

Treaty of Peace Between the United States and Mexico

Executed at the city of Guadalupe Hidalgo, February 2, 1848.

Ratification exchanged at Queretaro, May 30, 1848. Proclamation made
July 4, 1848.

(See Statutes at Large, Vol. 9, pp. 922-943)

In the Name of Almighty God:

The United States of America and the united Mexican states, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony and mutual confidence wherein the two people should live, as good neighbors, have for that purpose appointed their respective plenipotentiaries - that is to say, the president of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the president of the Mexican republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto and Don Miguel Atristain, citizens of the said republic, who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the Author of Peace, arranged, agreed upon and signed the following:

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

ARTICLE I FIRM AND UNIVERSAL PEACE TO PREVAIL

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

ANNOTATIONS

Cross references. — For provision that rights under treaty shall be preserved, see N.M. Const., art. II, § 5.

For establishment of holiday recognizing Treaty of Guadalupe Hidalgo, see 12-5-10 NMSA 1978.

Compiler's notes. — The captions appearing below the article and numbers throughout this treaty were inserted by the compiler.

Indians Mexican citizens at date of treaty. - If the republic of Mexico has never passed any act taking away from the Pueblo Indians their rights of citizenship, then at the date of this treaty the Indian race, in the Spanish sense of the term, were as much and fully citizens of the republic of Mexico as Europeans or Africans. *United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422.

All vestiges of self-governmental power were not abolished in Indian tribes by this treaty. *Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537 (10th Cir. 1980), *aff'd*, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

ARTICLE II CONVENTION FOR PROVISIONAL SUSPENSION OF HOSTILITIES

Immediately upon the signature of this treaty, a convention shall be entered into between a commissioner or commissioners appointed by the general-in-chief of the forces of the United States, and such as may be appointed by the Mexican government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III CESSATION OF BLOCKADE; WITHDRAWAL OF TROOPS; DELIVERY UP OF CUSTOMHOUSES; ACCOUNTING FOR DUTIES COLLECTED AFTER RATIFICATION OF TREATY; EVACUATION OF CAPITAL

Immediately upon the ratification of the present treaty by the government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the government of the Mexican republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same

condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican republic, to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the republic shall be completed with the least possible delay; the Mexican government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be dispatched to the persons in charge of the customhouses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such customhouses, or elsewhere in Mexico, by authority of the United States, from and after the day of the ratification of this treaty by the government of the Mexican republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV

RESTORATION OF CASTLES AND FORTS; FINAL EVACUATION OF MEXICAN TERRITORY; RESTORATION OF PRISONERS OF WAR

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

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

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

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

ARTICLE V

BOUNDARY BETWEEN UNITED STATES AND MEXICO

The boundary line between the two republics shall commence in the gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "Map of the United Mexican States, as organized and defined by various acts of the congress of said republic, and constructed according to

the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell." Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners Sutil and Mexicana, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

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

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general government of each, in conformity with its own constitution.

ANNOTATIONS

Cross references. — For further provisions on establishment of boundary between the United States and Mexico, see Gadsden treaty, art. I.

Compiler's notes. — See also:

The Boundary Convention of November 12, 1884, 24 Stat. 1011 (1886), T.S. 1011.

The Boundary Convention with Mexico, March 1, 1889, 26 Stat. 1512 (1889), T.S. 232.

Treaty terminating art. VIII of Gadsden treaty, entered into force December 21, 1937, 52 Stat. 1457, T.S. 932.

Convention for solution of problem of the Chamizal, entered into force January 14, 1964, 15 U.S.T. 21, T.I.A.S. 5515, 505 U.N.T.S. 185.

Act approving minute no. 228 of the international boundary and water commission concerning demarcation of new international boundary between United States and Mexico, entered into force October 28, 1967, 18 U.S.T. 2836, T.I.A.S. 6372.

ARTICLE VI FREE PASSAGE OF VESSELS IN GULF OF CALIFORNIA AND COLORADO RIVER; AGREEMENT FOR CONSTRUCTION OF ROAD, CANAL OR RAILWAY ON BANKS OF RIVER GILA

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government.

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

ANNOTATIONS

Cross references. — For annulment of this article, see Gadsden treaty, art. IV.

ARTICLE VII NAVIGATION OF RIVER GILA AND RIO BRAVO BELOW BOUNDARY LINE

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the Fifth Article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any

denomination or title, be levied upon vessels, or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ANNOTATIONS

Cross references. — For annulment of this article, except as to Rio Bravo del Norte, see Gadsden treaty, art. IV.

ARTICLE VIII RIGHTS OF MEXICANS ESTABLISHED IN TERRITORIES CEDED TO UNITED STATES

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax or charge whatever.

