

Union with reference to Outer Mongolia and Manchuria have already been accepted by China, there would seem to be no reason for the United States to approve or disapprove, by treaty or otherwise. As to Southern Sakhalin and the Kuriles there would seem to be no reason for the United States to withhold its consent to their formal transfer to the Soviet Union in the peace treaty with Japan. This proposal would have the advantage of relegating an agreement of uncertain meaning, doubtful duration, and questionable legal validity to its proper rôle of an historical curiosity and a legal monstrosity.

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GUATEMALA VS. GREAT BRITAIN: IN RE BELICE

The International Court of Justice, a principal organ of the United Nations, has been constituted through the election of its fifteen Judges. Great Britain has offered to have her 87-year-old dispute with Guatemala, concerning the territory of Belice, decided by this Court. The Belice controversy may constitute the first case before the new Court. It seems, therefore, timely to state the facts and the law involved in this case, without voicing any opinion as to the judgement.

The territory which the British call British Honduras¹ and the Guatemalans Belice, according to its capital, has an area of 8598 square miles, a little larger than Wales, and is situated 600 miles west from Jamaica; it borders in the West on Guatemala, in the East on the Caribbean Sea. It has a population of some 61,000 inhabitants, of whom only 4% are white. It is a British Crown Colony under a Governor, aided by an appointed Executive Council and a partially elected Legislative Council.

The history of Belice goes back to the XVIIth century and forms part of England's struggle against the Empire of Spain. The era of buccaneering² led in 1655 under Cromwell to the conquest of Jamaica, and Spain recognized England's title to Jamaica by the Treaty of Madrid of July 18, 1670. The attempts made by England to stop buccaneering³ had as a consequence that some of the former buccaneers became woodcutters, and woodcutters from Jamaica, attracted by the forests of mahogany, logwood, cedar, and cabinet

¹ For brief information see: *The Statesman's Year Book, 1943*, pp. 271-273; *Pan American Year Book, 1945*, pp. 530-532. British literature: G. Henderson, *An Account of the British Settlements of Honduras, 1811*; *Honduras Almanac, Belice, 1828*; D. Morris, *The Colony of British Honduras, 1883*; A. R. Gibbs, *British Honduras: A historical and descriptive account of the colony from its settlement, 1670*, London, 1883; L. W. Bristowe and P. B. Wright, *Handbook of British Honduras, 1889-1893*; A. B. Dillon, *Geography of British Honduras*, London, 1923; M. S. Metzgen and H. E. C. Cain, *Handbook of British Honduras, 1925*; A. H. Anderson, *Brief Sketch of British Honduras*, London, 1927; Sir J. A. Burdon, *Brief Sketch of British Honduras*, London, 1928; Sir A. Aspinall, *Handbook of the British West Indies, British Guiana and British Honduras, 1929-1930*.

² C. H. Haring, *Buccaneers in the West-Indies*, 1910.

³ *Cambridge History of the British Empire*, Vol. I, p. 246.

wood, which covered the greater part of British Honduras, made their first settlement in Belice in 1662. Jamaica was the port of the logwood cutters.⁴ "The British settlement at Belice was a direct outgrowth of the buccaneering era in the Western World."⁵ Up to 1786 the settlers remained completely independent of British control. Only in 1786 was a Superintendent for the Settlement appointed by the British Crown. But during the whole of the XVIIIth century⁶ there were constant disputes between England and Spain over the legality of the British settlement in Belice. The treaties of Paris of 1763 and of Versailles of 1783, followed by the Convention of London of 1786, dealt with the matter. In 1779 the settlement had been destroyed by the Spaniards; but the survivors returned in 1783. In 1798 the settlers resisted a Spanish attack⁷ and after that time were left in peace.

