to accept the boundary clauses of the treaty as written (*ibid.*, 604).

Comparing Article 5 of the Mexican project of January 9 with Article 5 of the treaty, it will be seen that the last two paragraphs of each are very much the same; but the opening paragraph of the project is expanded into two paragraphs of the treaty; in the final text first appears mention of the Disturnell Map¹ and of its lines of the southern and western limits of New Mexico as being those of the treaty, which includes the specific statement that the southern boundary of New Mexico runs north of "Paso"; the reference to the Plan of the Port of San Diego is elaborated and gives for the source of the treaty copy the Spanish atlas of 1802 rather than the Mexican publication of 1825; and the line from the confluence of the Gila and the Colorado westward differs in that by the project it ran to "three leagues from land opposite the Punta de Arena", while in the treaty the terminal point is on the coast, about one mile south of the Punta de Arena, expressed

¹ That Paso del Norte should be south of the frontier was deemed of great importance by the Mexican Commissioners; prior to 1824 that settlement had been within the *reino* of New Mexico; since then the northern limits of Chihuahua had been deemed to include the town; certain maps consulted at the time still put Paso del Norte in New Mexico; the Disturnell Map was thought to be accurate in this regard and for the limits of New Mexico generally; hence the specific mention in Article 5 of Disturnell's Map and, from abundant caution, of "Paso" as well; see the discussion in *Exposición*, 239.

as a marine league south of the southernmost point of the port; moreover, in the treaty, the line is expressly declared to be the "division line between Upper and Lower California".

With his despatch No. 27, of January 25, 1848 (enclosure A), is a memorandum wherein Trist gives his reasons for the location of the line from the mouth of the Gila River to the Pacific, now the southern boundary of California.¹ That memorandum, which follows (from Trist Papers, 28 : 61058-63), and which seems not to have been heretofore printed,² should be read in the light both of the Disturnell Map and of a modern map of the region in question:

A. MEMORANDUM, FRIDAY NIGHT, Jan. 7, 1848.

In my original instructions, under date April 15th 1847, the following passage occurs:

"Should Lower California not be embraced in the Treaty, then it will become necessary to change the delineation of boundary contained in the fourth article of the projet in the following manner:

"Instead of the concluding words 'to the Pacific Ocean', let it read 'to a point directly opposite the division line between Upper & Lower California; thence due West, along the said line, which runs north of the parallel of 32° & South of San Miguel, to the Pacific Ocean'."

In the despatch of the Secretary of State, of the 25th October 1847, the following passage occurs:

"It was to secure to us the port & harbor of San Diego beyond question, & to prevent the Mexican Government from hereafter contesting the correctness of the division line between Upper & Lower California, as delineated on the map which you carried with you, that, in my original instructions, I directed, that if you could not obtain Lower California, the 4th article of the Projet should, *in terms*, fix this line as running 'North of the parallel of 32° & South of San Miguel, to the Pacific Ocean'."

¹ Except for about 6½ miles at the eastern extremity of this portion of the treaty line. The Colorado (in its course of 1849) from the mouth of the Gila, flowed about west-northwest and then turned back toward the south. So some 6½ miles from its beginning at the confluence of the two rivers, the straight line westward crossed the Colorado; this stretch of the line formed part of the international boundary only during the intermediate period from the Treaty of Guadalupe Hidalgo to the Gadsden Treaty. That bend of the river became part of the boundary between California and the Territory of New Mexico (later, for this region, the State of Arizona); and the small area between that bend and the straight 6½-mile stretch which was for a few years part of the international line thus came within the Territory of New Mexico (Arizona). For the river as it ran in 1849, see the map facing p. 416. Since then, both natural forces and artificial works, such as irrigation projects, have from time to time caused changes in the courses of the Colorado and the Gila; river positions of various years are shown on map No. 27000 of the Bureau of Reclamation, Department of the Interior, entitled "Yuma Irrigation Project Arizona-California", issued in 1935; the junction of the Gila and the Colorado is thereon shown to be some miles east and slightly south of its location in 1849.

² There is a reason why this memorandum was not officially printed at the time; while called an enclosure to, it was not in fact enclosed with, despatch No. 27 (which reached Washington on February 28), but was sent from Mexico City some time later than February 12 (see despatch No. 29, of that date, printed below) and was almost certainly not received at the Department of State until after the Senate had acted on March 10.

Now, these very "terms" are a subject of great embarrassment to me; & the "map" here referred to, (& which I was directed to adopt) is also a subject of great embarrassment.

With respect to the "terms", it is exceedingly doubtful whether they do not involve a contradiction, by calling for a line which shall run both north & south of the same parallel. On the map referred to, & by following which the "terms" now under consideration were written, "the division line between Upper & Lower California" is represented as being a parallel of latitude, "running north of the parallel of 32°, & south of San Miguel": its distance from this parallel being a little upwards of one fourth of a degree, or more than 15 miles. But, it is altogether uncertain whether the true position of San Miguel, be not either directly upon the thirty second parallel, or a little south of it: the probabilities appear to be that it is the one or the other. In either case, a "due West" line, "running north of the parallel of 32°, & South of San Miguel, to the Pacific Ocean," would be a self contradiction. Nor would it mend the matter by leaving out the words "due West": for no line whatever, whether itself a parallel of latitude or not, (& on the map, it is one) could possibly get south of San Miguel, without ceasing to be a line running north of the thirty second parallel. In getting to the ocean, it must leave San Miguel to the south, or else it must cease to be itself: that is, it must cease to be a line running north of the 32^d parallel.

The data upon which rests the great probability, that the true position of San Miguel is as above stated; & the certainty almost, that it cannot be north of a line upwards of fifteen miles north of 32°, will be stated presently: a part of them, at least. I will here enter upon the second point: the great embarrassment occasioned by the map, when taken in connection with another part of the definition of boundary, & with the belief & intention in which it was written.

Agreeably to "the delineation of boundary" which I am instructed to insert in the treaty, the line is to run from the mouth of the Gila "down the middle of the Colorado & the middle of the Gulf of California, to a point directly opposite the division line between Upper & Lower California, thence due West, along the said line which runs north of the parallel of 32° & South of San Miguel to the Pacific Ocean."

Now, agreeably to the map, the mouth of the Colorado is just half a degree north of the parallel of 32°, & a little more than one fourth of a degree north of "the division line between Upper & Lower California". In writing this "delineation of boundary," therefore, it was manifestly intended that it should, & believed that it would, give us the whole of the right bank of the Colorado down to its mouth, & moreover about fifteen miles of the Western coast of the Gulf of California below the mouth of the river.

Such was the intention & belief, founded on the map. But, agreeably to Geographical facts, where should we in reality be put by this division-line, so traced upon the map, as running "due west", upwards of fifteen miles north of the thirty second parallel? This question is answered by the work of Mons^r de Mofras, published at Paris in 1844 (forty-four) by the French Government. (*) The Atlas

(*) The title is,—“Exploration of the Oregon Territory, the Californias, & the Vermillion Sea (Gulf of California). Executed during the years 1840, 1841, & 1842, by Mons^r Duflot de Mofras, attaché to the Legation of France in Mexico. Published by order of the King, under the auspices of Marshal Soult, President of the Council, & of the Minister of Foreign Affairs. Paris, 1844”.

From the Preface, it appears that Mons^r de Mofras was sent to Mexico for the special purpose of "visiting the western provinces of Mexico, New Galicia, Colima, Sinaloa, Sonora, the Gulf of California, Old & new California, the Russian forts in that quarter, the American & English posts at Astoria & along the Columbian river, & elsewhere within the Oregon Territory". The object of his exploration was "to obtain information as to what advantages, independently of the "political point of view, might be held out to our commerce & navigation by "mercantile enterprises & commercial establishments, in those regions, as yet "but little known in France."

In preparing for the exploration, as well as in preparing the results for publication, especially in regard to the "Geographical description & the hydrography of the coasts", he received all the aid which could be afforded by the French Govern-

contains a special chart of the mouth of the Colorado, with all its soundings & other details; & its latitude is laid down as being in $31^{\circ}51',0''$: that is to say, forty miles south of where our map puts it; twenty-five miles south of where our map puts "the division line"; & more than nine miles south of any possible line "running due west, north of the parallel of 32° ."

So that, even if the parallel of 32° were made the division line; even then, instead of our having fifteen miles of the Gulf coast below the mouth of the river, we should still be without any landing place on either of its banks, until we got nine miles above its mouth.

This, I have endeavoured to remedy, by demanding as a place of deposit, one league square, at a suitable place on the right bank (which the chart shows to be the *channel bank*) of the Colorado, below the mouth of the Gila. This, I have demanded & insisted upon; but not in the intention of making it a *sine qua non*, should the question of treaty or no treaty turn upon this point. For I constantly bear in mind, that this is not a mere treaty for the settlement of limits, but one, on the making of which—on the speedy, the immediate, conclusion of which—depends the termination of war. The question is between Peace and War. On the one hand is *Peace*, peace now & immediately. On the other hand, is War; the protraction for an indefinite time to come, of war, already raging; & which, unless speedily arrested, is pregnant with consequences to our Country, infinitely worse, far more to be deprecated, than any which could attend a war, brought home to her by an army, two hundred thousand strong, of the best troops of England or France; and that army posted in any position which Napoleon himself might have selected for them, as the one most favourable for making us feel in the fullest force, *what war is*. Such is my conviction, & the grounds of this conviction have been in part stated in my Despatch of the 6th December.

But, to return to my present difficulties:—Unless the latitude of the mouth of the Colorado, given by *de Mofras* be erroneous, & unless the error exceed nine miles, no "point directly opposite" any "division line between Upper & Lower California" (even supposing such division line to be now for the first time arbitrarily adopted) can be found, by going "down the middle of the Gulf of California", without placing that division line south, instead of "north of the parallel of 32° ." Consequently, even if it were agreed to establish now, as "the division line between Upper & Lower California", a line commencing on the Gulf, the above prescribed delineation of boundary would have to be changed, either by omitting the words underscored in the following extract, or by changing the word "north" into "south": thence, due west, along the said line, which runs north of the parallel of 32° & south of *San Miguel*".

As thus modified, the delineation of boundary would imply, as an ascertained & settled fact, that "the division line between Upper & Lower California"—that is to say, "the true & already established division line, as heretofore recognised—commences on the Gulf some distance below the mouth of the river. The correctness of this implication is denied on the part of Mexico. She contends, that Lower California has always been considered as consisting of "the Peninsula", the whole "Peninsula", embracing a passage by land to the Continent, round the head of the Gulf; & across the Rio Colorado.

On examining the authorities with reference to this position, it appears to be abundantly verified, & fully made good. "Old or Lower California" is invariably spoken of as consisting of "The Peninsula," as embracing the whole of it. In both of the maps accompanying the work of *de Mofras*, the division line between

ment, thro its departments of Marine & War; & similar assistance was given by "the learned Navarrete, Director of the Hydrographic office at Madrid". The geographical positions chiefly relied upon in the construction of his map, are, he says, "entitled to all confidence, as is proved by the authorities", cited on the table which he gives.

Whether these positions be or be not correct, the probability of correctness is unquestionably very much on their side, as compared with a map, suddenly got up, as the mere speculation of an engraver or bookseller, to meet the demand in our country for Maps of Mexico. And this is the character of the one I brought with me.

"Old or Lower" & "New or Upper" California is laid down as commencing on the Colorado: in the one, at the mouth of the Gila, in the other, a little above it. The work itself (vol. 1. p. 202.) whilst describing the Gulf of California, in the chapter devoted to Lower California, says "From the thirty first parallel upwards, its width diminishes rapidly till it reaches the Rio Colorado, which separates Old California from the northern part of Sonora". Again (p. 217). "About twenty leagues distant from the Rio Colorado, is the Mission of Santa Catalina, which is the northernmost of all those of Lower California. It has scarcely any inhabitants, & is six days travel from the port & mission of San Diego, upon the Pacific Ocean." In his map, this mission of Santa Catalina—which is among the places actually visited by the author—is placed north of the thirty second parallel, at a point about intermediate between it & that of the mouth of the Gila.¹ Again, immediately after the above words he says, "The line of separation between Old & New California begins nearly at the mouth of the Rio Colorado. . . . The Peninsula forming Old or Lower California is bounded on the north by Upper or New California, on the South & west by the Pacific Ocean, & on the east by the Vermillion sea". This, it is to be noted, is, from the very nature of the words employed, nothing but a general description of the line of separation. "Nearly at the mouth", may mean above, or it may mean below, the mouth. To know which of the two is meant, we must look to the context, (and particularly to the special facts stated therein) & to the maps connected therewith. Now, one fact of the kind, we have just seen: the Mission of Santa Catalina is stated by him to be within Lower California, & is placed on the map as being some distance above the mouth of the river, & above the thirty second parallel. We here see that the boundary of Lower California on the east is stated to be the Vermillion sea. Let us then see whether Upper California is stated by him to have this same Gulf for a part of its eastern boundary. It is bounded, on the north by the Oregon Territory, on the South by old California, on the east by the Rocky mountains, on the West by the Pacific Ocean" (v. 1. p. 316). No mention here, of the Gulf of California.

Thus much, in regard to the beginning of this division line. It remains to ascertain where it runs & how it terminates. Thus far, we have seen that the delineation of boundary which I am required to insert in the treaty, assumes, as an ascertained & settled fact, that this division line begins on the Gulf shore, some distance above its head. This fact is denied, & we have seen a part of the evidence which may be adduced in support of this denial. The delineation assumes also, as a part of the same ascertained & settled fact, that the line so commencing is a "due west" line, "running north of the parallel of 32°, & South of San Miguel". In regard to San Miguel, I have stated the probability that the true position of this place is such, that no line running north of the thirty second parallel can run south of San Miguel. In regard to the line's "running north of the parallel of 32°", we have seen a part of the evidence on which rests the probability that no line beginning on the Gulf shore can run otherwise than south of this parallel.

As modified by striking out the words "north of the parallel of 32°, &", the delineation of boundary, from the mouth of the Gila, would stand thus: "thence down the middle of the Colorado, & the middle of the Gulf of California, to a point directly opposite the division line between Upper & Lower California; thence due west along the said line, which runs south of San Miguel, to the Pacific Ocean".

Now, in regard to this last point also, the correctness of the implication is denied on the part of Mexico. She avers, that, independently, of all the other objections to this delineation, "the division line between Upper & Lower California" does not, & never did, run south of San Miguel.

How, then, does this line run on its way from the Colorado to the Pacific, & where does it strike that Ocean? In the first place, it appears, that no line of division ever was established between the two Californias, either by describing it, or by tracing it upon the map. That is to say, no such line ever was authoritatively established, by any act of the Government, either in old times or in the more

¹ For the correct location of the Santa Catalina Mission, some twenty-five miles to the south of the 32d parallel, see the folded map in Meigs, The Dominican Mission Frontier of Lower California.

recent. The Mexican Commissioners have diligently searched into this subject, & their researches have been fruitless. The authorities, however, do not vary as to the fact that Lower California consists of the Peninsula, the whole Peninsula, including a passage by land from Sonora, across the Colorado; this river, as appears from the old narratives, being crossed by *fording*.

The oldest authority on the subject is the posthumous work of Clavigero, published at Venice in 1789, under the title, "History of California". There was then but *one* California, which one afterwards, upon the establishment of Missions & posts, in the then unexplored region, to the north, came to be distinguished as the *Old*. In the map attached to this work, the port of San Diego is included. The description runs, California is a vast peninsula of North America, which & " & the Port of San Diego, situated at 33° Latitude 256 Longitude, may be called its western limit. On the northwest & north it is bounded by countries of entirely barbarian nations" & &. The ports most known on this coast (the western) are those of El Marques, or Santiago, La Magdalena", & & " & San Diego".

The result of the investigation (a very hasty one) which I have been enabled to make of this subject is to satisfy me that the probability is very strong that no *line* of division, no *definite limits* between the two Californias has ever been established; and also to furnish me with a satisfactory explanation of the origin of the impression which has come to prevail, as to where Old California ends and New California begins: which explanation serves to show how far that impression is definite, & rests upon precise grounds, and how far it is in its nature vague; and likewise to show how Geographers and map-makers have been led into the error of proceeding upon the assumption that such a line has been established, and into the error also of laying it down in a manner that disregards a *portion* of the facts—of the contestible facts—relating to the subject.

The "Map of California" (that is, of *Old* California) attached to Clavigero's work by the Editor, is stated by him to have for its basis, those comprised in a work, under the title of "Notices of California", published at Madrid in 1757. This map, as above stated, includes the Port of San Diego; & it includes also the Mission of San Giacomo Gualberto, situated inland, a little north of the parallel of that port, about two thirds of the way across from the Pacific to the Colorado, & about midway from the mouth of that river to where the Gila empties into it.

The Port of San Diego, however, came afterwards to be considered as the place where *New* California begins, and as included in it; and this was owing to the following circumstance. The expulsion of the Jesuits from Mexico took place in June 1767; and, from California;—(which had been settled by their zeal & perseverance, & where, in the course of seventy years, they had established fourteen flourishing Missions) early in the following year: their Missions being left in the charge of soldiers, until they could be taken possession of by priests of the Franciscan order who were to replace the Jesuits.

These details form the necessary introduction to the circumstance referred to, which was this: Simultaneously almost with the expulsion of the Jesuits from California, that is, early in 1768, the Court of Spain, apprehensive of the founding of settlements in that quarter by other European powers, despatched orders to the Viceroy of Mexico, to establish Missions and military posts at the posts of San Diego & Monterey; which order as regards the former was carried into effect the following year, 1769: the Mission being established by Franciscans who had succeeded to the Jesuits in the exclusive controul of that region. Two years afterwards, "the Dominicans of Mexico obtained a royal order, requiring "the Franciscans to surrender to the former the administration of one or two "Missions. The Father Director of the college of San Fernando caused to be "observed with reason, that the province of Lower California could not be "divided, that its natural limits were perfectly traced, that serious inconvenience "might result from two Orders being established, in competition with each other, "upon the same territory. He concluded by offering to the Dominicans, in case "they should see fit to take charge of the entire province, from cape San Lucas" (the southern point of the Peninsula) "up to the port of San Diego *exclusively*, "to cede to them, together with all the Missions previously administered by the "Jesuits, that of San Fernando de Vellicata; and the five others yet to be founded. "The Viceroy assembled the Council, and, on the 30th of April 1772, he rendered

"a decree to carry into execution the agreement between the two prelates. It was, however, not until the 1st of May of the following year, that the Dominicans entered into definite possession of Lower California, and that the Franciscans withdrew into the New; where, being enabled to concentrate all their efforts upon a territory less vast & more fertile, they soon obtained results worthy of admiration."

This is the account of the matter given by De Mofras, (vol. 1. p. 260) and it shows how the port of San Diego came to be "excluded" from Old California. The statement bears upon its face a derivation from authentic sources, so far as regards the partition whereby the Franciscans, on the pretext of the inconvenience of having two orders within the same province, and of "natural limits" which excluded the Port of San Diego from Old California, contrived to retain for themselves the terrestrial paradise which they knew commenced at that point; whilst the burthen of maintaining the old Missions, situated in the arid desert which the Jesuits had toiled in, was shifted to the shoulders of the Dominicans. With respect to the origin of this partition, however, Clavigero, who was a contemporary, gives an account which differs from the above, and brings into bold relief the motive of the Franciscan father for finding the "natural limit" of the Peninsula just south instead of just north of San Diego. Clavigero, citing letters from Mexico, says, "No sooner had the new Missionaries (the Franciscans) seen with their own eyes, that California was not what they had believed it to be, than they abandoned the Missions and the Peninsula, & returned to their convents" (in Mexico) "publishing every where, that the country was uninhabitable, and that the Jesuits ought to be very grateful to the King for having extricated them from that great misery. Some priests & friars afterwards went there; but they not being able to subsist in that country, Dominicans were sent to it from Spain."

Agreeably, therefore, to this "agreement between the two prelates", (which constitutes, so far as I can discover, the only existing basis for any demarcation between Lower & Upper California) the older of the two provinces extended up to some point on the Pacific, which excluded the port of San Diego from its limits. The next question is, how does the line run from that point across to the Colorado?

There is no probability whatever, that any such line was ever run, or determined in any way. The only basis for running it now would consist in ascertaining the extent of territory comprehended within the two northernmost, (one on the Pacific, the other inland) of those "five other" missions "yet to be established", which became founded by the Dominicans, under the compact between them & the Franciscans. I say, the extent of territory comprehended within those missions, because a "Mission" consisted of the establishment, as a nucleus, & the territory attached thereto; which territory was sometimes was very extensive. "The Missions" collectively, are always spoken of as constituting the entire province; the sum total of the population of the entire province is always made up by adding together the numbers of inhabitants of the respective missions. The probability is, that the two missions in question were those of San Miguel (on the Pacific) & Santa Catalina, whose position inland has been described above. Both are mentioned by De Mofras as being within Lower California; they are also included in his table of the missions of that province.

In regard to the precise geographical position of San Miguel, (considering this with reference to the possibility of a line running north of the 32^d parallel being south of that spot) we have seen that De Mofras mentions this mission (that is to say, the establishment or nucleus,) as being upon that parallel. Humboldt, in his enumeration of the missions of New California, "proceeding from south to north" gives San Diego as the first, and states it to be "fifteen leagues distant from the northernmost mission of Old California". The probability is great, that the northernmost mission here referred to is San Miguel. Now, taking the latitude of San Diego to be 32°44'59", (thus stated in the Secretary of State's despatch to me of July 19. 1847, as having been accurately ascertained by Major Emory) "fifteen leagues" measured from that point would put San Miguel just one second south of the 32^d parallel. (It may be a necessary caution here to remark, that Humboldt mentions a mission of the same name—"San Miguel"—as being among

those of New California. But that mission is far to the north of San Diego, being the tenth in order, commencing with the latter.)

This suffices to show, 1st That without reference to any thing else than geographical facts, it would be, to say the least, unsafe to describe an international boundary as running south of San Miguel, and north of the 32^d parallel. 2^{ndly} That, as a question between Old & New California, it is certain that the Mission of San Miguel, (whatever the precise latitude of its nucleus may be, that is, the convent & dependent establishment) belongs to the Old, & cannot be considered as comprehended within any claim to the New. 3^{rdly} That, whether the convent be situated north or south of the 32^d parallel, it is evident from all that preceeds, that the *territory* comprehended within that Mission (& consequently forming part of Old California) cannot but extend "up to" the very near neighbourhood of "the port of San Diego"; while it is not at all impossible, but it may extend "up to" the very shore of that bay.

Humboldt, it is true, commences his chapter upon New California as follows: (I translate from a spanish translation) "In the spanish maps, the name of *New California* is given to the whole coast of the great ocean, extending from "the isthmus of Old California, or from the Bay of *All Saints* (to the south of "the port of San Diego) up to Cape Mendocino". This, on the face of it, is a mere *general* description. The reference to the "spanish maps" evinces an uncertainty in regard to the existence of other grounds, upon which to found a more precise statement of the point of beginning. The expression "from the isthmus", "or from the Bay" &c, prove either that he had found those maps to disagree, or that they all left it uncertain, as to the *precise point* on the coast, where old California was to be considered as ending & the New as beginning. This question, he found decided by those maps with sufficient accuracy for the purpose, the *general* historical & geographical purpose, which he had in view. In examining it, & giving the result of that examination, he was not acting as an international *arbitrator* upon this question; he was not dealing with it as a point upon which hinged the continuance or discontinuance of a war between two nations: the one of said nations demanding, as a condition to the restoration of peace, to retain the whole of *Upper California*, but asking no part of *Lower*; and the point to be decided being, therefore,—where does the territory terminate which is embraced in that demand? The general and vague statement here made by Humboldt had reference to no such question as this; and the fact that it had not, is a consideration not to be lost sight of, in forming a judgment as to the weight due to his dictum upon this point.

The result to which I have been brought is, to propose that a division line between the two Californias shall be now *established*, as running from the mouth of the Gila to a point on the Pacific one league due south of the southernmost extremity of the port of San Diego.¹

In the earlier negotiations of August and September 1847, Trist had made no more than a formal effort to obtain Lower California for the United States; and in December 1847 and January 1848 he

¹ The three works cited by Trist in this memorandum are these:

Eugène Duflot de Mofras. Exploration du territoire de l'Orégon, des Californies et de la Mer Vermeille, exécutée pendant les années 1840, 1841 et 1842, par M. Duflot de Mofras, attaché à la Légation de France à Mexico; ouvrage publié par ordre du Roi, sous les auspices de M. le Maréchal Soult, Duc de Dalmatie, Président du Conseil, et de M. le Ministre des Affaires Étrangères. Paris, Arthus Bertrand, 1844. 2 vols. and atlas.

Francisco Javier Clavijero. Storia della California; opera postuma del nob. Sig. Abate D. Francesco Saverio Clavijero. Venezia, M. Fenzo, 1789. 2 vols. in 1.

Alexander, Freiherr von Humboldt. Ensayo politico sobre el reino de la Nueva-España, por Alej. de Humboldt; traducido al español, por Don Vicente Gonzalez Arnao, con dos mapas. Paris, Rosa, 1822. 4 vols.

did not make even a suggestion to that effect; moreover, Trist had come to interpret his instructions as meaning that the portion of the treaty boundary involved should be that already fixed between Upper and Lower California (if this could be determined), regardless of where that line ran and, in particular, regardless of whether it left San Diego within or without the territory of the United States.

So in his memorandum Trist discusses the location of the eastern and western termini of the boundary separating the Californias, the line from one to the other of the termini, and various geographical questions more or less directly connected therewith and with his instructions.

As to the eastern terminus, Trist points out that by Disturnell's Map it is on the Gulf of California, so that adopting it, according to his instructions, "would give us the *whole* of the right bank of the Colorado down to its mouth & moreover about 15 miles of the Western coast of the Gulf of California below the mouth of the river"; but the latitude of that terminus as fixed by the map is just north of the 32d parallel; this is erroneous, as the true latitude is, according to Mofras, about $31^{\circ}30'$; so the instructions (since they were based on Disturnell's Map) are to be disregarded, insofar as they mention fixed points, but accepted as to the figure of the parallel; the map is a "mere speculation of an Engraver or bookseller"; the line *must* be north of 32° . This argument is supplemented by reference to the available authorities, who indicate that the eastern end of the California line is about at the confluence of the Gila and Colorado. This point, then, is taken for the eastern terminus; and the "remedy" of a "place of deposit, one league square", on the right bank of the Colorado, below the Gila, is put forward, but not as a *sine qua non*; and while the memorandum does not so state, for this square league Trist offered to give the southern part of San Diego Bay.

For his discussion of the terminus of the boundary on the Pacific, Trist relied chiefly on the account of Mofras as showing that San Diego was "excluded from old California" in 1772-73; and the instructions that the line should run "north of the parallel of 32° and South of San Miguel" are laid aside because of (a) the probability¹ that San Miguel is not north of the stated parallel and (b) the conclusion² that San Miguel, whatever its correct latitude, is within Lower California. The "result", as summed up by Trist in the final paragraph of his memorandum, is the establishment of a division line between the two Californias to run from the mouth of the Gila to a point on the Pacific one league south of the southernmost extremity of the port of San Diego; and this became the treaty boundary.

¹ It was in fact geographically possible to draw the line as stated in the instructions, north of the 32d parallel and south of San Miguel; Misión Vieja, or the Mission of San Miguel Arcangel, is about six miles north of that parallel and about thirty miles south of the Pacific terminus of the treaty boundary; see the folded map in Meigs, *The Dominican Mission Frontier of Lower California*.

² This conclusion was correct; see Meigs, *op. cit.*, 111-13.

As has been seen, Trist, after a too cursory and casual consideration of the authorities, had, on January 4, accepted the view that San Diego was in Lower California; in his unfinished memorandum written during the evening of that day both Mofras and Humboldt are cited in support of that opinion, although each of those writers is to the contrary; and Trist's boundary proposal of January 5 was framed in accord with the erroneous conclusion which he had reached. By January 7 Trist had learned that San Diego was in Upper California; and his insistence then and thereafter that the line to the Pacific should not run north of that port was founded on his knowledge of that fact.

How that knowledge was acquired between the Tuesday and the Friday is, at least in part, very interestingly indicated by four pieces in the Trist Papers. The first to be mentioned is this unsigned and undated¹ memorandum of Thornton (Trist Papers, 30:61617-18), which includes an excerpt from a Spanish edition of Humboldt of the sentence which Trist quotes, translated from the Spanish in his memorandum of January 7:

In the Map published by the society for the diffusion of useful knowledge in 1842, San Diego is at 32°50', San Miguel at 32°, Cape All Saints 31°40', & the Mouth of the Colorado 32°.

M Duffot de Mofras puts San Diego at 32°.

In a Map of Upper California in the "United States' Exploring Expedition by Charles Wilkes U.S.N. in 1845" San Diego is laid down at 32°55', and the boundary line at 32°15'. San Miguel is not mentioned, though the map just includes the line of 32°:

Ensayo Político de Humboldt:

"En las Cartas Españolas se llama Nueva California toda la costa del grande Oceano, que corre desde el Istmo de la Vieja California, ó desde la Bahía de todos los Santos (al Sur del Puerto de San Diego) hasta el Capo Mendocino."

McCulloch's Geographical Dictionary says:

"Upper" California lies between 32° & 42°."

Two books which I have been unable to find, but which are likely to say something on this matter are "D: Pomposo Fernandez sobre Baja California", & "Los tres siglos de Mejico (Malaspina y Von)".

The Manuscripts mentioned by Humboldt, & supposed still to exist in the "Archivo General" in the National Palace at Mexico are:

1° Cronica Historica de la Provincia de Michoacan con varios Mapas de la California.

2° Cartas Originales del P. Juan Maria de Salvatierra.

3° Diario de Capitan Juan Mateo Mangi, que acompañó á los PP. apostólicos Kino y Kappus.

The Archivo General was kept in a room on the Ground floor of the Palace, on the right hand side as you go in by the door nearest the Market Place (in the Plaza).

The second indicatory item is the following memorandum of latitudes written by Captain Robert E. Lee, U.S.A., at the request of Trist (*ibid.*, 29:61334 and endorsement); this paper is unsigned and undated but cannot have been of later date than January 7 (the en-

¹ The date interrogatively assigned by the compiler of the Trist Papers to this memorandum is April 5, 1848; but its true date must be approximately, and not later than, January 7.

dorsement has the month and year only); it was obviously the basis of Trist's statements regarding the latitude of San Miguel:

S. Miguel according to Disturnells map of 1846 is 32°18', Lat.

" " " Tanners map of 1846 32°19'

S. Diego according to Disturnells map of 1846 is 32°55'

" " " Tanners map of 1846 32°57'45''

S. Diego according to the observations of Vancouver & Malaspina is in Lat. 32°39'30''

if then S. Miguel is 37' South of S. Diego, as the above maps would shew, it must be very near 32°. But Malaspina gives the latitude of the Island of San Martín, which I take to be the island just north of S. Miguel, 32°25'10''

Mascaro gives the latitude of the Passo del Norte (Presidio) as 32°9'0''

Diaz & Font, the junction of the Rio Gila & Colorado 32°45 0

Font the Casas Grandes (near the Rio Gila) 33 30 0

The third of the four papers, undated but marked as received on January 7, 1848, is this very brief but equally significant communication (*ibid.*, 28:61052):

Mr TRIST You will see that I was mistaken—it is in Northern California
Yours sincerely

PERSIFOR F. SMITH

That the "it" of the writer is San Diego, there can be no possible doubt whatever; Brigadier General Smith previously had also thought San Diego to be in Lower California; he sends word of his mistake; and there must have been some enclosure or accompaniment to the letter, a book or map or paper, from which Trist was 'o "see" where San Diego in fact was located.

Finally, there is this letter from Couto to Trist, dated and marked as received on January 7, 1848, and written before the conference on that day (*ibid.*, 28: 61054-55, translation, omitting the formal conclusion):

The Mofras that Mr. Trist was good enough to request of me yesterday is sent herewith.

Last night, while I had it in my possession, I leafed through it rapidly, and I find that it allocates the whole District of San Diego to New California. To make this agree with what the said Mofras prints in the first map of the atlas, I believe that it is necessary to assume that that district begins at the town from which it takes its name and that it extends entirely in a northerly direction. And in fact the other towns which, according to that writer, make up the district, San Luis, San Juan Capistrano, etc., all lie in that position.

I also consulted Humboldt's text (as Mr. Trist recommended to me the day before yesterday), and I find that he places San Diego in Upper California; I am transmitting the pertinent volume. Perhaps that traveler followed some political demarcation already established in his time; and Clavijero followed the geographical configuration of the peninsula. On that hypothesis, both writers would be right.

I also noted yesterday that although Humboldt locates the town of San Diego (I mean, in the atlas) on the coast of the bay of that name; on the map¹ engraved at New York it is assumed that there is a space of land between that coast and the town, which space might be more than the marine league of which we have spoken. That would be contrary to our ideas.

I would be very sorry indeed if Mr. Trist or ourselves should take as a basis any mistaken datum. My desire is that a negotiation, conscientiously pursued

¹ I.e., the Disturnell Map.

and in which the truth may (as far as possible) be established, may prepare a firm and lasting peace for us. If Mr. Trist believes that these new data render any point doubtful and that before we have finished writing our draft it ought to be cleared up by means of another conversation, we shall be ready to hold it now in the morning at such hour as he may be pleased to set.

When the foregoing letter of Couto was written, the latest draft of the boundary article was that of Trist of January 5, whereby the line was to reach the Pacific one league north of the northernmost point of San Diego Bay. Referring to the Disturnell Map, Couto points out that thereon the town of San Diego is located at a greater distance than one league north of the bay. His suggestion is that, if the Disturnell Map is correct in this regard, the line should be drawn so as to leave both the bay and the town south of the boundary, as in the Mexican proposal of January 3 ("two or three leagues north of the port of San Diego").

In the report of the Mexican Commissioners to their Government dated March 1, 1848, the latitude of San Diego and also that of the confluence of the Colorado and the Gila are discussed, with citation of various authorities, official and other; that San Diego had always belonged to Upper California is said to be undisputed ("sin controversia"); and there is this paragraph on the boundary between the Californias (Exposición, 237-38, translation):

We do not know whether the public authority, either under the Spanish Government or under the independent Government, has at any time traced a complete dividing line between the two Californias; but we believe that we can state with assurance that the Jesuit missionaries of Lower California never established any settlement at San Diego or in its immediate neighborhood; that even in the year 1793 the most northern mission of Old California was that of Santo Tomás, situated at 31°32'; that the mission of San Diego has always been counted as the first mission of New California, as founded by Father Serra in the year 1769, two years after the expulsion of the Jesuits; and, finally, that geographers, such as Baron von Humboldt, divide the two Californias still lower down, that is to say, in Todos Santos Bay.

That report of the Mexican Commissioners was written for publication and as a defense and justification of the treaty; it naturally did not contain any allusion to the boundary proposal made by Trist on January 5, whereby the line would have run north of San Diego.

The material before Trist which was relevant to the question of the historic line between the two Californias was incomplete and in part erroneous; and Trist's reasoning therefrom was biased. The following discussion of the subject is taken from the learned account of Peveril Meigs, 3d, in *The Dominican Mission Frontier of Lower California* (pp. 3, 111-13, and the folded map), and the works cited therein.

That historic boundary was first defined in the concordat signed at Mexico City April 7, 1772, as one between Franciscan (Upper California) and Dominican (Lower California) territory (for a translation of that concordat, its approval by the Council of War and Royal Exchequer at Mexico City on the following April 30, etc., see

Bolton, Palóu's Historical Memoirs of New California, I, 234-55); and that definition was officially accepted by the Council of the Indies on May 11, 1775, "expressed by the latter in somewhat ambiguous terms. The Dominicans were to proceed *hasta llegar a los confines de la Misión de Sⁿ. Diego en su Puerto, poniendo la última en el Arroyo de Sⁿ. Juan Bautista* [San Miguel Mission] *q^e. finalizaría cinco leguas mas adelante de una Punta que saliendo de la Sierra Madre, termina antes de llegar á la Playa, donde podrían torcer al Leste con poca inclinación al Les-Nordeste con q^e. salían al fin del Golfo Californico y Río Colorado*" (Meigs, *op. cit.*, 3, 111; Chapman, The Founding of Spanish California, 118, note 59); this may be rendered: "until they reach the frontiers of the Mission of San Diego on its port, placing the last [mission] on the arroyo of San Juan Bautista, which would terminate five leagues farther on with a peak which, coming from the Sierra Madre, ends before reaching the coast, whence they may turn to the east, slightly northeast, and so proceed to the end of the Gulf of California and the River Colorado". On August 19, 1773, that boundary was marked near the coast with a cross by the Franciscan padre, Francisco Palóu, "five leagues¹ distant from the Arroyo of San Juan Bautista and about fifteen from the port of San Diego" (see Bolton, *op. cit.*, I, 300-2) and "overlooking Médano Valley on the south side" (Meigs, *op. cit.*, 112; see Hendry, "Francisco Palóu's Boundary Marker", in California Historical Society Quarterly, V, 321-27). In 1788 "the boundary was shifted fourteen miles north from Médano Valley to the Arroyo del Rosarito (Rosarito Creek²), where it remained until the present international boundary was agreed upon, and must therefore be considered the real northern boundary of the Dominican territory" (Meigs, *op. cit.*, 113); but that change of 1788 was not, it seems, an alteration of the line for its whole extent but only for a short stretch of a few miles, beginning at the coast (see *ibid.*, the folded map); and it appears that the line described not only marked the division of ecclesiastical jurisdiction, but was also, from 1806, a military and political boundary as well (Hittell, History of California, I, 607-8). There is no definite evidence of any subsequent shifting of the line, although it was variously drawn from time to time by makers of maps; so the line first established in 1772-75, with the modification of 1788 at and near the coast, may be deemed to have been the true boundary between Upper and Lower California prior to the Treaty of Guadalupe Hidalgo.

