

and tolls paid, at \$1.25 per ton, were \$18,941.25. The United States registry rules set the net tonnage at more than 7,000 tons less than the British registry measurement, and the tolls paid for passage through the Panama Canal were approximately \$11,000 less than the amount paid at Suez.

The main reason for the difference between British and United States registry measurements was the exemption of certain so-called cabin spaces under the United States rules. One entire upper deck of the vessel is devoted to lounges, libraries, social halls, smoking rooms, etc., which under the British rules (and the Suez and Panama Canal rules) are subject to measurement and inclusion in the net tonnage. There was no stateroom on the deck. Taking advantage of an American ruling relative to such spaces in relation to staterooms, the owners removed from a small cloak and check room the original equipment and installed a bed, chiffonier, and portable washstand, and called it "Apartment A." This secured the exemption of space amounting to 3,319 tons from inclusion in the net tonnage as determined under United States registry rules, in addition to 4,181 tons exempted in other passenger spaces, under United States rules but not under British or Canal rules.⁶⁵

There was another serious objection to the dual measurement system. It did not result in discrimination against vessels of a particular nation, but very considerable inequalities existed in the charges made on ships of approximately equal earning capacity. Thus, between two vessels of equal Panama Canal net vessel-tons, one might pay tolls which were proportionately 50 per cent higher than the other.⁶⁶ Such a situation was possible because the average difference between Panama Canal net and United States net was greater for passenger or passenger-cargo vessels than for tankers. Between 1920 and 1936, the average tanker tonnage was 83.2 per cent of Panama Canal net tonnage. For all other classes of vessels, the 1936 percentage was 67.5. "Thus tankers pay a proportionately higher rate per Panama Canal ton than vessels of other types, the average for 1936 being \$1.045 per Panama Canal net ton, when laden, as against an average of \$.836 for general cargo and passenger-

⁶⁵ *Ibid.*, 1933, p. 87.

⁶⁶ *Ibid.*, 1935, p. 100.

cargo vessels, and a general average of \$.854 for all traffic.”⁶⁷ When the bill which finally disposed of the dual measurement system was being discussed in Congress some persons alleged that Congress was being asked to legislate in favor of the oil tankers.⁶⁸ It is obvious that to reach a common level tankers would pay less toll, while tolls for freight and passenger-cargo vessels would be raised, but that certainly should not be classed as undue favoritism.

A further criticism remained of the dual system. The President's proclamation of rates had set the toll for vessels in ballast at 40 per cent less per Panama Canal vessel-ton than for laden craft. Yet if the differential between United States net and Panama Canal net were great enough, as sometimes happened, the Panama Canal net multiplied by seventy-two cents would exceed the United States net multiplied by one dollar and twenty-five cents, in which case the vessel would pay on the basis of United States net whether ballast or laden. More frequently, a vessel would be required to pay on the basis of United States measurement rules when laden (that is, Panama Canal tonnage multiplied by one dollar and twenty cents was more than United States net multiplied by one dollar and twenty-five cents, the latter being the maximum toll legally permissible), but pay on its Panama Canal measurements when in ballast. In such case, ballast passage was less expensive than transit heavily laden, but the intended differential of 40 per cent was far from attained.

Beginning in 1915 the Canal authorities bent their efforts toward securing legislation to remedy the anomalous situation. Remedial proposals were placed before Congress intermittently, but all failed to become law until 1937. To overcome objections, the President thereupon appointed a Committee on Panama

⁶⁷ *Ibid.*, 1936, p. 94.

⁶⁸ *Cong. Rec.*, Vol. LXXX, pp. 800-821, 912-925, 931-937, 3236-3253, 3442-3449, 3613-3616, 3621-3622, 3766-3770, 3773-3776, 3779-3780; Vol. LXXXI, pp. 10213-10219.

Canal Tolls and Vessel Measurement Rules, whose hearings and report recommended a single system based on Panama Canal Rules to which the limits set by Congress would be applied and which would restore to the President the authority to fix rates of toll within the limits prescribed. Finally after long debate, the Panama Canal Rules with some minor adjustments were adopted and approved as the single system of measurement.⁶⁹ A Presidential Proclamation issued on August 25, 1937, provided that "spaces considered as 'permanently closed in' and spaces permitted to be exempted from measurement shall be determined solely by the provision contained in [the 1937 Act] . . . and not by any definitions or provisions contained in the measurement rules or regulations of any country."⁷⁰

Charges for laden merchant vessels are now ninety cents per Panama Canal net vessel-ton, in contrast to the previous one dollar and twenty cents. Vessels in ballast still pay seventy-two cents per ton, while public ships pay on the basis of fifty cents per displacement ton. Differences between systems of measurement and arbitrary changes in the spaces which are or are not to be subtracted from gross tonnage in order to obtain net-vessel tonnage no longer exist. The Rules contain detailed information concerning the areas to be exempted: all spaces used in navigation of the ship, including engines, boilers, coal bunkers, and fuel oil tanks;⁷¹ boatswain's stores; spaces for the

⁶⁹ 50 Stat. 750; 2 *Canal Zone Code*, 411, 412.

⁷⁰ Proc. No. 2248. *Fed. Reg.*, Vol. II, p. 1764. Supplemented by Proc. No. 2249, Aug. 31, 1937, *ibid.*, p. 1796. 35 C. F. R., Sec. 27. The new rules became effective March 1, 1938. Panama tolls are approximately the same as those of Suez for passage in ballast. They are around 14 per cent lower on laden ships. *Annual Report*, 1933, p. 89. The Suez Canal charges a toll for passengers, whereas no such assessment is made at Panama. The United States requires toll payment in cash in United States money, deposit at an approved depository, or a draft secured by bonds. Proc. No. 2248, Aug. 25, 1937, Rules 12, 20, 23.

⁷¹ Under Exec. Order No. 7813, Feb. 14, 1938, the fuel allowance for vessels in ballast was increased from 75 per cent to 125 per cent of the volume of the engine room as measured and shown on the Panama Canal Tonnage Certificate. This in no way affected the deduction for propelling power under the Panama Canal rules of measurement or the Panama Canal net tonnage on which toll charges are determined. It did permit vessels, however, proceeding in ballast

of Friendship and Cooperation. Within the Canal Zone all radio activities are under the full authority of the Governor and of the United States radio stations located there.

When the Hay-Pauncefote Treaty and the Convention for the Construction of a Ship Canal were drawn up, aircraft had not entered the picture, either as media of international transportation or as military weapons. The arrangements of 1901 and 1903 held in view only transportation by water and by land, and the desirability of affording the United States the rights pertinent to the construction, operation, maintenance, and protection of such routes across the Isthmus of Panama. The superjacent airspace was of no particular concern. Hence, the treaties made no reference to it. Neither did the basic laws.⁷⁸ Such omission did not deter the United States. On the contrary, it acted from the moment the use of aircraft became a practical matter as if it had entire freedom of action in regulating the use of the airspace above the Canal Zone.⁷⁹

A Presidential Order of August 7, 1913, inaugurated the law applicable to aircraft in the vicinity of the Canal. This made it unlawful for any type of aircraft to be operated "in or across the Canal Zone" without written authorization from the "Chief Executive of the Canal Zone."⁸⁰

After 1920, commerce and transportation by air became an

⁷⁸ The language of Sec. 10 of the 1912 Act is construable, however, to cover regulation of movement in the airspace: "That after the Panama Canal shall have been completed and opened for operation the Governor of the Panama Canal shall have the right to make such rules and regulations, subject to the approval of the President, touching the right of any person to remain upon or *pass over any part of the Canal Zone* as may be necessary." Italics inserted.

⁷⁹ The Joint Neutrality Board in Washington believed, according to a memorandum of Oct. 20, 1914, that because the treaties left the status of the airspace undecided, "the United States can with the greater propriety establish its own position in the matter." MS. Department of State.

⁸⁰ Exec. Order No. 1810, *Ex. O.*, p. 150. The order forbade the taking or making of pictures and sketches from aircraft without permission. A fine of not more than \$1,000, or imprisonment not exceeding a year, or both, was made the punishment for violation. Taking or making pictures or sketches from aircraft would also come within the terms of Title I of the Espionage Act, 40 Stat. 217, 220. *U. S. Code*, Title 50, Sec. 31.

established practice and a matter of national and international concern. In 1926 Congress passed the Air Commerce Act, Section 6 of which declared that

the Government of the United States has, to the exclusion of all foreign nations, complete sovereignty of the air space 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, save in accordance with an authorization granted by the Secretary of State.⁸¹

This Act did not undertake to regulate commercial and private aircraft in or above the Canal Zone. These remained subject to the Order of August 7, 1913, referred to above. In response to the requests of commercial aviation interests for permission to establish routes to South America passing across the Canal Zone, President Coolidge in 1928 designated the Secretary of State to receive such applications and to prescribe the conditions under which they might be accepted.⁸² Pursuant to an Executive Agreement with the Government of Panama, both governments issued identical orders governing private and commercial navigation.⁸³ The American order, issued under the authority of the Air Commerce Act, forms the basis for controlling air navigation in the Canal Zone in time of peace. These regulations reintroduced the principle contained in the Proclamation of February 28, 1917, declaring the Panama Canal

⁸¹ 44 Stat. 568. A later act of July 9, 1937 (50 Stat. 486; *C. Z. Code*, Supp. No. 1, p. 1), stated:

"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 airspace above the lands and waters of the Canal Zone. Until Congress shall otherwise provide, the President is authorized 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."

Penalty for violation of the executive rules and regulations was made a fine not exceeding \$500, imprisonment for not more than a year, or both.

⁸² Exec. Order No. 4971, Sept. 28, 1928, *Ex. O.*, Supp. No. 16, p. 417.

⁸³ Exec. Order No. 5047, Feb. 18, 1929, *ibid.*, Supp. No. 17, p. 420. An Executive Order was issued by the President of Panama on May 4, 1929. For United States rules, sec. 35 C. F. R., Sec. 5, pars. 1-18.

Zone, "including the three mile limit," to be a military airspace reservation. Local control in and over the Canal Zone and over Panamanian jurisdiction was continued in the hands of the Governor, the Commanding General in the Canal Zone, the naval Commandant stationed in the Canal Zone, and three representatives of Panama. Requirements were laid down concerning the papers to be carried by aircraft. Authority was conferred to require aircraft to enter, transit, or leave the Canal Zone via prescribed routes, and to compel craft failing to conform to descend and remain grounded. In special circumstances the Governor was empowered to suspend the operation of any or all aircraft over or within the Canal Zone. Arms, ammunition of war, as well as articles generally prohibited by law or regulations, were forbidden carriage in aircraft above the Canal Zone. Photography and the making of any drawings or maps of defense installations or equipment in the Canal Zone were made unlawful and subject to censorship or other discretionary action.⁸⁴

Question may be raised whether any of the provisions contained in the treaties relating to the Canal apply to and limit the control of the United States over the airspace above the Canal and Canal Zone. Considering that Article 3 of the Hay-Pauncefote Treaty uses only the word "vessels," and considering the nature of airspace and the freedom of movement inherent in aircraft as contrasted with ocean-going vessels, it would seem reasonable to conclude that no limitation was placed upon the United States concerning the airspace above the Canal and craft passing therethrough. May the United States, however, prevent

⁸⁴ Penalty of a fine up to \$500 or imprisonment up to one year was prescribed for violation of the regulations.

Further regulations were issued by the Secretary of State, Feb. 26, 1929, containing information regarding permits, authorizations, inspections, traffic rules, etc. *A.J.I.L.*, Vol. XXIII (1929), Supp., p. 123. Shortly after the issuance of these regulations, Pan American Airways commenced regular service to South America with landings at David and at Panama City. Pan American Union, *Bulletin*, Vol. LXIII (1929), pp. 615, 833. New regulations were issued by the Secretary of State on June 23, 1934. 35 C. F. R., Sec. 5, pars. 19-112.

foreign aircraft from flying across the Isthmus directly above the Canal which is "free and open to the vessels of commerce and of war of all nations"? It is believed that it may, and that the airspace above the Canal was not neutralized and made free and open to aircraft navigating in the airspace. A canal is not an airway. Great Britain and the United States agreed upon the rules to be applied to vessels in a "ship canal." They made no agreement concerning either a right of passage, or of the freedom or limitation of action in the airspace above a ship canal. The United States exercises rights of sovereignty over the Canal Zone by virtue of the Convention with Panama. That Convention contained no limitation on the exercise by the United States of jurisdiction over the airspace. Since then the United States has accepted no limitation whatsoever respecting its absolute control of all the airspace above the waters of the Canal and the territory of the Canal Zone.

In the foregoing pages an effort has been made to trace the lines along which the regulation of the Panama Canal has proceeded in times of peace. Notwithstanding the "neutralization" clauses in the treaties with Great Britain and with Panama, the problems of war and defense have come close to the Canal. The first World War abounded with questions calling for the institution of special rules and laws for the Canal and for vessels seeking transit. The hostilities recurring in Europe in 1939 dictated the adoption of further extraordinary precautions. These questions and the negotiations relating to the Canal in times of emergency and war will be examined in the next chapter.

CHAPTER IV

THE PANAMA CANAL IN TIME OF WAR

AN ISTHMIAN canal was originally conceived as a highway for peaceful commerce between nations. The extensive use of the Panama Canal by the vessels of many countries indicates that it has fulfilled such a function. At the same time the Canal has played a part in non-peaceful intercourse. It has facilitated the transportation of materials of war and of troops. It has enabled vessels of war to move rapidly from ocean to ocean, thus affecting naval strategy. From the commencement of its undertaking the United States Government has regarded the Panama Canal as an instrument of national defense. These facts serve to underline the importance of the Canal to all maritime states in war as well as in peace.

The opening of the Canal to navigation in 1914 coincided by mere chance with the outbreak of the Great War in Europe. From that moment, therefore, attention was focused upon the status of the Canal in time of war.

Anticipating occasions when war might prevail between the maritime Powers, it was agreed by the United States and Great Britain in the Hay-Pauncefote Treaty that certain rules should be adopted by the United States as a basis of the "neutralization" of the Canal. In the Convention of 1903 with Panama it was stated that the Canal and its entrances "shall be neutral in perpetuity." Nevertheless, as has been shown in Chapter II, the Canal was not completely neutralized in the fullest sense of the word. To the United States was left, subject to the provisions of the treaties, the exclusive right of regulating the Canal at all times. States other than Great Britain and Panama were not asked and did not enter into any contractual agreement to

respect the neutrality of the Canal. No limitation was placed upon the right of the United States to fortify, defend, and use the Canal in connection with its own defense.

The issuance of a proclamation of neutrality for the Canal whenever a state of war may exist was not called for by the treaties relating to the Canal. Nevertheless, the United States has adopted such a procedure in each of the wars involving the maritime states of Europe. In 1914, and again in 1939, two types of proclamations were issued by the President of the United States: one, a general proclamation of neutrality for all territory and waters subject to the jurisdiction of the United States,¹ dealing with "our activities as a neutral under the rules of international law and those of our domestic statutes in harmony therewith";² the other, a proclamation relating specifically to the neutrality of the Panama Canal Zone. It has been customary to issue separate proclamations of the first type for every state of war coming into existence between the various belligerents, as indicated by their declarations or announcements, whereas the practice has been followed both in 1914 and again in 1939 of issuing but one proclamation relating to the neutrality of the Canal Zone, applicable in general to the vessels and craft of all belligerents. In both instances the proclamations for the Canal Zone have followed rather than preceded the issuance of the first of the general proclamations of neutrality.

PROCLAMATIONS RELATING TO NEUTRALITY OF THE CANAL AND CANAL ZONE, 1914

The general Proclamations of Neutrality of the United States

¹ Arts. II and III of the Convention with Panama of 1903, granting use and control of the land and waters in the Canal Zone to the United States, unquestionably placed the Panama Canal and the Canal Zone within the "jurisdiction" of the United States, regardless of the question of sovereignty. Ports and waters of the Canal Zone were subjected to the same neutrality rules as the ports and waters of the continental United States. *Panama Canal Record*, Vol. VIII (1914), p. 295.

² Department of State, *Bulletin*, Vol. I, p. 203.

issued during 1914, 1915, and 1916,³ invoked the provisions of the Act of March 4, 1909, commonly known as the "Penal Code of the United States,"⁴ relating to offenses against the neutrality of the United States, together with treaties and principles of the law of nations. The contents of these proclamations, as of the law upon which they are based, are so well known as to require no lengthy elaboration here. Suffice it to say that they embraced accepting and issuing commissions, enlisting, arming vessels intended for use in the service of a belligerent, augmenting the force of the same, organizing, setting on foot, or using territory within the jurisdiction of the United States as a base of hostile operations, compelling vessels of war of belligerents to depart within fixed time limits, revictualing, taking on supplies and fuel, taking part in hostilities, and observing the statutes and treaties of the United States, as well as the law of nations.⁵

Shortly after the issuance of the first of these proclamations the Governor of the Panama Canal was instructed that belligerent vessels of war should be permitted to pass through the Canal only after the commanding officer of each vessel had given written assurance that the neutralization rules contained in the Hay-Pauncefote Treaty and the regulations for the navigation of the Canal would be observed, and that no act endangering the Canal would be committed.⁶

In ensuing weeks government officials responsible for directing policy concerning the Canal discussed its status under contingencies which might arise. If no provision for the neutrality

³ The first one was dated Aug. 4, 1914, and applied to the war between Austria-Hungary and Serbia, Germany and Russia, and Germany and France. 38 Stat. 1999. For citations to other identical proclamations see F. Deák and P. C. Jessup, *A Collection of Neutrality Laws, Regulations and Treaties of Various Countries* (Washington, 1939), Vol. II, p. 1204.

⁴ U. S. Code, Title 18, Chap. 2.

⁵ The reference to treaties in force must necessarily have involved a recognition of a continued application to the Canal of the neutralization rules contained in Art. III of the Hay-Pauncefote Treaty. 32 Stat. 1903.

⁶ Instructions by the Secretary of War, Aug. 22, 1914. MS. Department of State.

of the Canal other than the general proclamation were made, what would be the position of the Canal should situations develop which were not provided for in the rules of the treaty or of the proclamation? It was concluded that the Canal was not sufficiently safeguarded, and that a special proclamation for the security and protection of the Canal should be issued. A Proclamation Relating to the Neutrality of the Panama Canal Zone was accordingly issued on November 13, 1914.⁷ The drafters of the Proclamation sought by means of its provisions to fulfill a triple purpose: (1) to maintain the neutrality of the Canal so that "no jockeying shall be permitted which would be in the interest of one belligerent and to the detriment of his adversary";⁸ (2) preserve the safety of the Canal by making the regulations for its operation and navigation more stringent than was required in time of peace;⁹ (3) to pave the way for the introduction of more extensive restrictions in case the United States should become involved in war.¹⁰ Both the Hague Convention on the Rights and Duties of Neutral Powers in Naval War and the Hay-Pauncefote Treaty were taken into account in drawing up the Proclamation.¹¹

The Proclamation was concerned with establishing regulations for two classes of vessels which might arrive at the Canal:

⁷ 38 Stat. 2039. Consideration of the issuance and terms of such a proclamation commenced immediately after the declaration of war by Great Britain upon Germany, as a result of an inquiry by the British Embassy as to the regulations which would be in force at the Canal for belligerent vessels of war. MS. Department of State.

⁸ Memorandum of the Joint State-Navy Neutrality Board, dated Oct. 20, 1914. MS. Department of State.

⁹ The analysis of the proclamation prepared by the Joint State-Navy Neutrality Board remarked: "It is important in every way insofar as proper regulations can insure it, that the Panama Canal Zone shall be as far removed from belligerent operations as possible." *Ibid.*

¹⁰ *Ibid.*

¹¹ The Joint State-Navy Neutrality Board concluded, as set forth in the Memorandum referred to above, that "the fact that the rules [Hay-Pauncefote] are not quoted does not in any degree change their binding character as a part of an accomplished treaty. . . . The rules . . . as they exist in the treaty, do not exactly apply to all conditions governing the exercise of neutrality at the Canal Zone." *Ibid.*

belligerent vessels of war, belligerent or neutral vessels used as auxiliaries by belligerents or assimilated by their acts to belligerent vessels of war. Each class of vessels was carefully defined in order to avoid disputes and uncertainty.¹²

When commanded by an officer of the "military fleet," vessels of both classes were to be granted passage through the Canal in accordance with the procedure laid down in the Instructions of August 22, 1914. Vessels coming under Rule 2, and not commanded by a fleet officer, might be permitted transit, subject to "such steps" as the Panama Canal authorities might take "to insure the observance of the Rules and Regulations." Vessels of both classes, together with prizes, were prohibited to revictual or take on stores at the Canal "except so far as may be strictly necessary," and were required to effect transit of the Canal with the least possible delay.¹³ Fuel and lubricants might be provided by private persons in ports of the Canal Zone only upon express permission of the Canal authorities, and after the receipt of a written declaration stating the amounts already on board. The sale of supplies and provisions by the Canal Administration or any of its auxiliary enterprises was forbidden. Such commodities, as well as fuels and lubricants, might be furnished

¹² Vessels of the first class embraced vessels of war of a belligerent. Such a vessel was defined in Rule 1 as:

"a public armed vessel, under the command of an officer duly commissioned by the government, whose name appears on the list of officers of the military fleet, and the crew of which are under regular naval discipline, which vessel is qualified by its armament and the character of its personnel to take offensive action against the public or private ships of the enemy."

Vessels of the second class were stated by Rule 2 to include: "every vessel, belligerent or neutral, whether armed or not, that does not fall under the definition of Rule 1, which vessel is employed by a belligerent Power as a transport or fleet auxiliary or in any way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea; but such treatment shall not be given to a vessel fitted up and used exclusively as a hospital ship."

Quaere: Would such a classification include a neutral private vessel chartered by a belligerent chartering firm, itself under government control, to carry a cargo of munitions or materials useful in war from another neutral country to a port of the belligerent?

¹³ Rule 3 of the Hay-Pauncefote Treaty provided such treatment only for belligerent vessels of war and prizes.

to belligerent vessels by private contractors, but only with the permission of the Canal authorities, and to an extent to enable the vessel to "reach the nearest accessible port, not an enemy port" at which fuels and lubricants could be obtained, or, in the case of ship's stores, to bring supplies up to the peace-time standard.¹⁴ To deal with the contingency of a belligerent bringing a collier or supply vessel into Canal Zone waters there to transfer materials, it was provided that transfers from one belligerent vessel to another might occur only with the permission of the Canal authorities, and subject to the limitations noted above. The embarkation and disembarkation of troops, munitions, or materials of war in the Canal was prohibited except in case of necessity due to accidental hindrance of the transit, of which the "Canal Authorities shall be the judge."¹⁵ The stay of vessels of the classes defined was limited to twenty-four hours, with a like interval imposed between departures of the vessels of opposing belligerents.¹⁶ The total number of "vessels of war of any nation, including those of the allies of a belligerent nation" (vessels assimilated thereto were not mentioned in this paragraph), which might be within the territorial waters of the Canal Zone at one time, was limited to six, of which not more than three might be in the same terminal or in transit simultaneously. The Canal authorities were directed to fix the time of departure of vessels of both classes which returned to the waters of the Canal Zone within one week of their last departure. Use of the repair facilities and docks belonging to the United States Government and to the Canal was to be allowed to belligerent vessels of war and vessels assimilated thereto by Rule 2 "when necessary in case of actual distress, and then only upon the order of the Canal Authorities, only to

¹⁴ Cf. Art. 19 of the Hague Convention on the Rights and Duties of Neutral Powers in Naval War, 36 Stat. 2415.

¹⁵ Cf. Rule 4 of the Hay-Pauncefote Treaty.

¹⁶ Cf. Rule 5 of the Hay-Pauncefote Treaty, and Arts. 12 and 16 of the Hague Convention on the Rights and Duties of Neutral Powers in Naval War. The 24-hour limit was construed as in addition to the time occupied in transit of the Canal.

the degree necessary to render the vessel seaworthy.” Use of radio installations on board vessels of the classes noted was proscribed for any purpose other than Canal business while the vessel was within the waters of the Canal Zone, including the waters of Colón and Panama harbors.¹⁷

Finally, the rules forbade “aircraft of a belligerent Power, public or private” to arise and descend within or to pass over the airspace of the Canal Zone.¹⁸

The rules contained in this Proclamation were made additional to the *Rules and Regulations for the Operation and Navigation of the Panama Canal and Approaches Thereto*. Furthermore, an agreement with Panama, the Lansing-Morales Protocol, was annexed. An arrangement with Panama had been suggested because of the prevailing uncertainty as to the legal status of that country *vis-à-vis* the war on account of the failure of its government to issue any proclamation of neutrality.¹⁹ The United States and Panama agreed that hospitality once extended in the waters of Panama to a belligerent vessel of war or vessel assimilated thereto should serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months.²⁰

¹⁷ For regulation of radio in and about the Canal Zone, see Chapter III, pp. 117-118. This rule supplemented an Executive Order, dated Aug. 5, 1914, which had prohibited “all radio stations within the jurisdiction of the United States of America . . . from transmitting or receiving for delivery messages of an unneutral nature, and from in any way rendering to any one of the belligerents any unneutral service, during the continuance of hostilities.” Naval War College, *International Law Topics*, 1916, p. 87.

¹⁸ See Chapter III, pp. 119-121.

¹⁹ “The Republic of Panama has passed no laws regarding the rights and duties of neutrals in time of war, nor regarding the fulfillment of the obligations of neutrality. . . . Panama has made no proclamation of neutrality since its independence.” Memorandum by the consulting attorney of the Panama State Department, dated July 22, 1935, transmitted with note of July 25, 1935, to American Minister at Panama, and enclosed in Dispatch No. 144, Aug. 1, 1935, from the American Minister to the Secretary of State. F. Deák and P. C. Jessup, *op. cit.*, p. 862. A neutrality decree was issued in 1939.

²⁰ The Joint State-Navy Neutrality Board in Washington desired an agreement which would make “one neutral jurisdiction” of the Republic and the Canal Zone (MS. Department of State), but the agreement as concluded was more limited in scope. The text was as follows:

There appear to have been few infractions of this Proclamation and its annexes. In December, 1914, two incidents arose in relation to British vessels in Canal Zone waters, one of which involved use of wireless after entering territorial waters for communicating with a belligerent vessel outside the jurisdiction contrary to the specifications of Rule 14 of the November Proclamation.²¹ Ambassador Spring-Rice conceded that "sealing of wireless apparatus in neutral waters is right and proper," and said that "it is the desire of His Majesty's Government that British ships and officers should conform in every way to every detail of the regulations imposed by the United States' authorities under the authority of the President and in conformity with the treaty obligations of Great Britain."²² The care exer-

"Protocol of an agreement concluded between Honorable Robert Lansing, Acting Secretary of State of the United States, and Don Eusebio A. Morales, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, signed the tenth day of October, 1914.

"The undersigned, the Acting Secretary of State of the United States of America and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, in view of the close association of the interests of their respective Governments on the Isthmus of Panama, and to the end that these interests may be conserved and that, when a state of war exists, the neutral obligations of both Governments as neutrals may be maintained, after having conferred on the subject and being duly empowered by their respective Governments, have agreed:

"That hospitality extended in the waters of the Republic of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea, shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months, and *vice versa*." 38 Stat. 2042.

²¹ In the first case the Admiralty collier *Mallina* arrived without the requisite bill of health from the American consul at her last port of call. For this a fifty-dollar fine was paid. Before obtaining clearance from Canal officials her master received a message ordering the vessel to sea immediately. The vessel left without proper clearance. This action infringed the Rules and Regulations for the Operation and Navigation of the Canal.

The second case concerned the steamship *Protesilaus*, which was forced to dismantle her wireless apparatus. Department of State, *Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties* (European War, No. 2, 1915, Washington, 1915), p. 23.

