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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Implementing The Panama Canal Treaty Of 1977--Good Planning But Many Issues Remain

So far, progress has been good in implementing provisions of the Panama Canal Treaty, as illustrated by the smooth transfer to Panama of various port and railroad activities, certain health and sanitation services, and other functions. The Panama Canal Commission and the Department of Defense have made substantial progress in enacting important personnel changes required by the Treaty or its implementing legislation.

Several unresolved issues and problems hinder full implementation of the Treaty; however, the parties involved are working toward solutions to problems in the following areas.

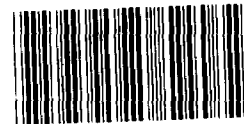
- Termination of U.S. jurisdiction in the former Canal Zone.
- Transfer to Panama of considerable property, port and railroad facilities, and certain public services.
- Defense's assumption of certain functions previously performed by the Panama Canal Company and Canal Zone Government.

In addition, there is potential for better inter-agency coordination.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This is our detailed report on Implementing the Panama Canal Treaty of 1977. It discusses the issues and concerns which we believe may require further attention and resolution in order to fully implement the Panama Canal Treaty. It also updates information contained in our June 1979 staff study and in congressional testimony by the Comptroller General since late 1977 on organizational and financial issues associated with this Treaty.

We are sending copies of this report to cognizant committees of Congress; the Director, Office of Management and Budget; the Secretaries of State, Defense, Army, Treasury, and Transportation; the Commander-in-Chief, U.S. Southern Command; and the Administrator of the Panama Canal Commission.

Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

IMPLEMENTING THE PANAMA
CANAL TREATY OF 1977--GOOD
PLANNING BUT MANY ISSUES
REMAIN

D I G E S T

Since early 1978, U.S. Government officials in Panama, former Canal Zone officials, and representatives of Panama have been preparing for the orderly and efficient implementation of the Panama Canal Treaty. The principal U.S. Government organizations responsible for Treaty planning were the Panama Canal Company and the Canal Zone Government (now the Panama Canal Commission), the Department of Defense, through the U.S. Southern Command; and the U.S. Embassy. The principal Panama organizations were the Panama Canal Authority and the National Guard.

To insure that the United States can fulfill its responsibilities of managing, operating, maintaining, and defending the Panama Canal, the U.S. planning organizations kept foremost in mind the importance of maintaining favorable working and living conditions for the U.S. community--both military and civilian--in the Panama Canal area. Two principles have guided such planning efforts: (1) the tactical capabilities of the military forces to defend the Panama Canal will not be degraded and (2) the present quality and level of all current services and support to U.S. citizens in the area will be sustained to the maximum extent possible. (See ch. 2.)

Within this framework, the United States and Panama have made good progress in implementing the changes mandated by the Panama Canal Treaty. The transfer to Panama of various port and railroad activities, certain health and sanitation services, vehicle registration and licensing, and utility billing and rate setting in certain locations outside Canal operating areas proceeded smoothly and with no apparent impact on Canal operations or on the living conditions of the general public.

In addition, commercial retail operations, such as the Balboa theater, restaurant, and bowling alley, were satisfactorily transferred to Panama for operation by private interests. (See ch. 3.)

In the difficult and critical area of employee provisions, the Commission and Defense have made substantial progress in implementing the important personnel changes required by the Treaty or by the Panama Canal Act of 1979, including

- implementation of a hiring preference system for Panamanians;
- development of policies and procedures to increase Panamanian participation in Canal operations;
- establishment of Defense civilian personnel policies to ensure 90 percent proportionality in the Panamanian workforce;
- development of procedures to implement other required changes; and
- action on certain social security matters.

The Canal Zone Civilian Personnel Policy Coordinating Board approved a new Panama Area Wage Base for employees hired after October 1, 1979, which meets the requirements for minimum levels of pay and annual increases set forth in the Panama Canal Act. (See ch. 6.)

Nevertheless, basic unresolved issues and problems in the following areas hinder full implementation of the Treaty.

- Termination of U.S. jurisdiction in the former Canal Zone.
- Transfer to Panama of considerable property, port and railroad facilities, and certain public services.

--Department of Defense assumption of certain functions previously performed by the Panama Canal Company and Canal Zone Government.

These matters are discussed below.

TERMINATION OF U.S. JURISDICTION

While good progress has been made in terminating U.S. territorial jurisdiction in the former Canal Zone, a number of major unresolved issues require further attention and resolution in order to fully implement the Treaty-specified changes, including

- assurance of procedural guarantees;
- impact of Panama laws on terms and conditions for business and non-profit activities;
- taxation of U.S. contractors;
- customs reporting; and
- land-use licensing matters.

The issues are complex. Mutually satisfactory solutions are needed which in most cases will require time, cooperation, and dedicated effort to devise and implement. (See ch. 3.)

TRANSFER OF PROPERTY FACILITIES, AND PUBLIC SERVICES

While the transfer to Panama of property, various port and railroad facilities, and public services proceeded smoothly, basic problems are hindering full Treaty implementation. These include Panama's problems in determining a method of maintenance for specific shipyard facilities and in developing procedures to verify the costs of providing certain public services. Also, the quality of these services has not been assured.

When the Treaty entered into force, the Commission transferred \$84.2 million in assets to Panama at no cost and \$34.9 million to Defense. Also, Defense transferred \$27.5 million in property and facilities to Panama. As a result of Defense's Treaty-specified property transfers, certain military installations and bases were relocated at an estimated cost of \$41.4 million in military construction funds. The Federal Aviation Administration (FAA) plans to transfer property and facilities to Panama valued at about \$4.1 million over a 5-year period.

The Commission and FAA have favored Panama in disposing of certain Federal property. For example, the Commission sold Panama certain Commission-owned refuse collection equipment which could have been used by Defense, and FAA favored transferring property to Panama at no cost. (See ch. 4.)