TRANSMITTAL OF THE TREATY

The first originals of the treaty and the additional and secret article were transmitted immediately after signature with the following despatch of February 2, 1848 (D.S., 14 Despatches, Mexico, No. 28):

¹ A league, *legua*, was 2.6 English miles (see Meigs, *op. cit.*, 165). The distance as the crow flies was actually about ten miles.

² About fourteen miles south of the treaty line.

I transmit herewith, the Treaty of Peace, Friendship, Limits and Settlement, signed one hour ago at the City of Guadalupe; a spot which, agreeably to the creed of this country, is the most sacred on earth, as being the scene of the miraculous appearance of the Virgin, for the purpose of declaring that Mexico was taken under her special protection.

During the negotiation—which has been an exceedingly laborious one, and has kept me closely employed for several weeks past, during every day & night, for as many hours as I could possibly give to labour—I have written many notes which would serve as an explanation of the Treaty in all its stipulations; and I have also written a long despatch on the subject. But it has proved impossible for me to find time to copy these papers, or to get them copied, for transmission. They will go some days hence, with the duplicate of the Treaty. Meanwhile this must speak for itself.

It will be delivered to you by Mr James L. Freaner, the correspondent of the New Orleans Delta, who has given such celebrity to the signature of "Mustang". For a service of this kind, he would be my first choice, by far, of all the men whom I have ever known; as he would be among the very first for any service which a man may be qualified for by high integrity of character, strong manly good sense, extraordinary sagacity and presence of mind, perfect fearlessness, and many other noble qualities; all united with a frame of steel & the sinews of a mountain deer. He had made his arrangements for leaving this place, on his return to the United States, with the train, which I had myself intended to accompany, and which set out from hence on the ninth of December last. Aware of his great value in such a capacity, at a juncture like the present, when the loss of a single hour might be attended with consequences the most momentous, I obtained his consent to remain here, with a view to the contingency which has occurred. I consider him, therefore, as having been in the employment of the Government as a special Bearer of Despatches, from the 9th of December. As generous & disinterested in his disposition, as he is brave and upright, he would be perfectly content with the consciousness of having been useful to our country, without any other reward; but I have told him that I should insist upon this matter's being placed upon the footing just stated.

With respect to the ratification of the Treaty, I believe the chances to be very greatly in its favour; although it cannot be counted upon in less than two months from the date of the proclamation which will be issued by the Executive summoning the new Congress. The elections have not yet been held in the States of Vera Cruz and Puebla. In the former, the Puros (war party) never had any strength whatever; and in the latter, not enough to counteract a vigorous and concerted effort on the part of the Moderados. These elections will now speedily take place, under the arrangements for facilitating them which will be entered into in pursuance of the 2^d Article of the Treaty; (inserted with a special view to this object) and the result will, according to every probability, give to the Peace party in Congress a preponderance so decided as to ensure its prompt ratification.

James L. Freaner, the bearer of the treaty (the first original) made the journey from Mexico City to Washington in seventeen days, a remarkably short time under the circumstances; his plans were formed in advance; at six points between Mexico City and Veracruz he was to have "a change of horse and escort", so as to complete the ride in less than three days (Trist Papers, 28 : 61166, January 18, 1848). The distance by the road traveled was about 250 miles; the route followed is marked in orange on the inset map in the lower left-hand corner of the Disturnell Map; and there is a profile of the route just to the right of the inset.

The second original of the treaty, which Trist called "the duplicate", was sent with the despatch dated January 25 (D.S., 14 Despatches, Mexico, No. 27, heretofore quoted in part); that despatch,

however, did not go forward until February 9; and the authenticated Disturnell Map and the authenticated Plan of the Port of San Diego, mentioned in Article 5 of the treaty, were transmitted with the following despatch of February 12 (*ibid.*, No. 29), the final communication of Trist to the Department of State:

I transmit herewith the maps referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits & Settlement between the United States & the Mexican Republic, which was signed in Quintuplicate on the 2^d inst, and despatched immediately after. The Duplicate of the Treaty was transmitted on the 9th, together with my despatch N^o 27, which had been written in the days immediately preceding the signature of the Treaty, but which it had proved impossible for me to get copied out for transmission, or to find time for copying myself. The same remark still applies to enclosures A & B of N^o 27; although it went accompanied by its enclosure C.

I take great pleasure in stating that the probabilities of the ratification of the Treaty by Mexico, which were previously very good, have been becoming stronger & stronger ever hour for several days past, and that there is good reason to believe that it may take place within two months from its date.

In the accompanying "Monitor Republicano" of the 11th inst. will be found the circular of the Minister of Relations to the Governors of States informing them of the signature of the Treaty.

DISTURNELL'S MAP

By Colonel Lawrence Martin, Chief of the Division of Maps, Library of Congress

In the second paragraph of Article 5 of this treaty, mention is made of two maps added to the treaty and signed and sealed by the Plenipotentiaries of the United States of America and the United Mexican States. The first of these is Disturnell's Map of Mexico; the second is Pantoja's Plan of the Port of San Diego. The former is referred to in the English version of the treaty as "the Map, entitled 'Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised Edition. Published at New York in 1847 by J. Disturnell.' of which Map a Copy is added to this treaty, bearing the signatures and seals of the Undersigned Plenipotentiaries". The map is referred to in the Spanish version in the same general terms, and the title of the map is given in Spanish, including a translation of the English words "Revised Edition".

As no less than seven editions of Disturnell's Map were published at New York in the year 1847, as all seven bear both that date and the designation "Revised Edition", and as all seven have the very same title, it is important to identify with precision the exact editions of Disturnell's Map which were used in connection with the negotiation and ratification of the Treaty of Guadalupe Hidalgo.

The fact of translation of the title of this map in the English version of the treaty is unfortunate, for there never was a map by Disturnell bearing the English title specified in the treaty; but there is a map, also published at New York, whose title closely resembles that specified in the treaty. The two titles are given below:

Title specified in the English version of the Treaty of Guadalupe Hidalgo.—“Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best Authorities. Revised Edition. Published at New York in 1847 by J. Disturnell”.

Title of Tanner's map which was not used in the negotiation of the treaty.—“A Map of the United States of Mexico, As organized and defined by the several Acts of the Congress of that Republic, Constructed from a great variety of Printed and Manuscript Documents, by H. S. Tanner. Fifth edition, 1847.”

Obviously a map published in 1847 as the “Revised Edition” is different from a map published in 1847 as the “Fifth edition”, and a map by J. Disturnell should not be mistaken for a map by H. S. Tanner. Nevertheless, confusion might have arisen if the Plenipotentiaries of the United States and of Mexico had not added copies of Disturnell's Map to the treaty.

The striking resemblance in the titles of the two maps is by no means accidental, for Disturnell's Map is a reprint of the first of two independent plagiarisms of Tanner's. Hence the likeness and the differences in the two English map titles given above are due to the fact that the title in the treaty had been translated from English into Spanish and back again into English.

The actual title of Disturnell's Map and the slightly errant wording of it in the Spanish version of the treaty are given below:

Title specified in the Spanish version of the Treaty of Guadalupe Hidalgo.—“Mapa de los Estados-Unidos de México, segun lo organizado y definido por las varias Actas del Congreso de dicha República y construido por las mejores autoridades: Edicion revisada que publicó en Nueva-York en 1847 J. Disturnell”.

Title of Disturnell's Map which was used in the negotiation of the treaty.—“Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition.”

The Spanish version of the treaty errs not only in the fact of translating the only two words which are in English in the title of Disturnell's Map, the words “Revised Edition”, but also in the spelling of Méjico, in minor matters of punctuation and capitalization, and in the order of mentioning Disturnell's name, the date, and the edition. There never was an edition of Disturnell's Map which included in its title the Spanish words “Edicion revisada” or the spelling “México”.

Moreover, there is still another map, entitled “Mapa de los Estados Unidos Mejicanos”, which is said to be based upon acts of the Mexican Congress, but it was published ten years before Disturnell's earliest 1847 edition, and at Paris rather than New York.

Since Disturnell printed at least twenty-three editions of the map of Mexico, seven of them in 1847, since it is a reprint of an earlier map by White, Gallaher & White, since that map is a bold plagiarism of a map of Mexico by H. S. Tanner, since that map in turn is taken literally from the southwestern part of a map of North America by Tanner, and since there has been a certain amount of perplexity concerning the edition we call Disturnell's treaty map, it appears convenient and desirable to record briefly the history of the successive

editions of all four maps in order to place the Disturnell maps of 1847 in their proper setting, as well as to enable those interested to identify the treaty maps with certainty. Actually there were two treaty maps rather than one.

TANNER'S MAP OF NORTH AMERICA

In 1822 H. S. Tanner published "A Map of North America, Constructed According to the Latest Information". The State names "Cohahuila" and "New Santander" are lettered astride the Rio Grande, since these subdivisions of the former Intendencia of San Luis Potosí appear to have terminated at the Rio Nueces rather than at the Rio Grande. The boundary between Upper California and Lower California is a hand-colored northeast-southwest line from the mouth of the Rio Gila to El Rosario on the Pacific coast some 150 miles south of San Diego. Tanner issued new editions of this map in 1829 and 1839 and perhaps in other years. The 1822 edition of the map was included in the 1823 edition of Tanner's *New American Atlas*. The geographical memoir at the beginning of that atlas specifies the sources of the several maps. The Mexican portion of the map of North America was based upon Pedro Walker's "Map of New California", Alexander von Humboldt's "General Map of the Kingdom of New Spain", Z. M. Pike's "Map of the Internal Provinces of New Spain", the same author's "Chart of the Internal Part of Louisiana", William Darby's "Map of the Southern Part of the Province of Texas", Bernardo de Orta's "Plan of the Port of Vera Cruz", and Juan de Langara's "Chart of the Gulf of Mexico" (*loc. cit.*, 8-10). In view of the subsequent dispute concerning the latitude of the southern boundary of New Mexico, it is interesting to observe that the latitude of "Paso" on the Disturnell Map is nearly the same as the latitude of this place on the Humboldt map and the Tanner maps. Humboldt, however, placed the southern boundary of New Mexico even farther south than Disturnell.

TANNER'S MAP OF MEXICO

In 1825 Tanner took the southwestern portion of his map of North America and made it the basis, and practically the sole and literal basis, of a map of Mexico. The scale was enlarged, that of the map of North America being 1 inch to about 120 miles and that of the map of Mexico, 1 inch to about 84 miles. The map was reoriented on a new central meridian. All the descriptive notes printed upon the face of the trans-Rocky Mountain and Mexican portions of the map of North America, appear on the map of Mexico.

Between 1825 and 1847 Tanner brought out at least ten issues of one or another of five editions of his "Map of the United States of Mexico". The several issues thus far identified all have the same title. They bear the following dates and designations: (a) 1825; (b) 1826; (c) [an impression of the second edition, copyrighted April 2, 1832]; (d) 1834, Second edition; (e) 1838, Second edition; (f) 1839, Second edition; (g) 1846, Second edition; (h) 1846, Third edition;

(i) 1847, Fourth edition; and (j) 1847, Fifth edition. The copy in the Library of Congress of the one designated "1846, Second edition" belonged to President Millard Fillmore and bears his autograph and the date May 21, 1846, suggesting that that was the date he purchased it and that the map designated "1846, Third edition" may have been published after May of that year. Beginning with the edition last mentioned, the Tanner maps bear an engraved boundary between Upper California and Lower California which extends in a northeast and southwest direction from a point on the west bank of the Colorado River opposite the mouth of the Gila River to a point on the Pacific Ocean near "P^t Mondraíns", some 120 miles south of San Diego. Before that date they all have a hand-colored line in the same position, except on Fillmore's copy, which indicates the boundary by color on the parallel of 32° north latitude. This particular copy of Tanner's map of Mexico is probably without historical significance because Fillmore was no longer a member of Congress when he acquired it and was not then in office; he was, however, interested in the Mexican War, since he had at least four other maps of Mexico showing battles there. In 1848 Fillmore was elected Vice President of the United States on the ticket with General Zachary Taylor; and in 1852, as President of the United States, Fillmore took an important action which has to do with Disturnell's Map.

The 1822 edition of Tanner's map of North America and the 1825 edition of Tanner's map of Mexico evidently derived the southern boundary of New Mexico directly from the one on Baron von Humboldt's map of New Spain published in 1809. In the 1826 edition of his map of Mexico, however, Tanner deleted the southern boundary of New Mexico west of the Rio Grande and replaced it by a new boundary which is about 8 miles farther north in the western part and 80 miles farther north in the eastern part. It is this latter boundary which was reproduced by White, Gallaher & White in 1828 and by Disturnell in 1846 and 1847.

All the Tanner maps of Mexico from 1825 to 1847 are copyrighted. They are chiefly important because they represent the original source of Disturnell's Map.

ROSA'S PLAGIARISM OF TANNER'S MAP OF MEXICO

An independent plagiarism of Tanner's map of Mexico was Rosa's "Mapa de los Estados Unidos Mejicanos Arreglado a la distribucion que en diversos decretos ha hecho del territorio el Congreso General Mejicano", published at Paris in 1837. This map was brought into the argument concerning the boundary marking in 1853. It is a literal copy of Tanner's map, taken from the 1834 edition on the original scale and translated into the Spanish language. The essential respects in which Rosa's plagiarism differs from Tanner's map of Mexico are three in number: (a) the statistical table in the Gulf of Mexico is omitted; (b) in the table of distances, the village of Cordova is replaced by the village of Ayotla, but the distance from Mexico City is not modified; (c) the hand-colored northeast-southwest

boundary between Upper and Lower California on Tanner's 1834 map is replaced by an engraved boundary in the same position on Rosa's 1837 plagiarism. Another edition of Rosa's map was printed in 1851. The Rosa maps of 1837 and 1851 are not to be confused with another plagiarism of Tanner's map which had already been printed at New York. This is next to be described.

WHITE, GALLAHER & WHITE'S PLAGIARISM OF TANNER'S MAP OF MEXICO

In 1828, two years after Tanner published his 1826 map of Mexico, it was plagiarized and published by White, Gallaher & White, of New York, who brought it out under a Spanish title. Eventually some twenty-four different editions of this map were published at New York. All but one of them were published by Disturnell, and the map has become widely known as Disturnell's Map. Actually it is White, Gallaher & White's map which Disturnell reprinted with appropriate revision. Accordingly, it seems best to say that there were twenty-four editions of the "Mapa de los Estados Unidos de Méjico", one published by White, Gallaher & White and twenty-three published by Disturnell. The first edition is described below.

First edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican White, Gallaher y White. Nueva York. 1828. Grabado por Balch y Stiles, Nueva York."

White, Gallaher & White's map differed from Tanner's in several respects, including the following: (a) the title was translated from English into Spanish, as were all the place names and explanatory legends on the face of the map; (b) the scale was enlarged, Tanner's map being on the scale of 1 inch to about 85 miles and White, Gallaher & White's on the scale of 1 inch to about 70 miles; (c) extensions of the map along the eastern and northern borders made the new map include Cüba, Florida, Georgia, and parts of South Carolina, northern Iowa, etc., so that whereas Tanner's map was more than 28 inches wide and nearly 23 inches high, White, Gallaher & White's map was nearly 41 inches wide and more than 29 inches high.

That the new map was plagiarized from Tanner's, however, is not merely suggested by the essential identity of the titles. It is proved by the fact that the two maps share the same errors, for example in the outlines of the coast and the courses of the rivers. Moreover, the two maps have the same inserts: a large-scale map of the portion of Mexico between the cities of Veracruz and Mexico, a highly individual table of statistics, and a long table of distances. If there were still any doubt about the matter, it is resolved by an examination of some half-dozen sets of explanatory remarks which are printed on the face of the map. The new map uses all Tanner's remarks and translates them *literatim*, as is shown by the one quoted below, which is printed on the two maps at the same point between the Colorado River and Santa Barbara, California.

On Tanner's map.—"These mountains are supposed to extend much farther to the North than here shewn but there are no data by which to trace them with accuracy."

On White, Gallaher & White's map.—"Se supone que estas montañas se estienden mas al Norte de lo que se exhibe aqui; mas no eziste dato alguno con que poderlas trazar con precision."

Rather curiously, since White, Gallaher & White's map was a plagiarism of Tanner's copyrighted map and since both were published in the United States, the White, Gallaher & White map was copyrighted also. Outside the lower neat line of the new map, near the right border, appear the words "Entered according to Act of Congress, May 31st, 1828, by White, Gallaher & White". This suggests the possibility that Tanner's map was used by friendly agreement in making the slightly enlarged map in the Spanish language; but, if this be so, it seems a little odd that White, Gallaher & White made no public acknowledgment to Tanner in the legend of their map.

The publication in the United States in the year 1828 of this map of Mexico in the Spanish language may possibly be related to the fact that the United States made a treaty of limits with Mexico on January 12, 1828 (Document 60), as well as to a desire to sell copies of the map in Mexico. It is understood, moreover, that during this period a number of books concerning Mexico were printed at New York in the Spanish language.

There are copies of the first edition in the Library of Congress, the Huntington Library, the New York Public Library, and the collection of Dr. W. E. Wrather, of Dallas, Texas.

DISTURNELL'S REPRINTS OF WHITE, GALLAHER & WHITE'S PLAGIARISM OF
TANNER'S MAP OF MEXICO

Having observed the salient features of three maps which bear a family resemblance of the order of identity rather than of mere similarity, (a) Tanner's 1822 map of North America, (b) Tanner's 1825 map of Mexico, and (c) White, Gallaher & White's 1828 map of Mexico, we now come to Disturnell's reprint, the earliest identified edition of which was published in 1846, doubtless as a result of the outbreak of the Mexican War. Its title is identical with that of White, Gallaher & White's map except for the date and the name of the publisher. It was printed from the same plates, as is proved by the faint markings of the copyright notice, which was incompletely eradicated and shows on the borders of all but two of Disturnell's editions in 1846, 1847, 1848, 1849, 1850, and 1858. The twenty-three titles are given below, followed by notes concerning a representative selection of the significant differences between the successive editions. There are still other differences. Twenty facsimiles of parts or all of Disturnell's Map are also briefly described. As previously stated, Disturnell's earliest reprint of White, Gallaher & White's map will be numbered as the second edition of the "Mapa de los Estados Unidos de Méjico".

Second edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846."

This map may be distinguished from the preceding edition, i.e., the White, Gallaher & White map, by (a) the absence of the date 1828; (b) the presence of the date 1846; (c) the absence of the names "White, Gallaher y White"; (d) the presence of the name and address "J. Disturnell, 102 Broadway", and the change of the preceding words "Lo publican" from script to block lettering; (e) the absence of the words "Grabado por Balch y Stiles, Nueva York"; (f) the absence of the copyright notice outside the lower neat line; (g) the moving of the names Oregon, Missouri, and Arkansas to new positions; and (h) various additions to the face of the map. These include the names of Iowa, Indian Territory, Balize, etc., the boundaries thereof and of Missouri, Arkansas, and Louisiana, various roads, and a number of notes in English. Many cities are added. Several lakes and streams are modified in position. The coast of California is substantially corrected. Hachures are introduced for certain mountains.

Of decided importance in connection with the subsequent use of later editions as treaty maps are the following: (a) the State names "Tamaulipas" and "Cohahuila" are left in the same positions which they occupied on White, Gallaher & White's 1828 map, that is, they are lettered astride the Rio Grande with parts of both names in Texas; (b) along the Rio Grande are added in English the words "Boundary as claimed by the United States"; (c) along the Rio Nueces and the headwaters of an unnamed stream between it and the Rio Puerco are added an engraved boundary and the English words "Original Boundary of Texas in 1835"; (d) between these streams and the Rio Grande are added the words "Prior to the revolution Texas & Cohahuila were united to form one of the Federal States of the Mexican Republic"; (e) the part of the engraved boundary of the State of Tamaulipas north of the Rio Nueces in Texas is imperfectly eradicated; (f) in the *Tabla Estadística* the Spanish words "y Tejas" are eradicated from the rubric "Cohahuila y Tejas" but the areas and populations remain unchanged; (g) an engraved highway marked "Gen. Taylors Route 1846", and the words "Ft. Brown" have been added near the mouth of the Rio Grande; (h) an engraved boundary between Alta California and Baja California extends east and west, near the parallel of 32°15' north latitude, from a point on the Colorado River about 50 miles south of the Gila to a point on the Pacific coast about 50 miles south of San Diego. This boundary is not present on the White, Gallaher & White map, which has in color but without an engraved line the same northeast-southwest boundary between Upper and Lower California that appears as an engraved line on the 1846 and 1847 editions of the Tanner map, the 1826 edition of which was the source of the twenty-four editions published by White, Gallaher & White or by Disturnell. It is a debatable question whether, if Disturnell had engraved this northeast-southwest boundary upon his

map in 1846, as Rosa did upon his plagiarism of Tanner's map in 1837, the southern boundary of the United States at the Pacific might have been fixed some 120 miles south of San Diego rather than only a little over a dozen miles south of that city.

There are copies of the second edition in the Library of Congress and in the library of the American Geographical Society of New York.

Third edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846."

This edition may be distinguished from the second edition by the following modifications: (a) in central Texas, between the city of "S^r Antonio de Bejar" and the city of "Austin", a trail some 135 miles in length has been added; (b) at the head of the first branch on the east side of the "Río S^r Marco" north of the city of "Gonzales" a small lake has been introduced. It may be distinguished from the fourth edition by the absence of the name "Rinconado Pass" in Nueva León near Monterrey, Mexico.

There is a copy of the third edition in the collection of Dr. Herbert M. Evans, of Berkeley, California.

Fourth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846."

This edition may be distinguished from the third edition by the following characteristics: (a) the city of Monterrey, Mexico, has been moved southward from 26° north to 25°40' north, and westward from 23° to 23°35'; (b) a group of roads, villages, etc., in the neighborhood have been added; (c) Rinconado Pass is shown; (d) the city of Saltillo has been moved southward; (e) the boundary between the States of Durango and Coahuila has been moved southward from a position north of La Concepcion to a new position close to the large letters *G* and *O* in the word "Durango".

There are copies of the fourth edition in the Library of Congress and in the Crocker Collection, California Historical Society, San Francisco.

Fifth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846. Revised Edition".

This edition may be distinguished by (a) the presence of the words "Revised Edition" in small lettering below and to the right of the date 1846; (b) the presence of a scale of English miles below the date; (c) the erasure of the words "Carolina del S", the words "Florida del O", and the words "del E" in "Florida del E"; (d) the addition of an engraved Florida-Georgia boundary and an engraved Alabama-

Florida boundary; (e) the addition of many roads, railways, and cities in Cuba, Florida, Georgia, and on other parts of the map; (f) various additions to and corrections in lakes and rivers in Florida and elsewhere; (g) the redrawing of the coast line of Texas; (h) the shifting southward of the word "Tejas"; (i) the addition of names of many Indian tribes; (j) the addition of hachures for and names of peaks and mountain ranges; (k) the addition of notes on the face of the map in English. One of these notes, lettered between the Arkansas River and the Ramo de Smoky Hill near longitudes 24° to 26° west of Washington, specifies that "The 'Army of the West' left Ft Leavenworth June 30th reached Santa Fe Aug. 18th 1846"; and this note fixes the date of publication of this edition of the map at some period after August 1846.

Of interest in relation to the subsequent use of later editions as treaty maps, are the following: (a) the State name "Tamaulipas" has been moved to a new position, so that no part of the name is lettered in Texas between the Rio Nueces and the Rio Grande; (b) the State name "Cohahuila" still stands astride the Rio Grande; (c) in the *Tabla Estadística* the area of "Cohahuila" has been reduced by 100,000 *Millas Cuadradas*, to allow for the subtraction of Texas, and the footing of the column has been corrected accordingly, but the population remains unchanged; (d) the name "Rio Grande or Bravo del Norte" has been added to the lower course of the river; (e) the words "Rio del Norte" have been erased from the mouth of the same stream; (f) other modifications nearby include the addition of the words "Battles of Palo Alto & Resaca de la Palma 1846", the words "Salt Lake", and the erasure of the phrase "Gen. Taylors Route 1846".

There is a copy of the fifth edition in the New York Public Library.

Sixth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1846. Revised Edition".

The sixth edition may be distinguished from the fifth by (a) the substitution of large lettering for small lettering in the words "Revised Edition"; (b) the replacement of the phrase "Scale of Miles" by "Scale of English Miles"; (c) the addition of the names "Miami", "L. Macoco", "L. Monroe", and "L. George" in Florida; (d) the addition of the words "Route of Gen. Taylor 1846" in southern Texas; (e) the change in a road near Corpus Christi; (f) the addition of the words "Sandy Desert", "Chaparel", and "Colorado C" nearby; (g) the addition of "S. Theresa" in northern Tamaulipas; (h) the substitution of "Tabasco" for "Villa Hermosa" in the State of Tabasco; and (i) the addition of "Sumasinti R" nearby.

There are copies of the sixth edition in the School of American Research, Santa Fe, New Mexico, and in the Library of Congress.

Seventh edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República; y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The seventh edition of the "Mapa de los Estados Unidos de Méjico" is the earliest of seven or more all published in 1847. It is this map which was sealed, authenticated, and added in February 1848 to the originals of the Treaty of Guadalupe Hidalgo which are now in the archives of the Department of State at Washington. But, as will appear below, this is a treaty map but not exclusively the treaty map.

The words "Revised Edition" are quoted, as will be remembered, in the Treaty of Guadalupe Hidalgo, but that expression should not be taken to signify that an edition of Disturnell's Map was published in 1847 without these words. Some eighteen editions, beginning with two of those in 1846, including all seven of the editions published in 1847, and continuing through the four editions published in 1848 and five published in 1849, 1850, and 1858 are likewise designated "Revised Edition".

This first of the 1847 editions may be distinguished from the preceding issue by (a) the absence of the date 1846; (b) the presence of the date 1847; (c) the presence of two insert maps in the western part of the Gulf of Mexico showing respectively the Bay of Veracruz and "the battle grounds of the 8th and 9th May 1846" near Palo Alto and Resaca de la Palma; (d) the absence of the word "Golfo" from the phrase "Golfo de Méjico" and its replacement by the letter "G."; (e) the addition of "F^t Jupiter" in Florida, of a railway east and north of New Orleans in Louisiana, and of several roads, railways, and cities in Cuba; (f) the deletion of the word "Chaparel", the change of the words "Salt Lake" to "Salt Lakes", and the headward extension of "Colorado C.", all in southern Texas; (g) the addition in Mexico of the figures "P. 8,000" at Veracruz, "P. 10,000" at Matamoros, "P. 15,000" at Monterrey, "P. 16,000" at Saltillo, and many other figures for population; (h) the addition, at the bottom of the map, near the middle, of two profiles showing the routes between Mexico City and Veracruz and between Mexico City and Acapulco; (i) extensive changes in drainage, roads, and city names in the northern parts of the States of Nuevo León and Coahuila near the Sabinos and Salado Rivers, which are changed from northeasterly to southeasterly courses; (j) the extension across the Red River from northern Texas into Indian Territory of the symbol for "Cross Timbers"; (k) the addition of hachures and the name "Washita M^{ts}" in southwestern Indian Territory; (l) the addition of hachures along the south bank of the "Ensenada Choctau", the east bank of the "Rio Puerco", and the east bank of the unnamed stream east of it which is designated as part of the original boundary of Texas in 1835; (m) the introduction of the words "Range of the" before the word "Comanches" in western Texas; (n) the addition of the place name "El Toro" near Monterey, California; (o) the addition of the place names "Pletel" and "Coco" in southern Tamaulipas; (p) the addition of rivers, roads, cities, systems of hachures, and other modi-

fications in Central America and southern Mexico, including "R. de Segovia", "R. Ulloa", "Yzabal", "Comayagua or Nueva Valladolid", "Guatemala", "Guastatoya", "Telonicapan", "Escuintla", the substitution of "Mosquito Coast" for "Costa Mosquito", the moving eastward of the western boundary of Guatemala and the shifting of the country name, the addition of the names "Honduras", "Tlasila", "Zepilitan", the fort north of Tabasco, "Tonala", "R. Alvarado", "R. S. Juan", "Lalana", "Tutla", "Sierra de la Madre", "Ixtlan", and the highways from La Puebla to Oajaca and from Yzabal to N. Chiapa; (g) the addition of roads or conversion from trails to double-line roads, in central and northern Mexico.

Of interest in relation to the use of this seventh edition as a treaty map are the following: (a) part of the Rio Nueces is moved southward to a new course nearer the Rio Grande; (b) a portion of the old course of this stream is designated as the "Rio Frio"; (c) a road southwest of San Antonio de Bexar is deleted; (d) a new road is added between San Antonio de Bexar and the Presidio de Rio Grande; (e) to this road are transferred the words "Genl Wool's Route 1846", which were formerly printed along a road farther south; (f) on the north side of the Rio Gila, near 33° west longitude, a river crossing is indicated by the addition of the word "Ford"; (g) the place names "Agua Sola", "Carizal", and "S. Jose" are added along the trail from San Diego to the junction of the Colorado and Gila Rivers; (h) a trail leading from "S. Diego" to "S. Miguel" and southward throughout Baja California is changed to a double-line road; (i) the place names "S. Maria", "Buena Vista", "Sario", and "Cocospera" are added south of the Gila River in northwestern Sonora; (j) in northeastern Sonora the Gila River is given a new headwater tributary, "R. Suanca", which rises close to the south boundary of New Mexico and upon which a village of Suanca is added.

This seventh edition was published by John Disturnell in the early months of 1847. We know this because Nicholas P. Trist received his instructions as American Commissioner on April 15, 1847, and left Washington the next day, and because on October 25, 1847, James Buchanan, Secretary of State, wrote to Trist, referring to "the division line between Upper and Lower California as delineated on the map which you carried with you" (D.S., 16 Instructions, Mexico, 79-83; serial 509, p. 95). Moreover, Trist quotes, in his memorandum of January 4, 1848, those words of the Secretary of State concerning the map he carried with him from Washington to Mexico, and then goes on to say: "The map referred to by the Secretary of State as the one I brought with me, is the 'Revised Edition' of the one published at New York, in 1847 (forty seven) by J. Disturnell, 102 Broadway, and bearing, in spanish, the following title: 'Map of the United States of Mexico, as organized & defined by various acts of the Congress of said Republic, and constructed according to the best authorities.'" In the same memorandum he says that the Secretary of State "had the map before him" when he wrote certain words concerning the boundary between Upper California and Lower California. Trist also said that this boundary "is *erroneously* laid down in your map" and called it the line "laid down in our map".

This earliest of the 1847 editions was probably used in discussing the boundary of Texas as well as that between the two Californias, for Trist said in his report of the conference between the Mexican Commissioners and himself on September 2, 1847 (printed above), that General Mora y Villamil illustrated certain of his remarks by running his finger "over the territory comprehended between the Nueces & the Bravo, on the map before us".

The seventh edition of the map of Mexico was published not long before April 15, 1847, for Trist observed in his memorandum of January 4, 1848, that the inclusion of San Diego in the territory claimed by the United States had its origin "in accident, in pure accident: the accident of the Secretary of State's having before him one map instead of another. That map was the one just published at New York, as an engraver's speculation, to meet the demand which put it into the hands of every body". On January 7, 1848, Trist enlarged upon his mistaken idea that this seventh edition was a new map, a mere speculation, and not based upon the best among earlier maps like that of Baron von Humboldt. Disturnell's Map, he then thought, was "a map, suddenly got up, as the mere speculation of an engraver or bookseller, to meet the demand in our country for Maps of Mexico. And this is the character of the one I brought with me". (The memorandums of Trist referred to are printed above.)

The treaty copy of Disturnell's Map which is now in the Department of State and which is reproduced in facsimile in this volume, has had important uses as follows: (a) in Washington by the Secretary of State and possibly by President Polk prior to April 15, 1847; (b) in Mexico between May 6, 1847, when Trist reached Veracruz, and February 12, 1848, when Trist sent the map back to Washington; (c) in the Department of State and perhaps at the White House on March 6, 1848; (d) in the United States Senate between March 7, 1848, when it was received from the White House, and March 10, 1848, when the resolution of advice and consent was adopted; and (e) in the Department of State and presumably in the Department of the Interior between March 10, 1848, and December 30, 1853, when the Gadsden Treaty was made.

There are copies of the seventh edition in the Department of State, in the Library of Congress, in the Boston Public Library, in the library of the Wisconsin Historical Society, and in the collection of Mr. George Griggs, of Mesilla, New Mexico.

Eighth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The eighth edition may be distinguished from the seventh by the presence of four insert maps in the Gulf of Mexico rather than only two. It may be distinguished from the five subsequent editions which also bear the date 1847 by the absence of the name "Buena Vista" in the southeast corner of the State of Coahuila, near Saltillo.

In the neighborhood of the Rio Grande the eighth edition differs from the seventh in the following respects: (a) in northern Tamaulipas a trail has been added from La Como to Nuevo Santander; (b) the place name "San Fernando" has been moved southward.

There are copies of the eighth edition in the library of the University of Arizona, in the New York State Library, and in the Library of Congress.

Ninth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The ninth edition may be distinguished from the eighth by the presence of the name "Buena Vista" in the southeast corner of Coahuila near Saltillo. In northwestern Sonora it lacks the village of S. Pablo at the junction of the Rio Gila and the Rio Colorado.

In Durango, Coahuila, and Chihuahua this edition shows for the first time the following villages and trails: (a) "Aqua Nueva"; (b) "Hedionda"; (c) "Bueno Ventura"; (d) a trail from Aqua Nueva to Bueno Ventura by way of Hedionda; (e) "Patos"; (f) "La Punta"; (g) "Joya"; (h) a trail from San Filipe to Encarnacion by way of Castañuela, Patos, and La Punta; (i) "Santiago"; (j) a trail from La Punta through Santiago and southwestward to the main road from Chihuahua to San Luis Potosí; (k) "Lienegas"; (l) a trail from Lienegas to Hornos; and (m) a trail from Monclova to Lienegas and northwestward to S. Pablo in Chihuahua.

There is a copy of the ninth edition in the collection of Mr. Montagu Hankin, of Summit, New Jersey.

Tenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The tenth edition may be distinguished from the ninth by the presence of the name "S. Pablo" in the northwest corner of Sonora south of the junction of the Rio Gila with the Rio Colorado and essentially on the site of the present city of Yuma, Arizona. In Coahuila, Tamaulipas, and Nuevo León it lacks the road from Presidio de Rio Grande to Loredo, Tamaulipas.

In the northwestern part of Baja California the name of the first coastal indentation south of "S. Miguel" has been changed from "Bahia S. Francisco or All Saints Bay" to "Bahia Todos Santos or All Saints Bay".

There is a copy of the tenth edition in the Library of Congress.

Eleventh edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The eleventh edition may be distinguished from the tenth by the presence of the road between Presidio de Rio Grande and Loredo,

and from the twelfth by the absence of the village of Milan Falls in Texas northeast of Austin.

Adjacent to the site of the international boundary, in Coahuila, Nuevo León, and Tamaulipas, there are eight modifications: (a) at Loredo, Tamaulipas, a circle has been added for the village site; (b) the circle on the bank of the Rio Grande at Revilla has been deleted; (c) a new circle for this village has been introduced eight miles farther west; (d) the circle for Presidio de Rio Grande has been deleted; (e) a new circle for this place has been introduced three miles farther west; (f) the northern part of the road from Seratvo, Nuevo León, to Revilla, Tamaulipas, has been altered in position; (g) the road from Revilla to Loredo has been moved westward; (h) a new road 110 miles in length has been introduced between Loredo and Presidio de Rio Grande.