²² *Ibid.*

cised by the Canal authorities, the cooperation of ship masters, and the fact that vessels of both groups of belligerents were not approaching or using the Canal, all help to account for the general absence of infractions.²³

Although the Panama Canal operated under a special neutrality proclamation, general provisions for the maintenance and enforcement of neutrality in the ports and territorial waters of the United States applied to the Canal Zone.²⁴ Examples of such provisions were the safeguards against any part of the territorial waters being used as a base of foreign military operations, and the treatment accorded armed merchant vessels. In the first case, a Joint Resolution of Congress of March 4, 1915, empowered the President to withhold clearance from any vessel "which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation."²⁵

BELLIGERENT ARMED MERCHANT VESSELS AT THE CANAL

The problems encountered by the United States during the World War in dealing with belligerent armed merchant vessels in its ports do not seem to have arisen in relation to the Panama Canal until the early part of 1917, so far as public documents reveal, notwithstanding the fact that large numbers of belligerent merchant vessels traversing the high seas were armed.²⁶

²³ The *Annual Reports of the Governor of the Panama Canal*, 1915, 1916, 1917, show that up to April 1, 1917, 2,335 foreign vessels passed through the Canal. No German, Austrian, or Turkish vessels were recorded as transiting.

²⁴ *Panama Canal Record*, Vol. VIII (1914), p. 295.

²⁵ 38 Stat. 1226. The President was authorized to employ such part of the land and naval forces as might be necessary to enforce the law. See Rules 3, 4, 10, 11 of the 1914 *Rules and Regulations for the Operation and Navigation of the Panama Canal and Approaches Thereto*. See also Title V of Act of June 15, 1917, *infra*.

²⁶ No mention is made of the passage of belligerent armed merchant vessels through the Canal in any of the Annual Reports of the Superintendent of the Marine Division to the Governor, or in any of the Annual Reports of the Governor for the years 1914-17. There is no reference to the matter in any

On January 3, 1917, Secretary of State Lansing sent a note to the Secretary of War enclosing copies of the memoranda on armed merchant ships, which he had prepared in 1914 and in 1916,²⁷ "in view of the position of merchant vessels of belligerent nationality, armed for defensive purposes, arriving at ports . . . of the Canal Zone."²⁸ One month later, February 3, 1917, the Secretary of State sent identic notes to the ambassadors of France, Great Britain, Russia, Japan, Italy, and Belgium stating:

I beg to advise you, for your information, that armed merchant vessels of belligerent nationality, entering Canal Zone ports, or passing through the Panama Canal, will be subject to substantially the same treatment and the same regulations as are armed merchant vessels in the United States ports.²⁹

Investigation was ordered for each armed merchant vessel which approached the Canal, and each instance was treated individually on its own merits in order that "no case shall be regarded by foreign governments as a precedent for action in the future when the conditions of naval warfare during the present conflict may assume a different aspect."³⁰ Foreign governments were required to file an assurance in writing with the Governor of the Panama Canal upon the approach of every armed vessel entitled to fly their flag, that the armament carried was used only for defensive purposes.³¹

of the issues of the *Panama Canal Record*, and no state papers have been found mentioning armed merchant vessels in connection with the Canal prior to January, 1917.

²⁷ *For. Rel.*, 1914, Supp., pp. 611-612; *ibid.*, 1916, Supp., pp. 244-248. These memoranda made no reference to belligerent armed merchant vessels at the Panama Canal.

²⁸ MS. Department of State.

²⁹ MS. Department of State.

³⁰ Secretary Lansing to the Secretary of War, Feb. 3, 1917. *Ibid.*

³¹ Memorandum issued by the Panama Canal office in Washington, Feb. 1, 1917. MS. Department of State. The Governor was directed to make a careful investigation in each case to determine whether the armaments were in fact "for defensive purposes only." The foreign governments were permitted to file the necessary assurances through either their diplomatic or consular officers.

No evidence has been found that the United States required any belligerent armed merchant vessel to dismount and land its guns while passing through the Panama Canal, comparable to the landings required on a few occasions in United States ports.³² The fact that no such incident occurred does not mean, however, that the Canal authorities did not have the requisite powers. Rules 4-7 of the 1914 Rules and Regulations for the Operation and Navigation of the Canal entitled the Canal authorities to satisfy themselves that there was nothing about any vessel, whether hull, superstructure, equipment or machinery, which might "endanger the structures pertaining to the Canal." Certainly power resided in the Canal officials to find in a given case that the gun or guns mounted or possessed by a foreign armed merchant vessel endangered the structures of the Canal, and to require removal of the danger before granting transit.

CARRIAGE OF WAR MATERIALS THROUGH THE CANAL

Throughout the period of its neutrality, from 1914 to 1917, the United States interposed no obstacle to the carriage of arms, munitions, and other materials regarded by belligerents as contraband of war, on board belligerent and neutral vessels passing through the Panama Canal.³³ The treaties relating to the Canal did not forbid such traffic, and no evidence has been found that any belligerent or neutral state protested the transportation of such goods through the Canal, or took the position that the United States was under obligation to stop it. Hence it would be difficult to support a thesis that carriage of contraband of war through the Canal violated the "neutralization"

³² *For. Rel.*, 1914, Supp., p. 606; *ibid.*, 1915, Supp., pp. 605, 848-851.

³³ The records of goods carried through the Canal do not include "contraband," "armaments," "munitions," or "materials of war" as separate categories. They do show, however, that large quantities of nitrates, petroleum, manufactured iron and steel goods, copper, chrom ore, naphtha, explosives, etc., were carried through the Canal to belligerent destinations. See table in *Panama Canal Record*, Vol. X (1916-17), p. 462.

of the Canal. On this point a portion of the opinion of the Permanent Court of International Justice in the *Wimbledon* case (involving the carriage of contraband of war through the Kiel Canal in 1921) is pertinent:

It has never been alleged that the neutrality of the United States before their entry into the war, was in any way compromised by the fact that the Panama Canal was used by belligerent men of war or by belligerent or neutral merchant vessels carrying contraband of war.³⁴

Enforcement of the neutrality of the Canal, as well as its protection, dictated careful watch over persons admitted to the Canal Zone. Extensive powers in this connection resided in the Governor even in times of peace, and were available for utilization at any moment.³⁵ These powers were enlarged, however, by two measures adopted in the period of United States neutrality. The Act of August 21, 1916,³⁶ concerning police power in the Canal Zone, authorized the President to make, amend, and exercise rules in connection therewith. It also authorized him to make regulations "touching the right of any person to enter or remain upon or pass over any part of the Canal Zone," and provided for the detention and deportation of anyone entering in violation of the same.

An order of February 6, 1917, issued under this law, classified persons subject to exclusion from the Canal Zone and included among others those "whose presence, in the judgment of the Governor, would tend to create public disorder or in any manner impede the prosecution of the work of opening the Canal or its maintenance, operation, sanitation, and protection."³⁷ These are broad powers, but who is to say that their

³⁴ *Publications of the Permanent Court of International Justice*, Series A, No. 1, p. 28.

³⁵ Exec. Order of May 9, 1904 (*Ex. O.*, pp. 20, 23); sec. 10 of the Panama Canal Act of 1912 (37 Stat. 560). See Chapter III.

³⁶ 39 Stat. 527. 2 *Canal Zone Code*, Secs. 67, 141, 321-323, 371-373, 391-392, 401-402; 5 *ibid.*, 255, 391-392, 591-592.

³⁷ *Ex. O.*, p. 220.

residence in the hands of the executive is not warranted by the delicate and indispensable character of the Panama Canal? To be sure, their comprehensive nature provokes the thought that they might be the cause of abuse or excess. Irresponsibility is not to be lightly presumed in high office, however; and the possibility of excess in the exercise of power has never been a valid argument for refusal to grant powers to those in authority commensurate with obligations placed upon them. For any undue deprivation of liberty the person already admitted to the Canal Zone might have recourse to the *habeas corpus*.

Public documents do not reveal the number of persons who may have been excluded, detained, or deported from the Canal Zone during the World War for violation of the laws relating to neutrality, or those relating to "undesirable persons." This does not mean, nevertheless, that such actions did not occur.

Experience during the years 1914-17 would seem to have demonstrated that the rights possessed by the United States, and the powers conferred upon the Canal authorities, were adequate to meet the situations arising as a result of the war in Europe and upon the high seas. Had command of the seas not been as completely in the hands of one of the belligerents, as happened to be the case save for the sporadic moments when German commerce raiders roamed uncaptured, incidents might well have occurred to test not only the rights and duties of the United States, but its determination and ability to defend and discharge them.

If the incidents which arose and which have been reported in connection with the Canal during the years of United States neutrality seem small in number and relatively minor in significance, it should be remembered that the Canal authorities possessed very broad powers, and that foreign vessels presenting themselves for transit were at the mercy of the local officials. By virtue of the Rules and Regulations for the Operation and Navigation of the Canal, issued before the opening of the Canal, permission to proceed into and through the Canal

was treated as a "privilege," and accorded only after the authorities had examined all of the ship's papers; satisfied themselves that there was nothing about the ship, its hull, machinery, or cargo which might "endanger the structures pertaining to the Canal, or which might render the vessel liable to obstruct the Canal"; that there were no unsettled claims or disputes involving violation of the laws of the United States, or the Canal Zone, or the Rules and Regulations regarding the Canal. A vessel whose condition did not satisfy the Canal authorities might be held at a terminal and refused entrance into the Canal until it had been put into a condition, *in the opinion of the Canal authorities*, to make it safe for passage through the Canal. The meaning of such regulations was comprehensible to masters and owners of vessels. Compliance with informal suggestions by the Port Captains and other officials for the preparation of the vessel for transit and for its control while within the jurisdiction of the Canal, must have seemed preferable to long delays with their consequential losses.

UNITED STATES ENTRY OF WAR RAISES QUESTION OF STATUS OF CANAL

The entry of the United States into the World War in 1917 raised a new question as to the legal status of the Panama Canal and as to the powers exercisable thereover by the United States as a belligerent. The Proclamation of War with Germany, issued by President Wilson on April 6, 1917, provided that: "This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States."³⁸ In view of the fact that the Canal and Canal Zone are within the jurisdiction of the United States, it may seem difficult to escape the conclusion that technically the Canal was divested of its "neutral" status, and involved in the "state of war" proclaimed

³⁸ 40 Stat. 1652. No mention was made of the Canal Zone in the Joint Resolution of Congress declaring war. 40 Stat. 1.

to be existing between the United States and the Imperial German Government. Can a territory be both belligerent and "neutral" at the same time? Can the Canal be in a state of war by one domestic law while at the same time it is held as "neutral in perpetuity" by the Convention with Panama incorporated into the same domestic law? Is the so-called "neutralization" of the Canal applicable only when the United States is a neutral, but otherwise merely a fiction to be observed when convenient?

The action of Panama may be of some significance in connection with these questions. No formal declaration of war was issued by the Government of Panama. On April 7, 1917, however, President Valdez issued a "Proclamation of Cooperation with the United States in War against Germany."³⁹ In this instrument the President declared it was the duty of Panama to act as an "ally," to cooperate "for the protection of the Canal and to safeguard national territory," to "lend emphatic cooperation to the United States against enemies who execute or attempt to execute hostile acts against the territory of the Canal," and to "facilitate the military operations which the forces of the United States undertake within the limits of our country."⁴⁰ Does that which is "neutral" have "enemies who execute . . . hostile acts" against it? Possibly; but this would seem to amount to a recognition on the part of Panama that

³⁹ Text in Naval War College, *International Law Documents*, 1917, p. 196. When the United States inquired as to the implications of the Proclamation, it was advised that the proclamation would be treated by the Government of Panama as "a declaration of war in its legal effect." *For. Rel.*, 1917, Supp., Vol. I, pp. 248-250. Panama later issued a declaration of war against Austria-Hungary, Dec. 10, 1917. Naval War College, *op. cit.*, pp. 196-197.

⁴⁰ In 1912 the Government of Panama granted permission for the armed forces of the United States to reconnoiter in the territory of the Republic in order to study the terrain and strategic factors there in relation to the Canal, and in order to make plans for any contingency which might arise affecting the security of the Canal. Republica de Panama, Sec. Rel. Ext., *Memoria*, 1912, pp. 49-50. On Feb. 7, 1917, the Foreign Minister of Panama had advised the United States that Panama would cooperate in allowing American troops to operate in the territory of Panama for the defense of the Canal. *Ibid.*, 1918, pp. 82-83.

the Canal and its adjacent territory had acquired the characteristics of belligerency instead. Whatever view be taken as to the status of the Canal following the proclamation by President Wilson on April 6, the Republic of Panama made no issue of it.

The status of the Canal in time of war in which the United States may be belligerent is discussed in three earlier state papers. In a communication of October 2, 1901, Ambassador Choate in London, who had been actively engaged in the negotiation of the Hay-Pauncefote Treaty, wrote Secretary of State Hay that by the provisions of the proposed treaty the Canal would be "ours to build as and when we liked, to own, control and govern—on the sole condition of its being always neutral for the passage of the ships of all nations on equal terms, except that if we get into a war with any nation we can shut their ships out and take care of ourselves."⁴¹ The views expressed by Ambassador Choate were reiterated in a letter from Secretary of State Hay to Senator Cullom, dated December 12, 1901:

The obvious effect of these changes [which had been introduced into the Hay-Pauncefote Treaty during its negotiation] is to reserve to the United States, when engaged in war, the right and power to protect the Canal from all damage and injury at the hands of the enemy, to exclude the ships of such enemy from the use of the Canal while the war lasts and to defend itself in the waters adjacent to the Canal the same as in any other waters, without derogation in other respects of the principles of neutrality established by the treaty.⁴²

A note from the British Embassy in Washington to the Department of State on November 14, 1912, clarified the matter further:

Now that the United States has become the practical sovereign of the Canal, His Majesty's Government does not question its title to exercise belligerent rights for its protection.⁴³

⁴¹ MS. Department of State.

⁴² MS. Department of State.

⁴³ S. Doc. 474, 63d Cong., 2d sess., p. 89.

BELLIGERENT PROTECTIVE RIGHTS EXERCISED BY
UNITED STATES, 1917

A series of actions taken by the Government within a few weeks after the United States entered the war and directed at strengthening the security of the Canal against possible destruction by enemy forces resulted in the Canal's being invested with something approaching belligerent status. Certainly the Canal in time of war no more operated under the system that had served it during neutrality than it had relied on the adequacy of the rules and regulations of peacetime in a period of neutrality. In both neutrality and belligerency, the basis of action was the body of peacetime procedure, but as the dangers to the Canal increased so did the measures taken by the United States to preserve it from harm.

President Wilson availed himself at once of the power contained in Section 13 of the Panama Canal Act to order the Commanding General stationed at the Canal Zone to "assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all its adjuncts, appendants, and appurtenances, including the entire control and government of the Canal Zone."⁴⁴ Brigadier General Edwards' first order continued all existing regulations, as well as the machinery of government and administration.⁴⁵ Notwithstanding this order, the placement of the Panama Canal and Canal Zone under the exclusive authority of a commanding officer of the United States Army clothed both entities with the same military status as any other land or water under the command of the Army during the war.⁴⁶

For the better protection of the Canal the terminal ports were closed from sunset to sunrise, and all navigational lights

⁴⁴ Order of April 9, 1917, *Ex. O.*, pp. 224-225. Control was assumed on April 10, 1917.

⁴⁵ General Orders No. 1, April 10, 1917. *Panama Canal Record*, Vol. X (1916-17), p. 429.

⁴⁶ Army control was terminated on Jan. 25, 1919, although the state of war with Germany continued thereafter. *Ex. O.*, p. 251.

extinguished.⁴⁷ "Defensive sea areas" were instituted off the terminals of the Canal, within which mines were planted, naval patrols set up, and vessels permitted entry only after receiving permission and directions from the patrols.⁴⁸ The areas were closed at night and during bad weather to all save public vessels of the United States. Vessels failing to follow directions of the entrance patrols, threatening the Canal defenses, or acting in any way "inimical to the interests of the United States in its prosecution of the war," exposed themselves to detention, and guilty parties to prosecution.⁴⁹ By these means all vessels, with the exception of public vessels of the United States, were kept at a distance from the Canal until the authorities were satisfied that it was safe to admit them to the terminals.⁵⁰

The defensive sea areas extended seaward more than three miles in some places, but at no point did they exceed a distance of four miles from the terminals. While this may have involved an assertion of jurisdiction over high seas, it must be said that the distance encompassed was fractional, that dicta of courts and the research of publicists support the exercise of jurisdic-

⁴⁷ Order of April 4, 1917. *Panama Canal Record*, Vol. X (1916-17), p. 419.

⁴⁸ Governor's Circular No. 643-37, April 20, 1917. *Ibid.*, p. 442. See U. S. Code, Title 18, sec. 96, and especially Act of March 4, and May 22, 1917, 39 Stat. 1168, 1193; 40 Stat. 84, 89. See also Exec. Order No. 2692, Aug. 27, 1917, *Ex. O.*, p. 227. Full details of the patrol system are to be found only in the records of the Navy Department. It may be said that there were in reality two patrols: one maintained inside the defensive sea area, the other outside of it. The task of the outside patrol was to hail and halt all vessels proceeding to the area. In day time vessels were held outside the area until boarded by the Canal authorities and released by them. At night the patrol directed all vessels to lie to or to keep clear of the entrances to the area until boarded in the morning. MS. Navy Department. The defensive sea areas were terminated by order of Jan. 25, 1919, *Ex. O.*, p. 251; *Panama Canal Record*, Vol. XII (1919-20), pp. 147, 336.

⁴⁹ The Act of March 4, 1917, provided for a fine of not more than \$5,000, or imprisonment not exceeding five years, or both. The Act of May 22, 1917, gave the District Court of the Canal Zone jurisdiction of offenses relating to such actions.

⁵⁰ Admission into the defensive sea area did not necessarily mean that a vessel had thereby received permission to enter and pass through the Canal. That remained a separate procedure.

tion over limited portions of the high seas for such purposes,⁵¹ and that no state is known to have objected in principle to the institution and maintenance of these areas.⁵² The areas did not constitute a "blockade," and they were not enforced as a right of war "within" the Canal. Hence it cannot be said that they compromised Rule 2 of Article III of the Hay-Pauncefote Treaty.

PROCLAMATION OF "RULES AND REGULATIONS FOR THE REGULATION, MANAGEMENT, AND PROTECTION OF THE PANAMA CANAL AND THE MAINTENANCE OF ITS NEUTRALITY," MAY 1917

Three weeks after the United States' declaration of war, the Secretary of State wrote to the Secretary of War that he believed the November, 1914, Proclamation of Neutrality for the Canal Zone was "now of doubtful value." It was suggested that there

⁵¹ The Supreme Court of the United States has sustained the thesis that "all Governments for the purpose of self-preservation in time of war . . . exercise an authority beyond this [*i.e.*, the territorial] limit." *Manchester v. Massachusetts*, 139 U. S. 258 (1891). The Research in International Law at the Harvard Law School, in its *Draft Convention on Territorial Waters*, has concluded: "On the high seas adjacent to the marginal sea . . . a State may take such measures as may be necessary for the enforcement within its territory or territorial waters of its customs, navigation, sanitary or police laws or regulations, or for its immediate protection." Art. 20. *A.J.I.L.*, Spl. Supp., Vol. XXIII (1929), pp. 333-334. Professor Charles Cheney Hyde in his *International Law* (Boston, 1922), Vol. I, p. 106, says: "When acts of self-preservation on the part of a State are strictly acts of self-defense, they are permitted by the law of nations, and are justified on principle, even though they may conflict with the normal rights of other States." See also *ibid.*, Vol. II, pp. 423-425; Oppenheim, *International Law*, 5th ed. Vol. 2, p. 550.

It would be difficult, all circumstances considered, to deny that the restrictions imposed upon foreign vessels in the defensive sea areas off the terminals of the Panama Canal were reasonable. In *Church v. Hubbard* the United States Supreme Court expressed the opinion that if restrictions imposed upon foreign vessels on the high seas by littoral states "are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to." 2 Cranch 187 (1804).

⁵² There were some difficulties with Panama on account of the improper entrance of Panama subjects into the areas, but the areas as such were not protested. *Annual Report of the Governor of the Panama Canal*, 1918, p. 34.

be a new proclamation "for the protection of the Canal and the maintenance of its neutrality."⁵³ President Wilson issued such a proclamation on May 23, 1917, in the form of "Rules and Regulations for the Regulation, Management, and Protection of the Panama Canal and the Maintenance of its Neutrality."⁵⁴ This was for the most part a revision of the contents of the Proclamation of Neutrality for the Canal Zone of November 13, 1914, and constituted an addition to the Rules and Regulations for the Operation and Navigation of the Panama Canal of July 9, 1914. The rules of the earlier proclamation were qualified in favor of the United States. Thus, for example, whereas Rule 5 of the November, 1914, Proclamation provided that no belligerent vessel of war or auxiliary might receive fuel or lubricants within the jurisdiction of the Canal Zone except on written authorization, Rule 5 of the 1917 Proclamation provided that no vessel of war or auxiliary vessel of a belligerent, "other than the United States," should receive fuel or lubricants at the Canal Zone without written permission. For example again, by Rule 10 no belligerent or its allies "other than the United States," might have more than three vessels of war at the same time within the Canal and its terminals.⁵⁵ Other rules were changed accordingly. The essentially new paragraph in the proclamation was Rule 15, dealing with enemy vessels. It read:

In the interest of the protection of the Canal while the United States is a belligerent no vessel of war, auxiliary vessel, or private vessel of an enemy of the United States, or an ally of such enemy shall be allowed to use the Panama Canal nor the territorial waters of the Canal Zone for any purpose, save with the consent of the Canal authorities and subject to such rules and regulations as they may prescribe.

⁵³ April 26, 1917. MS. Department of State.

⁵⁴ 40 Stat. 1667.

⁵⁵ In a letter to the Secretary of War, April 13, 1917, Secretary Lansing expressed the view that "the ships of the Entente Powers should not receive different treatment from that imposed by the President's Proclamation of November 13, 1914. . . ." MS. Department of State.

The phraseology of this rule is interesting in the light of the positions taken in the notes of Ambassador Choate, Secretary Hay, and the British Embassy quoted above. The rule may be interpreted as barring transit of the Canal by enemy vessels. On the other hand, it may be construed as not absolutely closing the Canal to enemy vessels, but only to those not receiving the consent of the Canal authorities. It is noticeable that the rule read "no vessel . . . of an enemy . . . shall be allowed to use the Panama Canal . . . save with the consent of the Canal authorities. . . ." It did not say "Vessels . . . of an enemy of the United States . . . shall be allowed to use the Panama Canal subject to the consent of the Canal authorities and in accordance with rules," etc. The form was essentially negative, rather than primarily conditional. The exclusion of enemy vessels amounted to the exercise of a belligerent power.⁵⁶

⁵⁶ Secretary Lansing took the position in a letter addressed to the Secretary of War, April 13, 1917, that the Rules of the November, 1914, Proclamation of Neutrality for the Canal Zone should not in 1917 apply to "enemies or their Allies, on the ground that while the Canal is yet in the process of construction and has not been officially opened to the world, and by virtue of the fact that the United States is solely responsible for the protection, operation, and control of the Canal, the vessels of the enemies of the country exercising sovereign rights over the Canal should not be allowed to endanger the safety and usefulness of this great waterway." MS. Department of State.

No German or Austrian vessel approached the Canal under its own control asking for permission to effect transit during the time the United States was engaged in hostilities with those nations. *Annual Report of the Governor of the Panama Canal*, 1917, pp. 126-127; *ibid.*, 1918, p. 137; *ibid.*, 1919, pp. 122-123. What might have happened had such a vessel sought transit is a hypothetical question which cannot be answered.

The record of vessels passing through the Canal, contained in the *Annual Report* for 1917, shows that in April and May six German vessels effected transit. The 1918 *Annual Report* reveals that these vessels had been seized by the United States at Canal Zone ports at the outbreak of war; that they were passed through the Canal under the command of American officers and engineers; and that the reason they were recorded as being German was on account of the fact that at the time of transit their registry had not been legally changed to the United States. *Annual Report*, 1918, p. 137. During the war a number of German ships under British Admiralty control passed through the Canal, but were recorded as British tonnage. *Panama Canal Record*, Vol. XIV (1920-21), p. 60.

CONTROL OF BELLIGERENT AND NEUTRAL VESSELS AT CANAL

Upon the declaration of war the United States seized six German ships lying in Canal Zone waters. Under the laws of war the United States was entitled to take over vessels of its enemies found within its jurisdiction.⁵⁷ On May 12, 1917, Congress passed a Joint Resolution authorizing the President to take possession and title of any vessel within the jurisdiction of the United States, specifically including the Canal Zone, which at the time of coming into such jurisdiction was owned wholly or in part by an enemy, or was flying the flag or under the registry of an enemy state.⁵⁸ Somewhat later in the war, when the United States took over Dutch vessels found within its jurisdiction,⁵⁹ two Dutch merchant vessels were "requisitioned" in the Panama Canal. These ships were later released on the ground that they had been taken over "without due consideration having been given to their being in the Panama Canal,"⁶⁰ and because of "treaty obligations prohibiting the exercise of belligerent authority in the Zone."⁶¹ The steps taken in these two instances lend weight to the conclusion that the rules of neutralization adopted by the United States in 1901 and reaffirmed in the Convention with Panama, protect the vessels of friendly states when the United States is at war, but not those belonging to its enemies.

⁵⁷ U. S. Navy Department, *Instructions for the Navy of the United States Governing Maritime Warfare*, June, 1917 (Washington, 1924), Sec. IX, par. 62; G. G. Wilson, *Handbook of International Law* (3d ed., St. Paul, 1939), pp. 318, 327, 331-335.

⁵⁸ 40 Stat. 75. Possession was taken of a large number of German vessels by order of June 30, 1917. *Ex. O.*, p. 226. This included the German steamships *Grunewald*, *Prinz Sigismund*, *Savoia*, and *Sachsenwald* seized in the Atlantic terminal. *Panama Canal Record*, Vol. X (1916-17), p. 489. Title was taken in all such vessels by Executive Order of Nov. 24, 1919. *Ex. O.*, p. 255. 40 Stat. 913, Sec. 11, conferred upon the President power to "requisition for military purposes, or for any other national purpose connected with or arising out of the present war, the temporary possession of any vessel." Possession in such instances was to cease upon termination of the war.

⁵⁹ G. G. Wilson, "The Taking Over and Return of the Dutch Ships," *A.J.I.L.*, Vol. XXIV (1930), p. 694.

⁶⁰ *For. Rel.*, 1918, Supp. I, Pt. II, p. 1433.

⁶¹ *Ibid.*, p. 1536.

In June of 1917, the British Embassy in Washington solicited unlimited use of the dry docks and repair yards at Balboa, as well as extensive supplies of oil, coal, and stores from the Commissaries for the British Pacific Squadron.⁶² Some weeks later the Embassy sought permission for the passage of transports through the Canal loaded with Australasian troops en route to Europe.⁶³

Calling attention to the Proclamation of May 23, 1917, the Department of State expressed the view⁶⁴ that this appeared to cover the substance of the requests. In interpreting the proclamation, the Department took the position that:

if it is not possible for British vessels to obtain coal, oil, etc., in sufficient quantities at British ports other than those in England, British vessels could, under the proclamation, be allowed to take on sufficient amounts to reach ports in the British Isles.

Respecting the passage of troop transports, the Department stated:

There is perceived to be no objection so long as the reasonable provision of the proclamation in regard to the embarkation and disembarkation of troops, munitions of war or warlike materials and other provisions of the proclamation relating to passage through the Canal are complied with.⁶⁵

Finally, concerning the request for unlimited use of the dry docks and yards, attention was drawn to the phraseology of the Proclamation restricting use of such facilities to cases of "actual distress." Noting that the Proclamation was based upon the treaties covering the status of the Canal "and the diplomatic correspondence on the same subject with the countries concerned," it was maintained that:

⁶² *Ibid.*, pp. 1269-1270.

