

Guatemala

PEACE, AMITY, COMMERCE, AND NAVIGATION

Convention signed at Guatemala March 3, 1849

Ratified by Guatemala March 20, 1849

Senate advice and consent to ratification September 24, 1850

Ratified by the President of the United States November 14, 1850

Ratifications exchanged at Guatemala May 13, 1852¹

Entered into force May 13, 1852

Proclaimed by the President of the United States July 28, 1852

Articles relating to commerce and navigation terminated November 4, 1874²

10 Stat. 873; Treaty Series 149³

GENERAL CONVENTION OF PEACE, AMITY, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF GUATEMALA

The United States of America and the Republic of Guatemala desiring to make firm and permanent the peace and friendship which happily prevails between both nations, have resolved to fix in a manner clear, distinct and positive the rules which shall in future be religiously observed between the one and the other, by means of a treaty, or general convention of peace, friendship commerce and navigation.

For this most desirable object the President of the United States of America has conferred full powers on Elijah Hise Chargé d'Affaires of the United States near the Government of the Republic of Guatemala, and the Executive power of the Government of the said Republic on the Sr. Lic^{do} Dⁿ José Mariano Rodriguez Secretary of State and of the Department of Foreign Relations, who after having exchanged their said full powers in due and proper form have agreed to the following articles.

¹ See footnote 4, p. 471.

² Pursuant to notice of termination given by Guatemala Nov. 4, 1873.

³ For a detailed study of this convention, see 5 Miller 547.

ARTICLE 1

There shall be a perfect, firm and inviolable peace and sincere friendship between the United States of America and the Republic of Guatemala in all the extent of their possessions and territories, and between their people and citizens respectively without distinction of persons or places.

ARTICLE 2

The United States of America and the Republic of Guatemala, desiring to live in peace and harmony with all the other nations of the earth by means of a policy frank and equally friendly with all, engage mutually not to grant any particular favor to other nations in respect of commerce and navigation which shall not immediately become common to the other party who shall enjoy the same freely if the concession was freely made, or on allowing the same compensation if the concession was conditioned.

ARTICLE 3

The two high contracting parties being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside and trade there in all kinds of produce, manufactures and merchandize, and they shall enjoy all the rights privileges and exemptions in navigation and commerce which native citizens do or shall enjoy, submitting themselves to the laws, decrees and usages there established to which native citizens are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved to the parties respectively according to their own separate laws.

ARTICLE 4

They likewise agree, that whatever kind of produce, manufacture or merchandize of any foreign country can be from time to time lawfully imported into the United States in their own vessels, may be also imported in vessels of the Republic of Guatemala, and that no higher or other duties upon the tonnage of the vessel or her cargo, shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And in like manner, that whatever kind of produce, manufacture or merchandize of any foreign country can be from time lawfully imported into the Republic of Guatemala in its own vessels, may be also imported in vessels of the United States; and that no higher or other duties, upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And they further agree, that whatever may be lawfully exported or reexported from the one country in its own vessels to any foreign country may be in like manner exported or

reexported in vessels of the other country. And the same bounties, duties and drawbacks shall be allowed and collected whether such exportation or reexportation be made in vessels of the United States or of the Republic of Guatemala.

ARTICLE 5

No higher or other duties shall be imposed on the importation into the United States of any articles, the produce or manufactures of the Republic of Guatemala, and no higher or other duties shall be imposed on the importation into the Republic of Guatemala of any articles, the produce or manufactures of the United States, than are or shall be payable in like articles being the produce or manufactures of any other foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any articles to the United States or to the Republic of Guatemala respectively, than such as are payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufactures of the United States or of the Republic of Guatemala, to or from the territories of the United States, or to or from the territories of the Republic of Guatemala which shall not equally extend to all other nations.

ARTICLE 6

It is likewise agreed that it shall be wholly free for all merchants, commanders of ships and other citizens of both countries, to manage themselves their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of their goods and merchandize by wholesale or retail, as with respect to the loading, unloading, and sending off their ships; they being in all these cases to be treated as citizens of the country in which they reside, or at least to be placed on a footing with the subjects or citizens of the most favoured nation.

