

Nootka – The Arbitration that never took place

Thy cities shall with commerce shine,
All thine shall be the subject main.

The events of 1789 lead the world to the brink of a world war.

France, the Dutch Republic, Prussia, Spain and England were preparing for armed conflict.

The English treasury allocated GBP 1,000,000 to the purpose.¹ Press gangs were roaming the ports of England pressing sailors into the royal service.² Britain sent ships and forces to Barbados, St. Vincent, the Leeward and Bahama islands, Dominica, Santa Lucia and Tobago, Cape Breton and Nova Scotia.³ More than sixty ships were waiting in Spithead ready to deploy.⁴ Ireland's Lord Lieutenant was asked "to throw all possible impediments in the way" of the export of provisions to the Spanish.⁵ Gibraltar's commander was warned of the risk of a Spanish attack and a regiment of infantry was sent to strengthen the garrison.⁶

Three ships were sent on their way to India to make preparation for an expedition to take Manila, or the west coast of America, from the Spanish - to exert control over the Pacific trade route.⁷

¹ Barry Gough, *Distant Dominion*, 1980, p. 112.

² William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 380 (available at: <http://www.gutenberg.org/files/53719/53719-h/53719-h.htm>); Barry Gough, *Distant Dominion*, 1980, p. 112 et seq.

³ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 385; H. V. Evans, *The Nootka Sounds Controversy in Anglo-French Diplomacy – 1790*, in: *Journal of Modern History* 46 (December 1974), 609, 624, 625 (available at: <https://www.jstor.org/stable/1877788>).

⁴ H. V. Evans, *The Nootka Sounds Controversy in Anglo-French Diplomacy – 1790*, in: *Journal of Modern History* 46 (December 1974), 609, 624, 625.

⁵ J. B. Fortescue, *Manuscripts preserved at Dropmore*, Vol. 1, p. 582 (available at: <https://ia600203.us.archive.org/31/items/manuscriptsjbfo01manugoog/manuscriptsjbfo01manugoog.pdf>). A request which was not met with great enthusiasm on the part of the Irish as Westmoreland's letter of 14 May 1790 shows, *ibid.* p. 585: "An official letter continues our information upon the subject of provisions; from this information you can reason as well as I can. I rather believe Spain has made provision contracts; the provision is gone. It does not appear that any provision remains on hand in the merchant's stores, and the present season will not permit the curing of sea provisions. I cannot, therefore, think an embargo as all necessary. The measure would be very injurious, and very unpopular and offensive in this country. Swayed perhaps a little by these considerations, I have almost persuaded myself that, with the market of the world open, Spain cannot be prevented from supplying her fleets with provisions; that it may not be impolitic to permit Ireland to continue a provision trade (very beneficial to herself) of which England has the first choice; and England likewise has the opportunity of stopping the enemy's supply, whenever the exigency requires it; which power she would not have if Spain should find another market. Directions are gone to the officers at Cork, Limerick, and Waterford, by official delays, to stop the sailing of any provision ships that they may suspect to be intended for the enemy, until they have given information to Dublin; and, if any important quantity should be discovered (a discovery not very probable) I propose a private purchase of the articles; but you must send authority, as the charge must finally be laid upon the English Treasury."

⁶ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 385.

⁷ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 385.

A formidable English fleet of 29 ships of the line, nine frigates, two sloops, four cutters and two fireships under Admiral Lord Howe was cruising in the Atlantic off the isle of Ouessant,⁸ which had already seen so many battles. Howe had orders, if he met the Spanish fleet, to tell them to turn south, and if they refused, to engage. He was also allowed to use force if the French fleet was to try and join the Spanish fleet.⁹

Upon learning of the fleet's leaving from Portsmouth, Spain ordered its own fleet to go out likewise.¹⁰ While the Spanish navy had express instructions not to engage in hostilities unless attacked, it created a potentially explosive situation: the ends of the rope were tied in the knot of war and it was a question if the politicians would untangle it, or continue to pull.

In London, William Pitt the Younger, England's ambitious Prime Minister was meeting with the South American revolutionary, Francisco de Miranda, telling him he was presenting Miranda's "grand plan" for a revolution in South America to His Majesty's Cabinet.¹¹ British agents were dispatched secretly to Charleston and New York to explore what could be done with regard to New Orleans, the Floridas and the Mississippi.¹² Negotiations were under way as well with the Creek and the Cherokee.¹³ The Governor of Canada was told not to return to Britain but make overtures to the young United States to secure their support.¹⁴

Diplomats in Europe in the meantime were discussing in the corridors of St. James, the gardens of Aranjuez, and the salons in Paris, writing letters and dispatches trying to avoid war. Spain suggested arbitration by a European king.¹⁵

France was the tip on the scale: which way would she turn? Would revolutionary France renew its Pacte de Famille with the Kingdom of Spain? Who was to decide on matters of peace and war – the King, the National Assembly?¹⁶

What would the young United States do? Hamilton, the Secretary of the Treasury, was advocating the English cause, while Jefferson, the Secretary of State, feared enclosure by the British:

"I am so deeply impressed with the magnitude of the dangers which will attend our government if Louisiana and the Floridas be added to the British Empire, that in my opinion we ought to make ourselves parties in the general war expected to take place, should this be the only means of preventing the calamity."¹⁷

⁸ Barry Gough, *Distant Dominion*, 1980, p. 113.

⁹ Barry Gough, *Distant Dominion*, 1980, p. 113.

¹⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 151 (available at: https://www.archive.org/details/cihm_17959).

¹¹ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 383 et seq., 412.

¹² William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 413.

¹³ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 414.

¹⁴ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 415.

¹⁵ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 401.

¹⁶ The events in France are described – from a British perspective – in Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, pp. 83 - 94, which quite independently of the moot gives a rare insight into France's division of powers as it relates to foreign policy during the early stages of the Revolution. See also William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 390, 391.

¹⁷ Worthington Chauncey Ford, *The United States and Spain in 1790, 1890*, p. 56 (available at: <https://ia902604.us.archive.org/4/items/unitedstatesand00fordgoog/unitedstatesand00fordgoog.pdf>); see also William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 415.

In August 1790, the US Government was debating what should be done were England to march troops through US territory.¹⁸ On 28 August 1790, John Jay, Chief Justice, delivered a legal opinion (1) “[w]hether the Laws of Nations entitle a belligerent power to a free Passage for Troops thro' the Territories of a neutral Nation?” and (2) “[i]n Case the Right to such Passage be not a perfect one, whether circumstances render a Refusal or a compliance most adviseable on the present occasion?”¹⁹

And all this for four ships and a small piece of wilderness on the Pacific shore, just north of the 49th parallel, on what became known – because of the events described below – as Quadra and Vancouver Island.

A full account of the negotiations between the two crowns was prepared by the British Government.²⁰

The Treaty of Tordesillas of 7 June 1494,²¹ the Treaty of Madrid of 13 January 1750,²² the Treaty of El Pardo of 12 February 1761 (repealing the Treaty of Madrid)²³ as well as the First Treaty of San Ildefonso of 1 October 1777 (reinstating the Treaty of Madrid)²⁴ are historical. As is the Treaty of Peace between Portugal and Spain of 6 February 1715 (one of the Utrecht Treaties).

Fictional is the Trade and Prosperity Pact (TPP). For purposes of the Moot, participants are to assume that the TPP was signed as Annex to the Treaty of Peace between Portugal and Spain of 6 February 1715, on the same date.

Although the facts of the case and the proceedings take place in the 18th century, for the purpose of the Moot participants will assume treaties, customary public international law and case law are those of the 21st century. In particular, participants in the Moot will assume that

¹⁸ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 418; Worthington Chauncey Ford, *The United States and Spain in 1790, 1890*, p. 43 et seq.

¹⁹ Worthington Chauncey Ford, *The United States and Spain in 1790, 1890*, p. 50.

²⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*. *Manning* describes this as “a very rare book, and very valuable for the subject in hand. No previous writer on the Nootka controversy has consulted it. Probably only a few copies were printed. The King’s own copy is now in the British Museum. That obtained for use in this study is the only other copy that Messrs. Henry Stevens, Son & Stiles, antiquarian booksellers of London, have noted during the whole of their business experience. Neither date nor name of publisher nor author is given. The British Museum catalogue gives 1791(?) as the date. It is evidently an official account prepared in the foreign office especially for the King. In a letter from J. B. Burges, under secretary for foreign affairs, to Lord Auckland, dated Whitehall, November 12, 1790, found in B. M. Add. MSS. 34434, f58, he mentions an ‘interesting Narrative, which, at leisure hours, I have prepared for the King, of the whole of this business.’ A careful comparison of the printed Narrative with the documents in the public record office reveals the identity of the printed Narrative with the Narrative mentioned by Burges in this letter. The comparison also revealed the fact that the printed account is full and faithful. It is necessarily condensed, but nothing of importance is omitted,” William Ray Manning, *The Nootka Sound Controversy*, 1905, ft. 220. **Today, a bit more than one hundred years later this “very rare book” is available on the internet.**

²¹ Available at: http://avalon.law.yale.edu/15th_century/mod001.asp.

²² Available in Spanish at: https://es.wikisource.org/wiki/Tratado_de_Madrid_entre_Espa%C3%B1a_y_Portugal_-_1750 (further reading only, not part of the case-study).

²³ Available in Spanish at: [https://es.wikisource.org/wiki/Tratado_de_El_Pardo_\(1761\)](https://es.wikisource.org/wiki/Tratado_de_El_Pardo_(1761)) (further reading only, not part of the case-study).

²⁴ Available in Spanish at: https://es.wikisource.org/wiki/Tratado_de_San_Ildefonso_entre_Espa%C3%B1a_y_Portugal_-_1777 (further reading only, not part of the case-study).

the New York Convention has entered into force on 12 March 1710. Both Portugal and Spain are contracting States. Neither the EU, nor any of its institutions, nor the Euro exist.

When citing from original documents, we have preserved the original spelling and grammar.

Flags and Furs

The fateful voyage described in this Case-Study was the third of John Meares to the Northern Pacific coast of America.

The first voyage in 1786, which he made from Calcutta with the two ships *Nootka* and *Sea Otter*, was under the auspices of the Bengal Fur Company.²⁵ It involved a not so friendly rescue by competing traders of Richard Cadman Etches and Company, aka the King George's Sound Company (who, unlike Meares' expedition, had licenses from the East India Company and South Sea Company).²⁶ Meares then outmaneuvered them arriving in Macao before they could and sold his 350 sea otter skins for 14,000 Spanish dollars (\$40/ skin).²⁷ When they arrived with their far greater cargo of 2,552 furs, they achieved only an average price of \$19.²⁸

The second voyage took place in 1788. Meares had in the meantime entered into a partnership with John Henry Cox and David Beale & Co forming the Merchant Proprietors (possibly also containing Meares' associates from the Bengal Fur Company).²⁹ The ships, the *Feliz Aventureira* (the re-christened *Nootka*)³⁰ and the *Efigenia Nubiana*, were owned in the name of Juan Carvalho of Macao and sailing under Portuguese flags.³¹ The Portuguese flag not only meant that the ships could enjoy privileges at Macao, which was a Portuguese possession, and lower duties in Canton/ Guangzhou,³² but was also a flag of convenience for English merchants that did not have licenses from the East India Company and South Sea Company.³³ Indeed it appears to have been a frequent practice amongst English merchants to sail either under Portuguese or Austrian colours.³⁴

The two vessels arrived in Nootka in May of 1788.³⁵ Meares later maintained that during this second voyage, he acquired land in the sound of Nootka from the local chief Maquinna (also spelled Muquinna and Makquilla) as well as concluded a compact for free and exclusive trade

²⁵ Dictionary of Canadian Biography, University of Toronto, (available at: http://www.biographi.ca/en/bio/meares_john_5E.html).

²⁶ Dictionary of Canadian Biography, University of Toronto; see also Barry Gough, *Distant Dominion*, 1980, p. 67.

²⁷ Barry Gough, *Distant Dominion*, 1980, p. 68.

²⁸ Barry Gough, *Distant Dominion*, 1980, p. 68.

²⁹ Barry Gough, *Distant Dominion*, 1980, p. 68.

³⁰ Barry Gough, *Distant Dominion*, 1980, p. 160, ft. 50.

³¹ Dictionary of Canadian Biography, University of Toronto.

³² Barry Gough, *Distant Dominion*, 1980, p. 68.

³³ Barry Gough, *Distant Dominion*, 1980, p. 66.

³⁴ Barry Gough, *Distant Dominion*, 1980, p. 66 (Austrian East India Company, Austrian port of Oostende), p. 53 (Imperial Company of Trieste for the Commerce of Asia, Austrian port of Trieste): "in London, the East India Company's Court of Directors anxiously watched these developments, fearing foreign rivalry in trade which might otherwise be turned to their advantage ... They knew British traders would enter into foreign employ in order to circumvent the Company monopoly and that of the South Sea Company for licensing all British ships in eastern seas. They also knew that British ships would sail under foreign flags of convenience, usually Portuguese or Austrian, in order to bypass these monopolistic regulations and gain unrestricted access to the Portuguese port of Macao", p.53).

³⁵ Dictionary of Canadian Biography, University of Toronto.

with him.³⁶ His ships had brought materials for the construction of a ship from China to the Pacific North West. With these he had a 40t schooner built, the first European ship constructed on the northern Pacific shore, which he aptly named the *North West America*.³⁷ In fall, Meares sailed back to China on the *Feliz Aventureira*, while the *Efigenia Nubiana* and the *North West America* were to sail to Hawaii for the winter.³⁸

Over the winter in China, Meares and his Merchant Proprietors reached an understanding with his competitors of the King George's Sound Company and formed a partnership called the "Associated Merchants of London and India Trading to the Northwest Coast of America".³⁹ An agreement of 23 January 1789 stipulated that all ships were to trade for the joint account and for equal profit sharing.⁴⁰

The new partnership prepared for a new expedition, Meares' third voyage, to the Pacific Northwest: two vessels, the snow *Argonaut* and the sloop *Princess Royal*, were put under the command of James Colnett and ordered to join the *Efigenia* and the *North West America*. According to Meares, Colnett "was directed to fix his residence at Nootka Sound, and with that view, to erect a substantial house on the spot which [Meares] had purchased in the preceding year ... That the *Princess Royal* and *Argonaut*, loaded with Stores and Provisions of all Descriptions, with Articles estimated to be sufficient for the Trade for Three Years, and a Vessel on Board in frame, of about 30 Tons Burthen, left China accordingly in the Months of April and May 1789. They had also on Board, in Addition to their Crews, several Artificers of different Professions, and near 70 Chinese, who intended to become Settlers on the American Coast, in the Service and under the Protection of the associated Company".⁴¹

The Nootka Incident

News of the events in Nootka reached England through the English chargé d'affaires in Madrid. On 4 January 1790, Anthony Merry wrote to the Secretary of State for Foreign Affairs, Francis Osborne, 5th Duke of Leeds, about rumours that an English vessel had been taken by the Spanish at Nootka.⁴² The letter reached London on 21 January 1790.⁴³

The Marquis del Campo, at the time the Spanish ambassador to the Court of St. James, officially informed the Duke of Leeds by letter of 10 February 1790:

"My Lord: Continuing the frequent expeditions which the King, my master, has ordered to be made to the northern coasts of California, the Viceroy of Mexico sent two ships, under the orders of Don Estevan José Martinez, ensign of the navy, to make a permanent settlement in the port of San Lorenzo, situated about

³⁶ Dictionary of Canadian Biography, University of Toronto; Barry Gough, *Distant Dominion*, 1980, p. 60.

³⁷ Dictionary of Canadian Biography, University of Toronto.

³⁸ Dictionary of Canadian Biography, University of Toronto.

³⁹ Barry Gough, *Distant Dominion*, 1980, p. 71; Dictionary of Canadian Biography, University of Toronto.

⁴⁰ Barry Gough, *Distant Dominion*, 1980, p. 71:

⁴¹ Lieutenant John Mears, Memorial to the right honorable William Wyndham Grenville, one of his Majesty's principal Secretaries of State, dated 30th of April 1790, and presented to the House of Commons, May 13th 1790, p. 2. The Memorial is included on the Moot's website. Participants of the Moot will exercise professional judgement in weighing the evidentiary value of both the Meares Memorial and the Narrative of the British Government.

⁴² William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 365.

⁴³ William Ray Manning, *The Nootka Sound Controversy*, 1905, ft. 212.

the fiftieth degree of latitude, and named by foreigners “Nootka,” or “Nioka,” of which possession had formerly been taken. He arrived there the 24th of last June. In giving his account to the Viceroy, M. Martinez said that he found there an American frigate and sloop, which had sailed from Boston to make a tour of the world. He also found a packet boat and another vessel belonging to a Portuguese established at Macao, whence they had sailed with a passport from the governor of that port. He announced also that on the 2d of July there arrived another packet boat from Macao. This was English, and came to take possession of Nootka in the name of the British King. She carried a sloop in pieces on board.

This simple recital will have convinced your excellency of the necessity in which the Court of Madrid finds itself of asking His Britannic Majesty to punish such undertakings in a manner to restrain his subjects from continuing them on these lands which have been occupied and frequented by the Spaniards for so many years. I say this to your excellency as an established fact, and as a further argument against those who attribute to Captain Cook the discovery of the said port of San Lorenzo, I add that the same Martinez in charge of the last expedition was there under commission in August of 1774. This was almost four years before the appearance of Cook. This same Martinez left in the hands of the Indians two silver spoons, some shells, and some other articles which Cook found. The Indians still keep them, and these facts, with the testimony of the Indians, served M. Martinez to convince the English captain.

The English prisoners have been liberated through the consideration which the King has for His Britannic Majesty, and which he has carefully enjoined upon his viceroys to govern their actions in unforeseen events. His Majesty flatters himself that the Court of St. James will certainly not fail to give the strictest orders to prevent such attempts in the future, and, in general, everything that could trouble the good harmony happily existing between the two Crowns. Spain on her side engages to do the same with respect to her subjects.

I have the honor to be, etc.,

THE MARQUIS DEL CAMPO.

His Excellency M. the DUKE OF LEEDS.”⁴⁴

The information shared by the Spanish diplomats was the only one available to His Majesty’s government at the time. However, even the – certainly less than impartial – account by the Spanish was sufficient to make Britain’s cholera rise:

“His Majesty’s ministers, however, conceiving the Circumstance of Seizing a British Ship in Time of Peace, to be an Offence against the Law of Nations, and

⁴⁴ English translation by William Ray Manning (The Nootka Sound Controversy, p. 367, 368, ft. 218, “[t]ranslated from a manuscript copy in French found in the Archives des Affaires Etrangères, Paris; Espagne 1790, 5 P^{tes} Mois, f. 96”).

an Insult to His Majesty, lost no Time in taking the only Step in their Power [...]"⁴⁵

Three days after receiving the letter by del Campo, Pitt met with Colonel Miranda to discuss the prospects of a South American revolution.⁴⁶

On 26 February 1790, Leeds replied to del Campo:

“As yet no precise information has been received relative to the events mentioned in your excellency’s letter, but while awaiting such I have His Majesty’s orders to inform your excellency that the act of violence spoken of in your letter as having been committed by M. Martinez, in seizing a British vessel under the circumstances reported, makes it necessary henceforth to suspend all discussion of the pretensions set forth in that letter until a just and adequate satisfaction shall have been made for a proceeding so injurious to Great Britain.

In the first place it is indispensable that the vessel in question shall be restored. To determine the details of the ultimate satisfaction which may be found necessary more ample information must be awaited concerning all the circumstances of the affair.”⁴⁷

While Spain did not intend to accede to the English claims, they were concerned as Merry reports in his letter of 22 March 1790 (received in London on 8 April 1790):

“The Spanish Minister, speaking to me Two Days ago, expressed much Dissatisfaction at the Answer he had received from the Court of London, on the Subject of the Seizure of the English Vessel at San Lorenzo. The Degree of Ill-Humour, which he appeared to shew on this Occasion, may, I conceive, more properly be construed into an Uneasiness and Diffidence, on his Part, with Respect to our Designs ; for he gave me to understand, that it was not the Matter itself in Question, which affected him so much as the Fear, that, from the Manner in which we have taken it up, we may at any Time make use of it as a Ground for Quarrelling.—Count Florida Blanca then expressed his Opinion, that, in the present Situation of Affairs, much depended on Great Britain and Spain remaining free and independent, and on their continuing on Terms of strict Harmony and good Understanding with each other ; for which Reason he had not chosen to form any close Connection in any other Quarter.”⁴⁸

While Merry reports in a letter of 5 April 1790 (received 18 April 1790) that

“The Alarm, which the Court of Spain has taken at our Answer about the Affair of Nootka, is so great, that they have given Orders for Reports to be Immediately sent from the Spanish Arsenals of the Quantity of Copper for sheathing Ships,

⁴⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p.12.

⁴⁶ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 370, 371.

⁴⁷ Leeds to Campo, Whitehall, February 26, 1790 (MS. Arch. Hist. Nacional, Madrid, Sec. Estado, 4291), quoted from William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 369, 370.