⁶³ *Ibid.*, 1917, Supp. 2, Vol. II, p. 1268.

⁶⁴ *Ibid.*, pp. 1270-1271.

⁶⁵ The first troopship arrived at the Canal, Aug. 30, 1917. Others followed during the ensuing fifteen months. Where necessary, they were fueled. Departures from the jurisdiction normally took place within 24 hours. MS. Navy Department.

to allow the unlimited use of the dry dock and repair shops at Balboa by the British Pacific Squadron would be an infringement of the peculiar status of the Canal which the United States is under obligation to maintain. The Canal and its approaches, in the opinion of the Department, should not be made a rendezvous for belligerent ships or a base of naval equipment and repair.⁶⁶

Some time after the delivery of this memorandum, dispute arose over shore leave in the Canal Zone to sailors of British warships and troops on transports passing through the Canal. The Canal authorities refused to sanction shore leave on the ground that Rule 8 of the May 23 Proclamation forbade disembarkation of troops. Mr. Frank L. Polk, Counselor of the Department of State, in a letter to the Secretary of the Navy, dated January 16, 1919, expressed the view that the rule need not be construed to stop shore leave to sailors of foreign warships. He declined, however, to give an opinion regarding leave to troops on belligerent transports. Following this the Secretary of the Navy instructed Admiral Sims at London to advise the British authorities that henceforth shore leave would be granted to the personnel of transient warships.⁶⁷

Reports reached American authorities in May, 1917, that Germans were endeavoring to purchase Dutch ships in various Oriental ports to load with cement and sink in the Canal.

⁶⁶ In line with these British requests was an application addressed to the Government of Panama in July, 1917, for a relaxation of the 24-hour rule for the stay of British war vessels off Taboga Island in the Bay of Panama. *For. Rel.*, 1917, Supp. 2, Vol. II, p. 1268. Inasmuch as the matter related to the terms of the Lansing-Morales Protocol of Oct. 10, 1914, it was brought to the attention of the United States. The Government of Panama expressed the opinion, in so doing, that it was disposed to accede to the request. *Ibid.*, p. 1269. The Panamanian Secretary of Foreign Affairs stated his opinion that the island was so far from the Canal that it was not covered by the neutrality of the latter. He also added his belief that the Lansing-Morales Protocol did not then restrict action by Panama on account of the fact that that agreement had been made for the purpose of maintaining neutral obligations of the two governments which had disappeared by virtue of their having affiliated themselves with one of the belligerent groups. No objection was seen by the Government of the United States to Panama's accession to this request, which was granted informally. *Ibid.*, pp. 1274-1277.

⁶⁷ MS. Navy Department.

Following these reports all suspicious vessels arriving at the Canal were examined "thoroughly" before permission was granted for transit, armed guards were placed on board all private vessels during transit, and enemy aliens on board such vessels, upon the arrival of the vessels at the Canal terminal, were required to disembark and be sent across the Isthmus by rail.⁶⁸ This practice was given legislative backing by Section 1 of Title II of the Act of June 15, 1917:

Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.⁶⁹

WAR-TIME LEGISLATION APPLIED AT CANAL

Other parts of the Act of June 15, 1917, have served to abet the security of the Canal. Of particular relevance are those

⁶⁹ 40 Stat. 217, 220. Paragraph 2 of Sec. 1 of this Act vests the powers extended by the Act in the Governor as far as concerns the territory and water of the Canal Zone. Failure to comply with any regulation issued under the authority of this section, or obstructing or interfering with the exercise of powers conferred upon the Governor of the Panama Canal by this Act, exposes the vessel and all of its equipment and furnishings to seizure and forfeiture to the United States, and persons guilty of causing such acts to fine and/or imprisonment. (Sec. 2.)

⁶⁸ American Minister to Panama, W. J. Price, to Secretary of State, May 3, 1917. MS. Department of State.

portions dealing with espionage,⁷⁰ with injuring or destroying vessels engaged in foreign commerce, with using them as a place of conspiracy for the preparation or commission of an offense against the United States, its laws, treaties, or obligations under international law,⁷¹ and with the enforcement of

⁷⁰ Sec. 1 of Title I provides that whoever obtains information concerning any place connected with the national defense of the United States, or under its jurisdiction or control, "with the intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation," or having lawful possession of the same, through negligence allows its leakage, shall be punished by fine of not more than \$10,000, or by imprisonment for not more than two years, or both. Flying over, photographing, or sketching defenses in any manner or by any means, as well as receiving and transmitting any information concerning them are specifically forbidden.

Sec. 2 provides that whoever directly or indirectly is party to communicating, delivering or transmitting information relating to the national defense to any foreign government or its agents shall be punished by imprisonment of not more than 20 years in time of peace, and 30 years or death in wartime.

Sec. 3 prescribes a fine of \$10,000, or imprisonment for 20 years, or both, for wilfully circulating false reports in order to interfere with the operations of the United States or to promote the success of its enemies; for causing insubordination in the military or naval forces in time of war; and for obstructing the recruiting or enlistment services of the United States. This was amended by an Act of May 16, 1918.

Secs. 4 and 5 relate to conspiracy, and to harboring persons known to have committed or suspected of committing an offense under this title, and provide penalties for both.

Sec. 6 gives the President permission in time of war or of national emergency to designate any place "in which anything for the use of the army or navy is being prepared or constructed or stored as a prohibited place."

Other sections of Title I define jurisdiction for purposes of enforcement and prosecution.

⁷¹ Sec. 3, Title II, and Title III. The latter ordains punishment for setting fire to, tampering with, or placing explosives upon vessels engaged in foreign commerce. Title IV institutes punishment for attempting to interfere with the exportation of articles of commerce to foreign countries. Title VIII prohibits the commission of or conspiracy to commit any act designed to disturb, or actually disturbing the international relations of the United States.

These provisions supplement Sec. 10 of the Panama Canal Act of 1912, according to which it is unlawful and a felonious offense to injure or to obstruct any part of the Panama Canal, its locks or approaches. 37 Stat. 560. The sections of the 1917 Act referred to may also be said to complement the Rules and Regulations for the Operation and Navigation of the Panama Canal, issued on July 9, 1914. *Ex. O.*, p. 178. An Act of April, 1918, made it unlawful and punishable to wilfully injure or destroy any war material, premises, or utilities. 40 Stat. 533. Such premises would include the Panama Canal and many of the works and establishments in the Canal Zone.

neutrality,⁷² and with the export of arms in time of war.⁷³ In this last connection it is to be noted that Section 6 of Title VI declares that with certain exceptions trade in arms and munitions "with any foreign port or place . . . which might have been lawfully carried on before the passage of this title, under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof," may not be interfered with. This would seem to mean that inasmuch as the Canal has been declared to be open to the vessels of commerce of all nations on terms of entire equality, passage through the Canal by foreign vessels loaded with arms and munitions destined to countries with which the United States is at peace is assured. Should a vessel arrive at the Canal with a cargo of arms destined to a country at war with the United States, clearance might be refused on the ground that a further movement of the vessel might be the cause of damage or injury to the United States,⁷⁴ or the cause of injury or obstruction to the Canal and its works.⁷⁵ Such a vessel might also be seizable in the ports or territorial waters of the Canal Zone under the general rights of belligerency, if the Canal Zone—as in 1917-18—

⁷² U. S. Code, Title 18, Chap. 2. This includes the authorization to withhold clearance to any vessel believed to be about to depart from the jurisdiction of the United States to carry fuel, arms, ammunition, or dispatches to a warship or auxiliary of a belligerent in violation of the laws and obligations of the United States, or about to depart to cruise or commit hostilities against a foreign state or people with which the United States is at peace. It also makes it unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, with any intent or under any agreement that it shall be delivered to a belligerent nation or its agent or officer. A penalty of \$10,000, or imprisonment of not more than five years, or both, plus forfeiture of the vessel and all equipment and cargo is ordained for violation of any of the sections by taking out, or attempting to take out any such vessel. Likewise a heavy punishment is prescribed for making any territory under the jurisdiction of the United States a base of operations against a state or people with which the United States is at peace.

⁷³ Title 6 renders it unlawful to export arms or other articles in violation of law, or in contravention of a presidential proclamation forbidding export in time of war, in which the United States is belligerent.

⁷⁴ Sec. 1 of Title II, 40 Stat. 217, 220.

⁷⁵ Rule 6, 1914 Rules and Regulations for the Operation and Navigation of the Panama Canal. *Ex. O.*, p. 178.

is considered as being within belligerent jurisdiction when the United States is at war.

Among other wartime measures of the United States applied to the Panama Canal and Canal Zone was the Trading with the Enemy Act.⁷⁶ This Act gave the President authority to establish censorship of all means of communication, control exports, take custody of alien enemy property, forbid and estop trading with the enemy, require oaths from masters of vessels that cargo shipped was not being delivered to the enemy, and to withhold clearance from any vessel believed to be likely to carry cargo to an enemy in violation of law. In accordance with the Act, licenses were required for all exports, including goods exported from the Canal Zone.⁷⁷ Export licenses were not demanded for vessels merely passing through the Panama Canal, or stopping at Canal ports without discharging or taking on cargo, unless part or all of the cargo of such vessels was destined to a neutral state in Europe.⁷⁸ Licenses were required, however, for all bunker fuel, sea or ship's stores and supplies obtained at ports of the Canal.⁷⁹ These restrictions served as a means of controlling neutral commerce and of preventing neutral vessels from reaching enemy ports. Question was raised in the Department of State about extending the powers of the War Trade Board and the Panama Canal authority by establishing a contraband control port at the Canal. This was not done on the ground that such a procedure would have been contrary to

⁷⁶ 40 Stat. 411. The Act applied to "all lands and waters, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof."

⁷⁷ *For. Rel.*, 1917, Supp. 2, Vol. II, pp. 1277-1282. *Panama Canal Record*, Vol. XI (1917-18), pp. 145, 283.

⁷⁸ *Ibid.*, Vol. XII (1918-19), pp. 305-306.

⁷⁹ *For. Rel.*, 1917, Supp. 2, Vol. II, pp. 1281-1282; *Panama Canal Record*, Vol. XI (1917-18), pp. 145, 283. Bunker license regulations operated to detain shipping more than all other defense measures combined. In September, 1918, vessels transiting the Canal faced a delay on the average of from 24 to 36 hours. Decisions regarding application of the regulations and clearance were made locally except in cases where the vessel's status was not satisfactory. MS. Navy Department.

the obligations of the United States under the Hay-Pauncefote Treaty.⁸⁰

TREATMENT OF ALIEN ENEMIES FOUND IN VICINITY OF CANAL

Numerous persons of German nationality were located in the Canal Zone when the United States declared war upon Germany in 1917. These were immediately arrested and interned. Similar action was taken by the Government of Panama with respect to Germans of suspicious character and behavior in that territory.⁸¹ Both groups of alien enemies were sent to Taboga Island, in the Republic of Panama, and lodged in the United States Government-owned hotel there, under the guard of American armed forces.⁸² Although alien enemies attempting to enter the Zone might have been dealt with under existing laws and orders, absolute exclusion from the Canal Zone was prescribed in a Proclamation relating to the Conduct of Alien Enemies issued by President Wilson on November 16, 1917.⁸³ One year after their internment on Taboga Island, and immediately after the passage of an Act of Congress legalizing the apprehension, restraint, and *removal* of alien enemies "who shall be within the United States" in time of war,⁸⁴ all of those lodged on Taboga Island, including those apprehended within the jurisdiction of Panama, were removed by the United States to New York. Prior to the removal the United States entered into an agreement with Panama whereby the latter was guaranteed that the legal status of those prisoners which had been

⁸⁰ MS. Department of State.

⁸¹ *For. Rel.*, 1918, Supp. 2, pp. 232-233.

⁸² Secretary of State Lansing instructed the American Minister to Panama to inform that government that "this Government will hold Panama harmless against loss on account of having heretofore interned persons in conformity with the Government's desire, provided this Government shall be kept informed of the proceedings of claimants and be satisfied that the Government of Panama resisted their claims in good faith." *Ibid.*, pp. 233-234.

⁸³ *Ex. O.*, p. 230. "17. An alien enemy shall not enter or be found within the Panama Canal Zone."

⁸⁴ 40 Stat. 531. *Cf.* Revised Stats., Sec. 4067.

apprehended in Panamanian territory and had been handed over to the United States would not be changed by the removal from the Isthmian region.⁸⁵ Notwithstanding this agreement, the action raised question whether under international law the United States was entitled to remove all of these persons to New York. Point was added to the question by German protests to Panama.⁸⁶ Secretary of State Lansing took the position that these persons were civil interns, and maintained that as between allies there was a right of transfer from one jurisdiction to another, particularly when the United States and Panama had come to a formal agreement on the matter, in which it had been stipulated that no change in their legal status should occur, and when the unusual relationship which existed between Panama and the United States was taken into account. The Secretary of State believed that:

if, in the end, this Government should find it necessary to assume the entire responsibility of the apprehension and detention of these interns as American interns it could find sufficient justification therefor in its broad powers under the treaty to preserve order on the Isthmus and to protect and maintain the Panama Canal.⁸⁷

Regardless of these views, the Department of Justice did not issue a formal order for the internment in the United States of those Germans who had been arrested originally within the jurisdiction of the Republic of Panama,⁸⁸ and all persons were returned to the Isthmus after the cessation of hostilities in Europe, and released from there.⁸⁹

The treatment accorded nationals of states associated with the United States in the war was naturally very different, but

⁸⁵ *For. Rel.*, 1918, Supp. 2, pp. 234-235. Panama, Sec. Rel. Ext., *Memoria*, 1918, pp. xiii-xiv.

⁸⁶ *For. Rel.*, *loc. cit.*, pp. 235-236.

⁸⁷ *Ibid.*, p. 243. The Secretary cited Arts. 1, 7, and 23 of the Canal Convention in support of his contention. Mr. Lansing also argued on the basis of analogy between removal of prisoners of war and removal of these interns, which would seem to vitiate his effort to treat these persons as civil interns.

⁸⁸ *Ibid.*, pp. 243-244.

⁸⁹ *McCain, op. cit.*, p. 201.

it also produced a question of legality. One month after the declaration of war, Congress amended Section 10, Chapter 2, of the Criminal Code (Offenses against Neutrality) to allow citizens or subjects of "any country engaged in war with a country with which the United States is at war," to enlist within the jurisdiction of the United States as a soldier, marine, or seaman on board vessels of war of their own country.⁹⁰ Although no foreign Power is known to have protested against the application of such a proposition to the Canal Zone, it may be questioned, nevertheless, whether permitting the taking of service on board a belligerent vessel of war at the Canal is not incompatible with Rule 4 of Article III of the Hay-Pauncefote Treaty, which states that "No belligerent shall embark or disembark troops . . . in the canal." If it is not incompatible, assuredly it comes close to the line.

Great Britain might have had grounds for protesting any enlistment allowed by the United States at the Panama Canal in favor of any other belligerent, but neutral and other nations, saving possibly the Republic of Panama, would have had no legal basis, on the ground of the terms of the Hay-Pauncefote Treaty, of protesting the enlistment. As emphasized in Chapter II, the Hay-Pauncefote Treaty is a bilateral instrument between the United States and Great Britain. While the United States agreed thereby to adopt certain Rules for the operation of the Canal, the Treaty conferred no rights upon any third party, and no other states have been invited to accede to it.

REGULATION OF RADIO AND AIRCRAFT IN CANAL ZONE, 1917-18

Aircraft and radio in and near the Canal occupied the attention of the American authorities on a number of occasions during the war period, with the result that exclusive jurisdiction was asserted over both.⁹¹ During the period of American

⁹⁰ Act of May 7, 1917, 40 Stat. 39.

⁹¹ See Chapter III, pp. 117-118 for discussion of regulation of radio. It may be pointed out that from May 12, 1917, until Nov. 15, 1918, Canal Zone

neutrality, 1914-17, aircraft of belligerents were forbidden to descend, arise, or fly through the airspace "above the lands and water" of the Canal Zone.⁹² When the United States became a belligerent, this prohibition was qualified in its own favor.⁹³ Somewhat later during the war, the President proclaimed the whole of the Canal Zone and its territorial waters a zone of military operations over which civilian aircraft might fly only after the obtainment of a special license.⁹⁴

SUMMARY OF THE CANAL AND THE FIRST WORLD WAR

The state of war between the United States and Germany was declared to be at an end by the Joint Resolution of Congress approved by President Wilson on July 2, 1921.⁹⁵ Many of the war and emergency measures applicable to the Panama Canal were suspended or revoked, however, within several months after the signing of the Armistice in 1918.⁹⁶ Vessels

radio stations refused radio communications with merchant vessels, save when they were off the terminals of the Canal and in the Canal. This was done in the interests of the safety of such vessels, and to leave the air free for traffic with war vessels. Governor's Circular No. 643-38. *Panama Canal Record*, Vol. X (1916-17), p. 483; *ibid.*, Vol. XII (1918-19), p. 147.

⁹² Rule 15 of Proclamation of Neutrality for the Canal Zone, Nov. 13, 1914, 38 Stat. 2039; *Ex. O.*, p. 203. See Proclamation No. 2350, Sept. 5, 1939, below.

⁹³ Proclamation of May 23, 1917, Rule 13, 49 Stat. 1667. Otherwise the restriction remained as in 1914.

⁹⁴ Proclamation No. 1432, Feb. 28, 1918, 40 Stat. 1753. It is interesting to observe the ground on which the proclamation was issued: "Whereas, the United States of America is now at war, and the Army and Navy thereof are endangered in their operations and preparation by aircraft. . ." This proclamation was abrogated by Proclamation of July 31, 1919, 44 Stat. 1765.

⁹⁵ 42 Stat. 105. The Treaty of Berlin with Germany, which entered into force Nov. 14, 1921, noted in its Preamble the Resolution of July 2, 1921, but did not mention the establishment of peace in its operative provisions. See Manley O. Hudson, "The Duration of the War between the United States and Germany," *Harvard Law Review*, Vol. XXXIX (1926), pp. 1020-1045.

⁹⁶ Dec. 23, 1918, Presidential Proclamation No. 1506 annulled and rescinded certain regulations prescribing the conduct of alien enemies. *Ex. O.*, p. 250. Presidential Order No. 3032, Jan. 25, 1919, terminated Army control of the Canal and Canal Zone. *Ibid.*, p. 251. Order No. 3027, Jan. 25, 1919, revoked orders establishing the defensive sea areas. *Ibid.* Department of State Order of July 12, 1919, relaxed the requirements concerning the travel of nationals and aliens. *Ibid.*, p. 252. Presidential Proclamation of July 31, 1919, abrogated

seeking passage of the Canal were given the benefit of the relaxation of these precautions. In particular, the wartime inspection and posting of armed guards on board ship while passing through the Canal were stopped.⁹⁷ Vessels flying the German flag were granted transit of the Canal beginning in January, 1920.⁹⁸

Far from being closed to wartime traffic, records show that from the time of opening in 1914 to March 30, 1917, that is to say during the American neutrality, 2,216 foreign and 1,033 American vessels passed through the Canal. Between April 1, 1917, and June 30, 1920, 4,453 foreign and 2,682 American vessels made the transit.⁹⁹ These numbers seem small compared with transits recorded in the decade following the war,¹⁰⁰ but they demonstrate, nevertheless, that the Canal served a useful purpose during the years of warfare, and that the requirements imposed upon vessels seeking passage through the waterway were not so vexatious as to deprive foreign commerce of reason for proceeding via the Panama Canal.¹⁰¹

The Panama Canal survived its first wartime test without

the regulations of Feb. 28, 1918, which had made the whole of the Panama Canal Zone a zone of military operations closed to flight by civilian aircraft. *Ibid.*, p. 254. The Joint Resolution of Congress of March 3, 1921, declared that certain Acts of Congress, Joint Resolutions and Proclamations which had been made for the duration of a state of war should be construed and administered as if the war had ended and the national emergency ceased to exist. 41 Stat. 1359.

⁹⁷ Report of the Marine Superintendent, *Annual Report of the Governor of the Panama Canal*, 1919, p. 117.

⁹⁸ *Ibid.*, 1920, pp. 113-114. Thirty-six German vessels were recorded as having passed through the Canal by July 1, 1921, *ibid.*; and *ibid.*, 1921, pp. 110-111.

⁹⁹ Compiled from *Annual Reports of the Governor of the Panama Canal*, 1914-20.

¹⁰⁰ It is interesting to compare with these figures of 6,669 foreign and 3,715 American vessels using the Canal during the war years 1914-20, figures for subsequent six-year periods. During the years 1920-26, 12,673 foreign and 11,845 American vessels passed through the Canal. In the next six years a further increase was registered as 19,207 foreign and 15,357 American transits were recorded. *Ibid.*, 1920-32.

¹⁰¹ See statement of steamship companies and masters on the expeditious handling of vessels during the war. *Panama Canal Record*, Vol. X (1916-17), p. 463.

having its status challenged by belligerents or neutrals, and without objection being taken to the laws and regulations governing the use of the Canal. No hostile acts or acts of war were committed within the Canal by foreign vessels. The Canal was not blockaded; neither was it attacked, injured, or impaired by any belligerent. Had all belligerents been able to use the customary sea routes a different situation might possibly have resulted. During the war the United States was faced with the problem of keeping the Canal neutralized and at the same time of defending it. A balance between the two objectives was attained by virtue of the exclusive right of the United States to provide for the regulation and management of the Canal and the Canal Zone. Through the maintenance of ceaseless vigil and the exercise of constant precaution by the civil authorities and armed forces charged with the operation and protection of the Canal, it survived the war unharmed. During the period of United States neutrality, interest was primarily centered on the preservation of the neutrality of the Canal and secondarily on its safety. When the United States became a belligerent, emphasis shifted to the safety of the Canal. In neither instance, however, was the dual responsibility forgotten.

CHANGES IN SITUATION OF PANAMA CANAL PRIOR TO SECOND WORLD WAR

Between 1920 and 1939 no situation arose to test again the status of the Canal under conditions of neutrality and belligerency. There were, of course, numerous instances of the use of force in various parts of the world during this interval, but in no case was the conflict sufficiently widespread to alter normal peacetime procedure at the Canal and Canal Zone.¹⁰²

One cannot discuss the Panama Canal in the war beginning

¹⁰² On various occasions the President invoked and applied laws embargoing the shipment of arms and munitions of war from the United States, but the proclamations did not preclude the carriage of such commodities through the Panama Canal.

in 1939 without first calling to mind Articles I, II, and X of the General Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the accompanying Exchange of Notes.¹⁰³ These various agreements pledged Panama and the United States, as was noted in Chapter II,¹⁰⁴ to cooperate for insuring the benefits and the protection of the Canal, as well as their common interests, and provided that military measures might be taken, before or after consultation, in the territory of Panama in the event of an emergency endangering the security of the Republic of Panama or the neutrality or security of the Panama Canal.¹⁰⁵ As remarked by the Secretary of State on the exchange of ratifications: "The present General Treaty . . . not only continues existing safeguards and provisions for the operation, maintenance, sanitation, and protection of the Canal from our point of view, but by associating the Republic of Panama in this work, accords even greater security and efficiency to the Canal, either in its present form or should it become necessary, in an expanded form."¹⁰⁶

Looking toward the greater security of the Canal in time of emergency, Congress in 1940, at the request of the War Department,¹⁰⁷ authorized the construction of a third system of lock chambers, commonly known as the "by-pass project."¹⁰⁸ Important considerations leading to the adoption of this project were that the existence of a third set of locks removed some distance from the original locks would minimize the danger of the Canal

¹⁰³ *U. S. Treaty Series* No. 945.

¹⁰⁴ *Supra*, pp. 65-68.

¹⁰⁵ Senator Pittman stated in the Senate, at the time of Senatorial consent to ratification, that the United States is the party to determine when an emergency exists which requires consultation and/or immediate action. *Cong. Rec.*, July 24, 1939, pp. 9833-9834, 9837.

¹⁰⁶ Department of State, *Bulletin*, Vol. I (1939), p. 84.

¹⁰⁷ In 1938 the Secretary of War said: "It has become apparent that the need for a third system of lock chambers may come much sooner than heretofore contemplated on account of defense requirements and it is proposed therefore to speed up studies and investigations during the coming year." *Annual Report of the Secretary of War, 1938* (Washington, 1938), p. 17.

¹⁰⁸ 53 Stat. 1409.

being put out of commission by enemy action, and that the Navy would be enabled to build and pass larger capital ships through the Canal.¹⁰⁹ It is generally understood that the new locks will be reserved for the use of public vessels of the United States until there is a need for additional lock capacity for commercial purposes.

The approach of war between the Great Powers of western Europe in 1939 immediately occasioned concern for the Panama Canal. Maritime warfare likely to affect the Canal became a real prospect for the first time since 1918. The enlarged amount of foreign shipping regularly passing through the Canal increased the danger of hostilities in the vicinity of the Canal. Watchfulness seemed warranted lest acts of sabotage or of war be attempted within or near the Canal.

The first step taken by the United States was the conclusion of an Executive Agreement with Panama reaffirming the Lansing-Morales Protocol of 1914 dealing with the extension of hospitality to belligerent war vessels or vessels assimilated thereto in the waters of the Canal Zone and of the Republic of Panama. It was agreed that the Protocol "is at present in effect and may be applied by both countries whenever circumstances require."¹¹⁰

1939 NEUTRALITY PROCLAMATIONS

After the commencement of war in Europe in September, 1939, the United States followed the precedent established in 1914. The President issued a general Proclamation of Neutrality of the United States, which was followed by a Proclamation Prescribing Regulations Concerning Neutrality in the Canal Zone. These measures were succeeded by a miscellany

¹⁰⁹ It was appreciated that increased facilities for commercial traffic would not be necessary for some years to come. H. Doc. No. 139, 72d Cong., 1st sess.; substantiated in 1936 by S. Doc. No. 23, 75th Cong., 1st sess.; reiterated in Hearings before the Committee on Merchant Marine and Fisheries, *Additional Interoceanic Canal Facilities*, H. Rep., 76th Cong., 1st sess.; Hearings before the Committee on Interoceanic Canals, *Additional Interoceanic Canal Facilities*, S. Doc., 76th Cong., 1st sess.

¹¹⁰ U. S. Exec. Agr. Ser. No. 160.

of orders and proclamations which rapidly brought the legal situation virtually to the stringency of 1917-18.

The general Proclamation of Neutrality of September 5, 1939,¹¹¹ followed the tenor of the proclamation of August 4, 1914. It invoked the laws of March 4, 1909, and of June 15, 1917, and enjoined performance of the acts embraced therein.¹¹² The provisions of the Proclamation were specifically applied to the Canal Zone by a clause which declared that it "shall apply to the Canal Zone except in so far as such provisions may be specifically modified by a Proclamation or Proclamations issued for the Canal Zone."¹¹³

The Proclamation Prescribing Regulations Concerning Neutrality in the Canal Zone was issued on the same day, September 5, 1939,¹¹⁴ and not some months later, as in 1914. This referred to the general Proclamation of Neutrality, and to the clause just noted, and declared that the said Proclamation was thereby modified. The general Proclamation was limited to the war between "Germany and France; Poland; the United Kingdom, India, Australia and New Zealand," which therefore meant that the Canal Zone Regulations Proclamation was similarly limited. When the President subsequently issued general Proclamations of neutrality for the United States in the wars involving the Union of South Africa, Canada, Norway, Belgium, Luxemburg, The Netherlands, and Italy,¹¹⁵ he did not issue

¹¹¹ Proclamation No. 2348. *Fed. Reg.*, Vol. IV (1939) p. 3809.

¹¹² U. S. Code, Title 18, Chap. 2. Forbidden acts include acceptance and issuance of commissions; enlisting; fitting out or arming or setting on foot expeditions; dispatching vessels intended to engage in cruising; making territory a base of operations; the 24-hour rule concerning departure of vessels; restrictions on the use of radio; taking on supplies and fuel; repairs; exercise of belligerent activities "in waters subject to United States jurisdiction"; internment of private and war vessels; and the commission of acts contrary to the laws and treaties of the United States or to international law.

