LEGAL STATUS OF THE AIRSPACE ABOVE THE PANAMA CANAL

by

© Felix Humberto Picardi

Licenciate in Law, National University of Panama

A Thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirement for the degree of Master of Laws

Institute of Air and Space Law
McGill University
Montreal

March 1980

To My Parents and Sisters

ABSTRACT

The fact that the two principal international waterways of the world, the Suez Canal and the Panama Canal, have for a long time been under the control of a foreign country other than the territorial state and that they have been placed under a regime of internationality, has put forward the question of the legal status of the airspace above them.

The first chapter of this Thesis attempts to place the Principle of Sovereignty in perspective by reviewing the salient features of the existing legal regime of the territory, the sea, the airspace and outer space.

The second chapter comprises an analysis of the legal status of the airspace above international straits, the Suez Canal and the Panama Canal, the latter being analyzed within the framework of the Convention of the Isthmian Canal of 1903.

Chapter Three contains an evaluation of the Panama Canal Treaty of 1977 as well as an evaluation of those treaties and agreements which have not been affected by Paragraph 1 of Article 1 of the 1977 Treaty, and also of those agreements which complement the Panama Canal Treaty of 1977, insofar as they refer to the discussion of the legal status of the airspace above the Canal.

RÉSUMÉ

Le fait que les 2 principales voies d'eau international du monde, le canal de Suez et celui de Panama, ont pendant longtemps été sous le contrôle d'un Etat étranger autre que l'Etat du territoire, et ont été placés sous un régime international, nous amène à aborder la question du statut légal de l'espace aérien situé au dessus d'eux.

Le premier chapitre de cette thèse cherche à définir le principe de la souveraineté, en analysant les caractéres particuliers du régime légal actuel du territoire, de la mer, de l'espace aérien, et de l'espace extra-atmosphérique.

Le deuxième chapitre comprend une analyse du régime légal de l'espace aérien au dessus des détroits internationaux, le Canal de Suez et celui de Panama. Ce dernier sera analysé dans le cadre de la Convention sur le Canal de l'isthme de 1903.

Le troisième chapitre contient une évaluation de l'intérêt du Traité sur le Canal de Panama de 1977, ainsi que de celui des Traités et Accords qui n'ont pas été affectés par le paragraphe 1 de l'article 1 du Traité de 1977, et aussi des Accords qui le complètent, dans la mesure où ils sont pertinent au débat sur le statut légal de l'espace aérien au dessus du Canal.

ACKNOWLEDGEMENTS

I would like to express my deep gratitude to those people whose generous cooperation enabled me to complete this dissertation.

I am indebted to the Civil Aeronautics Direction of Panama, particularly to its former Director, Ing. Juan Abad Araya, for giving me the opportunity to undertake the studies at the Institute of Air and Space Law of McGill University and for their support during my residence in Montreal.

My special words of appreciation to the Faculty members of the Institute of Air and Space Law for their guidance and general instruction; especially my deepest gratitude is for my supervisor, Professor Martin A. Bradley for his invaluable advice and his manifestations of friendship.

I am also very thankful to Dr. N. M. Matte, the Director of the Institute of Air and Space Law, and to Professor Ivan A. Vlasic, for their stimulation and teaching. My sincere gratitude to the staff of the McGill Law Library for their willingness and kindness in cooperating with me.

Last, but not least, I would like to thank Mr. Raymond Daoust for his diligence in the revision of the manuscript of the present work, and to Ms. Anna Watters who undertook the heavy task of typing this Thesis.

TABLE OF CONTENTS

INTRODUCTION

On November 18, 1903, the representatives of the governments of the United States of America and of the newly formed Republic of Panama signed at Washington, the Convention of the Isthmian Canal, whereby Panama granted the U.S. in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of a Canal.

In addition to this, Panama conferred upon the U.S. the rights, power and authority within the said Zone which the United States would possess and exercise as if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power and authority.

From the outset, the United States' interpretation of the Treaty provisions resulted in the contention that Panama ceded the territory occupied by the Canal Zone to the U.S. and consequently the full sovereignty over it. In contrast to this, Panama has always replied that its intention never was to cede or detach any part of the territory on behalf of the United States nor to relinquish its sovereign rights over the said territory.

Throughout the years, these two opposing views have been the source of permanent conflict and disagreement between the two countries, and although in 1936 and in 1955 the United

States and Panama concluded two treaties amending the 1903 Convention, the point of conflict remained unaltered. As a result, the discontent and indignation of the Panamanians, who regarded the 1903 Treaty as a permanent wound to the national pride, augmented in intensity and ended in the violent manifestations of January of 1964 where the death toll was 23 Panamanians and 4 U.S. soldiers.

The aftermath of the 1964 riots was the temporary breaking of diplomatic relations between Panama and the United States and the posterior issuance of a Joint Declaration whereby the two countries committed themselves to workout a new agreement whereby Panama's aspirations were to be recognized as well as the interests of the two nations in accordance with the principles and purposes of the United Nations.

After 13 years of negotiations with some periods of stagnation, Panama and the United States signed a new Treaty in Washington on September 7, 1977 whereby a new relationship was established.

If we apply the principle which states that the airspace is an appurtenance of the subjacent territory, naturally the state of affairs referred to above must have had its repercussions on the situation of the airspace above the Canal. Accordingly, the purpose of this dissertation is the analysis and evaluation of the Panama - United States relationship pertaining to the Panama Canal and its implications on the legal status of the airspace above the Canal, all this in the light of the existing rules and principles of international law.

Chapter I

THE PRINCIPLE OF SOVEREIGNTY

Section 1: The Historical Evolution of the Sovereignty Principle in International Law

With the publication in 1577 of his famous book "De La Republique" Jean Bodin introduced the concept of sovereignty into the range of studies of political science. Prior to Bodin at the end of the Middle Ages, the expression souverain, which has its origin in the latin superanus, was used in France to refer to an authority either political or otherwise which did not have an equal.(1) In this way, the highest courts in France were named Cours Souveraines.(2)

Nevertheless Bodin put new meaning into the old notion. As an earnest apologist and supporter of the monarchical absolutism, he defined sovereignty as "the absolute and perpetual power within a State".(3) Bodin considered that nothing could limit the paramount power of the sovereign within the State. The monarch was justly bound by "the Commandments of God and the Law of Nature";(4) therefore he was above the constitution and the positive law but, not with regard to contracts, since their obligatory character was based on the Law of Nature. Hence a contract should oblige the monarch.(5)

Most of the political writers of the sixteenth century accepted the ideas of Bodin; nonetheless, they estimated that the constitution and the positive law could impose limits to the power of the sovereign.(6)

In contrast to this, Hobbes in the seventeenth century declared that the power of the monarch was unlimited, and that such power embraced even religion. Pufendorf contested Hobbes' statement arguing that sovereignty did not imply omnipotence; therefore, it could be limited constitutionally. Notwithstanding, all these divergent views regarding the content of the sovereignty concept, the authors of these two centuries contended that sovereignty is indivisible.(7)

In the eighteenth century, the Westphalian Peace raised the problem of the status of those states whose monarchs were dependent upon other monarchs in various aspects of the exercise of their government prerogatives. This situation forced the writers of that period to recognize "a distinction between an absolute, perfect, full sovereignty, on the one hand, and on the other, a relative, imperfect, not full or half sovereignty."(8)

Another fact which reinforced the necessity of this distinction was the transformation of the United States of America into a Federal State. However, the theory of the divisibility of sovereignty did not receive a world wide recognition in the eighteenth century. In fact, Rousseau in his work, "Contrat Social", maintained the indivisibility of sovereignty.

The polemic about the divisibility or indivisibility of sovereignty continued in the nineteenth century, with followers and supporters on both sides. Undoubtedly, the appearance of new federal states (Switzerland, Germany), the Civil War in the

United States, and also the fact of the existence of semi-independent states gave great support to the thesis which advocated the divisibility of sovereignty.(9)

In the nineteenth century the debate concerning sovereignty was focused on the issue of whether it could be divisible or not but in the twentieth century the out break of two world wide conflagrations brought significant changes within the international community. As a result, International Law experienced a rapid development, as did various international organizations. All these events have contributed to an increasing interdependence among the members of the society of nations who accepted the rules of International Law. It follows that the idea of sovereignty in its traditional sense seems not to be in accordance with the present state of affairs.

As Oppenheim explains:

> "It is being increasingly realized that the progress in International Law, the maintenance of international peace and, with it, of independent national States, are in the long run conditioned by a partial surrender of their sovereignty so as to render possible, within a limited sphere, the process of international legislation and, within a necessarily limited sphere, the securing of the rule of law as ascertained by international tribunals endowed with obligatory jurisdiction." (10)

In the same way Schwarzenberger regards sovereignty as a relative concept:

> "In fact, International Law assists in a number of ways in making possible limitations of sovereignty. Rules of International customary law, general principles of law recognized by civilized nations and, above all, treaties impose far reaching limitations on the sovereignty of States. In a system of interrelated legal principles, sovereignty is necessarily a relative concept." (11)

Section 2: Sovereignty Over the Territory

Every state has the quality of sovereignty. Therefore, the state can exercise a series of powers and prerogatives over any area which is part of its territory, to the exclusion of any other state or power. This means that the state is independent in relation to the other members of the International Community. It follows that independence has two manifestations: in its external manifestation, independence is the freedom of the state to have diplomatic relations with other states; in its internal manifestation, independence is the freedom of the state to apply its laws to the persons (nationals and non-nationals) and things which are within its territory. This is what Oppenheim calls the "imperium" of the state within its borders.(12)

According to Professor Huber in his award in the Island of Palmas:

> "Sovereignty in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state. The development of the national

> organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations." (13)

In the same vein, the World Court emphasised in the Corfu Channel (Merits) Case (1949):

> "between independent States, respect for territorial sovereignty is an essential foundation of international relations."(14)

Nevertheless, it must be kept in mind that sovereignty is not an absolute concept since it can undergo certain limitations coming from different sources. As Starke, An Introduction to International Law (15th ed., 1963) says:

> "....the sovereignty of a State means the residuum of power which possesses within the confines laid down by international law... In the practical sense, sovereignty is also largely a matter of degree. Some States enjoy more power and independence than other States. This leads to the familiar distinction between independent or sovereign States, and non independent or non-sovereign States or entities, for example, Protectorates and colonies. Even here it is difficult to draw a line as although a state may have accepted important restrictions on its liberty of action, in other respects it may enjoy the widest possible freedom. "Sovereignty" is therefore a term of art rather than a legal expression capable of precise definition." (15)

In order to insure that the existing disparities among the members of the International Community do not become a source of injustice, the principle of equality of states has served to neutralize, up to a certain point, the danger that the size and power of a state could mean for another state. Only on the basis of equality can the society of nations succeed and the co-existence of sovereign states be possible. Thus, the Permanent Court of Arbitration has expressed that "international law and justice are based upon the principle of equality between states." (16)

In September 1964, the United Nations Special Committee on Principles of International Law met in Mexico City and adopted unanimously a text concerning friendly relations and co-operation among States:

"A. The Points of Consensus:

1. All States enjoy sovereign equality. As subjects of international law they have equal rights and duties.

2. In particular, sovereign equality includes the following elements:

   (a) States are juridically equal

   (b) Each State enjoys the rights inherent in full sovereignty

   (c) Each has the duty to respect the personality of other States

   (d) The territorial integrity and political independence of the State are inviolable

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems.

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States". (17)

....

"Equality is limited, however by the right of veto enjoyed by the five great powers in matters of substance." (18)

Section 3: Sovereignty Over the Sea

From the period of the Roman Empire to the first half of the Middle Ages, navigation over the sea was free to everyone. Thus Ulpian expressed that; "the sea is open to everybody by nature;" in the same way Celsus considered that; "the sea, like the air, is common to all mankind."(19)

However, this situation started to change in the second half of the Middle Ages when the first claims of sovereignty over cetain parts of the sea were put forward by the maritime powers of that epoch. Hence,

"the Republic of Venice, was recognised as sovereign over the Adriatic Sea, and the Republic of Genoa as sovereign of the Ligurian Sea. Portugal claimed sovereignty over the whole of the Indian Ocean and

> of the Atlantic South of Morocco, and Spain over the Pacific and the Gulf of Mexico, both basing their claims on two Papal Bulls promulgated by Alexander VI in 1493, which divided the New World between these Powers. Sweden and Denmark claimed sovereignty over the Baltic and Great Britain over the Narrow Seas, the North Sea and the Atlantic from the North Cape to Cape Finisterre." (20)

The above mentioned claims were effectively exercised by those countries through ceremonials which required certain behaviour to be observed by a foreign vessel while navigating over the waters under the sovereignty of such a state; for example, "to honour its flag as a symbol of recognition of its sovereignty." (21) In addition to these ceremonials, the coastal states also required the payment of tolls from foreign vessels, the interdiction of fisheries to foreigners and the control or even the prohibition of navigation of foreign ships, as a way to assert their sovereignty over those portions of the sea.

After the discovery of America, Spain and Portugal intended to monopolize the navigation over the Atlantic and the Pacific Oceans, prohibiting any foreign vessel from navigating in these areas. As a result of Drake's voyage to the Pacific in 1580, Spain lodged a complaint with Queen Elizabeth. The Queen answered that:

> "vessels of all nations could navigate on the Pacific, since the use of the sea and the air

> is common to all, and that no title to the ocean can belong to any nation, since neither nature nor regard for the public use permits any possession of the ocean." (22)

This statement was the antecedent of a growing trend pointing towards the freedom of the high seas.

In 1609, Hugo Grotius published his treatise Mare Liberum. In this he maintained, "that the sea cannot be State property, because it cannot really be taken into possession through occupation, and that consequently the sea is by nature free from the sovereignty of any state." (23) Soon Grotius's ideas were attacked by many writers who clung to the notion of closed seas subject to the sovereignty of the coastal states, as in the case of Selden in his book Mare Clausum.

All this delayed the immediate adoption of the principle of freedom of the high seas, but in the eighteenth century, the discussion around this topic was resumed. It was propounded that there should be a distinction between the maritime belt where the state enjoyed full sovereignty and the high seas where no sovereign acts were allowed. "In a work published in 1702 the Dutch jurist Bynkershoek propounded the doctrine that the power of the territorial sovereign extended to vessels within the range of cannon mounted on the shore." (24)

This doctrine was followed by those of other authors like Vattel, G.F. de Martens and Azuni. Nonetheless, the cannon-shot rule proved not to be a definite criterion to determine the breadth of the marginal sea. Thus,

> "in 1782 the Italian writer Galiani proposed three miles, or one marine league, and the diplomatic birth of the three-mile limit, appears to have been The United States' note to Britain and France of 8th November 1793, in which the limit was employed for purposes of neutrality. During and after the Napoleonic Wars, the British and American prize courts translated the cannon-shot rule into the three-mile rule." (25)

By the end of the nineteenth century, the principle of freedom of the high seas as well as the principle of sovereignty of the coastal state over its marginal waters were recognized in theory and practice.

These principles have become a rule of customary international law which have been sanctioned by various conventions,(26) enjoying in this way a wide acceptance among the members of the international community. No unanimous agreement, however, has been reached with regard to the breadth that the territorial sea must have; hence, many states have extended unilaterally their territorial sea beyond the original three mile limit, or have ascertained jurisdiction and sometimes even sovereignty over certain areas of the high seas justifying their actions on the grounds of self-defense, national security, and the protection of fishing rights.

The consequences of these claims and actions will be examined in greater depth later.(27)

Section 4: Sovereignty over the Airspace

A. In Antiquity

The first assertions of national sovereignty over the airspace can be found in Roman times, where the rights of the land owner in relation to the space above his land were recognized, regulated and protected by the state. This regulation and recognition by the state presupposes the possession of a superior power over the airspace above its territory in order to provide a basis for protection of the private enjoyment of such rights.[28] Throughout the following centuries, evidence of the existence of state's rights over the space above the land is revealed in the work of the Glossators,[29] in Grotius book: De jure belli ac pacis,[30] in the English Common law,[31] in several Codes adopted in the nineteenth century[32] and in judicial decisions in Great Britain and United States.[33]

B. The Paris Conference 1910

It wasn't until the beginning of this century that the modern principle of state sovereignty in airspace began to acquire its present features, indeed, during this period prominent scholars[34] propounded the first theories[35] that attempted to explain the rights that states were entitled to exercise over the space above their territories. The above mentioned theories served as a basis for the leading positions maintained at the International Air Navigation Conference that took place in Paris

in 1910.[36] Although this conference has been considered a diplomatic failure, tacit agreement was shown among the states there represented in relation to the full sovereignty that every state has in the airspace over its national lands and waters as part of its territory.[37] Moreover, in the years after the conference most of the participants enacted national legislations[38] regulating the right to fly above their territories.

Another factor that strongly contributed to the adoption of the principle of state sovereignty in airspace was the outbreak of World War I, since the use of aircraft as a war weapon demonstrated the great menace that such usage implied for the national security of states.[39]

C. The Paris Convention 1919

After the war ended, the Convention for the Regulation of Aerial Navigation was agreed in Paris on 13 October 1919. In its Article 1, the Convention adopted the already existing rule of international law, that is to say, the complete and exclusive sovereignty of the state over the airspace above its territory.[40] Article 2 of the Convention sought the attenuation of this principle through the recognition of the freedom of innocent passage in time of peace to aircraft of the contracting parties,[41] but maintaining the sovereignty principle with regard to third parties (i.e. ex enemies). Eventually this freedom was abandoned by the states and replaced by the right of overflight which was subject to prior authorization.[42]

D. The Ibero-American Convention 1926

In the Fifth Conference of the Panamerican Union, which took place in Santiago, Chile (1923), the American States expressed their dissatisfaction in relation to certain discriminatory practices contained in the Paris Convention.(43) As a consequence, the Spanish governement convened a Diplomatic Conference which met in Madrid between the 25th and the 30th of October 1926, resulting in the signing of a convention which became known as "The Madrid (Ibero-American) Convention". The text of the Convention was almost identical to that of the Paris Convention; hence, Article 1 merely reiterates the principle of sovereignty in national airspace which had already been declared in Article 1 of the Paris Convention.(44) Since only seven states ratified this convention it became a dead letter.

E. The Pan American Convention 1928

Another consequence of the Fifth Panamerican Conference of 1923 was the creation of the Inter-American Commercial Aviation Commission which was given the responsibility of drafting a convention on commercial aviation following the outlines of the United States' aviation policy.(45) In May 2, 1927, the final draft was drawn up in Washington and finally signed by 21 states(46) at the Sixth International Conference of American States held at Havana between January and February of 1928. Like its predecessors, the Panamerican Convention on Commerical Aviation (Havana Convention) adopted as its leading principle the sovereignty of the state in the airspace above its territory, although the wording

of Article 1 is slightly different from that of the other two conventions.(47)

However, because of the insistence of Americans in maintaining their foreign policy view's in commercial aviation, there continued to be an unsatisfactory state of affairs until their fears were allayed. As Louis Cassidy explains:

> "The reasons for the unhappy decisions which resulted in the Madrid Convention of 1926 and the Havana Convention of 1928 when the Paris Convention of 1919 was available as to the United States may be said to be a desire to establish a hegemony in the American Continents in matters concerning aerial navigation. Any fear concerning the protection of the Panama Canal is dispelled by Article 3 of the Paris Convention." (48)

In fact, the United States demonstrated its tenacity in relation to the maintenance of the security and neutrality of the Panama Canal Zone at Havana, when it submitted an amendment to Article 31 of the project which was accepted. Accordingly, the last paragraph of this Article reads as follows:

> "Nothing contained in this Convention shall affect the rights and obligations established by existing treaties." (49)

Here it is clear that the objective pursued by the United States with the amendment was to safeguard its interests in the Panama Canal Zone.

Nevertheless, the endeavors of the American States for the development of commercial aviation continued through the

work of the Pan American Conferences but their focus was limited to the American Continent.

F. The Chicago Convention 1944

As a consequence of the outbreak of World War 11, the expansion and development of international air transport was delayed but before the hostilities ended, the first steps toward the re-organization of the affairs of post-war air transport were undertaken by President Roosevelt who envisaged the necessity of organizing civil aviation on a world wide basis instead of on a regional footing. He therefore convened a Conference at Chicago in 1944 which was attended by fifty two states.(50)

The outcome of this conference was the formulation of the Convention on International Civil Aviation, better known as the Chicago Convention, which superseded the Paris and Havana Conventions when it came into force on April 4th, 1947.(51)

Following the precedent established in the foregoing conventions (Paris, Madrid and Havana)(52) the Chicago Convention recognised in its Article 1 that "every State has complete and exclusive sovereignty over the airspace above its territory." This recognition signified the consolidation of an already existing rule of international law which has been sanctioned by the custom and three conventions, thus ending the controversy and clearing the doubts about the legal status of the air space above national territories.

Notwithstanding, the United States, imbued with a liberal philosophy, strove with tenacity at Chicago trying to limit the principle of air sovereignty by the principle of freedom of air traffic.(53) The result of these efforts was the conclusion of two agreements outside the Convention: The International Air Transport Agreement or the Fifth Freedom Agreement,(54) and the International Air Services Transit Agreement or the Two Freedoms Agreement.(55) The former did not receive enough support from the States present at the Conference. Furthermore, the United States, which had been the originator of this agreement, withdrew from it afterwards. On the other hand, the latter agreement has been ratified by many states, showing the existence of a general consensus regarding the concession of transit rights.

The same cannot be said, however, with regard to traffic rights. As a consequence, the concession of traffic rights to scheduled international air services is subject to special permission or other authorisation of the state where these services are intended to take place.(56) In addition, they have to be rendered in accordance with the terms of such permission or authorisation.(57) Truly, the requirement of this formality constitutes a re-assertion of the principle of air sovereignty as recognised in Article 1 of the Convention.

Similarly, Article 5 reaffirms the right of every state to control and regulate the flight of foreign aircraft over the

airspace above its territory. It is true that this Article in its first paragraph, gives the right to all aircraft not engaged in scheduled international air services to make flights over the territory of other states and to make stops for non-traffic purposes without the necessity of obtaining prior permission. Nonetheless, the overflown state reserves its right to require landing and also to prescribe the route which an aircraft has to follow under certain conditions.(58) Moreover, the above mentioned rights can only be enjoyed by private aircraft belonging to a state which is party to the Chicago Convention.(59)

On the other hand, paragraph two of Article 5 contemplates a different situation; that is, the carriage of passengers and mail for remuneration or hire. Here the authority of the state to regulate and to set the conditions under which such services have to be rendered is even wider. Consequently, the exercise of these faculties could embrace the condition of prior permission if the overflown state so desired.(60) Despite the fact that such practice would imply an open violation of this Article, a large number of states have adopted it. Most notably, ICAO Assembly has held that special permission or other authorisation is required for non-scheduled international air services for the purposes of taking on or discharging passengers, cargo or mail in the territory of a contracting state.(61)

It is apparent that state practice coupled with ICAO decisions have established that prior authorisation is a prerequisite for the operation of non-scheduled air services, reaffirming in this way the almost absolute power that every state has over the airspace above its territory.

Further in the Convention other provisions merely reiterate the exclusiveness and completeness of the competence of the state over any aircraft flying into its airspace; for example, the prohibition of Cabotage (Art. 7), control of pilotless flight (Art. 8), the establishment of prohibited areas (Art. 9), rules of the air (Art. 12), designation of routes and airports (Art. 68), etc. All these articles require every aircraft flying over foreign territory to comply with the national laws and regulations of the overflown state.

1. Territory

As a complement to Article 1, Article 2 fixes the geographical scope in which the sovereignty has to be exercised. The definition provided, however, only marks the lateral limits of the territory, since no further definition of the term airspace is given in the Convention, thus leaving the matter of the upper limit of territorial sovereignty unresolved and subject to some controversy.(62)

Nevertheless, analyzing this problem within its geophysical context(63) the term airspace denotes the area where air is to be found, that is to say, the atmospheric layer. In fact, in the

French and Italian texts of the Paris Convention the terms "espace atmosphérique" and "spazio atmosferico" were used, while the English text used the term "airspace", but it is clear that the drafters of the Paris Convention were referring to the space where the air is present, in other words, to the atmosphere.(64)

Thus, if the territory of a state is analysed under its tridimensional aspect, it assumes the shape of an inverted cone; hence, the determination of the sides of this cone is made by drawing perpendicular lines from the center of the earth upwards through the frontiers of the state including also its territorial waters.(65)

Indeed, it is within this frontier that the state is allowed to exercise its jurisdictional powers, having competence over everything which occurs in its airspace.(66) However, the capacity of the state to exercise jurisdiction is not limited to its territory, since every state has quasiterritorial jurisdiction over its own aircraft while flying over the high seas(67) or over terra nullius. Similarly, every state retains personal jurisdiction over an aircraft bearing its nationality while flying in foreign territory.(68)

2. Territorial Waters

Besides the land, Article 2 of the Chicago Convention also recognizes the territorial waters adjacent thereto as part of the territory of the state. Therefore, every state is entitled to

exercise full sovereignty over the airspace above its land territory as well as over the airspace above its territorial waters.(69)

The breadth of the territorial sea, however, is a matter which has been the object of many controversies among states,(70) since no definite rule has been set out in relation to the width of the territorial waters. Originally the extension of the territorial sea had been fixed to a distance of three miles from the coast, because that was the range of the coast batteries.(71 The "raison d'être" of this rule was the principle of protection by which every riparian state should have a buffer zone to protect itself against the possible attacks of its enemies.(72) Besides the concern for national security, states also began to show concern for the protection and exploitation of the natural resources located in the sea areas adjacent to their coasts in the belief that their rights should go beyond the three miles limit in order to assure for their people the enjoyment of the wealth contained in the seas.

The first steps in this sense were given by the United States with the Truman Proclamation of 1945(73) through which the United States claimed jurisdictional rights and control over the natural resources of the subsoil and seabed of the continental shelf to a depth of 200 metres, but without affecting the status of the waters above it and the right of freedom of navigation. Subsequently, a torrent of expansionist demands took place, being for the most part claims asserting rights not only

on the continental shelf but also in the superjacent waters out to a distance of 200 miles. Among the most important claims were those put forward by the Latin American countries.(74) For instance, in 1946, Panama enacted a new Constitution which embodied the continental shelf as well as the airspace above it as part of Panamanian Territory.(75) Further, in 1967, by the Law No.31, Panama extended its territorial sea to a distance of 200 miles, asserting sovereignty rights over the sea adjacent to Panamanian coasts as well as over its airspace.(76)

Another example worth mentioning is the Peruvian Civil Aeronautics Law of November of 1965; which declared Peru's exclusive sovereignty over the airspace that covers its territory and jurisdictional waters within 200 miles.(77)

In order to strengthen their position as apologists of the 200 mile limit of the territorial sea, as opposed to the position held by the traditional maritime powers who always have favoured a much more reduced limit of the territorial waters, the Latin American States issued a series of "Declarations" in which they expressed their views in relation to the Territorial Sea, Continental Shelf, High Seas, and other issues pertaining to the Law of the Sea.