⁴⁸ Letter of 22 March 1790, Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 15, 16.

which there is in the Storehouses, and of the Number of Ships of the Line which can be got ready for Sea at a short Notice,"⁴⁹

He was apparently still convinced that "that Count Florida Blanca must be sufficiently sensible of the unfortunate State in which Spain is for the Support of a War, to be desirous of avoiding it by every possible Means."⁵⁰

At the same time, while asserting its peaceful intentions, Spain was preparing for war. Merry reports in a letter of 6 April 1790 that

"the Treasure, lately arrived at Cadiz from Spanish America, Aboard the San Ramon Ship of War of 68 Guns, the Castilla of 58, and the Nuestra Senora de las Mercedes Frigate of 36 Guns, amount altogether, by the most exact Account he [Merry] had been able to obtain, to about For Millions One Hundred and Thirty Thousand Hard Dollars. He added, that the Fleet of Exercise, he had formerly mentioned, was now assembling at Carthagena ; and that the Letters from that Place mentioned, that it was expected All the Ships would be collected, and would be ready for Sea, in the Course of the present Month [April 1790]".⁵¹

On 20 April 1790, Del Campo wrote to Leeds that

"Having communicated to his Court the Duke's Answer of the 26th of February to his Memorial, concerning the Detention in the Port of Nootka of the English Vessel called the Prince of Wales, he had received Orders to inform the British Ministry, that, notwithstanding the incontestable Rights of Spain, founded on the most solemn Treaties, on the Discovery of the Indies, on the ancient Laws, and on the immemorial Possession of an exclusive Sovereignty, Navigation and Commerce, which the Crown of Spain had constantly exercised over the Territories, Shores and Seas before-mentioned, and which it has manifested by the Capture of those who transgressed against it ; the Vice-Roy of Mexico, as appears by the last Intelligence, had released the above-mentioned Vessel and Crew, being convinced that nothing but Ignorance of the Rights of Spain could have encouraged the Individuals of any Nation to resort to that Coast, with the Idea of making an Establishment, or of carrying on a Commerce there ; and having positive Orders to shew every possible Attention to the British Nation, and to avoid every Thing which might be capable of disturbing the good Harmony and Friendship which happily subsisted between the Two Courts. For these Reasons, and to afford an additional Proof of the King's Desire to maintain and strengthen this Friendship, His Catholic Majesty considers and understands this Affair to be at an End, without entering into Disputes or Discussions on the indisputable Rights of His Crown ; and He flatters Himself that His Britannic

⁴⁹ Letter of 5 April 1790, Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 19.

⁵⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 19.

⁵¹ Letter of 6 April 1790, Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 19, 20.

Majesty will command all His Subjects to respect them, according to the Request con- [sic!] in the Marquis's First Letter."⁵²

Spain's letter was deemed an insult by Britain.⁵³

Meares' Memorial

At the same time, news reached London from a different source:

"Before any Determination, however, could be formed on this very important Business, a Circumstance occurred, which contributed to throw many new Lights upon the Subject ; and which proved the Conduct of the Spaniards to have been infinitely more hostile and injurious towards His Majesty, than either Mr. Merry's Information, or the Letters of the Marquis del Campo, had given Reason to imagine. The Circumstance alluded to was the Arrival of Captain Meares, the Gentleman who had commanded the Expedition to Nootka Sound, and who was materially interested in the Ships captured by Don E. J. Martinez. From him a more full, and probably a more authentic Account of this Transaction was obtained, than had already been in the Possession of Government."⁵⁴

The Narrative continued:

"To understand this properly, it will be necessary to recur shortly to the Origin of his Expedition, and trace it's History from it's [sic] Commencement, in the Beginning of the Year 1786.

At that Time certain Merchants, residing in the East Indies, communicated to Sir John Macpherson, the Governor-General of India, a Plan of opening a Trade with the North West Coast of America, for the Purpose of supplying the Chinese Market with Furs and Ginseng. Sir John, approving of the Plan joined in the Subscription for it's Execution ; and Two Vessels, called the Sea Otter and Nootka, were dispatched to Prince William's Sound; the former under the Command of Mr. Tipping, the latter under that of Captain Meares, who was a Lieutenant in His Majesty's Navy, and now had the Direction of the Expedition.

They arrived in Prince William's Sound in September following ; soon after which the Sea Otter was unfortunately loft off the Coast of Kamschatka.

Captain Meares passed the Winter in Prince William's Sound ; in the Course of which he opened an extensive Trade with the Natives ; and, having collected a Cargo of Furs, proceeded to China in the Autumn of 1787.

During his Continuance there he disposed of the Nootka, and, in Conjunction with several British Merchants residing in India, (amongst whom was nominally

⁵² Letter of 20 April 1790 (received by Leeds on 21 April 1790), Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 20 - 22. The dating of the letter cannot be correct as Del Campo was not in London at the time. Most likely, the date of 20 April 1790 was added by the Spanish diplomatic representation in London.

⁵³ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 23.

⁵⁴ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 23, 24.

included Juan Carvalho, a Portugueze by Birth, who had been naturalized and resided at Bombay, and traded from thence under the Protection of the East India Company, and who, from his Connection with the Governor of Macao, had obtained Permission from him to navigate under the Portugueze Flag, in order to evade the extravagant port Charges of the Chinese, and for any other Purpose that might be found convenient) fitted out Two other Vessels, called the Felice and Iphigenia, the former of which was commanded by himself, the latter by Mr. William Douglas.

Sailing from China, Captain Meares reached the Port of Nootka in May, 1788, and Captain Douglas arrived in Cook's River in the Month of June following.

Immediately on his Arrival, Captain Meares purchased from Maquilla, the Chief of the Nootka District, a Spot of Ground, on which he built a House, and hoisted the British Colours. This House he surrounded with a Breast-Work, in the Front of which he mounted One Three-Pounder.

He then proceeded to trade on the Coast. Taking a Southerly Course, while Captain Douglas, in the Iphigenia, sailed to the North. They confined themselves within the Limits of 60 Deg. and 45 Deg. 30 Min. North, and returned to Nootka Sound in the Month of September.

By this Time, the People left there had finished a new Vessel of about 40 Tons, which they named the North-West America.

In the Course of his Cruize, Captain Meares obtained from Wickenanish, the Chief of the District surrounding Port Cox and Port Effingham, in Latitudes 48 and 49 Degrees, in Consequence of considerable Presents, the Promise of a Free and Exclusive Trade with the Natives of That District, and his Permission to build any Storehouses or other Edifices which he might judge necessary. He also acquired the same Privilege of Exclusive Trade from Tatouche, the Chief of the Country bordering on the Straits of Juan de Fuca, and purchased from him a Tract of Land within the said Strait, which one of Captain Meares's Officers took Possession of in the King's Name, calling it Tatouche, after the Chief.

On the 23d of September, Captain Meares, in the Felice, proceeded, with a Cargo of Furs, to China, leaving the Iphigenia and the North-West America in Nootka Sound, with Orders to winter at the Sandwich Islands, and to return to the Coast in the Spring.

Captain Meares arrived in China early in the Month of December, where he sold his Ship and Cargo ; and Two Ships, the Prince of Wales and Princess Royal, fitted out from the Port of London by Messrs. John and Cadman Etches and Co. coming at this Time to Canton, from a trading Voyage on the North-West Coast of America, Captain Meares and his Partners (excepting Carvalho, who had become a Bankrupt, and who, from the Demise of the Governor of Macao, had lost his Influence there) associated themselves with those Gentlemen, as they possessed Licences from the East-India and South-Sea Companies which would not expire 'till the Year 1790 ; and as the Trade on that Coast might suffer by a Competition. An Agreement was therefore executed between Captain Meares and Mr. John Etches, Supra-Cargo of the Two Ships, making a Joint Stock of All the

Vessels and Property employed in That Trade ; and, under That Firm, they purchased a Ship, which had been built at Calcutta, and called her the Argonaut.

The Prince of Wales, having been chartered to load Teas for the East-India Company, soon afterwards returned to England ; and the Princess Royal and Argonaut were ordered to sail for the Coast of America, under the Command of Mr. James Colnet, to whom the Command of All the Concerns of the Company on That Coast had been committed. He was instructed to fix his Residence at Nootka Sound, and to erect a substantial House on the Spot purchased in the preceding Year by Captain Meares.

Mr. Colnet, with Articles estimated to be sufficient for the Trade for Three Years, and with a Vessel on Board in Frame, of about 30 Tons Burthen, left China in the Months of April and May, 1789 ; taking with him several Artificers of different Professions, and near 70 Chinese, as Settlers on the American Coast, in the Service and under the Protection of the Associated Company.

On the 24th of April the Iphigenia returned to Nootka Sound, and the North-West America reached that Place a few Days after. On their Arrival they found Two American Vessels, the Columbia and the Washington, which had wintered there.

On the 29th of the fame Month the North-West America was dispatched to the Northward to trade, and to explore the Archipelago of St. Lazarus.

On the 6th of May, while the Iphigenia was lying at Anchor in Nootka Sound, a Spanish Ship of War called the Princessa, commanded by Don Estevan Joseph Martinez, and mounting 26 Guns, anchored there. This Vessel had sailed from the Port of San Bias in the Province of Mexico. She was joined, on the 13th, by a Spanish Snow of 16 Guns, called the San Carlos, which had sailed from the same Port, loaded with Cannon and other Warlike Stores.

From the Arrival of the Princessa to the 14th of May, mutual Civilities passed between Captain Douglas and the Spanish Officers, and even Supplies were obtained from M. Martinez for the Use of the Ship. On that Day, however, Captain Douglas was ordered on Board of the Princessa, and, to his great Surprize, was informed by M. Martinez, that he had the King of Spain's Orders to seize All Ships and Vessels which he might find upon That Coast, and that he (Captain Douglas) was then his Prisoner.

M. Martinez then ordered the Officers to take Possession of the Iphigenia ; which they accordingly did in the Name of His Catholic Majesty : and the Officers and Crew of that Ship were immediately conveyed, as Prisoners, on Board the Spanish Ships, where they were put in Irons, and were otherwise ill-treated.

As soon as the Iphigenia was thus seized, M. Martinez took Possession of the Lands which had been purchased by Captain Meares, hoisting the Standard of Spain on the House he had erected, and performing the other Ceremonies usual on such Occasions. At the same Time he issued a Declaration, That All Lands, comprized between Cape Horn and the 60th Degree of North Latitude, belonged to His Catholic Majesty. He then proceeded to build Batteries, Storehouses, &c. ; in the Execution of which he forcibly employed some of the Crew of the

Iphigenia, and severely punished many of them who attempted to resist a Command, which they conceived to be injurious.

After a long Continuance of this unjustifiable Conduct, and after compelling Captain Douglas to sign a Paper written in Spanish (a Language which he did not understand) which proved to be an Obligation from him, on the Part of his Owners, to pay on Demand the Valuation of his Vessel, her Cargo, &c. in case the Vice-Roy of New Spain should adjudge her to be lawful Prize, as having entered the Port of Nootka without the Permission of His Catholic Majesty; M. Martinez permitted Captain Douglas to resume the Command of the Iphigenia, but restrained him from proceeding to Sea until the Return of the North-West America, insisting that he should then dispose of her for 400 Dollars, the Price which one of the American Captains had set upon her.

During the Time the Spaniards kept Possession of the Iphigenia, she was stript of all the Merchandize which had been provided for Trading, of her Stores, Provisions, Nautical Instruments, Charts, &c. and of every Article (except Twelve Bars of Iron) which could conveniently be carried away, even to the Matter's Watch, and various Articles of Cloathing.

Thus circumstanced, Captain Douglas applied to M. Martinez for Relief; and, after much Solicitation, obtained a trifling Supply of Stores and Provisions, for the Payment of which he was obliged to give Bills on his Owners.

M. Martinez, finding at length that Captain Douglas could not be induced to sell the North-West America, permitted him to depart; and accordingly, on the 1st of June, he quitted Nootka Sound and returned to China.

On the Eighth Day after his Departure, the ship North-West America, arriving off the Port of Nootka, was boarded and seized by Boats manned and equipped for War, commanded by M. Martinez, which towed her into the Sound, and, anchoring her close to the Spanish Ships of War, took Possession of her in the Name of his Catholic Majesty, as good and lawful Prize. The Officers and Men, with the Stores, Tackle, Furniture, Articles of Trade, and 215 Skins of the best Quality, were then removed on board the Spanish Frigate ; and Mr. Barnett, one of the Officers, and some of the Sailors, were afterwards put in Irons. The Ship was soon after employed by M. Martinez on a Trading Voyage, and brought Home a Cargo for his Use of 75 Skins, purchased with British Merchandize, which, on a moderate Calculation, were worth 7,500 Dollars.

On the 3d of July the Argonaut arrived off the Port of Nootka. As soon as M. Martinez observed her in the Offing, he boarded her in his Launch, and with much Civility promised Mr. Colnet, her Commander, every Assistance in his Power ; in consequence of which, and having no Suspicion of the Spaniards, he proceeded into the Sound. The next Day, however, M. Martinez sent the First Lieutenant of the Princessa, with a Military Force, to take Possession of the Argonaut. They accordingly seized her in the Name of His Catholic Majesty, and hoisted on Board of her the Spanish Flag. Her Officers and Men were made Prisoners, and Mr. Colnet was threatened to be hanged at the Yard-Arm, in case of his refusing to comply with any Directions which might be given to him. This Treatment had such an Effect upon the unfortunate Gentleman, that his Faculties

became deranged, and he continued, [when] the Account came away, in a State of Incapacity for the Conduct of any Business.

Not satisfied with these Instances of usurped Authority, M. Martinez appeared desirous of seizing fresh Opportunities of insulting the British Flag.—On the 13th of July the Sloop Princess Royal appeared off the Port of Nootka ; and the Commander, approaching the Sound in his Boat, was seized, and made a Prisoner by M. Martinez, who forced him, by Threats of hanging him at the Yard-Arm, to send to his Officers to deliver up his Vessel without Contest. These Orders were dispatched into the Offing by a Spanish Officer, and the Sloop was accordingly seized in the Name of His Catholic Majesty, and brought into Port. Her Crew were made Prisoners, and her Cargo, consisting of 473 Skins, was seized.

After suffering, for some Time, an ignominious and painful Captivity, the Crew of of the North-West America was sent by the Spaniards to China. The Argonaut, with her Officers and Men on Board, was sent as a Prize to San Blas ; and, when the Account came away, it was said that the Princess Royal, with her Crew, were to be sent to the same Place. M. Martinez, however, thought proper to detain the Chinese, whom he compelled to enter into the Service of Spain, and whom he employed to work in the Mines, which he had opened on the Lands purchased by Captain Meares.

Such was the Substance of the Information received from Captain Meares.”⁵⁵

The Narrative of the British Government was based on Mr. Meares’ Memorial.⁵⁶

Si vis pacem, para bellum

Shortly after receiving the information from Mr. Meares, London received news from both Merry and intelligence sources reporting on a large mobilization of the Spanish naval forces.⁵⁷ A second letter by Merry reported that currency exchange restrictions had been ordered.⁵⁸

Britain responded forcefully:

“THE Measures adopted by His Majesty's Ministers were as Vigorous as the important Occasion demanded, and their prompt Execution corresponded with the Urgency of the Moment. On the 4th of May a Messenger was dispatched to Mr. Merry at Madrid, conveying to him Instructions to Represent to the Court of Madrid, that the last Communication delivered by the Marquis del Campo is considered by His Britannic Majesty as Unsatisfactory, and as not affording that

⁵⁵ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 24 - 35.

⁵⁶ Lieutenant John Mears, Memorial to the right honorable William Wyndham Grenville, one of his Majesty’s principal Secretaries of State, dated 30th of April 1790, and presented to the House of Commons, May 13th 1790. The Memorial is included on the Moot’s website. Participants of the Moot will exercise professional judgement in weighing the evidentiary value of both the Meares Memorial and the Narrative of the British Government.

⁵⁷ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 37, 38 - 41.

⁵⁸ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 38, 39.

Reparation which His Majesty had a Right to expect on this Occasion ; it being therein stated, that the Restitution of the Vessel was made on the Ground of General Regard for the British Nation, and of a Supposed Ignorance of the Property of Spain, which alone, as it is alledged, could have encouraged the Individuals of any Nation to resort to those Coasts, in the Idea of Establishing themselves there, or of carrying on their Commerce; a Claim on the Part of the Court of Spain being also therein distinctly asserted to the Exclusive Rights of Sovereignty, Navigation and Commerce in the Territories, Coasts and Seas on the North-West Coast of America ; and no Satisfaction whatever being made or offered to His Majesty, for a Proceeding so offensive to the Honor of His Crown. That, in Addition to these Considerations, His Majesty had since received further Information of the Particulars of the Transaction in Question ; by which it appeared that the Spanish Officer did not confine himself to the capture of One Vessel alone ; that he had also made Prize [of] a Vessel called the Princess Royal, belonging to the Port of London, and had sent her, with her Crew as Prisoners, to the Port of San Blas, having seized her Cargo, and made Use of it for the Purpose of carrying on a Commerce on the Coast. That is was doubtful whether One or Both of the Tow Vessels, mentioned in M. del Campo's First Letter as belonging to a Portugueze, resident at Macao, were not in Effect British Vessels, navigated under such Circumstances as would, by the Laws of Nations, entitle them to the Protection of His Britannic Majesty. That it appeared, that the Soil at Nootka, and in some other Parts of the Coast, particularly in a strait in or about 40 Degrees, 50 Minutes of Latitide, had been, antecedently to this Transaction, purchased of the Natives by a British Subject, and the British Flag hoisted thereon.

Mr. Merry was then directed to Represent, that, under these Circumstances, His Majesty had felt it due to the Honor of His Crown, and the Rights of His People, to require the full and entire Restitution of All the said Vessels, with their Property and Crews, or of as many of them as should, on fair Examination of what can be alledged on both Sides, be found to have been British Vessels, entitled as such to His Majesty's Protection ; and to insist on an Indemnification to the Individuals concerned in the said Vessels, for the Losses sustained by their unjust Detention and Capture : And, above all, on an adequate Reparation to His Majesty for the Injury done by an Officer, commanding His Catholic Majesty's Vessels of War, to British Subjects, trading, under the Protection of the British Flag, in those Parts of the World, where the Subjects of His Majesty have an Unquestionable Right to a Free and Undisturbed Enjoyment of the Benefits of Commerce, Navigation and Fishery ; and also to the Possession of such Establishments, as they may for, with the Consent of the Natives, in Places unoccupied by Other European Nations.

Mr. Merry was finally directed to Demand a Speedy and Explicit Answer to This Communication ; at the same Time expressing the sincere Wishes of His Britannic Majesty, that the Issue of the present Business may be such, as to remove any Grounds of Uneasiness, and continue and confirm Harmony and Friendship between the Two Nations.”⁵⁹

⁵⁹ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 41 - 44.

With the same messenger, the Duke of Leeds informed Merry that he had dispatched Alleyne Fitzherbert, of the privy council as Britain's ambassador extraordinary and minister plenipotentiary to Madrid for direct negotiations.⁶⁰

“On the same Evening, a Notification of the Business in Agitation was transmitted to His Majesty's Consuls in the different Ports of Spain, and a General Press took Place, which proved the First Public Notice of the Dispute between the Two Crowns ; the whole Affair having hitherto been conducted with a Secrecy unknown on any former Occasion, and having been confined to those few Persons only, who, from their peculiar Situations of Confidence, were necessarily employed in it's Conduct.

On the following Day, His Majesty was graciously pleased to send a Message to each House of Parliament”:⁶¹

“His MAJESTY's most Gracious MESSAGE to the LORDS Spiritual and Temporal, in Parliament assembled.

Wednesday, May 5, 1790.

HIS Majesty has received Information that Two Vessels, belonging to His Majesty'S Subjects, and navigated under the British flag, and Two others, of which the Description is not hitherto sufficiently ascertained, have been captured at Nootka Sound, on the North-Western Coast of America, by an Officer commanding Two Spanish Ships of War ; that the Cargoes of the British Vessels have been seized, and that the Officers and Crews have been sent as Prisoners to a Spanish Port.

The Capture of One of these Vessels had before been notified by the Ambassador of His Catholic Majesty, by Order of his Court, who, at the same Time, desired, that Measures might be taken for preventing His Majesty's Subjects from frequenting those Coasts, which were alledged to have been previously occupied, and frequented by the Subjects of Spain.

Complaints were also made of the Fisheries carried on by His Majesty's Subjects in the Seas adjoining to the Spanish Continent, as being contrary to the Rights of the Crown of Spain. In consequence of this Communication, a Demand was immediately made, by His Majesty's Order, for adequate Satisfaction, and for the Restitution of the Vessel, previous to any other Discussion. By the Answer from the Court of Spain, it appears, that this Vessel and her Crew had been set at Liberty by the Vice-Roy of Mexico; but this is represented to have been done by him, on the Supposition that nothing but the Ignorance of the Rights of Spain encouraged the Individuals of other Nations to come to those Coasts, for the Purpose of making Establishments, or carrying on Trade, and in Conformity to his previous Instructions, requiring him to shew all possible Regard to the British Nation. No Satisfaction is made or offered, and a direct Claim is asserted by the

⁶⁰ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 44.

⁶¹ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 45.

Court of Spain to the exclusive Rights of Sovereignty, Navigation, and Commerce in the Territories, Coasts, and Seas in that Part of the World.

His Majesty has now directed His Minister at Madrid to make a fresh Representation on this Subject, and to claim such full and adequate Satisfaction as the Nature of the Case evidently requires. And, under these Circumstances. His Majesty having also received Information that considerable Armaments are carrying on in the Ports of Spain, has judged it indispensably necessary to give Orders for making such Preparations as may put it in His Majesty's Power to act with Vigour and Effect, in Support of the Honour of His Crown and the Interests of His People. And His Majesty doubts not but He shall have the Concurrence and Support of this House (on whose Affection and Zeal He perfectly relies) in taking such Measures, and making such Augmentation of His Forces, as may be eventually necessary for this Purpose.

