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STUDY PROJECT

PERMANENT NEUTRALITY AND THE PANAMA CANAL AFTER 1999

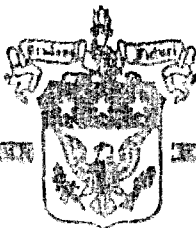
BY

COMMANDER ROBERT J. SANDERS, JR.

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USAWC MILITARY STUDIES PROGRAM PAPER

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PERMANENT NEUTRALITY AND THE PANAMA CANAL AFTER 1999

AN INDIVIDUAL STUDY PROJECT

by

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ABSTRACT

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PERMANENT NEUTRALITY AND THE PANAMA CANAL AFTER 1999

CHAPTER I

INTRODUCTION

This paper examines the strategic implications for the United States of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal after 1999. My analysis includes a review of neutrality as a general concept of international law as applied to the Panama Canal, an examination of the Neutrality Treaty of 1977, and consideration of likely threats to the canal and possible US responses. The paper concludes with recommendations for policy makers should the canal's permanent neutrality and operation be challenged.

BACKGROUND

There are few issues in the history of US foreign policy that have so captivated US public interest and evoked such fierce emotionalism as the Panama Canal. Eleven and one-half years ago, U.S. President Carter and Panama's General Omar Torrijos signed two new treaties which promised to begin a new era in US-Panamanian relations. The two treaties, the Panama Canal Treaty¹ and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal², were signed by the two leaders 7 September 1977, and ratified by the US Senate six months later. The Congressional and public debate over treaty ratification pitted conservatives, who saw the treaties as a betrayal of US interests

and a "giveaway" to an unstable military dictatorship in Panama, against moderates and liberals who looked to the treaties as the best guarantor of future good relations between the two countries and uninterrupted use of the canal. By a slim two-thirds majority vote (68-32), the US Senate consented to ratification subject to various amendments, conditions, reservations, and understandings. The ratifications were exchanged 16 June 1978 in Panama, and the two treaties entered into force 1 October 1979.

The Panama Canal Treaties of 1977

The Panama Canal Treaty abrogated all previous treaties and agreements between the US and the Republic of Panama concerning the Panama Canal and the Panama Canal Zone. The new treaty provided a transitional period for the gradual transfer of responsibility for canal operation to Panama. During this period, the US retains primary responsibility for defense of the canal. The Panama Canal Treaty terminates at noon on 31 December 1999. Thereafter, according to the Neutrality Treaty, "only the Republic of Panama shall...maintain military forces...within its national territory."³ The Neutrality Treaty established a regime of permanent neutrality for the canal that is to be maintained by both the US and Panama. The treaty stipulated the principles of neutrality to be followed, and gave the US the right of expeditious transit and unilateral defense of the canal.

The Issues

The United States has primary responsibility for defending

the canal and the right to maintain military forces in Panama until the year 2000. US unilateral action to maintain or restore the canal's permanent neutrality and operation should it become necessary, although certain to incite adverse public opinion, would be clearly supportable on the basis of US rights under both treaties.

Not as clear is the situation after 1999, when US unilateral action to maintain canal operation and neutrality might involve the use of military force, to include the reintroduction of ground forces. Notwithstanding US treaty rights, the uninvited reintroduction of US forces into Panamanian territory, even with the most altruistic of intentions, is fraught with difficulties. Under what circumstances should the US consider the use of military force to maintain the treaty? At what point does US unilateral action to maintain permanent neutrality destroy the canal's regime of neutrality? Will US unilateral action to maintain the canal's operation invite increased violence that results in closing the canal? In which scenarios is the US likely to risk damaging long term interests in the hemisphere while exercising the right to unilaterally intervene?

ASSUMPTIONS

Some underlying assumptions about the near term are necessary in order to narrow the range of variables. The following assumptions are based on current trends or stated policy.

1. There will be no new treaty arrangement with Panama to provide for the stationing of US forces in Panama beyond 1999.

2. The United States will withdraw its forces from Panama not later than 31 December 1999 as required by the 1977 treaties. All provisions of the Panama Canal Treaty will be honored and executed, and the treaty will terminate as scheduled.

3. The economic value of the canal will remain fairly constant. While the canal is still "an important utility to the United States and world trade...its existence is by no means vital or critical in the long term."⁴ The canal will continue to play a much larger role in the economies of developing nations. Countries in Central America and the West coast of South America are heavily dependent on the canal.⁵

4. The canal's military value to the US will not change. Unimpeded use of the canal enhances military mobility and flexibility but cannot be guaranteed in general war. The canal's vulnerability to modern weapons makes it prudent to assume that the canal will be closed by hostile action in a global war.

5. Democratic institutions in Panama will remain weak and subject to manipulation by the military. US foreign policy, the war on drugs, and US economic and social influences will prove adequate substitutes for the withdrawn US military force to sustain anti-American sentiment in Panama after 1999.

ENDNOTES

1. Department of State, "Panama Canal Treaty," 7 September 1977, TIAS 10030, Treaties and Other International Acts Series.

2. Department of State, "Panama Canal: Permanent Neutrality and Operation," 7 September 1977, TIAS 10029, Treaties and Other International Acts Series. (hereafter referred to as the Neutrality Treaty).

3. Ibid., Article V.

4. David S. Parker, "The Panama Canal Is No Longer Crucial to U.S. Security," Armed Forces Journal, December 1987, p. 55.

5. U.S. Congress, House, Committee on Merchant Marine and Fisheries, Subcommittee on the Panama Canal, Hearings on the Proposed Panama Canal Treaties, p. 98.