In the first place, the Declaration on the Maritime Zone was issued at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago, Chile, on August 18, 1952, it was signed by

Chile, Equador and Peru and acceded to later by Costa Rica.[78] Here the aforementioned states "proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of the sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast."[79] The justification for this policy was the duty and the right of the coastal states to assure to their inhabitants the enjoyment and the profitable utilization of the national resources of their maritime environment.

Later, in the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific which took place in Lima on December 4, 1954 an "Agreement Supplementary to the Declaration of sovereignty over the Maritime Zone of two hundred miles " was signed by Chile,Equador and Peru. Its purpose was to serve as a complement to the prior declaration.[80]

In addition to this, on May 8, 1970, a group of Latin American States[81] assembled at the Montevideo Meeting on the Law of the Sea. The outcome of this meeting was the issuance of the Motevideo Declaration on the Law of the Sea in which the States represented reaffirmed their legitimate right "to conserve, develop and exploit the natural resources of the maritime areas adjacent to their coast, its soil and its subsoil". Therefore,they extended their sovereignty and jurisdiction

over the sea adjacent to their coast to a distance of 200 nautical miles, but "without prejudice to freedom of navigation by ships and overflying aircraft of any flag."(82) Similarly the Lima Declaration of August 8, 1970, almost restated the same principle contained in the Montevideo Declaration.(83)

Afterwards, in the Declaration of Santo Domingo of June 7, 1972, the posture of the Latin American countries towards the Law of the Sea underwent some variations, since a limit of 12 miles for the territorial sea was propounded and the concept of Patrimonial Sea was introduced. Accordingly, the latter "defined resources within the 200 mile zone as an inheritance acquired from past generations and therefore not properly the subject of a negotiated compromise." (84)

In fact the above mentioned declarations have served as guidelines to the Latin American States in their participation in the debates sustained at the different sessions of the Third Conference on the Law of the Sea,(85) in which the maritime powers due to their fishing capability and advanced technology have strongly opposed the claims put forward by the Latin American States and other under-developed countries.

Nevertheless, an apparent compromise has been reached with the conclusion of the Informal Composite Negotiating Text at the 1977 New York Session, in which certain issues that have been the subject of a long controversy have been apparently settled, such as the breadth of the territorial sea which has been fixed at a distance of 12 miles (Art.3), the Contiguous Zone (Art.33), the rights, jurisdiction and duties of the coastal state in the Exclusive Economic Zone (Art.56), the rights of the coastal state over the continental shelf (Art.77), superjacent waters and airspace (Art.78), and freedom of the high seas, among others.

It is worth pointing out that the concept of the Exclusive Economic Zone coupled with the breadth of the territorial sea meet to a great extent the expectations of the Latin American States expressed in the Declaration of Santo Domingo, since the resemblance between the Patrimonial Sea and the Exclusive Economic Zone is quite great. At the same time, the fears of the Maritime Powers in relation to the erosion of the principle of freedom of the high seas are immensely soothed since the freedom of passage and the freedom of overflight over the airspace above the Exclusive Economic Zone or Patrimonial Sea are guaranteed.(86)

Notwithstanding, the I.C.N.T. has not been formally approved by the members of the international community. Hence, a group of nine countries,(87) eight of which are not

parties to the Convention on the Territorial Sea and Continental Shelf still maintain their claim to 200 miles of territorial sea, asserting, therefore, sovereign rights over the waters as well as over the airspace above, and challenging in this way the principle of freedom of the high seas.

G. ADIZ

Although the great powers appear to be the defenders of the freedom of the high seas they have not hesitated to seize or to claim jurisdiction over substantial portions of this milieu and its airspace, pleading the national security interest or other military reasons.(88) Thus the United States adopted, in December 1950, a number of administrative regulations which delineated certain specific areas over the sea adjacent to United States coasts as Air Defence Identification Zones, better known as ADIZ.(89) These regulations required that every aircraft heading to the United States must furnish its flight plans with an appropriate aeronautical facility, and the aircraft commander is also obligated to notify the position of the aircraft either when it enters the ADIZ or when the aircraft, "is not less than one hour and not more than two hours cruising distance via the most direct route from the United States." (90)

No state has presently contested the lawfulness of these measures. The United States has alleged that these

regulations by no means constitute an encroachment on the principle of freedom of the high seas, since the obligation to effect the reports or to notify the position of the aircraft has to be fulfilled only if the aircraft is bound for the United States. Hence, it can be assumed that any airplane which is not bound for the United States can enter into these areas without having to furnish any requirement or requisite.(91)

H. CADIZ

Like the United States Canada promulgated analogous regulations five months later, denominating them CADIZ (Canadian Air Defense Identification Zones). Similar to ADIZ, the purpose of CADIZ is "the interest of national security as appears in paragraph 1 and 3 of the information circular."(92) Certain dissimilarities, however, can be noted between these two groups of regulations. For instance, the dimensions of the U.S. ADIZ are larger than those of CADIZ.(93) While the Canadian regulations determine an altitude limitation, its counterparts do not establish such a rule.(94) However, the most outstanding difference between these two groups of measures is that under ADIZ the United States only has jurisdiction over those aircraft which enter these zones and are destined for the United States, while Canada acquires jurisdiction over any aircraft as soon as it breaks through the CADIZ no matter where it is going.

Admittedly, the Canadian regulations are more rigid than those of the Americans, although the former are not as wide as the latter.(95) Nevertheless, they far exceed the limits of the Canadian territorial waters as well as its contiguous zone, where the implementation of jurisdictional prerogatives have a more restrictive character. Consequently this absolute power to control the flight of any aircraft within these zones could be regarded as an encroachment on the principle of freedom of the high seas.

I. The Airspace Above the High Seas

The principle of freedom to fly over the high seas was expressly contemplated neither in the Paris Convention nor in the Madrid and Havana Conventions. Similarly the Chicago Convention does not provide any norm where this principle is asserted.

Notwithstanding, the Aeronautical Commission of the Peace Conference (1919) stated that:

> "It is only where the column of air lies over res nullius or res communis, like the sea, that the air becomes free...."

and that:

> "the airspace above the sea is as free as the sea itself." (96)
>
> .....
>
> "During the discussion in the International Commission for Air Navigation at its extra-ordinary session of June 1929, the Commission

> recognised that flight over the sea, outside territorial waters, is free." (97)

Apparently, the representatives of the different states gathered at Chicago took for granted that the principle of freedom of flight over the high seas was implicitly contemplated in Article 12 of the Convention, since this Article confers upon ICAO the power to regulate the flight and maneuvers of aircraft over the high seas and at the same time to make such rules binding upon contracting states.(98)

In illustration of this, Article 12 states: "Over the high seas, the rules in force shall be those established under this Convention." The rules which the aircraft of a contracting party must comply with, while flying over the high seas are those embodied in Annex 2 to the Chicago Convention (Rules of the Air); hence, the foreword of the Annex states:

> "Over the high seas....these rules apply without exception, signifying that the contracting parties should promulgate its national regulations in accordance with the provisions of this Annex and may not notify ICAO of any departures therefrom" (99)

As the former Professor Eugene Pepin explains:

> "Annex 2 contains some general rules which are of a mandatory nature only in the airspace above the high seas but which could equally well apply provided they do not conflict with the rules enacted by the subjacent state - in the airspace above the land and the territorial sea. It also contains some specific rules concerning operations

> by aircraft on the surface of the water, including the high seas. These rules are designed to prevent collisions with other aircraft or with ships and the Annex expressly extends to aircraft the International Regulations for Preventing Collisions at sea adopted by the International Conference on the Safety of Life at Sea (1948). Finally, an appendix specifies the lights to be displayed by aircraft on the surface of the water." (100)

If it is true that Aerial Conventions (Paris, Madrid, Havana and Chicago) have not expressly formulated the principle of freedom to fly over the high seas in any of their provisions; however, such a principle has been expressly declared in Article 2 of the Convention on the High Seas of April 29, 1958.(101) In other provisions the Convention refers either to aircraft or to airspace over the high seas as, for example, in the Article related to Piracy (Articles 15 to 22) and the right of hot pursuit (Article 23).(102)

Section 5: Legal Status of Outer Space in International Law

As we mentioned earlier(103) the Chicago Convention did not set the upper boundary of national airspace thus leaving this problem without solution. However, with the launching of Sputnik I on October 4, 1957(104) the expectations of outstanding scholars in regard to the legal problems which could arise from the placement of satellites or other flight instrumentalities in outer space were confirmed. As John Cobb Cooper stated in

address given in 1951:

> "High altitude rocket flights have reopened an old question: How far upward in space does the territory of the state extend? This is a simple question to state, but a very difficult question to analyze, and perhaps even now an impossible question to answer. Nevertheless, it must be considered." (105)

Since 1957, a large number of satellites have been put into orbit without arousing any objections on the part of those states which are overflown by these satellites. This has not been the case, however, in the high altitude flights performed by aircraft with the objective of carrying out reconnaissance activities over the territory of another state.(106) Nevertheless, the need to fix a boundary between airspace and outer space(107) has been expressed by a considerable number of scholars who have propounded theories which attempt to give a solution to the problem.(108) At the governmental level, states have adopted different positions towards this problem and these can be divided into three groups(109) or categories. The first group of countries considers that a delimitation or definition of outer space is urgent. The second group estimates that this problem does not demand an immediate solution, but that endeavours should be made to reach an agreement in the not too distant future. The third category embraces those countries which believe that such a definition is premature at the present stage of development of outer space activities.(110)

Despite the fact of the evident need to delineate the sphere of application of each system, no agreement of world wide character has been achieved yet, among jurists or states.

Referring to The U.N. Committee on Peacefule Uses of Outer Space's role in the problem of delimitation of outer space, Robert Henry Farris states:

> "Because it was a political question and the exploration of outer space a competition between the two super powers, the Ad Hoc Committee on Peaceful Uses of Outer Space (COPUOS), established by the United Nations General Assembly in 1958, found that the task of delimiting boundaries was not one of urgency. In its report to the General Assembly, the Committee stated that"....the determination of precise limits for airspace and outer space did not present a legal problem calling for priotiry consideration at this moment." (111)

This lack of agreement as well as the position of COPUOS toward this problem has been reflected in the Space Treaty of 1967, since the treaty does not define in any of its articles the specific height at which space should start. On the other hand, some authors consider that this boundary is tacitly established in the Space Treaty. However, the wording of the principal articles of the Treaty does not appear to reveal any allusion to this matter. On the contrary, the Space Treaty is plagued with ambiguous phrases, such as "for the benefit and in the interest of all countries", "shall be free for exploration and use", "in accordance with inter-

national law", and "including the Charter of the United Nations". All of these phrases have produced controversial interpretations and disagreements among states and among scholars.

This ambiguity and lack of precision as well as the many gaps found in the Space Treaty, have served as a common basis of discussion for seven Equatorial States[112] who met in a Conference at Bogota in December of 1976 and who adopted a Declaration in which they claim sovereignty over the segments of the Geostationary Orbit at a height of 36,000 Km as part of their territory and hence, subject to their sovereignty.[113]

The legal validity of this claim has been contested within the framework of the existing rules of international space law; specifically Article II of the Space Treaty, which expressly bans any act of national appropriation by claim of sovereignty in outer space and other celestial bodies.[114]

Since the Space Treaty, has not resolved the problem of these limits the Equatorial States could argue that such a limit should be established at the height where the Geostationary Orbit is located. Actually, the Equatorial States aduce that when the Space Treaty was drawn up the knowledge of space technology was in possession of the great space powers, and so they could develop a legal framework which would protect their interests in a covert way. As a result, the boundaries affair as well as the remote sensing affair[115] and the direct broadcast sattelites affair[116] remain unsettled.

In spite of the fact that the Space Treaty does not define the term outer space, in 1968 at the Buenos Aires Conference of the International Law Association an international legal body gave, for the first time, an interpretation of the term "Outer Space" as used in the Outer Space Treaty of 1967. This was done through the adoption of a resolution which in its second part reads as follows:

> "The I.L.A. considers that the term "Outer Space" as used in the Outer Space Treaty of 1967, includes all space up and above the lowest perigee achieved by the 27 January, 1967, when the Treaty was opened for signature, by any satellites put into orbit, without prejudice to the question whether it may or may not later be determined to include any part of space below such perigee." (117)

According to this resolution the reign of outer space should be constituted by the space above the lower perigee which could be even lower if the current level of the technological development permitted so, but it would not be higher than the present.

It is clear that the problem of delimitation and definition of outer space is demanding a prompt solution, since a longer procrastination in this matter could produce a chaotic situation, something similar to the Law of the Sea.(118) Nevertheless, in the last few years, a trend among the members of the United Nations Legal Sub-Committee is pointing towards a prompt solution of the boundary problem.(119)

FOOTNOTES

1. See L. Oppenheim, International Law, ed. by H. Lauterpacht, eighth edition, 1967, Vol. 1, p.120.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid, p.121
7. ibid.
8. Ibid.
9. Ibid, p.122
10. Ibid, p.123
11. Georg Schwarzenberger, International Law, London, Stevens and Sons Limited, Third Edition, 1957, Vol.1, p.121.
12. See L. Oppenheim, op cit, p.123.
13. J. G. Castel, International Law (Chiefly as Interpreted and Applied in Canada), University of Toronto Press, First Edition, 1965, p.78.
14. Schwarzenberger, op cit, p.115.
15. Castel, op cit, p.78.
16. Schwarzenberger, op cit, p.125.
17. Castel, op cit, p.89.
18. Ibid.
19. Oppenheim, op cit, p.582.
20. Ibid, p.583.
21. Ibid, p.584
22. Ibid.
23. Ibid, p.585
24. Ian Brownlie, Principles of Public International Law, Clarendon Press. Oxford, Second Edition 1973, Reprinted 1977, p.185.

25. Ibid.

26. See Article 2 of the Convention on the High Seas of April 29, 1958. See also Article 1 of the Convention on Fishing and Conservation of the Living Resources of the High Seas.

27. See infra p. 23.

28. In this sense Professor Cooper has expressed that: "The evidence became clear that even Rome, as a State, had created and regulated rights of the land owner in space above the earth's surface, thus asserting national sovereignty, for otherwise such private rights could not have existed". See John Cobb Cooper, Roman Law and the Maxim "Cujus est solum" in International Law, Explorations in Aerospace Law, ed., by Ivan A. Vlasic, Montreal, McGill University Press, 1968, (Reprinted from Institute of International Law, McGill University, Publication No.1, 1952) p.55.

29. Ibid, p.74.

30. Ibid, p.79.

31. Ibid, p.83.

32. Ibid. p.88.

33. Ibid, p.93

34. Fauchille, Westlake and Nys among others.

35. The four main theories were:
(1) The "Complete Sovereignty" Theory,
(2) The "Free Air" Theory,
(3) The "Innocent Passage" Theory,
(4) The "Territorial Air" or "Navigable Airspace" Theory.
In relation with these Theories, see Shawcross and Beaumont, Air Law, (3rd ed. Vol.1, 1966) p.189 and McNair, The Law of the Air, pp.4-5, (1964).

36. See John Cobb Cooper, The International Air Navigation Conference, Paris 1910, op cit, p.105.

37. Ibid. p.123.

38. "On June 2, 1911, the British Government adopted the Aerial Navigation Act. This was a statutory declaration of a right of sovereign control and also a right to deal separately with foreign and national aircraft." See John Cobb Cooper, State Sovereignty in Space: Developments 1910 to 1914, op cit, p.127.

39. "The United States, by a proclamation signed by President Woodrow Wilson on November 13, 1914, put into effect certain rules regarding the maintenance of neutrality by the United States in the Canal Zone. Rule 15 was as follows: Aircraft of a belligerent Power, public or private, are forbidden to descend or arise within the jurisdiction of the United States at the Canal Zone, or to pass through the airspaces above the lands and waters within said jurisdiction." Ibid, p.136.
See also for the treatment of this subject: David Johnson, Rights in Air Space, Manchester University Press, 1965, p.18; and Professor Dr. D. Goedhuis, The Limitation of Air Sovereignty, ILA Report Dubrovnik, 1956, p.197.

40. Article 1 of the Paris Convention states: "The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air space above its territory.
For the purpose of the present Convention the territory of a State shall be understood as including the national territory both that of the mother country and of the colonies, and the territorial waters adjacent thereto."

41. Article 2: "Each Contracting State undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting states, provided that the conditions laid down in the present Convention are observed.
Regulations made by a Contracting State as to the admission over its territory of the aircraft of the other contracting States, provided that the conditions laid down in the present Convention are observed."

42. "The question of prior permission was discussed at the Air Conference of 1929, and it was at this Conference that the principle of freedom of traffic at least for regular air services, was completely abandoned by the vast majority of states." See Professor Dr. D. Goedhuis, op cit., p.200.

43. The Paris Convention created an international body under the name of International Commission for Air Navigation (I.C.A.N.), having a permanent character and under the authority of the League of Nations. From the very beginning this commission faced many difficulties in connection with its integration due to the preferential treament regarding representation and voting given to the great powers, not only to the detriment of the rights of the vanquished forces, but also those of the neutrals. This situation prevented many states from adhering to the Convention. See Agustin Rodriguez Jurado , Teoria y Practica Del Derecho Aeronautico, Ediciones Depalma Buenos Aires, 1963, pp.45-46-47.

44. See Article 1 of Madrid Convention. Text of this Convention can be found in 8 JAL, 1938, pp. 263-269.

45. See Agustin Rodriquez Jurado, op cit., p.47.

46. Havana Convention was ratified by Sixteen States.

47. See Article 1 of Havana Convention. No reference is made in this article to territorial waters.

48. Louis Cassidy, Does the Havana Aerial Convention Fulfill a Need? Air Law Review, Vol. 2, 1931, p.42. See also: Stephen Latchford, Havana Convention on Commercial Aviation, JALC, Vol. 2, 1931, pp.207-209. Cooper, J.C., The Panamerican Convention on Commercial Aviation and the Treaty Making Power, American Bar Association Journal, Vol.19, 1933, pp.22-26. James L. Brown, Pan American Cooperation in Aeronautics, JALC, Vol. 9, 1938, pp.468-502.

49. See Louis Cassidy, op cit., p.39.

50. See David Johnson, op cit., p.58.

51. Article 80 of the Chicago Convention states: "Each contracting State undertakes immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919 of the Convention on Commercial Aviation signed at Havana on February 20, 1928, if it is a party to either. As between contracting states, this Convention supersedes the Conventions of Paris and Havana previously referred to."

52. For a comparative study of these Conventions see: Stephen Latchford, Comparison of the Chicago Aviation Convention with the Paris and Havana Conventions, U.S. Department of State Bulletin, Vol.12, Nos. 289-313, 1945, pp.411-420.

53. See Professor Dr. D. Goedhuis, The Air Sovereignty Concept and United States Influence on its Future Development, JALC, Vol.22, p.213.

54. Article 1 of the Transport Agreement contains the so called five freedoms of the air. Specifically they are as follows: "(1) The Privilege to fly across its territory without landing; (2) The privilege to land for non-traffic purposes; (3) The privilege to put down passengers, mail and cargo taken in the territory of the State whose nationality the aircraft possesses; (4) The privilege to take passengers, mail and cargo destined for the territory of the state

whose nationality the aircraft possessed; (5) The privilege to take passengers, mail and cargo destined for the territory of any other contracting state and the privilege to put down passengers, mail and cargo from any such territory."

55. It is to be noted that Article 1 of the Transit Agreement contains precisely the same language as the two first freedoms or privileges of the Transport Agreement. See Article 1.

56. The Chicago Convention took over the same principle that had been adopted in 1929. See supra note 15.

57. Article 6 states: "No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization."

58. See Article 5, paragraph 1 of the Chicago Convention.

59. See David Johnson, op cit., pp.62-63.

60. See Article 5, paragraph 2 of the Chicago Convention.

61. See ICAO Resolution A21-7. Repertory - Guide to the Convention on International Civil Aviation, Doc.8900/2, Second edition 1977.

62. See Bin Cheng, The Law of International Air Transport, London, Stevens and Sons Limited, New York, Oceana Publication Inc., 1962, p.121.

63. Ibid.

64. Ibid.

65. Ibid.

66. Article 2 of the Chicago Convention adopted the principle of territoriality as the main criterion to determine the jurisdiction of a state over the events which occur within its airspace.

67. The principle of territoriality as well as its exceptions are set forth in Article 12 of the Chicago Convention: "Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its

nationality mark wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft therein force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure prosecution of all persons violating the regulations applicable."

68. In the Lotus Case, the Permanent Court of International Justice (1927) expressed: "Though it is time that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offences committed outside the territory of the State which adopts them and they do so in ways which vary from State to State. The territoriality of Criminal Law therefore, is not an absolute principle of international law, and by no means coincides with territorial sovereignty.
L.C. Green, International Law Through the Cases, The Carswell Company Limited, Toronto, Canada, 4th edition, 1978, p.214.

69. This principle has also been recognized by the Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958, which in its Article 2 states: "The sovereignty of a coastal State extends to the airspace over the territorial sea as well as to its bed and subsoil." Aircraft, however, do not enjoy the privilege of innocent passage as ships do in maritime law.

70. In the North Sea Continental Shelf Cases: "The Federal Republic of Germany....while recognising the utility of equidistance as a method of delimitation,....denies its obligatory character for States not parties to the Geneva Convention, and contends that the correct rule to be applied at any rate in such circumstances as those of the North Sea, is done according to which each of the States concerned should have a "just and equitable share" of the available continental shelf, in proportion to the length of its coastline or sea frontage."
L.C. Green, op cit., p.475.

71. See supra p. 12.

72. See Martial,J.A., State Control of the Airspace over the Territorial Sea and the Contiguous Zone, 30 Canadian Bar Review, 1952, p.

73. See Lay, Churchill, Nordquist, New Directions in the Law of the Sea, Oceana Publication Inc., Dobbs Ferry, New York, 1973, p.106.

74. Argentina, Brazil, Costa Rica, Chile, Equador, El Salvador, Honduras, Nicaragua, Panama, Peru and Uruguay enacted national legislation extending their sovereignty either over the continental shelf or over the superjacent waters up to a distance of 200 miles.
See Republica Oriental Del Uraguay, Presidencia de la Republica, Secretaria, America Latina y la Extension del Mar Territorial, Montevideo, 1971, pp.85-115.

75. The Panamaniam Constitution of 1946 in its Article 209 states:
"The following belong to the State and are for public use and, consequently, may not be the object of private appropriation:
(1) The territorial sea and the waters of lakes and streams; beaches and banks of the same and of navigable rivers and ports and inlets. All the property is for free and common benefit, subject to the regulation that the law establishes;
(2) The lands and waters designated for public services of all classes of communications;
(3) The lands and waters designated or to be designated by the State for public services of irrigation, hydro electric production, drainage and aqueducts,
(4) The airspace and the continental submarine shelf belonging to the national territory; and
(5) The other property which the law designated for the public use.

76. See America Latina y la Extension del Mar Territorial, op cit, p.105.

77. See S. Muli' Aumaseali' I, New Trends in the Law of the Sea: Implications for the Regime of the Airspace, Thesis, p.77.

78. See Lay, Churchill, Nordquist, op cit., p.231

79. Ibid, p.232.

80. Ibid, p.233.

81. The following states were represented at the Montevideo Conference of the Law of the Sea: Chile, Peru, Equador, Panama, El Salvador, Argentina, Brazil, Nicaragua and Uruguay.

82. Lay, Churchill, Nordquist, op cit., p.235

83. Ibid p.237

84. See Shigeru Oda, The Law of the Sea in our Time - 1 New Development, 1966-1975; Sijthoff-Leyden, 1977, p.168.

85. For a comprehensive treatment of this subject see: Stevenson and Oxman, The Preparations for the Law of the Sea Conference,68 AJIL 1(1974); The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session, 69 AJIL 1 (1975); Bernard Oxman, The Third United Nations Conference on the Law of the Sea: The 1976 New York Sessions, 71 AJIL 247 (1977); The Third United Nations Conference on the Law of the Sea: The 1977 New York Session, 72 AJIL 1 (1978); The Third United Nations Conference on the Law of the Sea: The Seventh Session (1978), 73 AJIL 1, 1979.

86. See Article 56 of I.C.N.T. and the Santo Domingo Declaration, supra note 84.

87 Argentina, Benin, Brazil, Equador, El Salvador, Panama, Sierra Leone, Somalia, Uruguay.

88. The establishment of "danger areas" on vast portions of the high seas by the nuclear powers to perform atomic tests, thus prohibiting vessels or aircraft from entering these areas in certain periods of time, has caused much controversy among jurists as to whether this action constitutes an encroachment of the freedom of the high seas. In addition, States have contested the legal validity of the nuclear tests on certain areas of the high seas, arguing the negative effects of the radioactive rain on their territory. See Eugene Pepin, The Law of the Air and the Articles Concerning the Law of the Sea Adopted by the International Law Commission, Gov. Docs. U.N. Distr. General, A/Conf. 13/4, 4 October 1957, pp 17-18.
See also Muli'Aumaseali' I, op cit, p.136

89. See J.M. Denaro, States' Jurisdiction in Aerospace under International Law, 36 JALC, 1970, p. 707.

90. Martial, J.A. op cit. p.258

91. Ibid

92. Ibid, p.259

93. Ibid

94. Ibid, p.260

95. "For a complete description of the United States zones see Part 620 of the Civil Aeronautics Regulations (sub-part C); the Canadian zones are described in Section 2.11 of the Rules published in NOTAM 22/1955". Jean Pepin, op cit, p.20.

96. Ibid. p.13

97. Ibid

98. Ibid

99. Ibid, p.15

100. Ibid

101. Article 2
The High Seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law . It comprises inter alia, both for coastal and non-coastal states:
(1) Freedom of Navigation;
(2) Freedom of Fishing;
(3) Freedom to lay submarine cables;
(4) Freedom to fly over the high seas.
These freedoms and others which are recognized by the general principles of International Law, shall be exercised by all States with reasonable regard to the interests of other states in their exercise of the freedom of the high seas.

102. For an analysis of these subjects see E. Pepin, op cit., pp. 22-25.

103. See supra, p 18

104. See John C. Cooper, Legal Problems of Outer Space, op cit., p.269

105. John C. Cooper, High Altitude Flight and National Sovereignty, op cit., p.257.

106. For a comprehensive treatment of reconnaissance in airspace and outer space, see: Ahlawalia, K., The Question of the U-2 incident and International Law, 1 Indian Journal of International Law.
Legal Aspects of Reconnaisance in Airspace and Outer Space, 61 Columbia Law Review, 1961, pp.1074-1102.
Lissitzyn, O.V. The Treatment of Aerial Intruders in Recent Practice and International Law, 47 AJIL 1953 pp.559-590.

107. "For reasons perhaps having a common origin with man's not infrequent demands for even an illusory certainty, the alleged "problem" of establishing boundaries between airspace and outer space became with the very advent of astronautics for many commentators, as well as some states the central, even crucial issue in the public order of outer space." Myres S. McDougal, Harold D. Lasswell and Ivan A. Vlasic, Law and Public Order In Space. New Haven, 1963, p.323.