It is His Majesty's earnest Wish that the Justice of His Majesty's Demands may insure, from the Wisdom and Equity of His Catholic Majesty, the Satisfaction which is so unquestionably due and that this Affair may be terminated in such a Manner as to prevent any Grounds of Misunderstanding in future, and to continue and confirm that Harmony and Friendship, which has happily subsisted between the Two Courts, and which His Majesty will always endeavour to maintain and improve, by all such Means as are confident with the Dignity of His Majesty's Crown, and the essential Interests of His Subjects. G. R.”⁶²

The House of Lords agreed to His Majesty's requests on the next day – “nemine dissentiente”.⁶³ The Commons agreed on Thursday, 6 May 1790, again unanimously.⁶⁴

Like Spain, Britain was taking precautions:

“For this Purpose, immediate Notice, with proper Instructions for their Conduct at so critical a Period, was sent to the several Consuls on the Coast of Barbary, and to Major General O'Hara, commanding at Gibraltar. Lord Heathfield, the Governor of that important Fortress, solicited and obtained His Majesty's Permission to resume his Command, and set out on his Return to the Garrison. The Seventh Regiment of Foot was ordered to embark without Delay to the same Place, to join their Colonel His Royal Highness Prince Edward.

At the same Time every Attention was shewn to the Security of His Majesty's Possessions in America and the West Indies, which might reasonably be supposed to be more open to any sudden hostile Attack. Lord Dorchester, the Governor of Canada, who had signified his Intention of returning to England the ensuing Summer, was directed to remain in his Government, where his Experience and Abilities were judged to be of the greatest Importance. As it was doubtful

⁶² Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 46 - 49. The parallel Message to the House of Commons of 5 May 1790 is reproduced in *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, p. 52 - 54.

⁶³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 49.

⁶⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 54.

whether, confidently with the other Exigencies of the State, a Reinforcement of Troops could be sent out this Year to Canada, his Lordship was directed to take proper Measures for embodying the Militia in that Province, should such a Measure, in the Course of Events, appear to him to be necessary : And he was further instructed to cultivate, as much as possible, the Friendship of the Inhabitants of Vermont, in order to prevent any Alarm which might arise on the Part of the United States of America.”⁶⁵

Dorchester was to win over the Americans to the British cause also by highlighting the advantages for the United States – not only with regard to the Pacific Coast but also the Mississippi.⁶⁶

Similar information and instructions were sent to the “Governors of Barbadoes, St. Vincent, the Leeward and Bahama Islands, Dominica, Cape Breton and Nova Scotia ; with Directions to transmit the earliest Intelligence in their Power of the State and Preparations of the Spaniards and French in those Parts of the World, together with accurate Statements of the Forces under their respective Commands”.⁶⁷ Additional troops were also dispatched.⁶⁸

Britain was also concerned that Spain could take measures against British settlers in Honduras:

“the Earl of Effingham, who had recently arrived as Governor in the Island of Jamaica, was directed to pay a particular Attention to the Settlers in the Honduras. Though it was impossible for His Majesty, confidently with good Faith, to send Troops or other Articles of Military Preparation there, previously to an actual Rupture with Spain, yet it was extremely desirable that Preparations should be made for fending down, immediately and without the smallest Delay, both Advice and Assistance to the Settlers in case of Necessity.”⁶⁹

Britain was literally preparing for a world war:

“While thus every Measure was adopted, which could tend to the Security of His Majesty's Western Possessions, His Confidential Servants were not less attentive to the East Indies, nor less prompt in providing against a possible Attack in that Quarter, or for an effectual Exertion of the British Force, should the Conduct of the Spaniards justify such an Enterprize. Instructions were sent [12 May 1790] over Land by an Officer, and by the Company's Ships then under Dispatch, to Earl Cornwallis, Governor General of Bengal, directing him, in concert with General Medows and Commodore Cornwallis, to take all preparatory Steps for getting ready One Regiment of the King's Troops at Bengal, One at Bombay, and Two at Madras, with as many Madras or Bombay Seapoys as might, in the whole, constitute a Force of about Five Thousand Men, for the Purpose of acting

⁶⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 56, 57.

⁶⁶ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 58.

⁶⁷ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 60.

⁶⁸ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 60.

⁶⁹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, 1791, p. 60, 61.

offensively from the East Indies against the Spanish Settlements in the Phillippines, or on the Western Coast of America, should Orders come out from England to that Effect.”⁷⁰

Back in Europe, Britain was seeking re-assurances of her allies in the Netherlands and in Prussia.⁷¹ The Dutch went above and beyond the English request with promises of naval support against Spain.⁷² The British diplomats also tried to thwart an alliance between Spain and France.⁷³

For his negotiations with Spain, Fitzherbert was given the following instructions:

“That a Declaration should be given, in the Name of His Catholic Majesty, stating in Substance, that, in consequence of the Complaints made by His Majesty of the Conduit of the Spanish Officer at Nootka, His Catholic Majesty, in order to shew His Desire to remove any Cause of Misunderstanding between the Two Crowns, has agreed to make Satisfaction for the Injury complained of. That His Catholic Majesty should undertake to restore whichever of the Two Ships (viz. the Argonaut and the Princess Royal) has not been restored already, and also to restore the North-West America, if that Ship shall be proved to be British Property, and to have been navigated under such Circumstances as would, according to the established Laws and Practice of Nations, entitle it to the Protection of His Majesty : And further, that His Catholic Majesty should engage to make Full Compensation to the Owners, as well of these Ships as of the Iphigenia, (supposing the latter also to be proved to be British Property.) That the Fact, whether the North-West America, or the Iphigenia, should be considered as British Property, and also the Amount of the Losses to be compensated, may, if necessary, be referred to be ascertained by Commissaries, or may be regulated by further Examination and Discussion.

Should these Stipulations be agreed to such a Declaration of an Intention to give Satisfaction, together with the Restitution and Indemnification as above stated, would be considered by His Majesty as adequate Satisfaction ; and His Majesty would authorize a Declaration to be made, in His Majesty's Name, stating, that He accepted it as such.”⁷⁴

⁷⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 62, 63 The instructions were later modified and the amount of troops to be sent to the Philippines reduced because of a local conflict with the Tippoo Sultan, *ibid.* p. 63, 64.

⁷¹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 65, 66. Prussia shared information with its British allies that Spain may have been trying to negotiate “an Alliance with Russia and Austria, to which Denmark would be invited to accede ; of which His Prussian Majesty suggested He had positive Proofs” (*ibid.* p. 105).

⁷² Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 71. The report of Lord Auckland on the progress of the mobilisation of the Dutch navy can be found at p. 94 et. seq. It appears that the financial assistance offered by Britain (*ibid.* p. 97) was turned down by the Netherlands: “[the Burgomasters of Amsterdam] did not think it either just or becoming for these Provinces, which, certainly possess a considerable Degree of Opulence, to be a Charge to their Allies, or to be Subsidized” (*ibid.* 101).

⁷³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 68.

⁷⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 75, 76.

A further dispatch to Fitzherbert explained the Crown's position as to the more general question of territorial claims and free trade:

“It was further stated, that it was not His Majesty's Wish to go beyond these Points into Questions of Abstract Right, unless the Court of Spain should render it unavoidable; it being more adviseable to endeavour to form prospectively such a Settlement, as might secure the just Interests of Both Parties, and distinctly ascertain their relative Situation for the future : That, however, it would be proper for Mr. Fitz-Herbert to state, that, if the Court of Spain should make it unavoidable to rest the Discussion on this Question of Right, His Majesty can never admit the Territorial Claim of That Court, extending as it does to Places, which can in no Sense be alledged to be either possessed or occupied by the Subjects of that Crown ; such a Claim being contrary both to the established Principles of the Law of Nations, and to the plain Sense of the Treaties subsisting between the Two Courts, especially that of 1670.

The Claim of Exclusive Navigation or Commerce in the American or Pacific Seas was dated to be equally inadmissible ; as, according to the Principles of the Law of Nations, and the fair Construction of Subsisting Treaties, the Rights of Spain can extend only to exclude British Ships from the Ports of Countries Actually in the Possession of Spain, and to carry into Effect the necessary Regulations for preventing a contraband Trade with their Colonies or Settlements ; and that, consequently, the Court of Spain can have no Ground for asserting a Right to obstruct the General Freedom of Navigation and Fisheries in the American or Pacific Seas ; or to prevent any other Nations from frequenting any of the unsettled Parts of the American Continent. Should the Court of Spain adopt the Mode of proceeding to an Arrangement, which should only look forward, and remove Occasions of Misunderstanding in future, Mr. Fitz-Herbert was instructed, that the First Point would be, to secure His Majesty's Subjects in carrying on the Fishery for Whales and Seals, in any Part of the American Seas or of the Pacific Ocean. [...]

That every Jealousy on this Subject might be removed, Mr. Fitz-Herbert was authorized to express His Majesty's Readiness to agree to any proper Provisions which could be proposed, for effectually preventing His Subjects from making the Fishery a Pretext for carrying on any Contraband Trade with any of the Spanish Settlements in America; [...]

An Exclusive Right in the Court of Spain to any Territorial Claim was declared to be Inadmissible, unless founded on Actual Occupation and Established Possession, prior to any other European Nation. This cannot be proved to have been the Case, prior to the late Transaction, in any Part of the Continent North of the Spanish Settlements in California, but especially not at Nootka ; and, if any Part of that Coast has been occupied by Spain, since the Date of the Violence committed by the Spanish Officer, That Occupation cannot be considered as giving any Exclusive Right against the British Crown. There having been such a bona-fide Occupation of Nootka Sound by British Subjects, as would give a Title to the Lands occupied by them, and a Right to carry on their Commerce there, unless a Prior Possession on the Part of Spain or of any other Nation (of which His Majesty's Ministers are not yet apprized) can be proved ; His Majesty's

Subjects, unless this is the Case, must be restored to the Possession of the Lands purchased by them in those Places.

With respect to the Permanent Principle, on which the Right of making Further Establishments on any Part of the Coast in future should be regulated, it was stated to be evidently reasonable, that All European Nations should be competent to make such Establishments by a bona-fide Purchase, Occupation and Possession ; though it would not be just, that such Establishments should exclude Other Nations from a Commerce which they had previously carried on upon such Coast: A Stipulation to this Effect should therefore be inserted in any Treaty or Convention to be made on This Subject.

Mr. Fitz-Herbert was further instructed, not to conclude any Thing Definitively, without fresh Instructions, and to take, ad referendum, any Modifications, or any Different Proposals, which might be suggested by the Court of Spain ; and was informed, that, to prevent any Jealousy which Spain might feel as to our Intention of making Settlements in South America for the Purpose of facilitating a Contraband Trade, His Majesty might possibly be induced to enter into an Agreement with His Catholic Majesty, by which the Two Crowns should bind themselves not to make in future any Settlement on the Continent or Islands of South America, to the Southward of the Parts now occupied by Spain, except in the Event of a Settlement being made by any other Nation.”⁷⁵

Britain was also planning for the contingency that Spain should declare Merry persona non grata. In that case, he was to “repair to Lisbon where a Frigate would be ready for his own Conveyance, and some Sloops for the Purpose of carrying any Dispatches he might have Occasion to forward.”⁷⁶

At this point, Fitzherbert was making his way to Madrid via France, the French King indicated a willingness to act as mediator (possibly also to strengthen his own position) while at the same time the French navy was moving forward with armaments.⁷⁷ England politely discouraged the idea of mediation, let alone by France:

“the Injury received by His Majesty being of such a Nature not to allow Mediation of a Third Power ; and as, in any Case, the Mediation of either France or Spain could not be admitted, with Propriety, whenever This Country had any Difference to adjust with One of Those Powers.”⁷⁸

Both parties were still unclear about what had really happened in Nootka. By letter of 18 May 1790 (received 19 May 1790), Florida Blanca assured Merry that he knew only of one English ship that had been seized.⁷⁹

⁷⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 75 – 82.

⁷⁶ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 82.

⁷⁷ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 91 - 94.

⁷⁸ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 92.

⁷⁹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 109, 110.

However, over the next days, something must have happened in the Spanish disposition towards the affair. Merry reported on a more belligerent climate in his dispatch of 10 June 1790: in his opinion, Spain was interpreting the message of King George III to Parliament as “almost equivalent to a Declaration of War.”⁸⁰ Spain was making preparations for an armed conflict – although “not with any great Rapidity.”⁸¹ Merry also reported “[o]ne Circumstance [...] of Importance; for the Bankers and Trading Companies at Madrid, having been applied to by the Court for Money, had between them agreed to furnish about Four Millions Sterling.”⁸²

In the meantime, Fitzherbert had arrived in Madrid and dined with Florida Blanca on 14 June 1790.

“From the above Circumstances, and from every Thing he had observed and learned since his Arrival at Aranjuez, Mr. Fitz-Herbert drew this Conclusion, that he had the strongest Reason to be persuaded, that the Catholic King and His Ministers were entirely bent upon a War with Great Britain, though they refrained from commencing Hostilities, on a Presumption, that their persisting in their present Denial of Satisfaction would produce such Reprisals on our Part, as might afford them a colorable Pretext to complain of a hostile Aggression, and on that Ground, to demand the Assistance of France. His Excellency however thought it was by no Means easy to ascertain the real Motives of this Resolution; as it was scarcely possible to suppose, considering the relative Strength of the Two Powers, that the Spanish Ministry could seriously entertain any Hopes of wresting from Great Britain either Gibraltar or any of Her West India Possessions ; or that they should have had recourse to the Expedient of a Foreign War, in order to obviate any supposed Danger of a Revolution in the Government of Spain, similar to that which had taken place in France; not the smallest Symptom of Innovation having hitherto manifested itself in any Part of the former Country. On these Accounts his Excellency was inclined to think, that the hostile Disposition of the Spanish Cabinet originated solely in that excessive Proneness to Jealousy and Mistrust, which constitutes the leading Features of Count Florida Blanca's Character, and in consequence of which he had persuaded himself that, far from confining our Pursuits to the Fur Trade and Fisheries on the North-West and Southern Coasts of the Continent of America, our real Object was to establish in the First Instance a direct Commercial Intercourse with the Spanish Colonies, and finally to separate them entirely from the Dominion of the Mother Country. This Sort of Language had, for some Time past, been publicly held by Count Florida Blanca himself; and, he also had said, that, being confident that whatever Concessions might be made by Spain under such Circumstances, they would serve only for Great Britain to take Post upon, as it were, in order to lay Claim to something more, he had judged it to be safer, as well as more honorable, to make a vigorous Stand in the first Instance.”⁸³

⁸⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 114.

⁸¹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 114.

⁸² Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 114.

⁸³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 123-125.

In a dispatch of 18 June 1790 (received in London on 21 June 1790), Fitzherbert reported a “visible Change [...] in the Minds of the People at Paris” militating for “Support of France, should Spain stand in Need of Her Assistance.”⁸⁴ However, having arrived in Spain, Mr. Fitzherbert concluded that

“[a]s Count Florida affected to treat the French Alliance as a Resource on which he placed little Confidence in the present Conjecture, and as did not appear that the Negotiations at St. Petersburg and Vienna were likely to end in any closer Connection between Spain and those Courts, Fitz-Herbert was included to this that his principle Reliance was on the Assistance of the American States, to which Power he had lately made some Advances, which he thought would be decisive in engaging them to take Part in the present Contest. In Fact, Mr. Fitz-Herbert observed, the American Chargé d’Affaires at Madrid, Mr. Carmichael. Was greatly caressed at Court, and had artfully availed himself of the present Conjunction, in procuring from the Spanish Minister the Liquidation of a Number of Private Claims the Payment of which he had before solicited without the smallest Chance of Success. This Gentleman’s Private Opinion, however, appeared to be, that Count Florida Blanca’s American Negotiation would not be attended with Success.”⁸⁵

Three days later, London received a further dispatch from Fitzherbert (sent from Aranjuez on 19 June 1790), in which he enclosed a letter from Florida Blanca:

“The Count by this disputed the Principles laid down by Fitz-Herbert, and insisted that the Detention of the Vessels in Question took Place in a Port -on a Coast- or in a Bay of Spanish America, the Commerce and Navigation of which belonged Exclusively to That Crown by Treaties made with All Nations particularly with England. He also insisted, that Mr. Fitz-Herbert’s Principles could not apply to a Case like the present, where the Vessel which was detained endeavoured to form an Establishment, and to make itself Master of a *Port already possessed* by Another Nation ; *the Spanish Commander having such Possession at Nootka, and the English Aggressor not giving Way to his Amicable Representations for Desisting from or Suspending his Enterprize.*

The Count denied that the Vessels so detained were as yet proved to have been navigated with the Licence and under the Flag of Great Britain, although the Vessels themselves and some Individuals on Board of them might have been English ; as there was Reason to believe they had entered the Port of Nootka with Portugueze Passports, given by the Governor of Macao, merely as Trading Vessels, and not belonging to the Royal Marine : That besides, the Vessels, with their Crews and Cargoes (or the Value of the latter) having been restored, or being about to be restored, in consequence of the Resolution taken by the Vice-Roy of Mexico, and approved, for the Sake of Peace, by His Catholic Majesty, every Thing was restored to it’s original State ; nothing being wanting but the Indemnification of the Parties aggrieved, and the Satisfaction for the Injury ;

⁸⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 120.

⁸⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 126, 127.

which should also be fettle, as soon as the Circumstance of such an Injury having been committed should be ascertained, which hitherto had not been done.

Notwithstanding this however, the Count added, that, in order to avoid a Dispute about Words, which might involve Two friendly Nations in an unfortunate War, he was ordered by the King to say, that His Catholic Majesty would make the Declaration proposed by Mr. Fitz-Herbert, and would offer His Britannic Majesty a just and suitable Satisfaction for the Injury offered to the Honor of His Flag ; provided that, to these words. One of the following Explanations were subjoined, viz.

[French original in the footnote, English translation by the author:

1. We will offer satisfaction if the insult and the satisfaction itself have been estimated and qualified in substance and in form, by an arbitrator, who shall be one of Europe's Kings; the King my master leaves its appointment entirely to Her Britannic Majesty: because it is sufficient to the inviolable justice of his Spanish Monarch that he has a crowned head and decides, being well informed of the facts, like as she may find just.

2. We will offer just and appropriate satisfaction however if in the progress of the negotiation that shall be initiated it does not result from the facts that it is not just for it to be given or Great Britain shall not ask for it because the vessel flying its flag has not suffered any insult.

3. That such satisfaction shall be given as long as it does not result that Spain has waived its rights in this case, and the right to an equal or equivalent satisfaction that it can demand from Great Britain, when it is demonstrated in an amicable negotiation that the King is veritably and in reality infringing the usurpation of Spanish territories in violation of the Treaties.]⁸⁶

The Count concluded his Letter by saying, that the Court of St. James's might chuse which of these Three Explanations or Additions to the proposed Declaration She preferred, or All of them if the thought proper ; pointing out any Difficulty which might occur, or suggesting any other Mode, which She might

⁸⁶

French original:

Imo. ' L'on offrira une telle Satisfaction, l'Injure et la Satisfaction même étant estimées et califiées, dans la Substance et dans la Forme, par un Arbitre, lequel fera un des Rois de l'Europe ; dont le Roi mon Maitre laisse l'Election, en entier, à Sa Majesté Britannique : Car il suffit à la Justice inalterable du Monarque Espagnol, qu'il y ait une Tête Couronnée, qui, bien informée des Faits, en decide comme Elle le trouvera juste.'

2do. 'L'on offrira la Satisfaction juste et convenable, toutefois que dans le Progrés d'une Negotiation qui devra être entamée, il ne resultera pas des Faits qu'il n'est pas juste qu'elle soit donnée, ou que la Grande Bretagne n'a point pû l'exiger, n'y ayant eu d'Injure portée à son Pavillion.'

3tio. 'Que la dite Satisfaction sera donnée, pourvû qu'il ne s'en suive pas que l'Espagne auroit renoncée aux Droits qui Lui appartiennent dans cette Affaire, non plus qu'au Droit qu'elle auroit d'exiger de la Part de la Grande Bretagne une Satisfaction Egale ou Equivalente, s'il etoit démontré dans une Negotiation Amicale, que le Roi est dans l'Atteinte réelle et veritable d'une Usurpation de Territoire Espagnole en Contravention aux Traités.'

conceive to be more honorable, reciprocal, or likely to conduce to a Peace, equally desirable by all.

On this Letter Mr. Fitz- Herbert observed, that the Mezzo Terminis, thus submitted to His Majesty's Option, were in his Opinion Inadmissible, as resting alike on one and the same Erroneous Principle. He conceived, however, that there certain Expressions in this Paper, which seemed to corroborate a Surmise strongly current at Aranjuez, that the Court of Spain (from whatever Reasons) was become sincerely desirous of an Accommodation, provided it could be accomplished on Terms not incompatible with what they considered as their Point of Honor : though his Excellency thought that this Conjecture carried little Weight with it, when opposed to the various and almost irrefragable Proofs, which the Spanish Court continued to furnish of a Contrary Disposition. In pursuance of this Idea, His Excellency expressed his Determination, should any Instructions be on their Way from England tending to bring the depending Dispute to an Immediate and Speedy Issue, not to delay the Execution of those Commands, in Expectation of any Answer from the Duke of Leeds, on the Subject of the above Letter.