In the first half of the XIXth century the British made several encroachments on the Central American Coast which led to a rivalry and discussions with the United States, connected with the Monroe Doctrine and general Anglo-American diplomacy, and concerning the future Panama Canal. In 1841 the British proclaimed the "Mosquito" protectorate, in 1849 they occupied Tigre Island in the Bay of Fonseca, in 1852 the British "Colony of the Bay Islands" was established. The discussions with the United States led to the Clayton-Bulwer Treaty of April 19, 1850,⁸ by which the Contracting Parties bound themselves not to colonize or assume or exercise any dominion over any part of Central America. Soon afterward the British decided to stop colonial expansion in the Caribbean area. By the treaty with Honduras of 1859⁹ they withdrew from the Bay Islands and concluded a self-denying treaty with Nicaragua concerning the Mosquito Coast.¹⁰

But the British claim to the whole of British Honduras was upheld. By 1839 the Government of Belice was fully organized. On April 30, 1859, Britain concluded with Guatemala the treaty of frontiers between British Honduras and Guatemala. In 1862 Britain converted the settlement of Belice into a British Colony with a Lieutenant Governor, under the Governor of Jamaica. In 1871 British Honduras became a Crown Colony. In 1884

⁴ Same, p. 382.

⁵ Mary W. Williams, *Anglo-Isthmian Diplomacy, 1815-1915*, Washington, 1916, p. 2.

⁶ *Cambridge History of the British Empire*, Vol. II, pp. 538-541. See also Sir J. A. Burdon, *Archives of British Honduras*, London, 1931-1935.

⁷ E. W. Williams, *The Baymen of Belice and how they wrested British Honduras from the Spaniards*, 1914.

⁸ Malloy, *Treaties of the U.S.*, Vol. I, p. 659; Martens, *Nouveau Recueil Général*, 1857, p. 187.

⁹ *British & Foreign State Papers*, Vol. XLIX, pp. 13-19; Martens, Vol. XVI, Part II (1860), pp. 370-374.

¹⁰ Same, pp. 96-106. See also British-Nicaraguan Treaty, signed at Managua on April 19, 1905, in Martens, 2e sér., Vol. XXXV (1908), p. 367, which provides, in Art. 2: "His Britannic Majesty agrees to recognize the absolute sovereignty of Nicaragua over the territory that constituted the former Mosquito Reserve."

the dependence from Jamaica was severed and British Honduras became an independent Crown Colony under a Governor.

The dispute¹¹ with Guatemala over Belice dates from the treaty of 1859. The treaty,¹² signed on April 30, 1859, at Guatemala City, where ratifications were exchanged on September 12 of the same year, lays down in Art. 1 the frontiers between British Honduras and Guatemala. Guatemala recognizes British sovereignty over the whole territory of British Honduras without restriction. Art. 2 provides for a Joint Boundary Commission. Art. 7 contains the controversial norm,¹³ concerning the construction of a road from the Atlantic Coast to Guatemala City. The Joint Boundary Commission was appointed in 1860, met in 1861, but did not complete its work. There followed a long diplomatic controversy over the meaning of Art. 7. On August 5, 1863, the Lennox Wyke-J. de Francisco Martin treaty was signed, by which Britain's obligations under Art. 7 were reduced to the payment of £50,000; but the treaty was not ratified. In 1867 Britain informed Guatemala that she considered her obligations under Art. 7 canceled, as the costs of the construction of the road were far higher than expected. Guatemala protested.

In 1928 the Joint Commission was again appointed. An exchange of notes, concerning the completion of the demarcation of boundaries, was signed at Guatemala City on August 25 and 26, 1931.¹⁴

In September, 1936, Guatemala proposed to Britain that Britain return British Honduras against a payment of £400,000, or that Britain pay £400,000, while Guatemala will renounce any further claim under Art. 7, or, finally, that Britain pay £50,000 and grant a strip of land for the department of Petén so that it may have an outlet to the sea. Britain rejected the proposals.