108. Among the most important theories which have attempted to resolve the problems of boundaries are the following: (1) Theory based on Kepler's Laws; (2) Theory of the Altitude at which the Earth Gravity Ceases; (3) Theory of the Perigee of Satellites; (4) Theory of the Altitude of Effective Control; (5) Theory of the Altitude Guaranteeing the Security of the States; (6) Theory of the Altitude "ad infinitum".
For a comprehensive analysis of these Theories see Nicolas Mateesco Matte, Aerospace Law, The Carswell Company Limited, Toronto, Canada, 1969, pp.32-35.

109. See D.Goedhuis, Some Observations on the Problems of the Definitions and for the Delimitation of Outer Space, Annals of Air and Space Law, Vol. 11, 1977, p.298.

110. Lay and Taubenfeld wrote in 1970 that both the U.S. and the U.S.S.R., agreed that airspace and national sovereignty end somewhere, implying that space began above this terminal point. However, neither has encouraged drawing a specific line to delimit the two environments, although they agree that satellites have orbited in outer space. They conclude:.....it now seems clear that no single line will prove acceptable to the nations in the foreseeable future and that if one should ever be accepted by international consensus it will be based on mutual political accommodation rather than on the "scientific" merits of the proposal... Lay and Taubenfeld quoted by Robert Henry Farris, The Problem of Delimitation in Space Law, Doctoral Dissertation, University of Notre Dame, 1974, pp. 237-238.

111. Ibid, p.5.

112. Colombia, Kenya, Uganda, Zaire, The Congo, Equador, Indonesia.

113. See D. Goedhuis, op cit., p.289.

114. The adoption of the principle of non appropriation by claim of sovereignty constitutes a formal declaration of an existing rule of customary international law, since it had been previously expressed in various U.N. Resolutions (Res. 1962 XVIII). Nevertheless, under the Space Treaty, states maintain certain sovereign prerogatives, as appears in Articles IV, V, VII, IX and XII. For an analysis of these articles see Stephen Gorove, Sovereignty and the Law of Outer Space Re-Examined, Annals of Air and Space Law, Vol.II, p.311.

115. The space technology of remote sensing has brought about the need of a legal regime to regulate the conduct of the states involved in this activity. Despite the fact that the legal problems posed by remote sensing space systems have been largely discussed by the Legal Sub-Committee of the Outer Space Committee and that at its 17th Session the Legal Sub-Committee yielded a text of draft principles on remote sensing; divergent views still exist in relation to the legal principles that should form part of an international code of conduct that ought to be followed by the participating states.
For an anlysis of this topic see: Ivan A. Vlasic, The Evolution of the International Code of Conduct to Govern Remote Sensing by Satellite: Progress Report; Annals of Air and Space Law, Vol. III-1978, pp 561-574.

116. Likewise the problem of remote sensing and the problem of delimitation of outer space, direct television broadcast satellite is another important issue which has been the object of lengthy debates and intensive studies within the Legal Sub-Committee of the United Nations Committee on the Peaceful Uses of Outer Space. Although, an apparent consensus exists in regard to the nine principles which should serve as the basis for the conclusion of an international agreement on this matter. Wide disagreement still exists on issues like, consent and participation of states, program content and unlawful/inadmissible broadcasts, constituting in this way a stumbling block for the final achievement of an international convention on direct television broadcast satellite.
See Eilene Galloway, Present Status in the United Nations Of Direct Television Broadcast Satellites, Annals, Vol. II, 1977, pp. 269-285.

117. D. Goedhuis, op cit, p.302.

118. See above

119. D. Goedhuis, op cit, p.303

CHAPTER II

THE LEGAL STATUS OF THE AIRSPACE ABOVE INTERNATIONAL WATERWAYS

Section 1: Airspace Above Straits

Under the traditional 3 mile rule of the territorial sea,[1] all straits which are not more than 6 miles wide at the entrance and the land on both sides belong to the same state, the enclosed waters are regarded as territorial.[2] On the other hand, if the land which surrounds the strait belongs to different countries, each country should exercise its sovereignty up to the limit of its territorial waters. In cases where the strait is too narrow to permit the application of this rule, the delimitation is accomplished by setting a line at the middle of the strait or at the centre of the mid-channel.[3] These rules are subject, however, to the over-riding principle that if the strait is utilised for international navigation, then the navigation is free to the vessels of all countries.[4]

Continuing the same trend of thought, in the case of those straits whose breadth exceeds 6 miles, the mid-channel of them would constitute part of the high seas, therefore, ships would enjoy freedom of navigation and aircraft the freedom to overfly.

The notion of straits as international highways has been established because of their geographical and functional aspects. According to the former, an international strait links two parts of the high seas and according to the latter a strait is international because it is utilized for international navigation.

These criteria have been sanctioned by I.C.J., in the Corfu Channel Case. In establishing the international character of the North Corfu Channel, the court stated:

> "It may be asked whether the test is to be found in the volume of traffic passing through the strait or in its greater or lesser importance for international navigation. But in the opinion of the Court the decisive criterion is rather the geographic situation as connecting two parts of the high seas and the fact of its being used for international navigation. Nor can it be decisive that this Strait is not a necessary route between two parts of the high seas, but only an alternative passage between the Aegean and the Adriatic." (5)

The geographical aspect stated in the Corfu Channel case has been complemented by Paragraph 4 of Article 16 of the Geneva Convention of 1958, which adds to the notion of connecting the two parts of the high seas. The idea of linking a part of the high seas with the territorial sea of a foreign state.(6)

As a result, straits which are used for international navigation are open to foreign ships since there shall be no suspension of the right of innocent passage.

Certain territorial straits which are of great value for international navigation have been subjected to special juridical regime established by international agreements. This is the case for the Bosphorus and Dardanelles whose legal regime is determined in the Montreux Convention of 1936 which regulates the basic conditions of transit through these straits.

The Montreaux Convention devotes Article 23 to air navigation. Under this Article Turkey implicitly asserts its sovereignty over the airspace above the straits and the rest of its territory by establishing the conditions of air navigation and the routes that foreign civil aircraft must follow while flying over Turkish airspace.(7) Other straits which are of great importance for international navigation and are under treaty regime are the Danish straits, the Strait of Gibraltar and the Strait of Magellan. In all of these the right of innocent passage is guaranteed for foreign ships.(8)

Many straits which have traditionally been considered as international highways and therefore have been navigated by vessels and in many cases overflown by aircraft of different countries without any restrictions, are now under the category of territorial straits because of the adoption by 58 States(9) of the 12 mile territorial sea limit which could become, at the same time, the accepted international standard regarding the extension of territorial waters.

Naturally, the adoption of such a limit has caused great concern and worries among the great powers because many of these straits have both a commercial and a military importance. The fact that foreign ships no longer enjoy the freedom of navigation and the right of innocent passage would mean that their submarines would have to navigate over the surface showing their flag(10) and their military aircraft could not overfly the airspace above these straits unless they obtain a prior authorization from the concerned states.(11) In addition the maritime powers fear that

the coastal states could give a restrictive interpretation to the principle of innocent passage, affecting to an even greater extent their strategic interests.

The panorama tends to be more obscure for the big powers because of those states which have claimed 200 miles of territorial sea and also because of the emergence of the "archipelago concept" proposed by insular states like the Philippines and Indonesia. In both cases important straits are under the threat of becoming part of the territorial sea of the coastal or archipelago states, with the consequence that the principle of freedom of navigation and overflight would be seriously affected.

Before this problem the U.S. and U.S.S.R. have assumed a common approach in the sense that while recognizing the 12 mile limit of the territorial waters they seek to retain the recognition of the principle of freedom of navigation and overflight for ships and aircraft through and over such straits as they enjoy these freedoms over the high seas. However, the coastal states could designate the corridors through which such passage should be carried out. The U.S. and the U.S.S.R. proposals do not appear to make any distinction between civil and military aircraft or merchant vessels and warships. This implies that all of them should enjoy the same rights without any restrictions.(12) The U.S.'s position was reflected at the Third Conference on the Law of the Sea. In this sense Shigeru Oda explained that:

> "As the committee meetings continued, the United States decided that the expansion of the territorial sea from 3 to 12 miles was inevitable, and therefore undertook to secure free passage of warships, the right of underwater passage of

> submarines and a guarantee of the right of military aircraft to fly over territorial seas. It was even suggested that sacrifices could be made, if necessary, in the control of fisheries (e.g. the United States might be willing to agree to extend zones of fisheries jurisdiction), if agreement could be reached that free passage of military craft would not be subject to interference." (13)
>
> ...
>
> "The United States took the position that without free passage for warships and military aircraft, there could be no law of the sea conference; consequently, it seemed to be prepared to make drastic concessions to achieve free passage for military craft." (14)

For their part, coastal states along straits are reluctant to regard the passage of warships and military aircraft through and over the straits as innocent, because they believe that this constitutes a permanent threat to their territorial integrity. Moreover, strait states alleged that the unrestricted passage of atomic submarines, nuclear powered ships and large tankers, meant a continuous hazard to their marine environment. Therefore, they should be able to exercise sovereignty over these straits and set the conditions under which the passage through and over the straits should be accomplished in order to safeguard their national security and their economic interests.

Nonetheless, the goal pursued by the great powers, that is to say, the guarantee that their warships and military aircraft would enjoy freedom of navigation and overflight through and over international straits, has been apparently achieved or at least a formula to do so has been proposed. In the I.C.N.T. a new right with regard to navigation and overflight through and over international straits

has been created, that is, the "right of transit passage" whereby all ships and aircraft enjoy the freedom of navigation and over-flight but only for the goal of continuous and expeditious transit of the strait.(15) However, the scope of application of this right is limited to an "area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone."(16)

On the other hand, the right of innocent passage would apply when it takes place between one area of the high seas or/and an exclusive economic zone and the territorial sea of a foreign state, and also under the exception provided in Paragraph 1 of Article 38.(17)

Other provisions of Part III of the I.C.N.T. dealing with straits used for international navigation refer to issues like duties of ships and aircraft during their passage (Art. 39), laws and regulations of states bordering straits relating to transit passage (Art.42) and duties of states bordering straits (Art.44). These are among the more important provisions.

Section 2: Airspace Above Canals

A. Legal Nature of Canals

International canals constitute an intermediate category between international rivers(18) and international straits(19) having a status of their own in international law.

According to Joseph A Obieta, "an international canal may

be defined as an artificial waterway, connecting two parts of the open seas, and subject to an international regime, whereby freedom of navigation is guaranteed for the vessels of all nations of the world." (20)

Whether or not a canal will be under an international regime rests completely on the territorial sovereign, since its consent is an essential element for the creation of such a regime.(21) This consent may be given in the form of an unilateral declaration, in a multilateral treaty or by a bilateral treaty whereby the canal is put at the disposal of the international community for its use in international navigation.

Once the riparian state has made the decision to open the canal to international navigation, it is accepting a permanent restriction on its sovereignty by virtue of the fact that it is granting freedom of navigation to all nations. This kind of restriction is regarded as an "international servitude"(22) which has as beneficiary the international community. It follows that international canals which join two parts of the high seas, play a role very similar to that of international straits where the principle of freedom of navigation is the general rule.

The freedom of navigation in canals, however, does not constitute a corollary to the freedom of the high seas, as in international straits. This is the case because, the principle of territorial sovereignty as well as the particular conditions

of the canal and motives of national security tend to impose more restrictions than those that the coastal states impose over navigation through the straits.(23) Referring to the legal nature of international canals the Permanent Court of Justice declared in the Wimbledon case:

> "Whether the German Government is bound by virtue of a servitude or by virtue of a contractual obligation...to allow free access to the Kiel Canal...the fact remains that Germany has to submit to an important limitation of the exercise of the sovereign rights..." (24)

B. The Suez Canal

On November 30, 1854 the Viceroy of Egypt, Said Pasha, granted to the Count Ferdinand Lesseps the concession to build and exploit a canal through the Isthmus of Suez between the Mediterranean and the Red Sea.(25) This concession was followed by two more "Firman" (1856 and 1866) which merely reaffirmed the terms of the first one. The firman of 1866 was of great importance because the Sultan of Turkey, who at that time was the sovereign of Egypt, gave his consent to the provisions of the prior concessions.(26)

By the concessions of 1856, the canal was subjected to a regime of internationality as appears clearly indicated in Article XIV, where it is stated that the maritime canal shall be open forever, as a neutral passage, to every merchant vessel crossing from one sea to the other without any distinction, exclusions, or preference with respect to persons or nationalities or payment of fees.(27)

From the very beginning Great Britain demonstrated some opposition to the concessions for the construction of this canal considering that this was affecting her political and military interests in Egypt. However, as the construction of the canal in 1869 by the "Compagnie Universelle du Canal Maritime de Suez" became a fact the British began to change their policy towards the Suez.(28)

Hence, in 1875, Disraeli, the Prime Minister of Great Britain at that time, purchased from the Egyptian Government all of its shares in the Suez Canal Company, making Great Britain the strongest shareholder of the Company with almost half of the shares in her domain.(29) Eventually Great Britain consolidated her control over Egypt when her troops landed in 1882 under the pretext of putting down a rebellion that had erupted and was threatening the security of the canal and the life of European citizens.(30)

From her side, France viewed with disfavour the British action of organizing a de facto protectorate in Egypt, because she believed that complete British control over the canal would upset the traditional balance of power in the Orient and, in addition, the freedom of navigation in the canal might be jeopardized.(31)

In order to allay France's fears, Great Britain proposed a convention that would guarantee the freedom of transit through the canal to all vessels in any circumstances. Finally, under the constant pressure of France, a Convention was concluded

at Constantinople on October 29, 1888, by the representatives of Great Britain, Germany, Austria-Hungary, Spain, France, Italy, The Netherlands, Russia and Turkey.(32)

This convention also known as the "Suez Canal Convention", placed the canal under a regime of internationality. Thus in Article 1, the contracting parties agreed that, "the Suez Canal shall always be free and open in time of peace and in time of war, to every vessel of commerce or of war, without distinction of flag." It also specified that the canal will never be subject to the exercise of a blockade.(33) Article IV of the treaty prohibits any acts of war or hostility in the Canal or its vicinity which would interfere with the free navigation of the canal.(34) Further, in Article XIII, the sovereign rights of Turkey over the canal were recognized, as well as the immunities of the Khedive of Egypt.(35)

From the wording of Article XIV it seems that the intention of the contracting parties was not to fix a limit to the life of the treaty. On the contrary, the intention was apparently to make it last ad perpetuum.(36) In the same way, the signatory states appear to have had the objective to extend the effects of the treaty to non-signatory states.(37)

Although the Constantinople Convention of 1888 was meant to guarantee the neutrality of and the freedom of navigation through the Suez Canal, it was intended at the same time to limit the British control over the canal.

Great Britain made a reservation to the Convention, affirming her complete freedom of action in Egypt while her troops still remained on Egyptian soil, arguing that this measure was due to the special state of affairs prevalent at that moment.(38)

Great Britain continued the occupation of Egypt during the remaining part of the nineteenth century, showing clearly that she was the only ruler there despite the titular sovereignty that the Turkish Empire still possessed over Egypt. In 1904, the British eliminated all the political opposition to their presence in Egypt by the Anglo-French Agreement of April 8, whereby the two powers compromised by agreeing not to interfere in each other's affairs in Egypt and in Morocco respectively.(39)

With the outbreak of the hostilities in 1914, Great Britain brought Egypt into the war when she officially declared war on Turkey. At the same time England proclaimed Egypt a British Protectorate, giving in this way legal validity to a de facto situation that had lasted since 1882.(40)

From the opening of the Suez Canal in 1869 to the proclamation of Egypt as a British Protectorate in 1914 the legal status of the airspace above the canal did not raise any question of practical value because Aeronautical Science and Air Law were at an early stage of development, the rights of states over the airspace still being uncertain. On the other hand, there seems to be no official record of flights by foreign airplanes over the

Suez Canal during this period of time. Nevertheless, it is worth pointing out that right after the Paris Conference of 1910, the British Parliament passed the Aerial Navigation Act of 1911, the main purpose of which was to prevent the occurence of accidents over populated areas by the prohibition of overflight in such areas.(41) Later in 1913 another Aerial Navigation Act was enacted by the British Parliament, whereby the Secretary of State was empowered to prohibit flights by foreign aircraft over any area which he deemed necessary for the "defence or safety of the realm." (42) Both Acts have been considered a clear assertion of England's sovereignty over the airspace above the main land and her possessions.

This assertion may be regarded as having been extended to Egypt in 1914 and hence, to the Suez Canal, since both were under British jurisdiction. In fact, during the war almost every state closed its airspace to foreign aircraft especially those belonging to enemies, and England did likewise. Therefore, the likelihood that the same type of measures would have been enforced in Egypt and hence in Suez is quite great. This view is reinforced by the fact that during the war Turkish troops under the command of Djemal Pasha and German Colonel Kress attempted twice to invade the Suez Canal, but without success.(43) It follows that during the First World War the airspace above the Suez Canal should have been closed to either military or non-military aircraft, basically due to the fact that the Canal was the most important maritime means of communication of the British Empire; thus, their

concern for its security was very high.

After the war ended in 1918 Germany, Austria, Hungary and later Turkey, by virtue of the Treaty of Lauzanne of 1922, renounced their rights of free navigation through the Canal which they had obtained under the Constantinople Convention of 1888.(44) In addition it should be borne in mind that in the Convention for Aerial Navigation of 1919 the principle of state sovereignty over the airspace was recognized in Article 1, as was the right of innocent passage in Article 2. The latter however, had a restrictive character since the defeated states were excluded from the enjoyment of this right as were the non-contracting states. This right was eventually abandoned by the majority of states.(45) As a result, most of the state proclaimed sovereignty over their airspace, and so did England in her Aerial Navigation Act of 1920. Here, Great Britain extended her sovereingty to the airspace above her colonies and to those territories under her protectorate.(46) On February 28, 1922, Egypt was recognized by Great Britain as a sovereign state. Nevertheless, England reserved for herself, among other rights, the right to protect and defend the Suez Canal.(47)

Through the Decree-Law No.57 of May 23, 1935, the Egyptian government proclaimed in Article I that:

> "The state shall exercise complete and exclusive sovereignty over the airspace above its territory. The term "airspace" shall include the adjacent territorial waters."

This declaration of Article I has been interpreted to embrace also the airspace above inland waters, gulfs and canals and thus, the airspace above the Suez Canal.(48)

On August 26, 1936, Great Britain and Egypt signed a Treaty of Alliance in London. Through this treaty the military occupation of Egypt by British troops was terminated.(49) On the other hand, Great Britain reserved for herself the right to station forces in the vicinity of the Canal, with a view to ensuring in co-operation with the Egyptian forces the defence of the Canal.(50) The British government stressed that the presence of Her Majesty's forces in the Suez by no means constituted and act of occupation, nor a prejudice to Egypt's sovereignty rights over the Canal.(51)

All this appears to indicate that Egypt enjoyed absolute sovereignty over the airspace above its territory including that of the Suez. Nonetheless, Paragraph II of the Annex imposed certain restrictions upon Egypt's sovereignty over the airspace above the Canal. Thus, Paragraph II states:

> "Unless the two governemnts agree to the contrary, the Egyptian Government will prohibit the passage of aircraft over the territories situated on either side of the Suez and within 20 Km of it, except for the purpose of passage from East to West or vice-versa by means of a corridor 10 Km wide at Cantara. This prohibition will not however apply to the Forces of the High Contracting Parties or to genuinely Egyptian Air Organizations, or to the Air Organizations genuinely belonging to any part of the British Commonwealth of Nations operating under the authority of the Egyptian Government." (52)

From the wording of this paragraph, it appears that Egypt's freedom to admit foreign aircraft within its airspace was severely curtailed with regard to the airspace above the Canal, since the consent of England was required in order to allow any aircraft other than those of the contracting parties to overfly the canal zone and its vicinity.

Besides the right to veto Egypt's decision to allow a foreign aircraft to overfly the Canal, Great Britain obtained a series of privileges in the Egyptian airspace which became even greater during the war period. Referring to this situation, Le Goff in the analysis of the Treaty of 1936 explains:

> "Toutes ces dispositions s'accordent et se complètent. Droit au survol général du territoire égyptien, droit à l'atterrissage et à l'amerrissage dans tous les endroits réservés à cet usage, droit de réclamer la création et l'installation de lieux nouveaux d'atterrissage aux frais du gouvernement égyptien, droit de passage pour le matériel et le personnel entre les divers lieux d'atterrissage, droit de créer des stocks de combustible et du matériel, il est naturel de soutenir que le gouvernement britannique est bénéficiaire d'une situation priviligiée. Tout cela ne tend qu'a la défense du canal de Suez et à la préparation de cette défense." (53)

After the war ended, the stipulations of the 1936 Treaty continued to be in force for a period of time. However, they soon became inconsistent with the principles set out in the Chicago Convention. Thus, following the commandments of Article 82 of the Chicago Convention, Egypt along with England, proceeded to communicate

to ICAO the establishment of a prohibited zone which extended from the Eastern bank of the Suez Canal to the Egypt-Palestine border.(54).

In the following years the relations between Egypt and England experienced a growing deterioration. Thus, through the Anglo-Egyptian Agreement of October 19, 1954, the British troops were withdrawn from Egypt and the Treaty of 1936 was terminated.(55) Here, Egypt got hold of complete control, "defacto" and "dejure" over the Canal thus being the sole sovereign over the whole country.(56) Finally, the President of Egypt, Gamal Abdel Nasser, proclaimed the nationalization of the Suez Canal Company by a Presidential Decree on July 26, 1956, whereby the assets, rights and obligations of the Company were to be vested in the Egyptian State which would in turn indemnify the original shareholders.(57)

Although the President's Decree brought about an international dispute in which the great powers strove to impose certain restrictions upon Egypt's sovereign rights over the Canal and its administration, the Egyptian stand on the nationalization issue continued to be the same.(58) Nevertheless, by the Declaration of April 24, 1957, the Egyptian Government declared that it would cling to the spirit and letter of the Constantinople Convention of 1888, and stressed that the principle of freedom of navigation through the Canal to all countries would be maintained. In the case of disputes among the signatory states of the Constantinople Convention, such matters would be submitted to the judgment of

of the International Court of Justice. Later, this Declaration was registered with the Secretariat of the United Nations and declared to be an international instrument.(59)

Without any doubt, Egypt has been the sole sovereign power over the totality of its territory, including that of the Suez, since 1956 when the last remnant or trace of foreign influence over the Canal was eliminated by the Decree of Nationalization.

This supreme authority over the canal has been evidenced throughout the years by the prohibition of transit through the canal by Israeli vessels or by vessels carrying cargo or goods to Israel,(60) contradicting in this way the commitments that Egypt had undertaken under the Declaration of 1957, whereby Egypt commited itself to be bound by the Constantinople Convention of 1888, guaranteeing the right of freedom of navigation to the vessels of all nations. It must also be borne in mind that the Suez Canal remained closed to international navigation from 1967 to 1975 due to the political upheavals between Egypt and Israel. However, from the re-opening of the Canal on June 5, 1975 to the conclusion of the Camp David Peace Treaties, the transit through the Canal has been regular and without any major problems.(61)

From all this, it is clear that Egypt has willingly accepted a limitation to its sovereignty over that part of its territory occupied by the Suez Canal by means of an international servitude which allows vessels from all nations to transit freely through the Canal at all times. However, this servitude only applies to maritime transportation and in no instance is it applicable to

air transportation because, as we have already seen, the establishment of an international servitude depends entirely upon the consent of the State where the canal is going to be constructed, and this consent was expressed in the case of the Suez Canal in the Constantinople Convention of 1888, where no allusion was made to airspace for obvious reasons.

Since this Convention still constitutes the legal body which governs the international status of the Suez Canal, it follows that the airspace above the canal does not have the same status as that of the international water way because Egypt has never given its consent in this respect. On the contrary, the Egyptian Air Regulations, as well as government practice, appear to indicate that the airspace above the canal is regarded as national airspace; therefore, no rights to overfly the canal are permitted to foreign aircraft unless a prior authorization has been obtained from the Egyptian Government.(62)

C. Panama Canal ("1903")

1. Historical Background

After twenty-one years had elapsed since Christopher Columbus set foot on the New Continent for the first time, a Spanish explorer named Vasco Nuñez de Balboa reached the Pacific Ocean on September 29, 1513. In accomplishing this heroic feat he traversed a fringe of sylvan land which divided the two oceans. This isthmus forms part of what is now the Republic of Panama.(63)

Later, in 1519, the city of Panama was founded on the shore of the Pacific Ocean, and a track was opened in the jungle to link Panama with the city of Portobelo on the Atlantic side. This road was named "Camino de Cruces" and served the transportation of goods, gold and other supplies between Spain and its colonies and vice-versa. In this way, the isthmus of Panama began to acquire its status as a place of transit.(64)

According to C.H. Haring, in 1523 Charles V, King of Spain, conceived the idea of constructing a canal in the New World. Hence, in 1527, the Spanish Crown ordered De La Serna to explore the Chagres River in Panama and the Rio Grande in Mexico. However, it was not until 1529 that the first study affirming the feasibility of the construction of a canal in the American Continent was submitted by Alvaro Saavedra Ceron.(65)

The importance of Panama as a place of transit increased greatly during the XVIIth and XVIIIth centuries due to the celebration of Portobelo's Fairs (Ferias de Portobelo) which

became the centre of bartering for the Spanish colonies until they began to acquire their independence in the first quarter of the nineteenth century.(66)

On December 12, 1846 the Republic of Nueva Granada(67) and the United States of American concluded the Mallarino-Bidlack Treaty whereby the government of Nueva Granada guaranteed to the U.S. Government the right of transit across the isthmus by any means of communication in existence at that time and by those that could be open in the future. On the other hand, the U.S. guaranteed that they would not endanger the neutrality of the isthmus and the free transit from one sea to the other, recognising at the same time the sovereign rights of Nueva Granada over this territory.(68)

The discovery of gold in California in 1848 created the problem of its transportation from the West to the East coast of the U.S. It was considered that the shortest and most economical route to do so was through the isthmus of Panama. Thus, in 1850, the works for the construction of a railway began and were not completed until 1855.(69)

It is worth pointing out that the idea of building a canal somewhere in Central America had already been contemplated in 1850. In this sense the United States and Great Britain signed, in that year, the Clayton-Bulwer Treaty whereby the two powers agreed not to build a canal without the participation of the other. At the same time they also agreed not to erect fortifications in the canal or its vicinity and not to exercise acts of occupation, fortification and colonization in any of the countries of the area in order to preserve the neutrality of the canal zone.(70)

On May 18, 1878, the government of Colombia, by the Law 28 of 1878, granted a concession to Lucien Napoleon Bonaparte Wyse to build an interoceanic canal through the isthmus of Panama. Thus, the French Company of the Interoceanic Canal began the work in 1880.(71)

Later, in 1890, an extension to the terms of this concession was granted through the contract Roldan-Wyse and a second extension was also granted in 1893 through the contract Suarez-Mange. Finally, the works were abandoned in 1889 when the Company went into bankruptcy.(72)

In 1901 the United States eliminated the bonds created by the Clayton Bulwer Treaty of 1850 by the conclusion with Great Britain of the Hay-Pauncefote Treaty, whereby the former Treaty was abrogated,(73) giving in this way complete freedom of action to the U.S. in the construction of a canal in the Occidental Hemisphere. The Treaty also incorporated within its text the rules of neutrality established in the Constantinople Convention of 1888.(74)

One year after the signing of the Hay-Pauncefote Treaty the Congress of the United States authorised the President by the so-called Spooner Act of July 28, 1902 to negotiate with the government of Colombia for the acquisition of all the assets of the New Panama Canal Company of French nationality,(75) and also to obtain the perpetual control of a strip of land ten miles in width within Colombian territory for the construction and maintenance of an interoceanic canal.(76)

On January 22 of 1903, the United States and Colombia signed the Herran-Hay Treaty which reflected the guidelines set up in the Spooner Law. This treaty, however, was rejected by the Colombian Senate in August of the same year because it was considered to be contrary to Colombia's interests. As a result of the rejection of the treaty Panama, with the tacit support of the United States, declared its separation from Colombia on November 3 of 1903.(77)

On November 18, 1903, shortly after Panama's independence, the United States, duly represented by the Secretary of State, John Hay, and the Republic of Panama, wrongfully represented by Phillippe Bunau Varilla signed the Convention of the Isthmian Canal.(78) It is worth pointing out that the circumstances which surrounded the signing of the Treaty were quite anomalous.(79) History clearly shows that the United States took advantage of its strong bargaining position in order to obtain a large number of concessions from Panama. This was done with the complicity of the supposed representative of the Panamanian interests, Mr. Bunau Varilla whose only real concern was to obtain an indemnization from the U.S. Government for the conveyance of the rights that the New Panama Canal Company still had in Panama.(80)

Moreover, Mr. Bunau Varilla precipitated the signature of the Treaty when he learned that two Panamanian delegates with instructions to participate in the negotiations were heading to the U.S.. For its part the U.S. Government overlooked the rules of its protocol procedures when it allowed Mr. Varilla to sign the

Treaty without having presented his credentials in the customary diplomatic ceremony.(81)

It is doubtful that there was any negotiation in the real sense of the word, nor a real ratification on the part of Panama since the same haste, intimidation and pressures which surrounded the signing of the Treaty were once again present in the ratification process. The Panamanian Government Junta did not even have an appropriate period of time to ratify the Treaty whose only copy in the English language arrived in Panama on December 1 of 1903, being approved by the Government Junta in the Decree No.24 of December 2, 1903.(82) Obviously, the Treaty did not pass through any of the democratic formulas which should be applied in events of this sort.