¹¹³ The Proclamation was issued for neutrality in the state of war existing between Germany and France; Poland; the United Kingdom, India, Australia and New Zealand.

¹¹⁴ Proclamation No. 2350. *Fed. Reg.*, Vol. IV, p. 3821.

¹¹⁵ By separate Proclamations, the provisions of the Sept. 5th Proclamation were applied equally with respect to the Union of South Africa (Procl. No. 2353, Sept. 8, 1939, *Fed. Reg.*, Vol. IV, p. 3851); Canada (Procl. No. 2359,

separate Proclamations Prescribing Regulations Concerning Neutrality in the Canal Zone for the wars involving those countries. Did this infer that South African, Canadian, Norwegian, Belgian, Dutch, and Italian vessels were not to be subject to the limitations and restrictions placed upon German, French, Polish, and British vessels in the Canal Zone? This does not seem to follow. Each of the Proclamations of neutrality issued by the President after the 5th of September stated, *mutatis mutandis*, "that all of the provisions of my Proclamation of September 5, 1939, proclaiming the neutrality of the United States in a war between Germany and France; Poland; and the United Kingdom, India, Australia, and New Zealand *apply equally in respect to* the Union of South Africa."¹¹⁶ This must have meant that in each instance there was implied the clause: "the provisions of this Proclamation shall apply to the Canal Zone except in so far as such provisions may be specifically modified by a Proclamation or Proclamations issued for the Canal Zone." If this be the case, the Proclamation Prescribing Regulations Concerning Neutrality in the Canal Zone, which was issued specifically in modification of the Proclamation of September 5, must have applied to vessels of each of the states in respect to which Proclamations of neutrality were issued. In any event, no discrimination in favor of the vessels of belligerents entering the war after September 5, 1939, has been reported.

The Proclamation Concerning Neutrality in the Canal Zone resembled in large part the Proclamation relating to the same subject issued by President Wilson on November 13, 1914, alluded to earlier.¹¹⁷ The 1939 Proclamation differed from the preceding one in (1) omitting a definition of belligerent ships

Sept. 10, 1939, *ibid.*, p. 3857); Norway (Procl. No. 2399, April 25, 1940, *ibid.*, Vol. V, p. 1569); Belgium, Luxemburg, and The Netherlands (Procl. No. 2405, May 11, 1940, *ibid.*, p. 1689); Italy (Procl. No. 2408, June 10, 1940, *ibid.*, p. 2191).

¹¹⁶ Italics added.

¹¹⁷ *Supra*, p. 126.

of war, and the requirement that their commanding officers give written assurance before transit of the Canal that they will observe the rules and regulations relating to the Canal; (2) omitting application to auxiliary vessels and vessels assimilated to ships of war; (3) enforcing a 24-hour interval between the departure of a belligerent ship of war from one terminal and that of a vessel of an opposing belligerent from the other terminal only in respect to belligerent ships of war carrying aircraft; (4) altering somewhat the basis upon which repairs and supplies might be furnished to belligerent ships of war;¹¹⁸ (5) leaving out all reference to radio.¹¹⁹

Only one case has been reported in the press bringing into question terms of this Proclamation. The German merchant vessel *Duesseldorf*, under command of a British prize crew, arrived at Balboa on December 25, 1939, and sought transit en route to a British port. The vessel was sent through the Canal with a large military guard on board "to prevent attempts by Germans to jump overboard in the Canal to escape."¹²⁰ Clearance was granted from Cristóbal the following day, prior

¹¹⁸ The 1939 Proclamation stipulated that: "If it is wholly impossible, as determined by the Governor," for belligerent warships to obtain repairs, fuel, and stores from private contractors in the Zone or in Panama, the United States' agencies in the Canal Zone may effect such repairs or provide such materials, "in order to facilitate the operation of the Canal and its appurtenances." The repair facilities and docks "belonging to the United States" in the Canal Zone might not be used by a "public vessel of a belligerent, except when necessary in case of actual distress . . . and only to the degree necessary to render the vessel seaworthy."

¹¹⁹ The exclusion of belligerent aircraft was renewed in the 1939 Proclamation.

The provisions of this Proclamation, as well as of the general Proclamation of neutrality, were made additional to the Rules and Regulations for the Operation and Navigation of the Panama Canal of Sept. 25, 1925, as amended. For analysis of Rules and Reglms. see Chapter III, pp. 92-100.

An Exec. Order (No. 8233) of Sept. 5, 1939, prescribed the duties to be performed by the Governor of the Panama Canal in the Enforcement of the Neutrality of the United States. *Fed. Reg.*, Vol. IV, p. 3822. This was applied by subsequent orders "equally to" Canada, South Africa, Norway, Belgium, Luxemburg, The Netherlands, and Italy. *Ibid.*, pp. 3863, 3889; *ibid.*, Vol. V, pp. 1570, 1691, 2193.

¹²⁰ *New York Times*, Dec. 26, 1939.

to the termination of the 24-hour limit. Protest was reported to have been made against the transit and clearance by the German consul at Colón,¹²¹ although the Hay-Pauncefote Treaty, as well as the Proclamation Concerning Neutrality in the Canal Zone, provide for the transit of prizes. It has long been a generally accepted practice to forward prizes captured on the high seas to belligerent ports with officers and members of the crew of the captured vessel on board. There would therefore seem to be no reason why the Canal authorities should have refused transit and clearance on the ground that the transit involved carriage of prisoners of war through neutral jurisdiction contrary to law.¹²²

The same case had another angle. When the *Duesseldorf* reached Balboa, a person on board, Herr von Appen, former steamship agent at Balboa, was reportedly taken off for hospitalization on the certification of the ship's doctor that he was critically ill. Objecting to being sent to a Canal Zone hospital, he was taken to Panama, where he held a permanent residence permit. When found to be "normal" and not ill by medical examiners, he was returned to the Canal Zone and held at an immigration station pending further action. Finally he was turned over to the British Vice Consul at Cristóbal, and reported to have been escorted by armed sailors aboard the Canadian destroyer *Assiniboine*, which sailed at once for Bermuda where the *Duesseldorf* was held.¹²³ The handing over of von Appen to British authorities would seem to have been a correct procedure since he had not escaped from them in the first instance, but had been landed by them and given over to the custody of the Canal authorities for a particular purpose, the accomplishment of which dictated his return to the British.

¹²¹ *Ibid.*, Dec. 27, 1939. The basis of the protest was not indicated. See *ibid.*, Feb. 22, 1940, for British defense of their action in carrying prisoners through the Canal on board a prize.

¹²² For examination of law on the subject of transport of prisoners through neutral waters, see editorial comment. "Was Norway Delinquent in the Case of the *Altmark*?" by Edwin Borchard, *A.J.I.L.*, Vol. XXXIV (1940), p. 289.

¹²³ *New York Times*, Jan. 22, 1940.

REGULATIONS GOVERNING THE PASSAGE AND CONTROL OF
VESSELS THROUGH THE CANAL, 1939-41

Additional rules for the Canal were introduced by an Executive Order of September 5, 1939, in the form of Regulations Governing the Passage and Control of Vessels through the Panama Canal in any War in which the United States is Neutral.¹²⁴ The first part ordained that:

Whenever considered necessary, in the opinion of the Governor of the Panama Canal, to prevent damage or injury to vessels or to prevent damage or injury to the Canal or its appurtenances, or to secure the observance of the rules, regulations, rights and obligations of the United States, the Canal authorities may at any time, as a condition precedent to transit of the Canal, inspect any vessel, belligerent or neutral, other than a public vessel, including its crew and cargo, and, for and during the passage through the Canal, place armed guards thereon, and take full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by the Canal authorities to go or to remain on board thereof during such passage.

The second part specified that:

A public vessel of a belligerent or neutral nation shall be permitted to pass through the Canal only after her commanding officer has given written assurance to the authorities of the Panama Canal that the rules, regulations, and treaties of the United States will be faithfully observed.

A third provision was added as an amendment by an Executive Order on March 25, 1940.¹²⁵ This order prescribed that no person on board "any vessel in transit through the Panama Canal" should have a camera in his possession, or make any drawing, picture, etc., of any of the Canal locks and works

¹²⁴ Exec. Order No. 8234, *Fed. Reg.*, Vol. IV, p. 3823.

¹²⁵ Exec. Order No. 8382, *Fed. Reg.*, Vol. V, p. 1185. The penalty for violation was declared to be the punishment provided for in Sec. 9 of Title II of the Canal Zone Code. These regulations were made additional to the Rules and Regulations Governing Navigation of the Panama Canal and Adjacent Waters of 1925, See Chapter III.

without first obtaining the permission of the Governor and submitting the product to the Governor. This section also required that the master of every vessel transiting the Canal collect and secure in an "inaccessible place" all cameras on board such vessels while in transit, and cooperate with the Canal authorities "as may be necessary" to prevent the making of pictures and drawings.

The September 5 Order, while not mentioning the relationship, stems from Section 1 of Titles I and II of the Act of June 15, 1917, and from Rule 3 of the Proclamation of November 13, 1914.¹²⁶ It will be observed that this Order allows the Governor of the Panama Canal to place guards aboard vessels and to take possession of them in the Canal whenever considered necessary; in his own opinion, in a war in which the United States is neutral. The 1917 law, however, allowed such extreme measures only after the President had declared "a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States." The "national emergency" proclaimed by President Roosevelt on September 8, 1939,¹²⁷ declared, however, that an emergency exists in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peacetime authorizations." No reference was made in the preamble or text of this Proclamation to the law of June 15, 1917. One may question, therefore, the legality of the conferring upon the Governor the powers set forth in Section 1 of the Executive Order of September 5, 1939, prior to a presidential declaration of a national emergency "by reason of" the causes stated in Section 1, Title II of the Act of June 15, 1917. Nevertheless, the Commanding General of the Panama Canal Department once given exclusive authority over the Canal, as was done on September 5, 1939, might order

¹²⁶ *Cit. supra.*

¹²⁷ *Fed. Reg.*, Vol. IV, p. 3851.

armed guards placed and received on board transiting vessels as a necessary means of assuring the Canal authorities that nothing about a vessel "endangers the structures pertaining to the Canal," and that all of the Rules and Regulations were complied with.

Removing any doubt there may have been regarding the legal basis of the powers conferred by the Order of September 5, the President issued a Proclamation on June 27, 1940,¹²⁸ reciting Section 1 of Title II of the Act of June 15, 1917, and declaring that:

It is essential, in order to carry into effect the provisions of said Act, which are quoted herein, that the powers conferred therein upon the President, the Secretary of the Treasury and the Governor of the Panama Canal be at this time exercised, or available for exercise, with respect to foreign and domestic vessels.

The Proclamation of national emergency of September 8, 1939, was referred to and continued, with the additional declaration, founded upon the exact words of the 1917 law, of "the existence of a national emergency by reason of threatened disturbance of the international relations of the United States."

By virtue of the authority vested in him by the 1917 law and the last-mentioned Proclamation, the Governor of the Panama Canal promulgated Regulations for the Inspection and Control of Vessels in Canal Zone Waters, which were approved by the President on July 9, 1940.¹²⁹ Port Captains were given complete control of the anchorage and movement of all vessels in waters of the Canal Zone, and, together with chiefs of customs of the ports, authorized:

to cause to be inspected and searched at any time any vessel, foreign or domestic, or any person or package thereon, within the waters of the Canal Zone, to place guards upon such vessels, and to remove therefrom any and all persons not specially authorized by them to go or to remain on board thereof.

¹²⁸ Proclamation No. 2412. *Ibid.*, Vol. V, p. 2419.

¹²⁹ *Ibid.*, p. 3393.

Port Captains were directed,

subject to the approval of the Governor, to take full possession and control of any vessel, foreign or domestic, in the waters of the Canal Zone, whenever it appears that such action is necessary to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the Canal Zone, or to secure the observance of the rights and obligations of the United States.¹³⁰

These Governor's Regulations also provided that:

No vessel shall depart from any port or place in the Canal Zone on a voyage on which clearance by a port captain is required, unless the port captains shall have been authorized by the Governor to permit the departure.¹³¹

The powers enumerated in these several proclamations, orders, and regulations were readily applied, much after the pattern worked out during the first World War. In addition to the customary inspection of arriving vessels by the Canal authorities, a naval officer was attached to, and placed in charge of each boarding party. His duty was to examine the vessel to see that it complied in all respects with the neutrality and defense laws and proclamations, that there was nothing suspicious about it, that its wireless apparatus was sealed if it flew a belligerent flag, that its magazine was sealed if it were a belligerent armed merchantman, and that the master agreed to accept an armed guard while in transit. The presence of a naval officer in the boarding party lent added authority to the

¹³⁰ Pending action by the Governor, they were authorized to detain vessels.

¹³¹ Vessels were required to have all of their ship's papers certified by the American consul at the vessel's last port of departure prior to arrival at the Canal. Failure to present papers so endorsed rendered a vessel liable to delay until endorsement or intelligence could be obtained. The Rules and Regulations allow holding of a vessel until the Canal authorities are satisfied that there is nothing about a vessel endangering the Canal structures or violating the laws and Rules. See Chapter III, pp. 92-94. Small craft operating in Canal Zone waters were required by Sec. 6 of the Regulations to possess a license which might be revoked for any infraction of the laws and orders relating to this emergency, or for any action inimical to the interests of the United States.

activities of the other examiners and insured that in case of any trouble naval assistance could be summoned at once.

PLACEMENT OF ARMED GUARDS ON TRANSITING VESSELS

As part of the formality of clearance for transit of the Canal, the master of every private vessel was required to sign a written declaration of observance of the Rules and Regulations for the Navigation of the Canal, and of willingness to receive on board an armed guard while in the Canal. These guards, varying in number depending on the size and character of each vessel, boarded a vessel after she had been passed for transit. Each detachment of guards, generally speaking, was composed of armed soldiers and naval ratings. Guards were posted at all important stations on a vessel from the pilot house and decks to the engine room. Others were detailed to circulate about the vessel watching for any attempt to photograph,¹³² or to draw sketches of canal structures, to throw objects overboard, or to perpetrate acts of sabotage or espionage. The naval ratings were stationed beside the ship's quartermaster in the wheel house, and in the engine room. Each detachment of guards carried its own portable telephonic equipment by means of which every order from the bridge to the engine room might be independently checked. In the event of any untoward development on board involving or appearing to involve sabotage, violation of the Navigation Rules or neutrality regulations, or threatening the safety of the Canal, instant action by the guards, involving the use of armed force if necessary, was in order. Without doubt the placement of these guards on vessels transiting the Canal in time of national emergency has been a salutary measure, for their presence

¹³² The captain and a steward of the Japanese steamship *Argentina Maru* were reported in Sept., 1940, to have been fined \$125 for having a camera not locked up during a trip through the Canal. The steward pleaded guilty to possessing the camera, and the captain to failure to take possession as required. *Boston Traveler*, Sept. 20, 1940.

aboard ship, and their constant, attentive circulation among crew and passengers have inspired meticulous observance of the rules and laws.¹³³

For the assurance of an adequate force to control vessels in the territorial waters of the Canal, the President issued an Order providing that upon the request of the Governor of the Panama Canal, subject to the approval of the Commanding Officer of the Army in the Canal Zone so long as or during such future times as the control of the Canal and Canal Zone may be vested in him by the President, "those in command of the land and naval forces of the United States shall employ such parts of the forces under their respective commands as may be necessary and available to render the assistance requested."¹³⁴

Might the Regulations that armed guards be placed on "any vessel, foreign or domestic," be interpreted to include public armed vessels and naval auxiliaries as well as private vessels? Might foreign warships and naval auxiliaries be required to receive an armed guard, as well as to give written assurance that the Navigation Rules and neutrality regulations would be observed, as a condition precedent to the granting of permission to transit the Canal? Such a procedure may appear offhand to involve departure from a generally accepted rule of international law respecting the immunity of foreign war vessels from local jurisdiction. It is believed, however, that an interpretation of the Regulations to include placement of armed guards on foreign war vessels is sustainable. It has always been customary for war vessels admitted to a foreign port to submit to local harbor and sanitary rules. Failure to abide by rules may result in expulsion from the port. The Panama Canal is not a strait of high seas. It is a body of water exclusively under

¹³³ As a further precautionary measure armed guards were stationed ashore at all critical, vulnerable, and strategical points of the Canal route in positions to watch for and repel any untoward development.

¹³⁴ Exec. Order No. 8677, Feb. 11, 1941. *Fed. Reg.*, Vol. VI, p. 935.

the jurisdiction of the United States. Transit of the Canal is accorded as a privilege, it is not demandable as a right. It may be granted or withheld. Vessels applying for transit must submit to such rules and regulations, designed for their own and the Canal's safety, as the Canal authorities deem necessary. There is no convention in force exempting any class of foreign vessels from such regulations. The placement of armed guards aboard all vessels transiting the Canal is a proper safety regulation. To station such guards on foreign men-of-war may constitute an innovation in the practice of nations. The reception of such guards on board would involve no greater imposition on the sovereignty of the vessel's state, however, than does the admission of the warship herself into and across the forty miles of inland water of the United States of America. The foreign war vessel has an open choice. The Panama Canal is a route, but it is not the only route between any two points. If the reception of an armed guard, no matter how relatively powerless it may be, is objected to, the vessel need not proceed via the Canal. To impose such a regulation cannot be construed as closing the Canal, denying passage without reason, or practicing discrimination. In ratifying the Hay-Pauncefote Treaty the United States accepted no stipulation enjoining such an interpretation of its right to establish rules and regulations for the operation and navigation of the Panama Canal.

No objection was raised by the United States in the second World War during its own neutrality to the passage through the Panama Canal of belligerent armed merchantmen, or of belligerent or neutral vessels carrying contraband of war to the warring Powers. These vessels were submitted to the same emergency regulations as all other foreign and domestic craft, with the exception that the magazines of armed merchant vessels were required, as in other territorial waters of the United States, to be sealed, and to remain sealed until the vessel was cleared from the opposite terminal.

EMERGENCY MILITARY CONTROL

Acting under the discretionary power vested in him by the *Canal Zone Code*, and in line with the precedent established by President Wilson in 1917, President Roosevelt, on September 5, 1939, placed the Canal and Canal Zone under the full control of the Commanding General of the Army stationed at the Zone.¹³⁵ As in 1917, the Panama Canal authorities were subsequently directed by the Commanding General to carry on as usual and until ordered otherwise.

Question has arisen at various times whether in an emergency the Commanding General has the legal right to establish martial law in the Canal Zone. In the case of *Ex Parte Milligan*,¹³⁶ the Supreme Court of the United States ruled that the President has power under the Constitution to declare martial law for any locality only when there is an invasion, or when, by virtue of the immediacy of hostilities, the civil courts have been vacated. As land and water under the jurisdiction of the United States, the Canal Zone is subject to the constitutional authority of Congress. The President enjoys only such powers with respect to the governance of the Canal Zone as may be granted to him by the Congress. Wide powers have been conferred upon him for this purpose, but in no act has Congress authorized him to suspend civil law there. There is no mention of the institution of martial law in Section 8 of Title 2 or in any other section of the *Canal Zone Code*. Consequently, it must be held that unless empowered otherwise by act of Congress, martial law may be proclaimed only in the event of an invasion of the Isthmus or when the civil law ordained by Congress has ceased to function.¹³⁷ This is not to say that members of the armed forces of the United States stationed in the Canal Zone

¹³⁵ Exec. Order No. 8232, *Fed. Reg.*, Vol. IV, p. 3812.

¹³⁶ 4 Wall. 127.

¹³⁷ An opinion rendered by the Judge Advocate General of the Army has held that the Commanding General, Panama Canal Department, may not be vested by the President, under existing law, with power to proclaim martial law. *Digest of Opinions*, Sec. 2141.

are not subject to military law. The Articles of War are applicable at all times to military personnel whether in military reservations or elsewhere. In the military reservations, however, civilians remain within the protection and jurisdiction of the civil law.

RESTRICTIONS OF FLIGHT OF AIRCRAFT

In the Proclamation Prescribing Regulations Concerning Neutrality in the Canal Zone, it was provided, in language closely resembling that employed in 1914, that "no belligerent aircraft shall be navigated into, within, or through the airspace above the territory or waters of the Canal Zone."¹³⁸ This was followed by an Executive Order containing Regulations Governing the Entrance of Foreign and Domestic Aircraft into the Canal Zone and Navigation Therein, issued on September 12, 1939.¹³⁹ As in the Proclamation of February, 1918, and the Order of February, 1929, the airspace above the Canal Zone, including the marginal waters, was set apart as a military airspace reservation. Navigation of foreign or domestic aircraft (other than public aircraft of the United States) within or through this area was made unlawful except in conformity with the provisions of the order, and after the granting of permission by the Civil Aeronautics Authority in the case of domestic aircraft, and by the Secretary of State in the case of other aircraft. Such authority, it was added, "shall be granted only after consultation with the Secretary of War," and shall be subject to all rules and regulations issued concerning aircraft in the reservation. Following the terms of the 1929 Order, it was stated that all craft may be required to follow prescribed routes and to land at specified places, and must communicate in every instance of flight with the Governor of The Panama Canal prior to entry into the reservation. Cameras were ordered sealed and no firearms, munitions, or explosives might

¹³⁸ Proclamation No. 2350, Sept. 5, 1939, *Fed. Reg.*, Vol. IV, p. 3821.

¹³⁹ Exec. Order No. 8251, *Fed. Reg.*, Vol. IV, p. 3899.

be carried without the consent of the Canal authorities. Special permission was required for every flight of an aircraft operated by or transporting any foreigners. All such craft must approach the reservation to a rendezvous point designated by the Governor, where they must be met by an official escort which must be followed closely to the landing-point, and, on leaving, to the rendezvous point.¹⁴⁰

On October 19,¹⁴¹ and again on November 4, 1939,¹⁴² the President issued Proclamations, pursuant to the discretionary powers conferred upon him for that purpose by the Joint Resolutions of May 1, 1937, and of November 4, 1939, respectively, making it unlawful, except as a result of *force majeure*, for submarines of belligerent states to enter the ports and territorial waters of the United States, "exclusive of the Canal Zone."¹⁴³ Inasmuch as foreign submarines were not excluded from the waters of the Canal Zone, there is no occasion for speculating on the consequences of a different course. Suffice it to say that to have declared it to be unlawful for belligerent submarines "to enter ports or territorial waters of the Canal Zone" would have been tantamount to closing the Canal to and discriminating against such vessels of war of the states named. In the case of the United Kingdom this would have involved a violation of a treaty obligation. It would also have compromised the

¹⁴⁰ The order empowers the Governor to make further rules and regulations. Sec. 9 stated that this Order was to be administered in connection with Order No. 8233 of Sept. 5, 1939, Prescribing Regulations Governing Enforcement of the Neutrality of the United States, and Proclamation No. 2350, Sept. 5, 1939, Prescribing Regulations Concerning Neutrality in the Canal Zone, *cit. supra*. Sec. 6 of the Order, regarding applications, was amended by Exec. Order No. 8271, Oct. 16, 1939, *Fed. Reg.*, Vol. IV, p. 4277. The Department of State issued regulations pursuant to this Order restating its general provisions on Oct. 10, 1939. Department of State, *Bulletin*, Oct. 14, 1939, pp. 379-380.

Enforcement of regulations regarding aircraft was placed in the hands of the Marine Superintendent of the Panama Canal.

¹⁴¹ Proclamation No. 2371. *Ibid.*, p. 4295.

¹⁴² Proclamation No. 2375. *Ibid.*, p. 4494.

¹⁴³ The November 4th Proclamation applied to the submarines of all states then belligerent. The prohibition was extended in 1940 to cover such craft belonging to Norway, Belgium and the Netherlands, and Italy.

undertaking contained in Article 18 of the 1903 Convention with Panama, which provided that "The Canal, when constructed, and the entrances thereto, shall be neutral in perpetuity. . . ." The exception made in favor of the Canal Zone in these instances points again to the distinctions which are made between the Canal Zone and other territories and waters subject to the jurisdiction of the United States.

The "Neutrality Act" of November 4, 1939, repealing the Acts of 1935-37, applied by its own definition to the Canal Zone,¹⁴⁴ but did not affect the rights and obligations of the

¹⁴⁴Pub. Res. No. 54, 76th Cong., 2d sess.; Department of State, *Bulletin*, Nov. 4, 1939, p. 453. Thus, subsequent to the issuance of the proper proclamation, no American vessel might carry passengers or cargo from Canal Zone ports to any foreign state named; no goods might be exported or transported from the Canal Zone [emanating therefrom and not in interoceanic transit in foreign bottoms] to a belligerent state until all right, title, and interest had been divested by Americans; no citizens of the United States might proceed from the Canal Zone to a combat area or take passage on a belligerent vessel from a port in the Canal Zone except on the authorization of the Governor; no purchase, sale, or transaction of securities of a belligerent state might take place in the Canal Zone [except possibly between foreigners on board foreign vessels in transit through the Canal]; no funds might be solicited in the Canal Zone for the benefit of any named state; restrictions might be imposed upon the departure of vessels believed to be "about to carry fuel, men, arms, munitions, implements of war, supplies, despatches, or information to any warship, tender, or supply ship" of a belligerent [presumably this must be read in the light of the treaty requirement regarding free passage of vessels of commerce and of war carrying goods, men, or information in transit, taken on or acquired prior to entry of the waters of the Panama Canal]; restrictions might be established regarding the entrance and departure of submarines and armed merchant vessels [also presumably subject to the treaty agreement to allow free passage to vessels of commerce and of war]; registration of exports of munitions from the Canal Zone with the National Munitions Control Board might be required.

Proclamation No. 2374, Nov. 4, 1939, declared the law operative for the present war. *Fed. Reg.*, Vol. IV, p. 4493. This rescinded Proclamations Nos. 2349, 2354, 2360, cited above.

Proclamation No. 2376, Nov. 4, 1939, invoked and applied Sec. 3 of the law regarding the establishment of a combat zone. *Ibid.*, p. 4495. Order No. 4 of the Acting Secretary of Commerce, Nov. 17, 1939, instructed the Bureau of Marine Inspection and Navigation that "no clearance shall be granted to any vessel (watercraft or aircraft) of a belligerent state while having on board any citizen of the United States, whether as passenger or member of the crew except in accordance with the rules and regulations prescribed under the authority of the Neutrality Act of 1939." *Ibid.*, p. 4628. Department of State Order No. 827, Nov. 17, 1939, contains regulations relating to travel in combat areas and

United States under the treaties or agreements in force relating to the Canal, or under international law. The sections of this Act prohibiting American vessels going into foreign combat zones, and forbidding the arming of American vessels were repealed on November 13, 1941. The remainder of the Act ceased to be operative when the United States declared war, December 11, 1941.

SPECIAL REGULATIONS REGARDING PERSONS

The same concern which prompted the United States to adopt special measures for the control of persons in the vicinity of the Canal during the first World War led to the taking of similar precautionary steps in 1940. Two things in particular may be noted. The rules involving classes of persons excluded and deportable from the Canal Zone were amended and enlarged by an Executive Order of May 22, 1940. Persons engaging in or inciting strikes in the Canal Zone resulting in obstructing or interfering with the Canal and Canal Zone or the observance, safeguarding, and enforcement in the Zone of the neutrality of the United States and the strengthening there of the national defense, were added to the list of those who might be excluded and deported. The Act of Congress requiring Registration of Persons Employed to Disseminate Propaganda in the United States¹⁴⁵ was applied to the Canal Zone. This was reported to have been enforced in the case of a German dispatch carrier arrested on a Japanese ship at Balboa in the summer of 1940. According to the *New York Times*, this individual was fined \$2,000 and given a suspended sentence for acting as an alien agent without notification to the Department of State and without filing proper registration statement.¹⁴⁶

on belligerent ships. *Ibid.*, pp. 4640-4641. Mention may also be made of the Department of State regulations regarding shipper's declarations of Nov. 25, 1939. *Ibid.*, p. 4701.