On July 21, 1937, Guatemala proposed international arbitration by the President of the United States. Britain accepted the idea of arbitration,

¹¹ Gordon Ireland, *Boundaries, Possessions, and Conflicts in Central and North America and the Caribbean*, Cambridge, Mass., 1941, pp. 120-128.

¹² Wyke-Aycinena Treaty: *British & Foreign State Papers*, Vol. XLIX, pp. 7-13; Martens: Vol. XVI, Part II (1860), pp. 366-370. The treaty is in English and Spanish.

¹³ Art. 7: "With the object of practically carrying out the views set forth in the preamble of the present Convention for improving and perpetuating the friendly relations which at present so happily exist between the two High Contracting Parties, they mutually agree conjointly to use their best efforts by taking adequate means for establishing the easiest communication (either by means of a cart-road, or employing the rivers or both united, according to the opinion of the surveying engineers) between the fittest place on the Atlantic Coast, near the settlement of Belice, and the capital of Guatemala, whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future."

¹⁴ Martens: *Se sér.*, Vol. XXVI (1933), pp. 42-48. The text of the treaty of 1859 is reprinted in the Annex.

but held that it should be made by the Permanent Court of International Justice. This change was not accepted by Guatemala.

In 1938 Guatemala took a new stand and claimed the reincorporation of the whole territory of British Honduras into Guatemala. She pressed her claim in official publications¹⁵ and by Pan American action. She attached a reservation concerning Belice to the Declaration of Panama of 1939¹⁶ and the Second Consultative Meeting at Havana in 1940 adopted Resolution XIX¹⁷ which "expresses the keen desires and wishes of the American countries in favor of a just, peaceful, and prompt solution of the question of Belice between Guatemala and Britain." Since 1939 a large literature dealing with the historical and legal aspects of the problem of Belice has come into existence.¹⁸

In August, 1939, the new minister of Guatemala in London, S. Aguilar, was instructed to begin new negotiations on Belice with Lord Halifax, but President Jorge Ubico of Guatemala made known on June 15, 1940, that the efforts to reincorporate British Honduras would be suspended until Britain had less pressing major difficulties on her hands.

The new Constitution of Guatemala of March 11, 1945,¹⁹ declares in Art. 1 of its Transitory Dispositions²⁰ that Belice is part of Guatemala's territory and considers the measures undertaken to obtain its effective reincorporation as matters of national interest. On September 19, 1945, the National Con-

¹⁵ Guatemala, Secretaría de Relaciones Exteriores, *Libro Blanco: Cuestión de Belice*, 1938, and *Continuación del Libro Blanco*, 1939.

¹⁶ Carnegie Endowment for International Peace, *The International Conferences of American States, First Supplement, 1938-1940*, Washington, 1940, p. 337. ¹⁷ Work cited, p. 363.

¹⁸ D. Vela, *Nuestro Belice*, Guatemala City, 1939; *Opinion of the Geographical and Historical Society of Guatemala on Guatemala's right to Belice*, 2nd ed., 1939; S. Aguilar, *La cuestión de Belice*, in *Revista de la Facultad de Ciencias Jurídicas y Sociales de Guatemala*, Vol. I (1938-39), pp. 281-307, 499-530, Vol. II, pp. 56-114, 290-322, 440-453, 500-504, 543-556 and, Vol. IV, pp. 34-53, 250-268; Fernando Juárez Muñoz, *Belice es nuestro*, in same, Vol. II, pp. 557-561, and Vol. III, pp. 66-87, 163-172; Marco Aurelio Morales, *Asunto de Belice entre Guatemala y Bretaña* in same, Vol. III, pp. 281-287; L. Anderson, *Los Estados Unidos y las ocupaciones británicas en Centro-América*, in *Revista de Derecho Internacional*, No. 72 (1939), pp. 170-227; F. Termer, *Guatemala und Britisch Honduras: ein Landstreit*, in *Ibero-Amerikanisches Archiv*, Berlin, Vol. XIV (1940), pp. 44-67; F. Asturias, *Belice*, Guatemala City, 1941; G. Santiso Gálvez, *El caso de Belice a la luz de la historia y el derecho internacional*, Guatemala City, 1941; José Luis Mendoza, *Inglaterra y sus pactos sobre Belice*, 1942 (reviewed by Aurelio Alba in *Tulane Law Review*, Vol. XIX (1944), pp. 315-322; A. Cravioto, *La Paz de América*, Mexico City, 1943; Gabriel Pasos, *Belice: patrimonio de Guatemala*, Thesis, Granada (Nicaragua), 1944.