DEFENSE'S ASSUMPTION OF FUNCTIONS

To a large extent, Defense has been successful in planning for and continuing the operations assumed October 1, 1979, and in expanding its own services as needed. However, several unresolved issues could adversely affect the cost and quality of postal or health services or have an impact on who is eligible for these services. The issues pertain to:

- U.S. and Panama disagreement over airport terminal payments for mail delivery.
- Lack of a final agreement between Panama and Defense on mail privileges for non-profit activities.
- Lack of criteria and guidance on certain health care billing matters.
- Lack of military exchange, commissary, and housing privileges for Panamanian health care professionals.

Southern Command representatives and, in some cases, U.S. Embassy officials are attempting to resolve these matters. (See ch. 5.)

The Commission, U.S. Southern Command, U.S. Embassy, and Panama recognize these unresolved issues and are working to correct them. For example, Panamanian attorneys have been hired to assist in analyzing Panama laws in order to ensure the procedural guarantees and Panama has reintroduced legislation that may deal with the guarantees on an individual basis. Resolutions are being pursued on the use and maintenance of the shipyard facilities. Panama has proposed a solution to the disagreement over the delivery of mail that appears acceptable to the United States. It should be noted, however, that the recent dissolution of the Panama Canal Authority has held up further bilateral actions on these issues.

Finally, GAO identified the following situations which should be considered by the Federal agencies and by others as Treaty implementation proceeds. Whether the:

- System of preference will result in a real and effective increase in Panamanian employment in order to fulfill the U.S. commitment to increase Panamanian participation in Canal operations. (See p. 43.)
- New minimum pay levels and annual increases provided for in the Act create a situation whereby two U.S. Government employees working side-by-side and performing the same or similar duties will earn different wages. (See p. 55.)
- New Panama Area Wage Base will (1) equalize the wage levels in Panama while respecting the worker's interests according to the Treaty and (2) not jeopardize Panama's income derived from the Canal. (See p. 55.)

- Cost of living allowance can be computed to recognize individual circumstances and needs, such as marital status, family size, and income level. (See pp. 55 and 56.)

RECOMMENDATIONS

The Secretaries of State and Defense and the Administrator of the Panama Canal Commission should closely monitor the extent to which basic unresolved issues and problems impede full Treaty implementation and, through concerted action by the principal U.S. Government agencies and by Panama as appropriate, work to resolve these matters without delay. Such actions should include encouraging Panama to:

- Take the necessary steps to insure that procedural guarantees are assured for persons specified in the Treaty.
- Modify existing laws that adversely affect the terms and conditions for operating business and nonprofit activities in the former Canal Zone.
- Develop procedures for verifying the costs incurred in providing Treaty-specified public services.

AGENCY COMMENTS

GAO discussed a draft of this report with the U.S. agencies involved and incorporated their comments and suggestions where appropriate. In addition, the Commission provided written comments. (See app. VIII.)

The Departments of Defense and State expressed no objections to the above conclusions and recommendations. The Administrator of the Commission agreed with these recommendations, but pointed out that the unresolved issues are complex and are not likely to be resolved quickly. Also, the Administrator considered the report "disappointing in overall balance and in its seeming emphasis on a comparatively few unresolved issues."

INTERAGENCY COORDINATION

Effective coordination among the three U.S. Government agencies responsible for implementing the Treaty is important to avoid duplication of effort, present a single and consistent U.S. position on issues, and maximize economy and efficiency in Treaty implementation.

Overall, coordination among the three agencies has been good, given the complexity and variety of the problems and time constraints for planning and carrying out Treaty implementation. Through formal and informal coordination, the agencies have to a large extent avoided duplication of effort and have maximized economy and efficiency in planning for implementation. However, the U.S. Embassy is not a full member of either of the key committees established to provide the interaction between the United States and Panama on Treaty implementation matters.

GAO believes that for effective coordination throughout the Panama Canal Treaty period, the U.S. Embassy should be a full member of these committees, and recommends that the Secretaries of State and Defense and the Administrator of the Panama Canal Commission work together to provide for such membership.

The State Department agreed with this recommendation, but Defense and the Commission disagreed, maintaining that Embassy membership is not necessary. (See apps. VIII and IX.)