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

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

ANNOTATIONS

I. GENERAL CONSIDERATION.

Cross references. — For free passage of vessels and citizens of United States through the Gulf of California to and from possessions north of boundary line, see Gadsden treaty, art. IV.

For application of this article to territory ceded by Mexico by Gadsden treaty, see art. V thereof.

Law reviews. — For article, "New Mexico Water Law: An Overview and Discussion of Current Issues," see 22 Nat. Res. J. 1045 (1982).

Meaning of article. — In this treaty the United States pledged itself that property of every kind should be inviolably protected in the territories conveyed; this was simply a declaration of international morals. *Joseph v. Catron*, 1905-NMSC-023, 13 N.M. 202, 81 P. 439.

By this article, Mexicans established in ceded territory were free to remain where they were or to remove to Mexican territory, retaining property possessed in ceded territory. *Ainsa v. United States*, 161 U.S. 208, 16 S. Ct. 544, 40 L. Ed. 673 (1896).

Treaty does not contemplate administration of public schools. *Lopez Tijerina v. Henry*, 48 F.R.D. 274 (D.N.M. 1969), *appeal dismissed*, 398 U.S. 922, 90 S. Ct. 1718, 26 L. Ed. 2d 86 (1970).

Nor does it confer proprietary right to have Spanish language and culture preserved and continued in the public schools at public expense. *Lopez Tijerina v. Henry*, 48 F.R.D. 274 (D.N.M. 1969), *appeal dismissed*, 398 U.S. 922, 90 S. Ct. 1718, 26 L. Ed. 2d 86 (1970).

Gadsden treaty. — Article V of the Gadsden treaty ratified this article. *Carter v. Territory*, 1859-0NMSC-009, 1 N.M. 317.

II. CITIZENSHIP.

Election of citizenship authorized. — This article gives Mexicans established in New Mexico the right to retain the title and rights of Mexican citizens, or acquire those of United States citizens; the election was required to be made within one year after exchange of ratifications of treaty. *United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422.

Method of election. — Military governor of the territory was authorized to issue the proclamation setting forth the method of election by which Mexicans could retain Mexican citizenship under this article. *Carter v. Territory*, 1859-0NMSC-009, 1 N.M. 317.

Effect thereof. — This article and article IX secure to all persons transferred to the jurisdiction of the United States the same rights of property as are enjoyed by all

citizens of the United States, and to such persons as should not elect within time specified to retain Mexican citizenship, admission to the enjoyment of all the rights of citizens of the United States according to the principles of the constitution. *United States v. Santistevan*, 1874-NMSC-003, 1 N.M. 583.

Election option not open to Indians. — The citizenship election given Mexican residents of conquered territory in this article and article IX did not embrace Indians. *Tenorio v. Tenorio*, 1940-NMSC-002, 44 N.M. 89, 98 P.2d 838.

Citizenship of Indians open question. — Upon termination of Spanish sovereignty, Pueblo Indians were given enlarged political and civil rights by Mexico, but it remains an open question whether they have become citizens of the United States. *United States v. Sandoval*, 231 U.S. 28, 34 S. Ct. 1, 58 L. Ed. 107 (1913).

Pueblo Indians of New Mexico were citizens of Mexico at the time of this treaty and are citizens of New Mexico and of the United States, hold their lands with full power of alienation and are subject to taxation by the territory. *Territory v. Persons in Delinquent Tax List*, 1904-NMSC-00, 12 N.M. 139, 76 P. 307.

Those inhabitants of this territory, commonly known as "the Pueblo Indians," were transferred with this territory by Mexico to the United States by this treaty, and according to its terms have same relations to United States which they had to Mexico, where they were citizens, both as regards their persons and property, at the time of the treaty. *United States v. Santistevan*, 1874-NMSC-003, 1 N.M. 583.

Pueblo Indians of New Mexico were, at date of this treaty, Mexican citizens, and were, by this article, made citizens of United States, inasmuch as not one of them elected "to retain the title and rights of Mexican citizens," consequently their property rights were guaranteed by the treaty equally with those of other Mexican citizens of the territory. *United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422.

Court did not consider it proper to withdraw 8,000 citizens of New Mexico, Pueblo Indians, from the operation of the laws, made to secure and maintain them in their liberty and property, and consign their liberty and property to a system of laws and trade made for wandering savages and administered by the agents of the Indian department. *United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422.

III. PROPERTY RIGHTS.

A. IN GENERAL.

Private property protected. — This article and article IX provide for the protection of private property. The security of private property so stipulated is in accordance with the principles of public law as universally acknowledged by civilized nations. *Chaves v. Whitney*, 1888-NMSC-011, 4 N.M. 611, 16 P. 608.