¹⁴⁵ 52 Stat. 631. Amended by Pub. No. 319, 76th Cong., approved Aug. 7, 1939.

¹⁴⁶ Aug. 20, 1940.

For the further protection of the Canal against espionage and sabotage a careful checking system on the presence and movements of all aliens and suspected persons was cooperatively inaugurated by the authorities in the Canal Zone and in the Republic of Panama shortly after the outbreak of the European War. This culminated in the reported removal of a number of persons illegally resident in the Canal Zone to the United States.¹⁴⁷

THE LEND-LEASE ACT AND THE CANAL

On March 11, 1941, the President approved an act popularly known as the Lease-Lend Act authorizing the leasing, loaning, or transferring of "defense articles" belonging to the United States to "the government of any country whose defense the President deems vital to the defense of the United States."¹⁴⁸ Pursuant to the terms of this act, and "notwithstanding the provisions of any other law,"¹⁴⁹ the President was empowered to direct "the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government" to manufacture "defense articles" for a foreign belligerent government, to erect plants for the manufacture or processing of such articles, to sell, transfer, dispose of and export such articles,¹⁵⁰ whether of recent manufacture or installed and currently being used by the armed forces of the United States, to finish, complete, and repair "defense articles," including vessels, warships, and aircraft, belonging to any government designated by him, and to provide "defense information" pertaining to any defense article furnished to a designated foreign government. The statute did not exclude any officers or any place within the jurisdiction of the United

¹⁴⁷ Associated Press dispatch, Sept. 17, 1940.

¹⁴⁸ H.R. 1776, Pub. No. 11, 77th Cong., 1st sess.

¹⁴⁹ This would cover the neutrality laws of the United States and all proclamations issued under them, as well as the *Canal Zone Code* and all proclamations and orders issued under it.

¹⁵⁰ Most "defense articles" would doubtless be regarded as materials of war and as contraband by belligerents.

States from its application at the direction of the President. In view of the fact that the Panama Canal is under the supervision of the Secretary of War, and that general laws of the United States employing such comprehensive phraseology as "the head of any other department or agency of the Government" are interpreted as being applicable in the Canal Zone,¹⁵¹ there is no doubt that the Governor of The Panama Canal and the Commanding officers of the Army and Navy stationed in the Canal Zone might be ordered by the President to render in the Canal Zone assistance of the nature specified in the act to a foreign belligerent government.

The rendering of aid of this sort within the Canal Zone, under the conditions mentioned, might raise questions regarding the obligations of the United States under treaties in force and under generally accepted principles of international law.¹⁵² On the other hand, there is no doubt that the United States and Great Britain may modify the application *inter se* of the rules of neutralization embodied in the Hay-Pauncefote Treaty. Likewise, the United States and Panama may reinterpret the 1903 undertaking that the Canal be kept neutral in perpetuity in the light of modern conditions and of their joint interest in the defense of the Canal expressed in the General Treaty of Friendship and Cooperation. Furthermore, reference may also be made to the Proclamation of the President of the United States Prescribing Regulations Concerning Neutrality in the Canal Zone, issued September 5, 1939, which

¹⁵¹ See Chapter V, p. 185.

¹⁵² Secretary of State Hull admitted in testimony before the Committee on Foreign Affairs of the House of Representatives, Jan. 15, 1941, that "to do the things contemplated by the proposed act would render us unneutral." "This," he said, "would be largely true under ordinary circumstances but we are not dealing here with an ordinary war situation. Rather we are confronted with a situation that is extraordinary in character." He added further in extenuation of the Lease-Lend Act, "We are in the presence of forces which are not restrained by considerations of law or principles of morality; which have no fixed limits for their program of conquest. . . . The most scrupulous observance by peaceful countries of legal concepts provides today no security whatever. . . ." Department of State, *Bulletin*, Vol. IV, p. 85 et seq.

permits the repairing of belligerent war vessels by the agencies of the United States administered by the Canal authorities and the granting of supplies.

SEIZURE OF FOREIGN VESSELS

On March 30, 1941, President Roosevelt ordered federal officers to board and take possession of all foreign vessels lying idle in American waters in order to stop or avert damage being done to them or to their machinery by their officers and crews. The largest of these vessels, the Italian liner *Conte Biancamano*, was docked at Cristóbal where she was being held in the custody of a marshal of the District Court pending the outcome of judicial proceedings instituted some months earlier by British fuel purveyors.¹⁵³ The liner was boarded by a detachment of troops, taken into possession, and the master and ship's personnel taken ashore, but only after damage had reportedly been done to mechanisms of the vessel.

This seizure was based on the provisions of Section 3 of Title 2, and Section 19, Title 3 of the Act of June 15, 1917.¹⁵⁴ It was justified by the apparent discovery of circumstantial evidence of intent on the part of officers and crew to injure and destroy the motive power and navigation instrumentalities of the vessel and to endanger its safety in the waters of the United States.¹⁵⁵

¹⁵³ The vessel arrived at Balboa, June 5, 1940, with a crew of four hundred, fifty passengers, and two thousand tons of copper. June 7 orders were issued by the Italian Government to all Italian vessels to go into neutral ports. Italy entered the war on June 10. The vessel transited the Canal on June 25 under an armed guard and was anchored in Limón Bay. The vessel was attached by the marshal on a libel for the East Asiatic Petroleum Company, for a debt of \$92,000 on account of fuel and oil supplied to other vessels of the Lloyd Triestino Line at Suez, and a marshal was placed aboard the liner. The libel subsequently was increased to \$400,000. The vessel remained anchored in Limón Bay not far from the breakwater until March 7, 1941, when it was moved into dock. This was done lest the ship attempt to leave the jurisdiction without clearance, or commit some act of sabotage or injury in the Bay.

¹⁵⁴ 40 Stat. 220; U. S. Code, Title 50, Sec. 193; *ibid.*, Title 18, Sec. 502; *Canal Zone Code*, pp. 1014-1015; *ibid.*, p. 946. See above, pp. 147-149.

¹⁵⁵ See note of Secretary of State Hull to Royal Italian Ambassador, April 3, 1941. Department of State, *Bulletin*, Vol. IV, p. 420. For reply see *New*

Destruction or injury of such a vessel or its machinery exposes the vessel "to seizure and forfeiture to the United States," and the perpetrators to punishment.¹⁵⁶

On June 6, 1941, an Act was passed by Congress and approved by the President, "To authorize the acquisition by the United States of title to or the use of domestic or foreign merchant vessels for urgent needs of commerce and national defense, and for other purposes."¹⁵⁷ This Act, which applied equally to the Canal Zone as to the United States proper, permitted the Government to charter or requisition the use of, or take over in an emergency and on payment of just compensation, both American and foreign-owned vessels lying idle in ports under the jurisdiction of the United States.¹⁵⁸ In ordering the Act to be applied, the President stated that he found that "the foreign merchant vessels now lying idle in waters within

York Times, April 15, 1941. The captain, officers, and crew were reported to have been arrested for deportation, April 3, and subsequently sent to New York on board an Army transport. En route several of their number were ordered returned to the Canal Zone for trial. *Ibid.*, April 9, 1941. The powers given the President and the Governor of the Panama Canal by the 1917 Act were available for exercise as a result of the Emergency Proclamation of June 27, 1940. *Cit. supra*, p. 165. The vessel was towed to Balboa, Aug. 30, for repair and the installation of new turbines. *New York Times*, Aug. 31, 1941.

¹⁵⁶ A fine of not more than ten thousand dollars, or imprisonment for not more than two years, or both, is fixed for causing or permitting the injury or destruction of a vessel. A fine of not more than ten thousand dollars, or imprisonment for not more than twenty years, or both is ordained for violating Sec. 1 of Title 3 by tampering with the motive power or instrumentalities of navigation of a vessel with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board. By Art. I of the Treaty of Commerce and Navigation of 1871 between Italy and the United States it is agreed that vessels belonging in either state going into the jurisdiction of the other shall be subject to the laws and regulations there in force. 17 Stat. 845.

¹⁵⁷ H. R. 4466. Pub. No. 101, 77th Cong., 1st sess.

¹⁵⁸ See Message of the President to Congress, April 14, 1941. H. Rep. No. 440, "Utilization of Idle Foreign Merchant Tonnage," 77th Cong., 1st sess. Distinction was made in debate before Congress between requisitioning and taking over foreign vessels, the former implying some degree of intention of turning back vessels at the end of the emergency, the latter involving acquisition of complete right to the vessels and perpetual ownership. *Cong. Rec.*, May 14, 1941, p. 4116 (daily ed.). "Taking over" is a physical act, which may leave unsettled for the moment questions of title and ultimate disposition of the vessel.

the jurisdiction of the United States, including the Philippine Islands and the Canal Zone, are necessary to national defense." ¹⁵⁹

The taking over of foreign owned merchant vessels at the Panama Canal under whatever guise and conditions, whether performed when the United States is a neutral or a belligerent, inevitably raises perplexing questions. The seizure of German vessels in 1917 must indicate to any Power at war or likely to become engaged in hostilities with the United States, that there can be no lasting asylum for its shipping at the Panama Canal notwithstanding the agreement of the United States with Panama that it would keep the Canal and its entrances neutral in perpetuity. The seizure of the Italian steamship in 1941 makes it plain that the United States will not with impunity allow belligerents to damage their vessels at the Canal in the hope of thereby rendering them inoperative for foreign commerce for the duration of a war. The taking over of idle foreign ships in the waters of the Canal Zone must suggest to all foreign shipping interests question as to the security of their ships temporarily anchored or docked at the Canal terminals awaiting orders. Regardless of the facts that all vessels at the Panama Canal are subject to the laws and orders of the United States in force there, and that the Inter-American Financial and Economic Advisory Committee has unanimously resolved that the American Republics may utilize foreign flag vessels in their ports "in accordance with the rules of international law and the provisions of their respective national legislations, in such manner as to promote the defense of their economies as well as the peace and security of the continent," ¹⁶⁰ it may be debatable whether, as a matter of policy, the United States should at any time take over foreign vessels lying idle within the waters of the Panama Canal and Canal Zone because of its need for shipping. Seizing a vessel for violating a law or en-

¹⁵⁹ Exec. Order No. 8771, June 6, 1941. *Fed. Reg.*, Vol. VI, p. 2759.

¹⁶⁰ Department of State, *Bulletin*, Vol. IV, p. 531. Adopted April 26, 1941.

dangering the Canal is a very different consideration and entirely justifiable.

CONCLUSION

Many of the measures adopted after September 5, 1939, related in one way or another to the defense of the Canal and Canal Zone. These were accompanied by many acts of a military character. The strength of the armed forces stationed in the Canal Zone was greatly increased. Negotiations were conducted with the governments of neighboring states looking toward mutual assistance in the event of acts of aggression in the region of the Canal. Efforts were made to reduce the dangers which might arise from the existence of airplane facilities of an unfriendly or hostile nature in nearby territories.¹⁶¹ Canal terminals were reported to have been mined.¹⁶² Naval patrols were established off the terminals and no vessel was allowed to enter without the express permission of the patrol, which was not given until the vessel was under the control of the Canal authorities.¹⁶³

Indicative of the grave view held concerning the course of world events was the Proclamation of an "Unlimited National

¹⁶¹ *New York Times*, Sept. 20, 22, 1939, May 31, 1940.

¹⁶² *Ibid.*, June 26, July 9, Aug. 3, 1940. Foreign vessels were warned to approach Canal Zone harbors by special courses. U. S. Navy Department, Hydrograph Office, *Notice to Mariners*, No. 27, July 3, 1940, p. 540, sec. 1753.

¹⁶³ *Notice to Mariners*, No. 35, Aug. 28, 1940, p. 691.

"Aug. 20. Special Warning No. 99.—The Panama Canal authorities advise that owing to the changes being made from time to time in the channels leading to the Atlantic and Pacific entrances to the Panama Canal it is unsafe for any ship to enter the ports of Cristóbal or Balboa without receiving instructions from the United States Naval vessel stationed outside each entrance. All ships are required to stop near this naval vessel and may not proceed until the necessary instructions have been received.

"Ships disregarding this order do so at their own risk and may be liable for legal action for noncompliance."

Vessels were boarded for inspection on the seaward side of the Patrol at the Pacific terminal, whereas they were usually permitted to pass into Limón Bay at the Atlantic terminal following a Canal tug before inspection on account of the heavy seas running outside of the breakwater, especially during the dry season.

Emergency" issued by President Roosevelt on May 27, 1941, which, as stated in the context of the Proclamation, "requires that its [i.e. the United States'] military, naval, air, and civilian defenses be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere."¹⁶⁴ While the issuance of this Proclamation made a number of powers theretofore not invoked by the President available for application,¹⁶⁵ one of the immediate consequences was to place the Canal Zone in a state of civilian as well as military alert.

A survey of practice during two World Wars leads to the conclusion that the Canal treaties and agreements have given the United States a durable body of rights adequate for dealing with the problems which have confronted it. As yet it has not had to deal with a situation in which large numbers of vessels of both opposing belligerents have constantly sought transit. It has been prepared for such an exigency, but experience alone can tell whether existing regulations and military precautions are sufficient for the issues which might be presented under such circumstances.

It seems fair to say that the United States has been reasonable in the regulations which it has instituted for the use of the Canal during time of war. It has generally allowed neutrals and belligerents, saving its own enemies, transit subject to a minimum of restraint essential for safeguarding the waterway. During its belligerency in 1917-18 it interpreted the "neutralization" rules to its own advantage by understandings with Great Britain and Panama. In 1941 these rules were again construed to meet national interests. Although the militarization of the Canal Zone, together with the phraseology of some legal measures, may warrant enemies of the United States regarding the Canal as belligerent jurisdiction and as a legitimate object of attack, the extensive military preparations

¹⁶⁴ *Fed. Reg.*, Vol. VI, p. 2617.

¹⁶⁵ See list in *Cong. Rec.*, May 28, 1941, pp. 4605-4612 (Daily ed.).

which the United States has been making for many years in the Isthmus of Panama and elsewhere warn that armed force will not be lacking for use in case of need for the enforcement of the laws relating to the Canal, or for its defense.

All things point to a fixed determination on the part of the United States to exercise at all times a degree of control calculated to insure uninterrupted operation of the Canal for vessels which it may see fit to pass. In wartime this control must necessarily increase in intensity. It must likewise be conditioned to some extent by policies being followed by other Great Powers. A program of world-wide conquest on the part of any foreign state or group of states must inevitably evoke the enforcement of more stringent regulations than a limited war between small nations in a remote part of the globe. While the United States has allowed transit of the Canal to the vessels of all nations in time of peace, regardless of the domestic and foreign policies of the nations whose vessels seek passage, it has left no doubt of its determination to employ the Canal as an instrument of its own national policy and defense plans during any large international conflict in which it feels an intimate interest.

CHAPTER V
GOVERNMENT, ADMINISTRATION, AND
BUSINESS ENTERPRISE

THE Panama Canal Zone is unique among all lands subject to the jurisdiction of the United States. It was "granted" to the United States "in perpetuity" for the construction, maintenance, operation, sanitation, and protection of the Panama Canal. It was not ceded nor was it leased to the United States, yet Panama contracted away "the use, occupation and control" of the Zone for a period of endless time. Notwithstanding complete renunciation by Panama of "all right, title and interest" to the lands, canal, property, and rights acquired by the United States from the New Panama Canal Company, and a covenant that they "shall not be in any respect lessened or impaired" regardless of the political future of the Republic of Panama, the United States did not acquire absolute sovereignty over the Zone. It did, however, specifically obtain "all the rights, power and authority within the Zone" which it "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 rights, power or authority." The Zone has sometimes been spoken of as a "possession" of the United States.¹ It is doubtful, however, whether it can be so regarded from the point of view of international law in view of the language employed in the Canal

¹ The Fifth Circuit Court of Appeals in the case of *Huasteca Petroleum Co. v. U. S.* (14 Fed. (2d) 495) held the Canal Zone to be a possession, but not a part of the United States, so far as the application of Sec. 863 of the United States Revised Statutes regarding depositions *de bene esse* is concerned.

Convention. Nevertheless, there is sufficient *majestas* enjoyed by the United States to exclude claim on the part of any other state to exercise rights of possession.

The Zone is not an "incorporated territory," like Alaska and Hawaii. On the other hand, it is distinguished from Puerto Rico and the Philippines, which are held as "unincorporated territory." There can be no doubt that the Zone is "territory under the control and jurisdiction of the United States." Nevertheless, it has not been brought within the customs and immigration barrier of the United States, not all laws passed by Congress apply within the Zone, and on one occasion at least Canal Zone ports have been considered "foreign ports."² Both the customs and immigration laws of the United States apply to goods and persons entering the United States from the Canal Zone. Likewise, the Canal Zone has its own regulations regarding such matters, applicable to goods and persons coming from the United States as from any other country.

THE POWERS OF CONGRESS IN RELATION TO THE CANAL AND ZONE

Although it may be debated whether under the terms of the 1903 Convention the Canal Zone, as distinguished from the Panama Canal, is regardable as "a possession" of the United States, there is no denying that it is territory under the jurisdiction of the United States. As such, the Canal Zone falls within the scope of the powers of Congress under Article IV, Section 3 of the Federal Constitution. It is the proper object of such "needful Rules and Regulations" as the Congress may see fit to enact. As an instrumentality for the promotion of national defense, as well as for the facilitation of interstate and foreign trade, the Panama Canal is unquestionably a proper

² The United States Supreme Court in the case of *Luckenbach S. S. Co. v. U. S.* (280 U. S. 173), held that Canal Zone ports are to be considered foreign ports within the intent and meaning of a statute granting compensation to ship operators for carriage of mails between the United States and "foreign ports."

object of the exercise of the constitutional powers of Congress to provide for the national defense and the regulation of commerce. For purposes connected with these ends, Congress may, under Article I, Section 8, of the Constitution, appropriate and authorize the expenditure of national funds, and enact laws for the construction, operation, maintenance, sanitation, and protection of the Canal.³ Exercising its prerogatives, Congress has appropriated the necessary funds for the Canal enterprise, and from time to time laid down the fundamental law governing the Panama Canal and Canal Zone. The most notable instances of this have been the Act of April 28, 1904, the Panama Canal Act of 1912, and the Canal Zone Code Act of 1934.

Laws passed by Congress for the United States and its possessions apply in the Canal Zone when expressly so designated in the act itself, and also when it is provided that an act shall be applicable "to the United States and all territory under its control and jurisdiction." Some of the general laws of the United States are, however, regarded as being applicable, notwithstanding the fact that they may not mention the Canal Zone nor territory under the control and jurisdiction of the United States, if they are by their terms extended to "possessions," there being nothing in the laws to indicate that Congress, in its use of the word possessions, intended to recognize any technical distinction between the status of the Canal Zone and regular possessions. Some administrative laws, such as those pertaining to "all government employees" or to "all departments and independent agencies of the United States Government," are considered applicable to the employees of The Panama Canal and to The Panama Canal as a distinct branch of the Government of the United States. On the other hand,

³ *New York ex. rel. Rogers v. Graves et al.* 299 U. S. 401. In testing the Spooner Act and the Panama Canal Act the Supreme Court held that the operation of the Panama Railroad Company, as well as the Canal, was a proper governmental function.

the provisions of the Constitution concerning civil and political rights do not apply in the Canal Zone unless and except insofar as they are extended by Congress.⁴

Following a principle adopted in 1904, Congress has authorized the President to exercise a broad scope of powers over the Canal and Canal Zone, thereby advancing efficiency in administration and a centralization of executive activities. The Congress may, however, at any time subject the powers granted to the President to limitation, or it may revoke them entirely. It has maintained a control over policy and administration by specifying that "no money shall be expended for any of the purposes of constructing, and maintaining said Isthmian Canal, or for any purposes incident thereto, except in accordance with appropriations made by Congress."⁵ It may also accomplish the same end by enacting changes in the *Canal Zone Code*.

The law in force in the Canal Zone is composed of the *Canal Zone Code*, general acts of Congress applicable in the Zone, together with Executive Orders and Proclamations issued by the President, and Regulations issued by the Governor of The Panama Canal, having the force of law and currently in effect.⁶

⁴ *McConaughey v. Morrow*, 3 *Canal Zone Reports*, 377, 381. The first statute passed relating to government in the Canal Zone provided for "maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion." 33 Stat. 429.

⁵ 34 Stat. 5.

⁶ The Code is made up of an Act of Congress (48 Stat. 1122) which includes former acts applicable to the Canal and Canal Zone, those acts and ordinances of the Isthmian Canal Commission and Executive Orders of the President relating to affairs in the Canal Zone issued prior to 1912 which were ratified and confirmed as law by Congress, and certain subsequent orders which Congress has confirmed. In other words, the Code "embraces all the laws relating to or applying in the Canal Zone, except such general laws of the United States as relate to or apply in the Canal Zone." *Canal Zone Code* (Washington, 1934), p.v.

Executive Orders, Proclamations, and Regulations in force in the Canal Zone as of June 1, 1938, are to be found in the *Code of Federal Regulations of the United States of America*, Title 35, "Panama Canal." Executive Orders, Proclamations, and Regulations coming within the Title and Chapters of the C. F. R., issued since June 1, 1938, may be found in the *Federal Register*.

THE AUTHORITY OF THE PRESIDENT

The President's powers in relation to the Canal Zone stem originally from the Spooner Act. This empowered him to acquire the territory and rights necessary for the construction of a canal, and, through the Isthmian Canal Commission, to proceed to the excavation, construction, and completion of such canal.⁷ Shortly after the ratification of the Convention with Panama, Congress passed the "Act to provide for the temporary government of the Canal Zone at Panama . . .," which stated that ". . . all the military, civil, and judicial powers as well as the power to make all rules and regulations necessary for the government of the Canal Zone and all the rights, powers, and authority granted by the terms of such treaty [with Panama] shall be vested in such person or persons and shall be exercised in such manner as the President shall direct. . . ."⁸ As the Canal approached completion, Congress formulated a more permanent policy by means of the previously mentioned Panama Canal Act. This authorized the President to ". . . complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed and operated. . . ." It also enumerated various specific powers which the Chief Executive or his delegate might exercise. Thus, he can acquire additional land necessary to the operation and maintenance of the Canal, or extinguish private claims to property within the Zone. With the advice and consent of the Senate, he appoints the Governor, the district judge, district attorney, and marshal for the Zone. He designates the person who shall assume "exclusive authority and jurisdiction" over the Canal and Canal Zone when, in his opinion, war is imminent. By the Act of August 21, 1916, it was added that he might make rules and regulations affecting health, sanitation,

⁷ 32 Stat. 481. See also "Act to provide for the temporary government of the Canal Zone at Panama, the protection of the canal works, and for other purposes," 33 Stat. 429.

⁸ 33 Stat. 429.

quarantine, taxation, public roads, self-propelled vehicles, and police powers for the Canal Zone.⁹ Congress, has, in short, given the President broad initiatory and administrative powers respecting the Panama Canal and Canal Zone, and it has not restricted him in the manner of executing these powers.

THE WAR DEPARTMENT AND THE CANAL ADMINISTRATION

In a letter to the Secretary of War on May 9, 1904, the President assigned a part of his responsibility for the Canal Zone to the Secretary of War. He wrote:

Inasmuch as it is impracticable for the President, with his other public duties, to give to the work of supervising the . . . construction of the Canal and government of the zone the personal attention which seems proper and necessary, and inasmuch as the War Department is the department which has always supervised the construction of the great civil works for improving the rivers and harbors of the country and extended military works of public defense, and as the said department has from time to time been charged with the supervision of the governments of all the island possessions of the United States, I direct that . . . all the governmental power in and over said canal zone and its appurtenant territory . . . shall be carried on or exercised under your supervision and direction as Secretary of War.¹⁰

The letter gave three instructions to the head of the Canal Zone Government relating to supervision by the Secretary of War. First, all laws, rules, and regulations of a governmental character were required to be submitted to the Secretary of War for his approval before they came into effect, and his disapproval sufficed to negate any measure. It was directed that an Annual Report should be prepared by the Canal authorities for transmittal to Congress via the Secretary of War. Finally, it was specified that Canal appropriations should be sought

⁹ 39 Stat. 528.

¹⁰ *Ex. O.*, p. 20. When Elihu Root became Secretary of State in 1905, President Roosevelt contemplated placing the Canal Commission under his control, but eventually decided to leave it with the Secretary of War. Jessup, *op. cit.*, Vol. I, pp. 518-519.

from Congress through the medium of the Secretary of War. It is logical that for purposes of efficiency, economy, and good administration, matters connected with the administration of The Panama Canal should be under one Cabinet officer. While the Canal authorities are responsible for protecting the Canal, local defense of the Zone has been assumed by the War Department. In time of war the operation and government of the Canal may be placed under the control of a Commanding General of the United States Army. The Canal was constructed by engineers drawn from the Army Engineer Corps. The Governor of The Panama Canal and the Engineer of Maintenance, who is second in authority in the civil administration of the Panama Canal Zone, have in all instances held high military rank and been members of the Army Engineer Corps.¹¹ The reasonable conclusion is that supervision of the Canal and the Canal Zone has quite properly been given by the President to the Secretary of War.

As indicated by the President's letter placing the Canal under the supervision of the Secretary of War, and by the Executive Order of January 27, 1914, providing for the permanent organization of the Canal, the authority of the Secretary in Canal affairs is far from a nominal one. He can guide policies. He can alter administrative organization and procedures. He can influence the future development of the enterprise. He can adjust the relationships between the Canal authorities and the commanding officers of the Panama Canal Department of the Army in peace and in war. He can promote or retard contacts between The Panama Canal and other branches of the Federal Government.

The time of the Secretary of War is always under pressure due to the manifold concerns of his office. In order to provide adequate attention to Canal affairs it has become customary to have an Administrative Assistant in his office to deal in first

¹¹ Memorandum accompanying Exec. Order of Jan. 27, 1914, providing for a permanent organization of the Canal. *Ex. O.* p. 157.

instance with such matters. This assistant provides the Secretary with such information as may be required by him on any occasion. He keeps himself informed on all things relating to or affecting the Canal, and advises the Secretary on problems calling for his personal attention. He channels communications to or from other departments of the Government, or interested parties outside of the Government. He may be, as is presently the case, a member of the Board of Directors of the Panama Railroad Company. Thus, he may, as Assistant to the Secretary, exert considerable influence upon the operation and administration of the Canal and Railroad. If his identity is obscured to the public, his, nevertheless, is one of those behind-the-scenes positions which is indispensable to the effective operation of a Government of the size of that of the United States of America today.

THE NAVY AND THE CANAL ADMINISTRATION

The organization of The Panama Canal includes several naval officers¹² who are under the direction of the Governor for their terms of service with the Canal.¹³ While they are detailed to such duty by the Secretary of the Navy, they are, nevertheless, instructed by him to place themselves under the orders of the Governor. They are subject to recall to active service with the Navy by the Secretary of the Navy at any time, and to replacement by other officers approved by the Governor.¹⁴ Although the Army is responsible for the local defense of the Canal Zone by means of coast artillery and

¹² Naval officers are detailed for duty as Marine Superintendent, Captains of the Terminal Ports, and Superintendent of the Mechanical Division. Exec. Order No. 1885. *Ibid.*

¹³ Exec. Order No. 1888, Feb. 2, 1914, *ibid.*, p. 158. Section 2 states that ". . . employees are subject to the regulations of the Governor."

¹⁴ Naval officers detailed for Canal duties continue under navy pay, in accordance with a part of Section 4 of the Panama Canal Act, which provides: "If any of the persons appointed or employed . . . shall be persons in the military or naval service of the United States, the amount of the official salary paid to any such person shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act." 37 Stat. 560.

other defenses, the Navy Department has bases, dockyards, and naval air stations situated in the Canal Zone as a part of the naval defense program both of the Canal and of the United States. Thus the Navy contributes to the civil administration of the Canal and participates in its defense.