C o n t e n t s

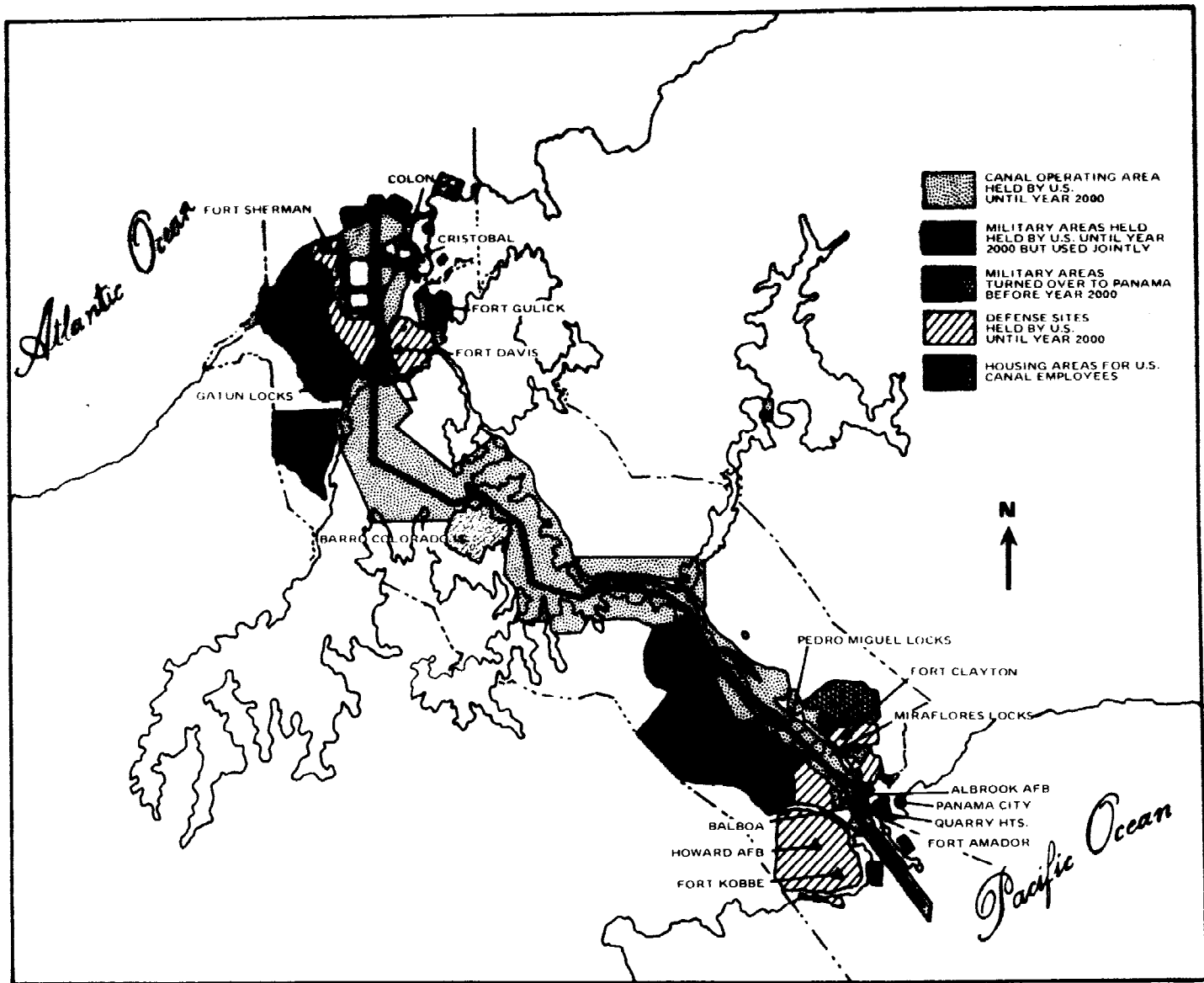
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ABBREVIATIONS

AID	Agency for International Development
CZG	Canal Zone Government
FAA	Federal Aviation Administration
GAO	General Accounting Office
PCA	Panama Canal Authority
PCC	Panama Canal Company
PRC	Panama Review Committee
SOFA	Status of Forces Agreement



CHAPTER 1

INTRODUCTION

This report is intended to inform the Congress of the planning by U.S. Government agencies, and Republic of Panama agencies where appropriate, to implement the Panama Canal Treaty of 1977 and to highlight those issues and concerns that may require further attention and resolution. It covers the

- planning framework to implement the Treaty;
- termination of U.S. jurisdiction in the former Canal Zone;
- transfer to Panama of considerable property, port and railroad facilities, and current public services;
- Department of Defense's assumption of certain functions previously performed by the Panama Canal Company and Canal Zone Government (PCC/CZG);
- employee provisions of the Treaty and implementing legislation; and
- coordination among U.S. Government agencies in planning for Treaty implementation.

The report also updates information contained in our June 4, 1979, staff study 1/ and congressional testimony by the Comptroller General since late 1977 on organizational and financial issues associated with this Treaty.

On September 7, 1977, President Carter and Panama's Chief of Government, Brigadier General Torrijos, signed two treaties dealing with the Panama Canal: (1) a basic treaty governing the operation and defense of the Canal which extends through noon December 31, 1999 (Panama Canal Treaty), and (2) a treaty guaranteeing the permanent neutrality of the Canal (Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal). The basic treaty is supported by separate agreements concerning defense and

1/ "Background Information Bearing Upon Panama Canal Treaty Implementing Legislation" (ID-79-33).

operation of the Canal. The two treaties entered into force on October 1, 1979.

The treaties provide for a new cooperative relationship between the United States and Panama in both the operation and defense of the Panama Canal. They replace the U.S.-Panama Treaty of 1903 (the Hay-Bunau-Varilla Treaty) which governed Canal operations since the waterway's construction and the subsequent treaties of 1936 and 1955. The new treaties' basic objectives are to assure that the Canal continues to be efficiently operated, secure, neutral, and open to all nations on a nondiscriminatory basis.

PANAMA CANAL TREATY

Jurisdiction

Under the new Panama Canal Treaty, Panama assumed general territorial jurisdiction over the former Canal Zone on October 1, 1979, and for all practical purposes, the Canal Zone and the Canal Zone Government ceased to exist. The United States retains criminal jurisdiction over U.S. nationals in most cases for the first 30 months of the Treaty. Thereafter, Panama exercises primary criminal jurisdiction, except in U.S. Defense sites and military areas of coordination. Private business and nonprofit activities which operated in the former Canal Zone prior to March 7, 1977, may continue operating for 30 months under the same terms and conditions prevailing prior to the entry into force of this Treaty. (See chart on p. 13.)

Canal operation

The Panama Canal Treaty gives the United States continued primary responsibility for operation and defense of the Canal until December 31, 1999, and the right to use all land and water areas and facilities necessary for this purpose. A status of forces agreement, similar to such agreements elsewhere, covers the activities and presence of U.S. military forces. At this Treaty's end, Panama will take over operation of the Canal.