ARTICLE 7

The citizens of neither of the contracting parties shall be liable to any embargo, nor be detained with their vessels, cargoes, merchandize or effects for any military expedition nor for any public or private purpose whatever without allowing to those interested a sufficient indemnification.

ARTICLE 8

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports or dominions of the other with their vessels, whether merchants or of war, public or private, through stress of weather, pursuit of pirates or enemies, they shall be received and treated with humanity, giving to them all favour and protection for repairing their

ships, procuring provisions, and placing themselves in a situation to continue their voyage without obstacle or hindrance of any kind.

ARTICLE 9

All the ships, merchandize and effects belonging to the citizens of one of the contracting parties which may be captured by pirates, whether within the limits of its jurisdiction or on the high seas, and may be carried or found in the rivers, roads, bays, ports or dominions of the other shall be delivered up to the owners, they proving in due and proper form their rights before the competent tribunals; it being well understood that the claim should be made within the term of one year by the parties themselves, their attorneys, or agents of their respective Governments.

ARTICLE 10

When any vessel belonging to the citizens of either of the contracting parties shall be wrecked, foundered, or shall suffer any damage on the coasts or within the dominions of the other, there shall be given to them all assistance and protection, in the same manner which is usual and customary with the vessels of the nation where the damage happens, permitting them to unload the said vessel (if necessary) of its merchandize and effects without exacting for it any duty, impost, or contribution whatever, provided the same be exported.

ARTICLE 11

The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other by sale, donation, testament, or otherwise, and their representatives, being citizens of the other party shall succeed to their said personal goods, whether by testament or abintestato, and they may take possession thereof, by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country where said goods are or shall be subject to pay in like cases. And if in the case of real estate the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them the term of three years to dispose of the same as they may think proper and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the Government of the respective States.

ARTICLE 12

Both the contracting parties promise and engage formally to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in the territories subject to the jurisdiction of the one or of the other, transient or dwelling therein, leaving open and free to them the tribunals of justice for their judicial recourse, on the same terms

which are usual and customary with the natives or citizens of the country in which they may be; for which they may employ in defence of their rights such advocates, solicitors, notaries, agents and factors as they may judge proper in all their trials at law, and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them, and likewise at the taking of all examinations and evidence which may be exhibited in the said trials.

ARTICLE 13

It is likewise agreed that the most perfect and entire security of conscience shall be enjoyed by the citizens of both the contracting parties in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country. Moreover, the bodies of the citizens of one of the contracting parties who may die in the territories of the other, shall be buried in the usual burying grounds or in other decent or suitable places, and shall be protected from violation or disturbance.

ARTICLE 14

It shall be lawful for the citizens of the United States of America and of the Republic of Guatemala to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandize laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid to sail with the ships and merchandizes before mentioned, and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy before mentioned, to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one power or under several. And it is hereby stipulated that free ships shall also give freedom to goods, and that every thing shall be deemed to be free and exempt which shall be found on board the ships belonging to the citizens of either of the contracting parties although the whole lading, or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are officers or soldiers and in the actual service of the enemies: provided however, and it is hereby agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those powers only who recognize this principle; but if either

of the two contracting parties shall be at war with a third and the other neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle and not of others.

ARTICLE 15

It is likewise agreed, that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other by virtue of the above stipulation, it shall always be understood that the neutral property found on board such enemy's vessels shall be held and considered as enemy's property and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree, that two months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemies property, in that case the goods and merchandizes of the neutral, embarked in such enemy's ship shall be free.

ARTICLE 16

This liberty of navigation and commerce shall extend to all kinds of merchandizes, excepting those only which are distinguished by the name of contraband, and under this name of contraband or prohibited goods shall be comprehended.

1st—Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, and grenades, bombs, powder, matches, balls, and all other things belonging to the use of these arms.

2^{dly}—Bucklers, helmets, breastplates, coats of mail, infantry belts and clothes made up in the form and for a military use.

3^{dly}—Cavalry belts and horses with their furniture.

4^{thly}—And generally all kinds of arms and instruments of iron, steel, brass and copper, or of any other materials manufactured, prepared and formed expressly to make war by sea or land.