RELATION OF OTHER FEDERAL DEPARTMENTS TO THE CANAL

The Department of Justice administers the United States District Court of the Canal Zone.¹⁵ The Department of State discharges the obligations of the United States to foreign states incurred because of the Canal, negotiates with the Republic of Panama and with foreign governments in all matters requiring diplomatic arrangement. Revenues collected by the Panama Canal are sent to the Treasury Department and money available from Congressional appropriations comes from this Department. Canal accounts are audited annually by officers under the direction of the Comptroller General.¹⁶ The Federal Employees' Injury Compensation plan is administered in the Canal Zone by the Governor. Although commerce plays an important role in the Zone, the Commerce Department has no voice in the conduct of affairs at the Canal. The Zone has its own postal system and the Post Office Department of the United States is not responsible for it. Other Departments of the Federal Government have little direct contact with the Canal organization. In all instances reports, requests, and communications affecting any Department of the Federal Government must pass through the Governor and Secretary of War,¹⁷ thus assuring propriety of form and relationship.

"THE PANAMA CANAL"

For many years it has been customary to refer to the collectivity of authorities governing and administering the Panama Canal and Canal Zone as The Panama Canal. This practice

¹⁵ See *infra*, pp. 245-246, for discussion of the Court.

¹⁶ 38 Stat. 886; 42 Stat. 24; 48 Stat. 1122.

¹⁷ Exec. Order of May 24, 1927. *Ex. O.*, p. 408.

has not rested upon the terms of any treaty or law but rather upon usage and terminology employed in Executive Orders of the President. The treaties with Panama and laws passed by Congress refer to the "operation and control of the Panama Canal," and to "the government of the Canal Zone." The manner in which the two things have been constantly associated leaves no room for doubt as to the propriety of uniting the performance of both functions in the hands of a single organization. It remained, however, to the President, acting upon the direction of Congress "to govern and operate the Panama Canal and govern the Canal Zone, or cause them to be governed and operated, through a Governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties,"¹⁸ to first employ the designation The Panama Canal as referring to the permanent organization in the Canal Zone and in Washington,¹⁹ as distinguished from the waterway alone.

¹⁸ 37 Stat. 560.

¹⁹ The form was used for the first time in an Order of March 2, 1914, creating a Washington Office of The Panama Canal, and continuing in force previous Orders relating to "rules, regulations, and executive orders for the government of officers and employees of The Panama Canal and the transaction of the business of The Panama Canal." *Ex. O.*, p. 162. This Order specifically referred back to the Order of Jan. 27, 1914, which had established the permanent organization for the Panama Canal but had not employed the formal terminology "The Panama Canal."

Although practice remains far from uniform in the use of the form The Panama Canal in government documents when referring to the organization controlling and governing the waterway and the Canal Zone, it is a term properly utilizable in this connection, and an effort has been made herein to follow the general practice of the Government.

The *Code of Federal Regulations*, Title 35, deals with "Panama Canal" and not "The Panama Canal." Nevertheless, in the context of that Title of the Code, it will be found that an effort has been made generally to use the form "The Panama Canal." Thus, the first section of Chapter I states that "'Governor' shall mean the Governor of The Panama Canal." This seems suitable when referring to the head of the entire administration localized within the Canal Zone. On the other hand, as the chief authority in charge of the inter-oceanic canal, it seems equally proper to use the form Governor of the Panama Canal. In as much as a waterway as such does not employ workers, it is correct to speak of the employees of The Panama Canal. Likewise, the authorities who administer the Canal may be spoken of as the authorities of The

GOVERNOR
 THE PANAMA CANAL
 PRESIDENT, PANAMA RAILROAD COMPANY

DEPARTMENT OF OPERATION & MAINTENANCE

U.S. MARSHAL (Dept. of Justice) — U.S. DISTRICT COURT (Dept. of Justice) — U.S. DISTRICT ATTORNEY (Dept. of Justice)

ACCOUNTING DEPT. COMPTROLLER T
 Panama Canal & P.R.R. Accounts, Inspection, Audit.

PAYMASTER T

COLLECTOR T

CIVIL INTELLIGENCE SEC. T

SEN. AERONAUTICAL INSP. T

WASHINGTON OFFICE CHIEF OF OFFICE T
 Administration, Purchase, Employment

PANAMA RAILROAD CO. NEW YORK OFFICE - VICE-PRES.
 General Office - Panama Line
 Commissary Purchasing Agent

SUPPLY DEPARTMENT CHIEF QUARTERMASTER
BUILDING DIVISION B
 Construction & Maintenance of Buildings.
MOTOR TRANSPORTATION DIV. B
 Official Motor Vehicles Stables & Repair shops
QUARTERMASTER DIVISION T, S, B
 Quarters, Care of grounds & Public Bldgs. General Utilities, Gas Stations
STOREHOUSES & OIL PLANTS B
 Purchase, Storage and Sale of Supplies
CANAL ZONE EXPER. GARDENS T
PANAMA CANAL PRESS B
SUBSISTANCE SECTION B
 Silver Messes

MECHANICAL DIVISION B
 Dry Docks, Marine & R.R. Shops. Design & Construction of Floating Plant
MARINE DIVISION T
 Captain of Port Cris. and Balboa. Board of Admeasurement. Board of Local Inspectors. Aids to Navigation Salvage Section.

OFFICE OF ENGINEER OF MAINTENANCE
 Engineer of Maintenance
 2nd. Vice-Pres. Panama Railroad Co.
DREDGING DIVISION T
 Construction & Maintenance of Channels & Harbors, Ferry Services, Gravel Plants, Floating Crane & Lighterage Service
SPECIAL ENGINEERING DIV. T
 Design & Construction of Third Locks. Safety Section

OFFICE OF ASST. ENGINEER OF MAINTENANCE
 Asst. Eng. of Maintenance
MUNICIPAL DIVISION B
 Construction, Operation & Maintenance of Highways Water & Sewer Systems Heavy Const. (Except. Bldgs.)
ELECTRICAL DIVISION B
 Maintenance & Operation of Light & Power Systems Electrical Constn. & Repairs
 For Panama Railroad Co. Maintain & Operate Telephone & Telegraph System Railroad Signal System
OFFICE ENGINEER DIVISION T
 Architectural, Structural, Electrical-Mechanical-Design, Estimates, Planning Topography, Field Surveys
SECTION OF METEOROLOGY AND HYDROGRAPHY T
LOCKS DIVISION T
 Maintenance & Operation Locks, Dams & Spillways

EXECUTIVE ASST. TO ENGINEER OF MAINTENANCE
PLANS SECTION T
 Staff Agency Statistics on Canal Traffic

P.R.R. AGENCIES UNDER CHIEF O.M.
COMMISSARY DIVISION
 Retail Stores, Warehouses, Cold Storage Plant, Laundry and Food Processing Plants
HOTELS
 Tivoli and Washington Hotels
MINDI DAIRY

LEGEND
 ** All matters involving more than one division are coordinated by the Engineer of Maintenance
 T - Transit Divisions
 B - Business Divisions

EXECUTIVE DEPARTMENT
OFFICE OF EXECUTIVE SECRETARY
EXECUTIVE OFFICE T
 General Correspondence and Records
DIVISION OF CIVIL AFFAIRS T
 Post Offices, Customs, Licenses, Estates and Shipping Commissioner
POLICE AND FIRE DIVISION T
DIVISION OF SCHOOLS T
 Schools & Playground Section
PANAMA CANAL CLUBHOUSES
GENERAL COUNSEL T
MAGISTRATES COURTS T
Division of Personnel Supervision & Management T
 Recruiting, Employment and Personnel Records
PANAMA CANAL LIBRARY T
REAL ESTATE SECTION
 Panama Railroad Co. Agency under Executive Secretary

HEALTH DEPARTMENT CHIEF HEALTH OFFICER
HOSPITALS T
 Gorgas, Colon, Corozal, Margarita Hospitals. Town Dispensaries. Leper Colony & Aid Stations
DIVISION OF SANITATION T
 Mosquito Control, Food Inspection and Garbage Disposal
DIVISION OF QUARANTINE AND IMMIGRATION T
DIVISION OF PREVENTIVE MEDICINE T
 School Medical Service District Nursing Service Physical Examinations Dental Clinics

PANAMA RAILROAD CO. GENERAL MANAGER
MASTER OF TRANSPORTATION
ROADMASTER
RECEIVING AND FORWARDING AGENCY
 Handling & Distribution of Ocean Going Freight
Cooling Plant
LOCAL AGENCY - PANAMA
LOCAL AGENT - PANAMA LINE

ORGANIZATION CHART
 THE PANAMA CANAL
 AND
 THE PANAMA RAILROAD CO.
 1941

As distinguished from the Panama Railroad Company which serves the Canal enterprise and is wholly owned by the Government of the United States, but which operates as a business corporation under a charter of incorporation from the State of New York, The Panama Canal is a part of the executive branch of the Government of the United States. Its acts, property, funds, employees, rights, and liabilities are, generally speaking, those of the United States acting in its governmental capacity.²⁰

THE GOVERNOR

The administrative organization of The Panama Canal and Canal Zone is highly centralized, pointing up in the person of the Governor of The Panama Canal. This is the result of a process of experimentation commenced during the construction period. As was noted in Chapter I, the Isthmian Canal Commission governed the Canal Zone from 1904 to 1908. In the two years that followed, the process of administering the Zone was gradually transferred to the Chairman of the Commission, Colonel George W. Goethals, who was also Chief Engineer of the Canal, as it was found the large body was not capable of prosecuting the task at hand with sufficient vigor. The Commission functioned more and more in an advisory capacity, acting as a board of directors. Finally, work on the Canal and in the Canal Zone was organized into departments,

Panama Canal. But, as they also operated the waterway, it would seem just as proper to characterize them as the authorities of the Panama Canal. Such distinctions, while perhaps seeming to be lawyer's finesse to the layman, do express differentiations which exist, and they form the basis for the differing manner of using the article.

²⁰ In a case involving a suit against the Governor of the Panama Canal and others for damages on account of alleged incompetence of a Canal pilot, the Fifth Circuit Court of Appeals said: "this suit, though in name and by fiction against the Panama Canal, a mere designation of a governmental activity, and the Governor of the Canal Zone, is in fact a suit for tort brought against the United States in its governmental capacity." The Court held that suit could not be maintained without consent. *Cie Générale Transatlantique v. Governor of the Panama Canal et al.* 90 Fed. (2d) 225.

and department heads were made responsible directly to the Chairman of the Commission and only indirectly, through the Chairman, to the Commission itself. This general organization was maintained during the period of construction. As this period approached an end, the Commission was abolished and the organization which had evolved under the direction of the Chairman was retained as the permanent means of operating the Canal and Canal Zone. In the Panama Canal Act the title of Chairman of the Commission was changed to Governor of the Panama Canal. The authority of Colonel Goethals was not materially altered thereby, except insofar as it was increased by the fact that he worked directly under the supervision of the Secretary of War rather than through the Commission.

The Panama Canal Act states that the Governor has "official control and jurisdiction over the Canal Zone and shall perform all duties in connection with the civil government of the Canal Zone which is to be held, treated and governed as an adjunct of the Panama Canal."²¹ His power is extensive. It is superseded only in time of national emergency when civil authority may be made subject to the order and direction of "such officer of the army as the President may designate." This coordination of Canal and defense may, but does not necessarily, involve drastic changes in administration of the Canal and Zone. Beginning in 1917 and again in 1939, the Canal was placed under the direction of the Commanding General. This resulted in little alteration in Canal Zone administration save for a time during 1918.

The Governor is the chief executive in the Canal Zone. He has supervision over all departments and divisions of The Panama Canal. At the same time he is President of the Panama Railroad Company. Within the restrictions of law and of orders of the President of the United States he has a broad degree of latitude in arranging details of administration. He has ultimate authority regarding employment and personnel

²¹ 37 Stat. 560. The powers were restated in 42 Stat. 1004.

administration. All matters involving relationships with other branches of the Federal Government must pass through his hands. He conducts correspondence with members of Congress who interest themselves in Canal affairs. He controls private business within the Zone through his licensing authority. A business may be permitted to operate in the Zone if he finds it to be "proper, legitimate, permissible under the laws of the Canal Zone, and not in conflict with the policy of administering the Canal Zone as an adjunct of the Panama Canal,"²² and if it is permitted under the terms of the 1936 Treaty. He may revoke such a license at any time if the business proves to be "contrary to public policy or to the policy of administering the Canal Zone as an adjunct of the Panama Canal."²³

Not the least of the Governor's tasks is the conduct of relations with the Government of the Republic of Panama, insofar as this may be necessary. This may be handled in several different ways. Particularly important questions may be taken up with the Department of State in Washington through the Secretary of War, and by the Department of State directly with the Government in Panama City. Matters requiring less formal action may be handled through personal contact with the American Ambassador in Panama. Negotiations over detailed and routine questions may be conducted by the Governor directly with the authorities of the Government of the Republic. The conduct of these negotiations established between the Republic, the United States, and The Panama Canal by the treaties and by propinquity are such that questions frequently arise which call for some measure of consultation. In times of international conflagration this may involve delicate and arduous conference. This has likewise been the case whenever it has been necessary to obtain additional land or rights outside of the original Canal Zone, as in the cases of the construction of the Madden Dam and Reservoir, and the building of the trans-

²² 3 *Canal Zone Code*, Sec. 224.

²³ *Ibid.*, Sec. 230.

Isthmian highway. Whatever the official policy of the United States has been, whether that of the Good Neighbor or something else, the Governors of The Panama Canal have regarded it as one of their primary duties to attempt to maintain friendly relations with Panama.

Under the American system of government, department and office heads must appear before committees of Congress each year, to seek authorization for future undertakings, and to argue for appropriations for the ensuing fiscal year. The Governor of The Panama Canal is no exception to this rule. Ordinarily about one-sixth of the year must be spent in Washington for these purposes. He must also appear in Washington whenever special investigations or hearings affecting the Panama Canal are being conducted by Congress and demand his presence. As President of the Panama Railroad Company he attends the annual meeting of the Directors of the Company which for many years has been held in New York. The successful discharge of these responsibilities means that the Governor must not only have complete command of the affairs of the Canal and Railroad but that he must be persuasive, clever, and tactful.

One cannot omit at least passing mention of the Governor's social obligations. Many important officials and personages visit the Panama Canal in the course of each year. These must be received and entertained. Relationships with the ranking officers of the Army and Navy stationed at the Canal Zone entail a good deal of social life. Finally, the maintenance and promotion of friendly intercourse with the members of the Government of Panama necessitates extensive participation in social occasions with them.

Paramount among the preoccupations of the Governor is that of general policy-making. Notwithstanding the mass of detail which confronts him from day to day, no such combination of public utility and government could long operate efficiently or adapt itself to changing world conditions without foresighted

planning. This might be monopolized by the President or the Secretary of War, insofar as the law goes. These officers of State have, however, always tended to place much reliance upon the Governor's judgment in plotting out the lines which should be followed, thus stimulating initiative and a local sense of responsibility for the future of the Canal. Policy-making, nevertheless, is a task requiring time for reflection and study. In order to afford more opportunity for this, a careful division of labor has been worked out among the higher officers, and the Governor has been provided with an executive assistant capable of relieving him of numerous details. For policy formulation purposes a sort of unofficial cabinet has been developed which meets frequently for informal conference. The composition of this may differ somewhat in accordance with the nature of the matter at hand. Officers often included are the special Assistant to the Governor, the Engineer of Maintenance, the Marine Superintendent, the Executive Secretary, and the Comptroller. To this group may be added the Assistant Engineer of Maintenance and the General Counsel. If a matter involves the Panama Railroad, the General Manager of that organization may be brought in. This flexible, informal arrangement has definite advantages over anything more formalized. One cannot but feel that the collective planning of these men has borne much fruit. At the same time it has done much to develop that loyalty and *esprit de corps* which has marked the Canal organization over the years. It remains only to be urged that the Congress continue to see the wisdom of allowing the Governor the latitude he now enjoys, and of providing liberally enough so that there may always be a staff sufficiently large and technically competent to allow the Governor and his chief aides time for review and planning.

Since the retirement of Colonel Goethals, the Governor of The Panama Canal has customarily held office for four years. He is appointed by the President on nomination of the Secretary of War, and the appointment must be confirmed by the

Senate. The tradition was established at the opening of the Canal, and has been consistently followed ever since, that the appointee shall be the person holding the position of Engineer of Maintenance, and that this person in turn shall be drawn from the Army Engineer Corps. This practice has meant that each new Governor has already had at least four years of experience in Canal administration prior to his appointment, and it has done much to promote the efficiency which is characteristic of the Panama Canal and Panama Railroad. It has eliminated politics from an office pre-eminently calling for administrative ability and engineering experience. The continuous improvement of the Canal project through dredging, the construction of the Madden Dam, and of the third set of locks has demonstrated irrefutably the need for such qualifications in the office of Governor.

There are without doubt capable administrators in other branches of the Army, the Navy, or in civilian life who might be chosen for the Governorship if the administrative side were the only one to be considered at the Panama Canal. But, as the preceding discussion of the powers and duties of the Governor has evidenced, Canal administration deals with something more than government. The Panama Canal is above all a military-engineering undertaking. For the maintenance and operation of such a public works the personnel of no other branch of the United States Government receives a training comparable to that of the Army Engineer Corps. So long as the Canal retains its present characteristics, it seems proper to say that the Governor should be chosen according to the principles followed since 1914.

OPERATION AND MAINTENANCE OF THE WATERWAY

In turning to an examination of the departmental organization of The Panama Canal, it is natural that attention should be devoted first to the Department of Operation and Maintenance, since it is concerned with the technical engineering aspects of

the Canal enterprise. It occupies the central position in the administration of The Panama Canal, and from the point of view of the functioning of the Canal as a waterway, may be said to be the most important department. Its activities are legion. They relate in the first place, as the name implies, to all matters connected with the operation and maintaining of the Canal. In this connection the Department superintends canal traffic, operates and keeps up the locks and dams, handles the measurement and inspection of vessels, maintains aids to navigation, supervises harbors, and provides for the ever-necessary dredging of the Canal. In the second place, the Department has charge of various business activities which are auxiliary to the operation of the Canal. These include the extensive shops, the dry docks, and fueling stations. In addition, the work of the Department embraces certain governmental functions, such as hydrographic observations, surveys and estimates, together with municipal and electrical engineering.

THE ENGINEER OF MAINTENANCE

The successful running of such a department requires at its head consummate administrative proficiency. This has long been appreciated in Canal circles. Consequently, the Department has been placed under the immediate supervision of the two highest officials: the Governor, assisted by the Engineer of Maintenance.

The Engineer of Maintenance occupies a position that is virtually unique in Federal administration. In addition to being the acting head of the Department of Operation and Maintenance, he is, by Presidential Order, second in power to the Governor, and acts as Governor in the absence of the latter.²⁴ But furthermore, tradition that has been unbroken since the opening of the Canal has established that this officer shall be appointed Governor of The Panama Canal whenever a vacancy

²⁴ *Ex. O.*, p. 157. In the "absence or disability" of both the Governor and the Engineer of Maintenance, the Marine Superintendent assumes the duties of the Governor. *Ibid.*, p. 333.

occurs in that office. The Engineer of Maintenance is called frequently into consultation with the Governor, and acts with him in policy determination. By direction of the Governor he may be designated to perform various executive duties. He is the "direct representative of the Governor for securing economy and efficiency in the management of the government functions and business operations of The Panama Canal and Panama Railroad on the Isthmus."²⁵ He is the Second Vice-President of the Panama Railroad Company. To insure coordination of work in the Zone the Governor has ordered that all matters affecting more than one department or division must be taken up with the Engineer of Maintenance, and that correspondence with officials of the Army and Navy on the Isthmus must be passed on by him. The Engineer of Maintenance may issue orders in the Governor's name. In addition to assisting the Governor in administering the Department of Operation and Maintenance as a whole, he has particular responsibility for the Special Engineering Division which has charge of the construction of the third set of locks and of the secret protective work on the existing structures, as well as for the Plans Section and the Dredging Division.

The multiplicity of responsibilities and powers which have been assigned the Engineer of Maintenance might almost warrant calling him "Vice-Governor" of the Canal. Regardless of the lack of such a title, few ranking professional positions in the United States Government carry with them the virtual certainty of promotion to an office of such distinction as the Governorship of The Panama Canal. Looking back over the years one must say that the capabilities which have been shown by those who have held the Governorship have vindicated the wisdom of those who founded this regime. Such a system has provided advance training in office for those appointed Governor. It has insured continuity of policy. It has protected the Canal against the vicissitudes of politics.

²⁵ Governor's Circular No. 660-75, April 13, 1935.

The work of the Engineer of Maintenance requires some delegation of authority and a good deal of expert assistance. Next under him is the Assistant Engineer of Maintenance, who reports directly to the Governor in some matters. The duties of this officer comprise supervision of the Locks Division, the Electrical Division, the Municipal Engineering Division, the Section of Surveys, and the Office Engineer. In view of the fact that the heads of the Marine Division and the Mechanical Division report directly to the Governor rather than to the Engineer of Maintenance, the assignments to the Assistant Engineer of Maintenance take a large part of the routine, detailed work of the various divisions of the Department of Operation and Maintenance off the shoulders of the Engineer of Maintenance. This is as it should be. Notwithstanding this, the Engineer of Maintenance has been forced to deal with many matters of detail, especially in times of national emergency and of extensive new construction. In order to relieve the situation further, the position of Executive Assistant to the Engineer of Maintenance was created, allowing the shifting of some more of the routine executive work.

The operation of a lock canal of the size and nature of the Panama Canal necessarily involves a carefully integrated administrative organization. The Department of Operation and Maintenance is divided into twelve subdivisions. These are known as the Marine Division, Mechanical Division, Dredging Division, Panama Railroad (operation on the Isthmus as distinguished from the Panama Railroad Company), Electrical Division, Municipal Engineering Division, Locks Division, Section of Office Engineer, Section of Meteorology and Hydrography, and Plans Section. A division of recent creation, and of temporary duration (the Special Engineering Division), has to do with the construction of the third set of locks and the approach channels.

THE MARINE DIVISION

All matters having to do with the dispatching and the supervision of shipping in the Canal, and the necessary aids thereto, are under the supervision of the Marine Division. This Division is headed by the Marine Superintendent who, unlike the chiefs of most of the other divisions of the Department of Operation and Maintenance, reports directly to the Governor. At the direction of the President, a high ranking officer of the United States Navy is detailed to the position of Marine Superintendent, thus assuring proper technical knowledge of the handling of vessels. His rank brings to the Marine Superintendency a prestige which is important to the office. It also affords a ready access to the proper channels of the Navy in case of need. From the point of view of the administrative organization, the Marine Superintendent acts as Aide to the Governor on official and social functions, and he is designated to act as Governor of The Panama Canal in the event of the absence or disability of both the Governor and the Engineer of Maintenance. The direction that the Marine Superintendent should report directly to the Governor, rather than indirectly through the Engineer of Maintenance or Assistant Engineer of Maintenance is therefore quite proper. Delicate questions involving Canal policy are susceptible of arising on short notice in connection with the work of this Division. It is imperative, therefore, that the head of the Division should be in close touch with the Governor, and should be well informed on the general policy.

The Marine Division has manifold duties. These include the enforcement of the Rules and Regulations Governing Navigation of the Panama Canal and Adjacent Waters; the dispatching and transit of vessels, together with their assignment to anchorages or dockage, and the granting of clearance; harbor regulation; the maintenance of lights, buoys, and other aids to navigation; towage; salvage; piloting.

A large part of the work of the Marine Division is performed through the offices of the two Port Captains, at Cristóbal and at Balboa. Customarily the Port Captains are naval officers holding the rank of Commander. Vessels radio to these offices notice of the approximate time of their arrival off the terminals of the Canal. Here the arrangements are made for the necessary boarding inspections, measuring for and preparation of toll charges, supplying stores, fuel and water. Here transit schedules are composed for each day, with designation of times of departure for all vessels, assignment of pilots, and the detailing of transit guards when required. The Port Captains must see that vessels with hazardous cargoes are properly protected and in order for transit. They must satisfy themselves that vessels have met all of the Rules and Regulations for the Operation and Navigation of the Canal. The Dispatcher's office indicates when a vessel may leave its anchorage or dock for transit of the Canal. It also maintains a constant check upon the movements of all vessels while within the Canal, supervising traffic to see that passage through the locks and Cut is orderly and in accordance with the Rules and Regulations. In addition, the Port Captains have oversight of the terminals, harbors, harbor craft, tugs, and facilities located in the terminal harbors.

The Lighthouse Subdivision has charge of the buoying, bea-
coning, and lighting of the Canal and its terminals. Perhaps
strangely, it also is in control of all salvaging authorized by the
Governor.

The admeasurers who survey vessels preparatory to the col-
lection of tolls function as a part of the Port Captains' organi-
zation. Actually, they are under the Director of Admeasurement
who reports to the Marine Superintendent. This official is
responsible for administering the Rules for the Measurement
of Vessels for the Panama Canal. His task involves the
possession of much technical knowledge, insistence upon metic-
ulous measurement and computation, and advising on the

proper issuance of Panama Canal Tonnage Certificates. As a member of the Board of Admeasurers he has a large share in the drawing up of new measurement rules and regulations. He is a member of the Board of Transportation of Hazardous Cargoes. Finally, he is directed by the Governor to perform such other duties as may be assigned to him by the Marine Superintendent.

Various other activities come within the scope of the Marine Superintendent. He is chairman of a Board of Admeasurement, which determines in the last analysis points relating to measurement and to toll charges. He is Supervising Inspector of a Board of Inspectors of the Steamboat Inspection Service. This Board performs in the Canal Zone the customary inspections of the United States Steamboat Inspection Service, such as of hulls, boilers, engines, and issues licenses to pilots, masters, engineers and others. He is head of the Board of Transportation of Hazardous Cargoes, which sees to it that all vessels carrying such cargoes are equipped with the necessary safety devices and comply with the special regulations for the carriage of such materials through the Canal. He is also a member of the Board of Local Inspectors which investigates damages to vessels transiting the Canal, damages to Canal property caused by passing vessels, together with marine accidents which might be likely to lead to claims against The Panama Canal. Furthermore, the Marine Superintendent has been charged with the enforcement of the Governor's Regulations Concerning Air Navigation in the Zone.

Watching the methodical passage of many different types and sizes of vessels through the Canal day after day, one cannot refrain from praising the efficiency with which the men of the Marine and Locks Divisions go about their work. From the boarding of the first vessel at five-thirty in the morning until the dropping of the pilot from the last vessel through at the other end late in the evening, the routine moves forward expeditiously, without hitch and without bluster. Boarding vessels

with the boarding officers one invariably notices the friendly respect shown the Canal authorities by the officers and crews of transiting vessels. Inspections are completed and the vessels dispatched on their transit as quickly as possible, which may be in less than an hour after boarding. In the lockage process the same business-like handling prevails, one vessel being locked through as rapidly as another is out of the next chamber. In the peak year of 1929 an average of 17.2 transits per day were handled by the Canal. Even with a smaller average number of transits per day, traffic would be subject to delays were it not for the skilled administration of the Marine and Locks Divisions. During 1940 the aggregate delay caused all vessels in lockage due to "faulty operation or failure of equipment which held up traffic" amounted to only fifty-one hours and fifteen minutes.²⁶ Another test of efficiency may be found in the number of marine accidents taking place. During the years 1938, 1939, and 1940, the largest number of cases of vessels striking lock walls amounted to the amazingly low figure of seven in any one year. The greatest number of instances of vessels striking the Canal banks in any of these same years was three. Four ships grounded in 1939, but taking the three years as a whole only one ship struck Canal equipment.²⁷ These are indeed notable testimonials.