CHAPTER II

PERMANENT NEUTRALITY

Permanent neutrality, or more properly, neutralization has a long tradition in international law and has long been a factor in the foreign relations of nations. Neutralization can be defined as "a special international status designed to restrict the intrusion of specified state actions in a specified area."¹ While the terms neutrality and neutral refer to the non-belligerent posture of a state, or the special protection afforded certain establishments or organizations in time of war, neutralization refers to the status of a state or geographic area whose independence, integrity, and security are guaranteed by international agreement for all time.² A state or area that is neutralized is permanently neutral. Neither term should be confused with demilitarization since a state can be permanently neutral without giving up its armed forces. Another similar term with an entirely different meaning is neutralism which refers to a state's nonaligned status with respect to the super powers.

Permanent neutrality is established by international agreement and imposes reciprocal obligations, guarantees and responsibilities on the contracting parties. The motivations for such an agreement usually lie in the self-interest of the parties by enhancing the international order, supporting political or territorial integrity, or improving military security and moderating defense costs. Once negotiated and ratified, the weak link in any neutrality agreement is the effectiveness of the

formal commitments provided for in the treaty in the face of political realities. Since neutralization is likely to represent only a compromise agreement between the contracting parties, unilateral action to maintain neutrality inevitably raises questions of partiality and "tend to destroy a neutralization arrangement under the guise of enforcing it."³

THE PANAMA CANAL

A review of the history of the Panama Canal in terms of neutralization provides not only the background with which to examine the 1977 treaty, but gives a frame of reference for considering US-Panamanian relations.

The Beginning

The California gold rush of the 1840s created the economic incentive for the development of a modern transportation system across the Isthmus of Panama. Great Britain, the world's greatest sea power at the time, was also interested in the commercial prospects of a new trade route to the Pacific, and had already entered into an agreement with Colombia to guarantee transit across the isthmus. The mutual interests of the US and Great Britain led to the Clayton-Bulwer Convention, signed 19 April 1850. This agreement established the neutral character of any future ship canal that might be constructed between the Atlantic and Pacific Oceans. The US and Great Britain declared that neither would seek exclusive control over any such canal, and neither would fortify or occupy any part of Central America. In case of war between the two parties, they agreed not to

blockade, detain or capture each other's ships within the canal. They further agreed that after such a canal was completed, they would "protect it from interruption, seizure, or unjust confiscation, and ... guarantee the neutrality thereof, so that the said Canal may forever be open and free..." The treaty concluded by establishing a "general principle ... that the same Canals, or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall, also, be open on like terms to the citizens and subjects of every other State which is willing to grant thereto, such protection as the United States and Great Britain engage to afford." Besides articulating the precept of neutrality for an isthmian canal, the Clayton-Bulwer treaty also established the precedent of inviting other states to accede to the principles and objectives of the treaty.⁴

While an American company completed construction of an isthmian railway between Colon and Panama City, a Frenchman pursued his dream of building a canal through the Isthmus of Suez. Under Ferdinand de Lesseps, who would later fail in Panama, the Suez Maritime Canal Company completed a canal across Suez and opened it to traffic in 1869. But it was not until nearly 20 years later that an international agreement on the neutral character of the Suez Canal was reached. The agreement, the 1888 Convention of Constantinople, provided regulations and enforcement provisions deemed necessary to keep the canal always "free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag..." Other provisions delineated the terms under which belligerent

warships could use the canal. The Convention preserved Egypt's sovereign rights and charged Egypt with the responsibility of insuring the protection of the canal, under the supervision of an international commission.³

The rise of American naval power and acquisition of overseas territories incident to the Spanish-American War enabled the US to fill the vacuum in Central America created by the Royal Navy's withdrawal from the Western Hemisphere and the failure of de Lessep's French Panama Canal Company in 1893. This transition was recognized in the Hay-Pauncefote Treaty of 1901. The US and Great Britain agreed that the 1850 Clayton-Bulwer Treaty was superseded "without impairing the 'general principle' of neutralization established in Article VIII of that Convention," and that a canal could be constructed by the US alone. The US was granted the exclusive right of regulating and managing the canal. The US adopted, "as the basis of the neutralization of such ship-canal, the following Rules, substantially as embodied in the Convention of Constantinople ... The Canal shall be free and open to the vessels of commerce and of war of all nations observing the Rules, on terms of equal equality ... the Canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder." Additional rules restricted provisioning, troop movement, and length of stay within the canal and adjacent waters for belligerent naval ships.⁴

The political machinations of Philippe Bunau-Varilla, a former director and the chief stockholder of the defunct French Panama Canal Company, with the complicity if not encouragement of certain US officials, culminated in Panama's independence from Colombia and the Hay-Bunau Varilla Treaty of 1903. In return for the US guarantee of Panamanian independence, Panama granted to the US "in perpetuity the use, occupation and control of a zone of land ... for the construction, maintenance, operation, sanitation and protection of said Canal," and "all the rights, power and authority within the zone ... which the United States would possess and exercise if it were the sovereign..." (Article III). With respect to the international character of the canal, Article XVIII provided that "the Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by ... the treaty entered into by ... the United States and Great Britain on November 18, 1901."⁷

The Hay-Bunau Varilla Treaty set the pattern for US-Panamanian relations and fueled anti-American sentiment in Panama for the next 75 years. Panama tended to interpret the treaty as narrowly as possible, insisting that the US was entitled to sovereign rights only to the extent essential for the canal's construction, maintenance, sanitation and protection. The US was more inclined to interpret the treaty more broadly, and gradually came to identify canal defense with defense of the Western Hemisphere.⁸

The Challenge of War

The opening of the Panama Canal to traffic in 1914 coincided with the outbreak of the first World War in Europe, and provided a sense of urgency to questions concerning the canal's neutral status. As far as these questions are concerned, the situations in World War I and II are essentially identical. In both wars, the US remained a neutral state for some time after the outbreak of hostilities in Europe. In each case, the US met the anticipated challenges to the canal's neutrality and defenses through a series of executive orders, legislative acts, and Canal Zone regulations.