The most important juridical study is L. Anderson, *Estudio jurídico acerca de la controversia entre Guatemala y la Gran Bretaña relativa a la convención de 30 de abril de 1859 sobre asuntos territoriales* in *Revista de Derecho Internacional*, No. 70 (1939), pp. 163-231. This study has been made Guatemala's official standpoint. Guatemala has also favored the book by Mendoza. A brief summary of Guatemala's legal position is now given in *Revista de . . . Guatemala*, Vol. VIII (1945), pp. 24-27.

¹⁹ Text in *Revista de . . . Guatemala*, Vol. VIII (1945), pp. 35-79.

²⁰ Same, p. 78.

gress of Guatemala requested the Government to renew measures for recovery of the territory. A Guatemalan note of September 24, 1945, to the British Minister in Guatemala declared the suspension of discussions ended and expressed the wish to initiate negotiations to reach a happy solution of the question in the least possible time. The British note of January 14, 1946,²¹ is based on Art. 36 (3) of the Charter of the United Nations, according to which legal disputes should be referred to the International Court of Justice. While Britain rejects Guatemala's argument that the treaty of 1859 has lapsed, and regards Guatemala's claim to the territory of British Honduras as devoid of all foundation, she considers the dispute to be a legal dispute and is willing to accept the compulsory jurisdiction of the Court "*ipso facto* and without special agreement, in all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras, including all questions resulting from any conclusion which the Court may reach with regard to any such treaty." The decision would naturally be binding on Britain and Guatemala.

If the case comes before the Court, two completely different legal problems may have to be decided. The first has to do, as the British note of 1946 puts it, with the interpretation, application, and validity of the treaty of 1859. The first problem the Court will have to decide is the character of this treaty and the meaning of its Art. 7; this necessitates the interpretation of the treaty. Guatemala makes the point that she concluded the treaty under pressure, fearing, in consequence of the enormous discrepancy in power between her and Britain, otherwise to lose even more territory. But Guatemala does not contest the validity of the treaty because of duress. She also concedes that she recognized by this treaty the unrestricted sovereignty of Britain over the whole territory of British Honduras. According to Guatemala's argument, as developed especially by Anderson and Mendoza, the treaty of 1859 is a real treaty of cession of territory and constitutes Britain's only legal title to Belice. According to Britain, the treaty of 1859 is a simple treaty of boundaries, concluded on the basis of previous British sovereignty. Guatemala refers to the preliminary negotiations with Wyke, in which it was made clear that the treaty is a treaty of cession of territory and that Guatemala wants a compensation as a *quid pro quo*. Wyke, Guatemala says, declared that a cession, accompanied by compensation, was diplomatically impossible, because of Britain's obligation under the Clayton-Bulwer Treaty. Guatemala declares that on account of that reason alone the treaty of cession was disguised as a treaty of boundaries, and the compensation put into the ambiguous language of Art. 7, whereby the parties agreed "conjointly to use their best efforts" for the building of the road for the mutual benefit of both parties, and she points to Wyke's

²¹ The Guatemalan note of 1945 and the British answer of 1946 were circulated among the members of the General Assembly of the United Nations. (General Assembly, A/13, 23 January 1946, 5 pp.).

report to his Government of April 30, 1859. This argument inevitably brings up the question of what was to be Guatemala's part in these "joint efforts." Guatemala pretends that it was well understood that, in spite of its language, Art. 7 should create a unilateral obligation on the part of Great Britain for the unilateral benefit of Guatemala. The interpretation of Art. 7 is important for the question of non-fulfillment; the problem whether and how far *travaux préparatoires* may be used by the Court for the interpretation of the treaty will also present itself.