THE MECHANICAL DIVISION

The Mechanical Division is concerned with the maintenance, repairs, and new construction necessary for the efficient operation of the Canal and the Panama Railroad. As described in an Annual Report, the functions of the Division seem almost "too numerous to mention." To quote:

The mechanical division has jurisdiction over the mechanical and marine shops, drydocks, car shops, and roundhouses at Balboa and Cristóbal; the design, construction, and major alteration of hulls and machinery of floating equipment of the Panama Canal,

²⁶ *Annual Report, 1940*, pp. 31-32.

²⁷ *Ibid.*, p. 42.

Panama Railroad, and commercial business, except the electrical work; the design and technical matters of the railway rolling stock and of floating craft involving naval architectural subjects for the hulls and marine engineering subjects for the operating machinery; repairs to all equipment, floating and otherwise, of the Canal, Railroad, and commercial business (including merchant shipping) requiring mechanical or marine shop or drydock facilities, except electrical and automotive repairs; railway-car inspection, including repair of rolling stock, hostling, and manning the railway wrecking outfit; the maintenance of inspection services, including tests and repairs (except electrical and marine boilers) for the Canal and Railroad, for passenger and freight elevators, for weighing scales and measuring devices (scales, pumps, and meters), and for clocks, typewriters, and similar instruments; manufacture and distribution of compressed air, acetylene, oxygen, and hydrogen; and the fabrication of such machinery or equipment, floating and otherwise, spare parts, etc., as in the opinion of the Governor may be more economically or expeditiously made in the Canal Zone than purchased elsewhere.²⁸

This Division, also, is subdivided. A general office contains facilities for planning, estimating, and drafting, and for keeping accounts and records. The office of the Assistant Superintendent supervises the extensive Balboa shops. The Cristóbal shops are similar but of lesser magnitude, and are under the direction of a Production Superintendent who is responsible to the Superintendent of the Mechanical Division. The function of the subdivision for equipment and roundhouses may be gathered both from the title and from the recital of duties of the Division quoted above.

The Superintendent of the Mechanical Division, who is always a naval constructor, reports directly to the Governor like the Marine Superintendent, rather than through the Engineer or Assistant Engineer of Maintenance. This direct relationship was instituted in the days when the outlines of Canal administration were being worked out because of the important and multi-departmental type of work of the Division. Sooner or later, with the increasing pressure of responsibilities thrust

²⁸ *Annual Report*, 1938, p. 48.

upon the Governor, it may become desirable to have the Superintendent of the Mechanical Division report through the Engineer or Assistant Engineer of Maintenance. Such an adjustment would free the Governor's time somewhat without implying a diminution in the standard of headship required in superintendency of the Mechanical Division.

DREDGING DIVISION

The Dredging Division has occupied a foremost position in Canal affairs since construction days. Its work is no less essential today.²⁹ But for its constant operations, slides would have long since closed Gaillard Cut and silt from the tributary rivers would have blocked other parts of the Canal channel. Incessant excavation has been necessary since the opening of the Canal to navigation. This has been occasioned by the ever continuing movement of the slides, and by the necessity of improving the channel, harbors, and drainage. The increasing size and amount of shipping using the Canal has meant that the channel not only must be maintained at maximum depth and width, but widened in the narrower parts of the Cut.

The slides have been found to be of two sorts: gravity slides, such as the Cucuracha Slide, and slides due to structural weaknesses in the terrain, such as the Culebra Slides. The former type have occurred "where the excavated channel intersects beds of porous material lying on top of relatively impervious clays, shales or dense lava masses. Water sinking through the upper bed is retarded in its descent by the impervious material, and a slippery zone is formed between the two layers. If the lower layer dips toward the channel, or if there is much lateral pressure from higher ground, the material above the lubricated zone is almost sure to slide."³⁰

²⁹ The discussion of this Division is based upon a lecture delivered by the Superintendent, Mr. John G. Claybourn, before the Student Engineers of the Canal, Dec. 11, 1937. It is available only in the mimeographed *Manual of Information, op. cit.*

³⁰ *Ibid.*, p. 82.

The structural fault slides have been found to be the most troublesome and frequent offenders, particularly since 1915. "Their first manifestations are cracks or fissures approximately parallel to the Canal banks. The next stage is the tilting of large blocks of material, sometimes accompanied by upward bulging of the bottom of the channel. Such tilting, settling and bulging may continue for prolonged periods before the real slide occurs. This last stage consists in the comparatively rapid collapse of these large tilting masses, and in a very short time, sometimes only a few hours, it becomes a gravity slide of mud and rock debris which enters the channel, causing varying degrees of encroachment, depending upon the heights of the banks and nature of the material."³¹

On the basis of careful engineering studies, the Dredging Division has formulated a long-run program of work, involving the widening of the west side of Culebra Reach so that the bottom of the channel will be five hundred rather than three hundred feet wide, and cutting back to a lower gradient the upper masses of material lying on those areas subject to sliding. The magnitude of the work, as well as the imperative that the Canal be open at all times for vessels of the United States Government, has necessitated the accumulation at the Canal of a large amount of powerful, diversified equipment. This is figured as having a present capital value of seven million dollars. It includes three large dipper dredges, one hydraulic and one suction dredge, two subaqueous drill boats, two two hundred and fifty ton floating cranes,³² plus many barges and other equipment.

One of the concerns to the Division is the location of its dredges in such a way that the sudden occurrence of slides closing the channel would not find all on one side of the slide,

³¹ *Ibid.*

³² The two floating cranes possessed by this Division are among the largest of their kind in the world. They are used for handling lock gates, for salvage operations, and for other emergency calls requiring extraordinary lifting power. Their capacity is said to be sufficient to enable them to raise a sunken submarine.

or all isolated from the spoil dumps. This requires careful planning, as well as what might otherwise seem to be an unnecessary amount of equipment. At the present time materials excavated in Gaillard Cut are hauled to dumps located in Gatun Lake, approximately fifteen miles away. The length of the haul, together with the ever-present danger of an accelerated movement in the slides means that there must be sufficient disposal equipment on hand to enable the dredges to operate twenty-four hours a day.

The completion of Madden Dam has been a boon to the Dredging Division. It has reduced the amount of silt poured into the channel from the Chagres River, especially during the wet season. It has also served to regulate the water level in Gatun Lake, thereby alleviating the extremes of water level in the lake and allowing the dredges to keep a more uniform bottom.

The organization of the Division is divided into six main parts: Operations; Shops and Cranes; Drilling, Blasting, and Grading; Gravel Plant; Engineering; Division Office. The functions of each of these is generally explained by the title borne. The head of each of the groups reports to the Superintendent, who in turn reports to the Engineer of Maintenance.

The Engineering Group performs, among other things, the task of studying the slides and their movements. This is essential not only for determining where dredging must be done from day to day, but also for ascertaining the effect of fresh excavation upon slide movement. The safety and continuity of ship movement is dependent upon the accuracy with which such work is done.

It is obvious that close cooperation is necessary between the Dredging Division and the Marine Division. The latter must be informed at all times of the location and movement of dredging equipment; of the condition of the slides and channel. The Dredging Division, on the other hand, must know in advance the transit schedule for each day. It must have some

voice in determining the times when vessels may pass through the Cut when extensive operations are in progress, as well as in the regulation of the speed of vessels on account of the effect of wash. When a large amount of dredging has to be done in the narrow portions of the Cut, vessels are frequently required to wait at Paraiso and at Empire until all for the day have assembled for transit. Then the dredges are drawn to the side while all are passed through in rapid succession.

The task of the Division involves something more than merely keeping the Cut open. It embraces dredging and improvement of the harbors and terminals, the maintenance of the breakwaters at the Atlantic entrance, and the operation of the ferry service across Balboa harbor. The latter extraneous duties appear to have been imposed upon the Division because its personnel, equipment, and experience indicate its ability to perform them more efficiently than other divisions of the Canal administration.

ELECTRICAL DIVISION

The Electrical Division cares for the installation and maintenance of the power system and such other electrical equipment in the Canal Zone as may be required by The Panama Canal and other Government agencies, including the telephone and telegraph lines, fire alarms, railway signals, street lighting, and the printing-telegraph. This Division has charge of the hydro stations at Gatun and Madden Dams, and a diesel station at Miraflores. The telephone, telegraph, and signal systems are owned by the Panama Railroad, but are now operated by the Electrical Division. In addition to these operational activities, the Division functions as an electrical contracting agency owing to its obligation to install all new electrical equipment required in the Canal Zone. The one field in which it does not engage in electrical operation and maintenance is that of the lighting, power, and telephone systems at the Locks. While it puts in any new cables or equipment, operation is left with the

Locks Division. The Electrical Division has two main and two smaller subdivisions: Power System; Construction and Maintenance Section; Signal Section; Telephone Section. The first two are under the direction of Superintendents, and the last two under supervisors, all of whom report to the Electrical Engineer, who in turn reports to the Assistant Engineer of Maintenance.

MUNICIPAL ENGINEERING DIVISION

The Municipal Engineering Division is also under the supervision of the Assistant Engineer of Maintenance, and operates in the cities of Panama and Colón as well as in the Canal Zone proper. It is responsible for roads and streets, for sewage systems, and for the water system. Since the average daily consumption of water amounts to over 17,000,000 gallons,³³ the maintenance of pipe lines, reservoirs, filtration plants and pumping stations is no small task. As is the case with most of the organizations devoted to "maintenance," the work includes making "improvements." Thus one of the most valuable agencies of the Division is a testing laboratory. This makes analyses and tests of water, materials, soil, and model construction projects. The Division devoted much of its time in 1940-41 to the development and preparation of the new townsites at Albrook Field, Diablo Heights, Pedro Miguel, and Margarita.

LOCKS DIVISION

The operation of the Canal locks has already been described in Chapter III. The administrative organization of the Locks Division is simple. It is divided into two units, the Atlantic Locks and the Pacific Locks, each in charge of Assistant Superintendents responsible to the Superintendent of Locks who reports to the Assistant Engineer of Maintenance. At each lock there is a Lockmaster, a Mechanical Supervisor, an Electrical Supervisor—under whose supervision are the

³³ *Annual Report*, 1940, p. 86.

Control House Operators—Senior Locomotive and Tunnel Operators. The personnel consists in large part of mechanical and electrical craftsmen. Such paper work as is connected with the Division's functioning is carried on under the direction of two Chief Clerks.

MISCELLANEOUS SECTIONS

There are three sections within the Department of Operation and Maintenance devoted to the production of studies, records, and charts. These are the Section of Meteorology and Hydrography, the Section of Office Engineer, and the Plans Section.

The Section of Meteorology and Hydrography, the Chief of which reports to the Assistant Engineer of Maintenance, prior to May 1, 1940, was known as the Section of Surveys. Under its previous form it made various kinds of surveys, maps, records, measurements, and ratings for the Canal and Railroad. This included the gathering and broadcasting of weather and hydrographic information—indeed, of all data which might affect the water supply and navigation of the Canal. For these purposes it maintained meteorological and hydrographic stations at many points in the Isthmus. Because of its special knowledge, it also was assigned the brunt of flood control, which, however, is now much less a problem than it was prior to the construction of Madden Dam. By the Governor's Order of May 1, 1940, that part of the Section devoted to surveying was transferred to the Section of Office Engineer. Under the new arrangement the Section was placed under a Chief Hydrographer, and its responsibilities were concentrated on meteorological, hydrographic, and flood control matters.³⁴

The Section of Office Engineer reports also to the same Assistant Engineer of Maintenance. This organization prepares designs, blue prints, estimates, specifications, charts, surveys, cost data for work of all kinds for the Canal and Railroad.

³⁴ *Ibid.*, p. 62.

This extends from the preparation of designs for all sorts of things from locks, pipe lines, and refrigeration equipment to laying out town sites, roads, radio locations, or apartment houses.

The operation of an engineering project of the magnitude and, at the same time, of the intricacy of the Panama Canal requires precision work. It also demands detailed organization, constant observation, and careful planning for the future. This latter function is performed by an auxiliary administrative agency known as the Plans Section, which is responsible to the Engineer of Maintenance. Its function is twofold. In the first place, it conducts studies of existing methods of administration, maintenance, and operation in an endeavor to discover ways and means of increasing the efficiency of the Canal. In the second place, it formulates a long-term program of improvement and replacement coordinated with the needs of the Canal at present and with contingencies which may be expected to arise in the future. Thus it has constantly in mind a detailed six-year program and a general fifteen-year program for betterments of financial, physical, and operating features of the Panama Canal and Panama Railroad. It then endeavors to present that program to Congress in such form as to enable the Canal to get the necessary funds. These functions involve statistical work which has been found to overlap with the Bureau of Statistics in the Executive Department. On April 15, 1939, consequently, that Bureau was abolished, and its personnel and duties centralized under the Plans Section.³⁵

SPECIAL ENGINEERING DIVISION

On May 1, 1936, Congress passed, and the President approved, a resolution authorizing and directing the Governor to study the possibility of increasing the capacity of the Panama Canal, and to prepare designs and to submit cost estimates for any new construction.³⁶ Pursuant to this, a

³⁵ *Ibid.*, 1939, p. 65.

³⁶ 49 Stat. 1256.

Special Engineering Section was created by the Governor on July 1, 1937, to make the necessary investigations.³⁷ For a year and a half this Section made a careful study of the topography, hydrography, and other basic subjects connected with the project. It explored and sub-surface tested the locations where additional facilities might be installed. It also tested the condition of the concrete in the existing locks, with a view to ascertaining whether strengthening was required in the light of developments in military science. A report was made by the Governor to the Congress on February 24, 1939, recommending the adoption of certain plans for protective work on the existing lock structures, and for the construction of a new set of locks as well.³⁸ The recommendations contained in this report were adopted in substance in an authorization measure passed by Congress August 11, 1939.³⁹ This epochal Act authorized, but did not appropriate the funds for, the construction of additional facilities, including the third set of locks, additional approach channels, and other appurtenant works for the purposes of more adequately providing for the defense of the Canal and for increasing its capacity to handle vessels longer than one thousand feet or more than one hundred and ten feet wide. The Special Engineering Division continued its work subsequently by elaborating the necessary details of the construction program. This involved the preparation of blue prints, designs, maps; the drawing-up of excavation, supply materials, labor force, and other essential specifications; the designation of spoil dumps, worker's sites; exact locations of new locks and their approach channels; superintendence of an exhaustive soil, materials, and model testing program, plus figuring of costs. This Division was placed under the leader-

³⁷ *Annual Report*, 1938, p. 88. The title was changed to Special Engineering Division on July 22, 1939. *Ibid.*, 1940, p. 62.

³⁸ "Report on the Panama Canal for the Future Needs of Interoceanic Shipping." H. Doc. 210, 76th Cong., 1st sess.

³⁹ 53 Stat. 1409.

ship of a Designing Engineer, who, like the heads of the Dredging Division and Plans Section, was ordered to report directly to the Engineer of Maintenance.

With Congressional approval of the new construction granted, the Governor established another division within the Department of Operation and Maintenance on September 20, 1939, known as the Special Construction Division. The province of this Division included supervision of the construction of the new locks, the by-pass approach channels, and the protective installations. First excavation by dredging for the Miraflores by-pass was begun on July 1, 1940, following the passage by Congress of the Appropriation Act on June 24, 1940.⁴⁰ The first dry excavation was inaugurated at Gatun, February 19, 1941.⁴¹ As the work progressed, the Special Engineering Section and Special Construction Division were consolidated as the Special Engineering Division under the headship of the Supervising Engineer, who is immediately responsible to the Engineer of Maintenance.

The new construction is under the supervision of the Governor of the Panama Canal. A large part of the direction falls, however, from day to day upon the Engineer of Maintenance. He is the coordinator of the planning, contract letting, hiring, superintending, and construction. His office is, as it were, general headquarters, through which all matters must clear, and in which the vital decisions must be made. Conferences are held here every week, bringing together the ranking personnel, Canal and contracting, having to do with the prosecution of the undertaking. Here final approval must be given for specifications before work is undertaken and upon each completed unit. Much of the responsibility for the successful and expeditious completion of the new building will, therefore, rest with the Engineer of Maintenance.

⁴⁰ War Department Civil Appropriation Act, Public. No. 653.

⁴¹ *New York Times*, Feb. 20, 1941.

PROCUREMENT AND SUPPLY

FROM what has been said in the preceding pages, the Department of Operation and Maintenance may appear to monopolize the important work done in the Canal Zone. Governing the Canal Zone is in truth adjunctive to the working of the Canal. Were it not for the existence of the Canal, it is obvious that there would be no need for the administrative ramifications which complete the structure of The Panama Canal. But that fact does not minimize the importance to the Canal enterprise of the four remaining departments of Canal organization, which are known as Supplies, Accounting, Executive, and Health.⁴² In addition there must be considered the Washington Office of The Panama Canal, and the Panama Railroad Company. Each of these performs tasks essential to the efficient conduct of Canal affairs.

It must be remembered that, although the primary *purpose* of the Canal is the transit of ships, be they vessels of commerce or of war, the primary *motive* of the United States in entering into and operating the Canal enterprise was, and still is, military. Therefore considerations of efficiency, protection, and self-sufficiency assume a prominent place in the administration of The Panama Canal.

The efficient operation of such a tremendous undertaking as the Panama Canal, thirteen hundred miles from the nearest United States port and two thousand miles from New York, requires a large complementary organization. In line with this situation, the Supply Department is almost indispensable.

The Supply Department acquires, stores, and distributes materials and supplies for The Panama Canal, the Panama Railroad, for persons in the employ of these two agencies, and for transient vessels. The Chief Quartermaster is the official in charge of this Department. Its activities may be grouped

⁴² The order of treatment follows that contained in the *Annual Report of the Governor of the Panama Canal*.

into three divisions: housing, business operations for The Panama Canal, and business operations for the Panama Railroad.

The Buildings Division has direction of the construction and maintenance of buildings, the assignment of living quarters, and the care of grounds. The tropical conditions prevailing in the Canal Zone make the work of this department onerous. The damp weather and the prevalence of insects result in rapid deterioration of all structures, necessitating a good deal of repairing and reconstruction. Most of the office and shop buildings are of durable construction, requiring a minimum of annual repair. A large percentage of the residential quarters, on the other hand, are of wooden construction. Numbers of them date back to pre-1914 construction days, at which time they were put up as "temporary" buildings. While they have been moved from their original locations to congenial sites, it is readily apparent that many have long since passed the period of desirable usefulness. They are badly deteriorated, in need of constant, expensive repair, and actually provide, as the Governor has stated, housing "below reasonable standards of family shelter."⁴³ A large number of the cottages and multiplex dwellings were built in 1916. These also are in need of replacement. Many of the quarters are two- and four-family units. There are even some eight-family structures. Monotonous standardization, smallness of space, lack of insulation between walls and floors, and obsolescence of sanitary equipment render such places uncongenial. This situation might not be so bad if there were an abundance of suitable accommodations available in Colón or Panama City. But such is not the case. The quarters that are obtainable by silver employees outside of the Zone, and there are few of them any longer, are virtually intolerable hovels. The prices that are charged there, whether for the meanest or for luxurious places are very high, all things considered.

⁴³ *Annual Report*, 1940, p. 75.

The Panama Canal administration has been aware of the housing problem for a number of years. The Governor's *Annual Reports* have carried a straightforward statement of the urgent need of improvement. Why then is the situation what it is today? Three reasons seem to explain it. In the first place, the Supply Department has wished to have a steady program of work for its constructors extending over a long period of years, so that there will be no lack of work necessitating reduction in its rolls. This has meant a conservative program, one that will allow room for the emergency calls which may at any time be forthcoming for construction in other lines. In the second place, the Congress has failed to appropriate sufficient funds to allow a wholesale rebuilding of housing along modern lines, even if the Supply Department were disposed to undertake it. Finally, the decision to expedite the building of additional facilities for the Canal has brought into the Zone an influx of new employees with consequential pressure upon all housing. New, "temporary" housing is being built, principally in three new towns, Diablo Heights, Cocoli, and Margarita. This will shelter many. But the nature of the construction, the cramped quarters provided, the lack of modern insulation and many of the conveniences to which even the low-income groups have become habituated in the States, leave much to be said even for what has been built anew. The policy being followed seems to ignore the revolution which has occurred in modern housing. It seems to take for granted that help recruited nowadays in the United States will be satisfied with the privations to which the older generation has become accustomed. Admitting the higher cost of construction in the Zone than in the States, the United States still cannot afford, from the long-run point of view of building up a loyal efficient personnel, to provide living conditions for Panama Canal employees inferior to those established for the professional army and navy personnel stationed in the Zone, or to those to which people have become habituated in the United States. If the

Panama Canal is essential to the nation, it is vital that those charged with its maintenance and protection be adequately cared for. A complete reconstruction of housing on entirely new standards, with far more individual houses provided than is now the case, ought to be authorized by Congress and executed at once. An efficient, satisfied corps of officials and workers at the Panama Canal is more important than the degree of Congressional economy which is obtainable by withholding appropriations, or than a nicely worked-out construction plan extending over ten or twenty years.

There are three main business operations which the Supply Department performs for The Panama Canal: supervision and operation of the storehouses and fuel oil plants; the Panama Canal Press; motor transportation. The first of these subdivisions is under a General Storekeeper, whose task it is to stock general supplies for the use of the Canal, the Army and Navy, as well as to sell ships' stores to passing vessels, and to operate the fuel oil plants. Some forty thousand items are listed in the Division's Standard Stock Catalog for which effort is made to keep supplies always on hand. With few exceptions, materials must be of United States origin and manufacture. Purchases, which have averaged around four and a half million dollars a year in recent normal years, are made through the General Purchasing Officer in the Washington Office. This helps to explain the importance attached to the Washington Office. All materials shipped via New York must specify carriage by the Panama Railroad steamers, thus assuring these vessels steady cargoes, and the Canal people ocean transportation.

The Panama Canal does not store and sell fuel oil on a commercial basis. Private companies are allowed to have storage tanks in the Zone and to engage in this business. All pumping and fueling machinery, however, is owned by the Canal, and fuel oil can be provided only through the stations under the control of the Storekeeper. This is a measure to

insure safety to the Canal and to enable the Government to control oil shipments in the Zone.

The Panama Canal Press, located at Mt. Hope, is the official press of The Panama Canal and Panama Railroad. It prints the *Panama Canal Record*, other official documents used by the Canal and Railroad, and the scrip which is the tender for purchases in the commissaries. All delivery trucks and automobiles used on official business by The Panama Canal and Panama Railroad are in the hands of the Transportation Division and must be requisitioned therefrom according to specified forms.

THE COMMISSARIES

The business operations conducted by the Supply Department in behalf of the Panama Railroad reveal the overlapping relationship which prevails between the Canal and Railroad. These operations embrace the commissary, the laundry, the hotels, and the dairy farm. The Commissary Division functions under a General Manager, who is paid by the Railroad, but who reports to the Chief Quartermaster of The Panama Canal. Purchasing in the States is done for The Panama Canal by the purchasing department of the Railroad Company's office in New York, just as the Washington Office of The Panama Canal handles some of the buying for the Railroad. There is good reason for Railroad ownership of the Commissaries. If they were operated with funds appropriated by Congress, purchases of a given item would have to be made from the lowest bidder and under Government regulations. But in supplying the needs of individuals, the Commissaries must cater to individual tastes in matters of brand, quality, and style. The desired flexibility is attained through Company rather than Canal ownership of the Commissaries, since Company money is not subject to restrictive government regulations. The Railroad Company as such, however, does not manage the commissary business in the Zone, and is not supposed to meddle

in it. The conduct of business operations is largely in the hands of the General Manager, although the Chief Quartermaster is more than a figurehead in this Division. He has final voice, albeit it may not be exercised at all times, in the determination of prices, purchases, and the help employed.

The Panama Railroad commissaries are an old institution. They were started during the original construction days of the railroad, from 1849 to 1855. They were continued under the Railroad until the collapse of the French Canal Company in 1889. Revival was soon found necessary, and in 1896 their sales services were extended to ships visiting the Isthmus, and to diplomatic and consular officers stationed there. When the United States took over the Railroad in 1904 the commissaries were doing a thriving business, although the goods sold were for the most part restricted to non-perishable groceries. Sales have expanded since then with the changing character of life in the Zone, and today cover practically the entire range of foodstuffs, house furnishings, clothes, and luxury articles demanded by Canal Zone residents. As one investigator has said, they have "grown from a pork-and-beans beginning to a silk-stocking maturity."⁴⁴ Objections on the part of Panama to sales by the commissaries, based upon their supposed deleterious effect upon the economic welfare of Panamanian merchants, who have shown little disposition to import and stock the quantities and kinds of goods required by Americans, led to the agreement in 1936 to restrict sales to residents of the Canal Zone and employees of the Canal and Railroad, as noted in Chapter II.

The Commissary organization is generally divisible into two parts: that having to do with wholesaling and manufacturing, and that concerned with retailing. Within the first branch are comprised the large storage warehouse and manufacturing

⁴⁴ Marshall E. Dimock, *Government-Owned Enterprises in the Panama Canal Zone* (Chicago, 1934), p. 106.

plant at Mt. Hope. Here are stored and distributed to the retail commissaries groceries, dry goods, clothes, furniture, and even baby carriages. Meats, vegetables, and coffee are processed. A large ice cream plant and bakery supply good quality commodities in vast quantities. An industrial laboratory formulates and puts up cosmetics, drugs, soft drinks, soaps, at cut-rate prices over standard-brand goods which are also brought in by the Commissary from the United States. Approximately four hundred different products are sold under the Commissary label. This has meant not only a saving to the consumer, but also in many cases an adaptation of commodities to tropical conditions and local demand. All foodstuffs and perishables are inspected before distribution to the retail stores. A milk-bottling plant packages and distributes fresh milk from the Dairy and Cattle Industry Division's dairy at Mindi, and chilled milk brought in bulk from New York by steamer. This wholesale branch also operates the large laundry establishment which is operated efficiently enough to give six-hour laundry and drycleaning service in a climate necessitating uncommon amounts of laundering. The wholesale and manufacturing branch supplies not only the retail commissaries, but also food to the clubhouses, hotels, and at times to the Army and Navy messes. With the tremendous increase in the number of Canal employees and in Army and Navy personnel since 1939 a strain has been placed upon the Commissary Division. Ocean transportation facilities are barely adequate, even with the three new ships of the Panama Steamship Line, put into service in 1939, to carry to the Zone the quantities of food, clothes, furniture, and other commodities in constant demand. Under present circumstances there is a turn-over of much stock within every two weeks. Some articles are naturally subject to a much faster turn-over, and cannot be brought frequently enough in sufficient quantities, with all of the other freight which must also be carried on the several ship lines serving the Isthmus, to satisfy popular demand.

The retail stores branch of the Commissary Division maintains stores at all of the Canal towns. It does not have them at the Army and Navy posts, but members of the armed forces are privileged to buy at the Commissaries. The Commissaries vary considerably in size and in the variety of stock carried on the floor. The largest ones are located at Cristóbal and Balboa. These impress the visitor as smaller replicas of the department stores or retail branches of the mail order houses found in the States. Floor samples and varieties of goods are restricted, beyond the point of popular desires, but this is due in part at the present time to extraordinary circumstances. The smaller commissaries are curious mixtures of the typical small-town variety and grocery stores. It is not an uncommon sight to see waiting lines, particularly at the meat counters of the commissaries. Nor is it an uncommon complaint of buyers that by mid-forenoon one cannot be certain of getting what one wants. There may be excuse for such a situation at times when national emergency sends an influx of new personnel into the Zone, or requires the detachment of shipping. But, like the housing situation, this is a condition which the Supply Department should bend every effort to remedy. The American worker, be he professional or laborer, requires a standard of living which it is obvious that Panama neither can nor is disposed to provide. Reliance must be placed, therefore, upon the Supply Department of The Panama Canal to see to it that such a standard is maintained. There is no ground for saying that this Department has failed in its responsibility. There is only a basis for saying that it has not always and in all respects provided an above-minimum assortment of commodities which some persons would like to obtain. Compared with the colonial servants of other nations, the employees of the United States in the Canal Zone have been enabled to continue their normal home life to an exceptional degree. For this they have to thank the Supply Department, which has, since the opening of the Canal, steadily improved the variety,

the quality, and the quantity of articles offered for sale in its stores. These goods it has provided at prices comparable to, and, in some instances below, retail prices in the States. This has been made possible through the large buying power of the Department.