There was no question as to the US right to defend the canal so long as the US remained a non-belligerent. The 1903 Treaty had granted to the US the right "at any time to employ armed forces for the safety or protection of the Canal."⁹ The legal right of a neutral state to take military action to defend itself had long been recognized in international law. Accordingly, in addition to the General Proclamation of Neutrality (issued 4 August 1914), other proclamations which specifically addressed the canal were ordered by President Wilson. The Secretary of War instructed the Governor of the Canal Zone on 22 August 1914 to obtain written assurances from the commanding officers of ships belonging to belligerents that they would adhere to all canal and harbor regulations before allowing them to transit.¹⁰ The numerous rules and regulations specified in great detail which acts were prohibited or restricted in the Canal Zone by each of the various classes of ships. The neutrality proclamations, in

addition to providing for more stringent control of the canal, were intended to prepare for even tighter control procedures should the US enter the war.¹¹

The US declaration of war on 6 April 1917 brought with it new problems as to the legitimacy of continued neutrality of the canal. Although the canal had been declared "neutral in perpetuity," was it now considered to be the territory of a belligerent?

The issue of a belligerent's right of defense and neutralization of the canal had first been raised in 1900 during Senate debate on the first draft of a treaty which later became the Hay-Pauncefote Treaty. Referring to the revised proposal in a letter to Secretary of State Hay on 2 October 1901, the American Ambassador in London wrote that the canal could be "ours to build ... to own, control and govern --- on the sole condition of its being always neutral ... except that if we get into a war with any nation we can shut their ships out and take care of ourselves."¹² The US interpretation of the neutrality provisions of the 1901 treaty is further revealed in a letter from Secretary Hay to Senator Cullom on 12 December 1901:

The obvious effect of these changes is to reserve to the US, when engaged in war, the right and power to protect the Canal from all damage and injury at the hands of the enemy, to exclude the ships of such enemy from the use of the Canal while the war lasts and to defend itself in the waters adjacent to the Canal the same way as in any other waters, without derogation in other respects of the principles of neutrality established by the treaty.¹³

Regardless of the legal issues involved, practical considerations for the defense of the canal immediately brought

about more stringent control procedures. The Commanding General in the Canal Zone was directed by an Executive Order issued 9 April 1917 to assume exclusive authority and to exercise exclusive control over the Panama Canal and Canal Zone.¹⁴ A proclamation issued 23 May 1917 implemented additional regulations which prohibited enemy vessels from the Canal Zone without the consent of canal authorities. Additionally, the US Navy established defensive sea areas seaward of the canal's entrances and prohibited traffic in these areas during hours of darkness. All previous neutrality rules applicable to ships belonging to belligerents were amended to exclude US ships. However, the proclamation made no distinction between hostile belligerents and allied friendly belligerents.¹⁵

The US's refusal to distinguish between friendly and enemy vessels with respect to wartime neutrality measures strengthened the canal's neutral standing in international law even if it did inconvenience allies. The US carefully weighed the practical need for adequate defense measures to protect the canal with the legal decisions rendered by the State Department to protect the canal's neutral character. Thus the US seized six German merchant vessels lying in the Canal Zone when war was declared as a sovereign right to confiscate enemy vessels within its jurisdiction --- and by the 1903 treaty with Panama, though not the sovereign, the Canal Zone was most definitely under US jurisdiction. On the other hand, Great Britain's request for the unlimited use of Canal Zone repair facilities by the Royal Navy's Pacific Squadron was rejected by the US State Department since the ships could not be certified as being in actual distress, a

condition required by US neutrality regulations.¹⁴

The US managed a delicate balancing act between the two sometimes conflicting objectives of defending the canal and of preserving its neutral status. That no one challenged or objected to the war time regulations imposed by the US as a precondition for using the canal is evidence that the US, within the constraints of legitimate security measures, upheld the principle of neutralization intended by the 1903 treaty.

In the interwar years the US became the "good neighbor" and espoused a policy of mutual respect and nonintervention in the hemisphere. Efforts to improve relations with Panama resulted in the General Treaty of Friendship and Cooperation (Hull-Alfaro Treaty), signed 2 March 1936. The treaty did not abrogate the basic relationship embodied in the 1903 treaty, but it did restore some of the rights, dignity and land that Panama had given up previously. The treaty did cancel the US guarantee of Panama's independence and moderated the terms under which the US could take action in defense of the canal. Article X of the treaty provided that "In case of an international conflagration or the existence of any threat ... Any measures, in safeguarding such interests, which shall appear essential to one Government to take, and which may affect the territory under the jurisdiction of the other Government, will be the subject of consultation between the two Governments."¹⁵ Not until Panama acknowledged that the US "need not delay action to meet the emergency pending consultation" but should consult with Panama "as soon as it may be possible" did the US Senate consent to ratification.¹⁶