The next point is the problem of non-fulfillment. Guatemala claims that Art. 7 constituted a resolutive condition for the cession of territory. Guatemala pretends that Art. 2, concerning the demarcation of boundaries, has not been fulfilled, and that Britain has not fulfilled Art. 7, nor has she paid the £50,000 agreed upon in the abortive treaty of 1863. Has Great Britain failed to fulfill Art. 7? What about her earlier contention that her obligation under Art. 7 was canceled because of the unforeseen high costs of the construction of the road?

As, according to Guatemala, Britain failed to fulfill Art. 7, she has, under international law, a right, at her option, either to insist on fulfillment and indemnity, or to declare the treaty of 1859 no longer valid. She has chosen to declare that the treaty has lapsed because of non-fulfillment, a legal position rejected by Great Britain. Here the Court will have to decide the problem of the unilateral termination of a treaty because of non-fulfillment by the other party, and the highly controversial problem whether such unilateral right can be exercised because of the non-fulfillment of any article of a treaty, and whether in such case the whole treaty can be abrogated.

On the basis of the interpretation of the treaty and the decision of the question of non-fulfillment the Court may come to the conclusion that the treaty of 1859 has lapsed. In this case the entirely different problem of Great Britain's title to sovereignty over Belice, prior to and independent from the treaty of 1859, will have to be decided, an issue equally covered by the British note of 1946.

Guatemala claims that the treaty of 1859 constitutes Britain's only legal title to Belice and that the lapse of the treaty restores the *status quo ante*, i.e. to leave Britain without any legal title, whereas the legal title is in Guatemala.

Guatemala claims as the successor of Spain; Spain's title to sovereignty was inherited first by the independent Central American Republic in 1821, then, after the dissolution of this Republic, by Guatemala, to which sovereignty over Belice belongs under the rule of *uti possidetis*. Guatemala must, therefore, prove Spain's title to sovereignty.

The only legal title, Guatemala claims, which Great Britain held during the colonial period to the settlement in the northern part of British Honduras, stems from Art. 17 of the Treaty of Paris of February 10, 1763, under which the King of Spain "will not permit the British subjects or their work-

men to be disturbed and molested under any pretense whatever in the occupation of cutting, loading, and carrying away dye wood or logwood in northern British Honduras"; but this article forbids any other agricultural, industrial or commercial activity, forbids the keeping of troops, the erection of fortifications or the establishment of any form of government and adds expressly that "this concession shall never be considered as derogating in the slightest degree the rights of the sovereignty of Spain." Analogously worded are Art. 6 of the Treaty of Versailles of September 3, 1783, and Art. 3 and 4 of the London Convention of July 14, 1786. Under these treaties, Guatemala says, Great Britain held only a precarious concession of usufruct, granted by the Spanish Crown, and expressly recognized Spanish sovereignty. Guatemala rejects the theory of title by conquest in 1798, as the Treaty of Amiens of 1802 returned to Spain the territories conquered during the hostilities, with the exception of Ceylon and Trinidad and as the Treaty of Madrid of 1814 revalidated the treaties of 1783 and 1786 and Britain recognized the limited rights of her subjects in Belice and Spain's sovereignty. Guatemala points out that Great Britain herself considered Belice merely "under the protection, but not within the dominions, of Britain," that Belice was officially known in Britain as a Settlement until 1862.²² Guatemala points also to the attitude of the United States concerning Belice²³ and to the views of various American writers.²⁴

As Spain had sovereignty over Belice, as Guatemala inherited Spain's title, and as, under international law, state succession extinguished the treaties of 1783 and 1786, Guatemala held sovereignty over Belice free from the concessions granted by Spain, Guatemala ceded Belice to Britain by the treaty of 1859. As this treaty has lapsed, full sovereignty is again in Guatemala and she wants to reincorporate this territory in the Republic.