Duty to provide mode of protection with congress. — By this article and article V of the Gadsden treaty, the property of Mexicans, within the territory ceded to the United States, was to be "inviolably respected," both as to them and their heirs and grantees; duty of providing mode of securing these rights, and of fulfilling obligations imposed upon United States by the treaties, belonged to political department of government; congress might either discharge that duty or delegate it to judicial department. *United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422

While private rights of property within territory ceded to United States by treaty were unaffected by the change in sovereignty, duty of providing mode of securing such rights and of fulfilling obligations imposed upon the United States in protecting them under its treaty obligations belonged to congress, and congress was free to discharge the duty itself or to delegate it. *Chadwick v. Campbell*, 115 F.2d 401 (10th Cir. 1940).

But citizens' lands subject to eminent domain. — Lands of citizens of New Mexico, since the cession in this treaty, were subject to eminent domain under federal, state and territorial laws and were not exempt therefrom by virtue of this treaty. *Albuquerque Land & Irrigation Co. v. Gutierrez*, 1900-NMSC-017, 10 N.M. 177, 61 P. 357, *aff'd*, 188 U.S. 545, 23 S. Ct. 338, 47 L. Ed. 588 (1903).

Water rights of Pueblo Indians. — The Pueblo Indians, as "Mexicans not established there," have a right to use all the water in the Tesuque and Nambeljoaque stream system necessary for their domestic uses and to irrigate their lands, except for the land ownership and appurtenant water rights terminated by the operation of the federal 1924 Pueblo Lands Act, Act of June 7, 1924, ch. 331, § 1 et seq. *New Mexico ex rel. Reynolds v. Aamodt*, 618 F. Supp. 993 (D.N.M. 1985).

B. LAND GRANTS.

Provision protecting Mexican or Spanish titles was inapplicable to inchoate rights. *Grant v. Jaramillo*, 1892-NMSC-002, 6 N.M. 313, 28 P. 508.

Claimants under confirmed Mexican grant and United States patent were entitled to enjoin claimants under subsequent and inchoate Mexican grant, except as to portions for which title had been acquired under adverse possession statutes and as to water usage already established. *Waddingham v. Robledo*, 1892-NMSC-005, 6 N.M. 347, 28 P. 663.

Establishing validity of title. — Under articles VIII and IX of this treaty and article V of the Gadsden treaty, perfect titles to grants of land needed no confirmation by political authorities of United States to establish their validity. *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421.

Decision rests with congress. — Final action on land grant claim is reserved to congress; its action is conclusive and not subject to judicial review. *H.N.D. Land Co. v. Suazo*, 1940-NMSC-061, 44 N.M. 547, 105 P.2d 744.

Manner of recognition of property rights in case of an imperfect grant was exclusively for congress to determine. Congress was not bound either by treaty or by morals to confirm it. *Joseph v. Catron*, 1905-NMSC-023, 13 N.M. 202, 81 P. 439.

No restrictions on disposition of public lands. — This treaty placed duty on United States government to protect Mexican citizens in all of their rights of property which they possessed at the date of the treaty, but the legislation of congress must be looked to in ascertaining what has been done in this regard, since the treaty itself placed no restrictions whatever upon the disposition of any of these lands which the courts are bound to recognize. *Lockhart v. Wills*, 1898-NMSC-007, 9 N.M. 344, 54 P. 336, *modified sub nom. Lockhart v. Johnson*, 181 U.S. 516, 21 S. Ct. 665, 45 L. Ed. 979 (1901).

There is nothing in this article or article IX, which could be construed as a withdrawal of lands from entry and sale as public lands which in fact were public lands of United States, although contained within claimed limits of some Mexican grant made prior to cession to United States. Mere fact that lands were claimed under Mexican grant did not operate under treaty to reserve such lands from entry and sale when grant did not in truth cover them. *Lockhart v. Johnson*, 181 U.S. 516, 21 S. Ct. 665, 45 L. Ed. 979 (1901).

Applicability of Mexican law — Mexican-Spanish law was applicable in determining titleholder's right to water and fishing on lands held under United States patent and congressional confirmation, where patent issued to heirs of person to whom land was originally granted by responsible Mexican government in 1824, grantee's title being subject to question only by third persons. *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421.

C. TAXATION.

Meaning of inhibition against tax. — Inhibition in this article against contribution, tax or charge plainly refers to right or privilege of removing from the United States the proceeds of sale of property, and has no reference whatever to a tax regularly assessed against land and property remaining in the United States. *Chadwick v. Campbell*, 115 F.2d 401 (10th Cir. 1940).