Mr. Fitz-Herbert also mentioned, that the Naval Arrangements throughout Spain were going on with the most unremitting Activity ; and that an Attempt had been made, on the 18th Instant, to assassinate Count Florida Blanca, by a Frenchman of the Name of Perez, who had slightly wounded him in Two Places with a Stiletto, and had afterwards, on being apprehended, attempted to kill himself.”⁸⁷

England's answer of 5 July 1790 had several elements:

- “insisting upon His Majesty's Demand of Satisfaction”,⁸⁸
- “though the Spanish Claims did not appear to be capable of being sustained on the Grounds of Reason or Justice, even with a View to subsequent Negotiation, His Majesty would nevertheless be willing, when the Satisfaction should once be given, to enter on a fair and temperate Discussion of them, and of every Thing which the Court of Spain might be able to alledge, so far as they rest on Grounds distinct from that on which the Question of Satisfaction itself necessarily depended.”⁸⁹
- “the Satisfaction must amount to an Admission, that the Court of Spain was not in Possession of an Actual, Known and Acknowledged Sovereignty and Dominion at Nootka, which could justify detaining the Ships of other Nations, in order to condemn them in in the regular Course of judicial Proceedings, for a Violation of established Laws, founded either on the Stipulations of Treaties, or on the

⁸⁷ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 127-132.

⁸⁸ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 133.

⁸⁹ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 133, 134.

General Rights of Sovereignty; no subsequent Discussion could therefore take Place on this Point, after the Satisfaction had been given.”⁹⁰

- “if the Court of Spain were able to prove that Nootka was, at the Time of the Seizure, in the Predicament above stated, the Time for offering such Proof must be Before the Point of Satisfaction is settled ; as it would, if established, remove the Ground on which the Demand of Satisfaction was originally made, and was now insisted upon. But it was evident, from all the Circumstances preceding and attending the Transaction, even according to the Spanish Statement of it, as well as from the Nature of their Allegations, that no such proof could be adduced ; and therefore Satisfaction was insisted upon.”⁹¹
- “any other Grounds of Claim, founded on any Thing short of such an Actual, Known and Established Possession of Sovereignty and Jurisdiction as before described, would be still open to Discussion, and would in no Degree be precluded by the Satisfaction.”⁹²

In case that the Spanish Crown was to insist on a reservation of rights, England would be receptive as long as the reservation was in line with the principles outlined before.⁹³ Fitzherbert was allowed to go as far as the third option proposed by Florida Blanca except for the phrase “Aux Droits qui Lui appartiennent dans ces Affaires” (which was deemed to go beyond the principles).⁹⁴

Count Florida Blanca's Proposal, “relative to a Right to claim Reciprocal Satisfaction, was Wholly Inadmissible [...] a Clause which appeared Inconsistent with the very Principles on which the Satisfaction was demanded : That, at the same Time, there could be no Difficulty in his Excellency's [...] assuring him there never could be a Doubt but that, whenever any Case should arise, of a Nature similar to that on which His Majesty's Claim of Satisfaction was made, His Majesty's Justice would not refuse to the Court of Spain, or to any other Power, a Satisfaction similar to That now demanded by Him”.⁹⁵

“With regard to the First and Second of the Proposals made by Count Florida Blanca, Mr. Fitz-Herbert was informed, they were such as could not be adopted ; the Idea of an Arbitration, on a Subject of this Nature, being entirely out of the Question ; and as a Reservation, such as That contained in the Second Proposal,

⁹⁰ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 134.

⁹¹ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 134, 135.

⁹² Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 135.

⁹³ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 135, 136.

⁹⁴ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 137.

⁹⁵ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 137, 138.

would render the Satisfaction nugatory, as it would refer to Subsequent Discussion the very Grounds on which that Satisfaction was demanded.”⁹⁶

As to the Spanish proposal for mutual disarmament during the negotiations, Britain said no:

“The Duke of Leeds stated that the Reasons he had given in his other Dispatch of this Date were sufficient to shew the Impossibility of His Majesty's discontinuing His Armaments in the present State of the Business. That as, should the Court of Spain Ultimately agree to grant the Satisfaction required, it was probable that the same Idea of disarming would be brought forward by them, as a proper Preliminary to the subsequent Negotiation. Mr. Fitz-Herbert was instructed to be particularly careful not to give the smallest Encouragement to this Idea, as His Majesty could not consent to discontinue His Preparations, 'till He should have secured, by sufficient Stipulations, the Freedom of Navigation, Commerce and Fisheries for His Subjects, in conformity to the Principles explained to his Excellency in a former Dispatch.

As this Proposal for Disarming was represented by Spain as having been originally made by Mr. Merry, in a Private Letter to Count Florida Blanca of the 16th of May, Mr. Fitz-Herbert was desired to observe, that Mr. Merry did not, even in that Private Letter, make any Direct Proposal of that Nature ; and that there was not the smallest Ground for stating, that any such Offer had been made on the Part of this Court. The Duke added, that he particularly mentioned this Circumstance, in order to prevent the Possibility of Mistake, on a Point of so much Importance.”⁹⁷

At the same time, there was a lull in communications between Fitzherbert and Florida Blanca – until about the end of June, when the two met to discuss “the Ulterior Arrangements which might be necessary, in order to remove every future Ground of Misunderstanding between the Two Courts.”⁹⁸ After the meeting, Fitzherbert was hopeful that a peaceful solution might be found.⁹⁹

At the same time, British warships were observed reconnoitring the ports of Cadiz, Carthagen and others. Apparently to avoid any provocation, Spain had given orders to all “Naval Commanders, to conduct themselves with regard to all British Ships, including those in Question, with the same Degree of Civility and Attention as in Times of profound Peace : And Count Florida Blanca also declared, that it was the Determination of his Court, not to grant Convoys for the present to the Spanish Merchantmen.”¹⁰⁰

However, as a letter of 5 July 1790 shows, Spain was blowing hot and cold:

⁹⁶ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 138. The draft declarations that were included with the instructions to Fitzherbert are reproduced on p. 142- 144.

⁹⁷ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 144, 145.

⁹⁸ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 147, 148.

⁹⁹ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 149.

¹⁰⁰ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 148, 149.

“Orders had been issued for the Cadiz-Squadron to put to Sea at the shortest Notice, and that a List of the Spanish Naval Armaments, in Europe and in America, had been just published at Madrid under the Sanction of Government. As this was a Step entirely inconsistent with the Natural Reserve of the Spanish Court, to any Thing, except the extreme Anxiety of Count Florida Blanca to inspire Confidence into the Public at large at a Moment of alarming Crisis. And he was confirmed in this Opinion by finding that, conformably to the same System, he had affected to communicate, with the utmost seeming Freedom and Confidence, with many Principal Persons at Madrid, on the Subject of the Measures adopted by Great Britain, and of the Incident which led to them, By such Artifices, and by the Circulation of a Number of False and Exaggerated Representations of the British Demands, the Public in general seemed to be pretty well reconciled to the Prospect of a Rupture ; though several well-informed Persons considered these Hostile Appearances as merely a Political Refinement, calculated to conceal the Minister's Intention of complying Ultimately with His Majesty's Demand, rather than hazard the Consequence of a Rupture.”¹⁰¹

Spain was stepping up its military game. On 9 July 1790, they informed the British that in response to the British fleet sailing from Portsmouth on 28 and 29 June 1790, Spain ordered its fleet to “go out likewise, with express Injunctions however, not to commit the least Hostility, unless it should be attacked.” At the same time, His Catholic Majesty assured Britain “that there would be no Alteration in His Desire to terminate immediately the existing Disputes by Means of an amicable Negotiation” inviting Fitzherbert for a meeting with Florida Blanca on the next day.¹⁰²

On 10 July 1790, Florida Blanca presented Fitzherbert with “his Ideas respecting an Arrangement of several Objects in Litigation ; and confided to him a Paper of loose Notes, in his own Hand-Writing, from which he extracted the following Outline of his Plan:

1mo. That Spain should retain the Exclusive Possession of the Whole Coast of North-West America, from California up to, and including, the Port of Nootka.

2do. That, from Nootka, to Latitude 61 North, which is stated as the Limit of the Spanish Discovery in that Quarter, the Subjects of Great Britain should enjoy, in common with Spain, the Right of Trading and forming Establishments ; but that, from Latitude 56 downwards, this Right should not extend beyond a certain Number of Leagues Inland, in order to avoid Interference with the Spanish Mission.

3tio. That the Subjects of Great Britain shall enjoy the Right of Fishing in the South Sea and Magellanic Region, together with that of Landing, and Erecting Occasional Buildings, in such Unsettled Islands or Parts of the Coast, as should be agreed upon : but that they should not land, or even approach, within a certain Distance of any Spanish Settlement.

4to. That, as by Means of such an Arrangement, the Two Crowns would avoid all Discussion of the Respective Rights, they should also agree to waive their Mutual

¹⁰¹ Letter of 5 July 1790, Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 150, 151.

¹⁰² Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 151.

Demand of Satisfaction ; in which Case, Spain would consent to pay to the Proprietors of the Ships taken at Nootka the full Amount of their Loss.

On these Proposals Mr. Fitz-Herbert remarked, that though, in their present State, they, without Doubt, were absolutely Inadmissible, he was not altogether without Hope that they might be finally modified, so as to meet the Idea of His Majesty's Ministers.”¹⁰³

Britain gave Fitzherbert orders not to “enter into any Ministerial Negotiation, ‘till the Point of Satisfaction should be settled” .¹⁰⁴

On 5 August 1790, finally good news arrived in London (a letter dated 25 July 1790). With great difficulties,¹⁰⁵ Fitzherbert had managed to broker a deal:

“Mr. Fitz-Herbert communicated to His Majesty's Ministers the pleasing and important Intelligence of his having interchanged with Count Florida Blanca, on the preceding Night, the following Declaration and Counter-Declaration, which he trusted would be found to agree, in all essential Particulars, with the Projets and Instructions transmitted to him on the 5th of July.

[French original in the footnote, English translation¹⁰⁶:

DECLARATION

His Britannic Majesty having complained of the capture of certain vessels belonging to his subjects in the Port of Nootka, situated on the North-West coast of America by an officer in the service of the King; the under-signed Counsellor and Principal Secretary of State to His Majesty being thereto duly authorized, declares in the name and by the order of his said Majesty, that he is willing to give satisfaction to His Britannic Majesty for the injury of which he has complained; fully persuaded that his said Britannic Majesty would act in the same manner towards the King, under similar circumstances; and His Majesty further engages to make full restitution of all the British vessels which were captured at Nootka and to indemnify the parties interested in those vessels, for the losses which they shall have sustained, as soon as the amount thereof shall have been ascertained;

It being understood that this Declaration is not to preclude or prejudice the ulterior discussion of any right which His Majesty may claim to form an exclusive establishment at the port of Nootka. In witness whereof I have signed

¹⁰³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 152, 153. At the same time, Fitzherbert reported that Spain was preparing for a possible attack on “Porto Rico” (*ibid.*, p. 154).

¹⁰⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 154.

¹⁰⁵ For a more detailed description see Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 158 – 164.

¹⁰⁶ English translation found in Great Britain, Parliament, John Almon, John Debrett, *The Parliamentary Register; or History of the proceedings and debates of the House of Commons; containing an account of the most interesting speeches and motions; accurate copies of the most remarkable letters and papers; of the most material evidence, petitions &c. laid before and offered to the House, during the first session of the seventeenth Parliament of Great Britain, Vol. XXVIII*, p. 35, 36.

this Declaration, and sealed it with the Seal of my Arms. At Madrid, the 24th of July, 1790. Signed, Le Comte de Florida Blanca.

COUNTER DECLARATION

His Catholic Majesty having declared that he was willing to give satisfaction for the injury done to the King, by the capture of certain vessels belonging to his subjects, in the bay of Nootka, and the Count de Florida Blanca having signed, in the name and by the order of his Catholic Majesty, a Declaration to this effect; and by which his said Majesty likewise engages to make full restitution of the vessels so captured, and to indemnify the parties interested in those vessels for the losses they shall have sustained; the undersigned Ambassador Extraordinary and Plenipotentiary of His Majesty to the Catholic King, being thereto duly and expressly authorized, accepts the said Declaration in the name of the King; and declares that His Majesty will consider this Declaration, together with the performance of the engagements contained therein, as a full and entire satisfaction for the injury of which his Majesty has complained. The undersigned declares, at the same time, that it is to be understood, that neither the said Declaration signed by Count Florida Blanca, nor the acceptance thereof by the undersigned, in the name of the King, is to preclude or prejudice, in any respect, the right which his Majesty may claim to any establishment which his subjects may have formed, or should be desirous of forming in future at the said Bay of Nootka. In witness whereof I have signed this Counter-Declaration, and sealed it with the Seal of my Arms. At Madrid, the 24th of July 1790.

Signed, Alleyne Fitz Herbert.]”¹⁰⁷

¹⁰⁷ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 155 - 158. The two declarations were made public in London on the date of their arrival, *ibid.*, p. 167, 168. As to the discussion on mutual disarmament and avoiding the seizure of further vessels, see *ibid.*, p. 164 – 166.

French original :

DECLARATION.

S A Majesté Britannique s'étant plainte de la Capture de certains Vaisseaux appartenants à Ses Sujets, faite dans la Baye de Nootka, située sur la Côte du Nord-Ouest de l'Amérique, par un Officier au Service du Roi ; le sous-signé, Conseiller et Premier Secrétaire d'Etat de Sa Majesté, étant à ce dûment autorisé, déclare, au Nom et par Ordre de Sa dite Majesté, qu'Elle est disposée à donner Satisfaction à Sa Majesté Britannique pour l'Injure dont Elle s'est plainte ; bien assurée que Sa dite Majesté Britannique en useroit de même à l'égard du Roi, dans de pareilles Circonstances : Et Sa Majesté s'engage en outre de faire Restitution entière de tous les Vaisseaux Britanniques qui furent capturés à Nootka, et d'indemniser les parties intéressées dans ces Vaisseaux des Pertes qu'Elles auront essuyées aussitôt que le Montant en aura pû être estimé.

Bien entendu, que cette Declaration ne pourra point exclure, ni prejudicier, à la Discussion ulterieure des Droits que Sa Majesté pourra pretendre à la Formation d'un Etablissement exclusif au Port de Nootka.

En Foi de quoi, j'ai signé cette Declaration, et y apposé le Cachet de mes Armes.

A Madrid, ce 24 Juillet, 1790.

Fitzherbert also received from Florida Blanca “a Packet from Captain Colnett of the Argonaut, dated on the 1st of May, from Mexico, and containing open Letters for the Admiralty in England and for his Owners. By these oz appeared, that that Officer, his People and Vessel had just been released by Order of Mons. De Revilla Gigedo, Governor of that Province, and that he was in a fair Way of obtaining Compensation for his Losses. As Mons. De Revilla Gigedo’s Gigedo's Conduct on this Occasion appeared to have been extremely humane and liberal, Mr. Fitz-Herbert thought it right to send him a suitable Compliment through some Persons of his Family with whom he was acquainted. The Release of this Vessel took Place in consequence of Positive Instructions from the Spanish Court, (which, from the Dates, appear to have been dispatched immediately after the Arrival of the News of her Capture) and Count Florida Blanca assured Mr. Fitz-Herbert, that Orders had been sent to Mexico for the Arresting Mons. Martinez, and bringing him to Trial, for his unwarrantable Conduct towards the British Subjects whom he made Prisoners at Nootka.”¹⁰⁸

London now sent Fitzherbert instructions for the substantive discussions with Spain (including a draft convention and extensive explanation of the background of the individual articles).¹⁰⁹ The messenger also carried an answer by Leeds to the Spanish proposal for mutual disarmament: Britain refused to disarm before a “Systeme, capable, non seulement de contribuer au plus parfait Retour d’Amitié et de Paix, mais en éloignant tout Sujet de Jalousie entre les Deux Nations, par Rapport à leurs Interêts respectifs en Amérique, rendre leur Amitié sure et permanente.”¹¹⁰

“BY the same Messenger Mr. Fitz-Herbert was further charged to represent to the Spanish Court, that, by the Accounts referred to in Mr. Meares's Memorial, it

(L.S.) Le Comte de Florida Blanca.

CONTRE-DECLARATION.

Sa Majesté Catholique ayant déclaré qu’Elle étoit disposée à donner Satisfaction pour l’Injure faite au Roi, par la Capture des certains Vaisseaux appartenants à Ses Sujets à la Baye de Nootka, et Monsieur le Comte de Florida Blanca ayant signé, au Nom et par Ordre de Sa Majesté Catholique une Declaration à cet Effet ; et par laquelle Sa dite Majesté s’engage pareillement à faire Restitution Entiere des Vaisseaux ainsi capturés, et d’indemniser les Parties interessées dans ces Vaisseaux des Pertes qu’elles auront essayées ; le sous-signé Ambassadeur Extraordinaire et Plenipotentiaire de Sa Majesté près le Roi Catholique étant à ce duëment et expressement autorisé, accepte la dite Declaration, avec que Sa Majesté regardera cette Declaration, avec l’Accomplissement des Engagements qu’Elle renferme, comme une Satisfaction pleine et entiere de l’Injure dont Sa Majesté s’est plainte.

Le Sous-signé declare, en même Tems, qu’il doit être entendu, que ni la dite Declaration signée par Monsieur le Comte de Florida Blanca ni l’Acceptation que le Sous-signé vient d’en faire au Nom du Roi, ne doit exclure ni prejudicier en rien aux Droits que Sa Majesté pourra pretendre à Tout Etablissement que Ses Sujets pourroient avoir formé, ou voudroient former à l’avenir, à la dite Baye de Nootka.

En Foi de quoi, j’ai signé cette Contre-Declaration, et y ai apposé le Cachet de mes Armes. A Madrid le 24 Juillet, 1790.

(L. S.) Alleyne Fitz Herbert

¹⁰⁸ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 155 - 158. As to the discussion on mutual disarmament and avoiding the seizure of further vessels, see *ibid.*, p. 166 - 167.

¹⁰⁹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 168 – 193.

¹¹⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 194 – 200, 200.

appeared that a Number of Chinese, who were in the Service of His Majesty's Subjects at the Time of the Capture of the British Vessels at Nootka, were seized, and had since been detained and employed in working Mines by the Spaniards. His Majesty had not thought it necessary to make this the Subject of any separate or formal Article in the Convention, especially as it appeared that an Enquiry was directed to be made into the Whole of the Conduct of Mons. Martinez in this Transaction, and as the Restoration of these Men was evidently comprized within the Declaration signed by Count Florida Blanca. But, in order to avoid any Misunderstanding on this Subject, it was judged proper, that the Circumstance should be mentioned by his Excellency to that Minister; and that he should be informed, that, independent even of that Engagement, His Majesty had no doubt, that the Justice of His Catholic Majesty would have induced Him to give immediate Orders for setting at Liberty these Persons, who had been so unjustifiably and cruelly detailed.”¹¹¹

At the same time, Britain was watching closely what would unfold in France. If France were to make any commitment to Spain, Spain could feel encouraged to resist British demands.¹¹²

“By these, his Excellency was directed to lose no Time in delivering to Mons. de Montmorin a Memorial to the following Effect, viz.

‘THE Assurances which have been repeatedly given of the friendly Disposition of His Most Christian Majesty, and particularly those conveyed through Mons. de la Luzerne, subsequent to the present Discussion with Spain, were received by His Majesty with the greatest Satisfaction, and with perfect Reciprocity of Sentiments. Feeling an earnest Wish to preserve a good Correspondence with His Christian Majesty, the King has seen, with great Surprize and Concern, the great additional Armament now ordered to be prepared in the Ports of France ; as such an extraordinary Preparation, under the Circumstance of the Negotiation now depending with the Court of Spain, carries an Appearance in no Degree consistent with those Sentiments of Friendship which have been professed; His Majesty has therefore thought it necessary to direct the undersigned, to desire an Explanation of the Object and Destination of the Armaments now carrying on in the French Ports ; and His Majesty earnestly hopes, that the Answer to this open and friendly Communication may be such, as to promote the Harmony and good Understanding which His Majesty, on His Part, is sincerely desirous of cultivating with His Most Christian Majesty.’

HIS Excellency was also directed to express to Mons. de Montmorin, in the strongest Terms, the Continuance of His Majesty’s sincere Desire for the Preservation of Harmony with the Court of France ; but, at the same Time, to observe to the French Ministry the obvious Impossibility of that Harmony remaining uninterrupted, if that Court should think itself bound to take Part in

¹¹¹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 201.

¹¹² Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, p. 209 – 213.

Support of any Claims, however unfounded, which the Court of Spain might chuse to advance.”¹¹³

Britain was also lobbying “Persons of Weight and Influence in the National Assembly.”¹¹⁴

France retorted that her own armaments were prompted by the armaments by Britain and Spain, as Montmorin put it in a letter of 28 August 1790,

“that He had received great Pleasure from the Exchange of the Declaration and Counter Declaration between those Two Courts, which He considered as a Preliminary Step towards a Reconciliation ; and that His Satisfaction would have been compleat, if that Measure had been followed a Reciprocal Disarmament, or at least by a Convention not to increase the existing Armaments on either Side. Such a Circumstance, Mons. de Montmorin added, as it would have been a Proof of the Pacific Views of the Two Courts, would have made it unnecessary for His Most Christian Majesty to take those Measures of Precaution and Prudence, which He now thought indispensable.”¹¹⁵

In the weeks following this exchange, tension was building up between France and England.¹¹⁶

On 10 September 1790, Montmorin had informed Earl Gower, the British ambassador in Paris, that he had instructed the French Ambassador in London (Mons. de la Luzerne) to communicate with Leeds on the Subject of General or Partial Disarmament as well as France’s peaceful intentions. However, despite meeting with Leeds and others, de la Luzerne did not address the topic at all. In the meantime, Britain was receiving news about the French armaments. Britain was seriously considering whether the French silence was the prelude to an armed conflict.