US preventive measures to protect the canal's operation and neutrality during the Second World War were similar to those taken earlier. On 5 September 1939, President Roosevelt issued two proclamations, one a general proclamation of neutrality, the other prescribed neutrality regulations in the Canal Zone. These were followed by a succession of ever more detailed regulations. Neutrality rules were rigidly but impartially enforced, and "no objection was raised by the US in the second World War during its own neutrality to the passage through the Panama Canal of belligerent armed merchantmen, or of belligerent or neutral vessels carrying contraband of war to the warring Powers."¹⁹

One exception to the US's impartial enforcement of its neutrality procedures is recorded in the case of a group of Japanese merchant vessels that entered Cristobal on 9 July 1941 for transit to the Pacific. The US had coincidentally learned that Japan had recalled its ships for a "major military effort" and ordered those in Atlantic ports to be west of the Panama Canal by 1 August. The War Department instructed canal authorities that because of urgent maintenance then in progress, canal traffic was to be limited and that no Japanese vessel was to transit until further notice. The Japanese, informed that there would be some delay, waited a few days, then steamed back out into the Atlantic. Afterward, Secretary of State Welles justified the US action on the basis of the Japanese aggression in the Pacific that threatened the supply of US raw materials and the Philippines, also threatened US security worldwide.²⁰

As war loomed nearer, US port authorities were directed to take possession of foreign vessels lying idle in American waters

in order to prevent crews from sabotaging their ships or obstructing navigation. The order applied to ships in the Canal Zone, and the largest ship to be seized was an Italian passenger ship, the Conte Biancamano, dockside in Cristobal.²¹

US-Panamanian relations were strained during the first two years of the war due in large measure to Panama's President Arnulfo Arias, alleged to harbor pro-German sympathies. Late in 1940, the US consulted with Panama to gain leasing rights to additional land sites in order to improve the air defense capability of the Canal Zone. Arias balked, demanding what the US thought to be excessive compensation, and refused to negotiate in good faith. Increasingly frustrated with Arias' delaying tactics, one US foreign service officer recommended that in the "face of a real emergency, 'practical considerations should prevail over theoretical ones,' implying that the US should take over the bases arbitrarily."²² Arias finally acceded to the US request in March 1941, however a formal agreement was not signed until October.

The defense of the Panama Canal continued to be a security concern throughout the war. However, US security measures in the Canal Zone, allied naval superiority and the canal's geographic isolation from the two theaters of war provided a secure environment for uninterrupted canal operations during the war years.

THE SUEZ CRISIS AND THE PANAMA CANAL

In the aftermath of World War II, the United States, despite

its preoccupation with the Soviet threat, sought to diffuse a resurgence of anti-Americanism and discontent with a new treaty arrangement. The result, the Treaty of Mutual Understanding and Cooperation, was signed 25 January and entered into force 23 August 1955. The treaty provided some symbolic, largely pecuniary concessions but did little to address the root cause of the problem. The American presence in Panama, protected and privileged in the Canal Zone, was perceived by many Panamanians as incompatible with their national aspirations.

Great Britain experienced similar pressures in the Middle East. In Egypt, the forces of nationalism and Arab unity led Britain to re-examine the terms of a 1936 bilateral agreement that had allowed it to maintain military forces in Suez. Aggravating tensions, Egyptian customs inspectors began to search ships and seize cargo bound to or from Israel. Britain was reluctant to agree to a timetable for troop withdrawal due to concern for the tenuous balance of power in the Middle East. By October 1951, Egyptian frustrations with British obstinacy resulted in Egypt's unilateral abrogation of the treaty. Britain rejected Egypt's declaration and promptly sent reinforcements to Suez. Tensions mounted as nationalist rhetoric increased and Egypt expanded the search and seizure of Israeli ships and cargo. Finally, in July 1954, Egypt and Britain reached agreement for the withdrawal of all British forces within 20 months of the signing. The agreement, signed 19 October 1954, afforded Britain the right to retain some parts of bases in Suez ready for immediate use by British forces in the event of armed attack by an outside power on Egypt. The treaty also reaffirmed the

contracting parties determination to uphold the tenets of the 1883 Constantinople Convention, and was to remain in force for seven years. Despite this reaffirmation of determination, Egypt continued to interfere with Israeli use of the canal.

As Britain withdrew forces from Suez, Egypt under Nasser's leadership began to cultivate contacts with the Soviet Union. By September 1955, Nasser had arranged an arms deal with the Soviet Union and Czechoslovakia for fighters, tanks and artillery in exchange for Egyptian cotton. In May 1956, Egypt formally recognized the People's Republic of China; a month later, the last of the British forces withdrew.

The stage was now set for confrontation. Britain and the US withdrew an earlier offer to finance the Aswan High Dam on 19 July 1956. One week later, Nasser ordered the nationalization of the Suez Maritime Canal Company and announced that canal revenues would be used to finance the dam project. Canal employees were ordered to continue working, and shareholders, mainly British and French, were promised compensation. As the concession to the Canal Company were due to expire in 1968 anyway, and as long as shareholders were fairly compensated, nationalization was not at the heart of British concern. Rather, they and the French were worried about Egyptian intentions with respect to freedom of navigation of the canal. Britain and France planned a joint military operation while a flurry of diplomatic activity in London failed to produce an acceptable compromise. Meanwhile, British and French canal employees, including most of the qualified canal pilots, left Egypt.²³

On 29 October 1956, Israeli forces attacked Egypt and headed for the Suez. Two days later, British and French forces bombarded Egyptian airfields. By 3 November, the canal was unnavigable. After British and French paratroopers deployed, and under intense international and US pressure, all parties agreed to a cease-fire on 6 November. A UN peace keeping force deployed to Egypt, and by 22 December all British and French troops had withdrawn.