Property taxable. — Where perfect Spanish-Mexican grant was confirmed by court of private land claims, but patent was not issued because of nonpayment of part of survey expenses, the property was taxable by the territory. *Territory v. Persons & Property Described in Delinquent Tax List*, 1903-NMSC-015, 12 N.M. 62, 73 P. 621.

Decree of court of private land claims, establishing and confirming title in named persons, and the patent conveying it to them, as a private grant, was conclusive in respect to nature of title as between a public or a private grant; land was subject to tax and tax sale, and treaty provision permitting Mexicans to remain here or remove to Mexico with their property or its proceeds or any after-acquired property had nothing to

do with taxes levied on such land or other property, which was not exempt or immune from ordinary taxes. *Chadwick v. Campbell*, 115 F.2d 401 (10th Cir. 1940).

Land which was part of Sebilleta de La Joya grant, a Spanish grant, in Socorro county, New Mexico and contained in territory ceded to United States was granted to private persons and not to community, and was taxable. *Chadwick v. Campbell*, 115 F.2d 401 (10th Cir. 1940).

ARTICLE IX HOW MEXICANS REMAINING IN CEDED TERRITORIES MAY BECOME CITIZENS OF THE UNITED STATES

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

ANNOTATIONS

Cross references. — For application of this article to territory ceded by Mexico in Gadsden treaty, see art. V thereof.

Purpose of article was to protect Mexicans covered herein against discrimination in respect to property or religion; it did not exempt them from ad valorem taxes regularly assessed and levied. *Chadwick v. Campbell*, 115 F.2d 401 (10th Cir. 1940).

Treaty does not contemplate administration of public schools. *Lopez Tijerina v. Henry*, 48 F.R.D. 274 (D.N.M. 1969), *appeal dismissed*, 398 U.S. 922, 90 S. Ct. 1718, 26 L. Ed. 2d 86 (1970).

Nor does it confer proprietary right to have Spanish language and culture preserved and continued in the public schools at public expense. *Lopez Tijerina v. Henry*, 48 F.R.D. 274 (D.N.M. 1969), *appeal dismissed*, 398 U.S. 922, 90 S. Ct. 1718, 26 L. Ed. 2d 86 (1970).

Passage of title to common land. — Even though Mexican grant of common land to man and his sons could be held to be community grant in its inception, title to the common land was never in the settlers but in the Mexican government, and this passed to the United States by the treaty. *H.N.D. Land Co. v. Suazo*, 1940-NMSC-061, 44 N.M. 547, 105 P.2d 744.

Congress reserved to itself mode of securing private rights under these treaties in New Mexico and Arizona, and prescribed the duties of the surveyor general. *Ainsa v. United States*, 161 U.S. 208, 16 S. Ct. 544, 40 L. Ed. 673 (1896).

Congress' confirmation conclusive. - Confirmation by congress of land grant from Mexico to a man and his sons was final and conclusive, and court could not go behind the confirmation to determine title under the original grant and treaty relevant thereto. *H.N.D. Land Co. v. Suazo*, 1940-NMSC-061, 44 N.M. 547, 105 P.2d 744.

Congress' disposition of public lands. — Holder of perfect title granted by Mexico, whose title was not confirmed by congress or by any tribunal authorized by it, is not entitled to prove his grant in action in ejectment by holder of patent from United States, for power of congress in disposal of public domain cannot be interfered with or its exercise embarrassed by any state or territorial legislation, nor can such legislation deprive the grantees of property granted. *Chavez v. Chavez de Sanchez*, 1893-NMSC-007, 7 N.M. 58, 32 P. 137.

ARTICLE X

[Stricken out]

ARTICLE XI

SUPPRESSION OF SAVAGE INDIAN RAIDS INTO MEXICO;

PURCHASE OF CAPTIVES OR STOLEN PROPERTY PROHIBITED; RETURN OF CAPTIVES TO MEXICO

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the government of the United States whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said government, and satisfaction for the same shall be exacted - all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics,

nor to purchase or acquire horses, mules, cattle or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country, or deliver them to the agent or representative of the Mexican government. The Mexican authorities will, as far as practicable, give to the government of the United States notice of such captures; and its agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the meantime, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ANNOTATIONS

Cross references. — For abrogation of this article, see Gadsden treaty, art. II.

Meaning of Indians. — This article, in speaking of Indians, makes reference to Pueblo Indians, for the term is "tribus salvajes" (savage tribes). *United States v. Lucero*, 1869-NMSC-003, 1 N.M. 422.