Eventually, Gower raised the topic with Montmorin, who replied on 4 October 1790:

“In this Paper, Mons. de Montmorin, after briefly reciting the Memorial delivered to him by Earl Gower on the 4th of September, and the Dispatch of the Duke of Leeds which had been communicated to him on the 30th of the same Months proceeded to state to His Excellency, that he had Reason to believe, that Mons. de la Luzerne would not have lost a Moment in communicating to the British Ministry his Dispatch of the 9th of September; and he expressed his Astonishment at this Omission, which he imputed to some unexpected Circumstance, or some Misunderstanding. He insisted, however, that the English Ministry had had an Official Communication of this Dispatch through Earl Gower himself, and that the French Ambassador had already given them the most precise Explanation of His Most Christian Majesty's real Intentions. In

¹¹³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, p. 213 - 215.

¹¹⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, p. 216.

¹¹⁵ Letter of 28 August 1790, Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 218, 219.

¹¹⁶ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 221 et seq.

consequence of this Information, Mons. de Montmorin insisted, that the Court of London ought to have been convinced, in the first Place, that the French King desired nothing so much as the Maintenance of Peace, and that He would do all in His Power for that Purpose ; and, in the second Place, that if His Most Christian Majesty did at first determine to arm, and afterwards to augment His Forces, He had been induced to do so, because He could not remain in a State of Inaction, while neighbouring Powers were making considerable Armaments, and because, if unhappily the Differences between the Courts of Madrid and London should not be amicably arranged. He might find Himself forced to fulfil the Defensive Engagements subsisting for a Number of Years between France and Spain. [...] and he declared himself at a Loss to guess, what Irregularity there could have been in the Transmission of it to the Court of London 'though he assured Earl Gower, that, if there had been any such Irregularity, his Excellency's Silence on that Head put it out of the Power of the French Ministry, either to rectify or to disavow it. [...]

Mons. de Montmorin concluded by assuring Earl Gower, that, if any Uncertainty should still remain, the French Ministry would willingly give a further Explanation, their Views and Wishes being directed to the Preservation of Peace, and to a speedy and equitable Arrangement.”¹¹⁷

Britain was now on notice that France might indeed intervene in case of a military conflict. On 8 October 1790, the Duke of Leeds instructed Earl Gower to address Montmorin as follows:

“In the Event of the present Discussions with Spain not terminating in a friendly Manner his Grace said, His Majesty's Ministers trusted, that the Candour of the French Government would listen to their Representation of the Case, before She should think Herself justified in supporting Spain : That, in such an Event, the King would not fail to lay open to France, and to All Europe, the Grounds on which His Majesty rested the Justice of His Cause.”¹¹⁸

Montmorin in a letter received on 14 October 1790 assured the British:

“by His Royal Matter's Orders, that His Most Christian Majesty persisted invariably in the Disposition, of which He had already so often given the most positive Assurances to the English Court : That the Court of Madrid had not, as yet, made any Requisition of a Total, or even a Partial Re-union of the French Naval Force with Her own : That His Most Christian Majesty flattered Himself, that the Negotiation depending at Madrid would terminate as happily as His Britannic Majesty could desire ; and that, in this Hope; He did not hesitate to Declare, that during the short Space which would elapse before the Court of London could receive a Definitive Answer from His Catholic Majesty, He would not make any Disposition of His Naval Forces, with a View of effecting a Co-operation with Spain.

¹¹⁷ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 226 – 229.

¹¹⁸ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 232.

Mons. de Montmorin concluded by saying that His Most Christian Majesty entertained no Doubt of the Court of London perceiving, from the Promptitude and Precision of this Answer His Desire to maintain the Harmony and good Intelligence which so happily subsisted between the Two Countries.”¹¹⁹

Also the Netherlands were continuing their armaments faithful to their British allies.¹²⁰

In the meantime, Fitzherbert had received “Full Powers” which were sent “under the Great Seal” on 1 September 1790 “to enable him to conclude a final Arrangement with the Court of Spain”.¹²¹

“Mr. Fitz-Herbert was directed to omit no Opportunity of expressing to Count Florida Blanca the Probability of this Measure on the Part of France impeding, rather than accelerating, the Return of Harmony and Friendship between Great Britain and Spain ; as the Appearance of a Third Power interfering in the present Discussion between the Two Countries, during their Negotiation, by making a considerable Armament, and that Power, from it's Connections (already subsisting, however likely to be qualified in future) with Spain, holding out a partial Degree of Countenance to the latter, with the obvious Intent of influencing the Negotiation in Her Favour, could not but give Umbrage to England ; and, unless the Spanish Ministers should prefer a direct Rupture to an amicable Accommodation, there could be little Doubt of their rather discouraging than promoting any Measure on the Part of France, which was not only apparently calculated to prevent the wished for Accommodation between Their Britannic and Catholic Majesties, but must, if carried into Effect, produce the most serious Consequences.”¹²²

Spain made overtures to Britain that – in the light of the “enormous Expense and other Inconveniencies attending to the present Armaments” Britain “might perhaps be induced to discontinue them” in exchange for an undertaking by Spain not to “proceed to any Kind of Violence or Voie de Fait” “in Case of real or supposed Encroachment committed by British Subjects” in the West Indies.¹²³

Britain’s answer of 10 September 1790 was a resounding “no”.¹²⁴

As to the events in France, Florida Blanca send an equivocal message. On the one hand, the Spanish King “looked at the National Assembly with the utmost Horror and Detestation, considering their Principles and Proceedings as utterly subversive of every Principle of Government and good Order” and “was extremely adverse to the adopting the Species of

¹¹⁹ Letter received on 14 October 1790, Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 232, 233.

¹²⁰ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 233 - 237.

¹²¹ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 238.

¹²² Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 238, 239.

¹²³ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 240.

¹²⁴ Sir James Bland Burges, A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791, p. 240, 241.

Treaty proposed to him by that Body”.¹²⁵ On the other hand, “His Catholic Majesty knew too well to what imminent danger the Spanish Monarchy would be exposed by engaging, single-handed, in a War with Great Britain ; and therefore that He should be absolutely obliged to accept of the Succours tendered to him by France, on whatever Conditions, supposing that the Court of London *pressed too hardly upon Him in the present Conjunction.*”¹²⁶

Spain explained its idea of being “pressed to hardly upon”:

“it was the unanimous Opinion of the Members of that Body [the Council of State], that a speedy Accommodation between Great Britain and Spain could not possibly take Place, conformably to the very comprehensive Plan traced out in those Papers [the British proposal]. That, in particular, previously to the returning any positive Reply from Spain on the Subject: of the proposed Lines of demarcation, it would be indispensibly necessary to send to America, for an exact Account of the Extent and Circumstances of the Spanish Settlements and Missions in the Interior of that Continent, as well to the North as the South, and to enquire, at the same Time, into a Number of other Circumstances, intimately connected with the present Business. That, before sufficient Answers to these Inquiries could be collected and transmitted to Europe, a great Length of Time must necessarily elapse, during which it was next to impossible, considering the powerful Armaments now on Foot both here and in Great Britain, and the Jealousy naturally entertained by both Courts of each other's Designs, that some disagreeable Incident should not intervene, that might bring on a decided Rupture. That, moreover, during so long an Interval, it would be equally impossible for this Court to spin out their Negotiation with the French Government, so as to avoid some decided Explanation ; in consequence of which, as His Catholic Majesty would still be in a State of Uncertainty respecting the Issue of his Negotiation with Great Britain, he would be compelled, however reluctantly, to accept the proposed National Compact. Count Florida Blanca ended by saying, that, on a Consideration of all these Difficulties, he had at Length obtained the Consent of His Catholic Majesty to propose to our Court the following Expedient viz. the immediate Conclusion of a preliminary Agreement, that would secure to Great Britain by general, but sufficient Stipulations, the Objects which She had in View ; and thus put a Stop. to the present Armaments, and furnish the Two Crowns with sufficient Leisure for the Completion of a definitive Arrangement, as well as of a System of Union, which might enable His Catholic Majesty to disengage Himself entirely from His Connections with France ; and that he was going to prepare a Projet to that Effect, which he would communicate to Mr. Fitz-Herbert very shortly. Mr. Fitz-Herbert observed, that, considering all the Circumstances attending this Proposal (and more especially the important and unforeseen Change which had taken Place in the Dispositions of this Court with Regard to France) it occurred to him at the Instant, that it might perhaps be so modelled, as to form the Basis of a very eligible Arrangement ; and he therefore ventured (as in his private Capacity) to meet it half Way ; and moreover, having found by Experience that, in negotiating with the Spanish Court, it is often of Advantage to frame the first

¹²⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 243.

¹²⁶ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 243, 244.

Draft of any Agreement, he undertook to draw up a Projet conformably to the Spanish Minister's Idea. Accordingly, on the following Day, he delivered to Mons. de Florida Blanca the Paper [...].”¹²⁷

In the evening of the same day, Spain responded with a counter-offer.¹²⁸ Florida Blanca represented that “in framing the Paper in Question he had gone to the utmost Length warranted by the Resolutions of His Catholic Majesty and his Colleagues in Office.”¹²⁹

Around the same time, Fitzherbert learned of naval movements of the Spanish fleet.¹³⁰ Fitzherbert relayed both to Leeds.

“On the 2d of October [received on 12 October 1790¹³¹], a Messenger was dispatched to Mr. Fitz-Herbert, with the Instructions which His Majesty had commanded to be sent to that Minister, for his Direction in the very important and critical Negotiation in which he was engaged.

His Majesty's Ministers observed, that the Effect of these Instructions must be decisive on the Alternative of Peace or War; as neither the Circumstances of the Negotiation, nor the relative Situation of the Two Countries and of other Powers, could allow of any further Delay. That the Projet of a Declaration, which Mr. Fitz-Herbert received from Count Florida Blanca, was in many Respects unsatisfactory, particularly as it would leave open to subsequent explanation and Discussion Points which it was essential now to bring to a precise and final Decision.

On this Ground, the Duke of Leeds informed Mr. Fitz-Herbert, that he had it in Command from His Majesty to state to him, that that Declaration was utterly inadmissible ; and that it would have appeared very doubtful, if that Paper had not been accompanied by other Circumstances mentioned in his Dispatch, whether any Advantage could have been hoped for from a farther Continuance of the Negotiation.”¹³²

Still, Leeds instructed Fitzherbert to make one last attempt:

“His Excellency was therefore desired to understand, that the Sentiments which his Grace was now to state to him, were Final and Unalterable: And if he should not be able to bring the Discussion to a very speedy Conclusion, it would be His

¹²⁷ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 246, 247. A copy of the draft is at p. 247 - 249.

¹²⁸ A copy of the draft is in Sir James Bland Burges' *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790*, p. 250 – 252.

¹²⁹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 255.

¹³⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 256.

¹³¹ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 289.

¹³² Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 257, 258.

Majesty's Pleasure (as should be more particularly stated to him in a separate dispatch), that he should entirely break off all Negotiations.”¹³³

While London acknowledged that Spain's stated reason for “avoiding a Definitive Arrangement, (that is the Necessity of a Reference to America for local Information) applied to any of the Points contained in the Projet which the Duke of Leeds transmitted to his Excellency, it could only be to that of the precise Demarcation of the Limits, and not to any of the other Points contained in the Projet originally transmitted.”¹³⁴

“His Grace added, that the Question of the Restitution of Nootka and the other Trades of Land must depend solely on these Points : Whether Spain claims them on the Ground of a supposed general Right of exclusive Sovereignty, in that Part of the World, or of alledged prior Discovery, or any other Ground independant of established Occupation and Possession ; or lastly, whether it could maintain that such Occupation and Possession actually existed prior to the Time when the Lands were purchased, and Buildings erected by His Majesty's Subjects. These were all Points on which the Court of Spain must: be supposed, after all that had passed on the Subject, to be as capable of deciding now as it could be at any Time hereafter. In like Manner, the Security for the Navigation, Commerce and Fisheries of His Majesty's Subjects (liable to such Provisions as may be made for preventing illicit Trade to those Parts actually in the Possession of Spain) depended solely upon the fundamental Question, whether that Crown did or did not insist upon, and maintain, an exclusive Sovereignty over the Continent in Question, and the Seas adjacent. If therefore Spain should persist in refusing a distinct and final Settlement on these Points, under Pretence of making further Inquiries, such a Conduct could only be considered as a Proof of wishing to gain Time, in order ultimately to contest the Principles themselves on which these Articles are founded.”¹³⁵

With the detailed instructions, London also included two alternative projets.¹³⁶

“On the Supposition that the present Negotiation terminating amicably, and of Count Florida Blanca's returning to the Subject of Disarming, that the Enormous Expence respectively incurred by Both Countries, in Fitting out such considerable Fleets, could not but render it highly to be wished, on both Sides, that Circumstances might permit a speedy Reduction of this heavy Branch of Public Expenditure. That the Moment our Differences with Spain should be finally adjusted, we trusted our Mutual Confidence would be a stronger Security, in respect to our Disarming on both Sides, than any Formal Stipulations could afford.

¹³³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 260, 261.

¹³⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 264.

¹³⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 265, 266.

¹³⁶ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 261 – 282.

With Respect to the particular Mode of disarming, His Grace observed, that it might be difficult to come to any precise Stipulation on that Subject. Mutual Confidence would, he trusted, prevent any Jealousy or Suspicion between us; and his Grace declared himself to be convinced the Court of Spain would enter into the Justice of our Motives for not binding ourselves to reduce our Navy precisely to our Peace Establishment, in the First Instance. We certainly could not take such a Step, 'till France should have reduced Her Navy: And there might be many other important Reasons for not being too precipitate in our Reductions, during the present unsettled State of Europe in general; both which Considerations would, his Grace was convinced, be admitted as worthy of Attention by Count Florida Blanca.

The Duke further stated, that His Majesty's Ministers were persuaded Spain was not only equally interested, but equally disposed with England, to prevent any material Alteration in the Relative situation of the several Powers of Europe. That the only Quarter, from which this Situation appeared liable to Disturbances, was the Court of Petersburg ; and the Reluctance with which that Court appeared to listen to the Proposals of an Accomodation with the Porte, short of a Material Dismemberment of the Turkish Dominions, could not but render it incumbent on the Allies to be prepared to defend a System of Moderation, which the Empress seemed so unwilling at present to adopt, and which it seemed so material for every other Power to see securely established.

By the same Messenger, the Duke of Leeds informed Mr. Fitz-Herbert, that the Proposals herein before detailed, must be considered as constituting the Ultimatum of this Court [...] And his Grace added, that, after communicating the several Proposals to Count Florida Blanca, Ten Days appeared sufficient for an Answer to them ; and that, in case a Satisfactory Answer should not be returned within that Period, it was His Majesty's Pleasure, that his Excellency should quit Madrid, without taking Leave of the Spanish Court, and should forthwith set out on his Return to England.”¹³⁷

The initial reactions from the Spanish crown were negative prompting Fitzherbert to inform “General O’Hara and the Consuls in the several Ports of Spain, recommending to them the same Measures of Precaution, which they had adopted at the Outset of these Disputes.”¹³⁸

¹³⁷ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 282 - 285. Another dispatch of the same day, carried by the same messenger apprised Fitzherbert of an incident in the Gulf of Florida, *ibid.* p. 285 - 288. Leeds stated: “The Case evidently came under that Part of the Projet now sent, respecting Satisfaction to be reciprocally given by the Contracting Parties, for any Loss or Injury sustained by their respective Subjects since a certain Period. In case, however, this particular Article of the Projet should not ultimately be agreed to, a direct and separate Answer must be obtained from the Spanish Court, to our Complaint of the Cruelty exercised by their Officer on Captain Macdonald. The Duke added, that, having stated the Case to that Court, it was His Majesty's Pleasure, that Mr. Fitz-Herbert should inform the Spanish Minister, that he was absolutely forbid to conclude any other Part of the Negotiation, until he had received a positive Official Assurance in Writing, that, in the Event of the Facts contained in the Depositions above stated not being disproved, a just and adequate Punishment should be inflicted on the Offender” (*ibid.*, p. 288). On 13 October 1790, Florida Blanca confirmed that the respective officer, a Don Juan Vincente Yanez, was being brought before a court martial (*ibid.*, p. 289, 290).

¹³⁸ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 290.

The First Nootka Convention

“In order, however, that no Means of effectuating a Pacification might be left untried, Mr. Fitz-Herbert, on the 15th of October delivered to the Spanish Minister a translated Copy of the Whole of the Duke of Leeds's Draft, intitled *Projet* without the Demarcation of Limits, in consequence of which the Count sent him, on the following Day, an Answer ; which, though still conceived in Terms extremely wide of our Proposals was nevertheless such as to revive his Hopes of engaging the Spanish Minister, by Degrees, to accede to His Majesty's Demands. After repeated Conferences, both at the Escorial and at St. Ildephonso, (whither His Catholic Majesty removed on the 20th) the Difficulties which had interviened being removed, a Draft of the following Convention between His Majesty and the King of Spain was at length definitively settled between Mr. Fitz-Herbert and Count Florida Blanca on Sunday the 24th of October and was agreed to be signed by them, with the usual Formalities, on the Wednesday or Thursday following.

[French original in the footnote, English translation¹³⁹]:

CONVENTION between His Britannic Majesty and the King of Spain.

Their Britannic and Catholic Majesties, being desirous of terminating, by a speedy and solid agreement, the differences which have lately arisen between the 2 Crowns, have judged that the best way of attaining this salutary object would be that of an amicable arrangement, which, setting aside all retrospective discussion of the rights and pretensions of the 2 Parties, should fix their respective situation for the future on a basis conformable to their true interests, as well as to the mutual desire with which Their said Majesties are animated, of establishing with each other, in everything and in all places, the most perfect friendship, harmony, and good correspondence.

In this view, they have named and constituted for their Plenipotentiaries; to wit, on the part of His Britannic Majesty, Alleyne Fitz-Herbert, Esq., one of His said Majesty's Privy Council, in Great Britain and Ireland, and his Ambassador Extraordinary and Plenipotentiary to His Catholic Majesty; and on the part of His Catholic Majesty, Don Joseph Monino, Count of Florida Blanca, Knight Grand Cross of the Royal Spanish Order of Charles III, Councillor of State to His said Majesty, and his Principal Secretary of State, and of the Despatches; who, after having communicated to each other their respective Full Powers, have agreed upon the following Articles:

Article I.

It is agreed that the Buildings and Tracts of Land, situated on the North-west Coast of the Continent of North America, or on Islands adjacent to that Continent, of which the Subjects of His Britannic Majesty were dispossessed, about the month of April, 1789, by a Spanish Officer, shall be restored to the said British Subjects.

¹³⁹ English translation found in Great Britain, Foreign office, British and Foreign State Papers 1812-1814, Vol. I – Part I., p. 663 – 667.

Article II.

And further, that a just reparation shall be made, according to the nature of the case, for all acts of violence or hostility which may have been committed, subsequent to the month of April, 1789, by the Subjects of either of the Contracting Parties against the Subjects of the other; and that, in case any of the said respective Subjects shall, since the same period, have been forcibly dispossessed of their Lands, Buildings, Vessels, merchandise, or other property whatever, on the said Continent, or on the Seas or Islands adjacent, they shall be re-established in the possession thereof, or a just compensation shall be made to them for the losses which they shall have sustained.

Article III

And in order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the 2 Contracting Parties, it is agreed that their respective Subjects shall not be disturbed or molested either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas, in places not already occupied for the purpose of carrying on their commerce with the Natives of the Country, or of making Settlements there; the whole subject, nevertheless, to the restrictions and provisions specified in the 3 following Articles.

Article IV.

His Britannic Majesty engages to take the most effectual measures to prevent the Navigation and Fishery of his Subjects in the Pacific Ocean, or in the South Seas, from being made a pretext for illicit trade with the Spanish Settlements; and, with this view, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery in the said Seas, within the space of 10 sea leagues from any part of the Coasts already occupied by Spain.

Article V.

It is agreed, that as well in the places which are to be restored to the British Subjects, by virtue of the 1st Article, as in all other parts of the North-western Coasts of North America, or of the Islands adjacent, situated to the North of the parts of the said Coast already occupied by Spain, wherever the Subjects of either of the 2 Powers shall have made Settlements since the month of April, 1789, or shall hereafter make any, the Subjects of the other shall have free access, and shall carry on their trade, without any disturbance or molestation.

Article VI.

It is further agreed, with respect to the Eastern and Western Coasts of South America, and to the Islands adjacent, that no Settlement shall be formed hereafter, by the respective Subjects, in such parts of those Coasts as are situated to the South of those parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain; provided that the said respective Subjects shall retain the liberty of landing on the Coasts and Islands so situated, for the purposes of

their Fishery, and of erecting thereon huts, and other temporary buildings, serving only for those purposes.

Article VII.