There is a copy of the eleventh edition in the Library of Congress.

Twelfth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The twelfth edition, a second treaty map, may be distinguished from the eleventh by the presence of the place name "Milan Falls" in central Texas. The absence of a date at Buena Vista in Coahuila distinguishes it from the subsequent edition which is also dated 1847.

In Texas this edition also has the following features which are not on the eleventh edition: (a) "Baston"; (b) "Marshall"; (c) a road from Baston to Henderson by way of Marshall; (d) three headwater tributaries of the Rio Sabino altered to flow into the Red River in Louisiana; (e) a road from Washington northwestward to Franklin; (f) a trail from Franklin northward to "Chihuahua Trail"; (g) a road from Nashville to Milan Falls; (h) "Liverpool"; (i) a road from Virginia via Liverpool to Columbia; (j) "Egypt"; (k) a road from Port Calhoun southwestward the whole length of St. Joseph Island; (l) a road from Port Cavallo to Quintana; (m) a road from Quintana to Matagorda; (n) a road from Columbus to La Grange; (o) a road from Houston to Richmond and continuing southwestward to the Egypt road.

This twelfth edition of Disturnell's Map shares with the seventh edition, as stated above, the distinction of being a treaty map. The seventh edition, as already observed, is filed with the Treaty of Guadalupe Hidalgo in the archives of the Department of State at Washington; and a full-scale, colored facsimile is in a pocket in the back cover of this volume. The twelfth edition is preserved in the archives of the Government of Mexico as number "C-1-2-22-2" and is certified in Spanish and in English. The English certificate, signed by Trist, stands on the right and reads as follows:

This is the Map, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic, signed this day.

Witness our hands and seals, at Guadalupe Hidalgo, this second day of February, one thousand eight hundred and forty-eight.

A hand-drawn facsimile of a portion of the Mexican treaty map was reproduced in 1878 (*infra*, under discussion of facsimiles). Although imperfect, it is clear that the twelfth edition, the Mexican treaty map, and not the seventh edition, the American treaty map, was reproduced.

There are original colored copies of the twelfth edition in the Mexican archives, in the library of the United States Geological Survey, in the Huntington Library, in the library of the New York Historical Society, and in the Library of Congress; the institution last named also has a photostat of the certified Mexican treaty map. The latter was transmitted with despatch No. 2825, of August 20, 1935 (D.S., File 103.7/2966), from the American Ambassador in Mexico to the Secretary of State.

Thirteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

The thirteenth edition may be distinguished from the twelfth by the following features in southern Coahuila: (a) the place name "Buena Vista" has been erased and relettered farther north; (b) the circle for the locality has been replaced by a larger circle with a dot inside; (c) at the left of this new symbol crossed sabers have been introduced; (d) below appear the word "Battle" and the dates "Feb. 22 & 23, 1847"; (e) the place name "Patos" has been moved northward; (f) new trails leading westward and northwestward from Patos have been added; (g) the place name "S. Antonio" has been introduced on the trail from Castañuela to Alantos.

The chart of the Bay of Veracruz printed as an insert map in the Gulf of Mexico has been modified in the thirteenth edition as follows: (a) southwest of the city of Veracruz a curved line of dashes has been introduced; (b) along this line appear the words "Vera Cruz invested by the American Army under Gen. Scott, March 1847"; (c) south of the city appear the words "City & Castle Surrend^d March 27. 1847"; (d) near the bottom of the map, east of the symbol for an anchor, are added the words "American Fleet"; (e) west of this point on the shore is a short line of black dashes; (f) opposite this line are added the words "American Forces Landed here March 9th 1847".

Along the site of the international boundary the thirteenth edition shows the following features which are not on the twelfth: (a) in Texas, "Goliad" moved northwestward; (b) "Refugio" moved northward; (c) "Preston" added; (d) a road southwest of Victorio deleted; (e) the road from Victorio to Refugio in a new position; (f) a new stream near Refugio introduced; (g) "Laredo", Texas, added opposite "Loredo", Tamaulipas; (h) the words "Head of Nav" introduced south of Laredo, Texas; (i) the words "Guerreo or" introduced before the place name "Revilla" in Tamaulipas; (j) the old name "Guerreo" deleted in Coahuila.

There are copies of the thirteenth edition in the collections of the American Geographical Society of New York and of Dr. W. E. Wrather, of Dallas, Texas, and in the Library of Congress.

Fourteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The fourteenth edition may be distinguished from the thirteenth by the substitution of the date 1848 for the date 1847 and by the presence of an insert map entitled "Diagram of the Battle Ground Feb 22^d and 23^d 1847", which is printed in the Atlantic Ocean east of Georgia. The absence of the words "Boundary pro^d by Mr. Trist" at the mouth of the Rio Grande distinguishes it from subsequent editions also dated 1848.

Within the strip of territory adjacent to the international boundary, the fourteenth edition has the following features which are absent from the thirteenth edition: (a) in southern Nuevo Méjico and Alta California a road or route from the Rio Grande to the Rio Colorado starts at "Mina de Cobre" and follows the "R. Suanca" and the "R. Gila"; (b) the eastern portion of this route is designated "Gen. Kearney's Route Oct. 1846"; (c) near the junction of the Gila and the Colorado are introduced the words "Note The Gila on its Northern side is bounded by a range of lofty Mountains"; (d) along the road from the junction of the Gila and the Colorado are introduced the words "Gen. Kearney's Route Dec. 1846"; (e) northeast of San Diego is introduced the place name "S. Maria"; (f) nearby are added the words "Battle of San Pascal Dec^r 6th 1846"; (g) a trail is added running northwestward from "S. Jose" to "Ciudad de los Angeles"; (h) upon this trail is added the place name "Temascal"; (i) in northern Sonora, south of the Gila, are introduced the words "Gen. Kearney's Camp Nov 11th 1846"; (j) in northern Chihuahua, along the road south of Paso, are introduced the words "Col Doniphan's Route 1847"; (k) upon the same road, between Chihuahua and Saltillo, appear the words "Doniphan's Route 1847".

There are copies of the fourteenth edition in the collections of the American Geographical Society of New York and of the New York Public Library.

Fifteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The fifteenth edition may be distinguished from the fourteenth by the presence of the words "Boundary pro^d by Mr. Trist", which are printed in the Gulf of Mexico opposite the mouth of the Rio Grande.

This edition is also remarkable in the following respects: (a) in Alta California a dotted line follows the 37th parallel of north latitude eastward from the Pacific Ocean to the meridian of 23° west

longitude (i.e., west of Washington, D.C.); this line is lettered with the words "Boundary Proposed by Mexico"; (b) in Texas a dotted line extends due south from the Red River to the Nueces River near 23°45' west longitude; this line is also designated "Boundary Proposed by Mexico"; (c) where the Arkansas River flows out of the Rocky Mountains, the name "Pikes Peak" is introduced; (d) at "Cuidad de los Angeles" are added the words "Battle Jan 9th 1847"; (e) west of the junction of the Colorado River with the Gila, the words "Sandy Desert" appear for the first time; (f) from the mouth of the Gila River a dotted boundary runs southward throughout the whole length of the Gulf of California; (g) west of the Rio Grande the southern boundary of Nuevo Méjico is deleted; (h) north of the parallel of 32° north latitude and about 90 miles west of the Rio Grande, the place name "Corepelado" has been removed; (i) a new south boundary of Nuevo Méjico is drawn on the parallel of 32° north latitude except at the east end, where it bends a little farther south; this line is designated "Boundary proposed by Mr. Trist"; (j) the Rio Grande is shifted westward some 25 to 35 miles in the 200 miles of its course from "Fra Cristobal", north of "Paso", to "F^{te} S. Eleazario", south of that place; (k) a hachured mountain range nearly 70 miles in length has been introduced between the old course of the Rio Grande and the new course; (l) the road along this portion of the Rio Grande and for some miles farther south has been altered in position; (m) "Brazito" has been moved southward to a point on the east bank of the Rio Grande near the site of "Paso"; (n) "S^o Diego" has been moved southeast and relettered "San Diego"; (o) "Robledillo" has been deleted; (p) "Dona Ana" has been introduced north of "La Salinera"; (q) "La Canada" has been deleted; (r) "F^{te} de Carizal" has been relettered "Carrizal"; (s) a lake and stream have been introduced nearby; (t) hachures have been introduced for the northward extension of "M^{te} Barrigon"; (u) "L. S. Martin" has been deleted and a larger body of water, called "Laguna de Encinillas", has been introduced a little farther south; (v) the dotted boundary extending westward from "M^{te} Guadalupe" to the Rio Grande has been deleted; (w) a new dotted boundary extends southwestward from "M^{te} Guadalupe" to the Rio Grande, with the words "Boundary Proposed by Mr. Trist" engraved and then imperfectly erased again; (x) the name "Paso" is deleted; (y) the name "F^{te} Paso del Norte" and the population "P. 5,000" are deleted from their position near 32°10' north latitude; (z) the name and the symbol for "Paso del Norte" are introduced on the west bank of the relocated Rio Grande near 31°50' north latitude, with the population "Pop. 5,000" nearby.

There is a copy of the fifteenth edition in the Library of Congress. Above the title it is annotated in ink with the words "This Map forms part of the Mexican Boundary Commission". As it was in the General Land Office, Department of the Interior, prior to June 1935, and as it is worn and mutilated and bears still other annotations, it may be assumed that this particular map was used in the

field by John R. Bartlett, the Boundary Commissioner who worked under the direction of the Secretary of the Interior in and soon after the year 1850, or else by John B. Weller, his predecessor, in 1849.

Sixteenth edition.—"Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República; y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The sixteenth edition may be distinguished from the fifteenth by the presence of the words "Boundary Proposed by Mexican Commissioners", in place of the words "Boundary Proposed by Mexico", just below the word "California" in the term "Alta California". It may be distinguished from the seventeenth edition by the complete absence therefrom both of the two designations and of the long east-west boundary itself.

Other outstanding characteristics of the sixteenth edition are indicated below: (a) the east-west boundary between the Pacific Ocean and the Gulf of California, which is represented by heavy dashed lines on several previous editions, has been deleted; it is replaced by a line of fine dots in exactly the same position, i.e., north of the parallel of 32° north latitude and south of the place name "S. Miguel"; (b) on the southern boundary of New Mexico the words "U.S. Commissioner" have been added between the phrase "Boundary proposed by Mr. Trist" and the place name "M^o Florida"; (c) in western Texas the phrase "Original Boundary of Texas in 1835" has been altered to read "Boundary of Texas in 1835 (See S. F. Austin's Map)"; (d) the northwestern headwater of the San Antonio River has been designated "Medina R"; (e) a dashed boundary has been introduced between the head of this stream and the head of the Nueces River, continuing thence northwestward, eastward, and northward to the Red River northeast of "Waco Village"; (f) along this boundary are added the words "Spanish Boundary 1786 between Coahuila & Texas"; (g) from the head of the Nueces River a dashed boundary extends southwestward to the Chihuahua-Coahuila boundary on the south bank of the Rio Grande; (h) to the phrase "Prior to the revolution Texas & Cohahuila were united to form one of the Federal States of the Mexican Republic" have been added the words "(Mexican Decree May 7. 1824)"; (i) along the meridian of 23°45' west longitude, between the Red River and the Nueces, the phrase "Boundary Proposed by Mexico" has been amended to read "Boundary Proposed by Mexican Commissioners"; (j) the name "R. Colorado", near the head of the Red River, has been amended to read "R. Colorado or Red R"; (k) the headwaters of the "Rio Colorado de Bajar" have been cut off on the northwest and added to on the southwest by the inclusion of a stream formerly shown as a tributary of one of the branches of the Rio Grande; (l) "Loredo", Tamaulipas, is deleted; (m) at the mouth of the Rio Grande the phrase "Boundary pro^d by Mr. Trist" has been amended by the addition of the words "U.S. Commissioner".

There are copies of the sixteenth edition in the Library of Congress, in the New York Public Library, and in the library of the New York Historical Society.

Seventeenth edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1848. Revised Edition."

The seventeenth edition may be distinguished from the sixteenth by the presence of the words "California &c." in the title.

Among the characteristics of this edition are the following: (a) the whole east-west boundary along the 37th parallel from the Pacific Ocean to the meridian of 23° west longitude has been deleted; (b) the words "Boundary Proposed by Mexican Commissioners" have been deleted from this boundary; (c) the east-west boundary from the Pacific Ocean to the Gulf of California between the place name "S. Miguel" and the 32d parallel has been deleted; (d) a new boundary has been introduced running eastward from San Diego Bay to the junction of the Colorado River with the Gila; (e) along this line are introduced the words "New U.S. Boundary"; (f) the country name "Méjico" and the words "Gold Region" are introduced for the first time.

There are copies of the seventeenth edition in the Library of Congress and in the library of the New York Historical Society.

Eighteenth edition.—"Map of California, New Mexico and Adjacent Countries Showing the Gold Regions &c. New York. Published by J. Disturnell. 1849. Printed at Ackerman's rooms, 120, Fulton St. N.Y."

The eighteenth edition covers only the western half of the "Mapa de los Estados Unidos de Méjico". It was made from a new plate and seems to have been printed from stone rather than from copper. It was mechanically reproduced from the copperplate of the seventeenth edition or else from a paper negative derived from that plate, since all the corrections and incomplete erasures on the seventeenth edition also appear on the eighteenth.

A number of the major geographical names have been translated from Spanish into English, notably "New Leon" for "Nuevo Leon", "New Mexico or Santa Fe" for "Nuevo Méjico ó Santa Fe", "Gulf of California" for "Golfo de California", "Lower California" for "Baja California", "Pacific Ocean" for "Mar Pacífico", "Mexico" for "Méjico", etc. The letters "Est" in the country name "Estados Unidos" have been deleted, and the name "United States" has been lettered boldly across the upper part of the map. The name "Texas" is introduced, and there are additional streams, lakes, mountains, trails, place names, and remarks in Upper California.

In the frontier area seven features are notable: (a) the State name "Cohahuila" is still lettered in its original position with the letter *L* astride the Rio Grande and the final letter *A* north of that

stream near the Nueces River; (b) the north-south dotted boundary in Texas, extending from the Nueces to the "R. Colorado or Red R" on the seventeenth edition, has been deleted on the eighteenth; (c) the words "Boundary Proposed by Mexican Commissioners" have been deleted from this boundary; (d) the trail from San Diego to the mouth of the Gila River and thence southeastward through Sonora has been changed to a double-line road; (e) from "Mina de Cobre" on the Rio Grande to the junction of the Gila with the "R. de las Asencion" a long trail has been introduced by way of "Terrenate" and "F^{te} Santa Cruz" in the part of northern Sonora acquired by the United States in the Gadsden purchase; (f) this trail is designated "Lieut. Col. Cooke's Wagon Route"; (g) in New Mexico the word "Apacheria" is deleted.

There are copies of the eighteenth edition in the Library of Congress, in the Bancroft Library, Berkeley, and in the Huntington Library, San Marino, California.

This map was issued as an accompaniment to the second of the three editions of Disturnell's Emigrant's Guide to New Mexico, California, and Oregon. The first edition is a 46-page pamphlet, published in 1849 and accompanied by a folded map by J. Calvin Smith entitled "Map of North America", having a large-scale insert map entitled "Map of the Gold Region California". The map was published by Disturnell but is not a version of the "Mapa de los Estados Unidos de Méjico". The second edition of this emigrant's guide, likewise dated 1849, is an 80-page pamphlet accompanied by the English-language version of the western half of Disturnell's "Mapa de los Estados Unidos de Méjico" described above as the eighteenth edition. The third edition of the emigrant's guide is dated 1850. The only two identified copies of that edition are accompanied by J. Calvin Smith's "Map of North America", and it is uncertain whether the map usually issued with it was Smith's or the revised English-language version of the western half of Disturnell's "Mapa de los Estados Unidos de Méjico" described below as the nineteenth edition.

Nineteenth edition.—"Map of California, New Mexico and Adjacent Countries Showing the Gold Regions &c. New York. Published by J. Disturnell. 1849. Printed at Ackerman's rooms, 120, Fulton St N.Y."

The nineteenth edition may be distinguished from the eighteenth by the following additions: (a) a dotted trail extending from western Texas to "F^{te} Santa Cruz" in northern Sonora; (b) the words "Col. Hays' Route" at two points on this trail; (c) the place name "Fredricksburg" in central Texas; (d) the place name "San Pedro" in northern Sonora; (e) a dotted trail from the eastern edge of the map near latitude 36° to the "Route of the Santa Fee Expedition 1841" on the "Ensenada de Trace"; (f) the words "Gregg's Route" on this trail; (g) a trail symbol, a creek symbol, and the words "Goose Creek" at the north edge of the map between longitudes 36° and 37°

west of Washington; (h) the words "Lawson Pass" and a dotted east-west line near the north edge of the map in the valley west of "Fremont's Route"; (i) the words "to Oregon" on a trail near the north edge of the map and longitude 42° west of Washington.

There is a photostat of the nineteenth edition in the Library of Congress.

Twentieth edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1849. Revised Edition."

None of the anglicizing of Spanish names on the eighteenth edition has been carried on to the twentieth, which is printed from the original copperplate. The other additions on the eighteenth edition, notably in Upper California, are now made on the twentieth, which differs from all previous Spanish-language editions in its date. None of the changes on the nineteenth edition, however, appear on the twentieth.

There is a copy of the twentieth edition in the collection of Mr. Edwin Grabhorn, of San Francisco, California.

Twenty-first edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1849. Revised Edition."

The twenty-first edition differs from the twentieth in the following respects. In California are added the place names "Webster", "Benicia", "Martinez", "Suisan", "Stockton", "N. York", "Fremont", "Vernon", "St. Louis", the words "Gold Region", "Mt Linn", "Laguna", and "Coast Range", and a trail symbol running northeast from "S. Jose", California. In Texas are added "San Marcos", a road from San Marcos to Seguin, "New Braunfels", a road from San Marcos to Austin, "Fredericksburg", a road from Fredericksburg to Austin, a road from Corpus Christi to Laredo, Texas, and a road from Corpus Christi to Mier, Tamaulipas, with a branch leading to Comargo; "Seguin" is moved northwestward to a new position; the road from San Antonio de Bexar to Bastrop is moved so as to pass through San Marcos; the trail from San Antonio de Bexar to Austin and the road from San Patricio to Mier are deleted. In Oregon are added a new course of the "Rio Luis or Snake R" from "F. Hall" westward to 37°30'; a road on the south bank of this stream; two new tributaries of the Snake River, one called "Goose Cr." Near 38° north latitude and 28° longitude west of Washington are added a short trail and the words "Fremonts Route Dec 1848".

There is a copy of the twenty-first edition in the Library of Congress.

Twenty-second edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell. 102 Broadway. Nueva York. 1850. Revised Edition."

The twenty-second edition may be distinguished from the twenty-first by two additions: (a) along the Missouri-Arkansas boundary are engraved the words "Missouri Compromise Line 36°30'"; (b) between the top of the map at longitude 43° west of Washington and the junction of the Rio Virgin with the Rio Colorado are added two dotted lines similar in form to the Nevada-California boundary but in different positions. Actually the territories east of these lines in 1850 were Utah and New Mexico.

There are copies of the twenty-second edition in the Crocker Collection, California Historical Society, San Francisco, and in the Bancroft Library, Berkeley, California.

Twenty-third edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 157 Broadway. Nueva York. 1850. Revised Edition."

The twenty-third edition may be identified by the following modifications: (a) Disturnell's street address is changed in the title; (b) the words "Eagle Pass" are added in northern Coahuila; (c) the words "Trinity or" are introduced before the words "Smiths R" in northern California; (d) the words "Sacramento City" are substituted for the words "Nueva Helvetia"; (e) the words "S. Jose" are relettered in capitals; (f) to the right of the title are introduced the words "Note. In the 1847 edition of this map which was appended to the Treaty of Guadalupe Hidalgo, dated Feb. 2, 1848, a geographical error was discovered and corrected in regard to the true position of Paso del Norte situated near the 32^d degree of North Latitude"; (g) below the boundary which extends eastward from San Diego to the junction of the Colorado River with the Gila are introduced the words "North West Boundary of Mexico As defined by the Commissioners in October 1849. North Latitude 32°31'59" Longitude 7 H. 48 M. 21 S. W. from Greenwich being about 17 miles to the Southward of the town of San Diego in Upper California"; (h) the place name "S. Miguel" is moved westward.

There are copies of the twenty-third edition in the Huntington Library, San Marino, California, and in the Library of Congress.

Twenty-fourth edition.—"Mapa de los Estados Unidos de Méjico, California &c. Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell. Nueva York. 1858. Revised Edition."

The twenty-fourth edition, latest identified issue of Disturnell's Map, is readily recognized by its date. Among respects in which it differs from the twenty-third edition are the following: (a) Disturnell's street address is deleted from the title; (b) between the Rio Grande and the Gulf of California the present southern boundary of the United States is indicated by a dash-dot line; (c) this boundary is marked "Gadsden's Treaty Line"; (d) the territory between this dash-dot

line and the Gila River is designated "Ter. of Arizona"; (e) the initial letter of the country name "Méjico" is left in Arizona; (f) a number of railway routes are added throughout the map.

There are copies of the twenty-fourth edition in the library of Princeton University and in the Library of Congress.

THREE SIGNIFICANT EDITIONS OF DISTURNELL'S MAP

During the negotiation of the Treaty of Guadalupe Hidalgo, at least three different editions of Disturnell's Map were used. One of these was the seventh edition, dated 1847 and now with the American originals of the treaty in the archives of the Department of State at Washington. A second was the twelfth edition, also dated 1847 and now with the original treaty in the archives of Mexico. There is no evidence that either Trist or the Mexican Plenipotentiaries knew that they authenticated and placed with the treaty originals two different editions of Disturnell's Map or, indeed, that they suspected there were at least seven editions all dated 1847 and all designated "Revised Edition". As a matter of fact, although the differences between the seventh edition and the twelfth are numerous, none of these differences caused complications, so far as we know, in the boundary marking by Weller, Bartlett, and their Mexican colleagues.

The third significant edition of Disturnell's Map is one of those published in 1846. Robert E. Lee used and commented upon it in January 1848 when he was assisting Trist in determining whether San Diego was in Upper California or in Lower California. We do not know which of the several 1846 editions he was using.

THE FACSIMILES OF DISTURNELL'S MAP

Since 1848 twenty or more facsimiles of Disturnell's Map have been produced. Most of them have to do with the marking of the international boundary which limits the acquisition by the United States of the territory now comprising California, Nevada, Utah, Arizona, New Mexico, and parts of Wyoming, Colorado, and Texas. The use of the names of the engravers, Duval, Hoen, and Ackerman, with the facsimiles numbered 3 to 11 below is merely one of convenience and should not be interpreted as indicating that these engravers either prepared or published the facsimiles of parts of Disturnell's Map which appeared in certain congressional documents.

1. E. D. Mansfield's 1848 Facsimile Entitled "Battle Grounds, Taken by permission, from Disturnell's Map of Mexico".

This is an incomplete black-and-white facsimile of the portion of Disturnell's Map from Corpus Christi, Texas, to Veracruz, Mexico, and inland to Saltillo, San Luis Potosí, and Mexico City, and is reproduced in E. D. Mansfield's *Mexican War* (New York, 1848), page 8. It shows the sites of several military engagements which are not represented on Disturnell's Map. The presence of the words "National Bridge" northwest of Veracruz shows that one of the four 1848 editions was reproduced.

2. The United States Government's 1849 Facsimile Entitled "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

This is a full-scale, black-and-white, gold-toned contact print of the whole map, probably made in 1849 by the Department of State rather than in 1850 by the Department of the Interior. The edition reproduced was the seventh, and the particular map was the one with the originals of the Treaty of Guadalupe Hidalgo which are in the archives of the Department of State at Washington.

The second letter of instructions from James Buchanan, Secretary of State, to John B. Weller, the first Boundary Commissioner, dated February 13, 1849, included a reference to "the Map of the United Mexican States; published at New York, in 1847, by J. Disturnell, of which a copy was added to the Treaty bearing the signatures and seals of the Plenipotentiaries". Buchanan then said: "You are now furnished with a certified copy of this Map" (D.S., 37 Domestic Letters, 165-69; see Senate Executive Document No. 34, pt. 1, 31st Congress, 1st session, serial 558, pp. 4-5). Likewise, the instructions from D. C. Goddard, Secretary of the Interior *ad interim*, to John R. Bartlett, the third Boundary Commissioner, on August 1, 1850, contained slightly paraphrased statements of the same tenor, concluding with the words "You are furnished with a certified copy of this map" (Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 87-88). It is probable, though not certain, that John C. Frémont, the second appointee as Boundary Commissioner, was also furnished with a certified copy of the map on June 26, 1849, when John M. Clayton, Secretary of State, sent him a commission and instructions, since Clayton transmitted "a copy of the several instructions which this Department has addressed to your predecessor" (D.S., 37 Domestic Letters, 239-40). The form of certification is not known, for neither the identical facsimile furnished to Weller nor the one supplied to Bartlett appears to have been preserved.

A half-dozen copies of this facsimile were in the Department of State in 1936, and two copies were in the Library of Congress, but none of these bears a certificate. The identity of the facsimile with the treaty map in the Department of State is established not only by the reproduction on the facsimile of distinctive tears and other defects on the face of the treaty map and by the brush marks on the hand-colored boundaries, but also by a gap in the upper neat line of the facsimile at the precise position where the certificate is attached to the treaty map itself.

3. Duval's 1852 Facsimile Entitled "That Part of Disturnell's Treaty Map in the Vicinity of the Rio Grande and Southern Boundary of New Mexico, as referred to by U.S. Surveyor in Communication to Commissioner, July 25. 1851. See page 281, Senate Ex. Doc. 119, 32d Congress, 1st Session [serial 626]. P. S. Duval & Co's Steam lith. Press Phila."

The date of authorization for the printing of this document was August 31, 1852. Two thousand copies of the facsimile were printed, and it is inserted at the end of the document, as are also facsimiles 4, 5, and 6. It differs from Disturnell's Map in the absence of several towns and roads and in the presence of a heavy east-west line marked "True position of parallel of 32° N. Lat." and of similar lines for the parallels of 34° and 36°. These added parallels on the facsimile are about 35 English miles north of the parallels of 32°, 34°, and 36° on Disturnell's Map.

A separate copy of this facsimile in the Bartlett correspondence in the Department of State bears the name of A. B. Gray, a number of computations in pencil, a line marked "Bartlett & Condé's line parallel of 32°22'", a cross marked "Gray's line Treaty", and the assertion that there were "about 6000 Square Miles between true & false line". Another copy of this facsimile in the same file is similarly annotated in ink.

4. Duval's 1852 Facsimile Entitled "Mexican Boundary B. Extract from the Treaty Map of Disturnell of 1847. Referred to in Col. Graham's Report to the Hon: the Secretary of the Interior of Augth 16th 1851. To face page 245, Senate Ex. Doc: 119, 32^d Congress, 1st Session [serial 626]. P. S. Duval & Co's Lithy Philad^a".

This facsimile comprises all the territory from the Rio Grande to the California coast south of San Diego. It differs from the treaty maps in including a rectangular area, obliquely ruled, between the Rio Grande and the headwaters of the Rio Gila, marked A, B, C, D. Along the upper border thereof are engraved the words "Mess^{rs} Bartlett & Condé's Line", along the lower border the words "Treaty Line", and inside the area the words "5950 Square miles". Many of the names and roads on Disturnell's Map are omitted from the facsimile. Along Bartlett and Condé's line, a little over 70 miles west of the Rio Grande, appear the words "Arrested here on the part of the United States, July 1851".

5. Duval's 1852 Facsimile Entitled "N^o 2. Disturnell's Map, exhibiting the error in the Rio Grande's Position. Accompanying Commissioner Bartlett's letter to the Secretary of the Interior of Dec^r 28th 1850. (See pages 392 & 393; Senate Ex. Doc. 119.—32^d Congress, 1st Session [serial 626].) P. S. Duval & Co's Steam Lith. Press Phil^a".

This facsimile differs from the corresponding portion of Disturnell's Map in the omission of place names, roads, etc., as well as in the following particulars. A dashed stream about 2° west of the Rio Grande of Disturnell's Map is marked "True position of the Rio Grande". A city symbol about 2° due west from El Paso is marked "True position of El Paso".

6. Duval's 1852 Facsimile Entitled "N^o 1. Accompanying Commissioner Bartlett's letter to the Secretary of the Interior, dated 'Santa Rita del Cobre, August 8th 1851'. See page 148, Senate Ex. Doc. 119.—32^d Congress, 1st Session [serial 626]".

This is an incomplete copy of the part of Disturnell's Map from "Paso" to "F^{te} de Tucson" and from "Mina de Cobre" to "Cacurape".

7. Duval's Second 1852 Facsimile Entitled "Mexican Boundary B. Extract from the Treaty Map of Disturnell of 1847. Referred to in Col: Graham's Report to the Hon: the Secretary of the Interior of Augst 16th 1851. To face page 179, Senate Ex: Doc: 121, 32^d Congress, 1st Session [serial 627]. P. S. Duval & Co's Lith^y Philad^a".

This facsimile appears to be from the same plate as No. 4 above, the title being modified only with reference to the Senate document in which it is printed and in which it follows page 250. A second ranch symbol has been added west of the Rio Grande at "La Rancheria".

8. Duval's 1853 Facsimile entitled "Mexican Boundary B. Extract from the Treaty Map of Disturnell of 1847. Referred to in Col: Graham's Report to the Hon: the Secretary of the Interior of Augst 16th 1851. To face page 179, Senate Ex: Doc: 121, 32^d Congress, 1st Session. P. S. Duval & Co's Lith^y Philad^a".

To this facsimile, published in an 1853 edition of the Senate document referred to above, are added hachures and names for "M^{te} Babuquiburi", "M^{te} Sta Clara", "M^{te} Burros", "Sierra de los Mimbres", and hachures for several escarpments. The names "Robledillo" and "La Rancheria" are relettered.

9. Hoen's 1853 Facsimile Entitled "N^o 5. That Part of Disturnell's Treaty Map in the Vicinity of the Rio Grande and Southern Boundary of New Mexico referred to by U.S. Surveyor in (his Communication to the Commissioner) July 25, 1851. Showing his plan of removing the parallels. Senate Ex. Doc. [No. 41] 32^d Congress 2^d Session [serial 665]. Lith. by A. Hoen & Co. Balto."

This facsimile covers the same ground as No. 3 above, the first of the Duval facsimiles, but is an entirely new engraving. One of the names is the other side up, some are in a different style of lettering, and some are in slightly different positions.

10. Hoen's 1853 Facsimile Entitled "N^o 1. Disturnell's Map, exhibiting the error in the Rio Grandes Position. Accompanying Commissioner Bartlett's letter to the Secretary of the Interior of Feb. 7th 1853. Senate Ex. Doc. [No. 41] 32^d Congress 2^d Session. Lith. by A. Hoen & Co. Balto."

This facsimile covers the same ground as No. 5 above, but is an entirely new engraving. It differs from Duval's engraving not only in having the words "Rio Grande" and the words "True position of the Rio Grande" lettered the other side up but also in two other respects. The Rio San Pedro is shown farther west and incompletely on Hoen's facsimile, and it is Duval's facsimile which is faithful to Disturnell's original. The town symbol designated "True position of El Paso" is not due west of the Paso of Disturnell's Map, as Duval shows it, but southwesterly of El Paso.

11. Ackerman's 1855 Facsimile Entitled "That Part of Disturnell's Treaty Map in the Vicinity of the Rio Grande and Southern Boundary of New-Mexico as referred to by U.S. Surveyor, in Communication to Commissioner, July 25,

1851. With Messrs Bartlett & Condés Line traced off and the true Situation of the Parallels with reference to Natural objects in the Vicinity shewn. Ackerman Lith 379 Broadway N.Y."

This facsimile covers the same ground as No. 3 and No. 9 above, but is an entirely new engraving. It is published in Senate Executive Document No. 55, 33d Congress, 2d session, serial 752. The Senate authorized printing on February 19, 1855, and two thousand copies of the map were printed, one hundred of them for the use of A. B. Gray.

12. Tracing bearing the words "Copied from 'J. Disturnell's Map' of the United States and Mexico. 1847. Office Coast Survey, Washington, March 30th 1853".

This map covers the territory from San Antonio, Texas, to the Pacific coast at San Miguel. There is no record of the purpose of the tracing. The presence near San Miguel of the place name "Bahia Todos Santos or All Saints Bay" shows that, although an 1847 edition was traced, it was not the American treaty map but an edition subsequent to the ninth. This tracing is now in the Library of Congress.

13. Tracing bearing the words "N^o 4. Sketch of Texas, with the Boundaries of Mexican States, as shown on the Map of the United States of Mexico, by J. Disturnell. 1848. E. Gilman, Drs^r".

In outline this map, now in the Library of Congress, shows Texas and New Mexico as well as the northeastern States of Mexico. It was traced, for an unrecorded purpose, either from an 1847 edition or from the fourteenth edition of Disturnell's Map, the earliest of the four printed in 1848, but has the New Mexico-Chihuahua boundary as it is on the fifteenth edition. An estimated area of Texas, in square miles and in acres, is lettered in the upper right corner.

14. Tracing in the General Land Office Entitled "Extract of Mapa de los Estados Unidos de Méjico, Lo Publican J. Disturnell 102 Broadway Nueva York. 1848."

This map covers the territory from Louisiana to the western boundary of Nueva Méjico and from the top of Disturnell's Map to the southern boundary of Tamaulipas. The tracing was made long ago for an unrecorded purpose. The presence of the phrase "Boundary Proposed by Mexico" at two points on the tracing shows that it was made from the fifteenth edition.

15. The Mexican Government's 1878 Facsimile Entitled "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway Nueva York. 1847 Revised Edition."

This is an incomplete facsimile of the part of Disturnell's Map between the mouth of the Rio Grande and the coast of California.

It is published in *Tratados y convenciones concluidos y ratificados por la Republica Mexicana desde su independendencia hasta el año actual, acompañados de varios documentos que les son referentes. Edicion oficial (Mexico City, 1878)*, opposite page 214. For convenience, the title has been moved from the northeast corner of the map to the southwest corner. The map is not reproduced by photographic process but by redrawing, in the course of which many names have been misspelled. It was not made from the seventh edition but from the twelfth.

16. The United States Geological Survey's 1923 Facsimile Entitled "Part of the Map of Mexico Prepared by J. Disturnell and Published in New York in 1847".

This facsimile was published in 1923 as plate IV of *Douglas, Boundaries, Areas, Geographic Centers and Altitudes of the United States*, 1st ed. (U.S. Geological Survey Bulletin 689). It was not reproduced from the treaty map which is in the Department of State, i.e., the seventh edition, but from a copy of the twelfth edition in the library of the Geological Survey. Thus the Geological Survey has reproduced a treaty map, but it is the Mexican treaty map and not the American treaty map.

Below the title of the facsimile the following statements are printed:

This is a photographic reproduction of the part of the map referred to in the treaty of Guadalupe-Hidalgo of 1848 and although very inaccurate is of considerable historical value. The map is drawn on the scale of 70 miles to 1 inch. Longitudes are indicated in degrees west of Washington.

The following are features of especial interest:

The area shown as New Mexico (Nuevo Méjico), having indefinite western and southern boundaries.

The town called Paso, shown as about 8 miles below the southern boundary of New Mexico and about 31' of latitude north of its actual position.

The Texas boundary line of 1835.

The area called Alta (Upper) California, north of Gila River, which was sold to the United States in 1848.

The facsimile is unfaithful to the original in replacing the words "United States" by the abbreviation "U.S." on the Rio Grande in the phrase "Boundary as claimed by the United States". The area is limited to a little less than the northwest quarter of the map, so that the lower course of the Rio Grande and the territory between that stream and the Rio Nueces are not shown, although this territory was involved in important ways in the negotiation of the Treaty of Guadalupe Hidalgo.

17. The United States Geological Survey's 1930 Facsimile Entitled "Part of the Map of Mexico Prepared by J. Disturnell and Published in New York in 1847".

This facsimile was printed from the same plate as the one described above. It was published in 1930 as plate 6 of *Douglas, Boundaries, Areas, Geographic Centers and Altitudes of the United States*,

2d ed. (U.S. Geological Survey Bulletin 817) and differs from the 1923 edition in only one respect. The words "Bulletin 689 Plate IV" on the upper right border are replaced by the words "Bulletin 817 Plate 6".

18. The United States Geological Survey's 1932 Facsimile Entitled "Part of the Map of Mexico Prepared by J. Disturnell and Published in New York in 1847".

This facsimile was likewise printed from the same plate. It was published in 1932 as plate 6 of the reprint of U.S. Geological Survey Bulletin 817. There is no easy way to distinguish the 1932 edition from that of 1930 except by finding them in the publications in which they appeared.