The United States will operate and maintain the Canal through a new U.S. Government agency, the Panama Canal Commission, which replaces the PCC/CZG. The Commission is in the executive branch of the U.S. Government, and the President's authority, with respect to the Commission, is exercised through the Secretary of Defense. Five Americans and four Panamanians comprise the Board of Directors. Until

1990, the Administrator of the Commission will be a U.S. citizen and the Deputy Administrator will be a Panamanian. Thereafter, a Panamanian will be the Canal Administrator and the Deputy will be a U.S. citizen.

The Panama Canal Treaty also (1) establishes basic employment policies for the Commission, (2) provides for payments to Panama out of Canal operating revenues, and (3) provides for protection of the environment. It also commits the two countries to study the feasibility of constructing a sea-level canal in Panama and, if they agree that such a canal is necessary, to negotiate mutually agreeable terms for its construction. Further, the United States has the right to add a third lane of locks to increase the capacity of the existing Canal.

NEUTRALITY TREATY

Under the terms of the Neutrality Treaty, Panama and the United States will maintain indefinitely a regime providing for the permanent neutrality of the Canal, including nondiscriminatory access and tolls for merchant and naval vessels of all nations. U.S. and Panamanian warships are entitled to expeditious passage through the Canal at all times without regard to the type of propulsion or the cargo carried. After termination of the Panama Canal Treaty, no nation other than Panama may operate the Canal or maintain military installations within Panama's territory.

U.S. LEGISLATION FOR IMPLEMENTING THE PANAMA CANAL TREATY

The Panama Canal Act of 1979, (Public Law 96-70), was passed on September 27, 1979, to provide legislation for the implementation of the Treaty and related agreements. The principal distinguishing features of the Act are as follows.

- Provision for operation of the Canal by a noncorporate (appropriated fund) agency.
- Requirement that tolls and other receipts of the Canal be paid into the Treasury and that expenditures be made pursuant to annual appropriations.
- Audit of the Commission's financial transactions by the Comptroller General of the United States, including certification of estimated revenues.

- Designation of the Secretary of Defense as the executive branch officer responsible for oversight of Canal matters.
- Provision for Presidential appointment and Senate confirmation of the Administrator of the Commission and U.S. members of the supervisory board and Presidential appointment of other policymaking bodies provided for by the Treaty, such as the Consultative Committee and the Committee on the Environment.
- No payments may be made to Panama under the Treaty's financial provision that Panama is to receive an additional \$10 million per year if Canal traffic and revenues permit until the U.S. Government is reimbursed for any costs of Treaty implementation associated with the maintenance and operation of the Panama Canal, including the costs of providing education, health, and other services to the Panama Canal Commission employees.
- Canal cannot be transferred to Panama prior to December 31, 1999.

SCOPE OF REVIEW

Our review was directed at monitoring and reporting on the overall planning activities and the status of Treaty implementation as of March 1980. We visited the offices and held discussions with representatives of the Panama Canal Company and Canal Zone Government (now the Panama Canal Commission), U.S. Southern Command, Federal Aviation Administration (FAA), Smithsonian Institution, Interamerican Geodetic Survey, and the Canal Zone Civilian Personnel Policy Coordinating Board (now called the Panama Area Personnel Board) in the former Canal Zone and the U.S. Embassy and the Gorgas Memorial Laboratory in Panama.

We reviewed the Panama Canal Treaties of 1977, including supporting agreements and documents; applicable legislation; implementation planning documents, rules, and regulations; and various congressional hearings and reports. It should be noted that this report primarily concentrates on the implementation of the Panama Canal Treaty (hereinafter called the Treaty).

Our strategy was to prepare and issue memorandums, when appropriate, as problems and issues of Treaty implementation

were identified. During the review, we issued four such memorandums to appropriate U.S. Government agencies. However, the memorandums did not represent either a draft or a final GAO report; they were issued to advise the agencies of particular matters disclosed during the review and to give them opportunities for comment to insure that we were aware of any additional information, including any actions planned or in process.

Our fieldwork was done between May and November 1979. The draft of the report was submitted to the Panama Canal Commission, U.S. Southern Command, U.S. Embassy, FAA, and Smithsonian Institution for review and comment on January 17, 1980. We met with agency representatives in late January and late February 1980 to discuss their views and comments, which have been incorporated in this report. We also received written comments from the Panama Canal Commission and the Department of Defense in March 1980. (See apps. VIII and IX.)

CHAPTER 2

FRAMEWORK TO IMPLEMENT THE TREATY

Since early 1978, U.S. Government officials in Panama and the former Canal Zone and representatives of Panama have been planning for the orderly and efficient implementation of the Panama Canal Treaty. The bulk of the Treaty planning took place in Panama. The principal U.S. Government organizations responsible for Treaty planning were the Panama Canal Company and Canal Zone Government (now the Panama Canal Commission), the Department of Defense through the U.S. Southern Command, and the U.S. Embassy. The principal Panama organizations were the Panama Canal Authority (PCA), and the National Guard.

Implementation planning between the two governments took place in binational working groups which were generally considered as the predecessors to the Coordinating and Joint Committees called for by the Treaty documents. The binational working groups' actions were limited to preparatory planning and did not constitute implementation of the Treaty. The U.S. Embassy assigned a Treaty Implementation Counselor and staff to monitor and provide guidance to these working groups and other organizations involved in the implementation planning process. Panama created the PCA to deal with U.S. agencies, including the Commission, on Treaty-related matters and assigned its National Guard the responsibility for interfacing with U.S. Forces.

To insure that the United States can fulfill its responsibilities of managing, operating, maintaining, and defending the Panama Canal, planning by the U.S. organizations has kept foremost in mind the importance of maintaining favorable working and living conditions for the U.S. community--both military and civilian--in the Panama Canal area. Two principles have guided such planning efforts: (1) the tactical capabilities of the military forces to defend the Panama Canal will not be degraded, and (2) the present quality and level of services and support now available from all sources to U.S. citizens in the Panama Canal area will be sustained to the maximum extent possible.