This state of affairs was reflected in the Articles of the Canal Convention(83) as well as in the subsequent relationship between Panama and the United States. Thus, the particular and unilateral interpretation which the United States gave to the relevant provisions of the Treaty, specifically Articles 11(84) and 111(85) have been the cause of a permanent conflict between Panama and the United States.

The almost invariable American position has been that the Treaty of 1903 conferred to the U.S. sovereignty over the Canal Zone.(86) Nonetheless, the United States' contentions do not appear to find any support under the existing rules of international law, since a close examination of the Treaty provisions clearly shows that it was not the intention of the contracting

parties to place the Canal Zone under a regime of suzerainity protectorate, mandate or trusteeship where the strong state, in this case the U.S., would exercise certain prerogatives, such as international representation, on behalf of the weaker state, Panama.

If we look at the modes of acquiring territory recognized by international law,(87) we shall see that the U.S. will be unable to find sufficient grounds to support its claims.

This situation had been pointed out by the Minister of Panama, Ricardo J. Alfaro in a letter to the Secretary of State Mr. Charles E. Hughes, which reads as follows:

> "The zone has not been sold, transferred or alienated by the Republic of Panama to the United States in full ownership. The wording of the treaty is very clear. That which was ceded is the use, occupation and control of the zone for the specific needs of the construction, conservation, operation, sanitation and protection of the Canal. If the Canal were abandoned by the United States, the United States would have no legal ground for occupying the zone, title to which it has not acquired either by purchase, transfer, or conquest. Further the Canal Zone has not even been leased to the United States because the annual payment of two hundred and fifty thousand dollars which it undertook to make under the Canal Treaty was not stipulated as a fee for the use of the zone." (88)

A view which has been persistently maintained by the United States is that through the Convention of the Isthmian Canal Panama ceded to the U.S. the territorial area known as the Canal Zone. Analyzing this view, the former Special Ambassador of Panama for Canal Treaty negotiations, Dr. Carlos Alfredo Lopez Guevara, explains:

> "If Congress had intended to acquire sovereignty, sufficiently clear language was available to indicate that intent. Such language was used in the 1803 Treaty with France for the cession of Louisiana, the 1819 Treaty with Spain respecting the cession of the Floridas, the 1867 Treaty with Russia for the cession of Alaska, and the 1916 Convention between the United States and Denmark ceding the Danish West Indies. Each treaty contained the word "cession" and a clear relinquishment of sovereignty from the grantor to the grantee. Any possible dispute between grantor and grantee regarding ultimate sovereignty over the ceded territory was therefore precluded by the language used. In clear contrast, the term "cession" nowhere appears in the 1903 Canal Convention and the transfer of sovereignty is made in "as if" language....." (89)

In contrast to its often disputed sovereignty over the Canal Zone, the United States has not maintained a uniform practice within its law system in reference to the legal status of the Canal Zone. In this sense, Martha Jane Shay has written:

> "Over the years, Congressional acts, court opinions, administrative decisions and treaty provisions, have treated the Zone as if it were an independent nation-state a territory or possession of the United States, a U.S. government corporation, a leasehold, a state or local government and an instrumentality of jointly held sovereignty. As a result, the Zone today lacks a defined and consistently adhered to legal personality." (90)

Further Miss Shay adds:

> "It is evident that the stalemate on the sovereignty question causes difficulties in both domestic and international jurisprudence, but the confusion is surely augmented by the lack of a strong, positive statement as to the Zone's legal status. Thus far, it has been seen that the Canal Zone is sometimes a territory, sometimes a possession and sometimes a foreign country and that such determinations are

> made primarily in defining the coverage of a particular statute. Viewed abstractly, however, it is apparent that the Zone also has attributes associated with several other juridical personalities." (91)

Obviously, the confusion about the legal status of the Canal Zone in the North American Law is due to the wrong interpretation of the wording of Articles II and III of the 1903 Canal Convention, whereby the intention conveyed appears to be quite clear; that is, that Panama "grants in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of the said Canal." Here, the ends for which the grant has been made appear to be quite specific and by no means could this be interpreted as a cession of sovereignty or territory on behalf of the U.S.

On the other hand, if Article III is interpreted in conjunction with Article II the conclusion would be that the rights and authority that Panama granted to the U.S. in the Canal Zone as"if it were the sovereign" by no means constituted a cession or transference of Panama's sovereignty over the Zone. On the contrary, what Panama intended to grant was certain jurisdictional rights for the specific ends outlined in Article II of the Treaty.

In spite of the fact that two treaties(92) have been concluded whereby amendments have been introduced to certain articles of the Isthmian Canal Convention of 1903, the points

which have been the cause of disagreement between the two countries throughout the years have remained unaltered. However, it is worth pointing out that Article III of the 1936 Treaty recognized the fact that although the Canal Zone is under the jurisdiction of the United States, ultimate sovereignty resides in Panama.(93)

Notwithstanding the recognition of Panama's residual or titular sovereignty over the Canal Zone, a very unsatisfactory state of affairs has always prevailed in relation to Panama since the legal instrument - the Convention of the Isthmian Canal of 1903 - which has served as a guide in the relationship between the two countries is void from many points of view and also is in clear contradiction to the principles of international law.

The 1903 Treaty is void "ipso jure", since the conditions under which it was concluded were anomalous as has already been demonstrated. In the same way the treaty is null if we apply to it the legal maxim "convenio omnis intelligitur rubus sic stantibus" meaning that the conditions under which the treaty was concluded have changed, making the treaty obsolete and anachronistic.(94) As we have already seen the attempts to modernize the 1903 Treaty through the Treaties of 1936 and 1955 failed to achieve this objective. Finally, a treaty which is "contra bones mores" is void in its origin. In this sense the 1903 Treaty is in clear contradiction to the moral principles of the international community.(95)

Pope John XXII expressed in The Encyclica Pacem in Terris that the relations among states should be based on the principles

of truth, justice, active solidarity and freedom.(96) Referring to the thinking of his predecessor he said that Pius XII advised that a new order, founded upon moral principles, absolutely prohibits the lesion of the freedom, integrity and security of other nations, whatever would be their territorial extension or defensive capacity.(97)

The 1903 Treaty not only has contradicted this moral order but has also violated the Charter of the United Nations. Thus Article 2 paragraph 4 of the Charter provides: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in other manners inconsistent with the Purposes of the United Nations." (98)

Obviously, the situation created by the 1903 Treaty has constituted a permanent violation of Panama's territorial integrity and also of its political independence. Similarly the 1903 Treaty is contrary to the Charter of the Organization of American States which provides in its Article 17 that "The Territory of a State is inviolable, it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized." (99)

A comparison of these provisions with the antecedents provided above will constitute clear testimony of the legitimacy of Panama's contentions and of the futility of the U.S. position.

Within this framework, Panama has made endeavours to conclude a new treaty whereby its rights as sole and legitimate sovereign in the Canal Zone would be recognized. Thus, on April 3 1964, the United States and Panama issued a Joint Declaration whereby both countries committed themselves to elaborate a new agreement which would take into account Panama's aspirations, the interests of both nations, and the principles and goals of the United Nations.(100)

After 13 years of negotiations with some periods of deadlock, Panama and the United States finally signed a new Treaty in Washington on September 7, 1977.

The effects of the Panama Canal Treaty of 1977 over the legal status of the Canal Zone and hence over its airspace will be examined in depth in the next chapter.

2. Enforcement of Air Regulations in the Canal Zone Airspace

The first allusion to the airspace over the Panama Canal is found in the Proclamation by the President of the United States of America prescribing rules and regulations for the use of the Panama Canal by belligerent vessels (No. 1287 - November 13, 1914);(101) thus, Rule 15 of this Proclamation states that:

> "Aircraft of a belligerent power, public or private, are forbidden to descend or arise within the jurisdiction of the United States at the Canal Zone, or to pass through the airspace above the lands and waters within said jurisdiction."

The grounds on which President Woodrow Wilson appears to have based his decision to issue the aforementioned Proclamation

were the sovereign rights that the U.S. had in the land and waters of the Canal Zone. As a result, Rule 15 has been interpreted as extending such sovereignty to the airspace above these lands and waters which were part of the territory occupied by the Canal Zone.

However, the wording of Rule 15 appears to indicate that the prohibition to descend, to arise or to pass through the airspace above the Canal Zone was meant to cover those aircraft of a belligerent Power, either public or private, but not the aircraft of a neutral state. Still, the fact remains that the U.S., through this Proclamation, asserted a sort of control over the Canal Zone's airspace.

On May 13th, 1917, upon the entry of the United States into the War, a Proclamation for the regulation, management and protection of the Panama Canal and the maintenance of its neutrality was issued.(102) This Proclamation possesses almost the same spirit of the previous one, but with some modifications and additions. Rule 13 merely restated the principle established in Rule 15 of the document quoted above, with the addition of the words "other than the U.S." after the word "belligerent".

These two rules reflect the prevalent attitude among the members of the international community during the war period in relation to the world wide use of aircraft for military purposes. As a result, most of the states interdicted the right of overflight over their territory to foreign aircraft either military or non-military, and so did the U.S. as has

already been shown. Hence, the enforcement of these rules could find a legal justification in the right that the United States had to defend the Canal.[103] even though none of the articles of the 1903 Treaty make any reference to what would be the legal status of the airspace above the Canal (this of course for obvious reasons).

Notwithstanding, the U.S. appears to be entitled to exercise a certain kind of control over the Canal Zone airspace by the application of the principle of appurtenance according to which the airspace is something incidental to the superjacent territory. Thus it should assume a similar condition of the said territory: "Accessorum sequitur principali". Nonetheless, the control that the U.S. could exercise over the Canal's airspace would be limited for the purpose of defending the Canal, and by no means would this signify that the U.S. would enjoy full sovereignty over the Canal airspace since the Canal Zone is Panamanian territory and its airspace is subject to Panama's sovereignty.

It was not until 1926 that the United States expressly declared in the Air Commerce Act that it has, "to the exclusion of all foreign nations, complete sovereignty of the airspace over the lands and waters of the United States, including the Canal Zone. Aircraft, a part of the armed forces of any foreign nation, shall not be navigated in the United States, including the Canal Zone, except in accordance with an authorization granted by the Secretary of State."[104]

Further in Section 9, which refers to definitions used in the Act, Part (b) provides that:

> "The term "United States", when used in a geographical sense, means the territory comprising the several States, Territories, possessions and the District of Columbia (including the territorial waters thereof) and the overlying airspace; but shall not include the the Canal Zone." (105)

Although the former provision asserts the sovereignty of the United States in the airspace over the Canal Zone the latter appears to indicate that the Canal Zone is not regarded as an integral part of the United States. It follows that if Panama has granted no sovereign rights whatsoever to the United States over the Canal Zone airspace in any treaty or agreement, and if at the same time the U.S. does not consider the Canal Zone to be a U.S. Territory or a possession, the question of which title on which the U.S. is basing its contention then arises. In fact, as has already been demonstrated, Panama did not convey its sovereignty in the Canal Zone to the U.S., the rights that Panama granted were of a very specific nature, that is, for the construction, maintenance, operation, sanitation and protection of the Canal. Thus the rights, power and authority that the U.S. would exercise would have to be carried out in accordance with the aforementioned ends.(106)

In a further amendment to Sec. 6 of the Air Commerce Act of 1926, the criteria that had been previously set down with regard to the legal status of the Canal Zone airspace were again maintained. Nonetheless, this new version appears to imply that the U.S. sovereignty over the Canal Zone airspace

is exercised on the basis of the rights that have been conferred to the U.S. by the 1903 Treaty.(107) Once again it is pointed out that such rights and powers have never been granted by Panama to the U.S. It is also worth bearing in mind that during the life of the Air Commerce Act of 1926 the Canal Zone was not regarded as part of the United States in the geographical sense,(108) meaning that the territory occupied by the Canal Zone was not considered for the effects of the act as a territory or a possession of the U.S.

In the Civil Aeronautics Act of 1938, the U.S. adopted a completely different stand in relation to the legal status of the Canal Zone than the one it had adopted in the Air Commerce Act of 1926. Thus Section 1, which refers to the definitions as used in the Act, no. 29, now labels the Canal Zone as a "Possession of the United States".(109) Further, no.31 states that "the "United States" means the several States, the District of Columbia and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof."(110) These two provisions clearly show that the U.S. sought to strengthen its claims of sovereignty by creating within its own law the juridical figure which would provide the legal basis for the justification of its contentions because the provisions of the Air Commerce Act that referred to the Canal Zone gave almost no support to the U.S. assertions of sovereignty in the Canal Zone airspace, as has already been demonstrated above.

In the same way, it would not be unreasonable to assume that the new approach of the Civil Aeronautics Act of 1938 regarding the Canal Zone was meant to provide legal support for the amendment of Chapter 1, Title 2, of the Canal Zone Code, whereby a new section, numbered 14, was added in reference to Air Navigation. Here, the U.S. purported to possess exclusive sovereign rights over the Canal Zone airspace, giving authority to the President to make rules and regulations which would govern all the aeronautical activities within the Zone, and also to impose a punishment upon those who violated such rules.(111)

On September 12, 1939, the President of the U.S. issued an Executive Order whereby the airspace above the Canal Zone, including the three mile marginal sea at both ends of the Canal, was set apart as Military Airspace Reservation. Consequently, Sec. 2 provided that:

> "It shall be unlawful to navigate any foreign or domestic aircraft into, within, or through the Canal Zone Military Airspace Reservation otherwise than in conformity with this Executive order. Provided, however, that none of the provisions of this order shall apply to military, naval, or other public aircraft of the United States." (112)

The authority to allow the entrance of aircraft into the Canal Zone Military Airspace Reservation vested with the Civil Aeronautics Authority in the case of civil aircraft and with the Secretary of State in the case of all other aircraft. Nonetheless, such authorization could only be granted after consultation with the Secretary of War.(113)

Those aircraft requesting permission to enter the Canal Zone airspace were required to follow a prescribed route until reaching the landing area designated by the Governor. It was also mandatory that all cameras aboard be sealed before the aircraft would enter and while flying within the Canal Zone Airspace Reservation. In the same way, no arms, ammunition or explosives, except small arms, would be carried aboard such aircraft.(114)

In a similar manner, an aircraft which is operated or is engaged in the transportation of persons who are not citizens of the U.S. or of its possessions, and which has been granted the authorization to penetrate the Canal Zone Airspace Reservation must notify the Governor of its possible time of arrival and the cruising altitude and speed in order to determine a rendezvous point where it shall be met by an official escort of aircraft from the Canal Zone. This escort shall accompany the aircraft through the established route until reaching a designated landing point. The same procedure shall be followed when the aircraft is leaving the Canal Zone.(115)

Through this Executive Order the U.S. bestowed a more definite status upon the Canal Zone airspace within its own law, that is to say, it rendered the Canal Zone a Military Airspace Reservation. Truly, it is a well known fact that the Canal Zone has been from the very beginning a very important strategic point within the military defensive system of the U.S.. Thus the U.S. has always maintained in the Canal Zone a military force that far exceeds the defensive demands of the Canal,

evidencing in this way that besides the concern for maintaining the neutrality and the freedom of navigation through the Canal of which incidentally the U.S. is the principal beneficiary, there also has been a high degree of concern for the national security interest of the United States. This situation is clearly reflected in the status of the airspace over the Canal Zone.

In contrast to the U.S. regulations regarding the establishment of the military airspace reservation, the Supreme Court of Panama, on February 22, 1939, in re Cia. de Transportes de Gelabert held that:

> "According to the Conventions between the Governments of Panama and the United States, in the territories and the waters occupied by the North American army and navy by virtue of the Canal Treaty for the safety and defense of the interoceanic route, the authorities of the Zone exercise full jurisdiction as if they were the owners of the respective territory and waters. But the accident which is now being investigated, or rather, its cause, did not take place in those jurisdictional territories or waters of the Zone in which the Government of the United States enjoys the privilege of the aforesaid permission given by Panama. It occurred in the air. And as the Republic exercises therein its jurisdictional rights of sovereignty, its courts should take cognizance of this matter. The fact that the airplane may have crashed in the military encampment (the Zone) referred to does not deprive the Republic of the exercise of the jurisdictional right which it has in the atmospheric belt over its territory, up to the limits of the stratosphere if circumstances should so require. Suppose that instead of the airplane having fallen by reason of the aforesaid accident, the case had been different. For example, if one of the passengers had pushed a person out of the windows of the plane when it was flying over the military encampment (the Zone) referred to. From the fact that the person so thrown out would have fallen in the territory within such military jurisdiction does it follow that the authorities of the Zone ought to try the case of homicide?... The answer is obvious." (116)

The judgment of the Supreme Court of Panama in the case quoted above constitutes a clear testimony to Panama's attitude regarding the legal status of the airspace over the Canal Zone since, in the Court's opinion, the U.S. had jurisdictional rights only over the territory and the waters occupied by the Canal and this jurisdiction had been granted through the 1903 Treaty for the safety and defense of the interoceanic route. However, the U.S. could not enjoy the same rights over the airspace because Panama retains the right to exercise therein its sovereign powers. Admittedly Panama imposed a limitation upon its sovereignty in the Canal Zone by means of the rights that were conferred upon the U.S. for the construction, maintenance and defense of the Canal and also by the privilege of freedom of navigation that every vessel would enjoy in the interoceanic route regardless of its nationality. Nonetheless, Panama never relinquished its sovereignty over the Canal Zone airspace neither on behalf of the U.S. nor on behalf of the international community.

It follows that the transformation of the Canal Zone airspace into a Military Airspace Reservation by the Executive Order No.8251 of September 12, 1939, which paradoxically was enacted a few months subsequent to Panama's Supreme Court decision, is a clear violation of the spirit and letter of the 1903 Treaty and also is a violation of Panama's sovereignty over the totality of its airspace including that of the Canal Zone.

Actually, in 1932 Panama had enacted a Decree regulating Commercial Aviation within the territory of the Republic. Thus, Article 29 stated that:

> "As the Government of the Republic of Panama has complete sovereignty in the airspace over the lands and waters of the Republic of Panama, with the exclusion of all foreign nations, no aircraft which forms part of the armed forces of any foreign country shall fly over the Republic of Panama, unless in accordance with an authorization granted by the Secretary of Justice." (117)

Similarly, Article 30 establishes the requirement of prior authorization for those aircraft which, although not belonging to the armed forces of a foreign country, nevertheless intend to fly over Panamanian territory.(118)

Although none of the above provisions expressly refer to the Canal Zone airspace, the wording used in Article 29 appears to indicate that the intention of the legislators was to embrace the airspace over the Canal Zone by using the words "Panama has complete sovereignty in the airspace over all the lands and waters of the Republic of Panama". On account of this fact, Panama has always been consistent in its position toward the status of the Canal Zone, that is, that it has never surrendered its sovereign rights neither over the land nor over the airspace on behalf of the U.S. even though certain jurisdictional prerogatives were granted to the U.S. in the Zone by the 1903 Treaty. It follows that there was no need to allude expressly to the Canal Zone in Article 29 since there has never been any uncertainty or vacillation in the Panamanian stand in relation to the status of the territory

occupied by the Canal as well as the status of the airspace above it. All these contentions find great support in Panama's Supreme Court decision in the case that has already been discussed above.

In addition to this, Panama's document of adherence to the Chicago Convention contained a reservation regarding the use of the word "jurisdiction" in Article 2 of the Spanish text as an equivalent of the English notion of suzerainty. Accordingly, Panama's reservation reads as follows:

> "The Republic of Panama accedes to the said Convention with the reservation that the Republic of Panama does not give its assent to the word jurisdiction appearing in Article 2 of the Convention as equivalent to the term "suzerainty" which appears in the English text." (119)

In respect to Panama's reservation Mr. Narashi observed that:

> "The President replied that the Organization had not been informed of the difficulty the Panamanian authorities had with "jurisdiction", but from his knowledge of linguistic usages in different parts of the Spanish speaking world, he suspected that they might have preferred "señorio", which was another way of translating "suzerainty". (120)

In like manner, the Council of ICAO, in its thirty ninth session, referring to the same matter expressed that:

> "The instrument of adherence of Panama contains a "reservation" regarding the use of the word "jurisdiction" as a translation of the term "suzerainty" in Article 2 of the Spanish version of the Convention. However, the National Assembly of Panama has approved the Convention as it appears in the English text and therefore the United States Government, as depository of the Convention,

> considers that the reservation does not detract in any way from the obligations assumed by Panama with respect to the Convention." (121)

Although Panama's reservation to the Chicago Convention has been regarded as a mere problem of translation without any major implications other than a semantic confusion easy to be solved, it is a clear fact that in the light of this analysis the real intention of the Panamanian Government in submitting the reservation was to state clearly that there is no equivalence between the english term "suzerainty" and the word "jurisdiction" which appears in the Spanish translation of Article 2. This is the case because the former implies a sort of a colonial relationship that bestows upon the strongest state a series of sovereign prerogatives - mainly the international representation - exercised on behalf of the weaker state, which for this reason is considered to be half sovereign over its own territory. As a result, the word "jurisdiction" can not match with the concept of suzerainty because it does not necessarily imply the exercise of all the rights and powers that are supposed to be exercised when the concept of suzerainty is applied. The number of rights or prerogatives that jurisdiction comprises are far less than those embraced in suzerainty. Therefore, the use of the word "jurisdiction" in the Spanish translation of Article 2 does not convey the real concept of territory as established in the English version, because the fact that one state exercises jurisdiction

over the territory of another state does not necessarily mean that the former owns the territory of the latter.

It would seem that the Spanish words that would more properly serve as the equivalent of "suzerainty" are "senorio" and "dominio" and, in fact, the latter was eventually adopted by the Protocol on the Trilingual Text of the Convention on International Civil Aviation.(122)

In attention to all this,it would not be unreasonable to assume that Panama sought with this reservation to avoid any possible controversy that could arise from the fact that the U.S. exercised jurisdiction over the territory and waters occupied by the Canal Zone, since the acceptance of the exercise of jurisdiction on a given territory would imply that such territory and its airspace would become part of the state exercising the jurisdiction. This could have been interpreted as indication that Panama was accepting that the territory where the Canal was located and its airspace belonged to the U.S.

Something which gives support to this contention is consideration of the fact that Panama did not object to the use of the term "dominio" as the equivalent of "suzerainty" in the Spanish version of Article 2 in the Authentic Trilingual Text of the Chicago Convention, because the use of such a term did not signify any problems for Panama since it has already been demonstrated that the Canal is not under the sovereignty, suzerainty, protection or mandate of the United States.

Referring to the Third Category among those mentioned above within which Panama's situation could fit, Oppenheim explains: "On the American continent the United States established for a time relationship with Cuba, Panama, Dominican Republic, Haiti and Nicaragua which, while implying the right of intervention on the part of the United States in certain cases and important restrictions on the freedom of foreign policy, did not exhibit the characteristics of a protectorate as described above."(123)

Despite Panama's opposition to the U.S. contentions of sovereignty over the Canal Zone airspace the U.S. has maintained without a real legal basis a de facto control in the Canal Zone airspace, asserting its strict military character by the constitution of the "Canal Zone Military Airspace Reservation". In accordance with this criterion, the U.S. Government adopted on May 27, 1964 an amendment to Part 99 of the Federal Aviation Regulations which established an Air Defense Identification Zone over the Panama Canal Zone to require position reports and flight plans from pilots operating civil aircraft entering or already within the ADIZ.(124)

Apparently, the implementation of the ADIZ was one factor of a plan originated for the improvement of the flow of air traffic in the regional area which encompasses the Canal Zone. Consequently the role of ADIZ would be to reduce R-600 by the imposition of a ceiling at 2,500 feet above the sea level(125) and, at the same time, the danger areas over the

Canal, including those within the 3 mile limit, would be re-established by the military as "restricted areas" or rescinded as being no longer necessary. In addition, the danger areas existing beyond the 3 mile limit would be modified and renamed in non rule making actions by the FAA as warning areas.(126)

Although, the ADIZ reduced the scope of the Military Airspace Reservation by the establishment of a ceiling at the height of 2,500 feet, many danger areas were designated over the Canal and both IFR and DVFR flights were subject to the requirements of flight planning and position reporting that was justified on the basis of the national defense.(127)

In this fashion, the U.S. has acquired for itself a myriad of rights and faculties over the Canal Zone and its airspace which have culminated in the assertion of sovereignty in both milieux. This contention, however, is not rooted in a legitimate source of law. Neither at the bilateral level, that is to say, within the 1903 Treaty which is the main source of obligations for both countries, nor at the multilateral level, in this case within Article 2 of the Chicago Convention defining territorial limits, can one find legal support for the U.S. claims.