ARTICLE 17

All other merchandize and things not comprehended in the articles of contraband explicitly enumerated and classified as above, shall be held and considered as free and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force capable of preventing the entry of the neutral.

ARTICLE 18

The articles of contraband before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation, leaving free the rest of the cargo and the ship, that the owners may dispose of them as they see proper. No vessel of either of the two nations shall be detained on the high seas on account of having on board articles of contraband, whenever the master, captain, or supercargo of said vessel will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great and of so large a bulk that they cannot be received on board the capturing ship without great inconvenience; but in this and in all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port for trial and judgement according to law.

ARTICLE 19

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but shall not be detained, nor shall any part of her cargo, if not contraband, be confiscated unless after warning of such blockade or investment from the commanding officer of the blockading forces she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either of the parties that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other be restrained from quitting such place with her cargo, nor if found therein, after the reduction and surrender, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ARTICLE 20

In order to prevent all kind of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed, mutually, that whenever a vessel of war, public or private, shall meet with a neutral of the other contracting party, the first shall remain out of cannon shot, and may send its boat with two or three men only in order to execute the said examination of the papers concerning the ownership and cargo of the vessel without causing the least extortion, violence or ill treatment, for which the commanders of the said armed ships shall be responsible with their persons and property; for which purpose the commanders of the said private armed vessels shall before receiving their commissions, give sufficient security to answer for all the damages they may commit. And it is expressly agreed, that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting her papers, or for any other purpose whatever.

ARTICLE 21

To avoid all kind of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the two contracting parties, they have agreed and do agree, that in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other, must be furnished with sea-letters or passports, expressing the name, property and bulk of the ship, as also the name and place of habitation of the master or commander of said vessel, in order that it may thereby appear that the ship really and truly belongs to the citizens of one of the parties; they have likewise agreed that such ships, being laden, besides the said sea-letters or passports, shall also be provided with certificates containing the several particulars of the cargo and the place whence the ship sailed, so that it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed in the accustomed form; without which requisites said vessel may be detained, to be adjudged by the competent tribunal, and may be declared legal prize, unless the said defect shall be satisfied or supplied by testimony entirely equivalent.

ARTICLE 22

It is further agreed, that the stipulations above expressed relative to the visiting and examination of vessels, shall apply only to those which sail without convoy; and when said vessels, shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when they are bound to an enemy's port that they have no contraband goods on board shall be sufficient.

ARTICLE 23

It is further agreed, that in all cases the established courts for prize causes in the country to which the prizes may be conducted shall alone take cognizance of them. And whenever such tribunal of either party shall pronounce judgement against any vessel or goods or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence or decree and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of said vessel without any delay he paying the legal fees for the same.

ARTICLE 24

Whenever one of the contracting parties shall be engaged in war with another State, no citizen of the other contracting party shall accept a commission or letter of marque for the purpose of assisting or cooperating hostilely

with the said enemy against the said party so at war, under the pain of being treated as a pirate.

ARTICLE 25

If by any fatality, which cannot be expected and which God forbid, the two contracting parties should be engaged in a war with each other, they have agreed and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects wherever they please, giving to them the safe conduct necessary for it, which may serve as a sufficient protection until they arrive at the designated port. The citizens of all other occupations who may be established in the territories or dominions of the United States of America and of the Republic of Guatemala shall be respected and maintained in the full enjoyment of their personal liberty and property, unless their particular conduct shall cause them to forfeit this protection, which in consideration of humanity, the contracting parties engage to give them.

ARTICLE 26

Neither the debts due from individuals of the one nation to individuals of the other nor shares nor moneys which they may have in public funds or in public or private banks, shall ever in any event of war or of national difference, be sequestered or confiscated.

ARTICLE 27

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse, have agreed and do agree, to grant to the Envoys, Ministers and other public agents the same favours, immunities and exemptions which those of the most favoured nation do or shall enjoy; it being understood that whatever favours, immunities or privileges the United States of America or the Republic of Guatemala may find it proper to give to the Ministers and public agents of any other power, shall, by the same act, be extended to those of each of the contracting parties.