PLAN FOR IMPLEMENTATION

PCC/CZG and U.S. Southern Command

PCC/CZG and the U.S. Southern Command used a system of planning by objectives to establish the overall framework for

accomplishing Treaty implementation. PCC/CZG and Panama established a Binational Working Group which included 23 joint U.S.-Panamanian working subcommittees for such subjects as ports, railroad, personnel, social security, housing, and utilities to deal with those functions and activities which were transferred to Panamanian control on October 1, 1979. (See app. I for a list of subcommittees.) The Southern Command established a Joint Working Committee and 10 subcommittees to deal with military aspects of planning for implementation of the Treaty (see app. II) and a Combined Board Working Group. These groups were made up of representatives from the U.S. Southern Command and Panama's National Guard.

The initial subcommittee goals were to familiarize the members with the provisions of the Treaty and related documents and to formulate specific objectives. The subcommittees identified the issues to be resolved and developed plans and appropriate schedules to accomplish actions necessary for Treaty implementation. These plans were submitted to the Binational Working Group and the Joint Working Committee for final approval. They provided guidance to the subcommittees, reviewed and approved their work, and served as a forum for the resolution of unresolved matters. Differences unresolved at the binational level were referred to diplomatic channels for resolution.

The Combined Board Working Group operated according to the mission and tasks charged to the Combined Board by the Treaty. The Working Group's Treaty implementation planning emphasized those matters which would have the most immediate impact, such as the movement of armed military personnel, use of air space, a training coordination plan, and a mechanism for establishing the actual Board. Also, the Southern Command assigned Treaty affairs officers to plan for Defense's assumption of such functions as health, education, and postal services from PCC/CZG and the resulting increased support operations. The planning was concentrated in the individual military components (principally the Army and Air Force), with guidance from the Southern Command and component headquarters, and included operations planning, determining manpower requirements, formulating budgets, and arranging for the transfer of property and personnel.

The Coordinating and Joint Committees and the Combined Board were officially established on October 1, 1979, by an exchange of diplomatic notes. The Coordinating Committee provides the necessary interface between the Commission and Panamanian officials. The Joint Committee carries out the status-of-force-type provisions of the Treaty documents,

maintains communications between the two governments regarding Treaty matters, and resolves matters which may arise. It consists of military representatives from each government, including a senior U.S. and Panamanian military representative who serve as cochairmen and a coordinating staff composed of U.S. and Panamanian deputies. A U.S. Embassy representative serves as an advisor to the U.S. Joint Committee element and participates in that capacity in appropriate Joint Committee forums. The Joint Committee, when it became effective, formally ratified over 40 arrangements reached during the Treaty implementation planning state. The Combined Board develops joint plans for the protection and defense of the Canal.

U.S. Embassy

The Embassy was responsible for coordinating the activities of U.S. organizations involved in the transfer of functions and property to Panama, providing authoritative Treaty interpretations, and negotiating bilateral agreements with Panama for specific U.S. agencies. To do this, a Treaty Implementation Counselor was assigned to assess the various issues and to apportion mission tasks and resources.

The Counselor identified over 200 Treaty issues requiring resolution prior to the entry into force of the Treaty. Sections of the Embassy and other U.S. organizations, such as the U.S. Agency for International Development, were assigned to monitor the issues and keep the Counselor informed of significant developments. In addition, the Embassy assigned staff officers to observe the Binational Working Group and the Joint Working Committee and their subcommittees to assure compliance with the Treaty and to keep apprised of developments in issues within their areas of responsibility.

Government of Panama

Panama's basic mechanism for implementing the Treaty was the Panama Canal Authority 1/ which was established in

1/ Panama dissolved the PCA in December 1979 and integrated its responsibilities into various Panamanian Ministries. The effects of this action were not known as of January 1980; however, U.S. Embassy, Commission, and Southern Command officials advised us that, as a result of the dissolution, U.S.-Panama bilateral actions on important unresolved issues and problems have been delayed. Panama is presently organizing a smaller agency, within the Office of the Presidency, to replace the PCA.

September 1978 and given general responsibility for (1) coordinating the actions of various Panama components concerning the exercise of rights and discharge of responsibilities under the Treaties and (2) dealing with U.S. agencies, including the Commission, on matters related to the Treaties.

Panama's National Guard was responsible for dealing with military matters, including defense of the Canal and related areas. In those areas where the National Guard has no expertise, Panama provides civilian assistance.

The Office of Comptroller General of Panama could have some future involvement in Treaty implementation. It is authorized to audit the accounts of PCA and Panama's National Port Authority, the agency assigned to operate the Balboa and Cristobal ports. We are unaware of any formal role presently assigned to the Office of Comptroller General in connection with the Commission, and it currently has no authority to audit the Commission. One Panama Comptroller General official and an Embassy official told us that, in the future, the Comptroller General's office may request permission to review the new Commission's end-of-year financial statements.

The principal U.S. agencies coordinate their Treaty implementation planning with Panama by having Panamanian officials cochair the Binational Working Group and the Joint Working Committee, their respective subcommittees, and the Combined Board. Unresolved matters of these groups are sent to the U.S. Embassy for resolution at the diplomatic, or government-to-government, level.

COORDINATION

Since the Panama Canal Commission, Department of Defense, and U.S. Embassy, three principal agencies responsible for planning and preparing implementation of the Treaty, are pursuing many identical issues and activities simultaneously, coordination is important to avoid duplication of effort, present a single and consistent U.S. position on issues, and maximize economy and efficiency in planning.