Although Egypt suffered the most casualties and damage, the British and French suffered greatly diminished prestige. Egypt retained control over the canal while British and French salvage teams cleared the canal of more than 40 sunken ships. Egypt resumed and expanded the nationalization of foreign businesses. The canal reopened to international shipping, except to Israeli commerce, in April 1957. Egypt justified discrimination against Israel on the basis of the state of war that existed, and on the 1888 Convention that gave Egypt the right to take whatever measures necessary to guarantee its security. Ten years after reopening, the Suez Canal again became a casualty of war. The Six Day War, 5-10 June 1967, closed the canal, and the 1973 Yom Kippur War kept it blocked. Not until 5 June 1975, after eight years of closure, did the canal resume normal operations. Egypt continues to exercise exclusive sovereign rights over the canal.

The Suez Crisis, coming on the heels of the new treaty between the US and Panama, naturally led to comparisons of the two canals with respect to their international legal standing. Secretary of State Dulles was quite clear in refuting any similarity:

Question: Mr. Secretary, there seems to have arisen in Panama some area of misunderstanding between that government and ours as to what the Panama Treaty (of 1955) does ... if you could comment on that situation?

Answer: ... there has been a good deal of speculation as to possible similarities between the Suez Canal and the Panama Canal. Actually, the situation is totally dissimilar in two vital respects. First, the judicial, the legal aspect of the problem. The Suez Canal by the Treaty of 1888 is internationalized. The Panama Canal is a waterway in a zone where, by treaty, the US has all the rights which it would possess if it were the sovereign ... And there is no international treaty giving other countries any rights ...

Now the second aspect of the matter, ... , is the practical situation. In the case of the Suez Canal a large number of countries, whose very livelihood almost depends upon the free and efficient and impartial operation of the canal, are in fact gravely disturbed because they fear that there will not be that kind of operation and that their lifeline - and to them it is almost literally a lifeline - that their lifeline may be cut. As far as I am aware, no country anywhere in the world fears that its economy is jeopardized by possible misuse, abuse, of our rights in the Panama Canal.²⁴

The differences between the two canals were, at the time, far more abundant than the few similarities. Latin America and Panama have provided, in stark contrast to the turmoil of the Middle East and Egypt, a relatively stable regional environment for an international waterway. Sovereignty over the Suez Canal, and responsibility for insuring it remained always "free and open, in time of war as in time of peace, to every vessel ...," were reposed in Egypt by international convention. Within the Panama Canal Zone, the US exercised all rights "as if it were the sovereign" according to a bilateral treaty with Panama.

Nevertheless, Dulles may have ignored a fundamental similarity. Each canal is a manmade waterway that slices through

the territory of a sovereign state. Each canal has been perceived as impinging on the sovereign rights and as serving to frustrate the national aspirations and full economic development of the host nation. With the passage of time, the distinctions between the two waterways have blurred and have become overshadowed by this fundamental similarity. By the Spring of 1978, US Senate ratification of the Panama Canal Treaty would remove once and for all any lingering doubts with respect to sovereign rights in the land and water areas adjacent to the canal. Moreover, upon treaty expiration on 31 December 1999, Panama will assume full responsibility for the management, operation, maintenance, and regulation of the Panama Canal, and only Panama will maintain military forces within its territory.

The remaining historical difference between the Suez Canal and the Panama Canal lies in the realm of geopolitics and regional conflict. Developments in Central America since ratification of the Panama Canal Treaties point to mounting regional instability and serious challenges to the canal's permanent neutrality and operation after the turn of the century.

ENDNOTES

1. Cyril E. Black, et al., Neutralization and World Politics, p. xi.

2. Marjorie M. Whiteman, Digest of International Law, vol. 1, p. 342.

3. Black, p. 141.

4. U.S., "Convention for Facilitating and Protecting the Construction of a Ship Canal between the Atlantic and Pacific Oceans," 19 April 1850, Consolidated Treaty Series, vol. 104 (1850), pp. 42-46. (referred to as the Clayton-Bulwer Treaty).

5. Hugh J. Schonfield, The Suez Canal In Peace And War, 1869-1969, pp. 174-189.

6. U.S., "Treaty Relative to the Establishment of a Communication by Ship Canal between the Atlantic and Pacific Oceans," 18 November 1901, Consolidated Treaty Series, vol. 190 (1901-1902), pp. 215-217. (referred to as the Hay-Pauncefote Treaty).

7. Department of State, "Isthmian Canal Convention," 18 November 1903, Treaty Series 431, Treaties and Other International Agreements of the United States of America, 1776-1949, vol. 10, pp. 663-672. (referred to as the Hay-Bunau Varilla Treaty).

8. Paul B. Ryan, The Panama Canal Controversy: U.S. Diplomacy and Defense Interests, pp. 24-25.

9. Hay-Bunau Varilla Treaty, Article XXIII.

10. Norman J. Padelford, The Panama Canal in Peace and War, p. 125.

11. Ibid., p. 126.

12. Whiteman, vol. 3, pp. 1177-1178.

13. Padelford, p. 39.

14. Ibid., p. 139.

15. Ibid., pp. 142-143.

16. Ibid., p. 146.

17. Department of State, "Friendship and Cooperation Treaty," 2 March 1936, Treaty Series 945, Treaties and Other International Agreements of the United States of America, 1776-1949, vol. 10, pp. 742-752.

