

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and
the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

THE
PANAMA CANAL CONFLICT
BETWEEN
GREAT BRITAIN
AND
THE UNITED STATES OF AMERICA.

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and
the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and
the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

THE
PANAMA CANAL CONFLICT
BETWEEN
GREAT BRITAIN
AND
THE UNITED STATES OF AMERICA

A STUDY

BY

L. OPPENHEIM, M.A., LL.D.

Whewell Professor of International Law in the University of Cambridge

Honorary Member of the Royal Academy of Jurisprudence at Madrid

Member of the Institute of International Law

SECOND EDITION

Cambridge :
at the University Press

1913

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Published in the United States of America by Cambridge University Press, New York

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107418790

© Cambridge University Press 1913

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 1913

First paperback edition 2014

A catalogue record for this publication is available from the British Library

ISBN 978-1-107-41879-0 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

PREFACE TO THE SECOND EDITION

TO my great surprise, the publishers inform me that the first edition of my modest study on the Panama Canal conflict between Great Britain and the United States is already out of print and that a second edition is at once required. As this study had been written before the diplomatic correspondence in the matter was available, the idea is tempting now to re-write the essay taking into account the arguments proffered in Sir Edward Grey's despatch to the British Ambassador at Washington of November 14, 1912—see Parliamentary Paper Cd. 6451—and, in answer thereto, in Mr Knox's despatch to the American Chargé d'Affaires in London of January 17, 1913—see Parliamentary Paper Cd. 6585. But apart from the fact that the immediate need

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

vi *PREFACE TO THE SECOND EDITION*

of a second edition does not permit me time to re-write the work, it seemed advisable to reprint the study in its original form, correcting only some misprints and leaving out the footnote on page 5. It had been written *sine ira et studio* and without further information than that which could be gathered from the Clayton-Bulwer Treaty, the Hay-Pauncefote Treaty, the Hay-Varilla Treaty, the Panama Canal Act, and the Memorandum which President Taft left when signing that Act. Hence, the reader is presented with a study which is absolutely independent of the diplomatic correspondence, and he can exercise his own judgment in comparing my arguments with those set forth *pro et contra* the British interpretation of the Hay-Pauncefote Treaty in the despatches of Sir Edward Grey and Mr Knox.

L. O.

CAMBRIDGE,

February 15, 1913.

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

CONTENTS

- I. Article III, No. 1 of the Hay-Pauncefote Treaty of 1901 and Section 5 of the American Panama Canal Act of 1912, pp. 5–6—The Memorandum of President Taft, pp. 7–9—The interpretation of Article III of the Hay-Pauncefote Treaty preferred by the United States, pp. 9–11.
- II. The claim of the United States that she has granted the use of the Panama Canal under a conditional most-favoured-nation clause, pp. 11–14—The United States has never possessed the power of refusing to grant the use of the Panama Canal to vessels of foreign nations on terms of entire equality, p. 15—Such use is the condition under which Great Britain consented to the substitution of the Hay-Pauncefote Treaty for the Clayton-Bulwer Treaty, p. 16.
- III. If the use of the Panama Canal by vessels of foreign nations were derived from most-favoured-nation treatment, the United States would not be bound to submit to the rules of Article III, Nos. 2–6, of the Hay-Pauncefote Treaty, p. 17—The Panama Canal would then lose its neutral character and would be in danger of eventually

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

being made the theatre of war, p. 18—But it is the intention of the Hay-Pauncefote Treaty permanently to neutralise the Panama Canal, p. 18—The three objects of the neutralisation of an Inter-Oceanic Canal, pp. 19–20—Is the United States, under the Hay-Pauncefote Treaty, subjected to more onerous conditions than Turkey and Egypt are under the Suez Canal Treaty?, pp. 20–22.

- IV. Six reasons for the untenability of the American interpretation of Article III, No. 1, of the Hay-Pauncefote Treaty, p. 23—The stipulation of Article VIII of the Clayton-Bulwer Treaty, p. 23—The motive for, and the condition of, the substitution of the Hay-Pauncefote Treaty for the Clayton-Bulwer Treaty, p. 24—The rules of the Suez Canal Treaty which serve as the basis of the neutralisation of the Panama Canal, p. 25—Literal meaning of the words “all nations,” p. 26—Importance of Article IV of the Hay-Pauncefote Treaty, p. 26—The various contingencies contemplated by Article II of the same treaty, p. 27.
- V. The American contention that the exemption of American coasting trade vessels from the payment of canal tolls does not discriminate against foreign vessels, p. 29—Every vessel shall bear a proportionate part of the cost of the Panama Canal, p. 30—Meaning of the term “coasting

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

CANAL CONFLICT

3

- trade" as upheld by the United States, pp. 30–33
—Coasting trade vessels of the United States can trade with Mexican and South American ports, p. 33—Any special favour to a particular nation involves discrimination against other nations, p. 34.
- VI. Is the United States prevented from refunding to her vessels the tolls levied upon them for use in the Panama Canal?, pp. 34–35—Difference of such refunding from exempting the vessels concerned from the payment of tolls, p. 35.
- VII. Prominent members of the Senate and many American newspapers condemn the special privileges granted to American vessels by the Panama Canal Act, p. 36—The defeated Bard Amendment of 1900, p. 37.
- VIII. Two schools of thought concerning the relations between International and Municipal Law, p. 38
—The maxim that International Law overrules Municipal Law, p. 39—The doctrine that International and Municipal Law are two essentially different bodies of law, p. 39—The two maxims of the practice of the American Courts, pp. 40–42
—President Taft's message to Congress suggesting a resolution which would have empowered the American Courts to decide the question as to whether Section 5 of the Panama Canal Act violates Article III, No. 1, of the Hay-Pauncefote Treaty, pp. 42–44.

Cambridge University Press

978-1-107-41879-0 - The Panama Canal Conflict Between Great Britain and the United States of America: Second Edition

L. Oppenheim

Frontmatter

[More information](#)

4 *THE PANAMA CANAL CONFLICT*

- IX. The Panama Canal conflict and the British-American Arbitration Treaty, pp. 44–45—Does the term “interests” mean “advantages” or “rights”?, p. 46—*Pacta tertiis nec nocent nec prosunt*, p. 47—The exemption of the vessels of the Republic of Panama from payment of tolls, pp. 48–50.
- X. Why it must be expected that the Panama Canal conflict will be settled by arbitration, pp. 51–52—Mr Thomas Willing Balch’s letter to the *New York Sun*, pp. 53–57.