19. Paullin and Wright's 1932 Facsimile Entitled "United States-Mexican Boundary (Drainage and projection from Disturnell's 'Mapa de Méjico, 1847')".

This is plate 94A in Charles O. Paullin and John K. Wright's Atlas of the Historical Geography of the United States, published jointly in 1932 by the Carnegie Institution of Washington and the American Geographical Society of New York. It consists of the western two thirds of Disturnell's Map, skeletonized to a net of parallels, meridians, and streams and reduced in scale. Upon this base eleven boundary proposals between 1845 and 1848 have been compiled in red, blue, and green.

Despite the assertion in the title of this facsimile, there never was an edition of Disturnell's Map entitled "Mapa de Méjico", published in 1847 or any other year. The base used was a random 1847 edition of Disturnell's Map rather than either the seventh edition or the twelfth edition, which were the treaty maps. On this 1932 facsimile the representation of the boundary proposed by the Mexican Commissioners on September 6, 1847, differs decidedly in position from the representation of this boundary proposal on the fifteenth edition, published in 1848.

20. The United States Government's 1935 Facsimile Entitled "Mapa de los Estados Unidos de Méjico, Segun lo organizado y definido por las varias actas del Congreso de dicha República: y construido por las mejores autoridades. Lo publican J. Disturnell, 102 Broadway. Nueva York. 1847. Revised Edition."

This full-scale, colored facsimile is in a pocket inside the back cover of this volume. After the printing of the statement on the upper right border of this facsimile that the map reproduced is "the earliest of five or more 1847 editions" of Disturnell's Map, two additional 1847 editions were identified. The American treaty map is the earliest of the seven.

USES OF DISTURNELL'S MAP IN 1852

In the act of Congress approved August 31, 1852, making appropriations for the civil and diplomatic service of the United States for the year ending June 30, 1853, there was a proviso making it necessary

for the President of the United States to use Disturnell's Map in an important way. The clause reads as follows (10 Statutes at Large, 94-95):

For running and marking the boundary line between the United States and Mexico, under the treaty of Guadalupe Hidalgo, one hundred and twenty thousand dollars: *Provided*, That no part of this appropriation shall be used or expended until it shall be made satisfactorily to appear to the President of the United States that the southern boundary of New Mexico is not established by the commissioner and surveyor of the United States farther north of the town called "Paso" than the same is laid down in Disturnell's map, which is added to the treaty.

The proviso was introduced as an amendment in the Senate on August 27, 1852, by Senator James M. Mason, of Virginia, Chairman of the Committee on Foreign Relations. The record of the debate does not show that a copy of Disturnell's Map was laid before the Senate by either Senator Mason or his colleagues (Congressional Globe, XXI, 2402-7, August 27, 1852; Daily National Intelligencer, August 30, 1852). The other Senators who discussed the amendment were Clarke, of Rhode Island; Pearce, of Maryland; Weller, of California; and Underwood, of Kentucky. Senator Weller had himself been a United States Boundary Commissioner in 1849.

On October 11, 1852, the Secretary of the Interior, Alexander H. H. Stuart, responsive to an inquiry from President Fillmore dated September 10, 1852, wrote to the President concerning this proviso and the President's duty in the premises. The Secretary included in his letter the following statement (Senate Executive Document No. 6, 33d Congress, special session of the Senate, serial 688, p. 21):

To enable you to fulfil this duty, I respectfully submit the following report of the facts of the case, accompanied by a copy of Disturnell's map, and other documents bearing on the question.

The particular copy of Disturnell's Map then transmitted to the President of the United States has not been identified.

The Secretary of the Interior pointed out to President Fillmore (*ibid.*, 24, 25) that—

the line, as established by the joint commission, is but about seven geographical miles north of the position of Paso, as marked on the map. But when Paso is transferred from 32°15½', its place on the map, to its true position, which is 31°45' north latitude, or more than 30' south of its supposed position, then the distance between the line and El Paso is increased to more than thirty-seven geographical miles.

I do not see how, by a fair construction of the law, any part of the money can be drawn from the treasury, and I am therefore compelled, respectfully, to submit to you the propriety of at once suspending the operations of the commission, as there are no means at your disposal to maintain it in the field.

President Fillmore replied on October 14, 1852, saying (*ibid.*, 164):

I herewith return your report on the subject of the Mexican boundary commission, with my concurrence, together with the papers accompanying the report. It seems to me that, in justification of the course which the Administration has

been compelled to pursue, it might be well to give publicity to the report through the papers.

You will, of course, notify the Secretary of State.

The outcome of the President's sentence concerning publicity was that the Secretary of the Interior published in the National Intelligencer of October 16, 1852, his letter of October 11 to the President. With it he did not print Fillmore's letter quoted above, but an entirely different document, a formal note in the nature of an Executive order, dated October 13, 1852, and reading as follows (a copy of this Executive direction and a copy of the report referred to were transmitted by the Secretary of the Interior to the Secretary of State on October 15, 1852; D.S., Miscellaneous Letters, October 1852):

After a careful perusal of the foregoing Report and an anxious consideration of the question involved in it, I am reluctantly constrained to concur in its result; and consequently no part of the appropriation therein referred to can be drawn from the Treasury. The Secretary of the Interior will immediately notify the Secretary of State of this decision that he may inform the Mexican Government of the causes which compel this government to suspend the further prosecution of this work until Congress shall provide the requisite means.

With these documents should be read the report of the Senate Committee on Foreign Relations which led to the amendment concerning Disturnell's Map, together with editorials respecting the Mexican boundary situation, and all the documents in the report of the Secretary of the Interior dated March 21, 1853 (Daily Union, August 28, 1852, p. 3; *ibid.*, August 31, 1852, p. 3; *ibid.*, September 1, 1852, p. 3; Daily National Intelligencer, August 31, 1852, p. 3; *ibid.*, October 18, 1852, p. 2; Senate Executive Document No. 6, 33d Congress, special session of the Senate, serial 688).

Finally, President Fillmore, in his third annual message to Congress, dated December 6, 1852, quoted the proviso concerning Disturnell's Map in the act of August 31, 1852, and went on to say (Richardson, V, 173):

My attention was drawn to this subject by a report from the Department of the Interior, which reviewed all the facts of the case and submitted for my decision the question whether under existing circumstances any part of the appropriation could be lawfully used or expended for the further prosecution of the work. After a careful consideration of the subject I came to the conclusion that it could not, and so informed the head of that Department. Orders were immediately issued by him to the commissioner and surveyor to make no further requisitions on the Department, as they could not be paid, and to discontinue all operations on the southern line of New Mexico.

Disturnell's "Mapa de los Estados Unidos de Méjico", then, in its use in 1852 by the Secretary of the Interior, the President of the United States, and the Congress, made unavailable an appropriation of \$120,000 and led to the discontinuation of boundary demarcation by the Commissions of the United States and of Mexico.

THE PLAN OF THE PORT OF SAN DIEGO

By Colonel Lawrence Martir, Chief of the Division of Maps, Library of Congress, in collaboration with the editor

In Article 5 mention is made, as "added" to the treaty, of an authenticated copy of the Plan of the Port of San Diego¹ made in 1782 by Don Juan Pantoja and published at Madrid in 1802 "in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*".

In the Library of Congress is an unpublished manuscript map of the Bay of San Diego which appears to be the original drawn at San Diego in September 1782 by Don Juan Pantoja y Arriaga, second pilot of the Spanish fleet, consisting of the vessels *Favorita* and *Princesa*, which visited and supplied the Spanish presidios and missions between San Diego and San Francisco in 1782. There is another and later manuscript copy of this map in the Mexican archives. Still another copy seems to have been the basis of the versions of this map published at London in 1789 in English, at Paris in 1797 in French, at London in 1799 in English, at Madrid in 1802 in Spanish, at Mexico City in 1825 in Spanish, and at Paris in 1844 in French.

The authenticated treaty copy of the Plan of the Port of San Diego which is mentioned in Article 5 is a tracing from the 1802 edition of the map of Pantoja; this is item No. 5 in the volume entitled "Atlas para el viage de las goletas *Sutil* y *Mexicana* al reconocimiento del estrecho de Juan de Fuca en 1792, publicado en 1802".

It seems that Captain Robert E. Lee, U.S.A., either made or directed the making of the tracing of 1848; a note written by Captain Lee to Trist, dated at Mexico City January 15, 1848, reads, "I return the volume from which the map was copied I handed you some days since" (Trist Papers, 28:61138); the time when it was agreed between Trist and the Mexican Commissioners that an authenticated copy of the map of Pantoja should be added to the treaty was between January 9 and 15, 1848; the tracing was made from the atlas of 1802; there is no record of the copying of any other map and no reason appears why any other map should have been copied; the conclusion appears well grounded that the brief note of Captain Lee referred to one of the two treaty copies of the Plan of the Port of San Diego, namely, that one which is in the archives of the Department of State and which is not signed by the copyist (see the reproduction facing p. 236); the other, in the Mexican archives, a photostat of which is in the Library of Congress, is signed by Romualdo Rivera.

THE FULL POWERS

In the preamble of the treaty it is said that the Plenipotentiaries had made "a reciprocal communication of their respective full powers"; all that is written in the despatches of Trist regarding the full powers of the Mexican Commissioners is in his No. 27, of January 25, 1848, where the legal and constitutional basis of the then existing Mexican Government is discussed (see serial 509, pp. 280-81).

¹ Entitled "Plano del Puerto de S. Diego en la Costa Setentrional de California Levantado por el 2º Piloto de la Armada D. Juan Pantoja. Año 1782."

As it was well known to the Mexican Government at the time that the authority of Trist had been revoked, the full power which he had received was not, when the treaty was signed, in force; its form was this (D.S., 3 Credences, 214):

James K. Polk, President of the United States of America,

To all whom these presents shall concern, Greeting:

Know Ye, That, desirous of restoring between the United States of America and the United Mexican States, peace, harmony and good correspondence, and of removing all grounds of dissatisfaction, and reposing special trust and confidence in the integrity, prudence and ability of Nicholas P. Trist, I have appointed him Commissioner of the United States to the Mexican Republic, and have invested him with full and all manner of power and authority, for and in the name of the United States to meet and confer with any person or persons having like authority from the Mexican Government, and with him or them to negotiate and conclude a settlement of the subsisting differences and a lasting treaty of peace, friendship and limits between the United States and the Mexican nation; whereby shall be definitively settled all claims of the citizens and government of the United States upon the Government of that nation, and all claims of that nation or of its citizens upon the Government of the United States; and likewise the limits and boundaries between the United States of America and the United Mexican States, and all matters and subjects therewith connected which may be interesting to the two nations; transmitting the treaty or convention so to be concluded for the ratification of the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at the City of Washington, the 15th day of April, in the year of our Lord one thousand eight hundred (L.S.) and forty seven, and of the Independence of the United States the seventy first.

JAMES K. POLK.

By The President:

JAMES BUCHANAN,
Secretary of State.

The full powers of the Mexican Commissioners were dated December 30, 1847; the original thereof was exhibited to Trist on the evening of Sunday, January 2, 1848, and a copy was delivered to him on the following day (Trist Papers, 27 : 61012). The following text is from a certified copy (*ibid.*, 60909):

[Translation]

Pedro Maria Anaya, General de Brigada y Presidente interino de los Estados-Unidos Mexicanos.

Pedro Maria Anaya, General of Brigade and President *ad Interim* of the United Mexican States.

á todos los que el presente vieren, sabed,

To all who may see these presents, know ye:

Que estando resuelto, en uso de las facultades que al Presidente de la República Mexicana concede su Constitución Federal, á anudar las negociaciones de paz que quedaron pendientes con el Gobierno interino del General de Division, Benemérito de la Patria Don Antonio Lopez de Santa Anna accediendo á la invitacion hecha al efecto por el Señor Don Nicolas P. Trist, Comisio-

That having resolved, in exercise of the powers which the Federal Constitution of the Mexican Republic grants to its President, to resume the peace negotiations which were left pending with the provisional Government of Don Antonio Lopez de Santa Anna, General of Division, well-deserving of his country, by accepting the invitation extended for that purpose by Mr.

nado por el Gobierno de los Estados Unidos de América; estando ya nombrados desde entonces, como Comisionados de la República, el General de Division Don José Joaquín de Herrera, el Licenciado Don José Bernardo Couto, el General de Brigada Don Ignacio Mora y Villamil y el Licenciado Don Miguel Atristain; y no pudiendo en el día seguir en el desempeño de esa comisión los Generales Herrera y Mora, el primero por hallarse enfermo, y el segundo por estar ocupado en el servicio del Ministerio de la Guerra y Marina: he venido en nombrar en lugar de ambos al General de Division Don Manuel Rincón y á Don Luis Gonzaga Cuevas, para que en union de los expresados Don José Bernardo Couto y Don Miguel Atristain, ya nombrados puedan continuar las conferencias y pláticas de paz pendientes á fin de convenir y ajustar un Tratado que ponga término á la guerra que desgraciadamente existe entre ambas Naciones, dandoles y confiriendoles al efecto los plenos poderes necesarios, bajo las instrucciones que se les han comunicado ó en adelante se les comunicaren con la calidad de que cuanto convinieren y trataren quede sujeto á la aprobación del Congreso Nacional y á la ratificación consiguiente en los términos prevenidos por la Constitución de la República y en el concepto de que la falta de alguno ó algunos de los cuatro comisionados nombrados no ha de impedir el curso y conclusion de estas negociaciones, pues los otros quedan autorizados para ello.

En fe de lo cual he mandado estender el presente, firmado de mi mano y autorizado por el Secretario de Estado y del Despacho de Relaciones interiores y exteriores, en el Palacio Federal de Querétaro á los treinta días del mes de Diciembre del año del Señor de mil ochocientos cuarenta y siete, vigésimo-séptimo de la independencia.

P. M. ANAYA.

MANUEL DE LA PEÑA Y PEÑA.

Es copia del original. México primero de Enero de mil ochocientos cuarenta y ocho.

B^{do} COUTO
MIG^l ATRISTAIN
LUIS G. CUEVAS

Nicholas P. Trist, commissioned by the Government of the United States of America; General of Division Don José Joaquín de Herrera, Licenciado Don José Bernardo Couto, General of Brigade Don Ignacio de Mora y Villamil, and Licenciado Don Miguel Atristain, being Commissioners of the Republic already appointed at that time; and Generals Herrera and Mora not being able at present to continue in the discharge of such commission, the former because of illness and the latter because of his being occupied in the service of the Ministry of War and Marine: I have decided to appoint, in place of these two, General of Division Don Manuel Rincón and Don Luis Gonzaga Cuevas, to the end that in concert with the said Don José Bernardo Couto and Don Miguel Atristain, already appointed, they may continue the pending conferences and discussions of peace for the purpose of agreeing upon and drawing up a treaty which may terminate the war which unfortunately exists between the two nations, giving them and conferring upon them the full powers necessary for that purpose, under the instructions which have been communicated to them or which may be communicated to them hereafter, on condition that whatever may be agreed upon and negotiated shall be subject to the approval of the National Congress and to subsequent ratification under the provisions of the Constitution of the Republic and with the proviso that the absence of one or more of the four Commissioners appointed shall not hinder the course and conclusion of these negotiations, since the others continue to be thereunto authorized.

In faith whereof I have caused these presents to be drawn up, signed by my hand, and attested by the Secretary of State for Domestic and Foreign Relations, in the Federal Palace at Querétaro on the thirtieth day of the month of December in the year of our Lord one thousand eight hundred and forty-seven, twenty-seventh of independence.

P. M. ANAYA.

MANUEL DE LA PEÑA Y PEÑA.

Copy of the original. Mexico, January first, one thousand eight hundred and forty-eight.

B^{do} COUTO
MIG^l ATRISTAIN
LUIS G. CUEVAS

THE EXCHANGE OF RATIFICATIONS

Following the proceedings in the Senate, the authorities at Washington were fearful (unduly so, it now seems) that the Government of Mexico might refuse ratification of the treaty because of the amendments proposed by the Senate resolution of advice and consent and embodied in the United States instrument of ratification of March 16, 1848 (see Polk's Diary, III, 378, March 10, 1848).

The mission to exchange the ratifications was first tendered to Louis McLane, who declined (*ibid.*, 373, 375); it was then entrusted to Ambrose H. Sevier, Senator from Arkansas and Chairman of the Senate Committee on Foreign Relations. Sevier, under date of March 14, 1848, was appointed "Commissioner of the United States of America, with the rank of Envoy Extraordinary and Minister Plenipotentiary, to the Mexican Republic"; but owing to illness of Sevier, Nathan Clifford, of Maine, Attorney General (and subsequently Justice of the Supreme Court of the United States), was similarly commissioned four days later (D.S., 3 Credenches, 227). Their full power to exchange the ratifications was joint and several (*ibid.*, 232). Both appointments were made with the advice and consent of the Senate (Executive Journal, VII, 341-43). Sevier resigned as Senator and Clifford as Attorney General.

The instructions given to the two Commissioners, first directed to Sevier but made joint and several on the same day, March 18, 1848 (D.S., 16 Instructions, Mexico, 84-94, 96-98), were elaborate; their text follows:

You have been appointed by the President by and with the advice and consent of the Senate, to a most important and responsible mission. The task has thus been assigned to you of consummating the Treaty of Peace which was signed at Guadalupe Hidalgo on the second day of February, last, between the United States and the Mexican Republic, and which, on the 10th instant, was ratified by the Senate with amendments.

This brief statement will indicate to you clearly the line of your duty. You are not sent to Mexico for the purpose of negotiating any new Treaty or of changing in any particular the ratified Treaty which you will bear with you. None of the amendments adopted by the Senate can be rejected or modified except by the authority of that Body. Your whole duty will then consist in using every honorable effort to obtain from the Mexican Government a ratification of the Treaty in the form in which it has been ratified by the Senate, and this with the least practicable delay.

For this purpose, it may and most probably will become necessary, that you should explain to the Mexican Minister for Foreign Affairs, or to other authorized agents of the Mexican Government, the reasons which have influenced the Senate in adopting their several amendments to the Treaty. This duty you will perform as much as possible by personal conferences. Diplomatic notes are to be avoided unless in case of necessity. These might lead to endless discussions and indefinite delay. Besides, they could not have any practical result, as your mission is confined to procuring a ratification from the Mexican Government of the Treaty as it came from the Senate and does not extend to the slightest modification in any of its provisions.

One of the principal reasons which induced me to address a note¹ to the Mexican Minister for Foreign Affairs in explanation of the amendments of the Senate, was to avoid delay and prevent unnecessary discussion. This note, dated on the 18th

¹ Printed above under the heading "Explanation of the Amendments".

instant (with a copy of which you have been furnished) together with your own intimate and personal knowledge of all the proceedings of the Senate upon the Treaty, will enable you promptly to furnish every explanation which may be required.

Should you find it impossible, after exhausting every honorable effort for this purpose, to obtain a ratification from the President and Congress of Mexico of the Treaty as it has been amended by the Senate, it may then become necessary for you in conversation with the proper Mexican authorities to express an opinion as to what portion of the Senate's amendments they might probably be willing to yield for the sake of restoring peace between the two Republics. This will be a very delicate duty; but upon one point, at least, you will be relieved from all embarrassment. Neither the President nor the Senate of the United States can ever consent to ratify any Treaty containing the tenth article of the Treaty of Guadalupe Hidalgo in favor of grantees of land in Texas or elsewhere. The Government of the United States do not possess the power to carry such an article into execution; and if they did, it would be highly unjust and inexpedient. Should the Mexican Government persist in retaining this article, then all prospect of immediate peace is ended; and of this you may give them an absolute assurance.

In regard to the amendments by the Senate to the 12th Article of the Treaty, in relation to the mode of paying the \$12,000,000, it is believed that the case might be different. That enlightened body would probably not insist on these amendments if it should appear that they involved the question of peace or war. That they may involve this question, is not improbable; but of this you can better judge upon the spot than the President can at this distance.

It is well known that the present Mexican Government are sorely straitened for want of the pecuniary means of support. Their revenues have been rightfully seized by the commanding general for the support of the United States army in Mexico, and they are thus left comparatively without resources. The Mexican Government are pledged to peace. They have staked their existence upon peace. Without peace they must be destroyed. It may be, however, that they cannot sustain themselves in making peace and executing the Treaty without anticipating the receipt of the whole or a part of the \$12,000,000. Should this appear to you to be clearly the case, and that they cannot obtain the means necessary to prolong their existence under the amendments of the Senate to the 12th article, it is not supposed that you would incur any risk by assuring them that the Senate would recede from these amendments.

It cannot be denied that the twelfth article, as amended by the Senate, contains a positive and unconditional obligation on the part of the United States to pay to the Mexican Republic the sum of \$12,000,000, in four annual instalments of three millions each, commencing one year after the ratification of the Treaty by the Mexican Government. Negotiable or transferable certificates cannot, however, be issued for that amount. All that this Government could possibly do under the Treaty as it now stands, would be to furnish the Mexican Government with evidences of the debt in exact conformity with the terms of the article as amended. Upon such evidences, it is believed that the Mexican Government might raise the means necessary for their immediate support. In this belief the President may be mistaken, because capitalists are a timid race. Should it appear to the Senate that such would probably prove to be the fact, it is confidently believed that they would not risk a defeat of the Treaty by adhering to their amendments to the twelfth article.

The remaining amendments, although doubtless highly proper, are comparatively unimportant. According to the President's understanding of that portion of the 9th Article as it originally stood, which relates to the Catholic Church, it contains nothing more than an amplification of the clauses contained in the Louisiana and Florida Treaties and in the amendment of the Senate to the present Treaty providing for the security of the Catholic inhabitants in the free exercise of their religion without restriction. In this view of the subject the amendment could not finally jeopard the fate of the present Treaty.

It is not deemed necessary to remark particularly on the remaining amendments.

Still, I repeat, that until you find this to be unattainable, you are to insist strenuously upon the ratification of the Treaty by the Mexican Government just

as it has been ratified by the Senate. You might for this purpose urge upon them the following considerations, together with others which will suggest themselves to your own mind.

1. If this be done, the war will be promptly ended and the blessings of peace will be immediately restored. On the other hand, should the Treaty be sent back to the President to be again submitted to the Senate, this must occasion considerable delay and may altogether defeat the object.

2. Should the war be renewed, the Mexican Government can never again expect to make peace on terms so favorable as those contained in the present Treaty. In the opinion of a very large and increasing number of our fellow citizens, these terms are less favorable to the United States than we had a right to expect. The present Treaty was negotiated substantially in conformity with the ultimatum of my instructions dated on the 15th April, last, at a period when we had only just learned the capture of Vera Cruz and the Castle of San Juan d'Ulloa. Between that period and the date of the Treaty, circumstances had entirely changed and a vast amount of precious blood and of treasure had been expended in reaching and capturing the City of Mexico. Whilst for this reason the President might have justly exacted far more rigorous terms, yet such was his desire to conclude peace that he promptly assented to all the material provisions of the present Treaty and submitted it to the Senate. Should the war be renewed, instead of purchasing at a fair price a portion of the territories which we have been obliged to conquer and which are now in our undisturbed possession, and restoring the remainder to Mexico, we shall be compelled to appropriate, without pecuniary compensation, a just and ample indemnity in Mexican territory for all the expenses of the war.

Although the President has the most entire confidence in your sagacity, ability and discretion, yet it is deemed proper to make some suggestions to you in regard to the conduct which you ought to pursue in accomplishing the objects of your mission.

The Mexicans are a sensitive and suspicious people. They are now humbled in their own estimation by our brilliant and repeated victories. Their jealousy ought to be allayed by treating them, in all your intercourse, with marked respect. All the external forms of civility to which the Spanish race attach such peculiar importance, ought to be strictly observed by you. This will not only promote the success of your mission, but may be the foundation of a lasting peace and sincere friendship between the two Republics.

Whilst in Mexico, you will communicate freely and unreservedly with the commanding general of the American forces, who will be instructed to render you all the aid in his power, in accomplishing the object of your mission.

You will bear with you a copy of the Treaty with the amendments of the Senate ratified in due form by the President of the United States, together with a full power to exchange the ratifications with any Mexican authority clothed with a like full power from his Government to perform this duty. After the exchange of ratifications, you will return to the United States with the copy of the Treaty ratified by the Mexican Government, which you shall have received.

Should the Mexican Government ratify the Treaty with the amendments of the Senate, striking out its tenth article, and should refuse to ratify all or any of the remaining amendments, you will, then, notwithstanding, urge them to send without delay a Commissioner or other diplomatic agent to the United States clothed with full power to exchange ratifications in the City of Washington, in case the Senate should advise and consent to the ratification of the Treaty, in the form in which it shall have been ratified by Mexico.

Upon reaching the City of Mexico, you will immediately address a note to the Mexican Minister for Foreign Affairs apprizing him of your arrival and of your readiness to confer, without delay, on the subject of your mission, either with himself or with any authorized agent of the Mexican Government, at any place which may be designated.

In regard to the first three millions of the fifteen millions of dollars secured to the Mexican Government by the twelfth article of the Treaty as amended, provision has already been made for its payment under the authority which has been given to Major General William O. Butler by the Secretary of the Treasury to draw on the Treasury of the United States for that amount. General Butler's

draft, which will be promptly honored on presentation, you may deliver to the appropriate Mexican authorities immediately after the Treaty with the amendments of the Senate shall have been duly ratified by the Mexican Government. As the disbursement of so large a sum is a matter of great importance, you should use every precaution to be certain that the draft shall be drawn in favor of the proper Mexican functionary and that the whole business shall be transacted in such a manner that no difficulty can hereafter arise upon the subject. You will take receipts in triplicate for such draft, which ought, if possible, to be signed by the President of Mexico and countersigned by the Minister of Finance.

You are also furnished with four evidences of debt¹ from the Secretary of the Treasury dated on the 16th instant, for three millions of dollars each, corresponding with the four instalments to be paid to Mexico under the 12th Article of the Treaty as amended by the Senate. These evidences are in exact conformity with the Treaty. Should you discover that for the want of them serious impediments might exist to the ratification of the Treaty on the part of Mexico, you are then authorized to make known to the Mexican Government that they are in your possession and that you will deliver them over immediately after the exchange of ratifications. Still, the President would prefer that the Mexican Government should be satisfied with the obligation as it stands contained in the 12th Article. In that event, you will cancel these evidences and return them to this Department. Should you deliver them over, you will use all the precautions which I have suggested in relation to the draft for three millions of dollars.

The naval forces of the United States in the Pacific have captured Mazatlan and other places on the West coast of Mexico. These, by the terms of the Treaty must be surrendered. To avoid unnecessary delay in its execution, the Secretary of the Navy, by direction of the President has issued orders to the commander of these forces to evacuate all the ports and places in the Mexican territory on the Pacific which may be in his military possession south of the line of boundary established by the Treaty, as soon as he shall receive notice of the exchange of ratifications. You will, therefore, communicate to him a knowledge of this event as speedily as possible and at the same time transmit him a copy of the Treaty.

Even the instructions of March 18 were not deemed sufficient. Four days later, further instructions were given and a full power was issued (D.S., 3 Credences, 233) which authorized the Commissioners, or either of them, "to negotiate and conclude a Treaty changing the mode of payment of the twelve millions of dollars stipulated to be paid by the Government of the United States to that of the Mexican Republic by the twelfth article of the Treaty of Guadalupe Hidalgo as it has been amended by the Senate of the United States, in any manner which by them may be deemed expedient"; the instructions were in these terms (D.S., 16 Instructions, Mexico, 98-99):

Referring to my instructions of the 18th instant relative to the amendments made by the Senate to the 12th article of the Treaty, in regard to the mode of payment of the \$12,000,000, the President has deemed it proper to give you additional instructions upon this subject.

The Mexican Government may, notwithstanding all your efforts, refuse to ratify the Treaty because of these amendments to the twelfth article. In that event you are authorized to conclude a new Treaty with the Mexican Government adopting either the first or the second mode of payment of the \$12,000,000 prescribed by the twelfth article as it stood originally, *provided that Government shall have first ratified the original treaty with all the amendments adopted by the Senate.* In case you should conclude such a Treaty, it ought immediately to be ratified by Mexico and a ratified copy be brought to Washington at the same time with

¹ These evidences of debt were not delivered, but were returned and canceled; for their form, see Senate Executive Document No. 50, 30th Congress, 2d session, serial 541, pp. 80-82.

the ratified copy of the Treaty which you shall have received in exchange from the Mexican Government for the copy ratified by the President.

It is not doubted by the President that the Senate would immediately advise and consent to the ratification of the new Treaty which may be concluded by you. By this expedient, in case it should become necessary to resort to it, a delay of six weeks or two months in the final conclusion of peace might be avoided.

A full power to you or either of you to conclude such a Treaty is herewith furnished.

According to my instructions of the 18th instant, Mr Sevier, after the exchange of the ratifications, is directed to return to the United States with the copy of the Treaty ratified by the Mexican Government. In that event Mr Clifford will not accompany him, but will remain in Mexico until he shall receive further instructions.

Clifford arrived at Mexico City on April 11, 1848; he reported that the amendments of the Senate "as published in the New York Herald, were translated a few days since into the principal journal of the city, and appear not to have excited the least opposition" (D.S., 13 Despatches, Mexico, No. 3, April 12, 1848); Sevier arrived on April 15; communications with the Mexican Minister of Foreign Relations, Luis de la Rosa, began two days later (*ibid.*, Nos. 4 and 5, April 18 and May 7, 1848); that correspondence from April 17 to May 21, 1848, is printed in Senate Executive Document No. 50, 30th Congress, 2d session, serial 541, pages 57-61, 72-74; the only reference therein to the amendments to the treaty is in the opening note, cited in the next paragraph.

In their first note, of April 17, to the Mexican Minister of Foreign Relations (despatch No. 5, cited above, enclosure), the American Commissioners transmitted the note addressed to him by Secretary of State Buchanan under date of March 18, "explanatory of the said amendments", adding:

It is presumed that this communication embraces all the information which may be desired by the Mexican Govt in regard to the amendments to the treaty of peace. If, however, further explanations are wished, the Undersigned will be prepared to give them promptly to the Min: of F.R. or other authorized agents of the Mexican Republic at such convenient place as the Mexican Govt may designate.

The seat of the Mexican Government was then at Querétaro. The American Commissioners remained at Mexico City awaiting an invitation to Querétaro for the presentation of their credentials to the President of Mexico, Manuel de la Peña y Peña; this ceremony was postponed until favorable action on the treaty by the Mexican Congress was assured; that body assembled on May 7. Under that date the Commissioners reported (D.S., 13 Despatches, Mexico, No. 5) that the amendments of the Senate "do not appear to attract much attention, and it is not supposed that they will constitute any serious obstacle to the Consummation of the treaty"; the presidential message to the Congress of Mexico at the opening of the sessions recommended acceptance of the amendments (Senate Executive Document No. 50, 30th Congress, 2d session, serial 541, pp. 62-72); on May 19 the House of Deputies, by 51 votes to 35, approved the treaty as amended; the Senate, by 33 votes to 4, took action to the

same effect on May 25; and at about the same hour of that day the American Commissioners arrived at Querétaro, 120 miles from Mexico City (D.S., 13 Despatches, Mexico, Nos. 8 and 10, May 21 and 25, 1848, where the figures given for the votes are inexact; see Clifford, Nathan Clifford, Democrat, 183-85; Roa Bárcena, *op. cit.*, 623, 627; Apuntes para la historia de la guerra, 394-95).

On May 26 Clifford (Sevier being ill) was presented to the President of Mexico. There followed conferences and a protocol thereof (discussed below) dated at Querétaro May 26, 1848. Four days later, on Tuesday, May 30, the ratifications were exchanged. The report of the Commissioners of the same date enclosed copies of their communications to the various military and naval commanders of the forces of the United States informing them of the consummation of the exchange of ratifications and included these passages (D.S., 13 Despatches, Mexico, No. 11):

In our last we had the honor to inform you of our arrival in this city on the 25th inst. On the following day at 12 o'clock meridian, in pursuance of a previous arrangement, M^r Clifford was presented to the President of the Republic by M^r Rosa, the Secretary of Foreign Relations, in presence of the Cabinet and a large number of the civil and military officers of the Government, and placed our credentials in the hands of His Excellency. M^r Sevier was prevented by indisposition from being present on the occasion. We enclose a copy of our address to the President, and also a copy of his reply. Several conferences afterwards took place between Mess^{rs} Rosa, Cuevas and Couto and ourselves, which it is not thought necessary to recapitulate, as we enclose a copy of the protocol which contains the substance of the Conversations. We have now the satisfaction to announce that the exchange of ratifications was effected to-day. Some delay occurred after the conferences in the preparation of the Mexican Copy [instrument of ratification] of the treaty. That was finally accomplished within the last hour, when the exchange of ratifications was duly made by M^r Rosa in behalf of the Mexican Government, and ourselves on the part of the United States.

Having accomplished our duties here, we shall return immediately to the City of Mexico for the purpose of paying over the three millions according to the stipulations of the treaty. It is expected that the Mexican Government will appoint a Commissioner to repair to the city, in company with us, to receive the payment. No circumstances are foreseen by us to render it necessary to use the papers furnished by the Treasury Department in regard to the remaining twelve millions.

In one of the conferences M^r Rosa urged with much force the dangers of disorder in the City of Mexico in case our army should retire before the Mexican authorities had taken the necessary precautions.

The act of exchange was drawn up in English and Spanish with careful observance of the *alternat*. The English version is this:

Whereas the Treaty between the United States of America and the Mexican Republic signed at Guadalupe Hidalgo on the second day of February, eighteen hundred and forty-eight has been ratified by the President with the amendments made by the Senate of the United-States, and whereas the same Treaty and amendments have been ratified by the President with the approbation of the congress of the Mexican Republic.

Now therefore be it known that the undersigned having been duly empowered by our respective Governments, have this day with all suitable solemnities and after due comparison each with other and both with the original example of the said Treaty exchanged the said ratifications.

In witness thereof we have signed this act in the english and castilian languages and have sealed the same with our respective seals at Querétaro this thirtieth day of May eighteen hundred and forty-eight

[Seal] A H SEVIER
 [Seal] NATHAN CLIFFORD
 [Seal] LUIS DE LA ROSA

On the day of the exchange, the treaty was promulgated at Querétaro (see Algunos documentos sobre el Tratado de Guadalupe, 136-37).

THE PROTOCOL OF QUERÉTARO OF MAY 26, 1848

As stated previously, there are in the treaty file two examples of the protocol dated at Querétaro May 26, 1848; they differ slightly and immaterially in matters of capitalization, spelling, and abbreviation; there are also some variances of punctuation, none of which appears to have any significance. From one of them has been torn a small portion of the Spanish version. It is the more perfect original, marked "Duplicate", which has been used for collating here. The only textual differences are four or perhaps five; in the first numbered clause of the English version the imperfect original has "Guadalupe Hidalgo" where the other original has "Guadalupe"; in the same clause the latter original omits "is" after "understanding"; in the first paragraph of the second numbered clause of the English of the imperfect original the word "titles" is omitted; in the first numbered clause of the Spanish of the imperfect original "mismos" is written for "dichos"; and it seems that from the Spanish of the third numbered clause of the imperfect original there was omitted the word "mismo". The text of the protocol follows:

Protocol

In the city of Queretaro on the twenty sixth of the month of May eighteen hundred and forty-eight at a conference between Their Excellencies Nathan Clifford and Ambrose H. Sevier Commissioners of the United States of America, with full powers from their Government to make to the Mexican Republic suitable explanations in regard to the amendments which the Senate and Government of the said United States have made in the treaty of peace, friendship, limits and definitive settlement between the two Republics, signed in Guadalupe Hidalgo, on the second day of February of the present year, and His Excellency Don Luis de la Rosa, Minister of Foreign Affairs of the Republic of Mexico, it was agreed, after adequate conversation respecting the changes alluded to, to record in the present protocol the following explanations which Their aforesaid Excellencies the Commissioners gave in the name of their Government and in

En la Ciudad de Queretaro á los veinte y seis dias del mes de Mayo del año de mil ochocientos cuarenta y ocho reunidos el Escelentísimo Señor D^e Luis de la Rosa, Ministro de Relaciones de la Republica Mexicana y los Escelentísimos Señores Nathan Clifford y Ambrosio H. Sevier, comisionados con Plenos Poderes del Gobierno de los Estados unidos de America para hacer al de la Republica Mexicana las esplicaciones convenientes sobre las modificaciones que el Senado y Gobierno de dichos Estados unidos han hecho al Tratado de paz, amistad, limites y arreglo definitivo entre ambas Republicas, firmado en la Ciudad de Guadalupe Hidalgo el dia dos de Febrero del presente año; despues de haber conferenciado detenidamente sobre las indicadas variaciones, han acordado consignar en el presente protocolo las siguientes esplicaciones, que los expresados Escelentísimos Señores co-

fulfillment of the Commission conferred upon them near the Mexican Republic.