In all cases of complaint or infraction of the Articles of the present Convention, the Officers of either Party, without permitting themselves previously to commit any violence or act of force, shall be bound to make an exact report of the affair and of its circumstances, to their respective Courts, who will terminate such differences in an amicable manner.

Article VIII.

The present Convention shall be ratified and confirmed in the space of 6 weeks, to be computed from the day of its signature, or sooner if it can be done.

In witness whereof, we, the Undersigned Plenipotentiaries of Their Britannic and Catholic Majesties, have, in their names, and in virtue of our respective Full Powers, signed the present Convention, and set thereto the Seals of our Arms.

Done at the Palace of St. Lawrence, the 28th of October, 1790.

(L. S.) Alleyne Fitz-Herbert.

(L. S.) El Conde de Florida Blanca.]”¹⁴⁰ ¹⁴¹

¹⁴⁰ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 292 – 297. Details of the final negotiations, *ibid.*, p. 297 – 303.

French original:

LEURS Majestés Britannique et Catholique, étant disposées à terminer, par un Accord prompt et solide, les Differends qui Se sont élevés en dernier Lieu entre les Deux Couronnes, Elles ont trouvé, que le meilleur Moyen de parvenir à ce But salutaire seroit celui d'une Transaction à l'amiable, laquelle, en laissant de Côté toute Discussion retrospective des Droits et des Pretensions des Deux Parties, réglât leur Position respective à l'avenir sur des Bases qui seroient conformes à Leurs vrais Interêts, ainsi qu'au Desir mutuel dont Leurs dites Majestés sont animées, d'établir entre Elles, en tout et en tous Lieux, la plus parfaite Amitié, Harmonie et bonne Correspondance, Dans cette Vuë, Elles ont nommé et constitué, pour Leurs Plenipotentiaires ; savoir, de la Part de Sa Majesté Britannique, le Sieur Alleyne Fitz-Herbert, du Conseil Privé de Sa dite Majesté dans la Grande Bretagne et en Irlande, et Son Ambassadeur Extraordinaire et Plenipotentiaire près Sa Majesté Catholique ; et de la Part de Sa Majesté Catholique, Don Joseph Monino, Comte de Florida Blanca, Chevalier Grand Croix du Royal Ordre Espagnol de Charles III, Conseiller d'Etat de Sa dite Majesté, et Son Premier Secrétaire d'Etat et del Despacho : Lesquels, après s'être communiqués leurs Pleinpouvoirs respectifs, sont convenus des Articles suivans.

Article I.

Il est convenu que les Batimens et les Districts de Terrein, situés sur la Cote du Nord-Ouest du Continent de l'Amerique Septentrionale, ou bien sur des Isles adjacentes à ce Continent, desquels les Sujets de Sa Majesté Britannique ont été depossédés, vers le Mois d' Avril, 1789, par un Officier Espagnol, seront restitués aux dits Sujets Britanniques.

Article II.

De plus, une juste Reparation sera faite, selon la Nature du Cas, pour tout Acte de Violence ou d'Hostilité qui aura pu avoir été commis, depuis le dit Mois d'Avril, 1789, par les Sujets de l'une des deux Parties Contractantes contre les Sujets de l'autre ; et au cas que depuis la dite Epoque, quelques uns des Sujets respectifs ayent été forcement depossédés de leurs Terreins, Bâtimens, Vaisseaux, Marchandises, ou autres Objets de Propriété quelconques, sur le dit Continent, ou sur les Mers ou Isles adjacentes, ils en seront remis en Possession, ou une juste Compensation leur sera faite pour les Pertes qu'ils auront essayées.

Article III.

Et, afin de resserrer les Liens de l'Amitié, et de conserver à l'avenir une parfaite Harmonie et bonne Intelligence entre les Deux Parties Contractantes, il est convenu que les Sujets respectifs ne seront point troublés ni molestés, soit en naviguant ou en exerçant leur Pêche dans l'Océan Pacifique, ou dans les Mers du Sud, soit en débarquant sur les Côtes qui bordent ces Mers, dans des Endroits non déjà occupés, afin d'y exercer leur Commerce avec les Naturels du Pays, ou pour y former des Etablissements. Le tout sujet néanmoins aux Restrictions et aux Provisions qui seront spécifiées dans les trois Articles suivans.

Article IV.

Sa Majesté Britannique s'engage d'employer les Mesures les plus efficaces pour que la Navigation et la Pêche de Ses Sujets dans l'Océan Pacifique, ou dans les Mers du Sud, ne deviennent point le Pretexte d'un Commerce illicite avec les Etablissements Espagnols ; et, dans cette Vuë, il est en outre expressement stipulé, que les Sujets Britanniques ne navigueront point, et n'exerceront pas leur Pêche dans les dites Mers, à la Distance de Dix Lieues Maritimes d'aucune Partie des Côtes déjà occupées par l'Espagne.

Article V.

Il est convenu, que tant dans les Endroits, qui seront restitués aux Sujets Britanniques, en Vertu de l'Article Ie^r, que dans toutes les autres Parties de la Côte du Nord Ouest de l'Amerique Septentrionale, ou des Isles adjacentes, situées au Nord des Parties de la dite Côte déjà occupées par l'Espagne, partout où les Sujets de l'une des Deux Puissances auront formé des Etablissements, depuis le Mois d'Avril, 1789, ou en formeront par la Suite, les Sujets de l'autre auront un Accès libre, et exerceront leur Commerce, sans Trouble ni Molestation.

Article VI.

Il est encore convenu, par rapport aux Côtes tant Orientales qu'Occidentales de l'Amerique Meridionale et aux Isles adjacentes, que les Sujets respectifs ne formeront à l'avenir aucun Etablissement sur les Parties de ces Côtes situées au Sud des Parties de ces mêmes Côtes, et des Isles adjacentes, déjà occupées par l'Espagne : Bien entendu, que les dits Sujets respectifs conserveront la Faculté de débarquer sur les Côtes et Isles ainsi situées, pour les Objets de leur Pêche, et d'y bâtir des Cabanes, et autres Ouvrages temporaires, servant seulement à ces Objets.

Article VII.

Dans tous les Cas de Plainte, ou d'infraction des Articles de la presente Convention, les Officiers de Part et d'autre, sans se permettre auparavant aucune Violence ou Voïe de Fait, seront tenus de faire un Rapport exact de l'Affaire, et de ses Circonstances, a leurs Cours respectives, qui termineront à l'amiable ces Differends.

Article VIII.

La presente Convention sera ratifiée et confirmée dans l'Espace de Six Semaines, à compter du Jour de la Signature, ou plutôt, si faire se peut.

En Foi de quoi, nous sous-signés Plenipotentiaires de Leurs Majestés Britanniques et Catholiques, avons signé, en leurs Noms, et en Vertu de nos Pleinpouvoirs respectifs, la presente Convention, et y avons apposé les Cachets de nos Armes.

Fait à San Lorenzo el Real, le Vingt-huit Octobre, Mil Sept Cent Quatre-vingt-dix.

Although the agreement was eventually signed, it nearly failed on the last meters. Spain had seen the ten-day deadline set by Leeds as provocation which “occasioned a very high Degree of Pique and Ill-Humour at the Spanish Court.”¹⁴²

As of 23 October 1790, it was still unclear “whether the Determination [...] would be for Peace or War”.¹⁴³ When Florida Blanca communicated to Fitzherbert on 24 October 1790 that the king had agreed, Fitzherbert pushed for immediate signature even “offering, for that Purpose, to defer to a future Day the mutual Communication of their Full Powers.”¹⁴⁴ Florida Blanca refused fearing that he could later be accused “of having availed himself of the Opportunity of the King’s Visit to St. Ildephonso, whither He was not attended by any of the Ministers except himself and M. de Campo Alange, to lead Him, as it were by Stealth, into a Measure contrary to His Interests ; and he added, that he was also under the Necessity to transmitting to the aforesaid [Extraordinary] Junto, previous to the actual Signature of the Convention, a Memorial he was then preparing, and by which he hoped to justify his taking the Step in Opposition to their Opinion : That he therefore hoped Mr. Fitz-Herbert would content himself with His Catholic Majesty’s Words, which he pledged to him in the most solemn Manner, that the Convention to be concluded should be drawn, verbatim et literatim, agreeably to the Paper stated above ... The actual Signature of the Convention was therefore deferred, as has already been mentioned, ‘till His Catholic Majesty returned to the Escorial.’”¹⁴⁵

“This very important Information was received at Whitehall on the Morning of the 4th of November. On the 7th, another Messenger arrived with the Convention, which had been signed at the Escorial, by Mr. Fitz-Herbert and Count Florida Blanca, on the 28th of October. His Majesty’s Ratification of this Instrument was, on the 9th of November, forwarded to the Court of Spain ; and, on the 4th of December, the Business, which so long had excited the anxious Attention not only of this Country but of all Europe, was happily concluded, by the Receipt of the Catholic King’s Ratification of the Convention, which had been exchanged by

(L. S.) Alleyne Fitz-Herbert.

(L. S.) El Conde de Florida Blanca.

¹⁴¹ The Convention between His Britannic Majesty and the King of Spain also contained a Secret Article stating that “Since by article 6 of the present convention it has been stipulated, respecting the eastern and western coasts of South America, that the respective subjects shall not in the future form any establishment on the parts of these coasts situated to the south of the parts of the said coasts actually occupied by Spain, it is agreed and declared by the present article that this stipulation shall remain in force only so long as no establishment shall have been formed by the subjects of any other power on the coasts in question. This secret article shall have the same force as if it were inserted in the convention.” Ratifications for the Secret Article were exchanged by the Count of Florida Blanca and Alleyne Fitzherbert on the 22 November 1790. *See* William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 456, 457.

¹⁴² Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 303.

¹⁴³ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 304.

¹⁴⁴ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 304.

¹⁴⁵ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 305, 306.

Mr. Fitz-Herbert against that of His Majesty, on the 22nd of the preceding Month, at the Palace of the Escorial.”¹⁴⁶

Spain, though, seemed to have had her fingers crossed behind her back when signing the treaty. Florida Blanca communicated “some reflections” to his Catholic Majesty on 21 November 1790:

“These reflections declared that the purpose of the Convention was to avoid a war in the present unhappy circumstances, reserving it for a more favorable time, if it should become necessary. It did not involve an absolute renunciation in case Spain chose not to observe it. It was shown that by a strict interpretation of some of its terms the Convention could be made of little value to England and little loss to Spain. In the stipulations that granted to English subjects privileges of commerce and settlement north or south of places already occupied, attention was called to the expression ‘already occupied.’ The word ‘occupied’ did not mean nearly so much as ‘inhabited’ or ‘peopled’ would have meant, and ‘already’ did not mean ‘actually’ or ‘now.’ If a place had been once occupied and then abandoned this expression could be made to apply to it. The implication was that formal acts of taking possession where there had been no thought of making an actual settlement could be made to come under this head. Such acts had been performed practically all along the coast. Such a construction would have almost nullified the privileges granted to England. The reflections said further that the English were not allowed to approach Spanish settlements and Spain had equal rights with England anywhere on the coast. It was thought that Russia’s fear of English encroachments would be a safeguard against England. English trade and settlements were limited to the part of the coast north of Nootka. It was insisted that the treaty simply recognized existing conditions; that it conceded nothing except what had been allowed, and on the other hand obtained concessions by limiting the privileges. It was proposed to observe the Convention only so long as it should be to the advantage of Spain to do so. Whenever she felt strong enough to assert her ancient rights she could still do it.”¹⁴⁷

Florida Blanca’s career did not last long after Nootka. In February 1792, Florida Blanca was replaced by Pedro Pablo Abarca de Bolea, Conde de Aranda. Aranda was himself replaced by Manuel Godoy in November 1792.

The Second Nootka Convention

Both Britain and Spain appointed commissioners to implement the agreement in Article I of the Nootka Convention. The British commissioner, Captain Vancouver sailed from England in 1791 and arrived at the North-West Coast in the spring of 1792 and occupied himself with exploring the coast. He received his instructions regarding the restoration of British possessions in Nootka in summer 1792.¹⁴⁸ He reached Nootka in August finding that Bodega y Quadra, the Spanish commissioner, had already arrived.¹⁴⁹

¹⁴⁶ Sir James Bland Burges, *A Narrative of the Negotiations Occasioned by the Dispute Between England and Spain in the Year 1790, 1791*, p. 305, 306.

¹⁴⁷ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 458.

¹⁴⁸ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 464.

¹⁴⁹ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 464.

Vancouver and his Spanish counterpart failed to reach an agreement on what was to be handed over back to Britain. Bodega y Quadra was convinced that “the English had never purchased nor taken possession of any land except the small plat of ground on which Meares’s temporary house had stood in 1788.”¹⁵⁰ Vancouver was unable to agree to that. The matter was referred back to Madrid and London.

Vancouver waited for instructions for two years. Eventually, he learnt that Britain would send “a special British commissioner” and set sail for England on 1 December 1794.¹⁵¹

“While the arrangements were being made to send the above commissioners to Nootka to carry out the stipulations in the first article of the convention, steps were also being taken to fulfill the agreement in the declarations of July 24. The two Governments appointed commissioners to decide on the amount of the indemnity which Spain should pay to those interested in the ships captured at Nootka. Their negotiation was conducted at London. The Spanish agent, Manuel de Las Heras, was sent in May, 1791. Baron St. Helens [Fitzherbert] wrote on May 29 introducing him to Lord Grenville, who had succeeded the Duke of Leeds in the foreign office. Heras was also consul-general to England. St. Helens said:

He appears to me to be very sensible, well informed, and right headed; so that I am persuaded that he will do his best in order to execute the commission with which he is charged to the satisfaction of both Courts.

When the Spanish commissioner reached London he either misunderstood his instructions or was intentionally very reserved regarding them. On August 26 Grenville wrote to St. Helens:

The sending of M. Las Heras at last without any instructions is really abominable, and would be reason enough, if we were so disposed, to refuse to hear of alliance or anything else.

He appealed to St. Helens to ‘make those slow Spaniards send instructions and powers, and, above all, liberty to refer the matter to arbitration, by which the ministers of both Courts will get it off their hands.’ On receipt of this letter the British ambassador called the attention of Florida Blanca to the commissioner’s delay in negotiating. The Spanish minister thought that the instructions to Heras were clear and explicit; nevertheless, he sent additional instructions on September 8 authorizing the commissioner to settle and liquidate the damages, with the concurrence of Campo, the Spanish ambassador. He was to give the British Court to understand that in case of difference the Spanish King was willing to submit the matter to arbitration. The Count had given St. Helens a copy of these instructions and the latter sent them to Grenville, saying that they seemed satisfactory except that the commissioner did not have authority to settle finally without submitting the matter to the Spanish King. He remarked that such would have been an unprecedented power and said that His Catholic Majesty had promised to act on it immediately.”¹⁵²

¹⁵⁰ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 464.

¹⁵¹ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 464.

¹⁵² William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 465 - 466.

The collection of Manuscripts by J. B. Fortescue preserved some of the contemporaneous documents which mention the Nootka negotiations:¹⁵³

“Lord St. Helens to Lord Grenville

1791, October 3, Madrid. — ‘In conformity to what I mentioned to your Lordship in my last, I have had another conference with Count Florida Blanca on the subject of M. Las Heras's negotiation. He told me that, since our last meeting, he had found, on looking back to his correspondence, that the instruction which he had sent to that gentleman early in the last month (in consequence of my first representations) was as precise and clear as possible ; that he could not therefore doubt of his having proceeded instantly to business on the receipt of it, and consequently that, having nothing further to communicate to him on the subject at present, he thought it would be better to defer the departure of his intended messenger till he could be charged with His Catholic Majesty's final decision, either as to the payment of any sum that might have been provisionally settled by the respective Commissioners, or as to the choice of a referee.

Cipher.

‘The Spanish Minister has since sent me the enclosed copy of the above-mentioned instruction, which seems in fact to be sufficiently conformable to your Lordship's ideas, excepting only that it does not authorize M. de Las Heras to settle the business definitely, without waiting for a special permission to that effect. Count Florida Blanca contends that the investing him with such a power would be absolutely unprecedented; but he assures me that as soon as M. de Las Heras's report shall have been received, His Catholic Majesty's determination upon it shall be transmitted without loss of time ; and I am inclined to think, considering the present state of affairs in Europe, that he will, in this instance, be true to his promise.

‘It seems that the last French messenger was charged with a letter from His Most Christian Majesty to the King of Spain, written in his own hand, and as in his personal capacity, containing a long apology for his having laid aside the ensigns of his several orders of knighthood, and particularly those of the Golden Fleece. M. de Florida Blanca's language respecting this letter has hitherto been, that it merits no kind of attention, having been evidently extorted from the French Monarch by the threats of his oppressors; but the general tenour and style of the letter seem to contradict this assertion, and it is, besides, conceived in terms of such warmth and cordiality of affection towards His Catholic Majesty, that it is difficult to suppose that that Prince's personal feelings can permit him to leave it entirely unanswered. Hitherto he has contented himself with replying to it verbally through the channel of the Spanish Chargé d' Affaires at Paris, who has, at the same time, been instructed to declare to M. de Montmorin, with regard to His Most Christian Majesty's pretended acceptance of the new Constitution, that this Court cannot acknowledge the validity of that, or any other act of the French monarch, whilst he remained deprived, as at present, of his moral and physical free agency.’

¹⁵³ The Fortescue collection was not published until 1894. For the purposes of the moot, it is unclear how these papers ended up in Claimants' possession.

Enclosure.

M. de Florida Blanca to M. de Las Heras.

1791, September 8, St. Ildefonso. — ‘The English Ambassador here has informed me that you decline treating upon the liquidation of the damages claimed by the English merchants concerned in the affair of Nootka, alleging as a reason that you have no positive orders to that effect. As you acquired here all the insight and information that could be given upon the business, together with suitable directions, and it being in London that the pretensions set up are to be brought forward and established, I have the King's command to acquaint you that his Majesty authorizes you to settle and liquidate those damages, with the concurrence of the Marquis del Campo, his Ambassador, making a report of what may be agreed upon for his Royal approbation ; and that you are to understand that, in case of any difference, his Majesty is ready that a person of whom both Courts may approve, should be chosen as arbitrator upon the occasion.’

Copy.”¹⁵⁴

“Lord St. Helens to Lord Grenville

Private.

1792, May 14, Aranjuez. — ‘The Nootka arbitration business is still en bon train, and, though it goes on more slowly than I had at first expected, I hope to send away Slater with my despatches upon it in a very few days. In the meantime, I trouble you with these five lines just to show that I have not *deserted*, which you would perhaps have been inclined to suspect on receiving two succeeding Spanish mails without any letter from me.’”¹⁵⁵

“Lord St. Helens to Lord Grenville.

Private.

1792, May 29, Madrid. — ‘I cannot but hope that the proposal which goes by this messenger for settling what Count D'Aranda terms the fastidious business of the Nootka claims, by the payment of a round sum of money as a discharge in full, will strike your fancy as much as it does his and mine. If you should think the sum too little, I am confident that, rather than that the expedient should fail, he would go as far as 10, 15, or even 20,000 dollars more ; as, on the other hand, should you scout the idea altogether, and insist upon reverting to that of the arbitration, I am equally certain that you will find in him all the facilities held out in my despatch, both as to the place of meeting of the arbitrators, and their mode of proceeding, so that they may hold their first sitting within a month of the time originally proposed. I am the more anxious that you should give credit to these assurances, as it would give me the greatest pain to be suspected, even for a moment, of

¹⁵⁴ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p. 203, 204, (available at: <https://ia600201.us.archive.org/28/items/manuscriptsjbfo00manugoog/manuscriptsjbfo00manugoog.pdf>).

¹⁵⁵ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.268.

having left an important public business like this at sixes and sevens, for the sake of any personal consideration whatsoever.”¹⁵⁶

“Lord Grenville to Henry Dundas.

1792, July 5 [Whitehall].— ‘Pitt tells me you think the East India Company may take the Nootka furs, agreeably to the proposal of the parties. Will you be so good as to let somebody inform themselves from Sir R. Woodford of the quantities and prices or mode of valuation, and speak to the chairman about it, in order that we may be quite sure not to have any unforeseen obstacle arise, as the parties have made their acceptance of the other terms depend on this point. If you will let me know when this is done, I will proceed in the rest of the business.’¹⁵⁷

“Lord Grenville to Henry Dundas.

Private.

1792, July 7, Whitehall. — ‘I have directed such a communication as you mention relative to the Nootka furs. But I do not recollect that there is anything in Hammond's correspondence relative to the debts that could be separated from the other points which could not with propriety be communicated to the creditors. There is indeed less necessity for such a communication as they were, as I recollect, directed to appoint agents in America with whom Hammond might communicate directly, on any occasion that required it.’

Copy.¹⁵⁸

Henry Dundas to Lord Grenville.

1792, July 7, Priory. — ‘I have just received yours. I am afraid I cannot immediately take any steps in the business of Nootka, for Baring has been very ill, and has gone a short tour on the coast of Devonshire for his health ; he is not to be home sooner than Tuesday sennight, and it would be fruitless to agitate that or any other business of much moment in his absence. In the meantime, I think you should cause a short official precis to be made out, and transmitted to me officially by you, with a request that I would communicate with the East India Company on the subject ; and I will put it into the hands of the Chairman with my recommendation that they would consider it with a proper attention to the accommodation of Government.