The formal mechanism for coordinating the activities of the three U.S. agencies is the Panama Review Committee (PRC). It began in the early 1960s to serve as the principal forum for consultation among U.S. Government agencies operating in Panama and to coordinate their policies and activities. The PRC is also to serve as a forum for the exchange of reports and information and coordination of actions and proposals concerning implementation of the Panama Canal Treaties as they bear upon U.S.-Panamanian relations. Presently, it is

concerned with policy matters that affect the major U.S. agencies and with the international consequences of U.S. initiatives in Panama.

The PRC is composed of the Ambassador to Panama, who also serves as the Chairman; the Administrator of the Commission (who replaced the President of the PCC); and the Commander-in-Chief of the U.S. Southern Command. Its members are to endeavor to promptly resolve in Panama any differences which may arise among them and, if necessary, to refer such matters through appropriate channels to Washington. The PRC is supposed to meet periodically or at the request of any member.

Coordination also should occur through meetings and discussions in the PRC subcommittee, known as the Mini-PRC, which was established for Treaty implementation planning and consists of a senior-level representative from each of the three agencies. In addition, these agencies are to operate under a memorandum of understanding signed in October 1978 concerning the coordinated discharge of responsibilities of the Embassy and the Administrator of the Panama Canal Commission. Defense and the Embassy also concluded a separate agreement outlining Defense's day-to-day coordination procedures with the Commission and the Embassy for proposed agreements with Panama.

CHAPTER 3

TERMINATION OF U.S. JURISDICTION--

MAJOR UNRESOLVED ISSUES

Progress has been made in terminating U.S. territorial jurisdiction in the former Canal Zone, but a number of major unresolved issues require further attention and resolution in order to fully implement this Treaty-specified change, including

- assurance of procedural guarantees;
- impact of Panamanian laws on terms and conditions for business and nonprofit activities;
- taxation of U.S. contractors;
- customs reporting; and
- land-use licensing matters.

For these complex issues, mutually satisfactory solutions are needed which, in most cases, will require time, cooperation, and dedicated effort to devise and implement.

OVERVIEW

One major change under the Treaty is the termination of U.S. territorial jurisdiction in the former Canal Zone. The Treaty provides that the Panama Canal Commission, which replaced the PCC/CZG, may not engage in the commercial activities that had traditionally been part of the mission of the Canal organization, such as the operation of retail stores, theater, restaurant, bowling alley, harbor launch service, automobile repair, and other activities intended to benefit the general public.

These and other functions that were previously performed by the PCC/CZG were required to be redistributed. For example, functions such as education, health, postal service, and retail sales were reassigned to the Department of Defense. The significant port and railroad functions were transferred to Panama together with jurisdictional responsibilities, such as customs and immigration. Furthermore, the two governments now share certain responsibilities, namely law enforcement for the 30-month transition period and fire protection for the duration of the Treaty. The redistribution of functions

mandated by the Treaty is shown graphically in the chart on following page.

The Commission, Defense, U.S. Embassy, and Panama have done much to implement these major functional changes. The transfers to Panama of various port and railroad activities, certain health and sanitation services, vehicle registration and licensing, and utility billing and rate setting in certain locations outside Canal operating areas proceeded smoothly and with no apparent effect on Canal operations or on the living conditions of the general public. Also, commercial retail operations, such as the Balboa theater, restaurant, and bowling alley, were satisfactorily transferred to Panama for operation by private interests.