ARTICLE XII PAYMENT TO MEXICO FOR TERRITORY ACQUIRED BY UNITED STATES

In consideration of the extension acquired by the boundaries of the United States, as defined in the Fifth Article of the present treaty, the government of the United States

engages to pay to that of the Mexican republic the sum of fifteen millions of dollars [(\$15,000,000)].

Immediately after this treaty shall have been duly ratified by the government of the Mexican republic, the sum of three millions of dollars [(\$3,000,000)] shall be paid to the said government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars [(\$12,000,000)] shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars [(\$3,000,000)] each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions [(\$12,000,000)] from the day of the ratification of the present treaty by the Mexican government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler.

ARTICLE XIII UNITED STATES TO ASSUME AND PAY CLAIMS LIQUIDATED AGAINST MEXICO

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

ARTICLE XIV MEXICAN GOVERNMENT DISCHARGED FROM CLAIMS OF CITIZENS OF UNITED STATES

The United States do furthermore discharge the Mexican republic from all claims of citizens of the United States, not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be

allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV

AMOUNT FOR SATISFACTION OF CLAIMS OF UNITED STATES CITIZENS AGAINST MEXICAN GOVERNMENT

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars [(\$3,250,000)]. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the government of the United States, whose awards shall be final and conclusive: provided, that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the First and Fifth Articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one thousand eight hundred and forty-three; and in no case shall an award be made in favor of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners, or of the claimants, any books, records or documents in the possession or power of the government of the Mexican republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as congress may designate, make an application in writing for the same, addressed to the Mexican minister for foreign affairs, to be transmitted by the secretary of state of the United States; and the Mexican government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records or documents, so specified, which shall be in their possession or power, (or authenticated copies or extracts of the same,) to be transmitted to the said secretary of state, who shall immediately deliver them over to the said board of commissioners: provided, that no such application shall be made by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records or documents, shall have been stated under oath or affirmation.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler.

Compiler's notes. — The first and fifth articles of the unratified convention of 1843 provided for a board for the hearing of unresolved claims of individuals against the governments of the United States and Mexico, to be composed of two commissioners from each country, and for submission to an umpire of unresolved claims previously

referred to the umpire appointed under the convention of 1839 after submission to the commissioners appointed under that convention.

ARTICLE XVI RIGHT TO FORTIFY TERRITORY RESERVED

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

ANNOTATIONS

Cross references. — For application of this article to territory ceded by Mexico under the Gadsden treaty, see art. V thereof.

ARTICLE XVII TREATY OF 1831 REVIVED

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

ANNOTATIONS

Cross references. — For abrogation of the treaty of amity, commerce and navigation of 1831 mentioned above, see Gadsden treaty, art. II.

For applicability of this article to territory ceded by Mexico in the Gadsden treaty, see art. V thereof.

ARTICLE XVIII SUPPLIES FOR UNITED STATES TROOPS IN MEXICO PREVIOUS TO EVACUATION EXEMPT FROM DUTY

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although

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

ARTICLE XIX

RULES WITH RESPECT TO CERTAIN MERCHANDISE

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

A. all such merchandise, effects and property, if imported previously to the restoration of the customhouses to the Mexican authorities, as stipulated for in the Third Article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

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

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

D. all merchandise, effects and property, described in the first and second rules, which shall have been removed to any place in the interior whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

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

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

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the customhouse at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX TARIFF AT PLACES OCCUPIED BY UNITED STATES FORCES IN MEXICO TO BE IN FORCE FOR SIXTY DAYS AFTER SIGNING OF TREATY

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

ARTICLE XXI MUTUAL REPRESENTATIONS AND PACIFIC NEGOTIATIONS TO BE USED TO SETTLE DIFFERENCES BETWEEN GOVERNMENTS OF UNITED STATES AND MEXICO

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves; using, for this end, mutual representations and specific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ANNOTATIONS

Cross references. — For reaffirmation of this article, see Gadsden treaty, art. VII.

ARTICLE XXII RULES TO BE OBSERVED IN CASE WAR SHOULD BREAK OUT BETWEEN UNITED STATES AND MEXICO

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:

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

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

B. in order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison ships or prisons; nor be put in irons, or bound or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

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

ANNOTATIONS

Cross references. — For reaffirmation of this article, see Gadsden treaty, art. VII.

ARTICLE XXII TREATY SUBJECT TO RATIFICATION

This treaty shall be ratified by the president of the United States of America, by and with the advice and consent of the senate thereof; by the president of the Mexican republic, with the previous approbation of its general congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty of peace, friendship, limits and settlement; and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. Trist, [L.S.]

Luis G. Cuevas, [L.S.]

Bernardo Couto, [L.S.]

Migl. Atristain, [L.S.]