18. Padelford, p. 77.

19. Ibid., p. 169.

20. Whiteman, vol. 3, p. 1180.

21. Padelford, p. 177.

22. Ryan, p. 29.

23. Schonfield, pp. 143-155.

24. Whiteman, vol. 3, p. 1150.

CHAPTER III

THE NEUTRALITY TREATY AND THE FUTURE

The range of challenges to the Panama Canal's operation and regime of neutrality after 1999 are certain to be broader, more diverse, and more challenging than those encountered during the canal's first 75 years. Conversely, a significant capability of the United States to respond militarily will be lost with the withdrawal of US forces not later than 1999. What can threaten the canal? Regional conflicts, Communist insurgencies, nuclear-free zones, zones of peace, the war on drugs, the Latin America debt crisis, environmental concerns, international terrorism, civil disobedience and political unrest, fierce economic competition, and a host of other problems will challenge the political leadership and national resources of all countries. Because many of these 21st century problems will affect Panama and Central America, it is prudent to consider now the most likely threats to the canal, and how the US might respond in terms of the Neutrality Treaty.

THE NEUTRALITY TREATY OF 1977

In considering the treaty and related amendments, conditions, reservations, and understandings, it is important to note which country has the active role in the essential provisions. The one sentence preamble states that the US and Panama "have agreed upon the following..." but it is Panama in the first two articles that "declares that the Canal, as an

international transit waterway, shall be permanently neutral.." and "declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality..." Article III delineates rules to insure the security, efficiency and maintenance of the canal and states:

(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination.*

The maintenance provisions of the treaty are provided in articles IV and V, and are subject to amplification by various amendments, conditions and understandings. According to article IV, both the US and Panama agree "to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral,..." Amendment (1) pertains to this article and provides "a correct and authoritative statement of certain rights and duties of the Parties":

...The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States

action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.²

Additionally, an "understanding" applicable to this article reiterates that

...either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.³

Article V makes reference to the termination of the Panama Canal Treaty to reiterate that after 1999, only Panama may operate the canal and maintain military forces within its borders. Not only must US forces have been withdrawn by that time (unless a new treaty provides for a US military presence), but no other foreign military forces or installations may be maintained in Panama. This article is subject to amplification by the "De Concini reservation" that became a condition for Senate ratification:

...if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.⁴

Keeping in mind that Panama agreed in the protocol exchanging ratifications that the treaties were to be applied together with the amendments, etc., the US clearly has the right and the responsibility to take unilateral action and to use military force if necessary. The only caveat to independent US action is that it must not be directed against the territorial integrity or political independence of the Republic of Panama.

Article VI of the Neutrality Treaty entitles the US and Panamanian naval and auxiliary vessels to expeditious transit. This was interpreted in the Senate's resolution as meaning "without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line..."⁵ Determination of need is to be made by the nation operating the vessel.⁶

The final article of the treaty which bears directly on permanent neutrality is article VII. This article invites all the nations of the world to join a protocol in which they may acknowledge the objectives of the treaty and their agreement to respect the regime of neutrality. To date, 36 nations, including the Soviet Union, have become parties to the protocol.⁷ This protocol does not make the Neutrality Treaty a multi-lateral agreement as was the 1888 Constantinople Convention, but it does place it clearly in the international arena as a matter of legitimate interest and diplomatic scrutiny.

CURRENT PROBLEMS

Treaties tend to be interpreted in ways that support the national objectives of the contracting parties. In the case of the Neutrality Treaty, as long as the two sets of national objectives are in fundamental agreement, the treaty stands a good chance of achieving its stated purpose. However, when the two sets of national objectives are not aligned or begin to diverge, it can be expected that the agreement will become increasingly difficult to maintain.

What are the national objectives with respect to the Neutrality Treaty? Simply stated, the U.S. wants unimpeded use of the international waterway that crosses the Isthmus of Panama for itself and its allies and trading partners. What does Panama want? Without doubt, the canal is Panama's chief economic resource and its uninterrupted operation is in Panama's own best interest. But there is an additional, larger dimension to Panama's treaty objectives, and that is the issue of national sovereignty.

The fundamental assumption on which the Neutrality Treaty rests is that of US-Panamanian cooperation. The 1977 treaties recognized that "Today, our best way of insuring permanent access to the canal is not our exclusive or perpetual control of its operation, but rather the active and harmonious support of the Panamanian population." With active Panamanian support and under the banner of permanent neutrality, the U.S. can provide super power resources to protect the canal from the most probable, though not all, threats. Without Panamanian support, the U.S. is severely handicapped.

The treaties have been in force for nearly ten years and US-Panamanian relations have not always been harmonious. Relations began a sharp worsening trend in 1987 with allegations that General Noriega was involved in drug trafficking and other illegal activities. In February 1988, Noriega was indicted by federal grand juries in Florida on drug trafficking and corruption charges. Intense US diplomatic and economic pressure to force Noriega's ouster has seriously damaged the Panamanian

economy, aroused anti-American sentiment, and has been unsuccessful. In the United States, new public attention is focusing on a revaluation of the 1977 treaties. President Reagan opined two days before leaving office that the US should reconsider the treaties if Noriega remains in power.⁹ A conservative group has urged President Bush to notify Panama that US troops will not be withdrawn until a democratic government is elected to replace Noriega.¹⁰ Noriega has repeatedly said "the forces that support the regime will not give up the presidency or the military command until the military withdrawal of the United States in the year 2000."¹¹ A "military declaration" issued by a group of captains in the Panama Defense Forces (PDF), if representative of "the forces that support the regime," indicates solid support for Noriega leadership.¹² Meanwhile, opposing selective perceptions and interpretations of treaty rights and obligations lead to charges and counter-charges of treaty violations and malicious intent to destroy the agreement. Within this highly charged antagonistic atmosphere, US-Panamanian cooperation becomes largely fictional with the survival of the treaty resting on the soon to conclude US military presence in Panama.