ARTICLE 28

To make more effectual the protection which the United States of America and the Republic of Guatemala shall afford in future to the navigation and commerce of the citizens of each other, they agree to receive and admit Consuls and Vice consuls in all the ports open to foreign commerce, who shall enjoy in them all the rights, prerogatives and immunities of the Consuls and Vice consuls of the most favoured nation; each contracting party, however, remaining at liberty to except those ports and places in which the admission and residence of such Consuls and Vice consuls may not seem convenient.

ARTICLE 29

In order that the Consuls and Vice-consuls of the two contracting parties may enjoy the rights, prerogatives and immunities which belong to them by their public character, they shall before entering on the exercise of their functions exhibit their commission or patent in due form to the Government to which they are accredited; and having obtained their exequatur they shall be held and considered as such by all the authorities, magistrates, and inhabitants in the consular district in which they reside.

ARTICLE 30

It is likewise agreed that the Consuls, their Secretaries, officers and persons attached to the service of Consuls, they not being citizens of the country in which the Consul resides, shall be exempt from all public service, and also from all kind of taxes, imposts and contributions, except those which they shall be obliged to pay on account of commerce or their property, to which the citizens and inhabitants, native and foreign of the country in which they reside are subject; being in every thing besides subject to the laws of the respective States. The archives and papers of the consulate shall be respected inviolably, and under no pretext whatever shall any magistrate seize or in any way interfere with them.

ARTICLE 31

The said Consuls shall have power to require the assistance of the authorities of the country for the arrest, detention and custody of deserters from the public and private vessels of their country, and for that purpose they shall address themselves to the courts, judges and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the registers of the vessel's or ship's roll, or other public documents, that those men were part of the said crews, and on this demand so proved, (saving however where the contrary is proved), the delivery shall not be refused. Such deserters when arrested shall be put at the disposal of the said Consuls, and may be put in the public prisons at the request and expense of those who reclaim them, to be sent to the ships to which they belonged or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

ARTICLE 32

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree, as soon hereafter as circumstances will permit, to form a consular convention, which shall declare specially the powers and immunities of the Consuls and Vice-consuls of the respective parties.

ARTICLE 33

The United States of America and the Republic of Guatemala desiring to make as durable as circumstances will permit the relations which are to be established between the two parties by virtue of this treaty or general convention of peace, amity, commerce and navigation have declared solemnly, and do agree to the following points.

1st The present treaty shall remain in full force and virtue for the term of twelve years, to be counted from the day of the exchange of the ratifications, and further until the end of one year after either of the contracting parties shall have given notice to the other of its intention to terminate the same; each of the contracting parties reserving to itself the right of giving such notice to the other at the end of said term of twelve years; and it is hereby agreed between them that on the expiration of one year after such notice shall have been received by either from the other party, this treaty in all its parts relative to commerce and navigation, shall altogether cease and determine, and in all those parts which relate to peace and friendship, it shall be perpetually binding on both powers.

2^{dly} If any one or more of the citizens of either party shall infringe any of the articles of this treaty such citizen shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby; each party engaging in no way to protect the offender or sanction such violation.

3^{dly} If (which indeed cannot be expected) unfortunately, any of the articles contained in the present treaty shall be violated or infringed in any other way whatever, it is expressly stipulated that neither of the contracting parties will order or authorize any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended shall first have presented to the other a statement of such injuries or damages verified by competent proof, and demand justice and satisfaction, and the same shall have been either refused or unreasonably delayed.

4^{thly} Nothing in this treaty contained shall, however be construed or operate contrary to former and existing public treaties with other Sovereigns or States.

The present Treaty of peace, amity commerce and navigation 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 Government of the Republic of Guatemala, and the ratifications shall be exchanged in the City of Washington or Guatemala within *eighteen* months counted from the date of the signature hereof, or sooner if possible.⁴

⁴ The United States Senate, on Sept. 27, 1850, gave its advice and consent to exchange of ratifications at any time prior to Apr. 1, 1851, and on June 7, 1852, at any time prior to Nov. 1, 1852.

In faith whereof we the Plenipotentiaries of the United States of America and of the Republic of Guatemala have signed and sealed these presents, in the City of Guatemala this third day of March in the year of our Lord One thousand eight hundred and forty nine.

ELIJAH HISE [SEAL]

J. MARIANO RODRIGUEZ [SEAL]