In this light, the U.S. control over the Canal Zone airspace can be seen as a clear manifestation of a relationship where the imperium of force and intimidation have been the general rule, disregarding in this way the real essence of

obligations that the U.S. has contracted with Panama and the international community. As we have seen the territorial integrity of Panama has been severely curtailed and the deployment of a large military force in the Zone as well as the destination of the airspace for military use does not only relate to the purpose of defending the Canal but also to the national security interests of the U.S. This last situation has been translated into a permanent state of aggression toward Panama which, for its own part, has always responded with the only source at its disposal, namely the pleading of its inalienable right as the legitimate sovereign over the territory occupied by the Canal Zone.

FOOTNOTES

1. "In recent years, states have shown an increasing inclination to control activities off their shores by extending the limits of their territorial sea outward to such an extent that it is no longer possible to say that the three mile rule is recognized as placing bounds on the width of a nation's territorial sea. The International Law Commission, not without dissent, recognized that international practice in this regard is far from uniform and expressed the view that "International law does not justify an extension of the territorial sea beyond twelve miles", while maintaining that states are not require to recognize a breadth beyond three miles."
R.R. Baxter, The Law of International Waterways With Particular Regard to Interoceanic Canals, Harvard University Press, 1964, pp 6-7.

2. See C. John Colombos, The International Law of the Sea, Longmans, Sixth Edition, 1967, p.197.

3. Ibid.

4. This rule, however, does not apply to aircraft since as we have already seen, aircraft do not enjoy the right of innocent passage as vessels do.

5. The Corfu Channel Case, (1949) 1 C.J.4 as reprinted in New Directions in the Law of the Sea, (Churchhill and Norquist, eds. 1975), p.310.

6. Paragraph 4 of Article 16 reads as follows:
"There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state."

7. Article 23: "In order to assure the passage of civil aircraft between the Mediterranean and the Black Sea, the Turkish Government will indicate the air routes available for this passage, outside the forbidden zones which may be established in the straits. Civil aircraft may use these routes provided that they give the Turkish Government, as regards occasional flights, a notification of the dates of passage.
The Turkish Government moreover undertakes, notwithstanding any remilitarization of the Straits, to furnish the necessary facilities for the safe passage of civil aircraft authorized under the air regulations in force in Turkey

to fly across Turkish territory between Europe and Asia. The route which is to be followed in the Straits zone by aircraft which have obtained an authorization shall be indicated from time to time." Convention Regarding the Regime of the Straits signed at Montreaux, July 20, 1936. 173 L.N.T.S. 214 (No. 4015), 1937, U.K.T.S. 30.

8. See Colombo, op cit., pp.197-198-220.

9. See Churchill, Norquist and Lay, op cit, Vl, p.881.

10. See paragraph 6 of Article 14 of Geneva Convention on the Law of the Sea, 1958.

11. See Article 3 of paragraph C of the Chicago Convention.

12. For the text, and the analysis of this proposal see S. Muli' Aumaseali 'I, op cit., pp. 88-89.

13. Shigeru Oda, The Law of the Sea in Our Time - I New Developments, 1966-1975, Sijthoff-Leyden - 1977, p.173.

14. Ibid, p.174.

15. See Article 38, Third United Nations Conference on the Law of the Sea - Informal Composite Negotiating Text (A) Conf. 62/WP.10) 235 (15 July, 1977).

16. See Article 37, I.C.N.T.

17. See Article 45, I.C.N.T.

18. For a study of International Rivers see C. John Colombos, op cit., pp. 224-258. See also Oppenheim, op cit., pp. 464-474.

19. See above.

20. Joseph A. Obieta, S.J. The International Status of the Suez Canal, The Hague, Martinus Nijhoff, Second edition, 1970, p.26.

21. Ibid, p.41.

22. "State servitudes are those exceptional restrictions made by treaty on the territorial supremacy of a State by which a part or the whole of its territory is in a limited way made perpetually to serve a certain purpose or interest of another State." Oppenheim, op cit. p.536.

23. Obieta, op cit, p.42.

24. Ibid, p.43.

25. James I.V. Hakim, The International Character of the Airspace over the Suez Canal, Southern California Law Review, Vol. 29, 1955-56, p.215.

26. Ibid.

27. See Obieta, op cit, Appendix A: The Concession of 1856, p. 143.

28. Hakim, op cit. p.215.

29. Obieta, op cit. p.8.

30. Ibid. p.9.

31. Ibid. p.10.

32. Ibid. p.11.

33. Ibid. Appendix B: The Constantinople Convention, p.146.

34. Ibid.

35. Ibid.

36. Ibid.

37. See Hakim, op cit. p.218.

38. Ibid.

39. Obieta, op cit. p.12.

40. Ibid, p.13.

41. David Johnson, op cit, p.22.

42. Ibid.

43. See Hakim, op cit, p.219.

44. Ibid. p.220.

45. See supra p.12 Note 42.

46. See, Shawcross and Beaumont, Air Law, 1945, p.232.

47. Hakim, op cit, p.220.

48. Ibid, p.223.

49. See Article I of the Treaty, Extracts of this document can be found in the Annex III of the workd of D.C. Watt, Britain and the Suez Canal: The Background, Royal Institute of International Affairs, 1956, p.35.

50. See Article VIII, Ibid.

51. Ibid

52. League of Nations, Treaty Series, Vol. 173, No.4031, 1937.

53. Le Goff M. Le Statut Aérien du Canal de Suez d'apree le Traite Anglo-Egyptien de 26 août 1936, 46, Revue Général de Droit International Public, 1939, p.154.

54. David Morgan Hugues, Airspace Sovereignty Over Certain International Waterways, 19 J.A.L.C. 1952, p.147 55

55. "Egypt, on her part, consented to a British return to the Suez Canal Base in the event of an armed attack on any of the Arab League States or on Turkey." Obieta, op cit., p.18.

56. Ibid, p. 103.

57. Ruth Lapidoth, Reopened Suez Canal in International Law, Syracuse Journal of International Law and Commerce 1, 1976, p.13.

58. See Obieta, op cit, p.20.

59. Ibid, p. 108.

60. See Lapidoth, op cit, p. 16.

61. For a comprehensive study of the Reopening of the Suez Canal, see ibid.

62. See Article 2 of the Decree of May 23, 1935, Air Law and Treaties of the World, Vol. 1, 1965, p.631.

63. Diogenes A. Arosemena G., Breviario Historico sobre el Problema Canalero, Panama, 1976, p.9.

64. Ibid. p.10.

65. Ibid. p.9.

66. Ibid. p.10.

67. Panama declared its indepence from Spain on November 28, 1821 and right away became a member of a confederation of States known as the Great Columbia which was under the leadership of Simon Bolivar. After Bolivar's death the Confederation started to disintegrate leaving Panama the only State that remained attached to what later became the Republic of Nueva Granada.

68. Dr. Ernesto Castillero Pimentel, Panama y los Estados Unidos, Litho-Impressora Panama, S.A., Cuarta Impression, 1974, Apendice, p.III.

69. Diogenes Arosemena, op cit. p. 11.

70. See Article 1 of The Clayton Bulwer Treaty, Castillero Pimentel, op cit, Appendix p. VII.

71. Arosemena, op cit, p.13.

72. Ibid.

73. See Article I of the Hay Pauncefote Treaty, Castillero Pimentel, op cit., Appendix, p. XXXIII.

74. See Article III.

75. See Article I of this Act, Castillero Pimentel, op cit, Appendix, p. XXXX.

76. Ibid. see Article II.

77. Arosemena, op cit, p.15.

78. Ibid.

79. For a comprehensive analysis on this subject, see Castillero Pimentel, op cit, pp. 19-20.

80. The Secretary of State, John Hay, himself told the U.S. Senate that the Treaty was "vastly advantageous to the United States and, we must confess.....not so advantageous to Panama." U.S. Senate Hearings on Panama Canal Treaties, First Session, 1977, p. 141

81. Castillero Pimentel, op cit, p.25.

82. Ibid.

83. Throughout this Chapter "1903 Canal Convention" will be used to refer specifically to the Isthmian Canal Convention, November 18, 1903, United States - Panama, Treaties and Other International Agreements of the United States of America, 1776-1949, Bevans Department of State, Washington, p.663. The term "1903 Treaty" or simply "Treaty" will be used to refer to the Canal Convention, as amended by the 1936 and 1955 Treaties.

84. The first part of Article II provides:
"The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the centre line of the route of Canal to be constructed....."

85. Article III provides:
The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

86. In the case Wilson v Shaw, 204 U.S. 24 (1906) in which a taxpayer sued to restrain the Secretary of the Treasury from paying funds for the construction of the Canal. The taxpayer claimed the Canal Zone was not U.S. territory. The Court responded that "a treaty....ceding the Canal Zone, was duly ratified." The Court continued: "It would be hyprocritical to contend that the title of the United States is imperfect and that the territory described does not belong to this nation because of the omission of some of the technical terms used in ordinary conveyance of real estate." Dr. Carlos Alfredo Lopez Guevera, Negotiating a Peaceful Solution to the Panama Canal Question, New York University Journal of International Law and Politics, Vol. 9, Spring 1976, No.1, p.6.

87. Cession, Occupation, Accretion, Subjugation and Prescription. For the analysis of these concepts see Oppenheim.

88. Dr. Lopez Guevara, op cit. p.5.

89. Ibid, p.7.

90. Martha Jane Shay, The Panama Canal Zone: In search of a Juridical Identity, New York University Journal of International Law and Politics, Vol. 9, Spring 1976, No. 1, p.15.

91. Ibid, p.36.

92. The Isthmian Canal Convention, Nov. 18, 1903, United States - Panama 33 Stat. 2234, T.S. No. 431, has been amended twice, by the General Treaty of Friendship and Cooperation with Panama,March 2, 1936, 53 Stat. 1807, T.S.N. 945; and by the Treaty of Mutual Understanding and Cooperation with the Republic of Panama, Jan. 25, 1955, 6 U.S.T. 2273, T.I.A.S. No. 3297.

93. See Lopez Guevara, op cit. p.10.

94. Luis Carlos Noriega, Soberania de Panama, Republic de Panama, 1976, p.29.

95. Ibid. p.30.

96. Translation made by the author from Carlos Alfredo Lopez Guevara, Un Canal sin Zona del Canal, Colon, 1974, p.10.

97. Ibid.

98. U.N. Charter, Art. 2.

99. O.A.S. Charter, Art. 17.

100. "By 1967, three treaties were prepared. The text of these treaties is reproduced in Report Concerning the Panama Canal, by the Subcommittee on the Panama Canal of the House Committee on Merchant Marine and Fisheries, 91st Cong., 2d Sess. (1970). The first treaty proposed a joint U.S. Panama administration of the Canal. 1d at 38-54 Panama's sovereignty over the Canal Zone was recognized in Article 11 of that treaty, 1d . at 38. Article XXXIX provided for the transfer to Panama of the Canal, the Canal Zone and all property located therein. 1d at 54. Article XLI provided that this transfer is to occur on December 31, 2009 or one year after the opening of a new sea level canal, which ever date comes first. 1d Details concerning construction of a new sea level Canal on Panamanian territory was covered by a second treaty, 1d. at 55-66. A third proposed treaty covered defense of the Panama Canal and a guarantee of its neutrality. 2d. at 67-81. Panama rejected the three treaties and they were never submitted to the U.S. Senate for ratification." Lopez Guevara, op cit. p.4.

101. AJIL, Vol. 9 (Suppl.), 1914, pp. 126-131.

102. Proclamation No. 1371, AJIL, Vol.19 (Suppl.) 1917, pp. 165-168.

103. See Article III of the 1903 Treaty.

104. Sec. 6 Foreign Aircraft. - (a), Air Commerce Act of May 20, 1926, 44 Stat. 568, 1928 U.S. Aviation Reports, p.338.

105. Ibid. p.340, Emphasis added.

106. See Articles II and III of the 1903 Treaty supra notes, 84 and 85.

107. Sec. 6 (49 U.S.C., Sup.V.176) Foreign Aircraft
(a) The United States of America is hereby declared to possess and exercise complete and esclusive national sovereignty in the air space above the United States, including the air space above all inland waters and the air space above those portions of the adjacent marginal high seas, bays and lakes, over which by international law or treaty or convention the United States exercises national jurisdiction. Aircraft a part of the armed forces of any foreign nation shall not be navigated in the United States, including the Canal Zone, except in accordance with an authorization granted by the Secretary of State. (As amended by Section 1107(i) (3) of the Civil Aeronautics Act.) Aeronautical Statutes and Related Material, 1940, p.90.

108. See Sec.9(b), ibid. p.92.

109. See Sec.1(29), Civil Aeronautics Act of 1938. Ibid. p.8.

110. Ibid, p.9. Here it is worth pointing out the great difference between this definition and that provided in Sec. 9(b) of the Air Commerce Act of 1926.

111. "14 Air Navigation, 48 U.S.C.,Sup.V. 1314a. The Government of the United States is hereby declared to possess to the exclusion of all foreign nations, sovereign rights, power and authority over the air space above the lands and waters of the Canal Zone. Until Congress shall otherwise provide, the President is authorised to make rules and regulations and to alter and amend the same from time to time governing aircraft,air navigation, air navigation facilities and aeronautical activities within the Canal Zone. Any person who shall violate any of the rules or regulations issued in pursuance of the authority contained in this section shall be punishable by a fine of not more than $500 or by imprisonment in jail for not more than one year, or by both." Ibid. p.159.

112. Exec. O. 8251, Sept. 12, 1939, AJIL, Vol. 34, Suppl.p.32.

113. See Sec.3, ibid, p.33.

114. See Sec.4, ibid.

115. See Sec.5, ibid, p.34.

116. Annual Digest 9 (1938-40), Case No. 43.

117. This is a translation made by the author of the original text in spanish which reads as follows:
Art.29. Como el gobierno de la Republica de Panama' tiene completa soberania en el aeroespacio de todas las tierras y aguas de la Republica de Panama, con exclusion de todas las naciones extranjeras, ninguna aeronave que forme parte de las fuerzas armadas de cualguier pais extranjerc podra volar sobre la Republica de Panama; sino de acuerdo con la autorizacion que para ello haya concedido el Secretario de Gobierno y Justicia.
Decreto No.147 de 23 de Agosto de 1932, G.O. 6384, Definitivamente queda Reglamentado el Servicio de Aviacion Comercial en el Territorio de la Republica.

118. See Art. 30, ibid.

119. List of States Parties to the Convention on International Civil Aviation (based on information received from the depository State), ICAO, p.3.

120. Doc. 8057-3, C/922-3, 25/3/60.

121. ICAO Doc. C-WP/3100, p.1. (1960).

122. See the Spanish text of Article 2 of the Chicago Convention, ICAO Doc. 7300/4. The same document contains the Protocol on the Trilingual Text, p.39.

123. Oppenheim's op cit. p.194.

124. See Amendment 99-1, Published in 29 F.R. 7146, June 2, 1964, p.4.

125. The Military Airspace Reservation which is charted as R-600, extends from the surface of the Canal Zone upward without ceiling. Ibid.

126. Ibid.

127. See Amendment 99-3, Published in 29 F.R. 11446, August 8, 1964, p.5.

CHAPTER III

THE PANAMA CANAL TREATY OF 1977

Section 1: 1977 Panama Canal Treaty: An Appraisal

As has been noted earlier, the U.S. and Panama have been engaged since April 3, 1964, when the two countries issued a Joint Declaration agreed under the auspices of the Council of the OAS, in the negotiation of a new treaty which would provide the legal basis for the constitution of a new relationship. Finally, on August 10, 1977, after 13 years of endeavors, U.S. and Panamanian negotiators arrived at agreement on the terms of two new treaties which set forth the role that the two countries will play in the operation, management and defense of the Panama Canal. The new treaties have superseded a 74 year old treaty which has been a permanent source of conflict and disagreement between the two countries.

The new pacts were signed at Washington on September 7, 1977 (1) and further transmitted to the Senate for ratification by President Carter on September 16 (2). In pursuance of Article 11 of Section 2(2) of the United States Constitution, the Committee on Foreign Relations of the U.S. Senate carried out its duty to give its advice and consent to the President on the ratification of the Panama Canal Treaties. Thus, the Hearings began on September 26, 1977.

Among the most debated issues within the Committee was that of sovereignty. In this regard several senators and U.S. citizens have expressed their concern and dissatisfaction about what giving away the U.S. sovereignty in the Canal Zone would mean for

the national security interest of the United States.

One of the most outstanding crusaders against the surrendering of the alleged U.S. sovereign rights in the Canal Zone has been Senator Daniel J. Flood who has expressed that:

> "The maintenance, operation, sanitation and protection of the Panama Canal and its indispensable protective frame of the Canal Zone are technical problems of great complexity, requiring not only a depth of expert knowledge and experience but also the strong logistical support of a great and powerful nation. The solution of these problems, including that of the major modernization, does not consist of surrendering U.S. sovereignty over the Canal Zone and, ultimately, the Canal itself to a small weak, technilogically primitive and unstable country but the assumption by the United States of its responsibilities as the great power leader of the Free World." (3)

Similar distress regarding the acknowledgement of Panama's sovereignty over the Canal Zone by the U.S. government, and the harmful effect that this action would have upon the security of the U.S. has been articulated by Hanson W. Baldwin as follows:

> "The future security and well-being of the United States are threatened by the administration's proposed abandonment of sovereignty over the Panama Canal and the Canal Zone.
>
> Any such action would have global consequences, nowhere more adverse than in the Caribbean Sea-Gulf of Mexico area. The vital interests of a nation can be defined in territorial and regional terms or as political, psychological, economic, or military interests. By any and all of these yardsticks, the security of the Caribbean, the ability of the United States to control the Caribbean in war and to be a dominant influence there in peace, is vital to our country." (4)

Like these views, many other of the same nature have been expressed in the Senate,(5) reflecting in this way a misconception

about the sovereignty issue and a blind attachment to out-moded policies and ideas which are in contradiction to the very principles of international law .

Nevertheless, more in accordance with the present state of development of international institutions, officials of the Carter administration and the President himself have recognized the inalienable rights of Panama as the sole sovereign over the totality of its territory including that of the Canal Zone. Moreover, both the United States negotiators and President Carter in several addresses to the American public and to the U.S. Senate have dismissed the long sustained and defended idea of the so-called United States sovereignty in the Canal Zone.

Accordingly President Carter has explained:

> "There's an emotional feeling about the Panama Canal, And there is a lot of distortion about the significance of the Panama Canal. People say we bought it; its ours; we ought not to give it away. We've never bought it. It's not been ours. We are not giving it away. There is no semblance between the status of, say, the Panama Canal Zone and Texas or Alaska that were bought and paid for and over which we've always had sovereignty. There's no similarity at all." (6)

In like manner, the Ambassador at Large and Chief Co-Negotiator of the U.S. government, Mr. Ellsworth Bunker, referring to the sovereignty question has answered that:

> "What then, in terms of real, substantial national interests, do we stand to lose by ratifying this agreement? The answer is simple: We stand to lose nothing.
> Sovereignty over the zone? We have never had it - as treaty terms, U.S. public statements, and Supreme Court decisions all make clear. No amount of rhetoric can convey territory or sovereignty that the original treaty of 1903 did not convey to us. We cannot lose what we do not have." (7)

In support of the aforementioned declarations the Senior Adviser to the Panama Canal Treaty Negotiations, Mr. Sol M. Linowitz has declared that:

> "The simple fact is, therefore, that while we have exercised virtually complete jurisdiction over that part of the Panamanian territory which comprises the Canal Zone, we have never had actual sovereignty and do not have it today....." (8)
> We do not believe we are giving up sovereignty. We don't believe we have had sovereignty, and we have to actually rely on the judgment of the most competent people we know - the Joint Chiefs, the Department of Defense, and those who are deeply concerned with our security - who assume as that under the arrangement we have worked out our national defense interests are well preserved." (9)

This shift of the U.S. policy in relation to the sovereignty issue in the Canal Zone appears to be based on the understanding that their contentions of sovereignty could no longer be sustained on the basis of the outmoded treaty of 1903, and that the obstinacy in maintaining the status quo could severely affect their security interests in the Canal Zone and in the Western Hemisphere. It must also be noted that the Panamanian cause acquired world wide support, especially among the Latin American

countries[10] and therefore the conclusion of new agreements whereby the inalienable rights of Panama were to be recognized was an unavoidable outcome.

As a result, the U.S. officials in their lobbying campaign for the approval of the treaties by the Senate have emphasized that the national interest of the United States is best protected under the new treaties since these treaties fully eliminate the causes of conflict between the two countries.[11] It has been repeatedly said that the military and commercial interests of the U.S. lie in the use of the Canal, not in its ownership; that efficient operation of the canal in the future is more important than nostalgia for the past; and that the capability to defend the Canal is vital. Accordingly, the new treaties truly enhance the U.S. interests in the Canal Zone because they meet the Panamanians' aspirations and at the same time give the United States the necessary rights to operate and defend the Canal for the rest of this century.

Within this framework, the Declaration of Washington[12] of September 7, 1977 gives testimony to the American Republic's endorsement of the new Panama Canal Treaties with the understanding that the Republic of Panama is recognized as the sole sovereign over the totality of its territory, and that the settlement of the Panama Canal controversy constitutes a step forward toward the betterment and reinforcement of the relations among the nations of the Western Hemisphere on a basis of common interest, equality and mutual respect for the sovereignty of every state. In order to maintain the continuing accessibility and neutrality of the Panama Canal respect for and compliance

with the above mentioned principles is essential.

Likewise, the Preamble of the Panama Canal Treaty recognizes the sovereignty of the Republic of Panama over its territory. In addition it is stated that the principal purpose of the Treaty is to terminate the ruling of the prior treaties concerning the Panama Canal and to institute a new relationship.(13)

In accordance with this goal article I of the treaty provides for the termination of the Isthmian Canal Convention of 1903, the Treaty of Friendship and Cooperation of March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, on January 25, 1955. It also puts an end to all other treaties and agreements between Panama and the United States concerning the Panama Canal which were in force prior to the establishment of this Treaty.(14)

In addition to this paragraphs 2,3 and 4 set forth the general framework under which the two countries shall carry out the new relationship, thus superseding the old one. Accordingly, the Republic of Panama as territorial sovereign grants to the U.S. the necessary rights to regulate the transit of ships through the Panama Canal. In addition, the Republic of Panama will guarantee to the U.S. the peaceful use of the land and waters which it has been granted for the operation of the Canal, and at the same time will participate increasingly in the management, protection and defense of the Canal in a spirit of cooperation in order to assure that the Canal will remain open and efficiently operated.(15)

In accordance with article II, the Panama Canal Treaty along with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall enter into force simultaneously six calendar months from the date of the exchange of the instruments of ratification.(16) Apparently this period of six months is intended to provide the Contracting Parties with enough time to undertake the necessary steps for the implementation of the Treaty. The second paragraph of Article II stipulates Noon, Panama Time, December 31, 1999, as the termination date for the Treaty. This stipulation, however, does not embrace the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal, because this will remain in force after the termination of the 1977 Treaty.

The basic grant of right to the United States for the operation and management of the Canal are contained in Article III of the Treaty.(17) Thus Paragraph 1 lays down that the Republic of Panama, as territorial sovereign, grants to the U.S. the rights to manage, operate and maintain the Panama Canal; on the other hand, the United States commits itself to exercise those rights in accordance with the terms of the Treaty and the related agreements.(18)

Further, paragraph 2 enumerates a series of prerogatives that the U.S. will be entitled to perform pursuant to the above mentioned rights that is, a) the use of the various installations, areas and waters which are described in the Agreement in Implementation of this Article as well as those areas, installations

and waters made available to the U.S. described in other agreements related to the Panama Canal;

b) to improve or to alter such areas or installations as it deems necessary; c) the making and enforcement of rules and regulations concerning the transit and traffic control of ships passing through the Canal; in this regard, Panama will cooperate with the U.S. whenever necessary; d) the power to fix, alter, collect and retain tolls and other charges for the use of the Canal; e) issuance and enforcement of the necessary regulations for the effective compliance with the rights and obligations contracted under this Treaty.(19)

In carrying out the aforementioned rights, the U.S. shall do so through a Government agency constituted by and in accordance with the laws of the United States. This agency shall be called the Panama Canal Commission,(20) which shall be under the supervision of a Board consisting of nine members, five of whom shall be nationals of the U.S., and four of whom shall be Panamanian nationals proposed by the Panamanian Government to the U.S. for their appointment to such positions.(21)

The Republic of Panama also has the right to request the removal of a Panamanian national from the Board and to propose a new candidate to the U.S., which must agree to both things.

In the instance of a removal of a Panamanian member of the Board at the initiative of the U.S. this shall be done on the basis of prior consultation with Panama, which shall express its agreement and will proceed to appoint a new candidate.(22)

In regard to the directive positions of the Panama Canal Commission, the Administrator of the Commission will be a national of the United States and the Deputy Administrator will be a national of the Republic of Panama until December 31, 1989. From January 1, 1990 until the termination of the Treaty, the situation will be reversed.(23)

An extensive account of the activities that the Panama Canal Commission will be able to conduct pursuant to the rights and obligations that the U.S. has contracted under this Treaty is set forth in the Annex. In addition, the Annex lays down the procedures for the discontinuance of the activities formerly performed by the Panama Canal Company or the Canal Zone Government which will not continue to be exercised by the Panama Canal Commission.(24)

As a result, the exercise of private economic activities within the areas made available to the U.S. by Panama for the operation of the Canal shall be regulated and subject to Panamanian law.(25) Furthermore, the Panama Canal Commission shall refrain from engaging in governmental or commercial functions unless the performance of acts of this nature are strictly necessary and related to the efficient management, operation and maintenance of the Canal.(2

Conversely, the Republic of Panama shall assume the right and responsibility of providing public services such as police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection in the Canal operating areas for which services the Panama Canal Commission shall reimburse Panama for the cost it has incurred.(27)

In the same way, Panama will be in charge of furnishing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, pursuant to this Treaty and related agreements.(28)

In order to coordinate the activities of both governments regarding the Canal operation they shall set up a Panama Canal Consultative Committee which will basically be an advisory body which shall advise the two countries on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal at all levels and international policies concerning the Canal. Both governments will take into account the suggestion of the Committee at the moment of formulating their policy decisions.(29)

Finally, the last three paragraphs of Article III refer respectively to, a) the growing participation of Panamanian nationals at all levels of employment within the Commission with the purpose of facilitating in an orderly and efficient manner the assumption by Panama of the control of the Canal upon the termination of the Treaty;(30) b) the fact that the legal status of the U.S. agencies and employees will be governed by the Agreement in Implementation of this Article;(31) c) that upon entry into force of this Treaty the Panama Canal Company and the Canal Zone Government shall cease to operate within the part of Panamanian territory formerly denominated Canal Zone.(32)

The other matter over which Panama has granted specific right to the United States has been with regard to the protection and defense of the Canal. Thus, in Article IV of the Treaty the

United States and Panama commit themselves to share the responsibility of the protection and defense of the Canal in accordance with their respective constitutional processess.(33) In this regard, the question of whether or not the U.S. could act unilateraly pursuant to the stipulations of this article, to meet any threat or attack against the Canal has been raised.