FIRST.

The American Government by suppressing the IXth article of the Treaty of Guadalupe and substituting the III. article of the Treaty of Louisiana ¹ did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding that all of that agreement is contained in the III^d article of the Treaty of Louisiana. In consequence, all the privileges and guarantees, civil, political and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the Treaty had been retained, will be enjoyed by them without any difference under the article which has been substituted.

SECOND.

The American Government by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.

Conformably to the law of the United States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New-Mexico up to the 13th of May 1.846, and in Texas up to the 2^d March 1.836.

THIRD.

The Government of the United States by suppressing the concluding paragraph of article XIIth of the Treaty, did not intend to deprive the Mexican Republic of the free and unrestrained faculty of ceding, conveying or transferring at any time (as it may judge best) the sum of the twelve millions of dollars which the same Government of the United States

misionados han dado en nombre de su Gobierno y desempeñando la comision que este les confirió cerca del de la Republica Mexicana.

PRIMERA.

El Gobierno americano suprimiendo el artículo IX del Tratado de Guadalupe, y substituyendo á él el artículo III del de la Luisiana, ¹ no ha pretendido disminuir en nada lo que estaba pactado por el citado artículo IX en favor de los habitantes de los territorios cedidos por Mexico. Entiende que todo eso está contenido en el artículo III del Tratado de la Luisiana. En consecuencia todos los gozes y garantías que en el orden civil, en el político y religioso tendrían los dichos habitantes de los territorios cedidos, si hubiese subsistido el artículo IX del Tratado, esos mismos sin diferencia alguna tendrán bajo el artículo q. se ha substituido.

SEGUNDA.

El Gobierno americano suprimiendo el artículo X del Tratado de Guadalupe, no ha intentado de ninguna manera anular las concesiones de tierras hechas por Mexico en los territorios cedidos. Esas concesiones, aun suprimido el artículo del Tratado, conservan el valor legal que tengan; y los concesionarios pueden hacer valer sus títulos legítimos ante los Tribunales americanos.

Conforme á la ley de los Estados unidos son títulos legítimos en favor de toda propiedad mueble ó raiz ecistente en los territorios cedidos, los mismos que hayan sido títulos legítimos bajo la ley mexicana hasta el dia 13. de Mayo de 1.846. en California y en Nuevo Mexico y hasta el dia 2. de Marzo de 1.836. en Tejas.

TERCERA.

El Gobierno de los Estados unidos suprimiendo el párrafo con que concluye el artículo XII del Tratado, no ha entendido privar á la Republica Mexicana de la libre y expedita facultad de ceder, traspasar ó enagenar en cualquier tiempo (como mejor le parezca) la suma de los doce millones de pesos que el mismo Gobierno de los

¹ Document 28.

is to deliver in the places designated by the amended article.

Estados Unidos debe entregar en los plazos que expresa el artículo XII modificado.

And these explanations having been accepted by the Minister of Foreign Affairs of the Mexican Republic, he declared in name of his Government that with the understanding conveyed by them, the same Government would proceed to ratify the Treaty of Guadalupe as modified by the Senate and Government of the United States. In testimony of which their Excellencies the aforesaid Commissioners and the Minister have signed and sealed in quintuplicate the present protocol.

[Seal] A. H. SEVIER.
[Seal] NATHAN CLIFFORD
[Seal] LUIS DE LA ROSA

Y habiendo aceptado estas explicaciones el Ministro de Relaciones de la Republica Mexicana, declaró en nombre de su Gobierno que bajo los conceptos que ellas importan, vá á proceder el mismo Gobierno á ratificar el Trado de Guadalupe segun ha sido modificado por el Senado y Gobierno de los Estados Unidos. En fé de lo cual firmaron y sellaron por quintuplicado el presente protocolo los Escelentisimos Señores Ministro y comisionados ante-dichos.

[Seal] LUIS DE LA ROSA
[Seal] A. H. SEVIER.
[Seal] NATHAN CLIFFORD

The protocol was first written in Spanish and this was then translated into the English. In its text only one conference is mentioned, but there were at least two; the Commissioners, in their despatch No. 11, of May 30, 1848, above quoted, speak of "several"; the first was held at the residence of the Mexican Minister of Foreign Relations during the evening of May 26; besides the Minister, Luis de la Rosa, there were present Luis Gonzaga Cuevas and Bernardo Couto, two of the Plenipotentiaries who had signed the treaty; of the American Commissioners, only Clifford was in attendance, as Sevier was ill. In a letter of that date to his wife, Clifford speaks of this conference as the "official talk with Señor Rosa", adding that he had strong hopes that the ratifications would be exchanged the next day (May 27), permitting the American Commissioners to leave for Mexico City "on Sabbath morning", May 28 (Clifford, Nathan Clifford, Democrat, 184-85). The second conference was held at the residence of the American Commissioners on May 27; on this occasion Sevier was present with the others named and was the spokesman. The suggestion of a protocol was then put forward by the Mexican Minister of Foreign Relations and was accepted. Whether the protocol was written on that occasion or subsequently is not clear (see the note of Clifford of April 30, 1849, cited and printed below). Neither of the two American Commissioners knew Spanish; but their Secretary of Legation, Robert M. Walsh, was well acquainted with the language.

The treaty was communicated to Congress with the presidential message of July 6, 1848, recommending legislation in aid of its execution (Richardson, IV, 587-93). The accompanying papers did not include a copy of the protocol, although among them was the despatch of the American Commissioners of May 30, 1848, quoted above, in which the protocol is mentioned as an enclosure (House Executive Document No. 69, 30th Congress, 1st session, serial 521). The request of the House of Representatives of July 17, 1848, for the instructions given to Sevier and Clifford, was refused by Polk on July 29 as "inconsistent with the public interests" (Richardson,

IV, 602-3). At the following session, however, the protocol came to the attention of members of Congress from a print of it in the press (Polk's Diary, IV, 319-20, February 3, 1849); it might well have been noticed sooner, as it had been published at Mexico City more than eight months previously; the strange idea was broached that the protocol had the effect of "abrogating the Mexican Treaty" (*ibid.*, 328); somewhat elaborate resolutions requesting information were passed by the respective Houses of Congress (Congressional Globe, XVIII, 437-38, 442, 448-54, 456-57; see Polk's Diary, IV, 319-30, *passim*); all the relevant papers were communicated to the House of Representatives with a message of February 8; and papers were sent to the Senate with a message of February 9, 1849 (Richardson, IV, 679-87; see Congressional Globe, XVIII, 494-97, February 10, 1849). The message to the House and the accompanying papers are printed in House Executive Document No. 50, 30th Congress, 2d session, serial 541.

In that message it was pointed out that the final action of the Mexican Congress on the treaty had taken place before the American Commissioners had held any conference with the Mexican authorities and that the only explanations of the Senate amendments made by this Government which were before the Mexican Congress were those contained in the note of Secretary of State Buchanan of March 18, 1848; it was said that the protocol, if it had varied the treaty as amended, would have had no binding effect, that the American Commissioners did not regard the protocol as a part of the treaty or as modifying the treaty as amended, and that the Mexican Government likewise did not regard the protocol as modifying the treaty terms; the various clauses of the protocol were then reviewed in detail and defended; the concluding paragraph of the message is as follows:

With this view of the whole protocol, and considering that the explanations which it contained were in accordance with the treaty, I did not deem it necessary to take any action upon the subject. Had it varied from the terms of the treaty as amended by the Senate, although it would even then have been a nullity in itself, yet duty might have required that I should make this fact known to the Mexican Government. This not being the case, I treated it in the same manner I would have done had these explanations been made verbally by the commissioners to the Mexican minister for foreign affairs and communicated in a dispatch to the State Department.

Following the presidential message to the House of Representatives of February 8, 1849, there ensued a diplomatic correspondence regarding the protocol; this correspondence was had between Luis de la Rosa, then Mexican Minister at Washington, who had himself signed the protocol, and the Secretary of State (James Buchanan until March 7, 1849, and John M. Clayton thereafter). Seven notes were written, five by the Mexican Minister (February 10, 14, 23, and 24, and May 3, 1849) and two by the Secretary of State (February 15 and April 11, 1849). These notes are printed, the former in translation, in Senate Executive Document No. 1, 31st Congress, 1st session, serial 549, pages 69-89. The following excerpts from certain of them will indicate the principal points raised on the one side and on the other (those

from the notes of the Secretary of State are collated with the record copies in D.S., 6 Notes to the Mexican Legation, 197-202, 205-21):

[*Mr. de la Rosa to Mr. Buchanan, February 10, 1849*]

[Translation]

The Government of the undersigned might be, to a certain extent, reassured, on seeing in the message of His Excellency the President, addressed to the House of Representatives, that the Government of the United States gives to certain articles of the Treaty of Guadalupe the same sense and the same understanding which should be given to them agreeably to the explanations assigned in the protocol above mentioned. But as there are, at the same time, in that message certain passages from which it may be inferred that no value is attributed to the protocol in question, the undersigned believes that these expressions will exceedingly alarm his Government and may possibly occasion a serious and dangerous agitation among the Mexican people.

In order to avert this evil and its consequences, the undersigned anxiously desires to be enabled to assure his Government, in a manner firm, clear, and positive, that the Government of the United States will never give to the articles and modifications of the treaty to which the protocol relates any other sense or other interpretation than that resulting from the explanations of the said articles and modifications which were given by the Plenipotentiaries of the United States on signing the protocol in question at Querétaro.

[*Mr. Buchanan to Mr. de la Rosa, February 15, 1849*]

The President will be ever ready, in the kindest spirit, to attend to all representations of the Mexican Government communicated in a form which does not interfere with his own rights or those of Congress. It is to vindicate a great principle which he deems essential to the free and harmonious working of our institutions, that he has resolved upon the answer which I communicate to you upon the present occasion. His desire to cultivate the most amicable relations with Mexico has been evinced by his whole course of conduct ever since the termination of the late war. There is no wish nearer his heart than that Mexico may be a great and prosperous Republic bound to the United States in bonds of the most intimate and equal friendship. So far as depends upon himself, it has ever been his determination to execute every part of the late Treaty in the strictest good faith; and certainly no portion of it is less liable to cavil or doubt than the three points explained by our Commissioners in the Protocol. If in the process of time any case should arise, an event deemed highly improbable, which might cause the Mexican Government to suppose either that the perfect and absolute freedom of religion and security of property will not be guaranteed to former Mexican citizens within the ceded territory; or that valid and legitimate grants of land made by the Mexican Government within this territory will not be acknowledged and enforced by our Judicial Tribunals; or that the United States will attempt to interfere with the right vested in that Government, in common with every other creditor, of transferring to whomsoever they may please, the whole or any part of the debt of \$12,000,000 referred to in the Treaty; all that will be necessary is to specify the points of supposed difficulty either through their Minister in this country or through our Minister in Mexico, and these will be promptly and I have no doubt satisfactorily answered.

[*Mr. de la Rosa to Mr. Buchanan, February 24, 1849*]

[Translation]

The undersigned will not enter into the discussion of the question whether the explanations thus recorded in this document, and the understanding therein

given to certain articles of the treaty, are or are not at variance with the intention and design of the Senate of the United States, which modified those articles. The Government of Mexico could never suppose that the Plenipotentiaries of the United States could have been capable of exceeding the limits of their faculties and instructions by signing the protocol and guaranteeing the stipulations contained in it with their respective seals and signatures. The Government of Mexico treated with the Commissioners of the United States in the utmost good faith; and after assurance of the fullness of their powers, and in order to avoid every species of doubt on that point, the Mexican Government took care to have inserted in the protocol itself a declaration establishing the fact that the representatives of this Republic concluded that convention in the character of "Commissioners of the United States of America, with full powers from their Government to make to the Mexican Government suitable explanations in regard to the amendments which the Senate and Government of the said United States" had made in the treaty. It is also declared and recorded in the same document, that the said explanations were given by the Plenipotentiaries in the name of their Government and in fulfilment of the commission conferred upon them near the Mexican Republic. What may have been the secret instructions given them for the fulfilment of this commission, no one could then have known except the Plenipotentiaries themselves and the Government of the United States. The undersigned has insisted so strongly upon this point because he cannot agree that the convention concluded in the protocol should be null if it in any way alters the modifications which the Senate of the United States had made in certain articles of the treaty. As, in the message of His Excellency the President of the United States, the circumstance that the Mexican Government had not presented the protocol to the Congress of the Republic for its ratification is regarded as a proof that the Government did not consider the modifications made by the Senate as altered, the undersigned must say upon this point that the Government of Mexico never believed such ratification to be necessary for the validity and subsistence of the protocol. All that is therein stipulated is so favorable (comparatively speaking) to the rights and interests of Mexico that no doubt could possibly have been entertained of its ratification by the Mexican Congress if such ratification had been necessary. The Mexican Government, whose part it is to direct diplomatic negotiations in the manner most suitable, according to its judgment, to the interests of the country, fulfilled its duty by communicating to Congress the result of the conferences which were held with the Plenipotentiaries of the United States. The undersigned remembers that in the morning of the same day in which the ratifications of the treaty of peace were exchanged, the Minister of Foreign Relations presented himself to each of the Houses of the Mexican Congress and read in open session the protocol, in consequence of which, as he declared, he was about to ratify the Treaty of Guadalupe. The President of each of the Houses of Congress then said, in answer, that the Chamber, on being informed of what had been done, saw with pleasure the result of the conferences, and then ordered the protocol to be placed on record among the archives. No Deputy nor Senator protested against this proceeding; and the undersigned should observe to the Honorable Secretary of State that agreeably to the law which regulates the debates and the internal government of the Congress of Mexico, whenever the President of either House gives a certain course or adopts any resolution with regard to any affair, and no Deputy or Senator objects to it, the resolution is considered as sanctioned. From all this it may be clearly seen that the protocol not only was approved by the Mexican Congress, but was approved with satisfaction, and that this approval was given previous to the ratification of the Treaty of Guadalupe. The Mexican Government soon afterwards had the treaty of peace officially published, as well as the protocol in continuation of it, and no one, to this day, has doubted in Mexico that this protocol has been approved by the Congress.

[Mr. Clayton to Mr. de la Rosa, April 11, 1849]

The receipt of that money towards payment for the Territories ceded by the Treaty was of itself an acknowledgement by Mexico that the Treaty as it came

from the Senate of the United States, was fully ratified by her. As notice was given to her by the letter of the Secretary of State as well as by the provisions of the Constitution of the United States and the powers of our Commissioners, that any new stipulation, varying from the Treaty as amended by the Senate could form no part of that instrument until approved by that Body, it follows that by receiving these Three Millions of Dollars, she acknowledged that she had made a valid Treaty with the United States, whether the Protocol should form a part of it or not. How could Mexico with honor receive the indemnity stipulated by the Treaty if she intended at the time to take advantage of any contingency such as the rejection of the Protocol by the Senate, and to maintain that there was no treaty whatever binding her? Would she not be chargeable with the grossest imputations were she now to persevere in maintaining that though she has received millions for the Territory ceded, she will invalidate the title she has given us and reclaim the country we have purchased of her? Justice to Mexico forbids the supposition that she could adopt such a policy. All the right which she could have possibly acquired by the Protocol, (if indeed it was intended by it, to lay the foundation for an alteration in the Treaty) was a right to make such a proposition, with the consent of the Commissioners, to the Government of the United States. In that view of the subject, she took the hazard of our rejecting it, being fully aware of our perfect right to do so, without injury to her. This Government has refused to ratify it, and of this she has no right to complain. This Government has at no time regarded the Protocol as obligatory. The ratification of the Treaty by the Mexican Government was brought to this Country, and that instrument was proclaimed precisely in the form in which it was amended by the Senate of the United States. The Protocol appears to have been viewed as a mere record of conversations, and by no means as establishing a condition precedent to the ratification of the Treaty by the Mexican Government. In the course of the late session of Congress, the President communicated to each House a copy of that instrument, but neither thought proper to acknowledge it as obligatory upon the United States. After it had been communicated to the House of Representatives, that Body passed a Bill appropriating the money due under the Treaty on the 30th May, 1849, and 1850, and the same bill afterwards passed the Senate and has become a law. It must be presumed that if either House of the Congress of the United States had supposed that the Treaty as amended by the Senate, had been vitiated or in any way affected by the Protocol, they would not have made the appropriation adverted to, for no obligation therefor would have rested upon them. At the recent Executive session of the Senate of the United States, a Resolution was offered declaring the Protocol to be a part of the Treaty. This Resolution was laid upon the table and thus effectually rejected without a division. Under all these circumstances, therefore, the undersigned, actuated by that spirit of frankness which ought ever to characterize the diplomacy of the United States and resolved to give no room for any possible imputation upon the honor of this government, which could arise out of silence or acquiescence in the claim set up by Mexico that this Protocol signed at Queretaro on the 26th of May, last, by the Commissioners of the United States and the Minister for Foreign Affairs of the Mexican Republic, is a paper of any validity or effect, has the honor explicitly to declare to M^r de la Rosa, that inasmuch as that instrument does not on its face purport to be a diplomatic Convention, as it was not concluded according to the forms usually observed in negotiating or by men having power to make such Conventions; as it has not been approved by the Senate of the United States and the Congress of Mexico, or ratified by the President of either Republic agreeably to the requirements of their respective Constitutions, it is not and will never be held to be binding in honor or in law upon the Congress or the Executive of the United States.

It is not the province of the undersigned to anticipate the view which may be taken of that instrument by the Judiciary in such cases under the Treaty of Guadalupe Hidalgo as may be carried before them for consideration and decision.

In the exercise of the high prerogative of construing treaties as well as other laws, conferred upon them by the constitution, their opinions in regard to the Treaty as ratified and exchanged by the two governments, may or may not harmonize with those expressed in the protocol, but it cannot be believed that they will deem it their duty to construe the Treaty by that instrument. And if their

judgments should fail to award to Mexicans the rights which their government may suppose to have been secured to them by the Protocol, the Government of the United States holds itself absolved from any obligation to make amends therefor. M^r de la Rosa, however will not understand that the undersigned undertakes either to affirm or deny the soundness of the opinions expressed in the Protocol. This is the less incumbent on him from the fact, that M^r de la Rosa himself has not yet pointed out the differences, between those opinions and the meaning conveyed by the amendments of the Senate.

[*Mr. de la Rosa to Mr. Clayton, May 3, 1849*].

[Translation]

The importance of that note from the Honorable Secretary of State is such as not to allow the undersigned to answer it without first submitting it to his Government.

The undersigned has, in consequence, transmitted the said note from the Honorable Secretary of State to the Minister of Foreign Relations of Mexico, and he abstains, for the present, from any reply to it.

While the foregoing correspondence was in course, the subject of the protocol was again brought forward in the Senate during the special session which began on March 5, 1849, following the inauguration of President Taylor; papers were twice requested and furnished (Executive Journal, VIII, 90, 92, 94); the resolution of Senator Thomas H. Benton, of Missouri, to the effect that the protocol "ought to be held as binding upon the United States", was laid on the table (*ibid.*, 94-95, March 22, 1849); it was later said by a participant in the debate that the vote was unanimous, except for Benton himself (see *Casket of Reminiscences*, 337, a work by Henry S. Foote, Senator from Mississippi, 1847-52); but the account of the preceding circumstances as written in the work cited cannot wholly be reconciled with the relevant dates, for Clayton entered upon his duties as Secretary of State on March 8, 1849. The attitude of Benton toward the Treaty of Guadalupe Hidalgo is somewhat obscure; he speaks of it and of Trist in terms of commendation (*Thirty Years View*, II, 710-11); but he had voted in the Senate against the resolution of advice and consent and in favor of the amendments to Article 12 (Executive Journal, VII, 335-36, 340).

The position taken by the Polk administration regarding the protocol is further elucidated by two instructions to Clifford (who had remained at Mexico City as American Minister) dated, respectively, February 17 and March 2, 1849, the relevant paragraphs of which follow (D.S., 16 Instructions, Mexico, 122-29):

[Instruction No. 14, February 17, 1849, excerpt]

I enclose you copies of two extraordinary notes addressed by Mr de la Rosa to myself on the 12th [10th] and 14th instant, together with a copy of my answer to them dated on the 15th instant. These, together with a copy of the Union of the 9th instant containing the President's Message to the House of Representatives on the subject of the 'Protocol,' which is also enclosed, will enable you to make any explanations to the Mexican Government which may become necessary.

For a few days, the most absurd and unfounded rumors were circulated in regard to this Protocol and for a brief period made some impression on the public

mind. This has, I think, been entirely removed by the publication of the President's Message and the documents which accompanied it. Still, it would seem that Mr de la Rosa is highly excited on the subject, and may therefore make representations to his Government which it will be your duty to counteract. Your perfect familiarity with the whole subject renders it unnecessary for me to make any further observations respecting it.

I anticipate that Mr de la Rosa will reply to my note of the 15th instant. If he should, I shall immediately transmit you a copy of his reply with that of my rejoinder, should one become necessary.

[Instruction No. 15, March 2, 1849, excerpt]

I enclose to you copies of two notes, the one of the 23d and the other of the 24th ultimo, received at the Department from Mr de la Rosa, since the date of my last despatch.

It is difficult to conceive what can be the object of Mr de la Rosa in pursuing so pertinaciously the question of the Protocol. He no where states or even intimates in what particular the explanations contained in it are, in his opinion, at variance with the amendments of the Senate to the original Treaty. Indeed, he expressly declares that he "will not enter into the discussion of the question whether the explanations thus recorded in this document and the understanding therein given to certain articles of the Treaty, are or are not, at variance with the intention and design of the Senate of the United States which modified those articles".

The President, in his Message to the House of Representatives of the 8th February, last, expresses the opinion that these explanations are in accordance with the Treaty and gives his reasons for this opinion. If this be correct, as we believe it to be, then no practical question can ever arise between Mexico and the United States on the subject of the Protocol. Why, then, the pertinacity of Mr de la Rosa? Does he not believe that he has gained some advantage over Mr Sevier and yourself by the Protocol, but this of a character which he is unwilling to specify?

The first rumors circulated in this City concerning the Protocol were that it had annulled the amendments of the Senate striking from the Treaty the 10th Article, and restored to grantees of land in Texas all the rights which they would have enjoyed under this article. These rumors were speedily dissipated by the publication of the President's Message and the accompanying documents. Still, it may be possible that the Mexican Government, urged thereto by Mr de la Rosa, will insist upon this outrageous construction of the Protocol. At all events, that Government should now be clearly and distinctly reminded of the character of this instrument under the Constitution of the United States, although upon this subject it is morally impossible they could have been mistaken. The notes of Mr de la Rosa to myself have rendered this necessary. As you were one of the chief actors on the occasion, and are consequently well acquainted with all the particulars, the President has deemed it proper to entrust you with the performance of this duty. Besides, this can be done more advantageously in Mexico than Washington, because it is almost certain from the circumstances that Mr de la Rosa has been acting without express instructions, and I fear under unhappy influences to which he is peculiarly exposed from his entire ignorance of the English language. Had he sought an interview with me upon the subject in the first instance, instead of adopting the course which he has pursued, it is probable I might have convinced him, that although the Protocol is of no validity considered as a new agreement between the parties, yet that the exposition of the three points which it embraces, is a fair and legitimate construction of the Treaty and ought to be entirely satisfactory to his Government.

Mr de la Rosa, in his note of the 24th ultimo, asserts that "this Protocol is a real Diplomatic Convention concluded between the Government of Mexico and that of the United States, and equally binding on both". And again: "In whatsoever light the Protocol may be considered, the Undersigned firmly believes that the Government of the United States cannot do less than recognise in it, a Diplomatic Convention, as obligatory as the Treaty of Peace signed at Guada-

lupe." Now although the explanations contained in the Protocol present, in my opinion, the true exposition of the Treaty; yet if this were otherwise and they should contain any new stipulation, any change or modification whatever of any article in the Treaty, not in conformity with its letter and spirit, to this extent they are an absolute nullity.

Under forms of Government where the Sovereign or Chief Magistrate possesses exclusively the Treaty making power, he may by a Protocol or any other instrument agree with the other party to modify or change a Treaty in any manner he may think proper after it has received his ratification. But under such Governments as those of Mexico and the United States, where the approval of the Congress under the Constitution of the former and the advice and consent of the Senate under that of the latter are necessary to give validity to Treaties, no change can be made in any Treaty between such parties which has not previously received the constitutional sanction of these respective bodies. If this were not the case, diplomatic agents, on whom it would be impossible to confer any such legitimate authority, might, by means of a Protocol, usurp the powers of the American Senate and bind the Government of the United States in express violation of the Constitution. No case could be presented more striking than the present to illustrate the absurdity of such a pretension. Here is a Treaty which had been ratified by the President of the United States by and with the advice and consent of the Senate, and had been approved by the Mexican Congress; and yet the monstrous proposition is advanced, that the diplomatic agents of the two Governments, by an agreement in the form of a Protocol, possess the power to change, modify and annul the articles of this Treaty at pleasure. Had the Mexican Government attached any serious importance to the Protocol, their course was plain. The Congress of Mexico ought to have approved and the President ratified the Treaty with amendments. It would then have been returned to the President of the United States, who might, in his discretion, have submitted it to the Senate for their advice and consent, and if this had been given, he would again have ratified it in its amended form. But without any resort to these constitutional sources of power, it is now contended by Mr de la Rosa that this mere Protocol between the diplomatic agents of the two governments, which has never received the sanction of the Senate of the one or the Congress of the other,—which has never been and could not be published by either Government as a part of the Treaty, is "a Diplomatic Convention as obligatory as the Treaty of peace signed at Guadalupe".

It is impossible that the Mexican Government could have been ignorant of the provisions of the Constitution of the United States in regard to the Treaty making power. They had at different periods concluded Treaties with this Government. The very form of our ratification of the Treaty in question as well as of all these former Treaties, must have taught them that the President, without the advice and consent of the Senate, could enter into no valid Treaty stipulation whatever with a foreign Government. Much less were mere diplomatic agents, however exalted in rank, competent to exert this high power of binding the Government and people of the United States and declaring what should be the supreme law of the land. That the Mexican Government knew all this is demonstrated by my letter of the 18th March, 1848, to the Mexican Minister of Foreign Affairs. From this I extract the following quotation: "Your Excellency is doubtless aware that, under the Constitution of the United States, "the advice and consent of the Senate" is necessary to the validity of all Treaties, and that this must be given by a majority of two thirds of the Senators present. Every Treaty must receive the sanction of this august Executive Council, in the manner prescribed by the Constitution, before it can be binding on the United States."

And yet if rumor be correct, Mr de la Rosa, in the face of all this knowledge, will contend that the tenth article of the Treaty which he was informed in the letter just referred to had proved so obnoxious to the Government of the United States that the portion of it in regard to lands in Texas did not receive a single vote in the Senate, has been revived in this very particular by the paper called a Protocol, and is now to be held as sacred as if it had received every vote of the Senate. It is to be hoped that the Mexican Government will not adopt any such absurdity upon the suggestion of their Minister.

When the Senate of the United States deem it proper to make amendments to a Treaty, it often becomes an indispensable, though a delicate duty for the Secretary of State, under the direction of the President, to afford to the Government of the other party explanations of these amendments. In preparing the letter of explanation to the Mexican Minister for Foreign Affairs, I used the utmost caution and care and resorted to the best sources of information. I am not aware that any portion of this letter has ever been criticised, much less condemned. The President considers that the explanations in the Protocol are in conformity both with the Treaty and this letter. In communicating with the Minister for Foreign Affairs upon the subject, I trust, therefore, that you may be able to convince him that the Protocol contains a correct exposition of the Treaty, and that the Treaty thus explained secures to Mexico all her legitimate rights, in the same manner and to the same extent as though the Protocol had been made a part of the Treaty, under the authority of the Mexican Congress and the Senate of the United States.

It would be lamentable indeed should this question, which does not appear to be of the least practical importance, produce unkind feelings between the two Republics at a moment when the future relations between them promise to be of the most auspicious character.

It seems inherently improbable that such an instruction as that last quoted would have been written by Buchanan without the knowledge and approval of his successor; the instruction was dated two days before the end of the presidential term; it was well known that John M. Clayton would become Secretary of State under President Taylor, and Buchanan had been in touch with Clayton regarding the date when the latter would take office (Polk's Diary, IV, 354, February 27, 1849; March 4, 1849, was Sunday; Buchanan retired on March 7; Clayton was commissioned on that day and began his service on March 8); and there is a statement that Clayton "had thoroughly examined the official correspondence which had been held between Mr. Buchanan and the Mexican Minister, and that he was prepared to indorse every line and sentence which his predecessor, Mr. Buchanan, had heretofore addressed to the latter personage touching this grave and interesting affair" (Foote, Casket of Reminiscences, 336).

However this may be, the position taken by the Taylor administration regarding the protocol was not wholly in accord with that of the Polk administration.

There were two distinct though clearly related questions: first, Was the protocol binding and obligatory? and secondly, Did the explanations of the protocol correctly construe the treaty?

The Polk administration answered the second of those questions in the affirmative and accordingly considered the first question of minor and only theoretical importance (see the relevant papers hereinbefore quoted and also Polk's Diary, IV, 323-24, February 6, 1849); but it was also insisted that if the explanations of the protocol did in any way modify the treaty, they were to be deemed of no force.

Clayton answered both questions flatly in the negative; as to the first, nothing could well be more explicit than the statements of his note to the Mexican Minister at Washington dated April 11, 1849 (quoted in part above); and as to the second he was equally clear in the instruction to Clifford of July 29, 1849 (quoted below).

The diplomatic and other correspondence now to be mentioned followed the two instructions of Buchanan to Clifford of February 17

and March 2, 1849; the latter of these was the more important; neither was revoked by Clayton; on receipt of the former, Clifford reported thus (D.S., 13 Despatches, Mexico, No. 40, March 17, 1849):

In an interview with the Minister of Relations yesterday, when I was about to retire, he enquired if I had received any information in regard to the discussions in the U. States upon the subject of the Protocol. I repeated to him the substance of what is stated in M^r Buchanan's last despatch, that those discussions, for a brief period, made some impression upon the public mind, but that the publication of the President's message and the documents which accompanied it, had pretty effectually removed the misconceptions upon the subject. He replied to this that the Mexican Minister in Washington, Mr Rosa, had written him to the same effect, and that the matter had ceased to attract the attention of his Government.

When the more important instruction of March 2, 1849, was received (April 27), Clifford at once proceeded to carry out its directions; following a conversation with the Minister of Foreign Relations (Luis Gonzaga Cuevas), he addressed to the Minister on April 30 the following note, recounting the history of the protocol and giving his views (in harmony with those of the Polk administration) of the legal character and effect of that instrument (*ibid.*, No. 42, May 14, 1849, enclosure):

The Undersigned &c. &c. has the honor to inform His Excy. &c. &c. that he has just received a despatch from his Gov^t instructing him to invite the attention of His Excy. to a paper called the Protocol, which was signed at Querétaro on the 26th of May last by the Mexican Minister of Relations & the Commissioners of the U. States, and to explain & declare to the Mexican Gov^t the true character of the paper under the Constitution of the U. States. It is proper that His Excy. should also be informed that this step has become necessary in the opinion of the Gov^t of the U. States, in consequence of certain official notes addressed to the Secy. of State U.S. by the Mexican Minister resident in Washington. In compliance with this duty he begs leave, in the first place, to revert to the circumstances under which that paper was drawn up. The Commissioners of the U.S. arrived at Querétaro on the 25th of May 1848, and had the satisfaction of learning that, almost at the very moment of their arrival, the treaty had been ratified by the Senate of Mexico, and that nothing farther remained to be done than to exchange the ratifications. On the following day, their credentials were presented to the Pres^t of Mexico by the Undersigned, then one of the Comm^{rs}, M^r Sevier being unable to attend at the interview in consequence of indisposition. In one of their notes to the Minister of Relations from this metropolis, the Commissioners had mentioned to him that they were authorized to give explanations of the changes which had been made in the treaty by the Senate of the U. S., and these explanations M^r de la Rosa requested from them soon after their reception by the President. Accordingly, at a conference on the evg. of the same day, at the house of the Minister, these explanations were furnished by M^r Clifford verbally, M^r Sevier continuing too unwell to leave his room. Besides the Minister of Relations, there were present at the conference Don Luis G. Cuevas & Don Bernardo Couto, two of the Mexican Comm^{rs} who had signed the treaty at Guadalupe Hidalgo. The same three gentlemen called at the residence of the Commissioners on the succeeding day, & M^r Sevier then made the same explanations, in strict accordance with those previously given by M^r Buchanan in his letter to the Mexican Minister of Foreign Affairs. It was then suggested by the Minister that it would be highly useful in the then existing state of public feeling at Querétaro, to put the explanations on paper. To this no objection was perceived by the Commissioners, they having already declared, in the most explicit terms, and it being well known & understood by the Mexican Gov^t that

they were invested with no power to modify, change or alter, in the slightest degree, the treaty as amended by the Senate of the U.S. and that the memorandum of the conversations could no more have the effect to enlarge or restrict the amendments made by the Senate than the conversations themselves which it recorded. The explanations having been made by the Comm^{rs} in good faith & the sincerest conviction that they were in exact accordance with the provisions of the treaty as amended by the Senate, they did not hesitate to accede to the request, especially as they had perceived many reasons to justify it in the elements of discontent with which the Gov^t was surrounded, and believed it to be for the interest of both countries to strengthen its hands as far as possible against the impending revolution with which it was threatened. The explanations were accordingly reduced to writing in Spanish by Don Bernardo Couto, and a translation of his draft was made into English; and the document thus prepared was signed by the Minister of Relations & the Comm^{rs}, and immediately published in all the newspapers of Mexico. It could never have entered into the minds of the Comm^{rs} that the Minister was so slightly acquainted with the Constitution of the U.S. as to suppose that they could bind their Gov^t as to the stipulations of a treaty without the fullest sanction of the Senate, even if they had not expressly informed him that such was not the fact; and the Undersigned does not doubt that His Excy., Mr Cuevas, was fully impressed at the time with that conviction, that he still entertains it, and that he will not hesitate to act upon it with the frankness and good faith by which he is distinguished.

Such being the history of the document, such the circumstances & views under which it was signed, it is certainly a matter of surprise that His Excy. Mr de la Rosa, now Minister of Mexico to the U.S., should have deemed it his duty to assert in the most formal manner, that "this Protocol is a real diplomatic convention concluded between the Gov^t of Mexico & that of the U.S., and equally binding on both". This assertion is the more astonishing considering that Mr. de la Rosa had before him at the time the Protocol was drawn up, the letter of Mr Buchanan of the 18th of March 1848, to the Mexican Minister of F. Affairs, from which the Undersigned begs leave to make the following quotation: "Your Excy. is doubtless aware that, under the Constitution of the U.S., the advice & consent of the Senate is necessary to the validity of all treaties, and that this must be given by a majority of two thirds of the members present. Every treaty must receive the sanction of this august Executive Council in the manner prescribed by the Constitution before it can be binding on the U States." The assertion of Mr de la Rosa cannot for an instant be entertained; and the Undersigned, in carrying out his instructions, must be permitted to declare to His Excy. that, while the Gov^t of the U.S. considers the protocol a true exposition of the treaty & of the amendments made to it by the Senate, it, at the same time, regards it as of no force or efficacy whatever to enlarge or restrict any one of the provisions of the treaty. The treaty as amended must be construed by the appropriate tribunals of the U.S. entirely independent of the explanations of the Commissioners; and were it possible so to interpret them that they should contain any new stipulation, change or modification of any art. of the treaty not in conformity with its letter & spirit, to this extent they are an absolute nullity. Under forms of Gov^t where the Sovereign or Chief Magistrate possesses exclusively the treaty making power, he may, perhaps, by a Protocol or other instrument, agree with the other party to modify or change a treaty in any manner he may think proper, after it has received his ratification. But under such Gov^{ts} as those of Mexico & the U. States, where the approval of the Congress under the Constitution of the former, & the advice & consent of the Senate under that of the latter, are necessary to give validity to treaties, no change whatever can be made in any treaty between such parties which has not previously received the Constitutional sanction of the approving power. Such being the case, it follows as a necessary consequence, that the Protocol can never receive an interpretation either to enlarge or restrict the provisions of the treaty of Guadalupe Hidalgo as amended by the Senate of the U. States. It is matter of great satisfaction to the Undersigned in making this declaration in the name of his Gov^t, to know that in no event can any injustice result from it to Mexico, as both parties signed the explanations of the Comm^{rs} as a true exposition of the treaty as amended by the Senate of the U.S. But if it were otherwise, the Mexican Gov^t still would

have no ground of complaint. The amended treaty was approved by both branches of the Mexican Congress several days before these explanations were signed, and of course entirely independent of every thing which they contain. Had the Mexican Gov^t attached any serious importance to the Protocol, their course was plain. The Congress of Mexico ought to have approved & the Pres^t ought to have ratified the treaty with the explanations of the Comm^{rs} as amendments. It would then have been returned to the Pres^t U.S. who might in his discretion have submitted it to the Senate for their advice & consent, and if this had been given, he would again have ratified it in its amended form. Without any resort to these Constitutional sources of power, it is perfectly obvious that the protocol has no validity to enlarge or restrict any art. of the treaty, either under the Constitution of Mexico or that of the U. States. It is impossible that the Mexican Gov^t could have been ignorant of these well known truths. There was no want of information on the occasion in regard to the provision of the Constitution of the U.S. prescribing the manner of ratifying treaties. The Comm^{rs} referred to it and expounded it. The letter of M^r Buchanan before alluded to recites it in language clear as light. Mexico had at different periods concluded treaties with the Gov^t of the U.S., always under the same Constitution. The form of the ratification of the treaty in question, as well as of all the former treaties, must have taught her Gov^t. that the President U.S., without the advice & consent of the Senate, could enter into no valid treaty stipulation whatever with a foreign power. Surely, if it be admitted that the Pres^t could not exercise this high power of binding the people of the U.S. without the advice & consent of the Senate, it requires no argument to show that the Comm^{rs}, acting under his directions, were equally destitute of any such authority.