STRATEGIC IMPLICATIONS

The most contentious issue facing US-Panamanian relations and the Neutrality Treaty now and in the future is the permanent right of the U.S. to unilaterally act to restore the canal's operation and neutrality. Until the year 1999, Panamanian attention will remain fixed on the U.S. military presence in

Panama. Thereafter, attention will imperceptibly shift to the Neutrality Treaty and the ever present threat of U.S. intervention. As General Torrijos reportedly stated at the treaty signing ceremony, Panama remains under "the protective umbrella of the Pentagon" and the Neutrality Treaty could become, if not judiciously administered, an "instrument of permanent intervention."¹³ The potential for U.S. unilateral action will be sufficient cause to incite anti-Americanism on demand for whatever domestic political purpose it might serve.

There are numerous scenarios wherein a threat to the canal might suggest U.S. unilateral action and the use of military force. Scenarios include isolated acts of terrorism, regional conflict and global war, and Panamanian domestic turmoil. In each instance, the circumstances must be examined to determine the suitability, feasibility and acceptability of using U.S. military forces to protect the canal.

In the case of a determined terrorist threat, U.S. forces in Panama would provide little if any deterrent value. Conversely, a U.S. military presence in Panama might attract terrorist activity. U.S. forces might be able to upset a terrorist plot once discovered, but not necessarily more effectively than could a properly trained and equipped Panamanian police force.

At the other end of the spectrum, a major conventional air attack on the canal by the Soviet Union or its allies could not be thwarted by a U.S. military presence and air defense facilities in Panama alone. Such facilities would merely form the inner defense zone and would require augmentation by mobile

air defense systems at extended ranges. Because of the limited military utility in countering external hostile threats, there is little rationale for introducing U.S. forces into Panama without the active support of the Panamanian government. To do otherwise invites Panamanian resentment and a resurgence of anti-Americanism at the very time U.S.-Latin American solidarity would be most needed.

The high risk and low return of using U.S. forces in Panama in defense of the canal does not suggest that the U.S. should do nothing. Regardless of the state of U.S.-Panamanian relations when confronted with a threat to the canal, the U.S. can appeal to the Panamanian government for its cooperation and to the Organization of American States (OAS) and United Nations for support. If Panama remains unwilling to host U.S. forces, then naval and air forces should be used as available consistent with other defense priorities.

It is the Panamanian domestic arena that provides the most fertile ground for likely challenges to the canal's operation and neutrality. The canal is the principal economic asset of Panama and is a symbol of the incumbent government's legitimacy and past American imperialism. The canal would thus prove a tempting target for disaffected domestic political parties and externally supported insurgent groups of many persuasions. A well organized labor or insurgent campaign to disrupt canal operations, sabotage facilities and harass ships in transit would seriously weaken the Panamanian economy and undermine the government's legitimacy. In this volatile, uncertain political environment, there is only one set of circumstances that would clearly point to U.S. military

intervention in defense of the canal. Were a popularly elected Panamanian government to request U.S. forces as part of a comprehensive security assistance package, then U.S. military involvement would be appropriate. Only with the active cooperation of a popularly elected government could U.S. forces effectively counter an insurgent threat and remain largely immune to accusations of "Yanqui" intervention.

In the absence of a popularly elected government in Panama, the U.S. should proceed cautiously before responding favorably to a Panamanian request for military assistance or exercising the treaty right of unilateral intervention to protect the canal. A decision to provide U.S. military assistance for the legitimate defense of the canal might be easily perceived by opposition elements as U.S. support for a repressive dictatorship or minority regime. On the other hand, if the U.S. were to move too slowly in providing security assistance, the Panamanian government could charge the U.S. with abandoning its treaty responsibilities and seek assistance elsewhere. In either case, the U.S. would risk a great deal of influence and credibility in the hemisphere.

A unilateral U.S. decision to use military force to protect the canal, without the consent of the Panamanian government, would be counter-productive to long term U.S. interests and objectives in Panama and Latin America. In the case of a popularly elected but fragile Panamanian government, the introduction of unwanted U.S. armed forces would incite opposition and insurgent elements further and might hasten rather

than prevent the government's demise. Conversely, unilateral U.S. action permitted by the Neutrality Treaty but at odds with a dictatorial regime might inadvertently strengthen the regime by diverting opposition attention from domestic issues to a common external threat.

Any threat to the canal's operation and neutrality stemming from Panamanian domestic politics presents an unsatisfactory array of high risk alternatives for U.S. decision makers. Under these circumstances, the U.S. should seek an international response to the crisis. A mandate from the OAS or UN could provide international support for U.S. military assistance, or the assignment of an international peace-keeping force. Such a force under OAS sponsorship would be capable of protecting the canal and shipping from Panamanian domestic violence without endangering a fragile democracy or strengthening the grip of a dictatorship.