Admittedly, the U.S. has been given the primary responsibility to protect and defend the Canal(34) in view of the fact of its military might and experience; nevertheless, the eventuality that the U.S. in compliance with this committment could undertake an unilateral action appears to be prevented by the content of Paragraph 3 of the same article which provides for the establishment of a Combined Board(35) consisting of an equal number of senior military representatives of each Party, who will serve as liaison between the two governments in order to ensure consultation and cooperation on all matters concerning the protection and defense of the Canal and the planning of joint actions to be taken in this respect. However, this arrangement of joint defense will not interfe or affect the line of authority of the armed forces of each country.(3

In addition, the United States declares in paragraph 5 of this article its intention not to augment its armed forces in Panama above the level reached by those forces prior to the implementation of this Treaty, unless such an increase is necessary for the protection and defense of the Canal.(37)

The aforementioned articles, indeed, settle the question of the sovereignty over the Panama Canal by recognizing the Republic of Panama as the sole sovereign over the totality of

its territory, and as a consequence of this fact, it has granted to the U.S. the necessary rights to operate,manage and defend the Canal.

Likewise, in other articles of the Treaty the sovereignty of Panama over the territory of the former Canal Zone is recognized either explicitly or implicitly. Thus, Article V set forth the principle of non-intervention whereby the employees of the Panama Commission, their dependents and designated contractors of the Commission bow to the laws of the Republic of Panama and undertake not to engage in any political activities within Panama or to commit any sort of actions that could contradict the letter and spirit of this Treaty.(38)

Further, Article VI lays down the basis for the protection of the natural environment of the Republic of Panama. Accordingly the U.S. and Panama undertake to implement the Treaty giving due regard to the protection and conservation of the natural environment.(39)

A symbolic endorsement of Panama's sovereignty over the areas occupied by the Canal is the statement contained in Article VII which establishes that these areas will be under the flag of the Republic of Panama, and consequently this flag shall always occupy the position of honor.(40)

In a more tangible manner, Article IX sets forth that the law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and arrangements.(41)

Notwithstanding, the recognition of Panama's sovereignty over the former Canal Zone is apparent in the consequent right to apply its laws and to exercise jurisdiction within the areas destined for the operation and defense of the Canal; these faculties, however, do not have an absolute character since the very fact that the U.S. has been granted the rights to operate, manage and defend the Canal impose certain limitations to Panama's sovereignty and jurisdictional prerogatives.

Accordingly, it has been provided that the agencies and instrumentalities of the government of the United States of America shall be immune from the jurisdiction of the Republic of Panama as well as a limited number of officials of the Panama Canal Commission and their dependents who shall enjoy the privileges and immunities normally attributed to diplomatic agents.(42)

In the same way, Panama will have due consideration and respect for the rights of natural or juridical persons who on the date of entry into force of this Treaty were engaged in business activities in the former Canal Zone by allowing them to continue to do business and granting them licenses under the same conditions that are required for similar enterprises operating in Panama.(43) Also the rights of ownership pertaining to buildings and other improvements to real property will be recognized by Panama. However, such recognition will be subject to certain conditions and certain procedures.(44)

Along these lines Panama has also agreed that during the Treaty term, passage through the Canal will be free from

any imposed tax. Nevertheless, this principle does not apply to vessels calling to Panamanian ports.(45)

It is a clear fact that Panama's grant of rights to the U.S. has been made on a temporary basis and with the purpose of providing for the appropriate environment which shall guarantee that the transition for the final assumption by Panama of the full control of the Canal will take place smoothly and in an orderly fashion, without the freedom of transit through the Canal being jeopardized. Consequently, this could not be interpreted as a relinquishment by Panama of its sovereign rights over that part of its territory destined to the functioning of the Canal, since none of the Treaty articles appear to convey such an intention.

On the contrary, Panama's growing participation at all levels of the Canal management and operation as well as its role in the protection and defense of the Canal are a patent fact throughout the Treaty provisions evidencing in this way the transitory character of certain concessions, and the indisputable sovereignty of Panama over the totality of its territory including that made available to the U.S. for a premptory period of time.

Section 2: Treaties and Agreements not Affected by Paragraph 1 of Article i of the 1977 Treaty

The Agreed Minute to the Panama Canal Treaty contains a list of those treaties,conventions, agreements and exchanges of notes which are abrogated and superseded by the 1977 Treaty. In addition to this, Paragraph 2 of the Agreed Minutes refers to those treaties, conventions, agreements, and exchanges of notes between the United States and Panama which are not affected by Paragraph 1 of Article 1 of the Panama Canal Treaty; in other words, to such pacts that will continue to be in force between the two countries.

On account of the fact that the agreements referred to in the points c,d,e and f of Paragraph 2 of the Agreed Minute are related to Civil Aviation matters, they will be analyzed below.

A. Agreement Concerning the Regulation of Commercial Aviation in the Republic of Panama (46)

The agreement on Commercial Aviation between the Republic of Panama and the United States entered into force by an exchange of notes signed at Panama on April 22, 1929. The purpose of this Agreement was the creation of an Aviation Board by the Panamanian Government to which the U.S. could designate three of its members. In addition, Panama would undertake to provide the regulatory framework for the regulation of the Commercial Aviation in the national territory. Accordingly, Panama enacted the Decree No.147

of 23rd August 1932, whereby it regulated the service on Commercial Aviation. Thus, Article 1 of this Decree refers to the Aviation Board as a government entity upon which will depend the civil aviation in Panama; the Board will be presided over by the Secretary of Government and Justice and will be composed of five members appointed by the President of the Republic and an Aeronautical Technical Adviser who will participate in the meetings but who would not have the right to vote.(47) This Article makes no allusion to the fact that three of the members of The Board would be designated by the U.S.. Nevertheless the wording of the Agreement appears to indicate that the appointees will be Panamanian nationals since nothing to the contrary is stated.

It is worth pointing out that the stipulations contained in Article 1 of the Decree No.147 have been superseded and amended by Article 5 of the Decree Law No.19 of August 8, 1963 which set up the National Board of Civil Aeronautics as a consulatative agency of the Executive Power on matters concerning civil aeronautics. Here, not only the nomenclature of the Board has been changed but also its composition and functions.(48) Again no allusion is made to the right of the U.S. to designate three of the members of this Board.

Further, the Cabinet Decree No. 13 of January 22,1969 amended articles 4,5,6,7 and 36 of the Decree Law No. 19 and established the Advisory Board on Civil Aeronautics which would replace the National Board of Civil Aeronautics. Again, the composition of

Advisory Board differs from that of the previous one although its functions and purposes are quite similar but not identical.(49) Here also no reference whatsoever is made with regard to members of the Board being designated by the U.S.

From all this it follows that if the U.S. ever exercised its rights to designate members of the Aviation Board this was most probably done prior to 1963 because since then Panama's law and practice appear to have negated such a possibility.

As a result of this situation the Agreement on Commercial Aviation appears to have lost its purpose, the reason for its existence. Therefore, to uphold its validity does not have any practical purpose for Panama or for the U.S..

B. The Air Transport Agreement Between Panama and United States

On March 31, 1949, the United States and Panama signed at Panama an Agreement for the Regulation of Air Transport Services between the two countries.(50) Prior to the conclusion of this Agreement air transport services to Panama City and the Canal Zone were originated and terminated in the Albrook Air Force Base located in the Canal Zone. Hence, the United States in various of its bilateral agreements with other Latin American countries(51) often allowed them to carry out air transport operations within the Canal Zone, much to Panama's displeasure.

In view of the U.S.'s almost total domination of Isthmian commercial aviation, Panama made endeavours and thus built a modern airport fifteen miles away from the Canal Zone paving the way for a greater autonomy in the civil aviation field.

This state of affairs had its bearing on the provisions of the Air Transport Agreement of 1949. Accordingly, the Preamble of the Agreement states that Tocumen, Panama's National Airport, will function as a civil airport serving the Canal Zone as well as the Republic of Panama.(52) A similar intention is expressed in Section VII of the Annex to the Agreement regarding Tocumen's role.(53)

On the whole, the U.S.-Panama Air Transport Agreement falls into the category of the Bermuda type agreement.(54) As a result, the so-called Bermuda Principles, such as multiple designation of airlines,(55) fair and equal opportunity to compete,(56) and the provision of capacity adequate to the traffic demands between the country from which an air carrier derives and the country of the carrier's ultimate destination(57) are integral parts of the Agreement.

In addition to this, other provisions of the Agreement establish the basis for consultation and cooperation between the two countries on civil aviation matters such as the designation by the U.S. of a civil aviation mission to aid the Panamanian Government in the development of its civil aviation,(58) the establishment of air traffic control services in the interest of flight safety(59) and the coordination of communication services.(60)

Although the air transport agreement has turned out to be quite liberal for the state of development of Panama's commercial aviation, giving a significant advantage to the U.S. airlines over the Panamanian airlines,(61) it has not undergone any major

changes throughout the years.[62] Nevertheless, as part of the Panama Canal Treaties of 1977 there is a letter from U.S. Ambassador at Large Ellsworth Bunker to Panama's Chief Negotiator Romulo Escobar Bethancourt confirming their understanding that upon entry into force of the Treaty, Article XVII of the United States-Panama Air Transport Agreement of 1949 will not have furhter application.[63] As a result, the U.S. will no longer enjoy the privileges and prerogatives granted to them by this Article,[64] because matters such as customs, immigration and public health procedures will be Panama's responsibility and any exception to this principle shall be ruled by the 1977 Treaty and other related agreements.

C. The Agreement on Technical Cooperation

On August 8, 1952, the United States and Panama effected the exchange of notes whereby the Agreement on Technical Co-operation[65] entered into force. In its note No.121, the U.S. expressed to the Panamanian Government its wishes to establish a mission of aeronautical experts in a suitable and central location in the Latin American Area.[66] This regional establishment would consist of a Chief and ten or twelve specialists who would act as a consultative body which would render assistance and advice on various technical and specialized aviation problems upon request of the Civil Aviation Missions of the several countries of the area. In addition, the group of experts would carry out at its headquarters such studies, research analyses

and all type of activities that could be considered helpful in the development of aeronautical services as well as the installation of equipment on the site.(67)

Due to its convenient location and because of the U.S. establishment in the Canal Zone, it was stated that Panama would be the ideal place for the setting up of the Headquarters of the technical assistance mission. Accordingly, the U.S. would absorb all the expenses inherent to the establishment, staffing and operation of this office as part of its contribution to the Point Four program.(68) In return the U.S. requested that the personnel designated to the mission be granted the privileges and immunities specified in Article IV-Personnel of the Point Four General Agreement for Technical Cooperation of December 30, 1950.(69)

In reply to the note, Panama expressed its agreement with the U.S. proposals regarding the aforesaid regional office in the Republic.(70) As indicated in the Agreed Minute, Panama expressed its intention to leave this agreement in force.

D. Agreement on Air Services: Equipment for Navigational Aids

This Agreement(71) was effected by exchange of notes at Panama on December 5, 1967. It relates to the furnishing by the Federal Aviation Administration (FAA) of certain services and materials for air navigational aids used by Panama's Aeronautical authorities. Those services include the procurement, exchange and repair of the parts peculiar to the FAA-type air navigational aids operated by the Ministry. For its part,

Panama will reimburse the FAA for all the costs it has incurred in the performance of its duties under this agreement.

Like the previous agreement, this one is still in force and will remain so until Panama or the U.S. express a desire to terminate it.

Section 3: Other Agreements Related to the Panama Canal Treaty of 1977

A. Treaty Concerning the Neutrality and Operation of the Panama Canal

This Treaty[72] entered into force concurrently with the Panama Canal Treaty six calendar months from the date of the exchange of the instruments of ratification.[73]

In Article I, Panama, as territorial sovereign, declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty.[74] The same principle would be applied to any other international waterway constructed totally or partially on Panamanian territory.[75] It follows that the country which issues the Declaration contained in the foregoing article, that is to say Panama, is the appropriate party to make such a statement, since only upon its consent can an installation built on its territory be delcared neutral. Nevertheless, because Panama's declaration is made in an agreement with the U.S. it could be argued that Panama could not breach its committments by disregarding the consent of the United States. This principle, however does not

have an exclusive character because the neutrality of the Panama Canal was previously declared in the Hay Pouncefote Treaty of 1901[76] and also in the 1903 Treaty.[77] The status of the Canal as an international waterway, having as corrollary the freedom of transit for vessels of all nations, is considered to be a principle of customary international law[78] which has a binding force upon Panama; it follows that, any breach on the part of Panama of its committments would concern not only the U.S. but also the international community.

The objectives and goals of the regime of neutrality are outlined in Article 11, that is, "That both in time of peace and in time of war the Canal shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation or its citizens or subjects, concerning the conditions or charges of transit or for any other reason...."[79] It follows that the key elements of the regime of neutrality are in the first place the security of the Canal and in the second place the guarantee that the Canal always will be open on a non-discriminatory basis, such being the rule either in time of peace or in time of war. As a result, any vessel of any nation would be entitled to pass through the Canal as long as such passage is peaceful and regardless of whether or not the nation to whom the vessel belongs is at war with the U.S. or Panama. This fact, however, would not prevent Panama or the U.S. from undertaking war action out of the Canal area, that is to say, on that part

of the high seas which is in the vicinity of the Canal.

All of these elements forming part of the regime of neutrality are intended to avoid the possibility that the Canal could become the target of reprisals in the event of an international conflagration. Hence, this situation could only be prevented if Panama guarantees free access to the Canal to vessels of all nations with the only condition being the compliance with applicable rules and regulations, payments of tolls and other charges, and the commitment of refraining to perform acts of hostility while traversing the Canal.

In furtherance of the goals of security, efficiency and proper maintenance of the Canal, article III lays down the basic rules and standards that will govern its operation. In general terms, these rules shall be just, equitable and reasonable;(8 ancillary services for the transit of vessels shall be provided;(81) tolls and other charges shall be just, reasonable, equitable and consistent with the principles of international law;(82) guarantees for payment of indemnification (securities) may be required as a precondition of transit;(83) vessels' internal operation, means of propulsion, destination or armament shall not become an impediment to transit the Canal nor shall there be any obligation to disclose any information regarding the foregoing matters.(84) Further allusion is made to terms such as "vessel of war", "armament","inspection",etc., which are intended to serve as a guidance to the Canal operator in the application of the pertinent regulations.(85)

Under Article IV Panama and the United States agree to maintain the regime of neutrality established in this Treaty, in order that the Canal shall always remain neutral despite the termination of any other treaties between the two countries.(86)

The scope of the commitments contained in the foregoing article has been the object of controversy and long debates in the negotiation period as well as in the national forums of the two countries. As a result, the United States and Panama issued a Statement of Understanding(87) on October 14, 1977, whereby they expressed the interpretation of their rights under the Neutrality Treaty.

Accordingly, the correct interpretation of the aforementioned principle is that both Parties shall, in agreement with their constitutional processes, defend the Canal against any threat to the regime of neutrality. As a result the two countries would be able to take such military action that they deemed necessary to meet any kind of threat or aggression aimed at the Canal or intended to disrupt the peaceful transit of vessels through the Canal.(88)

However, if such a situation arises, the right to take military action shall not mean and shall not be interpreted as the right of the U.S. to intervene in the internal affairs of Panama nor could such action be directed against its territorial integrity and political independence.(89)

In order that any military action of the United States be consistent with the Neutrality Treaty, the Understanding, the

United Nations Charter,[90] the O.A.S. Charter[91] and the Inter-American Treaty of Reciprocal Assistance (Rio Treaty),[92] it would have to be circumscribed in purpose, in intensity and in duration to what would be precisely needed for the preservation of the Canal neutrality. Indeed, it could not be intended to seize a part of Panama's territory or change its form of government, nor could it mean the maintenance of a military detachment on Panamanian soil for a long period of time,[93] since the only power that will have the right to maintain military forces, defense sites and military installations within its national territory shall be Panama.[94]

Another element of the neutrality regime is the recognition of the important contribution of the U.S. and Panama to the construction, operation, maintenance, and protection and defense of the Canal.[95] On account of this fact and despite other Treaty provisions their vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.[96] In addition to this, it is provided that Panama may continue with the practice of allowing Colombia's vessels to transit the Canal without paying tolls.[97] Finally, the two Contracting Parties express their intention to co-sponsor a resolution in the Organization of American States,[98] which shall act as depositary for this Treaty and related instruments, and would open the Protocal to the Treaty[99] to accession by all nations of the world.

B. Article XIV of the Agreement in Implementation of Article III of the Panama Canal Treaty

The Agreement in Implementation of Article III of the Panama Canal Treaty is intended to provide a more detailed regulatory framework of the United States' rights to use land and water areas in Panama for the operation, management and maintenance of the Panama Canal, as well as the legal status of the Panama Canal Commission and the personnel associated with it.(100)

For the purposes of the present analysis special attention will be given to the provisions contained in Article XIV which refer to movement, licenses and registration of vessels, aircraft and vehicles; specifically the provisions related to aircraft.

Accordingly, aircraft operated by or for the Commission when in the performance of official duties will enjoy the privileges of moving freely through Panamanian airspace and waters without being obliged to pay taxes, tolls, landing or other types of charges to the Republic of Panama.(101) In addition to this, such aircraft will be exempt from customs inspections or other inspections. However, when such aircraft carry cargo, crew or passengers who are not entitled to the exemptions granted in this agreement the competent Panamanian authorities will have to be notified in a timely manner. Also the two countries shall adopt proceedings in order that the customs laws and regulations of the Republic of Panama are not infringed.(10

Here, it is worth pointing out two matters: Firstly, that the privileges afforded to aircraft of the Commission can only be exercised upon compliance of the condition that such aircraft are in the performance of official duties. Otherwise it would be in contradiction to the spirit of this provision and hence the Panamanian law. Secondly, when referring to Panamanian airspace it is understood that the term is intended to embrace the airspace over the area of Panama's territory dedicated the Canal operation.

Beyond this, it is provided that Panama will accept the marks and registration documents issued by the U.S. for aircraft which are the property of the Commission. In addition, it will also recognize as sufficient valid licenses, permits, certificates or other official classifications from the U.S. held by operators of aircraft of United States property.(103)

In regard to those aircraft owned by U.S. citizen employees or dependents, these craft will be entitled to move freely through Panama's airspace in compliance with the air traffic regulations and those regarding the annual mechnical inspection.(104)

Such being the case, the U.S. citizen employee owning an aircraft shall apply to the Panamanian authorities for the issuance of the appropriate documents of title and registration by accompanying their request with the title and registration issued by the competent authorities of the U.S. government. Such documents may be retained by the applicant in which case

he will have to leave a copy authenticated by the Commission, duly translated into Spanish. While the application is being processed and within a term which may not exceed ninety days after entry into force of this Agreement or after the arrival of the aircraft in the Republic of Panama, this same craft may be operated with the marks issued by the U.S. federal authorities or the authorities of the former Canal Zone.(105)

Likewise, the United States citizen employees and dependents holding a license and classification of airpilots issued by U.S. federal authorites or authorities of the former Canal Zone, shall receive equivalent Panamanian licenses, permits and classifications without being subjected to new tests or payments of new fees. Here, the same procedures are applied to the retainment of a license and the processing period of the application as have already been seen pertaining to titles and registration.(106)

The licenses, permits or classifications issued by Panama shall be valid for the period of time determined in its stystem of law. Thus, the holder of a license, in order to maintain its validity, will have to renew it in accordance with the Panamanian laws.(107)

In the case of a U.S. citizen employee or dependent who does not possess a valid license or other classifications of an air pilot Panama shall issue one upon the presentation of the required examinations whose materials shall be available in both Spanish and English.(108)

From all this it is clear that the movement of aircraft, including those owned by U.S. citizen employees and dependents, through Panamanian airspace, embracing the airspace located above the area occupied by the Canal, are subject to and regulated by the laws of the Republic of Panama evidencing in this way the completeness and exclusiveness of Panama's sovereignty over the airspace above its territory.

C. Article XV of the Agreement in Implementation of Article IV of the Panama Canal Treaty

This Agreement(109) constitutes a comprehensive account of the United States' rights concerning the protection and defense of the Panama Canal, as well as Panama's participation in those activities. It also provides for the legal status of the United States Armed Forces and the personnel associated with them across the Republic of Panama. In this sense it follows very closely the model of Status of Forces Agreements that the U.S. has concluded with other countries where United States Forces are deployed. The Agreement has 22 Articles, 4 Annexes, and Agreed Minute and a Map Atlas.

In the light of this analysis it is of great relevance to examine the provisions contained in Article XV which deals with the movement, licenses and registration of vessels, aircraft and vehicles, although those related only to aircraft will be examined here.

Accordingly, aircraft operated by or for the United States Forces have been granted the same privileges that have been afforded to the aircrafts of the Panama Canal Commission, that is, the freedom to move through Panamanian airspace without any obligation to pay taxes, tolls, landing charges or other charges to the Republic of Panama.(110) Such aircraft will also be exempt from customs inspections or other inspections. These privileges however, will be subject to the overriding principle that they only can be enjoyed when the aircraft is in the performance of official duties. In addition to this, such aircraft shall not be used by persons who are not entitled to the aforementioned exceptions unless Panamanian authorities have been duly notified. In order that Panamanian laws are not violated the two countries will adopt procedures in accordance with this purpose.(111)

In addition to this, Panama will accept and recognize the marks and registration documents of aircraft owned by the U.S. Forces and the licenses, certificates and other official classifications possessed by pilots as long as such documents have been issued by the United States Government.(112)

Aircraft belonging to the members of the Forces or the civilian component or dependents will be able to move freely within Panamanian territory in compliance with the national air traffic regulations.(113) The owners of such aircraft will have to apply to Panamanian authorities for the appropriate documents of title and registration of the aircraft.(114)

In the same way, they will have to apply for equivalent Panamanian air pilot licenses without being subject to new tests or payment of new fees.(115) These licenses,in order to maintain their validity, will have to be renewed in accordance with Panamanian laws.(116) In addition to this, Panama will issue in accordance with its laws air pilot licenses to those members of the forces who do not posses such documents.(117

Further, it is provided that the runways of the defense sites can be used by aircraft other than those of Panama and the United States only after obtaining appropriate authorization from the Republic of Panama. In this regard the two governments, when deemed advisable, may adopt rules through the Joint Committee(118) regulating the use by such aircraft.(119)

In order to ensure that the two contracting parties will be able with adequate anticipation, to notify aircraft under their respective control, of any alterations in navigation aids located in the defense site or in their vicinity, the appropriate authorities of the two Governments(120) will maintain a policy of mutual consultation.

In addition to this, Panama will provide whatever regulatory framework may be advisable to coordinate air traffic in the national territory, in order that, without interfering with the mission of the United States Forces, maximum safety will be offered to civil and military air navigation. Accordingly, both Governments will appoint authorities that will have the responsibility to develop jointly all the systems of control

and coordination of military air traffic, "respecting always the sovereignty of the Republic of Panama over all its airspace."(121)

Finally, Panama consents to restrict the overflight of certain of the defense sites if so requested by the United States, as long as security reasons justify taking such a measure.(122) It should be noted that the only provision in the whole Treaty which expressly alludes to Panama's sovereignty over all its airspace is paragraph 7 of the article presently under discussion, although such a statement is not indispensable in order that this principle be validly asserted, since throughout the Treaty Panama's sovereignty over the totality of its territory is recognized. Consequently, such recognition not only embraces the land but also the airspace.

FOOTNOTES

1. For the texts of the Panama Canal Treaties and related documents, see U.S. Dept. of State Bulletin, Vol. 77, 1977 pp. 483-503. See also I.L.M., 16, 1977, pp. 1021-1098, Hearings Before the Committee on Foreign Relations United States Senate, 95th Cong. 1st Sess. (1977) p.497.

2. See Letter of Transmittal, Dept. of State Bulletin, op cit, p. 486.

3. Panama Canal - The Problem and the Reasoned Solution, by Daniel J. Flood a Representative of Pennsylvania, Hearings, op cit., Part 2, p.146.

4. Hanson W. Baldwin, The Panama Canal: Sovereignty and Security, Hearings, op cit., p.107.

5. See Panama Canal Giveaway: A Latin American's View, by Mario Lazo, Hearings, op cit., Part 2, p.398.

6. U.S. Department of State Bulletin, op cit., p.723.

7. Ibid. pp. 508-509.

8. Ibid. p.523.

9. Ibid. p.532.

10. In 1973, for example, the U.N. Security Council meeting in Panama, voted 13-1 for a resolution calling on the United States to negotiate a more equitable arrangement to govern the Canal. The U.S. vetoed this resolution. For the text of the draft resolution, see Bulletin of April 23, 1973, p.497.

11. The Canal Zone has always been regarded by Panamanians as a colonial enclave which has divided their country in two, depriving them of the use and possession of 550 square miles which otherwise could have been used for its development. Contrary to Panamanian aspirations, the U.S. has established in the Zone, schools, jails, courts, a police force and commercial enterprises which have resulted in stiff competition for the native commerce. Furthermore, the annual fee that Panama has been receiving in no way constitutes an equitable share of the benefits that the Canal provides, the greater beneficiary of which is the U.S. This situation has caused resentment and hostility among Panamanians and disapproval and condemnation among the Latin American countries.

As a result, the U.S. has sought to quell these feelings and to build a new image in the Western Hemisphere that would lead to the betterment of political relations and to avoid any major political losses.

12. For the text of this Declaration see I.L.M., op cit. p. 1021.

13. See Preamble, ibid, 1022.

14. See Article 1 paragraph 1(a), (b), (c) and (d). The first paragraph of the Agreed Minute refers to this Article and it lists 9 other treaties and agreements which are terminated by Article I of the 1977 Treaty. The Agreed Minute also lists thirty five treaties or agreements which are not affected by Article I. Article XVI of the Civil Air Agreement of 1949 will cease to be in effect upon the entry into force of this Treaty. See Letter regarding the termination of this Article, I.L.M. ibid, p. 1090.

15. See Article I, Paragraphs 2,3,4.

16. See Article II.

17. See Article III.

18. Ibid, paragraph 1.

19. Ibid. paragraph 2.

20. Ibid. paragraph 3.

21. Ibid. 3(a).

22. Ibid. 3(b).

23. Ibid. 3(c).

24. Ibid. paragraph 4.

25. See Annex to the Treaty paragraph 1.

26. Ibid. paragraph 2.

27. See Article III, paragraph 5.

28. Ibid. paragraph 6.

29. Ibid. paragraph 7.

30. Ibid. paragraph 8.

31. Ibid. paragraph 9.

32. Ibid. paragraph 10.

33. See Article IV, paragraph 1.

34. Ibid. paragraph 2.

35. The Combined Board will plan and coordinate: a) The preparation of contingency plans for the protection and defense of the Canal; b) combined military exercises; and c) the conduct of United States and Panamanian combined military operations.

36. See Article IV, paragraph 3.

37. Ibid. paragraph 5.

38. See Article V.

39. See Article VI.

40. See Article VII.

41. See Article IX, paragraph 1.

42. See Article VIII.

43. See Article IX, paragraph 2.

44. Ibid. paragraphs 3,4,5,6.

45. Ibid. paragraph 9.

46. For the text of this Agreement see, Treaties and Other International Agreements of the U.S., 1776-1949, Bevans, 10, Dept. of State. This Agreement will also be referred to as Agreement on Commercial Aviation.