‘In some of the despatches I have recently read in circulation from your Office, I have observed a great deal of information respecting the steps taking relative to the debts due by the Americans to British subjects. I think it would be right that you should send me extracts of all that has been wrote on that subject by Mr. Hammond, or any of the consuls; and continue to do so from time to time,

¹⁵⁶ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.275, 276.

¹⁵⁷ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.287.

¹⁵⁸ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.289.

that I may transmit them to the committee appointed by the creditors for the management of their business. If they are furnished constantly with all that information in detail, they cannot afterwards complain that they have been kept in the dark, and thereby prevented from taking any measures, or giving any explanations they might think useful for their final accommodation.”¹⁵⁹

“Lord Grenville to Henry Dundas.

1792, August 4, Whitehall. — ‘Understanding that it is probable the answer to be received from the Court of Directors on Wednesday will be favourable, I have desired Sir. B. Woodford to inform the Nootka claimants that they will then be called upon to give a final answer whether they will accept the offer of the Court of Spain to pay 200,000 hard dollars here, or whether they wish a further application and reference to Madrid in the hope of increasing the sum. I guess they will accept the former, and in that case Woodford and Las Heras should have full powers to sign an agreement to that effect. If you will direct such an instrument to be prepared and sent me to Stowe, I can sign it. If they prefer further negotiation, Lord St. Helens can best explain to you the most advantageous ground for you to direct Jackson to take, in order to succeed in the negotiation ; but D’Aranda’s political existence is so precarious that we ought, if possible, to avoid further delays.

‘The American Minister is come, and I must trouble you to introduce him on Wednesday, if the King has a levée fixed that day for seeing him.

‘When you have done with the last American despatches, I should be obliged to you to put them into Mr. Bond’s hands in order that he may consider Jefferson’s paper.’

Copy.”¹⁶⁰

“Henry Dundas to Lord Grenville.

1792, September 2, Cold Harbour. — ‘I received yours of the 31st at this place this morning. I do not imagine Chauvelin will attempt any communication with the Office, but it is evident that the line followed by the States General is the proper one. Lord Gower, who was here this morning, says it was understood at Paris that he had wrote to be recalled. Lord Gower is gone to Weymouth. He went from this. He gives a sad picture of every thing. He seems to think that for the last week Santerre was the ruler, and Pethion losing ground, but every thing is the result of passion and unbridled fury. The case of the Queen he seems to think desperate. He thinks it was the plan of the National Assembly to have gone southward on the approach of the German armies, but that the mob, under whose control they completely are, will not permit them. They are in great alarm from the foreign troops.

¹⁵⁹ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.289.

¹⁶⁰ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.297.

'The Nootka business I take it for granted will get on, but it hangs rather unaccountably; I suspect both sides are in some degree to blame.

'We are going to send out Mr. Shore immediately to take the chair on Lord Cornwallis's departure. It is in every view an excellent measure, and will, I know, be a wonderful relief to Lord Cornwallis's mind.

'I saw the advertisements sometime ago for the sale of the cheap editions of Mr. Payne's book, and immediately took the proper steps upon it.

'The new magistrates are doing exceedingly well. Their own zeal will make them do so at first ; it must be the business of the Secretary of State's Office to take care that it continues, and there is no difficulty in establishing such arrangements as must ensure it.

'Lord Auckland shall be wrote to in the manner you suggest. I did not understand your letter when I received it, but Mr. Pitt explained it to me, and the box with the papers themselves arrived here about an hour ago.

'Give my best respects to Lady Grenville ; don't allow either yourself or her to return a moment sooner than is perfectly agreeable. It would have been no inconvenience to me, at any rate, to have remained in London a week longer; and [I] would have done it with great pleasure to prolong your recess which was so much interrupted ; but I am not entitled to take any merit with you on the subject, for I daresay Mr. Shore's appointment will lead me to have business with him that will occupy a week.'"¹⁶¹

“Lord Auckland to Lord Grenville.

Private.

1792 [1793], January 19, Hague. — ‘The enclosed copy of a despatch from Madrid may be worth your Lordship's perusal, but I have not thought it proper to be transmitted otherwise than in a private letter.

'I am curious to know whether the Princess of Orange is in her brother's confidence respecting the French affairs. I passed near an hour this morning with her ; but Lady Auckland was with me, and no political subject was mentioned. She has written to the Pensionary, who is still indisposed, that she has many matters of importance to confide to him.

'The Duke of Buccleugh and Mr. R. Dundas arrived here to-day. Lord Boringdon and Lord Granville Leveson, who have been sometime with us, proceed towards Dresden in three or four days.'

Enclosure.

Secret

¹⁶¹ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.307, 308.

[French original in the footnote, English translation by the author:

Content of a dispatch dated Madrid, 21 March 1792. – “The change that lastly occurred in the Ministry was attributed... to the system followed by the Count Florida Blanca regarding the affairs of France, and his political conduct in regard to this matter. However, it was likely that the Minister, who did not take a step against the wishes of Her Majesties, could not have been disgraced for this reason. It only served as a pretext in order to disguise from the eyes of the King, who loved the Minister, the real cause of the discontent against him. Here are the real causes. Since the passing of the late King the effort was made to tumble this Minister; several times his fall was near; but his perspicacity thwarted the intrigues that were formed against him, until they acquired such a degree of force that he yielded. The real cause is that not being sufficiently dedicated to Sieur Godoi and not managing him enough, he displeased the Queen who claimed to have all positions and the entire financial administration at her disposal. The Count Florida Blanca constantly contradicted her in his project ; and the internal affairs of the kingdom, which the Queen wanted to run with absolute power, taking place in the *Junta de Estado* presided by the Minister, slipped through her supervision. The hate increased even more when the Minister was opposed to the excessive donation projected for a long time and which had just been finalized in favor of the Sieur Godoi. Under the ministry of Count Florida Blanca, we have seen the lover rise from the grade of a simple guard to supreme command, but these promotions did not extend to the civil because of the need of land-ownership that the Queen was ready to give to him , but which would have had to be alienated from the royal estates that would still, according to Count Florida Blanca, have been subject to certain claims, consequently a cession would have been void and would have stimulated dangerous rumors because they would have implicated the violation of fundamental rights of the kingdom. The fall of Count Florida Blanca was resolved. The pretext was found in his behaviour regarding the affairs in France, especially in his negotiation with England regarding Nootka Sound. The necessary material for the two charges was gathered by a certain *Marquis de Valle de St. Jean*, who received as an award the French embassy. They have been provided by the *Chargé d’Affaires de France* who, wanting to avenge his nation of the Count Florida Blanca’s animosity, communicated to the confidant of Favori the secrets and misuse by the Minister, his invasive plans, and his imprudent threats against the nation of France. Regarding the second accusation, it was sufficient to show the convention concluded with England under a genuine point of view. During the negotiations, one will discover a Minister wanting to make himself needed to avoid losing all the resources, although the Queen wanted peace at all costs. To make the picture even more striking, it was made use of the domestic unrest, the lack of money, of credit, of mistrust, and of the troops. The King, who is the best monarch on earth and who is always of the opinion of the Queen, also held that reasons of state required to dismiss such a Minister. He welcomed the choice of Comte d’Aranda, without noticing that this lord, who watched like a hawk and who was also not of the taste of the Queen like the other, was chosen only to keep the dissatisfied silent by means of the public esteem which he enjoyed. The popularity, the strict probity and the high reputation of Comte d’Aranda let soon be forgotten Count Florida Blanca. Soon another one was thought of and his advanced age contributed to that. To achieve the goal in view, the *Junta d’Estado* had to be removed. The Council

of State was created and the meetings were held in the apartment of the Queen and her lover. There are only two great minds in that Council, the Count d'Aranda and Sieur Campomanes; the others just nod their heads, but the active members are in the backdrop. The Queen, the lover and two confessors govern with absolute power. The Minister of Finance, created by the ex-Minister, is still the same; and spends his day going up and down the stairs of the palace in order to receive the orders coming every moment and which are jointly adopted by the four persons listed above.]¹⁶²

¹⁶²

French original:

Substance d'une dépêche datée Madrid, le 21 Mars, 1792.— 'On a attribué le changement survenu en dernier lieu dans la Ministère . . au système suivi par le Comte de Florida Blanca, relativement aux affaires de France, et ça sa conduite politique à cet égard. Cependant il étoit probable . que le Ministre, n'ayant pas fait, un pas sans l'aveu de leurs Maïestés, n'a pu être disgracié par cette raison. On s'est seulement servi de ce prétexte pour deguïser aux yeux du Roi, qui aimoit le Ministre, les vraies causes du mécontentement qu'on avoit contre lui. Voici quelles sont ces véritables causes. Depuis la mort du feu Roi on a taché de culbuter ce Ministre ; plusieurs fois sa chute a été prochaine ; mais sa sagacité a toujours déjoué les intrigues qui se formoient contre lui, jusqu'a ce qu'enfin elles ont acquis un tel degré de force qu'il y a succombé. La vraie cause est, que n'étant pas assez devoué au Sieur Godoi, et ne le ménageant assez, il déplaisoit par là à la Reine, qui prétendoit avoir tous les emplois, et l'administration entière de finances à sa disposition. Le Comte de Florida Blanca la contrarioit sans cesse dans son projet ; et les affaires intérieures du Royaume, que la Reine, vouloit diriger avec un pouvoir absolu, se traitant dans la *Junta de Estado* présidé par le Ministre, échappoient dans le fait à sa surveillance. La haine s'accrût encore par l'opposition du Ministre au don excessif projeté depuis long-tems, et qui vient de se réaliser en faveur de Sieur Godoi. On a vu, sous la ministère du Comte de Florida Blanca, l'amant s'élever du grade de simple garde du corps au commandement suprême, mais ces promotions ne s'étendoient pas au civil, parcequ' il falloit pour cela des biens fonds que la Reine étoit prête à lui donner, mais qui devant être aliénés des domaines royaux, étoient regardés avec raison par le Comte de Florida Blanca comme restant sujets aux réclamations du fixe, de manière que leur cession seroit nulle, et pourroit exciter des murmures dangereux, en tant qu'elle impliqueroit une violation des loix fondamentales du Royaume. . La chute du Comte de Florida Blanca fut résolue. On trouva le prétexte dans sa conduite relativement aux affaires de France, et surtout, dans sa negotiation avec l'Angleterre, au sujet de Nootka Sound. Les matériaux nécessaires pour le premier de ces deux chefs d'accusation avoient été rassemblés par certain *Marquis de Valle de St. Jean*, qui aura pour récompense l'ambassade de France. Ils ont été fournis par le Chargé d'Affaires de France qui, pour venger sa nation de l'extrême animosité du Comte de Florida Blanca, avoit communiqué . à ce confident du Favori les manéges, secrets et détournés du Ministre, ses projets d'invasion, et ses menaces imprudentes contre la nation Française. Quant à la seconde accusation, il suffisoit de représenter la convention conclue avec l'Angleterre sous son véritable point de vue. L'on découvre d'ailleurs dans tout le cours de cette négociation un Ministre qui veut se rendre nécessaire, quoique ce soit la Reine qui a voulu, à tout prix, la paix, pour ne pas se voir privée de ses ressources. Pour rendre le tableau encore plus frappant, on s'est bien servi avec succès de l'agitation intérieure, et du manque d'argent, de crédit, de défiance, et de troupes. . Le Roi, qui est le meilleur monarque de la terre, et qui est toujours de l'avis de la Reine, trouva aussi que des raisons d'état exigeoient qu'on renvoyât un pareil Ministre. Il applaudit au choix du Comte d'Aranda, sans s'apercevoir que ce seigneur qui, regarde comme un Argus, étoit aussi peu du gout de la Reine que l'autre, n'avoit été choisi que pour imposer silence aux mécontents, au moyen de l'estime publique dont il jouit. La popularité, la stricte probité, et la grande reputation du Comte d'Aranda ayant beintot fait oublier la Comte de Florida Blanca . on pensera beintot à un autre, et son age avancé y contribuera. Pour attendre . le but qu'ou avoit en vue, il falloit supprimer la *Junta d'Estado* . . On crea le conseil d'état, et on plaça le lieu de ses séances dans les appartemens de la Reine et de son amant. Il n'y a que deux bonnes têtes dans ce conseil, le Comte d'Aranda, et le Sieur Campomanes ; les autres opinent du bonnet, mais les membres actifs sont derrière la toile. La Reine, l'Amant, et les deux confesseurs gouvernent avec un pouvoir absolu . Le Ministre des Finances, créé par l'ex-Ministre pour être un machine, l'est encore; et passe la journée à monter et à descendre l'escalier du palais, pour recevoir les ordres qui émanent à chaque instant, et qui sont concertés et arrêtés par les quatre personnes ci-dessus nommées.'

Copy. French.”¹⁶³

The Nootka Claims Convention was signed on 12 February 1793:

“In virtue of the declarations exchanged at Madrid on the 24th of July, 1790, and of the convention signed at the Escorial on the 18th (28th) of the following October, Their Catholic and Britannic Majesties, desiring to regulate and determine definitely everything regarding the restitution of the British ships seized at Nootka, as well as the indemnification of the parties interested in the ships, have named for this purpose and constituted as their commissioners and plenipotentiaries, to wit, on the part of His Catholic Majesty, Don Manuel de Las Heras, commissary in His said Majesty's armies, and his agent and consul-general in the Kingdoms of Great Britain and Ireland; and on the part of His Britannic Majesty, Mr. Ralph Woodford, Knight Baronet of Great Britain; who, after having communicated their full powers, have agreed upon the following articles:

ARTICLE I

His Catholic Majesty, besides having restored the ship *Argonaut*, the restoration of which took place in the port of San Blas in the year 1791 (1790), agrees to pay as indemnity to the parties interested in it the amount of two hundred and ten thousand hard dollars in specie, it being understood that this sum is to serve a compensation and complete indemnification for all their losses, whatever they may be, without any exception, and without leaving the possibility of a future remonstrance or any pretext or motive.

ARTICLE II

Said payment shall be made on the day which the present convention shall be signed by the commissioner of His Catholic Majesty in the presence of the commissioner of His Britannic Majesty, which later shall give at the same time an acknowledgement of payment consistent with the terms enunciated in the former article and signed by the said commissioners for himself and in the name and by the order of His Britannic Majesty and of the said interested parties. And there shall be attached to the present convention a copy of the said acknowledgement of payment, executed in the proper form, and likewise of the respective full powers and of the authorizations of the said interested parties.

ARTICLE III

The ratifications of the present convention shall be exchanged in this city of London within a period of six weeks from the date of its signature, or before if possible.

In witness whereof we, the undersigned commissioners and plenipotentiaries of Their Catholic and Britannic Majesties, have signed the present convention in

¹⁶³ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.367 – 369:

their names and in virtue of our respective full powers, affixing to it the seals of our arms.

Done at Whitehall, February 12, 1793.

Manuel de Las Heras.
R. Woodford.”¹⁶⁴

The Convention for the Mutual Abandonment of Nootka of 11 January 1794

“Their Catholic and Britannic Majesties desiring to remove and obviate all doubt and difficulty relative to the execution of article 1 of the convention concluded between Their said Majesties on the 28th of October, 1790, have resolved and agreed to order that new instructions be sent to the officials who have been respectively commissioned to carry out the said article, the tenor of which instructions shall be as follows:

That within the shortest time that may be possible after the arrival of the said officials at Nootka they shall meet in the place, or near, where the buildings stood which were formerly occupied by the subjects of His Britannic Majesty, at which time and in which place they shall exchange mutually the following declaration and counter declaration:

Declaration.

‘I, N—— N——, in the name and by the order of His Catholic Majesty, by means of these presents restore to N—— N—— the buildings and districts of land situated on the Northwest Coast of the continent of North America, or the islands adjacent to that continent, of which the subjects of His Britannic Majesty were dispossessed by a Spanish officer toward the month of April, 1789. In witness whereof I have signed the present declaration, sealing it with the seal of my arms. Done at Nootka on the —— day of ——, 179——.’

Counter Declaration.

‘I, N—— N——, in the name and by the order of His Britannic Majesty, by means of these presents declare that the buildings and tracts of land on the Northwest Coast of the continent of North America, or on the islands adjacent to that continent, of which the subjects of His Britannic Majesty were dispossessed by a Spanish officer toward the month of April, 1789, have been restored to me by N—— N——, which restoration I declare to be full and satisfactory. In witness whereof I have signed the present counter declaration, sealing it with the seal of my arms. Done at Nootka on the —— day of ——, 179——.’

That then the British official shall unfurl the British flag over the land so restored in sign of possession. And that after these formalities the officials of the two Crowns shall withdraw, respectively, their people from the said port of Nootka.

¹⁶⁴ The Nootka Claims Convention, (available at: https://en.wikisource.org/wiki/Nootka_Claims_Convention).

Further, Their said Majesties have agreed that the subjects of both nations shall have the liberty of frequenting the said port whenever they wish and of constructing there temporary buildings to accommodate them during their residence on such occasions. But neither of the said parties shall form any permanent establishment in the said port or claim any right of sovereignty or territorial dominion there to the exclusion of the other. And Their said Majesties will mutually aid each other to maintain for their subjects free access to the port of Nootka against any other nation which may attempt to establish there any sovereignty or dominion.

In witness whereof we, the undersigned first secretary of state and of the Cabinet of His Catholic Majesty, and the ambassador and plenipotentiary of His Britannic Majesty, in the name and by the express order of our respective sovereigns, have signed the present agreement, sealing it with the seals of our arms.

Done at Madrid, January 11, 1794

The Duke of Alcludia.

St. Helens.”¹⁶⁵

“Lord Grenville to Henry Dundas.

1794, February 22.— ‘The orders given by the Court of Spain to their officers at Nootka arrived here some time since, and similar orders ought to be given to our officers in those seas, duplicates of which must be sent to Madrid.

‘Measures must also be taken for sending out those orders. When we expected a much earlier answer from Madrid, steps had been taken, as you remember, to have a vessel ready to sail in October or November.

‘Under all the circumstances of season. I am inclined to believe the best way now would be to send our officer through Spain, and New Spain, in the same manner that Mr. Mudge came ; but that you will of course settle with the Admiralty; if you think proper.

‘When the Orders are prepared, and the arrangements made, you should, I believe, transmit hem to me officially in order that I may send them to the King's Minister at Madrid.’

Copy”.¹⁶⁶

¹⁶⁵ William Ray Manning, *The Nootka Sound Controversy*, 1905, p. 469, 470.

¹⁶⁶ The Manuscripts of J.B. Fortescue, Esp., preserved at Dropmore, Volume 2, Royal Commission on Historical Manuscripts, p.511.

The Dispute

When Juan Carvalho hears of the conclusion of the Nootka Claims Convention, but does not receive a penny, he is decidedly unhappy.

What about his claims, his entitlement, his damage? And this scoundrel Meares? Cutting him out on the deal with the two other ships? Telling the British government that he was allegedly British, and bankrupt?

Juan Carvalho wants justice (and above all money!). One night, in a small bar near Largo do Lilau, he is shouting out his frustration and tells the bar tender of the wrongs he suffered. He does not realise that one person is listening (not the bar keeper who has developed a talent for blanking out the white noise from drunken patrons).

The next morning that person reports to his employer, Manuel Pereira. Pereira, a wealthy merchant with great connections, is fascinated by the idea of suing Britain and recalls the historic Trade and Prosperity Pact. Given his own relation with the British, he would not be able to get involved in such a dispute, of course. But surely one of his friends could be interested in financing such a dispute.

This potential financier and Carvalho meet and enter into discussions. However, things are not moving fast enough for Carvalho, who is also unhappy about how much this financier wants from the proceeds (“he wants too much of my money!”). He eventually decides to send a cooling-off letter himself.

On 1 April 1794 a letter is received by Manuel Godoy from Juan Carvalho complaining of violations of international law, fundamental fairness and the TPP as well as other treaties between civilised States, and attaching the Memorial from Meares with colourful strike-throughs and annotations. The letter tells Spain to “come to the table and speak as real men” to resolve the problem. Otherwise, they should just “send me the money”.

On 18 September 1794, Mr. Carvalho receives a letter from the Kingdom of Spain:

“Dear Mr. Carvalho,

We refer to your letter dated 19 November 1793 (received by post on 1st April 1794) and documents enclosed with that letter which refer to dispute settlement under Chapter 9 of the [TPP].

We have considered carefully the documentation forwarded by you including the purported notice of dispute and the amended Memorial by Mr. John Meares of 30 April 1790. For the reasons outlined below (amongst others) Spain will not be providing a formal response to the purported notice of dispute. Principally, the pre-conditions to the commencement of an arbitration under Chapter 9 of TPP clearly have not been met and any such commencement would amount to an abuse of the dispute settlement process provided for in that chapter.

First, under Chapter 9 of TPP, many of the alleged actions giving rise to the purported claim to place well before the three year time period referred to in Chapter 9 Article 9.21 of TPP.

Secondly, the purported notice of dispute does not provide a satisfactory summary of the alleged breaches of Spain pursuant to Chapter 9 of TPP. Rather the notice sets out a series of unsupported allegations of serious misconduct on the part of government institutions as well as senior officers which are not only completely unfounded but clearly defamatory. We would ask you to withdraw those allegations immediately.

Finally, we note that you have suggested that the costs of any arbitration initiated by you be paid by Spain only or that Portugal be joined as a party as ‘financial back up of Claimant.’ Arbitral tribunals routinely seek deposits of costs from the parties both at the start and during the course of proceedings (for example see Article 43 of the UNCITRAL Rules) and these not insubstantial deposits are paid on an equal basis. It would be neither appropriate nor possible for Spain to pay the other party’s share of those deposits. Nor would Spain support the hypothetical joinder of another country for the purposes of that country paying a claimant’s share of such deposits.