MAJOR UNRESOLVED ISSUES

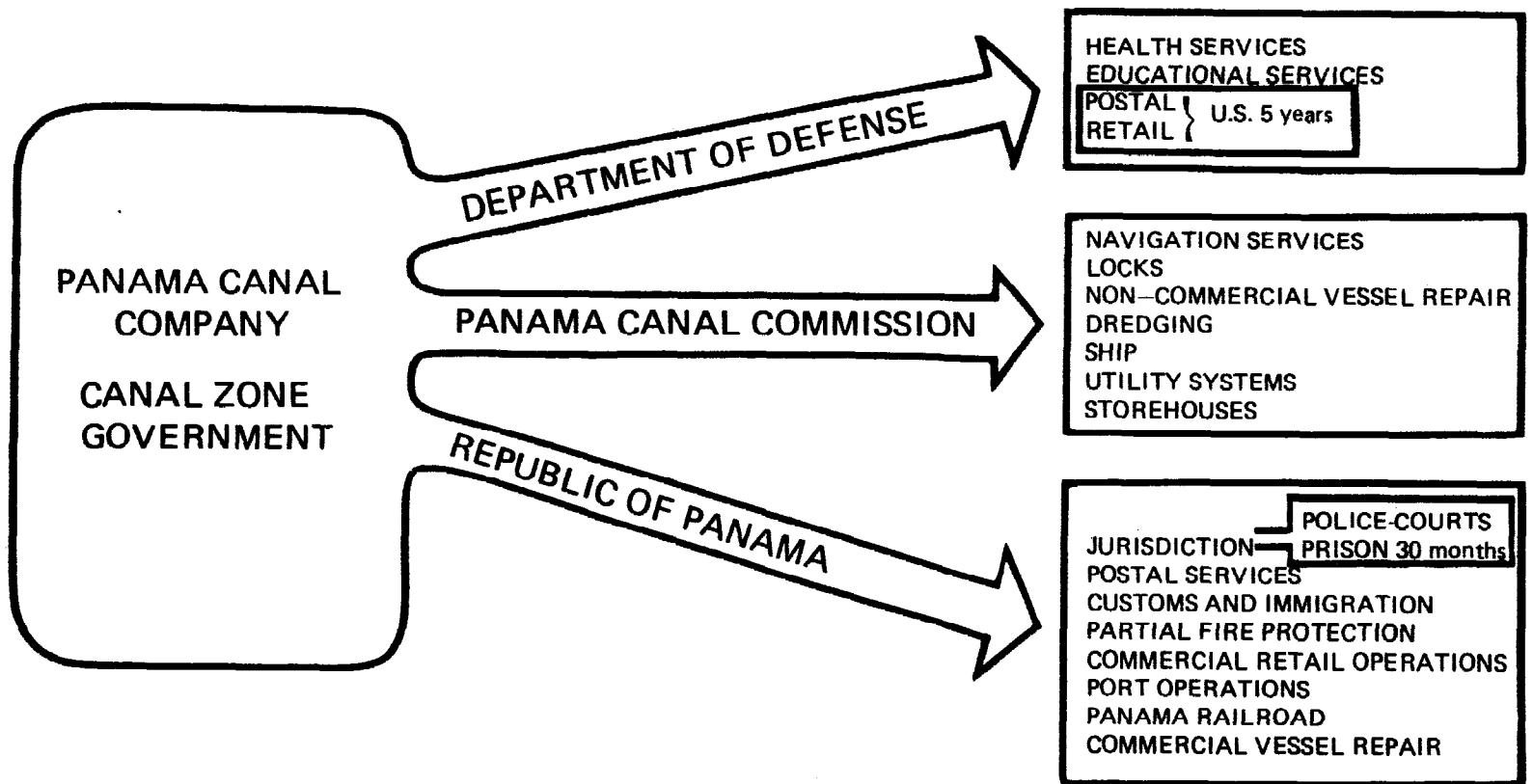
Procedural guarantees not assured

There is considerable question as to whether procedural guarantees are assured under Panamanian law. These guarantees are important to U.S. citizens who find themselves subjected to Panamanian jurisdiction. The Agreement in Implementation of Articles III and IV of the Treaty provide that U.S. citizen employees and members of the U.S. Forces and civilian components and their dependents who are prosecuted by the Panamanian authorities shall be entitled to certain procedural guarantees, including the right to

- a prompt and speedy trial;
- be informed in advance of trial of specific charge or charges;
- be confronted with and allowed to cross-examine witnesses;
- have evidence and witnesses in their favor presented;
- legal representation of their choice for defense throughout the entire proceedings; and
- a competent interpreter if they consider it necessary.

The State Department's position is that the Treaty negotiators believed these provisions to be self-executing under Panamanian law. Local U.S. Government officials, however,

**TREATY:
TRANSFER OF RESPONSIBILITIES AND FUNCTIONS**



have expressed disagreement over specific procedural guarantees provided by Panamanian law and their relationship to Treaty guarantees. According to some Panamanian representatives, the guarantees were contained in Panama's existing criminal procedures.

There have been some positive developments. First, in late December, Panamanian Decree No. 116 of September 30, 1979, went into effect. That decree, which deals with the special entry/exit permits for U.S. citizen Commission employees and their dependents contains the following provision.

"The Special Permit referred to in this Decree shall serve to identify the holder as entitled to the procedural guarantees stipulated in Annex C of the Agreement in Implementation of Article III of the Panama Canal Treaty."

Second, Panama drafted legislation intended to provide these Treaty-specified procedural guarantees to all persons in Panama. Analysis of the proposed legislation by Commission, Southern Command, and Embassy attorneys, however, indicated that the bill was defective in several regards, the most important of which was the right to legal counsel during initial interrogation. 1/ We understand that Panama's executive branch has withdrawn its bill from the legislature for revision. Current indications are that this proposed legislation when reintroduced may deal with the procedural guarantees on an individual basis. Enactment is not predicted until some time during 1980 because of political resistance, because this legislation represents an effort to extend procedural guarantees to all persons in Panama, and because of pressing educational reform issues. The Commission and the Southern Command are continuing to analyze Panamanian law for the existence of the procedural guarantees. In addition, the State Department, through the Embassy, is seeking to reconfirm the self-executing nature of these guarantees under Panamanian law.

1/ It is worthy of note that there is a difference between the English and Spanish versions of the Treaty documents with regard to this guarantee. The Panamanians take the position that the Spanish version does not provide for legal counsel until after the initial interrogation has been completed.

In the meantime, the Southern Command, Embassy, and Panama are attempting to work out some basic procedures for cases that may arise. According to the Embassy, because of the high visibility of the procedural guarantees issue, in a test case Panama would handle the issue cautiously even if the Treaty-specified guarantees are not self-executing under Panamanian law.

The delay in assuring Panamanian compliance with these important procedural guarantees appears to be attributable in part to lack of timely pursuit by U.S. and Panamanian representatives to the planning subcommittee responsible for ensuring that the procedural guarantees exist. This subcommittee did not begin functioning until February 1979, because it was felt that this matter was too political and should be handled outside the subcommittee structure. Also there is a lack of Panamanian legal expertise in the U.S. organizations, which could have greatly enhanced U.S. efforts to analyze existing Panama law. In this regard, both the Commission and the U.S. Southern Command have recently engaged Panamanian attorneys, and the Embassy has requested approval from the State Department to obtain one.

Impact of terms and conditions
for business and nonprofit
activities on Panamanian law

Under the Treaty, business or nonprofit activities established in the former Canal Zone prior to March 7, 1977, may continue under the same terms and conditions for a 30-month transition period following entry into force of the Treaty. This has been interpreted by the Departments of State and Defense to mean that such organizations can take up to 30 months to obtain provisional licenses to operate. Thereafter, they will be subject to the same treatment for obtaining their licenses to operate under Panamanian law as similar enterprises established in Panama.