47. See Article I, Decree No. 147 of August 23 of 1932., Gaceta Oficial No. 6384.

48. See Article 5, Decree Law No.19 of August 8, 1963, Air Law and Treaties of the World, op. cit., p.1970.

49. See Article 21, Cabinet Decree No.13 of January 22, 1969, Gaceta Oficial No.16.285, p.3.

50. For the text of this Agreement See Bevans, op.cit., p. 857, see also 63 Stat. 2450, Treaties and Other International Acts Series 1932.

51. See Agreement between the United States and Colombia on Aircraft Facilities for Commercial Aviation, February 23, 1929, See Bevans, op.cit. Vol.6, p.986. Similar to this Agreement is the Agreement Between the United States and Peru, Dept. of State Publication 2764, Treaties and other International Acts Series 1587, (1946).
For an analysis of this subject see Oliver J. Lissitzyn, International Air Transport and National Policy, Studies in American Foreign Relations, Percy W. Bidwell, Editor, No.3, 1942, p.211.
A.J. Thomas, Jr., Economic Regulation of Scheduled Air Transport National and International, Southwestern Legal Foundation Series, Dennis and Co., Inc., 1951, p.387.

52. See Preamble of the Air Transport Agreement.

53. See Annex, Section VII.

54. In view of the fact that at Chicago in 1944 the attending States failed to agree on the grant of traffic rights on a multilateral basis, the bilateral formula was the response to the question of how the commercial rights would be accorded among States. Thus, the United States and United Kingdom, the representatives of the two currents of thought present at Chicago, advocating firstly the Freedom on the Air and secondly for Order in the Air, reached a compromise at Bermuda in February 1946, by the signing of a bilateral agreement that became known as the Bermuda Agreement which served as a model or standard for further bilateral agreements concluded by the two countries.
For the analysis of this subject see George P. Baker, The Bermuda Plan as the Basis for a Multilateral Agreement, The Public International Law of Air Transport Materials and Documents, I.A. Vlasic and M.A. Bradley, McGill University, Vol.1, 1974, p.245.

55. See Annex, Section III.

56. Ibid. Section V.

57. Ibid. Section VII.

58. See Article XIV.

59. See Article XV.

60. See Article XVI.

61. This fact is patent in Schedule one, which allows the U.S. to exercise unlimited traffic rights via intermediate points and to points beyond Panama in other countries. Whereas Panama is just granted traffic rights via intermediate points in the Caribbean to Miami. See amendments of May 29 and June 3, 1952 TIAS 2551.

62. See Amendments:
May 29 and June 3, 1952, TIAS 2551.
June 5, 1967, TIAS 6270.
December 23, 1974 and March 6, 1975 TIAS 8036.

63. For the text of the letter see ILM, op.cit., p.1090.

64. See Article XVII.

65. For the text of this Agreement see U.S. Treaties and Other International Agreements, Vol.3. Part 4, 1952, TIAS 2691, p.5065.

66. Ibid.

67. Ibid.

68. Ibid.

69. Ibid.

70. See note, Ibid.

71. For the text of this Agreement see, U.S. Treaties and Other International Agreements, Vol.19, 1968, TIAS 6471, p.4731.

72. For the text of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, hereafter referred as "The Treaty" or "The Neutrality Treaty", see I.L.M., op.cit., p.1040.

73. See Article VII.

74. See Article I.

75. "Canal" is defined in Annex A to the Treaty as including not only the existing Canal, but any other interoceanic waterway in which the United States has participated either in terms of construction or finance. See paragraph 1 of the Annex.

76. The Hay-Pauncefote Treaty provides in Article III that as a basis for the neutralisation of the Panama Canal the same rules contained in the Constantinople Convention will be incorporated into the text of the Treaty.

77. The 1903 Treaty in Article XVIII states that the "Canal....shall be neutral in perpetuity."

78. This criterion was firstly declared by the Permanent Court of International Justice in The SS Wimbledon Case, See L.C. Green, op.cit., p.311.

79. See the complete text of Article II.

80. See Article III Subparagraph (a).

81. Ibid. Subparagraph (b).

82. Ibid. Subparagraph (c).

83. Ibid. Subparagraph (d).

84. Ibid. Subparagraph (e).

85. Ibid. Paragraph 2.

86. See Article IV.

87. For the text of the Statement of Understanding see Dept. of State Bulletin, 1977, p.681.

88. Ibid. First paragraph.

89. Ibid. Second paragraph.

90. Article 2 of paragraph 4 of the Charter provides that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

91. Article 17 of the Charter provides that "The Territory of a State is inviolable; it may not be the object, even temporarily of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever."

92. Article 1 of the Treaty forbids the use of force by parties to the Treaty in any manner inconsistent with the United Nations Charter or the Rio Treaty.

93. For a thorough analysis of this subject see Statement of Richard Baxter before the Committee on Foreign Relations, Hearings, op.cit., Part 4, p.75.

94. See Article V.

95. See Article VI, paragraph 1.

96. The term "expeditiously" is intended, and it shall be so interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in the case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.

97. See Article VI, paragraph 2.

98. See Article VII.

99. For the test of the Protocol see, I.L.M., op.cit., p.1042.

100. For the Text of this Agreement see, I.L.M.,op.cit., p.1043.

101. See Article XIV, paragraph 1.(a).

102. Ibid. 1.(b).

103. Ibid. paragraph 3(a) and 3(b).

104. Ibid. paragraph 4(a).

105. Ibid. 4(b).

106. Ibid. 4(c).

107. Ibid. 4(d).

108. Ibid. 4(e).

109. For the text of this Agreement see I.L.M., op.cit. p.1068.

110. See Article XV paragraph (1) (a).

111. Ibid. (1) (b).

112. Ibid. paragraph (3).

113. Ibid. paragraph (4)(a).

114. Ibid. (4) (b).

115. Ibid. (4) (c).

116. Ibid. (4) (d).

117. Ibid. (4) (e).

118. For Joint Committee see Article III of this Agreement.

119. Ibid. paragraph 5.

120. Ibid. paragraph 6.

121. Ibid. paragraph 7. It should be noted that pursuant to the Exchange of Notes of April 5 and 10, 1950 between Panama and the United States. The Federal Aviation Administration of the U.S. is responsible for air traffic control throughout Panama. However, this Agreement has been superseded by the Exchange of Notes Relating to Air Traffic Services, dated September 7,1977 whereby the two Governments, in order to set up appropriate procedures to provide certain air traffic control and related services in the areas designated by the International Civil Aviation Organization (ICAO) and described in the ICAO Caribbean/South American Regional Air Navigation Plan, Document No.8733, as Panama Flight Information Region (FIR) - (which basically embraces the geographical area including the Isthmus of Panama and certain oceanic areas on either side of the Isthmus) have agreed that at the request of the Republic of Panama, the Government of the United States undertakes to provide, through the Federal Aviation Administration, the Air Traffic Control, communications, systems maintenance, and related services (services to be provided are described in Article IV of this Agreement) until the time that Panama will be in the capacity to assume the responsibility for the provision of such services. In addition to this, the U.S. will provide to Panama such assistance as may be mutually agreed upon in order to facilitate the development of the capability of Panama to reassume its various responsibilities (See Article II of the Agreement). This Agreement will enter into force simultaneously with the Panama Canal Treaty of 1977 or in default of this when Panama notifies the U.S. that its constitutional processes have been fulfilled, whichever is later. It shal terminate five years thereafter (see Article XII).
In assessing the implications of this Agreement on Panama's sovereignty over the totality of its airspace, it is worth quoting the view of ICAO on the matter of delineation of Air Traffic Services (ATS) Airspace in Regional Air Navigation Plans. Accordingly the Assembly has declared that "any Contracting State which delegates to another State the responsibility for providing air traffic services, within airspace over its territory does so without derogation of its sovereignty." (Resolution A21-21, Repertory-Guide, Doc.8900/2, p.2.) Since this declaration leaves no room for doubts or controversy respecting this matter it is considered that no further elaboration is necessary.

122. Ibid.

CONCLUSION

From the previous exposition it follows that the legal status of the airspace above the Panama Canal has always been, is and will continue to be Panamanian airspace and consequently subject to Panama's sovereignty. This contention finds ample endorsement in the fact that the Republic of Panama throughout its bilateral relationship with the United States of America concerning the Panama Canal never ceded or transferred to the United States its sovereignty over the territory nor over the airspace of what has been largely known as the Canal Zone.

If, admittedly, Panama granted to the U.S. almost full jurisdiction over that part of its territory occupied by the Canal Zone, nevertheless Panama remained in possession of its titular sovereignty and this is not a barren concept as has been labelled on several occasions since this has always prevented the United States from transferring the territory of the Canal Zone to another country. A transference of this nature could only have been carried out if the U.S. were the legitimate sovereign.

It should be remembered that dubious circumstances surrounded the signing of the Isthmian Canal Convention of 1903. This was basically the product of an epoch where gun boat diplomacy was the main tool of foreign policy. Thus, the famous expression of the U.S. President Theodore Roosevelt "I took Panama" clearly reflects the spirit with which the Panama affair was handled, that is to say, that Panama was almost taken by assault.

As a result, the legal validity of the 1903 Treaty has always been questioned and so have all the United States' actions in pursuance of this Treaty. Hence, all those rights and prerogatives which the United States arrogated for themselves over the Canal Zone airspace appear to follow the same fate of the Treaty, that is they are null and void since they lack legal validity. On the other had, Panama never acquiesced to the U.S. argument that they possessed sovereignty over the Canal Zone airspace, so it could not be argued that the absence of Panama's protests in this regard constituted a tacit approval of the U.S. claims.

Similarly, the United States' contentions do not find any support under the existing rules and principles of international law since, in the light of articles 1 and 2 of the Chicago Convention, every state has complete and exclusive sovereignty over the airspace above its territory, this last term considered to consist of the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such a State. Indeed, it is a clear fact that the United States never could have sovereignty over the airspace above the Canal Zone within the terms of the definition of article 2 because such territory never was under the sovereignty, suzerainty, protection or mandate of the U.S.

The recent declaration of the United States officials in the wake of the signing of the New Panama Canal Treaties of 1977 have dismissed the long sustained view of U.S. sovereignty over the

Canal Zone and its airspace giving in this way the last deadly blow to this moribund theory.

Accordingly, the new Treaties fully recognize Panama's sovereignty over the totality of its territory including that part of the territory where the Canal is located. Although under the new treaties the United States will continue to operate, manage, maintain, protect and defend the Canal, Panama will have a growing participation in those activities so that the transition for the final takeover by Panama of full control of the Canal will take place in an orderly fashion without jeopardizing the freedom of transit through the Canal. It follows that the concessions which Panama have made to the United States in the new Treaties have been on a temporary basis. Thus, the privileges which the Commission and the U.S. Forces aircraft enjoy over Panama's airspace have the same character and in no way can this be interpreted or regarded as a limitation or reduction of Panama's sovereignty over the totality of its airspace because these privilegesmust be used in accordance with the specific purposes for which they have been granted. If these aims were not followed they would theoretically be suspended by Panama if she deemed it advisable.

In this fashion, after the termination of the 1977 Treaty by the end of this century Panama will be in full control of the Canal and of all the activities related to it. Thereafter, the regime of the Canal will be governed by the Neutrality Treaty

whereby Panama as territorial sovereign declares that the Canal shall remain permanently neutral and that both in times of peace and in times of war will it remain secure and open to peaceful transit by vessels of all nations on terms of entire equality. Here, it is clear that Panama has imposed upon herself a limitation to her sovereignty by means of an international servitude which guarantees to vessels of all nations the right of free access to the Canal either in times of peace or in times of war. This servitude, however, does not embrace the airspace since in this case the airspace does not necessarily possess the same status as the subjacent territory; consequently the legal status of the airspace above the Canal is that of national airspace. It will therefore remain for Panama to decide whether or not aircraft deriving from somewhere other than Panama will be allowed to overfly the Canal and in such a case Panama will determine the conditions of such transit.

On the whole, the Panama affair has not been too different from those others in the international arena wherein the interests of the great powers have been involved, whether such interests were military, strategic, political or economical. This situation has been observed in the case of Suez, in the case of international straits, in the Law of the Sea, in Outer Space etc., where the great powers have almost always endeavoured to impose views and policies which, in the final analysis, are devised to enhance their interests and conveniences to the detriment and disadvantages of the less powerful states.

An extrapolation of this attitude is the right that the United States has under the Neutrality Treaty to take military action to maintain the regime of neutrality of the Canal. It is expected that such a right will be used wisely and fairly if the situation ever arises, and that it will not become an instrument of permanent intervention and interference in the internal affairs of Panama and thus a violation of its politcal independence.

ANNEXES

ANNEX 1

ISTHMIAN CANAL CONVENTION 1903

ISTHMIAN CANAL CONVENTION

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific oceans, and the Congress of the United States of America having passed and act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a convention and have accordingly appointed as their plenipotentiaries,

The President of the United States of America, John Hay, Secretary of State, and

The Government of the Republic of Panama, Philippe Bunau Varilla, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, thereunto specially empowered by said government, who after communicating with each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

Article I

The United States guarantees and will maintain the independence of the Republic of Panama.

Article II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning to and across the Isthmus of Panama into the Pacific ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

Article III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

Article IV

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

Article V

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

Article VI

The grants herein contained shall in no manner invalidate the titles or rights of private land holders or owners of private property in the said zone or in or to any of the lands or waters granted to the United States by the provisions of any Article of this treaty, nor shall they interfere with the rights of way over the public roads passing through the said zone or over any of the said lands or waters unless said rights of way or private rights shall conflict with rights herein granted to the United States in which case the rights of the United States shall be superior. All

damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty, or by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation and protection of the said Canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint Commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damages shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said Canal or the Panama railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention.

Article VII

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad. All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewerage rates which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except to the extent that water rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

Article VIII

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the Canal shall revert to the Republic of Panama except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof.

Article IX

The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo officers, crew, or passengers of any such vessels except such tolls and charges as may be imposed by the United States for the use if the Canal and other works,and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the Canal and for other works pertaining to the Canal.

Article X

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the Canal, the railways and auxiliary works, tugs and other vesels employed in the service of the Canal, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers,and other individuals in the service of the Canal and railroad and auxiliary works.

Article XI

The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

Article XII

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

Article XIII

The United States may import at any time into the said zone and auxiliary lands, free of customs duties, imposts, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

Article XIV

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of the convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

Article XV

The joint commission referred to in Article VI shall be established as follows:

The President of the United States shall nominate two persons and the President of the Republic of Panama shall nominate two persons and they shall proceed to a decisions; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments who shall render the decision. In the event of death, absence or incapacity of a Commissioner or Umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

Article XVI

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies or misdemeanors without said zone and for the pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

Article XVII

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the Canal enterprise, and for all vessels passing or bound to pass through the Canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

Article XVIII

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section 1 of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

Article XIX

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

Article XX

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens and subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

Article XXI

The rights and privileges granted by the Republic of Panama to the United States in the precedding Articles are understood to be free of all anterior debts, liens, trusts, or liabilities,

or concessions or privileges to other Governments, corporations, syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

Article XXII

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N.B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

Article XXIII

If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

Article XXIV

No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

Article XXV

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

Article XXVI

This convention when signed by the Plenipotentiaries of the Contracting Parties shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

In faith whereof the respective Plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington the 18th day of November in the year of our Lord nineteen hundred and three.

John Hay
P. Bunau Varilla

ANNEX 2

PANAMA-UNITED STATES: THE PANAMA CANAL TREATIES

PANAMA CANAL TREATY

The United States of America and the Republic of Panama,

Acting in the spirit of the Joint Declaration of April 3, 1964, by the Representatives of the Governments of the United States of America and the Republic of Panama, and of the Joint Statement of Principles of February 7, 1974, initialed by the Secretary of State of the United States of America and the Foreign Minister of the Republic of Panama, and

Acknowledging the Republic of Panama's sovereignty over its territory,

Have decided to terminate the prior Treaties pertaining to the Panama Canal and to conclude a new Treaty to serve as the basis for a new relationship between them and, accordingly, have agreed upon the following:

Article I

Abrogation of Prior Treaties and Establishment of a New Relationship

1. Upon its entry into force, this Treaty terminates and supersedes:

(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;

(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936 and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;

(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and

(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this

Treaty, the rights necessary to regulate the transit of ships through the Panama Canal,and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.

3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.

4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

Article II

Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The Instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

Article III

Canal Operation and Management

1. The Republic of Panama, as territorial sovereign, grants to the United States of American the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertake to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

(a) Use for the aforementioned purposes, without costs except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;

(d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) Regulate relations with employees of the United States Government;

(f) Provide supporting services to facilitate the performance of its responsibilities under this Article;

(g) Issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and

(h) Exercise any other right granted under this Treaty or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamaniam national from membership on the Board, the United States of America shall agree to such request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator,or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.

5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operating areas and in housing areas set forth in the Agreement in Implementation of Article III of this Treaty and occupied by both United States and Panamanian citizen employees of the Panama Canal Commission: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garabage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars ($10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.

7. The United States of American and the Republic of Panama shall establish a Panama Canal Consultive Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama and which may appoint such sub-committees as it may deem appropriate. This Committee shall advise the United States of American and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendation shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at high management levels of the Panama Canal Commission, as provided for in paragraph 3 of this article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.

9. The use of the areas, waters and installation with respect to which the United States of America is granted rights pursuant to this article and the rights and legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this article, shall be governed by the Agreement in Implementation of this article, signed this date.

10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

Article IV

Protection and Defense

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each party shall act, in accordance with its constitutional processes,

to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

3. In order to facilitate the participation and cooperation of the armed forces of both parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperation efforts of the armed forces of both Parties;

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

4. The Combined Board shall, at five year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Governments respecting projects requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavour to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of American in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Article V

Principle of Non-Intervention

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly, they shallabstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama. The United States of America shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

Article VI

Protection of the Environment

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

3. The United States of American and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

Article VII

Flags

1. The entire territory of the Republic of Panama, including the areas the use of which the Republic of Panama makes available

to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.

2. The flag of the United States of America may be displayed together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at the site of the Combined Board,and as provided in the Agreement in Implementation of Article IV of this Treaty.

3. The flag of the United States of America also may be displayed at other places and on some occasions, as agreed by both Parties.

Article VIII

Privileges and Immunities

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.

3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, identifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

Article IX

Applicable Laws and Law Enforcement

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply

in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements.

2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws.

4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedures established in Article IV of the Agreement in implementation of Article III of this Treaty, the owners shall be authorized to continue using the land upon which their property is located in accordance with the procedures established in that Article.

5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of non-profit enterprises, such as churches and fraternal organizations, the cost of purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.

6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes,they shall be compensated at fair market value by the Republic of Panama.

7. The provisions of paragraph 2-6 above shall apply to natural or juridical persons who have been engaged in business or non-profit activities at locations in the former Canal Zone for at least six months prior to the date of signature of this Treaty.

8. The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.

9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

10. The United States of America and the Republic of Panama will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their dependents, and their property. The Republic of Panama will seek from its Legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State , and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

Article X

Employment with the Panama Canal Commission

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavour to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing skills and qualifications which are not available in the Republic of Panama.

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian Nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of

Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

4. The United States of America will established qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

7. Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain acitivities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in

effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

9. (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consulting with employee unions.

(b) Employee unions shall have the right to affiliate with international labor organizations.

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Article XI

Provisions for the Transition Period

1. The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms. In order to provide for an orderly transition to the full application of the juridictional arrangements established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committeed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementiond areas and installations. In such areas, the police authorities of the United States of America make take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.

5. The courts of the United States of America, and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by and exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installations made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

Article XII

A Sea-Level Canal or a Third Lane of Locks

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event that they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

3. The Republic of Panama grants to the United States of America the right to add a third lane of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of America has delivered to the Republic of Panama copies of the plans for such construction.

4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.

5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

Article XIII

Property Transfer and Economic Participation by the Republic of Panama

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas.

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this Treaty at such time as such units are made available to the Republic of Pamana.

(d) Upon termination of this Treaty, all real property and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to the rights, title and interest in such property.

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the

national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar ($0.30) per Panama Canal net ton, or its equivalence, for each vessel transiting the Canal after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a United States dollar ($0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter, successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is prefereable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars ($10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Article XIV

Settlement of Disputes

In the event that any questions should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter through consultation in the appropriate committees established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may, in appropriate cases, agree to submit the matter to conciliation mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

ANNEX

Procedures for the Cessation or Transfer of Activities Carried Out by the Panama Canal Company and the Canal Zone Government and Illustrative List of the Functions that may be Performed by the Panama Canal Commission

1. The laws of the Republic of Panama shall regulate the exercise of private economic activities within the areas made available by the Republic of Panama for the use of the United States of America pursuant to this Treaty. Natural or juridical persons who, at least six months prior to the date of signature of this Treaty, were legally established and engaged in the exercise of economic activities in the former Canal Zone, may continue such activities in accordance with the provisions of paragraphs 2-7 of Article IX of this Treaty.

2. The Panama Canal Commission shall not perform governmental or commercial functions as stipulated in paragraph 4 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.

3. It is undetstood that the Panama Canal Commission, in the exercise of the rights of the United States of America with respect to the management, operation and maintenance of the Canal, may perform functions such as are set forth below by way of illustration:

a. Management of the Canal enterprise.
b. Aids to navigation in Canal waters and in proximity thereto.
c. Control of vessel movement.
d. Operation and maintenance of locks.
e. Tug service for the transit of vessels and dredging for the piers and docks of the Panama Canal Commission.
f. Control of the water levels in Gatun, Alajuela (Madden) and Miraflores Lakes.
g. Non-commercial transportation services in Canal waters.
h. Meteorological and hydrographic services.
i. Admeasurement.
j. Non-commercial motor transport and maintenance.
k. Industrial security through the use of watchmen.
l. Procurement and warehousing.
m. Telecommunications.

n. Protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in areas used in operation of the Canal and the anchorages.
o. Non-commercial vessel repair.
p. Air conditioning services in Canal installations.
q. Industrial sanitation and health services.
r. Engineering design, construction and maintenance of Panama Canal Commission installations.
s. Dredging of the Canal channel, terminal ports and adjacent waters.
t. Control of the banks and stabilizing of the slops of the Canal.
u. Non-commercial handling of cargo on the piers and docks of the Panama Canal Commission.
v. Maintenance of public areas of the Panama Canal Commission such as parks and gardens.
w. Generation of electric power.
x. Purification and supply of waters.
y. Marine salvage in Canal waters.
z. Such other functions as may be necessary or appropriate to carry out, in conformity with this Treaty and related agreements, the rights and responsibilities of the United States of America with respect to the management, operation and maintenance of the Panama Canal.

4. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Commission, effective upon the dates indicated herein:

(a) Upon the date of entry into force of this Treaty:

(i) Wholesale and retail sales, including those through commissaries, food stores department stores, optical shops and pastry shops;
(ii) The production of food and drink, including milk products and bakery products;
(iii) The operation of public restaurants and cafeterias and the sale of articles through vending machines;
(iv) The operation of movie theaters, bowling alleys, pool rooms and other recreational and amusement facilities for the use of which a charge is payable;
(v) The operation of laundry and dry cleaning plants other than those operated for official use;
(vi) The repair and service of privately owned automobiles or the sale of petroleum or lubricants thereto, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other

privately owned property, including appliances, electronic devices, boats, motors and furniture.

(vii) The operation of cold storage and freezer plants other than those operated for official use;

(viii) The operation of freight houses other than those operated for official use;

(ix) The operation of commercial services to and supply of privately owned and operated vessels, including the construction of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;

(x) Printing services other than for official use;

(xi) Maritime transportation for the use of the general public;

(xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;

(xiii) Education services not for professional traning, including schools and libraries;

(xiv) Postal services;

(xv) Immigration, customs and quarantine controls, except those measures, necessary to ensure the sanitation of the Canal;

(xvi) Commercial pier and dock services, such as the handling of cargo and passengers; and

(xvii) Any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal.

(b) Within thirty calendar months from the date of entry into force of this Treaty, governmental services such as:

(i) Police;
(ii) Court; and
(iii) Prison system

5. (a) With respect to those activities or functions described in paragraph 4 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such activities or functions by the Panama Canal Commission to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof.

(b) In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 4 above which is necessary to the efficient management, operation or maintenance of the Canal, the Panama Canal Commission may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

Agreed Minute to the Panama Canal Treaty

1. With reference to paragraph 1(c) of Article 1 (Abrogation of Prior Treaties and Establishment of a New Relationship), it is understood that the treaties, conventions, agreements and exchanges of notes, or portions thereof, abrogated and superseded thereby include:

(a) The Agreement delimiting the Canal Zone referred to in Article II of the Interoceanic Canal Convention of November 18, 1903 signed at Panama on June 14, 1904.

(b) The Boundary Convention signed at Panama on September 2, 1914.

(c) The Convention regarding the Colon Corridor and certain other corridors through the Canal Zone signed at Panama on May 24, 1950.

(d) The Trans-Isthmian Highway Convention signed at Washington on March 2, 1936,the Agreement supplementing that Convention entered into through an exchange of notes signed at Washington on August 31 and September 6, 1904, and the arrangement between the United States of America and Panama respecting the Trans-Isthmian Joint Highway Board, entered into through an exchange of notes at Panama on October 19 and 23, 1939.

(e) The Highway Convention between the United States and Panama signed at Panama on September 14, 1950.

(f) The Convention regulating the transit of alcoholic liquors through the Canal Zone signed at Panama on March 14, 1932.

(g) The Protocol of an Agreement restricting use of Panama and Canal Zone waters by belligerents signed at Washington on October 10, 1914.

(h) The Agreement providing for the reciprocal recognition of motor vehicle license plates in Panama and the Canal Zone entered into through an exchange of notes at Panama on December 7 and December 12, 1950, and the Agreement establishing procedures for the reciprocal recognition of motor vehicle operator's licenses in the Canal Zone and Panama entered into through an exchange of notes at Panama on October 31, 1960.

(i) The General Relations Agreement entered into through an exchange of notes at Washington on May 18, 1942.

(j) Any other treaty, convention, agreement or exchange of notes between the United States and the Republic of Panama, or

portions thereof, concerning the Panama Canal which was entered into prior to the entry into force of the Panama Canal Treaty.

2. It is further understood that the following treaties, conventions, agreements and exchanges of notes between the two Parties are not affected by paragraph 1 of Article 1 of the Panama Canal Treaty:

(a) The Agreement confirming the cooperative agreement between the Panamanian Ministry of Agriculture and Livestock and the United States Department of Agriculture for the prevention of foot and mouth disease and rinderpest in Panama, entered into by an exchange of notes signed at Panama on June 21 and October 5, 1972, and amended May 28 and June 12, 1974.

(b) The Loan Agreement to assist Panama in executing public marketing programs in basic grains and perishables, with annex, signed at Panama on September 10, 1975.

(c) The Agreement concerning the regulation of commercial aviation in the Republic of Panama on April 22, 1929.

(d) The Air Transport Agreement signed at Panama on March 31, 1949, and amended May 29 and June 3, 1952, June 5, 1967 December 23, 1974 and March 6, 1975.