Yours sincerely,

Manuel Godoy”

It dawns on Juan Carvalho that Spain will not simply send him some money. Therefore he signs an agreement with the financier who in turn introduces him to a promising young lawyer, Joaquin Braga. The lawyer decides to send what he calls a proper Notice of Intent under Article 9.19.3 of TPP, as well as the Notice of Arbitration under Article 9.19.1 of TPP on 20 November 1794 to a Spanish colleague of his with instructions for their delivery (the Notice of Intent upon receipt, the Notice of Arbitration after 90 days). His colleague receives both documents on 25 March 1795.

In the Notice of Arbitration under the 1776 UNCITRAL Rules including the 1789 Rules on Transparency in Treaty-based Investor-State Arbitration, Braga states that Spain has breached its obligations under Section A of said Treaty and Claimant has suffered considerable damage by reason of the seizure of the vessels, as well as the cargo which was on board by Captain Martinez.

Mr. Braga attaches as exhibits the letters between British government officials relating to the negotiations of the Nootka Claims Convention (see pp. 46 of the Case-Study). In the Notice of Arbitration, Braga appoints Jean Jacques Régis de Cambacérès as arbitrator (a formidable lawyer and is not Spain at war with France ?).

Braga’s colleague delivers the Notice of Intent on 25 March 1795 and the Notice of Arbitration which states “Claimant elects for this Notice of Arbitration to be treated as its Statement of Claim” on 22 June 1795.

On 22 July 1795, the Kingdom of Spain (representing itself – in the person of the First Secretary of State Manuel Godoy), has its Response hand-delivered to Mr. Braga’s colleague in Madrid. In this Response, appoints Francisco Antonio de Lorenzana y Butrón as its arbitrator. As the two party appointed arbitrators fail to agree a president of the tribunal, the Permanent Court of Arbitration appoints Her Imperial Majesty Sophia Frederica Augusta of Anhalt-Zerbst, as Catherine Alekseyevna Empress and Autocrat of All Russia as appointing authority. Catherine appoints Jeremy Bentham as presiding arbitrator.

On 17 February 1796, the Kingdom of Spain submits its Statement of Defence.

“Su Católica Majestad, Carlos, Rey de España, objects to the jurisdiction of any arbitral tribunal and to the admissibility of any claims for the following reasons:

1. No jurisdiction *ratione temporis*

Many of the alleged actions giving rise to the purported claim took place well before the three and a half year time period referred to in Chapter 9 Article 9.21.1 of TPP expired. The dispute is filed out of time.

Also, Their Catholic and Britannic Majesties agreed on 11 January 1794 to mutually abandon Nootka and stated that after the celebration of a ceremony, which has since taken place, that “neither of the said parties shall [...] claim any right of sovereignty or territorial dominion there to the exclusion of the other”.

2. No jurisdiction *ratione consensus*

As explained in our letter of 16 May 1794, Article 9.19 of TPP requires that a proper Request for Consultations complying with Article 9.18 of TPP is submitted at least six months before the commencement of the proceedings. In the present case, the letter of 19 November 1793 does not fulfill the procedural requirements set forth in TPP, hence the pre-condition to consent was severely violated. Also, the Notice of Intent received from Mr. Braga a mere 89 days before the commencement of arbitration is in violation of the TPP. These procedural defects mean that there is no jurisdiction!

3. No Jurisdiction *ratione personae*

As explained in John Meares’ Memorial, which Mr. Carvalho expressly relies on for his allegations, it states that Mr. Carvalho was a naturalized British subject (see p. 5 of Mr. Meares’ Memorial).

4. No Jurisdiction *ratione materiae*

There is also no investment within the meaning of Articles 9.1 of TPP. While obviously, Nootka is Spanish territory and has been since time immemorial / was Spanish territory at the time, the ships that allegedly were owned by Mr. Carvalho (which Spain disputes) were no investments in such territory.

Moreover, Mr. Carvalho has not demonstrated that he actually owns the ships. This is a threshold issue for jurisdiction as Spain has only given its consent to TPP in order to submit investment disputes to arbitration.

5. Ne bis in idem

This claim is therefore in any event moot. The dispute was settled by virtue of the Nootka Claims Convention, which contains also a quit claim. If Mr. Carvalho has allegedly not received anything, he must sue Mr. Meares. According to Mr. Meares Memorial Mr. Carvalho is a British national – Britain did not have to ask Mr. Carvalho’s permission to act. The rights of an investor are at their base the rights of the home state.

6. No case to answer

Pursuant to Annex 9-B (1) an action or a series of actions by a Party which interfered with a tangible or intangible property right or property interest in an investment can constitute an expropriation. Facts do not qualify as expropriation. Spain did not take title and has since restored the ships, or the value respectively. Spain's actions were totally justified under the police powers doctrine.

In addition, Spain did not take anything of value. The North American in particular was so eaten up by shipworms that it was a hazard.

7. Disclosure

It has come to the attention of the Kingdom of Spain that Mr. Carvalho receives funding from an unknown third party. We require disclosure of (i) the name of the funder, (ii) the financial terms of the funding agreement and (iii) of any correspondence between Mr. Carvalho and/ or his lawyer and his funder (as well as other prospective funders with which he may have had any contact) – including the due diligence materials and the opinions handed over to the funder. This is necessary to establish (i) whether Mr. Carvalho is a bona fide claimant, (ii) whether he is financially viable to pay adverse costs and (iii) to assess the independence of the arbitrators. In relation to the latter, we will then also require statements from the arbitrators as to their relations with the funder.

8. Striking from the Record

Documents stemming from the secret bilateral negotiations between Their Catholic and Britannic Majesties have been put before this Tribunal improperly. They are secret and confidential. It is unclear how Claimant obtained these highly sensitive documents. They must be struck from the record and the Tribunal must order a mistrial. The problem is even more burning because of the application of the UNCITRAL Transparency Rules.

The Kingdom of Spain ask for these objections to be considered first by the Tribunal and therefore requests a bifurcation of the proceedings.

Signed, Manuel Godoy y Álvarez de Faria”.

The Tribunal orders the Claimant to submit a Reply to the objections and to comment on Spain's proposal to bifurcate.

Claimant's Reply

Claimant does not object in principle to the objections raised by Respondent being considered in a bifurcated way, except for some objections which should be considered only in a prima facie manner at this stage and should be joined to the merits insofar as they require a taking of evidence.

1. Jurisdiction *ratione temporis*

While the seizure of the ships took place in 1789, it was not until 1790 that the capitals of Madrid and London were even informed of the incident. Neither State had reliable

information about even the lay of the land until Vancouver and Quadra were sent to Nootka to investigate in 1792. Under these circumstances, the interpretation of the three years and six months period in Article 9.21 of TPP proposed by Spain is clearly manifestly absurd and unreasonable. The period cannot be said to have started running before the Nootka Claims Convention of 1793, which also gives rise to a cause of action and demonstrates that this is all a case of continued and composite act.

2. No jurisdiction *ratione consensus*

The letter of 19 November 1793 was sufficient to trigger Article 9.18 of TPP as it is “a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.” As to the Notice of Arbitration, it is true that it may have been delivered one day early. However, the oversight as to the number of days my Spanish colleague is not Claimant’s fault.

Moreover, Article 9.18 as well as the periods in Article 9.19.1 and 9.19.3 of TPP do not go to jurisdiction anyway, but to admissibility. Therefore, the simple fact something’s happened a day early or late is of no import. Spain knew the facts of the dispute anyway – having been through extensive negotiations with the Brits, having – as only party concerned – access to Mr. Martinez and having received the information from the Quadra-Vancouver expedition. They “know more than us”.

3. No Jurisdiction *ratione personae*

Claimant is a Portuguese national and never lost his Portuguese nationality. His Portuguese nationality is also the effective nationality – Claimant lives in Macau after all. Indeed, his Portuguese nationality was – according to the same Memorial of John Meares’ – an important reason to choose Claimant as a partner. It is unclear to what Mr. Meares refers when he speaks about a “naturalization” of Claimant in Bombay. In any event, even if that meant that Claimant had also acquired British nationality, such dual nationality would not have a negative effect on his claim.

4. No Jurisdiction *ratione materiae*

There obviously was an investment as is evidenced by Mr. Meares’ Memorial: Meares acquired land and established a building in Nootka. They even built the North-West America at Nootka. While it may be unclear whether in 1789 there still was a building (or whether Martínez had it destroy to suppress evidence of the British establishment and then pressured Maquinna to testify that such house never existed), this is irrelevant. It was established in 1788 and in 1789 the ships had cargo on board to continue and extend the foothold.

The whole taking of the ships and arrestation of the people was “justified” by Martínez and the Spanish Crown that they had “the incontestable Rights of Spain, founded on the most solemn Treaties, on the Discovery of the Indies, on the ancient Laws, and on the immemorial Possession of an exclusive Sovereignty, Navigation and Commerce, which the Crown of Spain had constantly exercised over the Territories, Shores and Seas before-mentioned, and which it has manifested by the Capture of those who transgressed against it” (letter by Del Campo to Leeds of 20 April 1790), Spain’s mentioning of the abandonment cannot be taken seriously. - Spain cannot have it both ways.

Mr. Carvalho is – as is evidenced by the Portuguese flag and passport of the Iphigenia and the Felice, the formal owner of those ships, including those of the 1789 expedition under the partnership with Messrs. Etches and Co. He also has in part beneficial co-ownership. The degree of owner-ship is a question for the merits of the proceedings and – most importantly – for the damages phase, not for jurisdiction.

5. Ne bis in idem

This dispute is far from moot. If Spain pays money to someone who is not the formal title-holder and not even a national of the flag state of the ships, this is Spain's problem. Spain can ask the British Government for the money back after it has paid Claimant. Claimant was not involved in the negotiations between Spain and Britain, nor had Claimant in any way authorized the British Government to act for him. Claimant's rights under TPP are his own subjective rights.

6. No case to answer

The ships were taken and their financial value was never restored to Mr. Carvalho. Only the effects of a measure matter. The value of the ships and their cargo is a question for the quantum phase.

7. Disclosure

This is asneira. All of this is confidential. There is no rule requiring disclosure and there is no power for the Tribunal to order such disclosure.

8. No striking from the record

There are no such things as secret and confidential in investment treaty arbitration. Investment treaty arbitration is a mechanism to investigate wrongdoing by States. If States were allowed to withhold evidence from a Tribunal arguing that it is secret, this would give States a silver bullet to defeat any case and hide their malfeasance. Claimant is under no obligation to disclose the source from which he obtained these documents. Suffices it to say that they were not obtained illegally and that they were not obtained from any Spanish sources. Spain would have to show the burden of proof showing any illegality.

Moreover, for the record, Spain does not dispute that these documents are indeed genuine.

There is no power for a Tribunal in an investment arbitration to order a mistrial. Also, in the present situation there is no room for a mistrial.

As to the alleged aggravation by the Transparency Rules, this defies legal logic as the rules have appropriate mechanisms to deal with this issue.

Times Change

The arbitration moves at a leisurely pace – not least because of the speed of postal services to Macau and the generous deadlines requested by the Spanish government. The Tribunal fixes the week of 12 March 1798 for a jurisdiction and admissibility hearing in London on the objections.

On 22 July 1795, the Peace of Basel ends the war between Spain and France and an alliance signed between them on 19 August 1796.

In the meantime, in March 1797, Francisco de Lorenzana was removed from his office as Inquisidor General de España and replaced with Ramón José de Arce y Uribarra (a friend of Godoy). It was rumored that the reason was a scandal involving Manuel Godoy:

In 1796, Cardinal Lorenzana had the courage of admitting three denunciations that other friars filed against the Prince of Peace as a suspect of bigamy and atheism, as well as a public and scandalous sinner. The archbishop of Seville, D. Antonio Despuig y Dameto, who was known as an archaeologist and the founder of the museum of Raxa, and the bishop of Avila, Rafael de Muzquiz, confessor to the Queen, joined forces against the private and achieved to convince Lorenzana, a virtuous and learned man, who happened, however, to be timid and irresolute, to undertake the secret instruction necessary before issuing a warrant of arrest. Llorente refers, even though his narrative seems fictional and not very credible, that Bonaparte intercepted an Italian courier in Genoa who had letters from Nuncio Vincenti addressed to the archbishop Despuig concerning this matter and, wishing to ingratiate himself with Godoy, he gave him the letters with the aid of general Pérignon, French ambassador in Madrid. As a result, on March 14, 1797 Lorenzana, Despuig and Muzquiz were exiled from Spain with the derisory pretext of sending them to console Pius VI. Lorenzana died in Rome after having shown magnificence, worthy of an Italian renaissance Prince, paying for the critical editions made by P. Arévalo de San Isidoro, de Prudencio, de Draconcio and from other monuments of our early church. He never managed to go back to Spain; he was forced to resign from his post as bishop and was replaced by Prince Louis de Borbón. If Godoy did not pass for a good Catholic, much less does Urquijo who was described in the previous chapter. His unfortunate translation of *The Death of Caesar*, Voltaire's tragedy, and certain proposals of statements regarding the influence of the theater on the customs drew the Holy Office's attention to him, which declared him slightly suspicious of disbelief and skepticism and acquitted him *ad cautelam* at a hearing on the charges, demanding that he consent to the prohibition of tragedy and speech. The edict is dated July 9, 1796 and it does not at all provide for the appointment of a translator who was at the time in the limelight. Urquijo took revenge on the Holy Office, diminishing in many different ways its jurisdiction and subtracting from its vigilance, by decree of October 11, 1799, the books and papers of the foreign consuls who dwelt in the ports and squares of commerce of Spain. To whose restrictive decree it gave margin a raid of domicile verified by the inquisitors of Alicante in the Consulate of Holland to pick up the prohibited books that the deceased consul of that place, D. Leonardo Stuck had among his own.¹⁶⁷

¹⁶⁷ English translation by the author. Spanish original found in Marcelino Menéndez Pelayo, *Historia de los heterodoxos españoles* (available at: https://archive.org/stream/historiadeloshet03men/historiadeloshet03men_djvu.txt), p. 220, 221:

El cardenal Lorenzana tuvo en 1796 el valor laudable de admitir tres denuncias que otros tantos frailes le presentaron contra el Príncipe de la Paz como sospechoso de bigamia y ateísmo y pecador público y escandaloso. El arzobispo de Sevilla, D. Antonio Despuig y Dameto, famoso como arqueólogo y fundador del museo de Raxa, y el obispo de Ávila, Rafael de Muzquiz, confesor de la reina, juntaron sus esfuerzos contra el privado y acabaron de persuadir a Lorenzana, varón virtuoso y muy docto, pero que pasaba por tímido e

9. Challenge

By letter of 20 March 1797 (which is received by the President of the Tribunal on 1 April 1797), Respondent challenges his party-appointed arbitrator Francisco de Lorenzana. Given that Francisco de Lorenzana was removed from his office as Inquisidor General de España for having attempted to conspire against Prime Minister (and Prince of Peace) Manuel Godoy. In the light of these events, he cannot be tolerated as arbitrator in this matter.

In accordance with Article 9.22.5 of TPP, Jeremy Bentham and de Cambacérès (with Francisco de Lorenzana not participating) make the following procedural order on 15 April 1797 (i) Francisco de Lorenzana is asked to comment within seven days from receipt of the message and (ii) Claimant is invited to comment on Respondent's challenge and de Lorenzana's comments within 15 days from receipt of the message.

9. Challenge

By letter of 24 December 1796 (which is received by the President of the Tribunal on 27 April 1797), Claimant challenges his party-appointed arbitrator Jean Jacques Régis de Cambacérès. Given that unlike Spain, Portugal is still at war with France, M. de Cambacérès cannot be considered as neutral. It has also come to Claimant's attention that the gentleman was also closely involved with the peace negotiations which resulted in the Peace of Basel and the Second Treaty of Ildefonso.

Bentham resolves for himself ("what is sauce for the goose...") to follow the same procedure. On 28 April 1797, he writes to de Lorenzana proposing the following procedural order (i) Jean Jacques Régis de Cambacérès is asked to comment within seven days from receipt of the message and (ii) Respondent is invited to comment on Respondent's challenge and de Cambacérès' comments within 15 days from receipt of the message.

irresoluto, a emprender la instrucción secreta que debía preceder al mandamiento de prisión. Llorente refiere, aunque su narración parece novelesca y poco creíble, que Bonaparte interceptó en Génova un correo de Italia en que venían cartas del nuncio Vincenti al arzobispo Despuig sobre este negocio y que, deseoso de congraciarse con Godoy, las puso en sus manos por medio del general Pérignon, embajador de la república francesa en Madrid. A consecuencia de esto fueron desterrados de España Lorenzana, Despuig y Muzquiz en 14 de marzo de 1797 con el irrisorio pretexto de mandarlos a consolar a Pío VI. Lorenzana murió en Roma después de haber mostrado magnificencia, digna de un príncipe italiano del Renacimiento, en costear las ediciones críticas que hizo el P. Arévalo de San Isidoro, de Prudencio, de Draconcio y de otros monumentos de nuestra primitiva Iglesia. Nunca logró volver a España; se le obligó a renunciar la mitra y le sustituyó el infante D. Luis de Borbón.

Si Godoy no pasaba por buen católico, mucho menos Urquijo, de quien queda hecha larga memoria en el capítulo anterior. Su infeliz traducción de La muerte de César, tragedia de Voltaire, y algunas proposiciones del discurso que la antecedía sobre la influencia del teatro en las costumbres llamaron la atención del Santo Oficio, que le declaró levemente sospechoso de incredulidad y escepticismo y le absolvió ad cautelam en una audiencia de cargos, exigiéndole que consintiese en la prohibición de la tragedia y del discurso. El edicto tiene la fecha [506] de 9 de julio de 1796 y en él no se nombran para nada al traductor, que a la sazón estaba en candelero. Urquijo se vengó más adelante del Santo Oficio mermando de cuantas maneras pudo su jurisdicción y sustrayendo de su vigilancia, por decreto de 11 de octubre de 1799, los libros y papeles de los cónsules extranjeros que moraban en los puertos y plazas de comercio de España. A cuyo decreto restrictivo dio margen un allanamiento de domicilio verificado por los inquisidores de Alicante en el Consulado de Holanda para recoger los libros prohibidos que tenía entre los suyos el finado cónsul de aquella plaza, D. Leonardo Stuck (2379)."

De Lorenzana's dispatches his comments on his challenge on 2 May 1797 (received by the President on 12 May 1797 and by Claimant on 8 September 1797). In those comments De Lorenzana declares that he "is independent and impartial and intends to remain so. He sees no reason to comment on the reasons of his transfer to Rome as this would be covered by the secrecy of office that he is bound to."

De Lorenzana receives Bentham's proposal for the procedural order of de Cambacérès on 9 May 1797 and – after long hesitation - communicates his agreement to Bentham (received on 30 May 1797).

Spain receives the procedural order regarding de Cambacérès on 12 June 1797, Claimant on 3 October 1797.

9. Challenge

Claimant submits its comment to the challenge of de Lorenzana on 21 September 1797 (received by the President on 10 January 1798): "Claimant does not agree to the challenge of de Lorenzana. It is not founded. The challenge should be decided by the two remaining co-arbitrators. The particulars of the challenge – which is unfounded – should be discussed at an oral hearing in person to avoid further delays. Claimant proposes to hear the challenge together with the objections on jurisdiction."

9. Challenge

Respondent submits its comment to the challenge of de Cambacérès on 27 June 1797 (received by the President on 9 July 1797): "Respondent does not agree to the challenge of de Cambacérès. It is not founded. Given that two of the three arbitrators have been challenged, the challenges should not be decided by the two remaining co-arbitrators but by the Emperor of Russia as successor of Catherine the Great. Spain stresses the long duration of this particular arbitration and the resulting "convivial" ties that grow up between arbitrators who work collegially over time, and the reduced likelihood that the remaining tribunal members could look disinterestedly at a challenge to their colleague.

Claimant receives Respondent's comments when he is about to embark for Europe for the hearing. He, his counsel and his letter all arrive in London on 10 March 1798 when the letter is hand-delivered by a messenger on the same day to the President as well as to Respondent's embassy.

9. Challenge

Claimant objects to Respondent's comments on the ground that they were filed out of time. In addition, it notes that the determination by the Permanent Court of Arbitration as an appointing authority cannot be "inherited" and that in the event that Spain was to succeed with its proposal, the PCA would have to appoint a new appointing authority. It urges the respective remaining co-arbitrators to decide the challenges themselves.

The President and his co-arbitrators meet for dinner at Bentham's house on the evening before the hearing. Before they sit down for dinner, the President sends an urgent message to the Parties informing them that the question of the procedure to be adopted for the challenges and – le cas échéant – also the challenges themselves will be discussed at the hearing.

Later that night, both de Cambacérès and De Lorenzana agree in their very favourable opinion of Bentham's wine cellar – their views on Bentham's philosophical views differ, esp. on his (unpublished) article "Offences against One's Self". Bentham disappears from the room for a few minutes without excusing himself. - Régis de Cambacérès' quip "the president has withdrawn for solitary deliberations" is met with a stony face from De Lorenzana.

On 12 March [2018], the Tribunal commences the hearing on jurisdiction and admissibility.