In conclusion, the Undersigned begs leave to reiterate his opinion that the explanations of the Comm^{rs} are a correct & truthful exposition of the treaty as amended by the Senate of the U. States. It is not known that any one has seriously attempted to prove the contrary, and it is believed that no such attempt, if made, will ever be successful. There being no difference of opinion on this point between the Gov^t of the U.S. & that of Mexico, it would be lamentable indeed should this question, which does not appear to possess the least practical importance, produce unkind feelings between the two Republics at a moment when their future relations promise to be of the most auspicious character.

There then occurred a change in the Ministry of Foreign Relations; upon the resignation of Cuevas (May 1), José María de Lacunza was named as his successor; with him Clifford conferred on May 11 and was informed that the answer to the note of Clifford of April 30 would follow the views expressed in the message of President Polk of the previous February 8 (cited and summarized above); but that answer was postponed, as Lacunza wished to have before him copies of the exchanges had at Washington; Clifford reported fully in his despatch of May 14, 1849, as follows (D.S., 13 Despatches, Mexico, No. 42; the two notes from Lacunza to Clifford therein referred to and enclosed are not here printed):

I have the honor to acknowledge the receipt of the despatch of M^r Buchanan, N^o 15 [of March 2, 1849], instructing me to make certain explanations to the Mexican Gov^t in regard to the paper called the Protocol, which was signed at Querétaro on the 26th of May 1848 by the Mexican Minister of Relations & the Commissioners of the U. States. The package containing it was postmarked at Vera Cruz on the 23^d ult^o and reached me in the regular course of the Mexican mail from that place. On the day of its receipt, the 27th ult^o, I called upon the Minister of Relations and had a pretty full conversation with him upon the subject to which it relates. This interview was deemed advisable in the first instance; before addressing him officially, lest by possibility his opinions had undergone some change in consequence of events that had occurred in the U. States, which it was known had been very fully communicated to him by the Mexican Minister resident in Washington. In the course of the conference I

made known to him that I had received the despatch, and explained to him without reserve the nature of the duty which it instructed me to perform. It was especially my object to impress upon his mind the true character of the paper under the Constitution of the U. States, which seems to be the main purpose of the instruction. In order to test his opinion fully, I presented the question in the various forms in which I afterwards treated it in my official note. To all this he replied that, it being admitted that the explanations of the Commissioners are a correct exposition of the treaty as amended by the Senate, the whole discussion was a mere war of words, utterly destitute of any practical importance either to Mexico or the U. States. It was not even suggested by him, nor has it ever been pretended by the Mexican Govt, so far as I know, that the Protocol is susceptible of a construction to enlarge or restrict any of the provisions of the treaty as amended by our Senate, much less that it has any validity to effect any such unconstitutional purpose, even supposing that its language and intent could be thus perverted. On the contrary, he received the explanations without the least manifestation of surprise, and promptly assured me that the subject involved no difficulty whatever. This was no more than I had a right to expect from Mr Cuevas, who was present when the paper was drawn up and doubtless well recollects that explanations similar in principle were made at the time by the Commissioners of the U. States. Considering his high character & intimate acquaintance with all the circumstances, I did not doubt for a moment when approaching him, that he would meet the question in a manner worthy of himself and of the high place which he then filled. It was then arranged between us that my note should be presented to him on the following Monday at one o'clock in the afternoon, and that his note in reply would be so framed as to supersede all necessity on my part to rejoin. This conference took place on the 27th ult^o, as before remarked. On the morning of the 30th I received a message from Mr Cuevas informing me that unexpected engagements rendered it inconvenient for him to see me at the hour which had been assigned for our meeting, and expressing a wish that it might be deferred to a future occasion. Knowing that serious dissensions had for some time existed in the Cabinet, and being desirous of fulfilling my instructions without farther delay, I sent the note, which was already prepared, to the office of Relations, and caused it to be placed in the hands of Mr Cuevas, requesting the Secy. of Legation who bore it to inform him that I would call at such time as suited his convenience. On the following day I learned with much regret that the Minister had tendered his resignation to the President; and in a few days after, that it had been duly accepted. . . . Being desirous of transmitting a copy of the reply which the change in the Ministry had devolved upon Mr Lacunza to make to my note addressed to Mr Cuevas, I called upon him on the afternoon of the 11th inst. and invited his attention to the subject. My views in regard to the character & effect of the Protocol being already before him in my note, I did not think it necessary to repeat them. The minister, without any hesitation, informed me that, in his opinion, the paper could not be regarded as an addition to the treaty as amended by our Senate, and that in framing his note he should follow the views which had been taken of the question by the late Pres^t of the U. States in his message of the 8th of Feby. last to the House of Representatives, assuring me, at the same time, that he considered those views correct, and that they were entirely satisfactory to the Mexican Govt. When I commenced writing I had every reason to expect that the reply from Mr Lacunza would be received in season to enable me to forward it with this despatch. In that, however, I am disappointed, as you will perceive from the explanatory note which was received on yesterday. Copies of my note to Mr Cuevas & the last named note of Mr Lacunza are herewith enclosed. Should the Minister make good the assurances given at the conference, and which in effect are pretty clearly shadowed forth in his explanatory note, it may be assumed that every apprehension that any difficulty will grow out of this question, is at an end. It being a political rather than a legal question, it is safe to conclude that the Courts of the U. States will follow the construction adopted by the political dept of the Govt. This rule has been uniformly adopted by the Supreme Court in the interpretation of treaties, even in cases where the American construction differed widely from that of the other high contracting party. Where both the contracting parties are agreed, it would be an absurdity, as it seems to me, to suppose that any

tribunal of our country, state or federal, would undertake to overrule their solemn determination. Should any of our courts adopt a theory so unsound & so directly at variance with the repeated decisions of the Supreme Court, it would be error cognizable by that court, where it could be immediately corrected. Such are my views of the question, which I submit for consideration to your better judgment. If M^r Lacunza has the moral courage to put on paper his own deliberate opinions, the discussion here will terminate with his response. How far he may feel embarrassed by the correspondence of M^r de la Rosa, it is impossible for me to foresee. The prevailing vice of public men in this country is the fear of responsibility. Whether the Minister will suffer himself to be influenced by this consideration or not, the future will show. Should he attempt to assail any of the positions assumed in my note, I hope to be able to fortify them & demonstrate their correctness. That truth & justice are on the side of the U. States I know, and I have yet to learn there is much to fear in a cause which has those powerful agents for its support.

Since writing the above, a second note from M^r Lacunza has come to hand, which I hasten to lay before you. It appears from this note that M^r de la Rosa has been instructed to close his correspondence & to forward all doct^r upon the subject to his Gov^t. In my opinion, this step augurs nothing unfavorable to the satisfactory termination of the discussion.

The despatch of Clifford of May 14, 1849, from which the foregoing is excerpted, was received at the Department of State on May 31; no response to it by way of simple acknowledgment or otherwise was made; Clifford proceeded, doubtless believing, as he had every right and reason to do, that his course was approved at Washington; on July 13 he reported what he then supposed to be the conclusion of the discussion; copies of two notes, also of July 13, were sent with the despatch; one of these was the note from Lacunza answering that of the previous April 30 and the other was Clifford's reply; the relevant paragraphs of the despatch and the text of the two notes (the first of these in translation) follow (D.S., 13 Despatches, Mexico, No. 44, and enclosures):

[*Mr. Clifford to Mr. Clayton*]

I have the honor to inform you that the discussion here respecting the character and effect of the Protocol, is concluded, and herewith I enclose copies of the correspondence. The question has never attracted much attention in this country, nor has the settlement of it been attended with much difficulty. About the time the news reached this city of the debate which took place in the House of Representatives in February last, I received the message of the late President upon the subject and caused it to be published. It was generally pronounced satisfactory, and nothing has occurred since to change the impression which that document produced. The steadiness with which M^r Lacunza & his associates in the Cabinet have adhered to the purpose of settling the question in a satisfactory manner, during the unavoidable delay which has taken place since my first note was written, is worthy of all praise, and shows very clearly, I think, the deep and solemn conviction of Pres^t Herrera & his Counsellors of the correctness of the positions which that note affirms. Notwithstanding the influence which has been brought to bear upon their minds to induce them to change that determination, it is due to them to say that they have never wavered and only asked for the delay in order to treat M^r Rosa with a proper respect and to avoid the appearance of a premature decision upon a partial view of the facts. Fortunately for the cause of truth & justice, the Mexican Minister in Washington is not the only person among his countrymen who knows the circumstances under which that paper was drawn up. Some of the most distinguished and upright men of Mexico were present on the occasion, and many who were not present have a full knowledge of the motives which led the Commissioners to consent to reduce their explana-

tions to writing. All who have any knowledge on the subject, know that the views put forth by Mr Rosa are incorrect, and are ready to sustain the President & his Cabinet in overruling them. It is useless, however, to indulge in any reflections upon the subject, now that it is concluded. It is enough that truth stands vindicated and the epitaph of the question is written.

[Mr. Lacunza to Mr. Clifford]

[Translation]

The undersigned, etc., etc., has the honor to acknowledge to Mr. Clifford, etc., receipt of the note which His Excellency did him the honor of addressing to him under date of April 30 last, in which, by order of the Washington Government, he expresses the opinion of the said Government concerning the value and binding force which the contents of the conferences held at Querétaro between Their Excellencies Mr. Clifford and the late Mr. Sevier and the Minister of Foreign Relations at that time of the Mexican Republic, His Excellency Mr. Rosa, might have.

The undersigned believes it unnecessary for him to enter into a discussion regarding the force of the said document, whether as a new treaty, or as an addition to the Treaty of Guadalupe, or as an amendment or alteration of the latter. The Government of the undersigned does not consider it necessary to maintain those conferences under such character, and, in accordance with the principles of constitutional law which have been laid down at length on the part of the United States of the North, principles which are similar in the Constitutions of the two countries, has no hesitation in agreeing that if it had been necessary to consider those explanations under such aspect, doubtless it would not yet have been completed.

But, although they ought not to be considered as additions to or modifications of the treaty, the undersigned believes that they ought to be considered, and the Mexican Government does consider them and is pleased to see that His Excellency the Minister of the United States also considers them, in the note to which I have the honor of replying, *as a correct and true explanation of the treaty*. As such, their original and essential merit, the merit of every good explanation, as it consisted and consists in not altering or modifying in any way the treaty itself, such as it was approved by the legislative bodies which the Constitution of both countries required. The clauses of which a protocol was drawn up formed, therefore, a clearer version of certain articles.

This view, which the former President held, was confirmed in the note to which this is a reply, and the Honorable Mr. Clayton, in his turn, confirms it when, in his note to His Excellency Mr. Rosa in which he impugns so vigorously and at such length the force of this protocol as a diplomatic convention different from the treaty, he affirms that the differences had not been set forth between the true sense of the latter and that of the protocol in question.

With regard to the force which, as such explanation, those clauses may have, the Mexican Government does not give them the force which they would have if they had been subjected to the formalities necessary for a treaty, as I have already had the honor of saying, nor the force which a series of judicial decisions pronounced in this sense would give them; but my Government does give them the force derived from the affirmation of the eminent persons who made them, persons fully qualified to know the truth and who had been officially commissioned to state it: one fact is certain regarding these clauses, namely, that the Governments of the United States and of Mexico, in signing and ratifying the treaty, understood that the sense thereof was the same as that of those clauses. To suppose that the idea of the Government of the United States was different would be to insult it, because it would be to suppose that it believed the contrary of what it then stated to Mexico, what the President of your Republic subsequently stated before its Chambers, and what Your Excellency is even now stating to this Government. As to the Mexican Government, it has ratified the treaty, giving it the sense which is on record in those explanations and which do not change but only clarify the sense of the clauses thereof.

Hence there does not appear to be any well-defined point that is causing the discussion concerning this matter and is prolonging this correspondence, especially as in this case, as His Excellency Mr. Clifford assures us, there is nothing to dispute. The Mexican Government therefore believes that it should consider these discussions closed, in view of the certainty that both Governments are persuaded that the clauses of the protocol, without at all changing the treaty, constitute its true and correct explanation. If, therefore, Mr. Clifford should find himself, as the undersigned hopes, in agreement regarding the propriety of putting an end to this matter under the terms indicated, it will give real pleasure to the undersigned.

[*Mr. Clifford to Mr. Lacunza*]

The Undersigned &c. &c. acknowledges the receipt of the note of His Excy. &c. in reply to the one which he had the honor to address to His Excy's predecessor on the 30th of last April, in regard to the Protocol. It gives him great gratification to state that the note is, in all respects, satisfactory, and will have the effect to settle the question in a manner equally honorable to both countries. In order, however, to guard against the possibility of any misconception of the correspondence, he begs leave to recapitulate some of the most important positions in regard to which there is an entire coincidence of opinion and a perfect agreement on both sides.

1. That the Protocol is not an addition to the Treaty and cannot so be considered either under the Constitution of Mexico or that of the U. States.

2. That it possesses no validity whatever to change or modify the treaty or any one of its provisions.

3. That the Protocol is regarded as a correct interpretation of the treaty, although it can never receive a construction to enlarge or restrict the treaty or any one of its provisions.

These principles being perfectly understood and agreed upon, the Undersigned will close the discussion on his part, and assures His Excy. that he considers the matter concluded.

On July 29, the day that Clifford's report of July 13 was received at the Department of State, his note of that date was in part disapproved and disavowed, and Clifford was recalled by this instruction (D.S., 16 Instructions, Mexico, 138-39):

Your despatches Numbers 44 and 45 have this day been received. It has been seen with regret from your note to the Mexican Minister for Foreign Affairs of the 13th instant on the subject of the Protocol, that you have asserted and admitted that that instrument presents a correct interpretation of the Treaty of Guadalupe Hidalgo. This the President does not and can never acknowledge, and it is deemed advisable to lose no time in apprizing you thereof. His wish and determination is to deal with the Mexican Government in a spirit of perfect fairness and candor. He conceives that it would not comport with this if he were to allow that Government to remain undeceived upon this point. He accordingly directs that as soon as may be practicable after you shall have received this despatch, you will address a note to the Minister for Foreign Affairs, in which you will state that while the President entirely concurs in the doctrines set forth in the paragraphs numbered 1 and 2, in your note above referred to, he wholly dissents from that part of the paragraph numbered 3 in the same note which states 'That the Protocol is regarded as a correct interpretation of the Treaty'.

Considering also the importance of this matter and apprehending that if you were to remain accredited in your present character to the Mexican Government, that Government might have reason to distrust the decided nature of the President's objections to the principle admitted in the paragraph adverted to, he has deemed it advisable to recall you. A sealed letter to the President of the Mexican Republic announcing this event, is accordingly herewith transmitted, and also an open copy of the same, which last you will communicate to the Minister for

Foreign Affairs with a note requesting him to appoint a day for you to present the original to the President. On taking leave of that functionary, you will address to him a few oral remarks expressive of the President's desire to maintain unimpaired the existing pacific and friendly relations between the two countries. Prior to leaving the City of Mexico, you will present M^r. Walsh to the Minister of Relations as Chargé d'Affaires *ad interim*, and will commit to his custody the archives of the Legation.

That instruction of July 29, 1849, resulted in two more diplomatic notes, of September 3 from Clifford to Lacunza and of September 4 from the latter to the former; these appear to be the latest exchanges on the subject between the two Governments; the texts thereof follow, the latter in translation (D.S., 13 Despatches, Mexico, No. 47, September 6, 1849, enclosures):

[*Mr. Clifford to Mr. Lacunza*]

The U. &c. has the honor to inform His Excy. &c. that he has received a despatch from the city of Washington communicating the information that a certain part of the third proposition in his note of the 13th July last has been disapproved by his Govt, & that the President does not & never can acknowledge its correctness, & instructing him to address this note to His Excy. & say that "while the President entirely concurs in the doctrines set forth in the paragraphs numbered 1 & 2, he wholly dissents from that part of the paragraph N^o 3 in the same note which states that the Protocol is regarded as a correct interpretation of the treaty." It is also the duty of the U. to inform His Excy. that the President apprehending that were the U. to remain accredited in his present character, the Mexican Govt might have reason to distrust the decided nature of the President's objection to the principle admitted in the paragraph adverted to, has deemed it advisable to recal him. Enclosed is an official copy of a sealed letter to the Pres^t of the Mexican Republic announcing that event. It only remains for the U. to request His Excy. to appoint a day when he may present letter to the President & take his leave of the Mexican Govt.

[*Mr. Lacunza to Mr. Clifford*]

[Translation]

The undersigned, etc., etc., has the honor to acknowledge receipt of the note of the 3d instant from His Excellency Mr. Clifford. In replying to the advice that the Government of the United States of the North has disapproved a single clause in the third paragraph of His Excellency's note of July 13 last concerning the protocol, the undersigned can do no less than express his regret at the prospect of a renewal of this discussion, as well as his surprise at the point chosen by the President of the United States for his disapproval.

The question in its present form is all the more embarrassing because the undersigned finds it difficult to divine what the intention of the Washington Government may be that can be in conformity with the propriety which he does not doubt it will observe. As soon as this point shall have been clarified, the Government of Mexico will be ready to discuss the question with good faith and in a spirit of friendship and with the most ardent desire to terminate it, if it is not already terminated, satisfactorily and honorably for both countries.

After the statement was made that the protocol was held in view as a true and correct interpretation of the treaty when the latter was signed by both Governments, after President Polk has maintained that he had considered and still considered the protocol as such true explanation, and, finally, in view of its real and intrinsic meaning, which is entirely in conformity with the stipulations of the treaty and so much so that even if it had been included in the original text it would not have made any change in the articles thereof, it is not easy to understand what the intention of the Washington Cabinet may be in objecting

to the clause in question, as we cannot attribute to it the purpose of implying that the statements made hitherto by the said Cabinet were not in accord with the truth.

Holding the view that the treaty is not changed by the protocol, that the latter does not add thereto or detract therefrom, Mexico continues to believe that it is a true interpretation of the treaty and that the courts, even though not bound by a real law or authentic interpretation, nevertheless, acting according to reason and all the rules of interpretation acknowledged by philosophy and international law, in interpreting the treaty rightly cannot interpret it otherwise than in conformity with the protocol.

It was in this sense and with this understanding that the question was considered and settled in the previous correspondence, and the undersigned still hopes that the Washington Cabinet will be satisfied with this explanation and that the discussion will not be reopened. The words chosen by the President for his disapproval do not by themselves form a complete thought and must be considered together with those which precede and follow them. The undersigned, therefore, repeats that he cherishes the hope that, the matter being considered thus and being without any practical importance, it will still be settled in this sense, and he has the honor to renew, etc., etc.

The final comment of Clifford is in his despatch last cited, of September 6, 1849, wherefrom these passages are excerpted:

A few words of explanation in regard to the Protocol question & I have done. It is scarcely possible that any difficulty can arise in regard to it, considering the anxiety of the Mexican Govt to arrange it & its readiness to acquiesce in almost any mode of adjustment that will be satisfactory to the Govt of the U. States. Waiving all discussion at this time of the correspondence that has been communicated & my position in regard to it, I beg leave to repeat what in substance may be found in one of my previous despatches, that the question has never attracted much attention in this country, nor is it now regarded as one possessing much importance. It being conceded that the Protocol is not an addition to the treaty, that it possesses no validity whatever to change or modify any one of the stipulations between the two countries, & that the Courts of the U. States are not bound by the explanations which it contains beyond their intrinsic truth, it does not seem to me there is much left for dispute. Should it ever become necessary to discuss the treaty & ascertain its true meaning on the three points embraced in the Protocol, it will be found there is no substantial difference of opinion whatever between the Govt of Mexico as at present organized, & that of the U. States. All will agree, I suppose, that the treaty in stipulating for the protection & maintenance of property, gives full confirmation to complete legal titles to lands. In giving this protection to property the treaty does no more than affirm a principle often recognized by the Supreme Court, that the U. States, as a just nation, would support such titles although there was no treaty stipulation to that effect. The protocol, in the sense in which the present Govt of Mexico understands it, does no more on this point than confirm complete legal titles, and it is all that is claimed by Mr Lacunza when he asserts that the protocol is a correct interpretation of the treaty. It has never been pretended by Mexico, nor does her Govt now claim that the Protocol gives any confirmation whatever to incomplete titles. If the impression is entertained that Mexico seeks to enlarge the treaty through the protocol so as to give any validity to impresario grants¹ in Texas or elsewhere, it is my duty to assure you it is a mistake. No such pretension has ever been set up by this Govt, and I am assured that it never will be. On one occasion I put the question distinctly to Mr Lacunza—does the Mexican Govt contend that the Protocol gives any confirmation to incomplete titles? To this he answered with much emphasis—"No, Sir".—The treaty provides that Mexicans who remain in the territories ceded shall be "seured in the free exercise of their religion without restriction." Mexico

¹ I. e., grants to *empresarios* or contractors; see *United States v. Ritchie*, 17 Howard, 525, at p. 539.

contends for nothing more, nor has it ever been pretended by any one of her Cabinet officers that the Protocol is more comprehensive on this point than the provision of the treaty already cited. Should our Gov^t think it necessary to require a more specific disclaimer on these two points, no doubt is entertained that it may be had without the least difficulty or hesitation. The other point being one of no difficulty, I forbear to submit any remarks in regard to it.

As between the two Governments, the protocol seems to have had no later history and to have occasioned no further discussion; but Clayton put on record in detail his views of the protocol in the first instruction written to Robert P. Letcher, the successor of Clifford as Minister to Mexico; no directions were therein given for the taking of any steps in the matter; from that long instruction of September 18, 1849, these paragraphs regarding the protocol are excerpted (D.S., 16 Instructions, Mexico, 140-66):

You will find on the files of the Legation a copy of the correspondence between M^r de la Rosa, the Mexican Minister here, and M^r Buchanan, relative to the Protocol signed at Queretaro on the 30th of May, 1848, by the Commissioners of the United States and the Minister for Foreign Affairs of the Mexican Republic. M^r Buchanan, however, not having thought proper to reply to the note of M^r de la Rosa of the 24th of February, that duty devolved upon me, and was performed in my note of the 11th of April, last, a transcript of which you will herewith receive. You will notice that I did not undertake to point out the discrepancies between the Protocol and the Treaty as amended by the Senate, because, as M^r de la Rosa himself had not done this, I did not deem it to be called for by the occasion. Your predecessor, however, having entered into a correspondence upon the subject of the Protocol with the Mexican Minister for Foreign Affairs, resulting in conclusions, one of which, that the Protocol is a correct construction of the Treaty, can never be assented to by the President, it is proper that you should be apprized of the grounds for this decision. I will, however, remark in the outset that, I do not presume to offer them as the reasons which actuated or influenced the Senate in adopting their amendments to the Treaty, or with any wish or expectation that they are to bias the judgments of the Courts in any cases under the Treaty which may be carried before them. They are to be considered as the views of the President only, and by them the proceedings of officers subject to his control touching the points involved, will be governed.

The first Amendment of the Senate respecting which the Protocol treats, is that relative to the Ninth Article of the Treaty.

The first paragraph of that Article is itself an amplification of the 3^d Article of the Louisiana Treaty, and was evidently framed with an eye upon that Article. It however embraces several important stipulations not embraced therein, which if they had been ratified, might have prevented not only this government but the States to be formed out of the ceded territories, from repealing Mexican laws in force at the time of the cession, no matter how repugnant those laws might be to the views of those of the inhabitants who must soon become a large majority of the population. It is not improbable for instance, that those of the Mexican inhabitants who were interested in the system of peonage known to have prevailed in some if not all parts of the ceded territories, would have contended that the perpetuity of that system was intended to be guaranteed by the paragraph in question. It is not to be wondered at that the Senate should have deemed it impolitic to sanction an article which might by any possibility admit of such a construction.

If, however, the first paragraph of the ninth article was thus objectionable, what must have been the sentiment respecting the two others?

The first article of the amendments to the Constitution of the United States declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof!

The Constitution also declares that all treaties made under the authority of the United States shall be the supreme law of the land.

As it is notorious that in the ceded territories the Roman Catholic was the only religion the public exercise of which was tolerated by law, the paragraphs in question could have referred to that religion only. The inevitable consequence of sanctioning them, therefore, might not only have been a recognition of the privileges and immunities of that sect, but might have been considered tantamount to the enactment of a law respecting an establishment of religion in conflict with the spirit of the constitution. A step like this would justly have alarmed the friends of constitutional restriction upon legislative power and would have excited unappeasable jealousy and dissatisfaction among the members of other religious denominations throughout the United States, as well as in New Mexico and California. It is not surprising that the Senate deemed itself bound to avert the possibility of consequences like these. The ninth article was accordingly stricken out and another based mainly upon the 3d of the Louisiana Treaty substituted in its stead. While the latter is in perfect harmony with the constitution, it places the inhabitants of the ceded territories on the same footing in respect to their liberty, property and religion, officially recognizes no ecclesiastical authorities of any kind, and does not expressly guaranty any exclusive privileges which the Roman Catholics may have enjoyed in the ceded territories whilst they were under the dominion of Mexico. Its stipulations are comprehensive and just towards all sects. That this Article embraces all the stipulations contained in the original 9th Article is not true. It is certain that the Senate deemed it impolitic to pledge the faith of the nation to the specifications of that article. If, therefore, the substituted article shall hereafter be held not to embrace all or any one of those specifications, the Mexican government will have no reason to complain of perfidy on our part.

The next subject of the Protocol relates to the suppression of the Xth Article of the original Treaty.

The object and effect of this article was to revive those lavish grants of land by the Mexican government, not only in the State of Texas, but in the territories which had not been by law incorporated into the United States at the date of the Treaty. It is notorious that these grants, though embracing vast tracts of territory and imposing nominal burthens only on the grantees, were forfeited by them from failure to comply with their conditions. By the very terms upon which the State of Texas had been admitted into the Union, the article was entirely nugatory so far as it related to lands within her limits. To have consented to it, would have been a breach of faith on the part of this government towards her, which must have provoked her just resentment and might have led to resistance on her part to its execution, which there would not have been moral means at the command of this government successfully to oppose. I fully concur in the sentiment expressed by M^r Buchanan in his letter to the Mexican Minister for Foreign Affairs of the 18th of March 1848, that it is difficult to conjecture how an article of this character could have obtained a place in the Treaty. Seeing, then, that the stipulation with reference to Texas was from the beginning void from the incompetency of the United States, one of the contracting parties, to enter into it, what was its effect in regard to the other ceded territories not comprised within the limits of Texas? It is believed that the Mexican government was not less prodigal in donations of its domains in New Mexico and California than it had been in disposing of Texas lands, and that the terms of the grants had not been more faithfully complied with. There was also more than reason to suspect that enormous alienations of territory lying there had been made shortly prior to the breaking out of the war, in contemplation of it, and in anticipation of that result, which has proved the sagacity which the grantees imagined they evinced. Could it however reasonably be expected that this government, in addition to the treasure and blood expended in prosecuting the war, would engage to pay fifteen millions of dollars for lands the title to the most valuable part of which had been extinguished in this manner? The Senate, in my opinion most wisely, negated this question also.

But what is the language of the Protocol upon the subject. "The American Government by suppressing the Xth Article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess and the grantees may cause the legitimate titles to be acknowledged before the American Tribunals.

Conformably to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1846, and in Texas up to the 2^o March 1836”.

It may be true that by expunging the 10th article this Government did not intend to annul the grants of land in the ceded territories; but they certainly did not thereby mean to confirm them. Nor did they purpose declaring a judicial opinion on the subject. They were actuated by motives of policy only. That policy had been marked out for them by the law providing for the admission of Texas, and they were bound by every consideration of duty and expediency not to depart from it. They acknowledged the force of the obligation, and obeyed its behests. The same considerations of policy governed them with respect to the other grants. The signers of the Protocol, however, did not scruple to go further than even the President and Senate of the United States had deemed themselves warranted in going. That instrument not only presumes to expound the motives by which the President and Senate were actuated, but also undertakes to express a legal opinion upon the validity, under the amended Treaty, of the Mexican grants in the ceded territories. The President and Senate deemed it incompatible with the public interest to pledge the faith of the nation to allow the grantees to comply with those conditions which they had not fulfilled in consequence of their inability or neglect, or the performance of which had been interrupted by war. The effect of the Protocol might be to overrule this policy and to infuse new life into certain classes, at least, of the grants. To say that an instrument leading to consequences like these, afforded a faithful interpretation of the amended Treaty, is obviously erroneous.

The Protocol is as far from being a correct construction of the twelfth as of any other article of the Treaty to which it refers. This article as it originally stood, provided for two modes of paying the twelve millions due to Mexico after the three millions payable at the exchange of the ratifications of the treaty, should have been paid. By the first method, the United States were to issue and transfer to the Mexican Government a six per cent stock for the whole amount, redeemable at the pleasure of this government at any time within two years. This would have enabled the Mexican administration for the time being to have commanded the whole money at once, perhaps at a considerable premium, which would have afforded it a temptation to disregard stipulations of the treaty to be executed by them and means for resisting an enforcement of those stipulations on our part. The Senate therefore deemed it inexpedient to sanction this method of payment and chose the second for which this article provides. By this, the twelve millions were to be paid at Mexico in Mexican coin in four annual instalments of three millions each with interest from the date of the exchange of the ratifications of the Treaty. The Article concludes with the following sentence, “Certificates, in proper form, for the said instalments respectively, in such sums as shall be desired by the Mexican government, and transferable by it, shall be delivered to the said government by that of the United States.”

Now it is obvious that if this sentence had been retained, the certificates for which it provides, would have been tantamount to a United States six per cent stock for twelve millions of dollars, redeemable, not at the pleasure of this government after the lapse of two years, but three millions a year for four years. The objections to the first mode of payment consequently applied with almost equal force to the second, mode if the concluding sentence were retained. This must have been the cause of its being expunged. According to the article as it now stands, the instalments, with the accruing interest, are to be paid to the Mexican government, in Mexican coin at the City of Mexico. If the administration of President Herrera should be overthrown by one of those revolutions to which Mexico has heretofore been so liable, the government de facto at the date when any one of the instalments falls due, will now have a right to expect payment thereof. If the certificates had been issued, payment must have been made to the holders of them, and it is not at all probable that any of them would have remained in the hands of any administration in that country which had any cause to apprehend that it would be expelled from power by force. Certainly, therefore, the Protocol declared the reverse of the fact when it stated that this

government 'did not intend to deprive the Mexican Republic of the free and unrestrained faculty of ceding, conveying or transferring at any time (as it may judge best) the sum of twelve millions of dollars'.

It is to be observed that M^r Buchanan in his letter to the Mexican Minister for Foreign Affairs of the 18th of March, 1848, does not expressly refer to this suppressed sentence of the twelfth Article. He merely quotes that part of the article which was adopted by the Senate. It is not surprising, therefore, that the Mexican Government should have expected from the Commissioners some conjectures at least as to the reasons for expunging that sentence. It is to be regretted that those offered by them were not more conformable to the facts. This regret is deepened when it is considered that the Commissioners had in their possession a power to negotiate a new Convention stipulating to change the mode of paying the twelve millions conformably to the wishes of the Mexican government as expressed in the omitted sentence. Under these circumstances, the President cannot concur in the opinion of my predecessor advanced in his note to M^r de la Rosa of the 15th of February, last, that, under the Treaty as it now stands, that government may, like any other creditor, assign, in anticipation of the period for its payment the debt due it by the United States.

The Senate deemed it impolitic to allow the debt to be assignable. They must have meant that it should be placed upon the same footing as a debt due from one individual to another upon a note of hand not negotiable or assignable. Among other causes, it is not unlikely they may have been influenced by an apprehension that citizens of the United States were creditors of the Mexican Government on accounts originating prior to the Treaty of Guadalupe but not intended to be adjusted by the Board of Commissioners under that Treaty, and that causes of complaint from other citizens against Mexican authorities might arise before the payments were completed. Even thus early after the exchange of the ratifications of the Treaty, the wisdom of this forecast has been shown, as will appear in the sequel. That Government must not suppose that the Government of the United States will fail to require that any just claims of this character will be allowed as an offset from the debt which it owes to Mexico. If that debt had been assignable, there is every reason to apprehend that it would not have been transferred to citizens of the United States who might have been creditors of Mexico.

The paper in question would with more propriety have been called a 'Protocol' if it had been an embodiment of the substance of conferences in contemplation of a new Treaty.

I am not aware of an instance in diplomatic history in which this name has been applied to the record of conferences immediately preceding the exchange of ratifications of a Treaty already concluded. It may be that in assigning this name to the paper, the Mexican Minister for Foreign Affairs intended to convey the idea that the execution of the instrument on the part of the Commissioners was expected by his Government as a condition precedent to their ratification of the amended Treaty. It must be confessed that the concluding paragraph of the Protocol strengthens this view. It is possible, also, that his government may not have been unmindful of a similar proceeding in its diplomatic transactions with the government of the United States. It is well known that the Mexican government having failed seasonably to ratify its Treaty of limits with the United States of the 12th of January, 1828, an additional article became necessary for the purpose of extending the time within which the ratifications were to be exchanged. This was accordingly concluded on the 5th of April 1831, and the ratifications of it and of the treaty itself were exchanged on the 5th of April 1832 [see Document 60 and the notes thereto]. The treaty, however, stipulated that the Commissioners and Surveyors of the parties should meet at Natchitoches within one year from the exchange of the ratifications, for the purpose of entering upon their duties in running and marking the line. The United States appointed those officers on their part and they would have been ready to meet the Mexican Commissioners and Surveyor at the time and place prescribed by the Convention. The Mexican Government, however, made no appointment of a Commissioner and Surveyor. The demarcation of the boundary was thus again delayed and a new Convention became necessary for the purpose of extending the time within which the Commissioners and Surveyors were to

meet. M^r Butler, the Chargé d'Affaires of the United States at Mexico, was accordingly empowered and instructed to conclude such a Convention. He signed one on the 3^d of April 1835 [Document 79] and brought it himself to Washington in June succeeding. It does not appear, however, to have been examined until the autumn of that year when he was on his way back to his post. M^r Forsyth, the Secretary of State, then called the attention of M^r Castillo, the Mexican Chargé d'Affaires here to the fact, that the Convention instead of stipulating for the *meeting* of the Commissioners and Surveyors as both Governments had intended, merely stipulated for their *appointment*. So far as this government, at least, was concerned, a stipulation of this character was not only variant from the instructions which were given to M^r Butler, but was entirely unnecessary, because, as has been remarked, the Commissioners and Surveyor on the part of the United States had already been appointed. M^r Castillo of course informed his government of the error, which seems to have occasioned it alarm, for M^r Gorostiza was at once despatched to the United States as Envoy Extraordinary for the purpose of concluding at Washington a Convention in the proper form. Meanwhile, however, the one concluded by M^r Butler had been submitted by the President to the Senate, and as the attention of that Body was not specially invited to its insufficiency, they advised its ratification without amendment. M^r Gorostiza, soon after his arrival, made an overture for a new Convention, which was declined. When the one which had been approved by the Senate was presented to the President, he ratified it and the ratifications were exchanged in this City on the 20th of April, 1836.