(e) The Agreement relating to the establishment of headquarters in Panama for a civil aviation technical assistance group for the Latin American area, entered into by an exchange of notes signed at Panama on August 8, 1952.

(f) The Agreement relating to the furnishing by the Federal Aviation Agency of certain services and materials for air navigation aids, entered into by an exchange of notes signed at Panama on December 5, 1967 and February 22, 1968.

(g) The Declaration permitting consuls to take note in person, or by authorized representatives, of declarations of values of exports made by shippers before customs officers, entered into by an exchange of notes signed at Washington on April 17, 1913.

(h) The Agreement relating to customs privileges for consular officers, entered into by an exchange of notes signed at Panama on January 7 and 31, 1935.

(i) The Agreement relating to the sale of military equipment, materials and services to Panama entered into by an exchange of notes signed at Panama on May 20, 1959.

(j) The Agreement relating to the furnishing of defense articles and services to Panama for the purpose of contributing to its internal security, entered into by an exchange of notes signed at Panama on March 26 and May 23, 1962.

(k) The Agreement relating to the deposit by Panama of ten percent of the value of grant military assistance and excess defense articles furnished by the United States, entered into by an exchange of notes signed at Panama on April 4, and May 9, 1972.

(l) The Agreement concerning payment to the United States of net proceeds from the sale of defense articles furnished under the military assistance program, entered into by an exchange of notes signed at Panama on May 20 and December 6, 1974.

(m) The General Agreement for Technical and Economic Cooperation, signed at Panama on December 11, 1961.

(n) The Loan Agreement relating to the Panama City water supply system, with annex, signed at Panama on May 6, 1969 and amended September 30, 1971.

(o) The Loan Agreement for rural municipal development in Panama, signed at Panama on November 28, 1975.

(p) The Loan Agreement relating to a project for the modernization, restructuring and reorientation of Panama's educational programs, signed at Panama on November 19, 1975.

(q) The Treaty providing for the extradition of criminals, signed at Panama on May 25, 1904.

(r) The Agreement relating to legal tender and fractional silver coinage by Panama, entered into by an exchange of notes signed at Washington and New York on June 20, 1904 and amended March 26, and April 2, 1930, May 28 and 24, 1950, September 11, and October 22, 1953, August 23 and October 25, 1961, and September 26 and October 23, 1962.

(s) The Agreement for enlargement and use by Canal Zone of sewerage facilities in Colon Free Zone Area, entered into by an exchange of notes signed at Panama on March 8 and 25, 1954.

(t) The Agreement relating to the construction of the inter-American highway, entered into by an exchange of notes signed at Panama on May 15 and June 7, 1943.

(u) The Agreement relating to the construction of the Panama segment of the Darien Gap highway,signed at Washington on May 6, 1971.

(v) The Agreement relating to investment guaranties under sec. 413(b) (4) of the Mutual Security Act of 1954, as amended, entered into by an exchange of notes signed at Washington on January 23, 1961.

(w) The Informal Arrangement relating to cooperation between the American Embassy, or Consulate, and Panamanian authorities when American merchant seamen or tourists are brought before a magistrate's court, entered into by an exchange of notes signed at Panama on September 18 and October 15, 1947.

(x) The Agreement relating to the mutual recognition of ship measurement certificates, entered into by an exchange of notes signed at Washington on August 17, 1937.

(y) The Agreement relating to the detail of a military officer to serve as adviser to the Minister of Foreign Affairs of Panama, signed at Washington on July 7, 1942, and extended and amended February 17, March 23, September 22 and November 6, 1959, March 26 and July 6, 1962 and September 20 and October 8, 1962.

(z) The Agreement relating to the exchange of official publications, entered into by an exchange of notes signed at Panama on November 27, 1941 and March 7, 1942.

(aa) The Convention for the Prevention of Smuggling of Intoxicating Liquors, signed at Washington on June 6, 1924.

(bb) The Arrangement providing for relief from double income tax on shipping profits, entered into by an exchange of notes signed at Washington on January 15, February 8, and March 28, 1941.

(cc) The Agreement for withholding Panamanian income tax from compensation paid to Panamanians employed within Canal Zone by the canal, railroad, or auxiliary works, entered into by an excahnge of notes signed at Panama on August 12 and 30, 1963.

(dd) The Agreement relating to the withholding of contributions for education insurance from salaries paid to certain Canal Zone employees, entered into by an exchange of notes signed at Panama on September 8 and October 13, 1972.

(ee) The Agreement for radio communications between amateur stations on behalf of third parties, entered into by an exchange of notes signed at Panama on July 19 and August 1, 1956.

(ff) The Agreement relating to the granting of reciprocal authorizations to permit licensed amateur radio operators of either country to operate their stations in the other country, entered into by an exchange of notes signed at Panama on November 16, 1966.

(gg) The Convention facilitating the work of traveling salesmen, signed at Washington on February 8, 1919.

(hh) The Reciprocal Agreement for gratis nonimmigrant visas, entered into by an exchange of notes signed at Panama on March 27 and May 22 and 25, 1956.

(ii) The Agreement modifying the Agreement of March 27 and May 22 and 25, 1956 for gratis nonimmigrant visas entered into by an exchange of notes signed at Panama on June 14 and 17, 1971.

(jj) Any other treaty, convention, agreement or exchange of notes, or portions thereof, which does not concern the Panama Canal and which is in force immediately prior to the entry into force of the Panama Canal Treaty.

3. With reference to paragraph 2 of Article X (Employment with the Panama Canal Commission), concerning the endeavor to ensure that the number of Panamanian nationals employed in relation to the total number of employees will conform to the proportion established under Panamanian law for foreign business enterprises, it is recognized that progress in this regard may require an extended period in consonance with the concept of a growing and orderly Panamanian participation, through training programs and otherwise, and that progress may be affected from time to time by such actions as the transfer or discontinuance of functions and activities.

4. With reference to paragraph 10(a) of Article X, it is understood that the currently applicable United States law is that contained in Section 8336 of Title 5, United States Code.

5. With reference to paragraph 2 of Article XI (Transitional Provisions), the areas and installations in which the jurisdictional arrangements therein described shall apply during the transition period are as follows:

(a) The Canal operating areas and housing areas described in Annex A to the Agreement in Implementation of Article III of the Panama Canal Treaty.

(b) The Defense Sites and Areas of Military Coordination described in the Agreement in Implementation of Article IV of the Panama Canal Treaty.

(c) The Ports of Balboa and Cristobal described in Annex B of the Agreement in Implementation of Article III of the Panama Canal Treaty.

6. With reference to paragraph 4 of Article XI, the areas in which the police authorities of the Republic of Panama may conduct joint police patrols with the police authorities of the United States of America during the transition period are as follows:

(a) Those portions of the Canal operating areas open to the general public, the housing areas and the Ports of Balboa and Cristobal.

(b) Those areas of military coordination in which joint police patrols are established pursuant to the provisions of the Agreement in Implementation of Article IV of this Treaty, signed this date. The two police authorities shall develop appropriate administrative arrangements for the scheduling and conduct of such joint police patrol.

Treaty Concerning the
Permanent Neutrality and
Operation of the Panama Canal

The United States of America and the Republic of Panama have agreed upon the following:

Article I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

Article II

The Republic of Panama 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, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world. The foregoing shall be subject to the following requirements:

(a) Payment of tolls and other charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Article III(c);

(b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III(c);

(c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and

(d) Such other conditions and restrictions as are established by this Treaty.

Article III

1. For the purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

(b) Ancillary services necessary for transit through the Canal shall be provided;

(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

(d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of vessels owned or operated by a State or for which it has acknowledged responsibility, a certification by that States that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility;

(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. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government non-commercial service.

2. For the purposes of this Treaty, the terms "Canal" "vessel of war" "auxiliary vessel," "internal operation," "armament" and "inspection" shall have the meanings assigned them in Annex A to this Treaty.

Article IV

The United States of America and the Republic of 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, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

Article V

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

Article VI

1. In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

2. The United States of America, so long as it has responsibility for the operation of the Canal, may continue to provide the Republic of Colombia toll-free transit through the Canal for its troops, vessels and materials of war. Thereafter, the Republic of Panama may provide the Republic of Colombia and the Republic of Costa Rica with the right of toll-free transit.

Article VII

1. The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all nations of the world the Protocol to this Treaty whereby all the signatories will adhere to the objectives of this Treaty, agreeing to respect the regime of neutrality set forth herein.

2. The Organization of American States shall act as the depositary for this Treaty and related instruments.

Article VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

DONE at Washington, this 7th day of September, 1977 in the English and Spanish languages, both texts being equally authentic.

For the Republic of Panama:	For the United States of America:
Omar Torrijos Herrera	Jimmy Carter
Head of Government of the Republic of Panama	President of the United States of America

Annex A

1. "Canal" includes the existing Panama Canal, the entrances thereto and the territorial seas of the Republic of Panama adjacent thereto, as defined on the map annexed hereto (Annex B) and any other interoceanic waterway in which the United States of America is a participant or in which the United States of America has participated in connection with the construction or financing that may be operated wholly or partially within the territory of the Republic of Panama, the entrances thereto and the territorial seas adjacent thereto.

2. "Vessel of war" means a ship belonging to the naval forces of a State, and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew which is under regular naval discipline.

3. "Auxiliary vessel" means any ship, not a vessel of war, that is owned or operated by a State and used, for the time being, exclusively on government non-commercial service.

4. "Internal operation" encompasses all machinery and propulsion systems, as well as the management and control of the

vessel, including its crew. It does not include the measures necessary to transit vessels under the control of pilots while such vessels are in the Canal.

5. "Armament" means arms, ammunitions, implements of war and other equipment of a vessel which possesses characteristics appropriate for use for warlike purposes.

6. "Inspection" includes on-board examination of vessel structure, cargo, armament and internal operation. It does not include those measures strictly necessary for admeasurement, nor those measures strictly necessary to assure safe, sanitary transit and navigation, including examination of deck and visual navigation equipment, nor in the case of live cargoes, such as cattle or other livestock, that may carry communicable diseases, those measures necessary to assure that health and sanitation requirements are satisfied.

Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal

Whereas the maintenance of the neutrality of the Panama Canal is important not only to the commerce and security of the United States of America and the Republic of Panama, but to the peace and security of the Western Hemisphere and to the interests of world commerce as well;

Whereas the regime of neutrality which the United States of America and the Republic of Panama have agreed to maintain will ensure permanent access to the Canal by vessels of all nations on the basis of entire equality; and

Whereas the said regime of effective neutrality shall constitute the best protection for the Canal and shall ensure the absence of any hostile act against it;

The Contracting Parties to this Protocol have agreed upon the following:

Article I

The Contracting Parties hereby acknowledge the regime of permanent neutrality for the Canal established in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and associate themselves with its objectives.

Article II

The Contracting Parties agree to observe and respect the regime of permanent neutrality of the Canal in time of war as in time of peace, and to ensure that vessels of their registry strictly observe the applicable rules.

Article III

This Protocol shall be open to accession by all States of the world, and shall enter into force for each State at the time of deposit of its instrument of accession with the Secretary General of the Organization of American States.

BIBLIOGRAPHY

Books and Thesis

Ahmed, Saiyed Ehtasham, "The Air Space in International Air Law; a Study of Article 1 of the Chicago Convention in its Territorial Scope and of the Rights of States over Navigable Air Space", Diss., McGill, 1957.

Arnold, Stanley, "Sovereign Rights in Space", Diss., McGill, 1957.

Arosemena, Diogenes A, Breviario Historico Sobre el Problema Canalero, Panama, 1976, n.p.

Aumaseali' I, S. Muli', "New Trends in the Law of the Sea: Implications for the Regime of the Airspace", Diss., McGill 1977.

Baxter, R.R., The Law of International Waterways with Particular Regard to Interoceanic Canals, Harvard: University Press, 1964.

Bin, Cheng, The Law of International Air Transport, London: Stevens and Sons Limited, New York: Oceana Publication Inc., 1962.

Brownlie, Ian, Principles of Public International Law, Oxford: Clarendon Press, 1977.

Castel, J.G., International Law (Chiefly as Interpreted and Applied in Canada), Toronto: University Press, 1965.

Castillero Pimentel, Ernesto, Panama y los Estados Unidos, Panama: Litho-Impresora, S.A., 1974.

Colombos, John C., The International Law of the Sea, London: Longmans, 1967.

Farris, Henry, "The Problem of Delimitation in Space Law", Diss., University of Notre Dame, 1974.

Flanz, Gisbert, Constitutions of the Countries of the World, n.p., P. Blaustein and G. Flanz, 1974.

Garcia Robles, Alfonso, La Conferencia de Ginebra y la Anchura del Mar Territorial, Mexico: n.p., 1959.

Green, L.C., International Law Through the Cases, Toronto: The Carswell Company Limited, 1978.

Greig, D.W., International Law, London: Butterworths, 1976.

Heere, Wybo P., International Bibliography of Air Law 1900-1976, Leiden: A.W. Sijthoff. N.Y.: Oceana Publications Inc., Dobbs Ferry, 1972, Supplement: 1976.

Johnson, David, Rights in Air Space, Manchester: University Press, 1965.

Kish, John, The Law of International Spaces, Diss., Cambridge, 1973, A.W. Sijthoff/Leyden, 1973.

Lay, Churchill, et al., New Directions in the Law of the Sea, 6 Vols. New York: Oceana Publications, Dobbs Ferry, 1973.

Lay, S. Houston and Taubenfeld, Howard J. The Law Relating to to Activities of Man in Space, Chicago: University of Chicago Press, 1971.

Lissitzyn, Oliver J. International Air Transport and National Policy, New York: Percy W. Bidwell, 1942.

Lopez, Guevara, Carlos, Un Canal sin Zona del Canal, Colon,N.P. 1974.

Matte, N.M. Aerospace Law, Toronto: The Carswell Company Limited, 1969.

McNair, Lord, The Law of the Air, London: Stevens and Sons, 1964.

---------- The Law of the Treaties, Oxford: Clarendon Press, 1961.

McDougal, M.S., Lasswell, et al. Law and Public Order in Space, New Haven, n.p. , 1963.

Noriega, Luis Carlos, Soberania de Panama, Republica de Panama, n.p., 1976.

Obieta, Joseph A. The International Status of the Suez Canal, The Hague: Martinus Nijhoff, 1970.

Oda, Shigeru, The Law of the Sea in our Time - 1 New Development 1966-1975, Leyden Sitjhoff, 1977.

Oppenheim, L. International Law, London: Lauterpacht, 1967.

Rodriguez Jurado, Agustin, Teoria y Practica del Derecho Aeronautico, Buenos Aires: Ediciones De Palma, 1963.

Shawcross and Beaumont, Air Law, London: Butterworths, 1966.

Schwarzenberger, Georg, International Law, London: Stevens and Sons Limited, 1957.

Thomas, A.J., _____ Regulation of Scheduled Air Transport and National Policy, New York: Dennis and Co., Inc., 1951.

Vlasic, Ivan A. "Cooper, J.C. Selected Essays" Explorations in Aerospace Law, Montreal: McGill University Press, 1968.

---------- and Bradley, M.A., The Public Intertional Law of of Air Transport, 3 Vols. Montreal: McGill University, 1974 and 1976.

Watt, D.C. Britain and the Suez Canal: The Background, London: Royal Institute of International Affairs, 1956.

Wyse, Lucién Napoléon Bonaparte, El Canal de Panama, El Istmo Americano, Panama: Publicacions de la Revista "Loteria", No. 4, 1958.

Articles

Ahlawalia, K. The Question of the U-2 Incident and International 1 Indian Journal of International Law, 1960, pp. 301-307.

Brown, James L. Pan American Cooperation in Aeronautics, Journal of Air Law and Commerce, Vol. 9, 1938, pp.468-502.

Cacopardo, S. La Condizione Giuridica dello Spazio Aereo in Rapporto Alle Vie di Comunicazione Acquee, 8 Revista de Diritto Aeronautico, 1939, pp.267-314 and 371-486.

Cassidy, Louis, Does the Havana Aerial Convention Fulfill a Need? Air Law Review, Vol. 2, 1931, pp.207-209.

Cocca, Aldo Armando, Remote Sensing of Natural Resources by Means of Space Technology: A Latin American Point of View, In Matte, N.M. and De Saussure, H. Legal Implication of Remote Sensing from Outer Space, Leyden Sijthoff, 1976, pp.6368.

Cooper, John C. The Panamerican Convention on Commercial Aviation and the Treaty Making Power, American Bar Association Journal, Vol. 19, 1933, pp.22-26.

---------- Comments (on Goedhuis, The Limitation of Air Sovereignty), International Law Association Report, Dubrovik, 1956, pp.207-212.

Denaro, J.M. States' Jurisdiction in Aerospace under International Law, 36 Journal of Air Law and Commerce, 1970, pp.688-728.

Dinu, M.C. State Sovereignty in the Navigable Air Space, 17 Journal of Air Law and Commerce, 1950, pp.43-53.

Galloway, Eilene, Present Status in the United Nations of Direct Television Broadcast Satellites, Annals of Air and Space Law, Vol. 11, McGill, 1977, pp.269-285

Goedhuis, D. Dr. The Limitation of Air Sovereignty, International Law Association Report Dubrovik, 1956, pp. 196-207.

---------- The Air Sovereignty Concept and United States Influence on its Future Development, Journal of Air Law and Commerce, Vol.22, pp.209-221.

---------- Some Observations on the Problems of the Definitions and for the Delimitation of Outer Space, Annals of Air and Space Law, Vol.11, McGill, 1977, pp.287-309.

Gorove, Stephen, Sovereignty and the Law of Outer Space Re-Examined, Annals of Air and Space Law, Vol.11, McGill, 1977, pp.311-321.

Hakim, James I.V. The International Character of the Airspace over the Suez Canal, Southern California Law Review, Vol.29, 1955-56, pp. 215-226.

Hazeltine, H.D. State Sovereignty in the Airspace,International Law Association Report, Paris, 1912, pp.261-270.

Hosenball, Neil S. Free Acquisition and Dissemination of Data Through Remote Sensing, In Matte, N.M. and Desaussure, Legal Implications of Remote Sensing from Outer Space, Leyden, Sijthoff, 1976, pp.105-111.

Hugues, David Morgan, Airspace Sovereignty Over Certain International Waterways, 19 Journal of Air Law and Commerce, 1952, pp.144-151.

Ibero-American Convention Relating to Air Navigation, Journal of Air Law and Commerce, 1937, pp.263-269.

Lapidoth, Ruth, Reopened Suez Canal in International Law, Syracuse Journal of International Law and Commerce 1, 1976, pp. 1-49.

Latchford, Stephen, Havana Convention on Commercial Aviation, Journal of Air Law and Commerce Vol.2, 1931, pp.207-209.

---------- Comparison of the Chicago Aviation Convention with the Paris and Havana Conventions, U.S. Department of State Bulletin, Vol.12, Nos. 289-313, 1945, pp.411-420.

---------- Freedom of the Air; Early Theories, Freedom Zone and Sovereignty, U.S. Department of State Documents and State Papers, August 1948, pp.305-322.

Le Goff, M. Le Statut Aérien du Canal de Suez d'apree le Traite Anglo-Egyptien de 26 août 1936, 46 Revue Général de Droit International Public, 1939, pp.143-158

Legal Aspects of Reconnaisance in Airspace and Outer Space, 61 Columbia Law Review, 1961, pp.1074-1102.

Lissitzyn, O.V. The Treatment of Aerial Intruders in Recent Practice and International Law, 47 American Journal of International Law, 1953, pp.559-590.

Lopez Guevara, Carlos A. Negotiating a Peaceful Solution to the Panama Canal Question, New York University Journal of International Law and Politics, Vol. 9, 1976, No. 1 pp.2-14.

Martial, J.A. State Control of the Airspace over the Territorial Sea and the Contiguous Zone, 30 Canadian Bar Review, 1952, pp. 245-263.

Monroe, Leigh, United States Policy of Collecting and Disseminating Remote Sensing Data, In Matte, N.M. and DeSaussure, H. Legal Implications of Remote Sensing from Outer Space, Leydon, Sijthoff, 1976, pp.147-150.

Oxman, Bernard, The Third United Nations Conference on the Law of the Sea: The 1976 New York Sessions, 71 American Journal of International Law, 1977, pp.247-169.

---------- The Third United Nations Conference on the Law of the Sea: The 1977 New York Session, 72 AJIL, 1978, pp.57-83.

---------- The Third United Nations Conference on the Law of the Sea: The Seventh Session, 73 AJIL, 1979, pp.1-41.

Pépin, E. The Legal Status of the Airspace in the Light of the Progress in Aviation and Astronautics, 3 McGill Law Journal, 1956, pp. 70-79.

Shay,Martha Jane, The Panama Canal Zone: In Search of a Juridical Identity, New York University Journal of International Law and Politics, Vol. 9, 1976, No.1, pp.15-60.

Smith, Hans, The Panama Canal: A National or International Waterway? Columbia Law Review, 1976, pp.965-988.

---------- The Proposed Panama Canal Treaties: A Triple Failure, Columbia Journal of Transnational Law, Vol.17, No.1, 1978, pp. 1-32.

Stevenson and Oxman, The Preparations for the Law of the Sea Conference, 68 American Journal of International Law, 1974, pp. 1-32.

----------, The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session,29 AJIL, 1975, p.1-30.

Vlasic, Ivan A. The Evolution of the International Code of Conduct to Govern Remote Sensing by Satellites: Progress Report, Annals of Air and Space Law, Vol. 111, 1978, pp.561-674.

Zhukov, G.P. Problems of Legal Regulation of Using Information Concerning Remote Sensing of the Earth from Space, In Matte, N.M. and DeSaussure, H. Legal Implications of Remote Sensing from Outer Space, Leyden, Sijthoff, 1976, pp.125-128.

Documents

U.N. Documents

Charter of the United Nations, TS 993, 59 Stat. 1031 Amendments: December 19, 1963 (16 UST 1134; TIAS 5857; 557 UNTS 143). December 20, 1965 (19 UST 5450; TIAS 6529).

Charter of the Organization of American States, 1948, 2 UST 2394, TIAS No.2361, 119 UNTS 3.

Inter-American Treaty of Reciprocal Assistance, (Rio Treaty), 1947, T.I.A.S. No.1838, 21 U.N.T.S. 77.

Convention on the Territorial Sea and the Contiguous Zone, 1958 516 UNTS, 15 UST 1606; TIAS 5639; 1965 UNTS.

The Law of the Air and the Articles Concerning the Law of the Sea Adopted by the International Law Commission at its Eighth Session, by E Pépin, U.N. A/Conf. 13/4 4 October 1957.

Third United Nations Conference on the Law of the Sea, Informal Composite Negotiating Text, A/Conf. 62/WP.10, 235, 1977.

Convention Regarding the Regime of Straits, Montreaux, 1936, 173 L.N.T.S. 214 (No.4015), 1937, U.N.T.S.30.

ICAO Documents

Convention on International Civil Aviation, Doc. 7300/4, 1969.

International Air Services Transit Agreement, International Civil Aviation Conference, Final Act, Chicago, 1944, pp.87-90.

International Air Transport Agreement, International Civil Aviation Conference, Final Act, Chicago, 1944, pp.91-95.

Assembly Resolution A21-7: The Airport of Jerusalem, Doc.8900/2, 1977.

Assembly Resulotion A21-21: Consolidated Statement of Continuing Policies and Associated Practices Related Specifically to Air Navigation, Doc. 8900/2, 1977.

Doc. 8057-3, C/922-3, 25/3/60.

Doc. C-WP/3100, p.1, 1960.

U.S. Government Documents

Isthmian Canal Convention, 1903, United States-Panama, Treaties and Other International Agreements of the United States of America, 1776-1949, Bevans Dept. of State.

General Treaty of Friendship and Cooperation with Panama, 1936, 53 Stat. 1807, T.S.N.945.

Treaty of Mutual Understanding and Cooperation with the Republic of Panama, 1955, 6 U.S.T.2273, T.I.A.S. No.3297.

Treaties of 1967 between United States and Panama, Report Concerning the Panama Canal, by the Subcommittee on the Panama Canal of the House Committee on Merchant Marine and Fisheries, 91st Cong., 2d Sess., 1970.

Proclamation No.1287, American Journal of International Law, Vol. 9 (Suppl.) 1914, pp. 126-131.

Proclamation No.1371, American Journal of International Law, Vol. 19, (Suppl.) 1917, pp.165-168.

Air Commerce Act, 1926, 44 Stat. 568, 1928, U.S. Aviation Reports, p.338.

Civil Aeronautics Act of 1938, Aeronautical Statutes and Related Material, 1940, pp. 1-18.

Canal Zone Code, U.S. Statutes at Large, 87th Congress, 2d Sess. 1962.

Federal Aviation Act of 1958, Act of August 23, 1958, 72 Stat. 731 and amendments.

Executive Order 8251, American Journal of International Law, Vol. 34, Suppl., 1939, p.1.

Annual Digest 9 (1938-40), Case No.43.

Amendment 99-1, Published in 29 F.R. 7146, June 2, 1964. p.4.

Amendment 99-3, Published in 29 F.R. 11446, August 8, 1964, p.5.

Panama Canal Treaties of 1977 and Related Documents, U.S. Dept. of State Bulletin, Vol.77, 1977, pp.483-503; International Legal Materials, No.16, 1977, pp.1021-1098.

Panama Canal Treaties of 1977, Hearings Before the Committee on Foreign Relations United States Senate, Executive N, 95th Cong., 1st Sess., Partl, Administration Witnesses, Part 2, Congressional Witnesses, Part 3 Public Witnesses, Part 4 Congressional and Public Witnesses, Part 5, Markup; 1977.

Proposed Panama Canal Treaties, Hearing Before the Committee on International Relations, House of Representatives, 95th Cong. 1st sess., 1977.

Agreement Concerning the Regulation of Commercial Aviation in the Republic of Panama, Treaties and Other International Agreements of the U.S. 1776-1949, Bevans, 10, Dept. of State.

Air Transport Agreement Between Panama and the United States, 63 Stat. 2450, Treaties and Other International Acts Series, 1932. Amendments: May 29 and June 3, 1952, TIAS 2551; June 5, 1967, TIAS 6270; December 23, 1974 and March 6, 1975, TIAS 8036.

Agreement on Technical Cooperation, U.S. Treaties and Other International Agreements, Vol.3, Part 4 1952, TIAS 2691, p.5065.

Agreement on Air Service: Equipment for Navigational Aids, U.S. Treaties and Other International Agreement, Vol.19, TIAS 6471, p.4731.

Panama Government Documents

Decree No.147 of August 23, 1932, Regulating Commercial Aviation in Panama, G.O. No.6384.

Decree No.150 of August 23, 1932, Regulating Entry Into and Departure from Panama by Air, G.O. No.6395.

Decree No. 7 of January 19, 1937, Regulating Schedule Air Traffic, G.O. No.7466.

Decree Law No. 19 of August 5, 1963, Regulating National Aviation, G.O. 14987.

Decree of Cabinet No.13 of January 22, 1969, Amending Certain Articles of the Decree Law 19 of 1963, G.O. 16285.