Since 1921 it has been the policy of the Department to sell at a price which would cover cost and merchandising, and produce a net profit of two per cent. Actually, profits have tended over periods of years to run from five to eleven per cent.⁴⁵ Figures for net sales over against purchases for the years 1938-40 show that there has been a safe margin for overhead, return on capital investment, and profit.⁴⁶

Criticism may be heard from Canal Zone residents against the policy of marking-up the prices of goods purchased advantageously in the States or manufactured cheaply at the Mt. Hope plant. However, there is no reason why the Department should not endeavor to conduct its operations in such a manner as to produce the same general return on its capital investment which The Panama Canal seeks to earn on its investment, three per cent. Considering the fact that prices are not above those in the States in most instances, despite freight-handling costs, and that Americans working for the Canal and Railroad are paid twenty-five per cent more than Government employees of the same classification in Washington, and that rents are low, there is little ground for seriously entertaining the objection. The quality of goods supplied at the price is uniformly of the best.

There is evidence of efficiency in the operation of the Commissary Division all the way from purchasing in New York to selling in the retail stores. The organization has been im-

⁴⁵ *Ibid.*, p. 109.

⁴⁶ *Annual Report*, 1940, p. 58.

Sales			Purchases		
1938	1939	1940	1938	1939	1940
\$8,518,242	\$8,897,317	\$12,291,266	\$6,150,750	\$6,557,651	\$9,824,203

bued with the spirit of getting the best at the lowest price, of handling it quickly, of merchandising attractively. Most of the stores are now attractive buildings with first-rate display and sales techniques. Clerks appear to be generally courteous and helpful. The manufacturing and wholesale storage plants at Mt. Hope are models of good management and cleanliness.

The two hotels in the Canal Zone, the Hotel Washington at Cristóbal and the Tivoli at Ancón, are also operated by the Supply Department. Both of these spacious hostelries are, like the commissaries, now owned by the Panama Railroad. This was not the case until 1929, and even now The Panama Canal owns the original investment in the Tivoli. The Railroad pays an annual rental to The Panama Canal on the Tivoli, but has a capital investment of its own in the hotel. Until 1940 the hotels were largely dependent upon tourist trade for their revenues, which have varied a good deal. Both hotels are well equipped to handle tourist trade, and their rates are as reasonable as any tourist hotels in the Caribbean area. Their cuisine is fine, and the Washington in particular has a most sightly location. There is reason to believe that the extended promotion of such a cruise advertising campaign as was conducted on a modest scale in 1940-41 would insure a steady complement of guests. The tourist business is more vital to the Washington than to the Tivoli at the present time, for the latter must serve the many contractors, consultants, and government officials visiting in the Zone on official business in connection with the emergency construction. The shortage of housing has resulted, furthermore, in some employees having to reside temporarily at the hotel.

During the course of the negotiation of the 1936 General Treaty, the United States negotiators expressed the attitude that the hotels had been established when sufficient accommodations were not available in Panama, which was undoubtedly true, and they allowed the Government of Panama

to put on record in an Exchange of Notes accompanying the Treaty its understanding that the United States had given the assurance "that as soon as this situation is satisfactorily altered the hotel business proper will be left in the hands of the industry established in Panama."⁴⁷ This assurance seems gratuitous. It is conceivable, of course, that desirable accommodations may be erected in Panama City or Colón, but only by having hostelries under its own control and in the Zone can the Canal administration be sure that at any given time there will be available lodgings which it may consider necessary and fitting for its guests, for visiting officers of government and others having official business to do with it. To be sure, the phraseology employed in the Note quoted, leaves with the United States determination of when the present hotel "situation [in Panama] is satisfactorily altered." Also, the insertion of the word "proper" after the words "hotel business" may be construed as having a reserving implication to the effect that while all tourist trade will be transferred to hotels in Panama, persons having business with the Canal and guests of the Canal will continue to be put up within the Zone. Such an arrangement should be compatible with the interests of all.

FINANCE AND ACCOUNTING

The Accounting Department is responsible for the financial records of The Panama Canal and the Panama Railroad. When this Department was established by the President in 1914, the head of the Department was given the title of Auditor. He was aided by an assistant auditor at the Canal Zone, and another assistant auditor in Washington. The title given to the head of this Department was not the most apt, for he was charged not only with accounting and auditing, but also with budget-making, the determination of fiscal policy, and with the collection and disbursement of funds. This arrangement was

⁴⁷ *Treaty Series* No. 945, p. 31.

objected to by the Special Panama Canal Commission in 1921,⁴⁸ and severely criticized by Professor Dimock in his report on *Government Operated Enterprises in the Panama Canal Zone* in 1934.⁴⁹ Under the original system the same person initiated fiscal policy, accounted for funds, and audited his own books. This was not in accord with generally approved financial administration.

The title of the head of the Accounting Department was changed by the Governor, by authority of the President, on December 15, 1934, from Auditor to Comptroller.⁵⁰ By the same order the titles of the assistant auditors were likewise changed to assistant comptrollers. This was done in order to more appropriately define the duties of the head of this Department. It incidentally more nearly aligned the fiscal organization of the Canal with that of the National Government than had been the case theretofore. Under the new arrangement, the Comptroller retained his former functions as financial adviser to the Governor, budget officer, and auditor. Holding in his hand these varied matters, the Comptroller naturally exercises a large influence over Canal and Railroad organizations. He is one of the Governor's close advisers, and is brought into frequent conference with him. Through his contacts with the Comptroller General, the Director of the Budget, and the appropriations committees of the Congress, he is one of the principal links with the Government in Washington.

The assistant comptroller in Washington "is responsible for disbursements and collections in the United States, consisting principally of payments for supplies and materials purchased for delivery on the Isthmus." He also facilitates fiscal transactions between the Canal and the United States Treasury, the

⁴⁸ *Report: Special Panama Canal Commission, 1921* (Washington, 1922), p. 14.

⁴⁹ Dimock, *op. cit.*, pp. 132-138, 141-142.

⁵⁰ *Annual Report, 1935*, p. 85.

Bureau of the Budget, and other Government departments in the United States.⁵¹

The Comptroller's office contains seven bureaus charged with various phases of the functions of the office.⁵² The Accounting Bureau prepares estimates for appropriations and controls the allotment of funds. It is responsible for general accounting, cost-keeping, operating statements, and billing. The Auditing Bureau performs the functions indicated by its name, so far as relates to cash collections and accounts receivable. Its auditing, however, is not final, as it has been specified by law that the accounts shall be checked by an annual visitation of auditors from the Treasury Department in Washington.⁵³ This audit is merely a routine one. It has not been used as a means of improving the efficiency of government and administration, as might be the case. A Claims Bureau audits payrolls and accounts payable. The Claims Officer also conducts an examination of all claims entered against The Panama Canal and the Panama Railroad, together with injury compensations. Accounts of the Panama Railroad, including those of the Commissary Division of the Canal, are handled by the Railroad Accounts Bureau, with the exception of the auditing of commissary books and coupons, which is within the province of the Coupon Accounts Bureau. This office also oversees Clubhouse and Post Office accounts, a combination apparently determined by rule of thumb. An Inspection Bureau examines property accounts and storehouse stocks, and maintains a timekeeper's force. Finally, there is a small Bureau of Mails and Files.

⁵¹ *Manual of Information, op. cit.*, p. 154. The Washington Office also conducts correspondence regarding deposits made by shipping firms for the payment of tolls.

⁵² Dimock's *Government Operated Enterprises in the Panama Canal Zone* contains a critical appraisal of pre-1934 financial administration, pp. 131-155. The best account of the present organization and operation of the Accounting Department is to be found in the generally unavailable *Manual of Information, op. cit.*, pp. 151-177. The description contained here is adopted from this source.

⁵³ Stat. 886.

Two other offices, that of Collector and Paymaster, carry on work related to the Accounting Department, but are not comprised within the Department. They are under the direct supervision of the Governor.⁵⁴ The Collector's Office receives all moneys due The Panama Canal and the Panama Railroad Company on the Isthmus, including Canal tolls. It also has custody of currency, postal savings, and other funds. The Paymaster is charged with the payment on the Isthmus of all moneys for both organizations.⁵⁵

The accounting system used by the Department divides the Canal establishment into two parts "in order to calculate net profits in accordance with the stipulations of the annual appropriation acts": Transit Divisions, and Business Divisions. In dealing with accounts relating to the Transit Divisions the accounting procedure prescribed by the Bureau of Efficiency in Washington is followed. The standards of the Interstate Commerce Commission for public utility corporations are utilized in the accounting for the Business Divisions, so far as compatible with a unified accounting for the enterprise as a whole. In this connection it may be remarked that The Panama

⁵⁴ By amendatory approval of the President, Nov. 22, 1934.

⁵⁵ Professor Dimock recommended in 1934 that the accounting and auditing be separated through the creation of an additional position of Treasurer, with the Collector and Paymaster subordinated to him. Dimock, *op. cit.*, p. 141. His thought was that the Treasurer should have control of budgeting, accounting, and financial policy generally, whereas the Auditor would become, as he put it, the eyes and ears of the Governor for promoting efficiency. This was an eminently sound suggestion at that time. The two changes made in the latter part of 1934 have accomplished much of the same object. The Chief Accountant, head of the Accounting Bureau of the Department, performs the duties of Mr. Dimock's Treasurer, minus advising on financial policy generally. The Chief Examiner of the Auditing Bureau sees to the auditing. The Comptroller has become the financial adviser, as well as the eyes and ears of the Governor for efficiency and accountability. The coordination of the Collector's and Paymaster's Offices under the Chief Accountant remains to be accomplished. So long as the title of this last officer remains as it is, there is reason for having the Collector and Paymaster directly under the Governor. The introduction of a Treasurer in place of the Chief Accountant, a legitimate innovation, should, however, be followed by the placement of these two officers under him, thereby relieving the burden of the Governor. Theoretically, there is no reason why these officers should be directly under the Governor.

Canal tries to put as many parts of the organization on a paying or business basis as possible.⁵⁶ The Business Divisions are charged a pro-rata part of the cost of the services of the Canal Executive and Accounting Departments and the Chief Quartermaster's Office. The Transit Divisions, on the other hand, are not charged for any part of the overhead of the Business Divisions, as the latter are expected to be self-supporting.

Distinction is made by the Accounting Department between the fiscal affairs which it handles for the so-called Transit Divisions of The Panama Canal, and for the Panama Railroad Company. The former have three general types of funds: Congressional appropriations, trust funds, and what are termed miscellaneous revenues. The Canal looks to Congress each year for appropriations covering net operating expenses, and for projects involving the outlay of new capital, such as for the third locks. These appropriations, as they appear in the War Department Civil Functions Appropriation Act,⁵⁷ fall into five classifications: Maintenance and Operation, Sanitation, Civil Government, Miscellaneous, and Annual Payments to Panama. For the fiscal year ended June 30, 1940, the appropriations for the first three of these amounted to \$22,823,087, \$1,004,535, and \$1,080,802, respectively.⁵⁸ The first of these appropriations covers expenditure for direct Canal operation and construction;⁵⁹ the second covers the net

⁵⁶ The Business Divisions include the Electrical Division, Municipal Waterworks, Mechanical Division, Fuel Oil Plants, General Storehouse, Motor Transportation Division, Building Division, Panama Canal Press, operation of Employees' Quarters, Utility Services for employees, including commissaries, clubhouses, theaters, etc. These make charges for all services rendered which embrace cost plus allowance for return on net investment.

⁵⁷ Canal appropriations prior to 1938 were contained in the War Department Non-Military Functions Appropriation Acts. Earlier still they were incorporated in the Independent Executive Office Appropriation Acts.

⁵⁸ *Annual Report, 1940*, p. 112. On page 124 of the same may be found a tabulation of operating appropriations since 1914.

⁵⁹ The appropriation of \$15,000,000 to initiate the new locks construction jumped the previous four year average for this classification from eight to twenty-two million dollars.

"Maintenance and Operation appropriation, while comprising one fund

expense of the Health Department, inclusive of the hospitals; the Civil Government appropriation covers the net expense of Customs, Schools, the Police and Fire Departments, and the Courts.⁶⁰ Moneys appropriated for expenditures not readily classifiable are treated as Miscellaneous. In recent years they have served such purposes as repatriation of alien workers, and the erection of a memorial to Colonel Goethals.

with respect to accountability to the U. S. Treasury, is administratively subdivided for accounting control as follows: (a) funds available for allotment for operating expenses and construction; (b) working capital; and (c) reserve funds, which latter are in turn subdivided into reserve for replacement, reserve for repairs, and reserve for leave.

"Allotments for operating expense and construction comprise the funds appropriated directly for these purposes, with some modifications due to savings and excesses; the working capital fund is a fixed allotment of about \$4,000,000 [\$4,120,000 in *Annual Report*, 1940], which is used only to finance the purchase of store stock and the fluctuation between accounts receivable and accounts payable; and reserve funds represent the retained portion of funds accruing from reserve charges to operating expenses." *Manual of Information, op. cit.*, p. 159.

A breakdown of the annual appropriations and reserve funds into their various categories will be found in the section of each *Annual Report* dealing with Financial and Statistical Statements.

Capital investments are financed by charging the outlay to "operating expenses," albeit the funds for both operation and capital investment come from the same source, that is, Congressional appropriations, and that the practice of lumping the two together was authorized by Congress in 1920.

The reserve funds for replacement are computed by means of a depreciation charge against the fixed capital value of all depreciable Canal property and plant. This is placed upon an accrual basis. In the fiscal year 1940 accruals were \$2,429,687.57, giving a total depreciation book figure balance of \$36,409,677.61. These reserves may be used as needed for capital expenditures. The accruals for repairs and leave being subject to constant charges, produce no such substantial accumulation.

Attention has been called by Professor Dimock to the fact that the terms depreciation and replacement seem to be used interchangeably, and that the procedure does not follow the mere normal pattern of charging depreciation to operating expenses and replacement to earnings. Dimock, *op. cit.*, p. 151. Given the existing fiscal arrangements, the point seems academic.

⁶⁰ Appropriation accounts, after specifying the purposes for which funds shall be expended, have contained a clause to the effect that they may be used for "such other expenses not in the United States as the Governor of the Panama Canal may deem necessary best to promote the maintenance and operation, sanitation, and civil government of the Panama Canal, all to be expended under the direction of the Governor of the Panama Canal . . ." Quoted from the 1938 Civil Functions Appropriation Act, 50 Stat. 515.

The annuity payments to Panama, now amounting to \$430,000 yearly, are not mentioned in the Canal accounts, as they are paid directly to Panama by the United States Treasury through the Department of State.

The custodial funds entrusted to The Panama Canal represents deposits by various parties to guarantee the payment of bills for services rendered, such as tolls. They also include postal savings accounts, money orders, and similar transactions.⁶¹

Canal revenues may be divided into two sorts: those that must be covered directly into the Treasury of the United States, and those which are repayable to Canal appropriations and consequently may be reexpended. The first are known to the Accounting Department as Miscellaneous Receipts, United States Revenues. They include tolls, business profits, postal surplus, licenses, fees, fines. The earnings of the several Departments otherwise constitute the revenues which may be reemployed. Taking the period from 1914 to 1940, the total revenues of the Canal have amounted to \$497,076,221.33. Deducting from this the net appropriation expenses, that is to say, expenses after the subtraction of earnings covered into the Treasury, which have amounted to \$225,838,505.71 over the same time, the figure is arrived at representing net revenues. This came to \$12,287,659.55 for the year 1940, for example, and to a total of \$271,237,715.62 for the years 1914-40. The earnings for the Canal repayable to it amounted to \$4,765,307.91 for 1940, but the expenses on the other hand were \$14,807,258.21. The revenues from business operations conducted separately from operating activities pertaining directly to the transiting of vessels and government of the Canal Zone are also reemployable, but any net profit derived from such operations must be covered into the Treasury annually.⁶²

⁶¹ For the year ended June 30, 1940, the total of these funds was \$4,668,723.19.

⁶² *Annual Report*, 1940, p. 129.

In drawing up the general balance sheet for each year, total assets are reckoned as the sum of computed capital assets of property and equipment, reimbursable capital expenditures, custodial funds, working assets including appropriated funds and stores in hand, and deferred charges. To illustrate the proportionate relationship of the amounts represented under these headings it may suffice to point out that of the total assets on June 30, 1940, of \$575,911,682.58, the capital assets accounted for \$554,535,730.97. On the liability side of the balance sheet are carried the total of capital investment, the special deposit accounts, repair and leave but not replacement reserves, and the balance of net revenues from 1914 to the present together with accrued depreciation reserves minus the total net cash refundments to the United States Treasury for the same period of time. To clarify the relativities again, it should be observed that of the total liabilities, which are the same as the total assets, \$559,635,638.06 constitute the capital investment of the United States in the Canal.⁶³

No charge has been made against the funds of The Panama Canal for the amortization of the capital investment of the United States. Neither has any charge been made for which coverage into the Treasury has been ordered for interest upon the capital investment. Nevertheless, it has long been felt that the operation of the Canal should be conducted in such a way as to produce a reasonable return to the United States on the money which it has invested in the enterprise. Three per cent on the capital investment has been regarded as a proper standard of return, both for each revenue-producing service of the Canal and on the capital outlay as a whole, which ought to be attained in so far as possible. Accordingly, the Accounting Department figures each year the interest at three per cent on the capital investment as of the end

⁶³ The investment is composed of net cash withdrawals from the Treasury for construction from 1904 to 1940, the payments to Panama from 1904 to 1920, interest at 3 per cent on the construction funds from 1904 to 1920, *ibid.*, p. 117.

of the fiscal year. As a matter of policy, the depreciation accruals are deducted from the capital investment before calculating the interest. The interest sum amounts to approximately fifteen million dollars. This is not charged against the assets or revenues on the General Balance Sheet. It is, however, compared against net revenues to ascertain whether the enterprise has come up to or exceeded this standard. When revenues exceed the interest the Canal is said to have a "surplus." When they fall below this figure it is said to have a "deficit." A tabulation of the net revenues and interest since 1920 shows that in only seven of the years has there been a "surplus," that is, an earning exceeding three per cent. In other years the net revenues have come to percentages ranging above 2.42.⁶⁴ Although this may be disappointing to some, the record of revenues is generally a most creditable one, when it is remembered that they are derived in largest part from tolls and from Congressional appropriations, the ultimate control of both of which lies beyond the Canal authorities.

The fiscal affairs of the Panama Railroad come within the purview of the Accounting Department of The Panama Canal. Railroad accounts, however, are segregated from Canal accounts, and kept by the Railroad Accounts Bureau of the Department. This is a rational procedure, considering the unique relationship of Canal and Railroad under the single leadership of the Governor. All collections, disbursements,

⁶⁴ The surplus and deficit figures will be found tabulated in the *Annual Report*, 1940, p. 123. The rate of return is stated in each *Annual Report*. During recent years the return has been 3.37 (1934), 2.86 (1935), 2.83 (1936), 2.56 (1937), 2.90 (1938), 2.86 (1939), 2.42 (1940). The drop in 1940 may be explained by the reduction in receipts from tolls due to the war, on the one hand, and the increase in the capital investment due to new construction commenced during the fiscal year on the other. In 1937 the accrued depreciation was adjusted upward by \$5,000,000 as a result of an engineering survey of the property. This same year a change was made which affected the interest by establishing the end of the original construction period as July 11, 1920, rather than June 30, 1921. This alteration produced a reduction in the gross capital investment on which interest is figured. *Annual Report*, 1938, p. 111.

valuations, property transactions, and capitalizations are separately accounted for. Exchanges of service between the two entities are "compensated for either by direct payments, where valuation is practical, or by reciprocal allowance in case of intangible types of general overhead expense."⁶⁵ Since the executive offices and accounting department perform work for the Railroad Company, as well as for the Canal, a proportional charge is made against the Railroad Company; where work is done for the Railroad by the business divisions of the Canal, it is charged for as it would be against any other party or division of the Canal organization, and vice versa. Thus the statement of Commissary expenses includes over \$100,000 in office expenses on the Isthmus.⁶⁶ Such charges are seldom paid in cash to the amount shown on the books, since bills frequently cancel out. For instance, Commissary coupons which by arrangement are accepted in payment for Panama Canal services are cleared by application to audited bills rendered to the Railroad; or, again, coal plant sales to the Canal will write off in part administrative and clerical expenses.

A quantity of accounting and paper work is obviously required by the assiduous separation of the goods and services of the Railroad from those of the Canal. The two bureaus which concentrate chiefly on Railroad affairs, the Railroad Accounts Bureau and the Coupon Accounts Bureau, employ sixty-two of the Department's one hundred and seventy-five employees.⁶⁷ In addition, part of the time of other Bureaus is chargeable to the Railroad. The Accounting Department, however, has no responsibility for affairs of the Railroad Company outside the Isthmus. The general balance sheet for the Company is drawn up in New York, where fiscal matters relating to Company interests not situated in the Canal Zone

⁶⁵ *Manual of Information, op. cit.*, p. 161.

⁶⁶ *Annual Report of the Panama Railroad Company, 1940*, p. 28.

⁶⁷ *Manual of Information, op. cit.*, p. 154.

are treated. Nevertheless, by far the greatest number of Company transactions occur on the Isthmus.⁶⁸

At first examination, it may seem that the painstaking separation of Canal and Railroad accounts is unnecessary since both are concerned with the Canal enterprise. In view of the differing stipulations or regulations attached to their expenditures and their separate accountabilities—the Canal to Congress, and the Railroad to its Board of Directors—a division seems essential even though both organizations are the property of the United States. These considerations, however, do not affect the wisdom of a coordinated accounting department on the Isthmus. That arrangement appears reasonable for purposes of efficiency and economy.

THE EXECUTIVE DEPARTMENT

The Executive Department, notwithstanding certain functions that are carried on by other departments, conducts most of the governmental services of the Zone. The head of the Department is the Executive Secretary who occupies one of the most influential positions at the Panama Canal. While he does not rank in the organization with the Engineer of Maintenance or the Marine Superintendent, so far as succession to the Governorship goes, he is, nevertheless, one of the Governor's closest advisers. His term of office is unlimited, in contradistinction to the limited terms of the Governor, the Engineer of Maintenance, and the Marine Superintendent. He has oversight of general administration, legal questions, personnel, and relations with the Republic of Panama. Continuance of experience and breadth of knowledge, coupled with the fact that both the present Secretary, Mr. Frank H. Wang, and his predecessor in office, Mr. Cloyd A. McIlvaine, who was with the Canal for

⁶⁸ Net revenue for activities in the Zone in 1940 was \$2,492,690.56 as compared to \$114,953.36 for operations in New York; of a total property account of \$45,852,726.49, \$32,628,062.14 was invested in the Isthmus. *Annual Report of the Panama Railroad Company*, 1940, pp. 22, 18.

thirty-four years, have been men of unusual wisdom, foresight, and tact, have made the Executive Secretaryship invaluable to the more transient superior officers. Furthermore, the Executive Secretary is the channel through which many of the decisions of the Governor and Engineer of Maintenance are carried out. The Executive Secretary is and has been more than a cog in a large administrative machine. He is, together with the Governor, Engineer of Maintenance, and Marine Superintendent, largely occupied with general policy making.

The *Annual Report* of the Governor sets forth the line of duties of the Executive Department as follows:

The executive department embraces the general office business of the Governor and all administrative activities invested by Executive order within the authority of the executive secretary. Under this department come the administration of police and fire protection, postal service, customs, shipping-commissioner work, estates, schools, general correspondence, and records for the organization of the Canal and Panama Railroad, personnel records and administration, wage adjustments, information and publicity, relations with Panama, and the operation of clubhouses, restaurants, moving-picture theaters, playgrounds, etc.⁶⁹

It must be apparent from this recitation that the work of the Executive Secretary and of his Department involves the devotion of attention to a mass of detail. A good deal of the routine correspondence of The Panama Canal passes over the Secretary's desk. He must approve and verify many administrative rulings. He must see to the smooth functioning of the social and economic services for the population of the Canal Zone, and endeavor to improve them so that there may be a satisfied and loyal corps of workers. He must handle personnel problems to the end that the Canal shall at all times have an efficient supply of labor on the one hand, and that just grievances be remedied on the other hand. All of these matters make

⁶⁹ *Annual Report*, 1940, p. 61.

extensive calls upon the time of the Executive Secretary, and explain why a sizable staff is required in this Department.

The Department has many subdivisions. These may be grouped under three general headings: administration, government, and welfare. Under the first of these come the Executive office, bureaus of correspondence, records, statistics, personnel, property and requisition (including the Real Estate Section formerly directly under the Engineer of Maintenance). Under government come the Office of the General Counsel, and the divisions of civil affairs, including police and fire, schools, post offices, customs service, the magistrates' courts, and the Panama Canal Clubhouses. Each of these bureaus and divisions has a chief who is responsible to the Executive Secretary. An Assistant Executive Secretary and a Director of Panama Canal Clubhouses are the principal assistants to the Executive Secretary.

THE OFFICE OF GENERAL COUNSEL

Until 1934 The Panama Canal looked to the District Attorney and to the legal officers under the direction of the Secretary of War in Washington for guidance upon legal questions affecting The Panama Canal. This system was never entirely satisfactory, as these officers were preoccupied with other official duties. After the adoption of the *Canal Zone Code*, the Governor issued a regulation on October 1, 1934,⁷⁰ establishing the Office of Counsel for The Panama Canal. As directed by the Governor, this officer was designated to render advice of a legal nature upon problems relating to Canal organization and activities, as well as to be at the Governor's disposal for such duties as might be assigned him. The functions of office naturally included preparation of legislation, Executive Orders, and Governor's Regulations. In view of the fact that the codification of the *Canal Zone Code* had been done under the direction of the Governor rather than under the District Attorney, it was

⁷⁰ *Ibid.*, 1935, p. 84.

fitting that someone closely identified with the drafting of this Code should be appointed legal officer of the Canal to administer it.

The Panama Railroad had, until 1936, its own legal advisers in New York and in the Isthmus. In this year the Governor ordered that the positions of Counsel of The Panama Canal and legal adviser to the Panama Railroad be amalgamated through the creation of the Office of the General Counsel for The Panama Canal. The duties of the General Counsel in relation to The Panama Canal remained without change, and the task of handling legal questions relating to the Railroad was added to existing responsibilities. The General Counsel is thus one of the immediate advisers of the Governor both in his position as chief officer of The Panama Canal and as President of the Panama Railroad Company. When occasion requires, the Counsel participates in the discussions of the policy-forming group referred to previously.⁷¹

THE DIVISION OF CIVIL AFFAIRS

The Division of Civil Affairs encompasses the postal service, the administration of certain of the port duties, including customs inspection, and the shipping commissioner's work. The postal system of the Isthmus is administered by The Panama Canal rather than by the Post Office Department of the United States. Until 1924 stamps were purchased from the Republic of Panama and surcharged "Canal Zone."⁷² After this date the Canal first used United States stamps with Canal markings, and later adopted special Canal Zone stamps. Although not operated by the Federal Post Office Department, the *Canal Zone Code* provides that "postal service of the Canal Zone shall be

⁷¹ *Supra*, p. 197.

⁷² The Taft Agreement (*Ex. O.*, 29) provided in Sec. 7 that "All mail of Panama to the United States and to foreign countries shall bear the stamps of the Republic of Panama properly crossed by a printed mark of the Canal Zone Government. . . ." The Agreement was abrogated in 1924.