On the same day, however, but before the exchange was effected, a paper was drawn up and signed by M^r Forsyth and M^r Gorostiza on the part of their respective governments, stating, in substance, that the Convention the ratifications of which were to be exchanged was not clearly expressed, but that the intention of the governments of both countries was that it should have stipulated that their Commissioners and Surveyors were to meet within the time and at the place prescribed by the original Convention. This instrument was not only never submitted to the Senate, but so far as I am aware that Body was not privy to its execution, nor was it known to them or to any persons other than Executive officers of the two nations, until it was published several years afterwards by this government. And even then, having been communicated to Congress with a mass of other papers upon our relations with Mexico, it escaped the attention and animadversion of that body and the public which its illegal character deserved.

With the statements in the two paragraphs last quoted should be read the notes to Document 79.

There is, of course, no reference to the protocol of May 26, 1848, in the United States instrument of ratification, of earlier date (March 16, 1848); the protocol is not mentioned in the Mexican ratification, in the act of exchange of ratifications, or in the proclamation; it is not included in the separate official prints of the treaty published at the time or subsequently; it is not with the text in 9 Statutes at Large, 922-43; in various later treaty collections the English version of the protocol is printed (e.g., 18 *ibid.*, pt. 2, 492-503; Haswell, 681-94; Malloy, I, 1107-21). In Mexican treaty collections, the Spanish version of the protocol appears (e.g., *Dublán y Lozano, Legislacion mexicana*, V, 379-80; *Tratados y convenciones concluidos y ratificados por la Republica Mexicana*, 210-11); the latter volume contains the English version as well (*ibid.*, 227-28).

The signing of the protocol by the American Commissioners, Sevier and Clifford, was ill advised; that instrument was at least partly, if not wholly, beyond the scope of their authority; moreover, the act seems to have been quite unnecessary; there is no reason to

suppose that the exchange of ratifications would not have taken place in due course without it; Sevier and Clifford had reported that the amendments proposed to the treaty had been published at Mexico City early in April but had roused no opposition and had attracted little attention;¹ and before the first of the conferences resulting in the protocol had taken place, both Houses of the Mexican Congress had approved the treaty with the amendments.

The protocol was not in any legal sense part of the Treaty of Guadalupe Hidalgo or obligatory as an international act; on this point the two Governments were in accord in the latest of the official exchanges on the subject (July 13 and September 3 and 4, 1849; quoted above). That the protocol did correctly interpret the treaty was maintained on the one part and denied on the other; the arguments for the latter view are very forcibly and convincingly stated in the instruction of Secretary of State Clayton of September 18, 1849 (quoted in part above). Articles 9 and 12 of the treaty were long since fully executed, without occasion having arisen for consideration of the statements of the protocol as to their meaning and effect; and insofar as it dealt with the deleted Article 10, the protocol, strictly speaking, did not, and did not purport to, interpret or construe a treaty text, for none existed for interpretation or construction; all that the protocol did in its item "Second" (particularly in the second paragraph thereof) was to record the opinion of the two American lawyers who signed it on the law of their country regarding titles to land in Texas and in California and New Mexico. One fundamental error of that opinion was its reference to Texas, an independent Republic since 1836, recognized as such by the United States in 1837, and one of the States of the American Union since 1845, as territory ceded to the United States by the Treaty of Guadalupe Hidalgo; and with that opinion of Sevier and Clifford there may profitably be compared the statements of the Supreme Court of the United States in relevant cases; among these are *McKinney v. Saviego*, 18 Howard, 235 (December term, 1855), wherein it was held, without mention of the protocol of May 26, 1848, that in Article 8 of the Treaty of Guadalupe Hidalgo the contracting parties "did not refer to any portion of the acknowledged limits of Texas"; *United States v. Yorba*, 1 Wallace, 412 (December term, 1863; Mr. Justice Nathan Clifford was then a member of the Court), sustaining a Mexican land grant in California dated June 15, 1846, without mention of the protocol in the opinion, although it is referred to in the argument for the United States; *Basse v. Brownsville*, 154 U.S., 610 (January 11, 1875), following *McKinney v. Saviego*, *supra*; *Botiller v. Dominguez*, 130 U.S., 238 (April 1, 1889), upholding the act of March 3, 1851,

¹ In the report of the Mexican Commissioners dated March 1, 1848, Articles 9 and 10 had not been treated as among those of special concern to Mexico; it was pointed out that Article 9 did not affect Mexican citizens; and it was said that no Mexican interest was involved in the land grants in Texas and that those made in California and New Mexico were of trifling importance (see *Exposición*, 243-44); that paper was printed in *El monitor republicano*, of Mexico City, on May 21, 1848.

"to ascertain and settle the private Land Claims in the State of California" (9 Statutes at Large, 631-34), but not referring to the protocol; *Barker v. Harvey*, 181 U.S., 481 (May 13, 1901), again upholding the act of March 3, 1851, and quoting the second item of the protocol.

ARTICLE 2

The instructions to Trist and the project of a treaty furnished to him contemplated a suspension of hostilities after signature of a treaty of peace but not until the ratification thereof by the Government of Mexico; throughout the negotiations of the winter of 1847-48, Trist was, in general and to the extent that he deemed fit, following these instructions, although he was acting without authority, as all concerned knew.

Hostilities had in fact ceased; and for them to be resumed would have been fatal to the whole plan of signing a treaty for later acceptance at Washington; with that plan General Scott was in entire sympathy; but reinforcements were being sent to him, and his orders were not consistent with the plan of Trist to make peace; while a tacit suspension of movements of troops might continue for a time, some armistice agreement was an essential accompaniment of a signed treaty.

Moreover, to delay such an armistice until ratification by the Mexican Government of the signed treaty was not practicable; the situation made the armistice a condition precedent to ratification; the Congress of Mexico was not in session; certain elections were necessary; and this required the existence of civil government, at least to the extent possible in view of the military occupation. Trist wrote at some length on the subject in his despatch No. 26, of January 12, 1848 (printed in serial 509, pp. 278-80); the relevant passages of that despatch have been previously quoted.

The agreement of Article 2 of the treaty for a convention for "a provisional suspension of hostilities" to follow immediately the signature, was one which could be carried out, on the part of the United States, only by independent action of the general commanding; authority from Washington for such a step was wholly lacking; Trist laid the matter before Scott in a letter of January 28, 1848 (Trist Papers, 29 : 61244-46); in that letter Trist defended his own course and argued that the alternatives were the treaty on the one hand and the fall of the Mexican Government on the other; he pointed out that an armistice was essential and that the second article of the agreed terms (a copy whereof was enclosed) made provision therefor; and he asked of Scott, as a necessary condition precedent to the signing of the treaty, "a pledge of your word, that no more expeditions shall take place, for the further occupation of the country by our troops until, the Treaty having been received at Washington, new instructions from thence shall have reached you."

There is no doubt of Scott's favorable attitude;¹ but he was not required to assume the responsibility of carrying out the provisions of Article 2, for there was delay; not until February 16, 1848, was notice given to General Scott by General Mora y Villamil of the appointment of himself and General Quijano as Commissioners to negotiate the armistice (War Department files, 1872, 4950 : 3; see Trist Papers, 30 : 61475); on February 18 orders were received which placed Major General William O. Butler in command of the American Army (see Hitchcock, *op. cit.*, 319-20); on the day following, General Mora y Villamil wrote to General Butler that his colleague, General Quijano, was expected to arrive at the capital that afternoon (War Department files, 1872, 4950 : 4); and General Butler named Generals Worth and Smith to arrange the armistice terms. The discussions opened on February 22; the Mexican proposals were extreme; Trist wrote on February 23 that they were "absurd" and had caused the negotiation "to be broken off" (Trist Papers, 30 : 61483, on the draft of articles sent by him to the Mexican Commissioners; see Smith, *op. cit.*, II, 242); the American Commissioners wrote formally to Generals Mora y Villamil and Quijano on February 23 that any discussion of those proposals was "utterly inadmissible" (War Department files, 1872, 4950 : 17); the Mexican project was withdrawn and the negotiations proceeded; on February 29 "rough copies" of the convention were signed; on March 2 there were "signed & exchanged the four fair copies [originals] two in English & two in Spanish each party taking one of each language, retaining the date [February 29] of the agreement" (journal of the American Commissioners; War Department files, 1872, 4950 : 6); by letter dated March 4, 1848, General Anaya, Minister of War, informed Generals Mora y Villamil and Quijano of the ratification of the armistice on that day by the Mexican General in Chief (Manuel María Lombardini), pursuant to direction of the Provisional President of Mexico (Peña y Peña), given after consideration in Cabinet, and enclosed the two originals for ratification by General Butler (original in War Department files, 1872, 4950 : 8; D.S., photostat); the latter acted on March 5; the armistice was promulgated in Orders No. 18, Headquarters Army of Mexico, March 6, 1849 (War Department files; D.S., photostat), and at Querétaro on March 9 (Dublan y Lozano, *Legislacion Mexicana*, V, 345-48); the text in English and Spanish, from the originals in the files of the War Department, follows (1872, 4950 : 1 and 2; D.S., photostats):

Military Convention for the provisional suspension of hostilities.

Convenio militar para la Suspension provisional de las hostilidades.

The undersigned met in the City of Mexico on the twenty ninth day of February 1848 for the purpose of complying with the 2nd Article of the treaty

Los infrascritos reunidos en la Ciudad de Mejico el dia veinte y nueve de Febrero de mil ochocientos cuarenta y ocho, con el objeto de cumplir con

¹ General Scott issued, on February 12, the orders against removal or destruction of arms, munitions of war, etc., which, by Article 4, were to be despatched "immediately upon the signature of this treaty" (see *Exposición*, 233).

of peace which was signed at the town of Guadalupe Hidalgo on the 2nd instant, in which it is agreed as follows:

"Immediately upon the signature of this treaty a convention shall be entered into between a Commissioner or Commissioners appointed by the General-in-Chief of the forces of the United States and such as may be appointed by the Mexican Government; to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be re-established, as regards the political, administrative and judicial branches, so far as this shall be permitted by the circumstances of Military occupation".

When having mutually exhibited and examined their respective full powers which were found full and satisfactory they agreed upon the following Articles.

ARTICLE 1st

There shall be an absolute and general suspension of Arms and hostilities throughout the whole republic of Mexico between the forces of the United States of America and those of the United Mexican States:—and consequently; immediately after the publication of this convention for the suspension of hostilities, in any place or district, no act of hostility of any kind shall be committed by the forces of either party;—and if any person or persons be guilty of any breach of this article, they shall be individually liable to be tried and condemned under the laws of War.

ARTICLE 2nd

The troops of the United States shall not advance beyond the positions already occupied by them towards any part of the Mexican territory not now in their possession, nor extend in any manner the limits of their present occupation—nor shall the troops of the United Mexican States advance from the positions now occupied by them, but each party may move freely and peaceably as they find most convenient, within the limits of their occupation, neither passing through a territory occupied by the other.

el artº 2º del Tratado firmado en la Ciudad de Guadalupe de Hidalgo, el día dos del presente mes, en el cual se estipuló lo q. sigue "Luego q se firme el presente tratado habrá un convenio entre el Comisionado ó Comisionados del Gobierno mejicano y el o los q nombre el General en Gefe de las fuerzas de los Estados Unidos para q cesen provisionalmente las hostilidades, y se restablezca en los lugares ocupados por las mismas fuerzas el orden Constitucional en lo politico, administrativo y judicial en cuanto lo permitan las circunstancias de Ocupacion militar" Despues de haber presentado y ecsaminado sus respectivos plenos poderes, y hallados en regla han convenido en los articulos siguientes

ARTICULO PRIMERO. Habrá una absoluta y general suspension de armas y hostilidades en toda la Republica Mejicana, entre las fuerzas de los Estados Unidos Mejicanos y las de los Estados Unidos de America, y en consecuencia en el acto de la publicacion de este convenio en cada lugar, ningun acto de hostilidad de cuales quiera clase q sea, se cometerá por las fuerzas de ambas partes: y si alguna persona ó personas se hicieren culpables de alguna infraccion de este Articulo, quedarán inmediatamente Sugetas á ser perseguidas y juzgadas pr las leyes de la guerra

ARTICULO SEGUNDO. Las tropas de los Estados Unidos de America no abanzarán mas lejos de las posiciones q ahora ocupan, á ninguna parte del territorio mejicano q no está actualmente en su posesion, ni estenderán la linea de su presente ocupacion en manera alguna. Tampoco las tropas de los Estados Unidos Mejicanos abanzarán de las posesiones q ahora ocupan: unas y otras tropas podrán moverse libre y pacificamente como lo crean mas oportuno dentro de las lineas q hoy ocupan, sin pasar por enmedio del pais ocupado por la otrá.

ARTICLE 3rd

All persons of either nation not belonging to the Army, may travel without molestation wherever their business may call them, subject to the laws of the country—But all persons belonging to the Army travelling from the posts of one, towards those of the other, shall be accompanied by a flag of truce or a Safe Conduct

ARTICLE 4TH.

In the Federal District and in all States occupied by the American troops, the collection of all the contributions of war provided for by General Orders No^o 376. & 395. of the Commander in Chief of said forces, due or becoming due for the months of February and March, shall be suspended until the expiration of this convention; and upon the ratification by the Mexican Government of the treaty of Peace signed on the second instant, all such contributions for the months of February and March, and afterwards shall be entirely remitted. But the tax on Gaming houses, liquor shops, and places of public amusement shall continue to be collected as now, in each place occupied by the American troops, until the exchange of the ratification of the treaty; without prejudice to the rights of the municipal authorities to collect taxes as heretofore.

ARTICLE 5TH.

With a view to the re-establishment of constitutional order as regards the political, administrative and judicial branches—it is agreed that in all the places occupied by the American forces, the citizens of the Mexican republic shall be free to exercise all their political rights in Electing and installing the general, State and municipal authorities which belong to the Territorial division fixed by the Mexican laws and Constitution.

The American authorities will respect the exercise of those rights, and consider those as duly elected, who are held as such by the Mexican Government and in like manner will be considered those civil appointments made by the Mexican general or State government.

ART^o TERCERO Todas las personas de ambas Naciones q no pertenecen al Ejercito, podrán viajar en todas direcciones á donde los llame sus negocios, sin ser molestados, sugetandose á las leyes del pais: pero todas las personas q pertenezcan al Ejercito q viajen de un punto á otro ocupado por la otra parte lo haran con salvo conducto, ó bajo bandera de parlamento.

ART^o CUARTO En el Distrito federal y en todo los Estados ocupados p^r las tropas Americanas, se suspendera la recaudacion de todas las Contribuciones de guerra impuestas p^r las ordenes g^l n^o 395., 376. del General en Gefe de dh^{as}. fuerzas, y q se deben ó debiesen por los meses de Febrero y de Marzo, hasta q espire este convenio; y cuando el Gobierno mejicano ratifique el tratado de paz firmado el dia dos del corfite, todas estas contribuciones pertenecientes á Febrero y Marzo y siguientes seran enteramente condonadas. Pero los derechos impuestos á las casas de juego, las de diversiones publicas, y las tiendas de licoros, continuaran recaudándose como lo son ahora en todos los lugares Ocupados p^r las tropas Americanas, hasta el cange de las ratificaciones del tratado de paz, sin perjuicio de q se cobren los derechos municipales.

ART^o QUINTO. Con la mira de restablecer el orden constitucional respecto de los ramos politico, administrativo, y judicial, se conviene: que en todos los lugares ocupados por las fuerzas Americanas, los Ciudadanos de la Republica mejicana serán libres p^a ejercer sus derechos politicos, p^a elegir ó instalar sus autoridades generales, las de los Estados y municipales, q corresponden segun la division territorial señalada por la Constitucion y leyes Mejicanas. El Ejercito Americano respetará el ejercicio de esos derechos y considerará precisamente como autoridades legitimas á las q se le dén á reconocer como tales por el Gobierno mejicano. De la misma manera se reconocerán y respetaran á las autoridades civiles de nombram^{to} del Gobierno General ó de los Estados.

ARTICLE 6TH.

Whenever an election is to be held in any town or place, occupied by the American troops: upon due notice thereof being given to the commanding officer, he shall march the whole of his force out of the limits of such town or place and there remain with them, until after the hour at which such elections should be concluded, leaving within the town or place only the force necessary for the security of his barracks, hospitals, stores and quarters.

And no person belonging to the American Army, shall by any means or on any consideration attempt to obstruct or interfere with any election: in order that they may be conducted according to the Mexican laws.

In Vera Cruz, the troops shall retire within the walls of the fortifications, and there remain until the elections are concluded.

ARTICLE 7TH.

The Mexican authorities whether General, State or municipal shall have full liberty to establish and collect in the places occupied by the American troops all taxes and revenues in conformity with the laws of the country: to appoint all officers and agents necessary for the purpose, to dispose of such revenues as they may think fit, without any intervention on the part of the American troops: Excepting from this stipulation, all duties collected in the Custom houses, all internal duties on transit, and those collected on the precious metals in the places occupied.

But if the Mexican Government desire to re-establish the Tobacco monopoly, It shall give public notice of its intention, 60 days, to be counted from the date of this convention, in order that the holders of that article may have time to dispose of it. Nor shall any tax be laid upon any one belonging to the American Army nor on its necessary supplies.

ARTICLE 8TH.

In all places of the Mexican Republic the Revenue and administrations of the Post-office shall be re-established as they previously existed. All post houses, Post offices, public stages, horses, mules and other means of transportation shall receive the protection

ARTº SESTO. Siempre q hayan de hacerse elecciones en Alguna Ciudad ó lugar ocupado p^r las tropas americanas, dando previamente noticia oficial al Comand^{te} militar, este dispondrá la marcha de todas sus fuerzas fuera de los limites de la Ciudad y permanecerá asi con ellas hasta la hora señalada p^a la conclusion de dh^{as}. elecciones; dejando solamente en la Ciudad ó lugar, las fuerzas necesarias para la seguridad de sus Cuarteles, almacenes, Hospitales y alojamie^{tos}; y ning^a persona q pertenezca al Ejercito americano, de cual quiera manera ó p^r ninguna consid^{ra} atentará, interrumpirá ó intervendrá en estas elecciones; p^a q se verifiquen segun las leyes mejicanas. En Vera-cruz las tropas se retirarán á las murallas y permanecerán en estas hasta la conclusion de las elecciones.

ARTº SETIMO. Las autoridades mejicanas, sean generales, particulares de los Estados ó municipales, tendrán entera libertad para establecer y recaudar en los lugares ocupados p^r las tropas americanas, todas las contribuciones y rentas de conformidad con las leyes del pais; nombrar todos los empleados y agentes necesarios con tal objeto; disponen de estas rentas como lo tubieren por conveniente, sin intervencion de ning^a especie, por parte de las tropas Americanas esceptuandose de esta estipulacion lo relativo á aranceles, derechos de internacion ó sobre los metales preciosos en los lugares ocupados: ademas en estos, no se impondrá ninguna contribucion ó derecho á las provisiones necesarias p^a las tropas, ó á los efectos q pertenecian al ejercito: y si en estos lugares ocupados, quisiese el Supremo Gobierno general mejicano, volver á estancar el tabaco, se darán á los tenedores de este fruto sesenta dias p^a la venta contados desde la fecha de este Convenio.

ARTº OCTAVO. En todos los lugares de la Republica mejicana serán restablecidas como ecsistian anteriormente la renta de correos y sus administraciones, sus oficinas publicas, todas las Casas de postas, las Diligencias, Caballos, y recuas, como todo otro medio

of the forces of both parties, and the whole shall be managed and conducted by the persons appointed in conformity with law, by the Mexican Government.

ARTICLE 9TH.

Should there be any stock or deposit of Tobacco, Stamped paper or Playing cards, or other articles of commerce belonging to the Mexican Government or to that of any of the States, in any place occupied by the American troops, and of which they have not taken possession; such articles may be freely taken possession of by the Mexican Government and transported in such manner, and to such places as may suit its convenience.

ARTICLE 10TH.

Immediately after the publication of this convention all public offices not in the occupation of the American troops, and all Archives, Utensils and furniture of such offices shall be delivered up to civil officers of the General or State Governments; and as soon as other convenient places can be provided for the troops and officers now occupying them, all Convents of Nuns, Colleges for Education, Public Hospitals and other buildings for charitable purposes—shall be immediately vacated and delivered up.

ARTICLE 11th

In all places occupied by the American troops—The Federal and State courts of justice and civil tribunals of every grade may enter freely and without any interruption, upon the exercise of their appropriate functions in conformity with the Mexican laws.

Nor will the American Military tribunals or civil tribunals created by their authority, take cognizance of or interfere in any cause or matter, unless a person belonging to the American Army be originally a party or the interest of the American Government or Army be concerned, in which cases, the jurisdiction shall remain in them; and the Mexican tribunals recognized and to be respected by the American Army, shall be those designated as legal by the proper authority of the Mexican General or State Governments respectively.

de transporte, y estos establecimientos han de ser protegidos por las fuerzas de ambas partes contratantes, y sus productos manejados p^r las personas nombradas por el Gobierno grál mejicano

ART^o NOVENO. Si hubiese algun deposito de tabaco, papel sellado, naipes ó algun otro efecto de comercio perteneciente al Gobierno grál mejicano ó al de los Estados en cualquiera lugar ocupado p^r las tropas de los Estados unidos del q ellas no hallan tomado posesion; el Gobierno grál. mejicano ó el de los Estados podra tomar libre posesion de dh^{os}. efectos, y trasportarlos de la manera y á donde lo estime conveniente

ARTICULO DECIMO. Inmediatamente despues de la publicacion de este convenio, todas las oficinas publicas q no estan ocupadas por las tropas Americanas con todos los Archivos, utensilios y muebles de aquellas, serán entregadas á los empleados civiles del Gobierno general ó de los Estados; y tan pronto como les sean proporcionados otros locales convenientes, desocuparán los colegios, Conventos de monjas, hospitales y casas de beneficencia.

ART^o UNDECIMO. En todos los lugares ocupados p^r las tropas Americanas los Trales y Jueces de la Federacion sean del grado q fuesen podrán entrar libremente y sin interrupcion en el ejercicio de sus funciones naturales, de conformidad con las leyes mejicanas. Los Trales militares Americanos, ó los civiles, erigidos por su autoridad, no tomarán conocimiento ó intervendrán en ninguna causa ó negocio á menos q en el no esté interesada alguna persona perteneciente al Ejercito Americano, ó q sea parte en él originalmente ó que esté interesado el Gobierno ó el Ejercito americano, en cuyo caso la jurisdiccion será suya. Los Trales mejicanos q sean reconocidos y designados como legales por el Gobierno mejicano ó los Estados respectivamente, serán reconocidos y respetados por el Ejercito americano

ARTICLE 12TH.

In the Federal District there may be organized and armed a force of 600 men of police or national guard to preserve order and maintain police—and in other places occupied by the American forces the Commanders thereof and the Mexican civil authorities shall agree upon the establishment of a convenient force for similar purposes.

ARTICLE 13TH.

In future as heretofore—in all the places occupied, Mexicans or Foreigners resident in Mexico, shall enjoy the protection of person and property guaranteed by the constitution and Laws of the Republic—and, as has heretofore been done, all supplies taken for the American Army shall be paid for at fair prices.

ARTICLE 14TH

The commanding officers of the American forces on the northern frontier of Mexico shall use all their influence to prevent the incursions of savages into the Mexican territory, and the robbery and ill treatment of the inhabitants—and the Mexican forces may assemble, oppose and pursue said Indians even within the lines occupied by the American troops, without being considered as infringing the provisions of this convention.

ARTICLE 15TH

The American Army will continue to respect as hitherto, the temples and free exercise of the religion of the people of the Mexican Republic, in public and private—and church property shall be subject only to such laws as were in existence, or may be passed by the Mexican Government.

ARTICLE 16TH

If any body of armed men be assembled in any part of the Mexican republic with a view of committing hostilities not authorized by either government; It shall be the duty of either or both of the contracting parties to oppose and disperse such body, without considering those who compose it, as having forfeited the protection of the laws of nations, un-

ARTº DUODECIMO. En el Distrito federal se organizará y armará una fuerza de Seiscientos hombres de policia ó de guardia nacional pº conservar el orden, y para mantener la policia: en los demas lugares Ocupados pº las fuerzas Americanas, el Comandº de ellas y la autoridad civil convendrán en el establecimº de la fuerza necesaria con el mismo objeto.

ARTº DECIMO TERCIO. En lo sucesivo en todos los puntos ocupados, los mejicanos y los extranjeros residentes en Mejico gozaran las garantias q para sus personas y bienes les conceden la constitucion y leyes de la Republica, y como se ha hecho hasta hoy, el Ejercito Americano pagará todo lo q necesite por sus justos precios

ARTICULO DECIMO CUARTO. Los Oficiales Comandºs de las fuerzas americanas en las fronteras del Norte de Mejico usarán de toda su influencia pº prevenir las incursiones de los indios barbaros en el territorio mejicano, y el q roben y causen estorciones á los habitantes. Las fuerzas mejicanas podrán reunirse Oponerse y perseguir á estos indios, aun dentro de las lineas ocupadas pº las tropas americanas, sin q por ello se consideren infringidos los articulos de este convenio

ARTº DECIMO QUINTO. El ejercito americano continuara respetando los templos y el libre ejercicio de la Religion del pueblo de la Republica mejicana asi en lo publico como en lo privado. Los bienes eclesiasticos quedarán Sugctos unicamente á las leyes q ecsistian, ó á las q se dieren pº las autoridades mejicanas.

ARTICULO DECIMO SESTO. Si alguna reunion de hombres armados de cualquiera de las dos partes contratantes se juntase en algun lugar de la Republica mejicana, con la mira de cometer hostilidades q no estén autorizados por ninguno de los dos Gobiernos, será la obligacion de una ó de ambas partes contratantes oponerse y dispersar tal reunion, sin q las personas aprehen-

less they have been guilty of robbery or murder.

The performance of this duty shall not be considered an infraction of this convention.

ARTICLE 17TH

This convention shall remain in force during the period fixed by the Treaty signed on the second instant at Guadalupe Hidalgo—or until one party shall give to the other, notice of its termination with the following additional delay, to wit: five days for all places within 60 leagues of the Capital, seven days for all places within 90 Leagues and twenty days for all other places.

The ratification of this convention shall be exchanged at Mexico within seven days from its signature.

In faith of which this convention has been signed in quadruplicate by the Commissioners the day month and Year first mentioned.

IGNACIO DE MORA Y VILLAMIL
BENITO QUIJANO
W. J WORTH *Bt Major General*
PERSIFOR F. SMITH *Bt Brig. General*

Ratificado por mi como Grál. en jefe del Ejercito de operaciones en Queretaro, con previa autorizacion del Supremo Gobierno, y de conformidad con sus instrucciones. Queretaro Marzo cuatro de mil ochocientos cuarenta y ocho.¹

MANUEL MAR^a LOMBARDINI

Ratified by me, at the city of Mexico, March 5, 1848.

W O BUTLER *Maj. Gen. Comg.*

For cases in which the military convention of February 29, 1848, is mentioned or discussed, see Moore, International Arbitrations, IV, 3798-3808.

didás puedan considerarse fuera de la proteccion del derecho de gentes escluyendose los Salteadores ó asesinos. La ejecucion de aquello no será considerada como una infraccion de este convenio

ARTº DECIMO SETIMO Este convenio concluirá en el termino señalado pº la aprobacion del tratado de paz firmado en la Ciudad de Guadº de Hidalgo el dos del Corriente ó cuando se tenga noticia oficial de alguna de las partes contratantes avisando á la otra con cinco dias de anticipacion para los lugares dentro del radio de sesenta leguas de esta Capital; con siete dias en un radio de noventa leguas, y veinte dias para los demas lugares. Las ratificaciones de este convenio serán cangeadas en Mejico dentro de siete dias de su fecha.

En fé de lo cual el presente convenio ha sido firmado por cuatruplicado por los Comisionados el dia mes y año citado.

W. J WORTH *Bt Major General*
PERSIFOR F. SMITH *Bt Brig General*
IGNACIO DE MORA Y VILLAMIL
BENITO QUIJANO

Ratificado por mi como Grál. en jefe del Ejercito de operaciones en Queretaro, con previa autorización del Supremo Gobierno, y de conformidad con sus instrucciones. Queretaro Marzo cuatro de mil ochocientos cuarenta y ocho.

MANUEL MAR^a LOMBARDINI

Ratified by me, at the City of Mexico, March 5, 1848.

W O BUTLER *Maj. Gen. Comg.*

¹ Translation: Ratified by me as General in Chief of the Army of Operations in Querétaro with previous authorization of the Supreme Government and in conformity with its instructions. Querétaro, March fourth, one thousand eight hundred and forty-eight.

ARTICLES 3 AND 4

Mexico City was evacuated by the forces of the United States on June 12, 1848. Clifford thus reported in his despatch of that date (D.S., 13 Despatches, Mexico, No. 13):

At six o'clock this morning the flag of the U. States was taken down from the National Palace in this city, and that of the Mexican Republic was hoisted. The customary honors were paid to both, and the ceremony passed off in perfect quiet, although the great square was thronged. The last division of the army then evacuated the place, General Butler and Mr Sevier accompanying it.

Regarding the evacuation generally and the execution of the provisions of Articles 3 and 4 of the treaty, see Smith, *op. cit.*, II, 251-52, 475-76.

For claims arising from acts of mustered-out troops, see Moore, *International Arbitrations*, III, 3006-7.

ARTICLE 5

The boundary demarcation for which provision was made in Article 5 (penultimate paragraph) was not completed under the Treaty of Guadalupe Hidalgo; the Emory report on the boundary, dated July 29, 1856, gives the history of the proceedings had under both this treaty and the Gadsden Treaty of December 30, 1853 (Senate Executive Document No. 108, 34th Congress, 1st session, serial 832; hereinafter cited as "Emory Report"; printed also as House Executive Document No. 135, 34th Congress, 1st session, serial 861).

The appropriations for the execution of the demarcation clauses of the two treaties totaled \$1,026,692; the relevant statutes are listed in the volume last cited at pages 21-22.

The boundary commission, as first constituted under Article 5, was composed of John B. Weller, Commissioner, and Andrew B. Gray, Surveyor, for the United States, and General Pedro García Condé,¹ Commissioner, and José Salazar Ilarregui, Surveyor, for Mexico; the earliest instructions to the American Commissioner from Secretary of State² Buchanan, dated January 24 and February 13, 1849, with other correspondence, mostly of the same year, are printed in Senate Executive Document No. 34, 31st Congress, 1st session, serial 558; that document is in two parts, separately paged.

The commission was organized at San Diego on July 6, 1849; the portion of the boundary first to be run consisted of a straight line from a point on the Pacific coast one marine league south of the southernmost point of the port of San Diego (indicated by the boundary drawn on the authenticated Plan of the Port of San Diego,

¹ General Condé died on December 19, 1851, and was succeeded by Salazar.

² In December 1849 the "business connected with the commission" was transferred to the Department of the Interior (D.S., 37 Domestic Letters, 374-75, 383).

added to the treaty) to the junction of the Gila and Colorado Rivers, about 147 statute miles in length.¹

The initial point² of the boundary was formally determined with some ceremony on October 10, 1849, "one marine league due south of the southernmost point of the port of San Diego" (see the journal of the commission for this period in Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 56-65, at p. 59); regarding the establishment of that "beginning point on the Pacific", Gray wrote on July 25, 1851, as follows (*ibid.*, 283):

Finally, as precedents sometimes govern principles, I will here call your attention to the fact that, in ascertaining the beginning point on the Pacific, a doubt arose as to the exact southernmost point of the port. The treaty obliged us to go by "Don Juan Pantoja's map of 1782." The conformation of the coast now was entirely different from that laid down; still, a bluff point some distance north of the lower part of the port appeared the same on the map as upon the ground. From this point, representing the bluff, was measured, by the *scale of the map*, the distance to the most southern point as laid down on the plan. This distance was laid off on the ground, and its extremity taken for the southernmost point of the port, according to Don Juan Pantoja. It fell far beyond what would now be considered the "southernmost point;" yet, nevertheless, from this the marine league was run and the initial point established.

The "Topographical Sketch of the Southernmost Point of the Port of San Diego", projected and drawn by Andrew B. Gray, United States Surveyor, is in Senate Executive Document No. 34, 31st Congress, 1st session, serial 558.

On November 30, 1849, the terminal point of this portion of the line, at the confluence of the Gila and Colorado Rivers, was there fixed by the Surveyor on the part of Mexico and Lieutenant Amiel W.

¹ As given in the Emory Report (p. 66), the length of the azimuth boundary line between the monument at the initial point on the Pacific coast and the junction of the Gila and Colorado Rivers is 148.689 miles; the United States Coast and Geodetic Survey has (1936) recomputed the distance, on the North American 1927 datum, to be 146.994 miles.

² Regarding this initial point and the old monument thereat, see the Report of the Boundary Commission . . . 1891 to 1896, pt. 2, 173-74, 197-98; for reproductions of photographs of the monument, see the original monument No. I in *ibid.*, 173, and the recut, repaired monument, now No. 258, in *ibid.*, 198, and in the album of that report.

The position of the initial monument on the Pacific (some 600 feet easterly of the shore line) was originally determined, astronomically, to be in north latitude 32°31'59".58 and in longitude 7 hours 48 minutes 21.1 seconds (i.e., 117°05'16".5) west of Greenwich (see the journal of the commission for this period in Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 59, 64); the inscription on the elaborate marble monument, made in New York and carried to San Diego in a naval vessel, was in the same terms (Report of the Boundary Commission . . . 1891 to 1896, pt. 2, 173-74). However, the position was recomputed to be in north latitude 32°31'59".63 and in longitude 117°08'29".7, which is about 3 miles farther west of the meridian of Greenwich, on the basis of observations of the moon received by Major Emory, on his arrival in New York, from Professor (later Sir) George Biddell Airy, Astronomer Royal at Greenwich (Emory Report, 242, and map No. 54 of the Boundary Commission).

The adjusted geographic position, on the North American 1927 datum, of this initial point, boundary monument No. 258, is fixed at 32°32'03".817 north latitude and 117°07'18".844 west longitude (letter of the Acting Director of the United States Coast and Geodetic Survey, April 13, 1936).

Whipple, of the Topographical Engineers, Assistant Astronomer on the part of the United States (see the paper signed by them on that date in *ibid.*, pt. 1, pp. 37-38, and also the copy there printed of the signed sketch therein referred to). That decision was confirmed at the meeting of the commission held at San Diego on January 28, 1850 (Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 60-62). At that meeting it was—

agreed that the geographical position of the precise point which is designated in the treaty as "the middle of the Gila, where it unites with the Colorado," is that of north latitude $32^{\circ}43'32''$, and 7 hours 38 minutes west of Greenwich meridian; that the geographical position of the point of land selected from which the azimuth of the line takes its departure, is $32^{\circ}43'31''.58$ north latitude. and in longitude 7 h. 38 min. 12 sec. 27 west of the meridian of Greenwich.¹

The latitude and longitude of "the middle of the Gila where it unites with the Colorado" are given in the journal of the boundary commission, January 28, 1850 (quoted above), as $32^{\circ}43'32''$ north, 7 hours 38 minutes (i.e., $114^{\circ}30'00''$) west of Greenwich; the position as redetermined by the commission under the Gadsden Treaty and used in the computation of the azimuth and the distance from the initial point on the Pacific Ocean, was in latitude $32^{\circ}43'32''.3$ north, longitude $114^{\circ}32'51''.61$ west (Emory Report, 165); as recomputed after the receipt of observations of the moon from Professor Airy, Astronomer Royal at Greenwich, the position was in latitude $32^{\circ}43'32''.3$ north, longitude $114^{\circ}36'09''.9$ west (*ibid.*, 242). Assuming the identity of the location of the "Boundary Post, Yuma" of the 1891-96 boundary commission with that of the reference monument erected by Lieutenant Whipple in 1849, the position of the point at which the Gila joined the Colorado in 1849, as recomputed on the basis of the 1927 geodetic datum, is in latitude $32^{\circ}43'32''.842$ north, and longitude $114^{\circ}36'40''.155$ west (derived from data in a letter of the Acting Director, United States Coast and Geodetic Survey, May 22, 1936). It is to be remembered that the present (1936) junction of the Gila and Colorado Rivers is some miles east and slightly south of its location in 1849; see map No. 27000 of the Bureau of Reclamation, Department of the Interior, entitled "Yuma Irrigation Project Arizona-California".

The monument near the mouth of the Gila River has a varied history. Lieutenant Whipple in 1849 "erected a stone pier upon the first hill in the azimuth line of boundary from the mouth of the Rio

¹ There is a very curious, though unapparent, inconsistency in this quoted statement. The longitude given for the confluence point of the two rivers is $114^{\circ}30'$ west (7 hours 38 minutes west of Greenwich); that for the "point of land" is stated as 12.27 seconds of *time* farther west, or $114^{\circ}33'04''.05$; the difference is more than 3 minutes of longitude, or, say, 3 miles; but the actual distance between the two points was only 327 meters. The longitude of the mouth of the Gila, however, as determined by Lieutenant Whipple in October-November 1849, is stated by Major Emory to have been 7 hours 38 minutes 11.8 seconds, or $114^{\circ}32'57''$, west of Greenwich (Emory Report, 18); somewhat inconsistent is the statement (*ibid.*, 165) that Lieutenant Whipple's report of November 30, 1849, gave the longitude of the junction as $114^{\circ}32'51''.61$.