Britain not only contests that the treaty of 1859 has lapsed but also rejects Guatemala's claim to the territory as devoid of all foundation. For while Spain's sovereignty over Belice is hardly deniable and was recognized

²² "By the treaty of 1783 Belice still remained under Spanish sovereignty. In 1815, and for many years subsequent to that date, Britain regarded Belice merely as a settlement of British subjects upon soil the sovereignty of which was in Spain" (Mary W. Williams, *Anglo-Isthmian Diplomacy, 1815-1915*, Washington, 1916, p. 9). It is, therefore, not correct, as Ireland states, that British Honduras has been "a British colony for 300 years" (work cited, p. 120).

²³ A statement by Clayton to Bulwer is quoted in *Cambridge History of the British Empire* (Vol. II, p. 541), according to which the United States did not construe the renunciation of territorial interests by Great Britain as extending to her settlement in Belice. But later the Senate set up an inquiry into British proceedings in Belice and a United States Representative "went on to claim that Belice itself was part of Guatemalan territory and that the British settlers were intruders" (same, p. 541). The United States recognized British claims to Belice in the Dallas-Clarendon treaty of 1856, but Guatemala takes the position that this treaty can in no way be binding upon Guatemala.

²⁴ Bancroft, *History of Central America*, Vol. II, p. 629. See also Manuel Peniche, *Historia de las relaciones de España y México con Inglaterra sobre el establecimiento de Belice*, 1869.

by Britain, Britain bases her title to Belice, apart from the treaty of 1859, on effective occupation, long and undisturbed possession.²⁵

The termination of the old dispute by international adjudication is highly desirable; it would also give the International Court of Justice a first case of great legal interest and considerable political importance. The decision of Great Britain to accept the compulsory jurisdiction of the Court in this dispute, which eventually may involve the fate of the colony, is certainly proof of Britain's earnest desire to base British policy on the United Nations Organization. Naturally the consent of Guatemala is necessary to give the Court jurisdiction; notwithstanding her attitude of 1937, it is earnestly to be hoped that Guatemala will give her consent.

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THE DEMAND FOR WORLD GOVERNMENT

The atomic bomb may produce as great a revolution in the field of political science as in that of physical science. The atomic scientists, more aware of what they have done, and shocked by this awareness into earnest and vigorous effort to secure social action to control the consequences of their discoveries, demand a strong international control over production and use of the bomb and are quite willing to follow the consequences of this logic into a system of world government. Even though depressed by consultation with political scientists they are not discouraged; they are steadily organizing and pressing for what they think is needed. There is no group in the country more socially conscious, more eager, or more potentially effective than the atomic scientists, and those who are interested in international law and order may gain greatly from association with them.

It is characteristic of the average human being that it requires disaster, or the immediate prospect of disaster, to rouse him to doing what his intelligence long ago told him to do, or to thinking of that on which he never before took the trouble to think. Many who had not troubled themselves to think about organization for the maintenance of international peace now look appealingly to the UNO, and ask for a commission to control the atomic bomb. Others who had complacently satisfied themselves that the UNO was a safe shelter for sovereign irresponsibility are now shocked into asking that what should have been done at San Francisco (by way of strengthening the Charter) should now be done. Some who had always demanded a stronger system now ask for world government, and find an increasing number of followers.

The demand for world government increases steadily, though those who support it would differ greatly as to its meaning or degree of authority. A number of distinguished persons met at Dublin, N. H., in October, 1945, and drew up a statement calling for a much stronger international system

²⁵ "Continuous and peaceful display of territorial sovereignty (peaceful in relation to other States) is as good as a title" (Huber, Arbitrator, *The Island of Palmas (Miangas)*, 1928).