A final scenario to be considered is that of Panama taking the last step in asserting its political independence and sovereignty. Devoid of the joint U.S.-Panamanian Canal Commission and the U.S. military presence after 1999, some future government might feel confident enough to complete the "nationalization" of the canal. With or without formally abrogating the Neutrality Treaty, Panama could exercise its political independence through its administration of canal operations. A government that valued its political independence more than economic realities could politicize the canal's operations through graduated toll schedules, selective enforcement of inspection regulations and other administrative

discriminatory practices. In such a way could the canal become an instrument of national power as did Nasser's Suez Canal.

Noting the example of British and French intervention in the 1956 Suez Crisis, the U.S. would be well advised to avoid the use of military force in responding to a similar crisis in Panama. Resorting to military force would most likely backfire, resulting in greater damage to the canal, U.S.-Panamanian relations and U.S. prestige than would otherwise occur. Instead, the U.S. should assert its diplomatic leadership in Latin America and world wide to pressure Panama into behaving as a responsible member of the international community.

ENDNOTES

1. The Neutrality Treaty, Article III.

2. Various amendments, conditions, reservations and understandings were contained in the Senate resolution of 16 March 1978 advising and consenting to ratification of the Neutrality Treaty. These amendments, etc., were delivered to and acknowledged by the government of Panama in the protocol exchanging the instruments of ratification on 16 June 1978. The amendments, etc., were delineated again in the Presidential proclamation of 24 September 1979. (hereafter referred to as "Senate resolution").

3. Senate resolution, Understanding (2).

4. Senate resolution, Condition (1).

5. Senate resolution, Amendment (2).

6. Senate resolution, Understanding (3).

7. The other parties to the Protocol are: Argentina, Barbados, Belize, Bolivia, Chile, China (Taiwan), Costa Rica, Denmark, Dominican Rep., Ecuador, Egypt, El Salvador, Equatorial Guinea, Finland, Fed. Rep. of Germany, Guatemala, Honduras, Israel, Jamaica, Korea, Liberia, Malawi, Netherlands, Nicaragua, Norway, Philippines, St. Vincent & the Grenadines, Saudi Arabia, Spain, Sweden, Tunisia, United Kingdom, Uruguay, Venezuela, and the Soc. Rep. of Vietnam. Listed in Treaties in Force: A List of

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in Force on January 1, 1998.

8. Department of State, Panama Canal: The New Treaties,
p. 1.

9. Lou Cannon, "Reagan Urges Review of Panama Canal Facts,"
Washington Post, 19 January 1989, p. 7.

10. Charlotte Saikowski, "Conservatives Attack Canal
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11. Circuito RPC Television, 2325 GMT 18 JAN 89, as reported
by FBIS, Latin America, 19 January 1989, p. 21.

12. "FDF Captains Reiterate Support for Noriega," Critica,
14 January 1989, p. 13, as reported by FBIS, Latin America, 18
January 1989, p. 34.

13. U.S. Congress, Senate, Committee on Foreign Relations,
Hearings to Consider the Panama Canal Treaties, p. 221.

CHAPTER IV

CONCLUSION

Permanent neutrality is a recognized legal principle that can effectively regulate international behavior. The Panama Canal Treaties of 1977 represent the logical progression of U.S.-Panamanian relations. The Neutrality Treaty is first and foremost a compromise agreement between two sovereign states, each having unique national interests and objectives. The treaty adequately protects U.S. national interests by insuring U.S. and international access to the canal. If need be, the U.S. can without Panamanian consent take unilateral action to defend the canal's operation and permanent neutrality. The neutrality regime does not vitiate Panama's sovereignty, nor does it necessarily restrict the U.S.'s freedom of action.

The range and complexity of challenges that face the Neutrality Treaty, the canal and Panama continue to grow, while the U.S.'s ability to effectively respond continues to diminish. Panamanian support is essential for the effective use of U.S. military power should the need arise. Unilateral action which includes the use of military force should only be considered after weighing the benefits, risks, and our long term interests in Latin America. In this regard, the six points suggested by Caspar Weinberger for consideration before committing U.S. combat forces are particularly appropriate. Perhaps most crucial is the imperative for clearly defined political and military objectives before using the military element of national power.

The most immediate challenge confronting the canal and the Neutrality Treaty is the corruption and abuse of power now exercised by the Panamanian government. Even if the current predicament is satisfactorily resolved as a result of the scheduled Panamanian election in May 1989, similar domestic political crisis in Panama are likely to remain the most probable threat to the canal's operation and permanent neutrality. After the withdrawal of U.S. forces in 1999, the United States will be forced to rely more heavily on the non-military elements of national power. The exercise of the political, economic and socio-psychological elements of power must reflect the loss of the deterrent value previously provided by the U.S. military presence in Panama. The U.S. should therefore attempt to divorce the canal and the Neutrality Treaty from public discussion and policy statements on U.S.-Panamanian relations. The U.S. must resist Panamanian efforts to politicize the canal by keeping domestic and international attention focused on relevant issues of responsible government in Panama. Official discussion of the canal and the Neutrality Treaty should emphasize their international character. In this regard, the U.S. should capitalize on the diplomatic potential of the protocol to the Neutrality Treaty by seeking broader international acceptance and acknowledgement of the treaty.

Lastly, U.S. policy makers must advance beyond a sentimental attachment to the canal and focus instead on long term strategic objectives in Latin America. A far sighted strategic vision can produce the consistent, non-partisan foreign policy

the United States needs in order to build the hemispheric solidarity and resolve necessary for successfully meeting our common challenges in the century ahead.

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