Gila toward the Pacific Ocean"; at the meeting of Lieutenant Whipple and José Salazar Ilarregui on November 30, 1849, it was decided that this "stone pillar . . . should be considered a monument upon the boundary line" (D.S., United States-Mexico Boundary, Whipple Correspondence, Whipple to Emory, December 15, 1849). This monument was erected 327 meters "from the middle of the Gila where it unites with the Colorado", its position being later determined to be in latitude $32^{\circ}43'31''.58$ north, longitude 7 hours 38 minutes 12.27 seconds (i.e., $114^{\circ}33'04''.05$) west of Greenwich (Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 60, 64); consistent with this distance of 327 meters is the statement that the monument was 73.5 feet south and 1,070 feet west of the junction of the Gila with the Colorado (Emory Report, 165). The position of the monument is there stated, however, to be in latitude $32^{\circ}43'31''.6$ north, longitude $114^{\circ}33'04''.3$ west. The longitude of the monument subsequently set up, designated as "Monument No. VII" on map 45 of the boundary commission, 1855 (apparently corrected after the receipt of astronomic data from Professor Airy), is stated on that map to be $114^{\circ}36'22''.20$ west of Greenwich (see also Report of the Boundary Commission . . . 1891 to 1896, pt. 1, 47). That monument, made of thin plates of cast iron riveted together, originally placed near the mouth of the Gila, was removed after the Gadsden Treaty of 1853 went into force, and was transferred to the new line approximately twenty miles farther south, where it was erected as monument No. II east of the Colorado; it was later repaired and numbered monument No. 204 (*ibid.*, pt. 1, 45, and pt. 2, 174, 193).

The later boundary commission attempted, in 1893, to recover the position of the original monument erected by Lieutenant Whipple in 1849 to mark the mouth of the Gila in its course at that time, and succeeded, to the satisfaction of the commission; the report of the commission refers to that position as "Boundary Post, Yuma" and states, "If we admit that the post found in 1893 marks the point established in 1849, as all the testimony obtainable from the old residents of Yuma seems to prove . . ." (*ibid.*, pt. 1, 45). The probability that the position of the 1849 monument was recovered in 1893 is strongly corroborated by records of the General Land Office; original surveys in 1855 and 1874 reported the distance of the monument, or of its base, from nearby section corners then established; and resurveys in 1928-29 and 1932 tie in these section corners very accurately with other monuments erected by the first boundary commission in 1849-55.

The United States Coast and Geodetic Survey recomputed in 1936 the position of important monuments and bench marks in the vicinity of Yuma, reoccupied a number of triangulation points established by the boundary commission in 1893, and recomputed their latitude and longitude in terms of the 1927 geodetic datum; and then recomputed the position of the "Boundary Post, Yuma" of that commission. The geodetic position of the monument established in 1849 near the mouth of the Gila, recomputed on the 1927 datum (on the assumption of the correctness of the identification of its position by the boundary

commission in 1893) is in latitude $32^{\circ}43'32''$.112 north, longitude $114^{\circ}36'52''$.685 west of Greenwich.¹

Because of the peculiarly winding course of the Colorado, which left within the United States both banks of that river for some ten miles below the mouth of the Gila, the Mexican Commissioner on January 28, 1850, proposed a reference to the two Governments of the sovereignty over the region (nearly three square miles of land) between the straight line of the treaty and the left bank of the Colorado; the ground of this proposal was the offer² made by Trist on January 7, 1848, to give up part of the harbor of San Diego in return for a square league of land on the "western" (thought to be the right) bank of the Colorado, below the mouth of the Gila; the argument was that it was not consonant with the "spirit" of the negotiators, although following the wording of the treaty, that now a larger area on the *left* bank of the Colorado below the Gila should be within the United States; the American Commissioner thought, on the contrary, that the "unequivocal language of the treaty itself" was the only guide; he pointed out that the probable "intention" of the negotiators had been to leave all of Upper California to the United States and that it was "notorious" that the line between the two Californias ran "several miles south" of the line fixed as the boundary (see Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 60-62); the reference to the Governments was refused by the American Commissioner and was not made; Weller reported to Secretary of State Clayton as follows (Senate Executive Document No. 34, pt. 2, 31st Congress, 1st session, serial 558, p. 2, February 3, 1850):

It is alleged on the part of Mexico, that our ministers, when negotiating the treaty under which we are now acting, endeavored to obtain a league of land on the right bank of the Colorado river, immediately below the mouth of the Gila. This proposition was doubtless based upon the supposition that the Colorado ran directly south to the Gulf of California. Such was the general impression. But it is found, upon actual survey, that, immediately after its junction with the Gila, it flows in a direction nearly northwest, thus making a straight line from the mouth of the Gila to the Pacific ocean, striking the Colorado some ten miles (by water) below the confluence of the two rivers. The effect of this, as you will perceive, is to throw some two leagues or more of land on the *left* bank of the Colorado, within the limits of the United States. This is understood to include the same territory which Mr. Trist sought to obtain, and for which certain concessions were offered upon the Pacific. The Mexican commissioner affirming that a strict adherence to the [letter] of the treaty would defeat the intention of the parties, desired to leave this question for the future settlement of our respective governments. To this, of course, I could not consent. A copy of that portion of the journal which relates to this subject is herewith enclosed, together with a map prepared by Mr. H. Clayton, the draughtsman of the commission.

A "Plan of the Junction of the Colorado and Gila Rivers", a copy of the signed sketch showing the boundary point agreed upon at that junction, and a "Map of a Survey . . . of the Mouth of the River Gila" are in the Senate document last cited; a reproduction of the map last mentioned, somewhat reduced, faces this page.

¹ This and the preceding three paragraphs were written by the Geographer of the Department of State, Mr. Samuel Whittemore Boggs.

² Quoted and discussed above under "The Boundary Proposals".

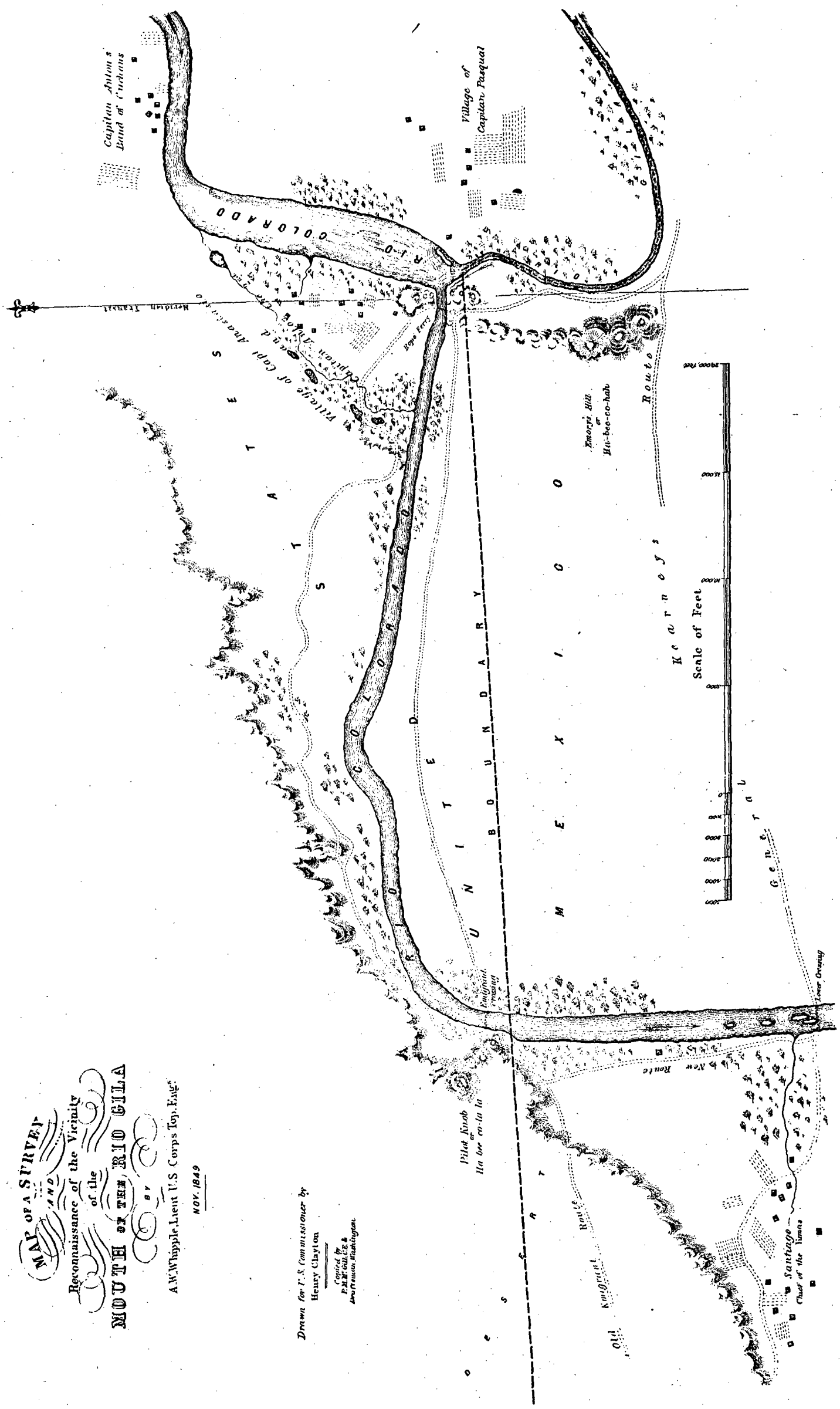
Scale 1:50,000

MAP OF A SURVEY
AND
Reconnaissance of the Vicinity
of the
MOUTH OF THE RIO GILA
BY

A.W. Whipple, Lieut. U.S. Corps Top. Eng.

NOV. 1849

Drawn for U.S. Commissioner by
Henry Clayton
Copied by
P. H. GILLIS &
American Institute



Under date of February 20, 1850, Gray wrote in some detail to Thomas Ewing, Secretary of the Interior, regarding the work done and to be done on this part of the line; from that report these passages are excerpted (*ibid.*, 4-6):

The surveys and measurements for defining upon the ground the southernmost point of this port, the marine league, and the initial point upon the Pacific, as referred to in the treaty, and also the survey for the settlement of the middle of the Rio Gila where it unites with the Colorado, I have completed. An entire reconnaissance and exploration, with distances determined and topography taken, I have also made of the country approximately to the line between the Pacific and the mouth of the Gila, being that portion of the boundary separating Upper from Lower California, (very nearly 130 miles¹ in a straight line). Plans of the two extremes of this line, with the topography and country in their vicinity, I have projected and drawn from my triangulations and surveys, both of which have been authenticated by the signing of the same by the commissioners and surveyors appointed under the treaty.

The latitude and longitude of the initial point and the junction of the two rivers have been determined by the astronomical party instructed by the late Secretary of State to perform that duty. The azimuth of the line has been completed from these observations, and the course traced upon the ground at either end for a few miles, and some stakes thus far stuck in the ground; the country on the Pacific being open and destitute of trees, and at the Gila a growth of scattered cotton-wood or dwarf willow.

The commission adjourned on February 15, 1850, to meet at Paso del Norte (now Ciudad Juárez), Chihuahua, on the following November 4; the work then remaining to be done between the Pacific and the mouth of the Gila was the construction of the monuments and the location of certain of them (see the journal of the commission in Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 56-65); this work was finished in 1851 (see the despatch of Major William Hemsley Emory of September 25, 1851, in *ibid.*, 77-78; also the Emory Report, 1-10, 138-66).

For a study of the work done on this portion of the boundary, see Lesley, "The International Boundary Survey from San Diego to the Gila River, 1849-50", in *California Historical Society Quarterly*, IX, 3-15; see also Carreño, *Mexico y los Estados Unidos de America*, 286-88.

The portion of the boundary next to be dealt with was that which was described in the treaty as running from the Rio Grande westwardly along the whole southern boundary of New Mexico ("which runs north of the town called *Paso*"), thence northward along the western line of New Mexico to the Gila, and down the middle of that river to its junction with the Colorado; and it was specifically stated that the southern and western limits of New Mexico "are those laid down" in Disturnell's Map.

Owing to the inaccuracies of Disturnell's Map, controversy arose regarding the location of the line; the Commissioners, now John R. Bartlett for the United States and General Condé for Mexico, formally agreed on April 24, 1851, in fixing the initial point on the Rio Grande at the latitude given by Disturnell's Map for the intersection of that

¹ Perhaps this is a printing error for "150 miles" in the document cited.

river with the southern boundary of New Mexico, namely, $32^{\circ}22'$ north (see Senate Executive Document No. 119, 32d Congress, 1st session, serial 626, pp. 233-34, 387-88, 391-93, 406), and the running of the line westwardly was begun; the Secretary of the Interior (Alexander H. H. Stuart) approved that determination; but the Surveyor for the United States, Andrew B. Gray, and his successor, Major Emory, took the view that the initial point should be located on the Rio Grande according to the position of "Paso" (Ciudad Juárez) on the Disturnell Map, that is to say, according to the position thereon of the Chihuahua-New Mexico boundary relative to the true latitude of Paso; this would have put the initial point at about the parallel of $31^{\circ}52'$ (see *ibid.*, 118, 145-49, and the opinion of Lieutenant Whipple at p. 247; arguments pro and con are in *ibid.*, 277-86; see also the Emory Report, 16-20). As the parallel of $31^{\circ}52'$ is, say, thirty geographical miles south of the parallel first selected, the territorial difference involved was some 6,000 square miles.

The possibility of dispute regarding the location of the initial point on the Rio Grande had been early considered by the Mexican Government; under date of March 20, 1849, the Mexican Commissioner had been instructed that the line between New Mexico and Chihuahua should run according to the latitude of Disturnell's Map; and instructions more precise and detailed were written in response to the request of General Condé of June 15, 1850 (see the texts in Carreño, *Mexico y los Estados Unidos de America*, 289-94).

The Congress of the United States adopted the view of Gray and Emory (acts of July 21 and August 31, 1852; 10 Statutes at Large, 15-24, at p. 17, and 76-100, at pp. 94-95; an elaborate report of Gray, dated at Washington May 1853, is in Senate Executive Document No. 55, 33d Congress, 2d session, serial 752; the report of the Senate Committee on Foreign Relations on the subject, dated August 20, 1852, is therein included; Bartlett's "observations in defence of the establishment of the initial point on the Rio Grande", dated February 7, 1853, with five accompanying maps and other papers, are in Senate Executive Document No. 41, 32d Congress, 2d session, serial 665). The opinions put forward are shown graphically in Paullin, *Atlas of the Historical Geography of the United States*, plate 93H; and in that work (pp. 63-64) is an account of the question; a full and detailed history of the dispute, with many valuable citations, is in Rippey, *The United States and Mexico*, 106-25 (see also Garber, *The Gadsden Treaty*, 12-25); controversy ended with the Gadsden Treaty of December 30, 1853; by the cession of that treaty (Article 1) the line from the Rio Grande to the Colorado was shifted to the south, beginning on the Rio Grande at $31^{\circ}47'$ north latitude, terminating on the Colorado twenty miles below the junction of the Gila therewith, and running from that point up the middle of the Colorado to that junction.

The remainder of the boundary, according to the Treaty of Guadalupe Hidalgo, ran from a point opposite the mouth of the Rio Grande, "three leagues from land", up the middle of that river (by the deepest

channel) to "the point where it strikes the southern boundary of New Mexico" (by Article 1 of the Gadsden Treaty of December 30, 1853, the terminal point was fixed at 31°47' north latitude); as detailed in the Emory Report (pp. 53-92, 191-241), this portion of the boundary (from the terminal point last mentioned) was surveyed in 1852-53.

From 32° to 31°47' north latitude the channel of the Rio Grande as it existed in 1850 became subsequently the boundary between New Mexico and Texas (see *New Mexico v. Texas*, 275 U.S., 279-303; 276 U.S., 557-60); the Salazar-Diaz survey of 1852, which covered the course of the Rio Grande through most of that area, is described in the earlier of the two opinions cited, at pages 295-300.

Owing to the controversy mentioned regarding the portion of the boundary running west from the Rio Grande and then north to the Gila, no "authoritative maps" contemplated by Article 5 of the Treaty of Guadalupe Hidalgo were signed until after the entry into force of the Gadsden Treaty (see the Emory Report, xiv, 38); the maps authenticated pursuant to the provisions of the two treaties are described in the notes to the Gadsden Treaty.

ARTICLES 6 AND 7

In Article 4 of the Gadsden Treaty of December 30, 1853, Articles 6 and 7 of the Treaty of Guadalupe Hidalgo are stated to be "abrogated and annulled"; but in respect of the Colorado River, that article of the Gadsden Treaty contains provisions quite similar to those of Article 6 of the Treaty of Guadalupe Hidalgo; and the stipulations of Article 7 of the latter treaty were continued in force as regards the Rio Grande (Rio Bravo del Norte) below 31°47' north latitude.

ARTICLE 11

Article 11 of the Treaty of Guadalupe Hidalgo was expressly abrogated by Article 2 of the Gadsden Treaty of December 30, 1853 (see Moore, *International Arbitrations*, II, 1305-9; III, 2430-47). For an account of the Indian problem from 1848 to 1853, see Rippey, *The United States and Mexico*, 68-84, and Garber, *The Gadsden Treaty*, 25-40.

ARTICLE 12

The first payment of \$3,000,000 to be made by the United States pursuant to Article 12 of the treaty was duly completed on June 30, 1848, and was thus reported by Clifford in his despatch of July 2 (D.S., 13 Despatches, Mexico, No. 15; by the act of March 3, 1847, 9 Statutes at Large, 174, the necessary sum had been appropriated):

I have the honor to inform you that the arrangement made by Major General Butler under the advice of Col. Sevier and myself for the payment of the first instalment of three millions due to the Mexican Govt by the treaty of peace, was amicably completed by me on the thirtieth of June last. The receipt is executed in triplicate, one of which I have inclosed together with a translation of the same. Of the two remaining, one I have deposited in the archives of the

Legation, and the other I shall bear with me to Washington when I return to the U. States. The manner in which the three millions have been produced will be seen by the following statement.

Memorandum

Amount received and paid over by Major General Butler on drafts transmitted to him from Washington from L. Davidson...	\$900. 000
Amount paid by Major Stewart by order of Major General Butler being cash on hand belonging to the army.....	769. 650
Amount allowed since the departure of Major General Butler for arms sold by him to the Mexican Government.....	87. 655. 90
Contribution levied on the Federal District by Major Gen ^l Scott and assumed by the Mexican Gov ^t	49. 712. 28
Twelve drafts negotiated by N. Clifford to L. S. Hargous amounting to.....	1, 151. 874. 16
Premium allowed by said Hargous.....	41. 107. 66
	\$3. 000. 000. 00

The drafts negotiated to L. S. Hargous are numbered from one to twelve inclusive. Eleven are for the sum of one hundred thousand dollars and the twelfth for the sum of fifty one thousand eight hundred and seventy four dollars sixteen cents. The endorsements respectively bear date June 30, 1848, and are in the words following to wit—"Pay the within to L. S. Hargous or order on account of value received by the United States in payment of the first instalment of the treaty of peace to Mexico," and signed "Nathan Clifford Commissioner".

I also inclose the original receipt of L. S. Hargous for the drafts, reserving in the archives of the Legation a true copy. I also inclose the original guaranty of Major Gen^l Scott given to certain capitalists who advanced the military contribution levied by him—the same having been adjusted by the Mexican Gov^t, as will be seen by the discharge to the U. States on the back of the instrument executed by Mess^{rs} Ballange & Lasquetty. The original memorandum placed in my hands on the thirteenth of June last by Major Gen^l Butler I also transmit to you, from which it will be seen that the payment has been made in exact conformity to the arrangement before mentioned, but which he was unable to accomplish for want of time.

In consideration of the service which has been rendered me by L. S. Hargous in carrying into effect the arrangement, as well as of the liberal premium allowed by him on the drafts, I venture to request in his behalf that the drafts purchased by him may be paid in the city of New York instead of Washington city where they are made payable. It will be seen that the U. States make a clear saving in the sale of the drafts of forty one thousand one hundred and seven dollars and sixty six cents, after having applied to the payment all the funds belonging to the army in Mexico & the amount collected by Gen^l Butler on the drafts transmitted to him, leaving no specie to be transported to the coast.

The receipts given by me to Major Gen^l Butler will show still in my hands draft N^o thirteen, executed in three parts and dated June 11, 1848, for the sum of forty eight thousand one hundred and twenty five dollars and eighty four cents, drawn by Gen^l Butler in my favor on the Treasurer of the U. States of America. The last named draft I have this day canceled by erasing the name of "W. O. Butler Maj. Gen. USA" and by endorsing on each part of the same the following certificate under my name—"I hereby certify that having paid the first instalment of the treaty of peace to Mexico from other funds and having no occasion to use the within, I hereby cancel the same."

The draft in three parts thus canceled is herewith inclosed.

The papers enclosed by Clifford with the foregoing despatch were sent to the Treasury. In the treaty file is one of the triplicate originals of the receipt, marked as delivered "in person by M^r Clifford" on November 25, 1848. It reads as follows in translation:

To all to whom these presents may come, be it known: That the undersigned, commissioned by the Government of the Mexican Republic with full powers to receive, in the name of the latter, the payment which will be spoken of below, and to issue a receipt to the Government of the United States of America for the said payment, hereby declare that we have received the first three million dollars which is to be paid by the same Government of the United States, in conformity with the stipulations of Article 12 of the Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic signed in the city of Guadalupe Hidalgo on the second day of February last, the ratifications of which were duly exchanged in the city of Querétaro on the thirtieth day of May last: and we certify further that the three million dollars mentioned has been paid on this day into the General Treasury of the Mexican Republic by Mr. Nathan Clifford, Commissioner of the United States, in fulfillment of an arrangement made in part by Major General Butler and consummated by the said Mr. Clifford, and the said three million dollars has been received by us in the name of the Mexican Government and in complete performance of the agreement made in Article 12 of the said treaty, as payment of the said three million dollars.

Done and attested by our signatures and seals in triplicate this thirtieth day of June, one thousand eight hundred and forty-eight.

MANUEL MARIA CAÑSECO
[Seal]

P. F. DEL CASTILLO
[Seal]

IGN. DE LA BARRERA
[Seal]

Approved:

M. RIVA PALACIO
Secretary of State and Treasury

The three officials who receipted were, in the order of signature, respectively, Chief Comptroller of the Court of Accounts, Minister of the General Treasury of the Nation, and Treasurer of the Customhouse of the Capital (see D.S., 13 Despatches, Mexico, No. 13, June 12, 1848, enclosure).

The remaining \$12,000,000 was agreed to be paid at Mexico City "in the gold or silver coin of Mexico" in four annual instalments with interest at 6 percent. The respective amounts (including the interest) and the due dates were: \$3,720,000, May 30, 1849; \$3,540,000, May 30, 1850; \$3,360,000, May 30, 1851; and \$3,180,000, May 30, 1852. Appropriations were made for the 1849 and 1850 instalments by the act of February 26, 1849 (9 Statutes at Large, 348); for the 1851 instalment by the act of September 26, 1850 (*ibid.*, 473); and for the 1852 instalment by the act of February 10, 1852 (10 *ibid.*, 2).

Transfer problems of some magnitude and difficulty were involved. It was not found possible to make the payments in lump sums on the respective law days; some spreading of the financing was required; but the rate of exchange was generally in favor of the United States.

For the effecting of the 1849 payment, a contract was made by Robert J. Walker, Secretary of the Treasury, with Baring Brothers & Company, of London, which was duly performed (D.S., Miscellaneous Letters, July 1850, Thomas Corwin, Secretary of the Treasury, to Daniel Webster, Secretary of State, July 30, 1850, with copies of the letter of Walker to T. W. Ward of November 27, 1848, and the answer of Ward of December 1, 1848; and see *ibid.*, March-April 1849, William M. Meredith, Secretary of the Treasury, to John M. Clayton, Secretary of State, April 5, 1849, and *ibid.*, May-June 1849,

T. W. Ward to the Secretary of the Treasury, June 30, 1849); the amount disbursed in United States funds was \$3,552,600 (Senate Executive Document No. 2, 31st Congress, 1st session, serial 552, p. 26; House Executive Document No. 11, 31st Congress, 2d session, serial 597, p. 30).

The amount paid in United States funds in respect of the 1850 instalment is reported as \$3,386,616.31 (*ibid.*). For the payment in Mexico City of a portion of the instalment, \$2,000,000, the American Minister, Robert P. Letcher, made an agreement on February 13, 1850, with Lionel Davidson, the agent of the Rothschilds, of London and Paris, for the negotiation of drafts on New York at a premium of 3½ percent, interest at 6 percent on advance payments to be "bonified" (D.S., 14 Despatches, Mexico, No. 2, February 15, 1850, enclosure; the instructions to Letcher of December 8, 1849, and January 23, 1850, are in D.S., 16 Instructions, Mexico, 181-83, 186-87); receipts for the proceeds of the drafts were given at various dates from February 27 to June 5, 1850 (D.S., 14 Despatches, Mexico, No. 27, June 12, 1850). It appears that the remainder of the instalment due (\$1,540,000) was disposed of by the Mexican Government some months in advance and that the bankers concerned (Yecker, Torre & Company) were reimbursed by a payment at New York of \$1,461,227.95, which took into account discount at 3 percent and interest at ½ percent a month (D.S., 16 Instructions, Mexico, 186-87, January 23, 1850; see D.S.; Miscellaneous Letters, November-December 1849, Howland & Aspinwall to the Secretary of State, December 5, 1849, and enclosures).

For making the instalment payments for 1851 and 1852, an arrangement was entered into in August 1850 with a group of banking houses, Baring Brothers & Company, Howland & Aspinwall, and Corcoran & Riggs (D.S., 16 Instructions, Mexico, 232, December 4, 1850). The agent for the Barings, Edmund J. Forstall, in December 1850 made advances to the Mexican Government on account of the 1851 instalment aggregating \$650,000 (Senate Executive Document No. 31, 31st Congress, 2d session, serial 589); and there were further advances in January and February 1851 of \$520,000 (D.S., 14 Despatches, Mexico, No. 45, February 16, 1851). A statement by the contractors showing the difficulties met in the carrying out of that arrangement in respect of the payment for 1851 is in their letter to the Secretary of State of January 14, 1852; payments to them from the United States Treasury ran from March 1 to June 27, 1851, averaging about May 15 (Senate Executive Document No. 18, 32d Congress, 1st session, serial 614). The amount paid by the Treasury was \$3,242,400 (Senate Executive Document No. 11, 32d Congress, 1st session, serial 614, p. 22).

The payment from the Treasury for the 1852 instalment appears to have been the exact amount stipulated in the treaty, namely, \$3,180,000 (House Executive Document No. 6, 32d Congress, 2d session, serial 675, pp. 290, 382). The appropriation for that final instalment was not made until February 10, 1852, less than four months prior to the due date of the payment in Mexico City,

Accordingly, the arrangement with the bankers last mentioned became inapplicable, and a new contract was made with them by Secretary of State Webster (D.S., Miscellaneous Letters, February 1852, the bankers to the Secretary of State, February 4, 1852; D.S., 16 Instructions, Mexico, 311-12, February 24, 1852); the instruction last cited reads thus:

I have to inform you, that a new contract for paying the instalment of indemnity due to Mexico on the 31st. of May next, pursuant to the Treaty of Guadalupe Hidalgo, has been entered into by Mr Webster on the part of the United States, and by Messrs Baring, Brothers & Co., Howland and Aspinwall and Corcoran and Riggs, as agents to make the payment. The contract contains a clause to the effect, that the funds which may be accumulated in Mexico by the agent of the contractors, previously to their payment to the government of that Republic, shall be under the protection of the United States, and shall be protected by them from loss in consequence of revolution or popular outbreak. Mr. E. J. Forstall is the agent of the contractors in Mexico. You will accordingly extend to the funds he may at any time have on hand for the purpose of making the payment any protection which he may desire and which may be requisite for carrying into full effect the stipulation on the part of this government above adverted to.

Letcher stated in his despatch No. 8 (D.S., 15 Despatches, Mexico, undated, received July 9, 1852) that the transaction had been closed; and on June 18 he reported as follows (*ibid.*, No. 10):

Mr Forstall left here this morning for Vera Cruz, in company with a Government Escort, which has under it's charge the Two Millions and a half of the American Indemnity, paid to the Agent of the British Bondholders.

The money was conveyed in forty waggons, each teamster being well armed. The escort is composed of a hundred and sixty Cavalry and Infantry, besides one piece of good artillery *well manned*.

Mr Forstall was placed in connection with the Commanding officer, at my request.

Every precaution has been taken, to secure the safe transportation of the money, in any and every contingency that may arise, and I hope it will arrive safely at Vera Cruz.

Although the United States is *now* free, as I conceive, from all responsibility connected with the affair, still, as the British Minister,¹ and the Agent of the Bondholders, and also Mr Forstall, all seemed to manifest a strong wish that the American protection should continue, until the money arrived at Vera Cruz, I consented, as an act of comitty not to withdraw it; but at the same time, declared in a most explicit manner, that the United States incurred no risk whatever, in the transmission of the amount, and such is the understanding of all the parties.

ARTICLE 13

The claims against Mexico which the United States, by Article 13, agreed to pay, had been adjudicated in the sum of \$2,026,139.68 under the convention of April 11, 1839 (Document 89); the notes to that convention and the authorities there cited should be consulted; pursuant to the convention of January 30, 1843 (Document 100), three of twenty instalment payments of the principal of those claims, and certain interest, had been paid by the Government of Mexico; two instalments, the fourth and fifth, had been taken up by the United States Treasury pursuant to the act of August 10, 1846 (9 Statutes

¹ Percy William Doyle.

at Large, 85, 94; for further details see the notes to Document 100); by the act of July 29, 1848 (9 Statutes at Large, 265), appropriation was made for the payment of the obligation of the United States in respect of the balance due upon those adjudicated claims; under that statute the amount paid, including interest, was \$2,090,253.19 (Smith, *op. cit.*, II, 469).

ARTICLES 14 AND 15

By Articles 14 and 15, Mexico was exonerated from all unadjudicated claims of citizens of the United States arising prior to February 2, 1848; and the United States, to the extent of \$3,250,000, agreed to pay such claims; the convention signed at Mexico City on November 20, 1843, had included provisions for the adjudications of certain claims of American citizens, but that convention failed to go into force (see the notes to Document 100); Articles 1 and 5 thereof, made principles and rules of decision by Article 15 of the present treaty, read as follows (D.S., Unperfected H2):

ARTICLE 1st

All claims of citizens of the Mexican Republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican Republic, which for whatever cause were not submitted to, nor considered, nor finally decided by the commission, nor by the arbiter, appointed by the Convention¹ of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a Board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican Republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners thus appointed shall, in presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs, which shall be presented, the principles of right and justice, the Law of Nations, and the Treaties between the two Republics.

ARTICLE 5th

All claims of citizens of the United States against the Government of the

ARTICULO 1º

Todas las reclamaciones de Ciudadanos de la Republica Mexicana contra el Gobierno de los Estados Unidos, que se presentaren del modo y en el tiempo que en adelante se espresa; y todas las reclamaciones de Ciudadanos de los Estados Unidos contra el Gobierno de la Republica Mexicana, que por cualquier motivo no se presentaron á la Junta ó que no fueron examinadas ó decididas finalmente por ella ó por el arbitro establecido por la convencion¹ de 1839, y que se presentáren del modo y en el tiempo que en adelante se espresará se someterán á cuatro comisionados que formarán Junta, y serán nombrados del modo siguiente, á saber: Dos comisionados serán nombrados por el Presidente de la Republica Mexicana, y los otros dos lo serán por el Presidente de los Estados Unidos, con consentimiento y aprobacion del Senado de los mismos. Los dichos comisionados de en modo nombrados, prestarán juramento en presencia unos de otros, de examinar y decidir imparcialmente las reclamaciones que se les sometan, y que legalmente deban considerarse segun las pruebas que se les presentaren y segun los principios de derecho y justicia de la Ley de las Naciones y de los tratados entre ambas Republicas.

ARTICULO 5º

Todas las reclamaciones de Ciudadanos de los Estados Unidos contra el

¹ Document 89.

Mexican Republic, which were considered by the commissioners, and referred to the umpire appointed under the convention of the 11th April 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this Convention, on the points submitted to the umpire under the late Convention, and his decision shall be final and conclusive. It is also agreed, that if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

Gobierno de la República Mexicana, que fueren examinadas por los comisionados y sometidas al Arbitro nombrado con arreglo á la Convencion de 11. de Abril de 1.839, y que no fueron por el decididas, se someterán y decidirán por el Arbitro que debe nombrarse conforme á esta Convencion por lo relativo á los puntos que se sujetaron al Arbitro establecido por la anterior convencion; y su decision será final y definitiva. A la vez se ha convenido que si se juzga oportuno por los Comisionados respectivos, podrán someterse por ellos al espresado Arbitro, nuevas esposiciones sobre dichas reclamaciones

The act of March 3, 1849 (9 Statutes at Large, 393-94), provided for the execution of Articles 14 and 15 of the Treaty of Guadalupe Hidalgo; the whole subject is fully treated in Moore, International Arbitrations, II, 1248-86 (in that work, also, various claims presented are separately treated; for references to these, see *ibid.*, V, 5181-82).

ARTICLE 16

This article on the right of fortification was modeled on the antepenultimate paragraph of Article 3 of the Treaty of Paris of May 30, 1814 (British and Foreign State Papers, I, pt. 1, 158; see *Exposición*, 248).

ARTICLE 17

By Article 17, the Treaty of Amity, Commerce, and Navigation of April 5, 1831 (Document 70), was revived, with a clause excepting any stipulations thereof inconsistent with those of the present treaty; also excepted was the additional article of the treaty of 1831; that additional article, as written, had a term of only six years, ending on April 5, 1838; the revival of the treaty of 1831 was for eight years from the date of exchange of ratifications of the Treaty of Guadalupe Hidalgo, and thereafter indefinitely but subject to one year's notice of termination.

Article 33 of the treaty of 1831 was abrogated by Article 2 of the Gadsden Treaty of December 30, 1853; by note of November 30 (received December 4), 1880, the Government of Mexico gave notice of the termination of the treaty of 1831 "at the close of the 30th day of November in the coming year 1881" (see *Foreign Relations*, 1881, 820-21).

ARTICLES 19 AND 20

These articles had for their basis Article 9 of the project given to Trist with the instructions of April 15, 1847 (printed above); and in the instruction of June 14, 1847 (printed in part above), Trist was told that by the orders issued on June 11 to the Secretaries of War and of the Navy it had been "announced to the world that the

Government intend to provide by the Treaty with Mexico, that goods imported into any of the ports of that country whilst in our military possession, shall be exempt from any new import duty or charge after the conclusion of peace" and that accordingly Article 9 of the project was to be considered as a *sine qua non*.

Trist explained the reasons for the detailed rules of Article 19 in his despatch of January 25, 1848, which has previously been quoted; and the comments of the Mexican Commissioners on the two articles are in *Exposición*, 248-49. Article 20, however, did not in fact have application, as more than sixty days necessarily elapsed between the date of signature of the treaty and the restoration of the custom-houses, which, by Article 3, did not take place until after the exchange of ratifications.

Cases arising from the importation of tobacco during the military occupation are treated in Moore, *International Arbitrations*, IV, 3806-13.

THE COMPENSATION OF TRIST

It appears that the pay of Trist was stopped on November 16, 1847, the day on which he received his recall; Trist left Mexico City on April 8, 1848, and reached Washington about the middle of the following June. Under date of August 7, 1848, he addressed to the Speaker of the House of Representatives a somewhat lengthy letter, highly critical of the administration, with extensive accompanying papers; these the House refused to print (*Congressional Globe*, XVII, 1057-58, August 10, 1848).

Under date of March 7, 1870, Trist petitioned for full compensation; a favorable report was made by the Senate Committee on Foreign Relations (Report No. 261, 41st Congress, 2d session, serial 1409, July 14, 1870); by that time Trist was seventy years old, as he was born at Charlottesville, Virginia, on June 2, 1800; by the act of April 20, 1871 (17 Statutes at Large, 643), there were appropriated for payment to Trist the sums of \$13,762.40 as the balance due for salary, etc., and \$797.50 for expenses incurred.