All other requirements of Panamanian law, however, became applicable to these organizations on October 1, 1979, including labor, fiscal, customs, and immigration laws. The increased financial burden of compliance with those laws, together with the loss of eligibility for duty-free purchases and imports, loss of medical benefits, and the generally higher cost of living in Panama, changed considerably the terms and conditions under which the organizations and their employees could operate. According to the Department of State, recently enacted Panamanian laws have caused concern within the State Department and the Commission about possible Treaty violations.

The first of these laws, approved on September 11, 1979, requires persons engaged in business and nonprofit activities in the former Canal Zone and their dependents to pay a \$100 temporary fee every 10 months during the transition period and to post a \$500 repatriation deposit. The law created unexpected difficulties for business and nonprofit activities. According to the U.S. Embassy and the Commission, it also appears to discriminate against persons formerly engaged in business and nonprofit activities in the former Canal Zone in that it doubles the fee and repatriation deposit applied in the rest of the country and advances the registration to 10 months rather than the standard one-year requirement.

The second law, approved on September 20, 1979, requires business and nonprofit activities operating in the former Canal Zone to either supply various information to the Panama Canal Authority by October 31, 1979, or pay a \$500 fine and cease operations. The Commission and the State Department consider the law burdensome because it allows an unreasonably short period for compliance and it appears to be inconsistent with Treaty provisions to allow such enterprises to operate for a 30-month transition period. It also contradicts earlier statements by Panama that administration requirements for provisional recognition would be simple and easy.

Panama has not imposed fines or penalties on those businesses or nonprofit activities that did not meet the October 31, 1979, deadline. U.S. representatives believe that Panama will continue to be lenient in applying this law and will provide ample opportunity to comply. As of mid-November 1979, only 71 businesses and 153 nonprofit activities had registered, out of an estimated population of 136 businesses and 236 nonprofit organizations.

The U.S. Embassy is presently discussing these laws with Panamanian officials at the diplomatic level.

Taxation of U.S. contractors

The United States and Panama do not agree on the circumstances under which Panama can tax the income of "designated" 1/ U.S. contractors. This matter is presently being negotiated at the diplomatic level.

1/ "Natural persons who are nationals or permanent residents of the United States or corporations or other legal entities organized under the laws of the United States and under the effective control of such persons."

The Agreements in Implementation of Articles III and IV of the Treaty provide that a designated U.S. contractor will not have to pay tax to Panama on income derived under a contract with the Panama Canal Commission or the U.S. Forces as long as he is taxed at a substantially equivalent rate in the United States.

The Embassy's position in diplomatic level discussions with Panama is that if U.S. tax rates exceed those of Panama, the U.S. contractor would have no competitive advantage vis-a-vis his Panamanian counterpart and would therefore be exempt from Panamanian taxation. On the other hand, if the Panamanian tax rate exceeds that of the United States at some levels of income, the difference in tax rates must be considered in terms of its ultimate effect on the competitive position of Panamanian and U.S. contractors bidding for contracts with the U.S. Forces or the Commission.

As of February 1980, Panama had not accepted this interpretation of "substantially equivalent." The Panamanians would prefer to quantify the term in percentages. Diplomatic discussions are continuing in an attempt to develop a mutually satisfactory interpretation of this language in the two major implementing agreements.

Customs reporting not resolved

The Commission and the U.S. Southern Command have taken different positions on Panama's requirement for contractors to complete a customs declaration/liquidation form. The Treaty-related agreements provide that all property imported for the official use or benefit of the U.S. Forces and the Commission, including property imported through their contractors and/or subcontractors, shall be exempt from the payment of all import taxes and license requirements. They also provide that the U.S. Forces and Commission shall issue certificates adopted by the Joint and Coordinating Committees stating that the property being imported is for these purposes.

Panama has required the Commission and U.S. Forces contractors to complete Panamanian customs declaration/liquidation forms on all imports. The Commission and the U.S. Forces believe the form must be filled out by a Panamanian customs broker, who charges a fee on nonofficial cargo in proportion to the cargo value. The form provides for disclosure of description, quantity, and price of each cargo item. According to Panama, the statistical data is needed for internal decisions related to its competitiveness in providing goods and services.

The Commission agreed to have its contractors complete the customs form for imports needed by the contractor. According to a Commission representative, the use of a broker will not represent a significant contractor cost that will be passed on to the Commission. Also, official Commission imports are not charged brokers' fees.

In contrast, the U.S. Southern Command has not agreed to have contractors complete the customs form for their imports and has advised contractors not to do so. Defense does not believe such reporting is required by the Treaty. As a result, Panama has refused to finalize other customs agreements, even though it has been honoring them, on such matters as certification of duty-free status of imported furniture, household goods and personal effects, vehicle import and export, and transfer of duty-free property.

Since October 1, 1979, Defense contractors have had some problems with their cargoes, even though diplomatic notes signed prior to October 1, 1979, stated that cargo would not be delayed for lack of an arrangement. In October 1979, Panamanian customs authorities held cargo consigned to U.S. Forces contractors for about 2 weeks. As of February 1980, this disagreement had not been resolved, so there is the potential for cargo stoppage again. A lengthy delay could affect contractors' abilities to meet schedules.

Land-use licensing matters

A number of land-use licensing issues have not been resolved, thus affecting the intended termination of U.S. jurisdiction. Article IV of the Agreement in Implementation of Article III provides that Canal operating and other areas made available for U.S. use may be used for other purposes compatible with the management, operation, and maintenance of the Panama Canal under land-use licenses to be issued by Panama and approved in writing by the United States.

As of January 1980, a U.S. position statement was being prepared for submission to the Coordinating Committee with the view toward resolving the following issues at that level.

- Use of Commission buildings by non-U.S. Government entities (including whether the United States or Panama will assign space and collect rent).
- Inclusion of Treaty Article IX indemnification clauses in land-use licenses to be issued by Panama.

--Requirement for timely notification to and review by the United States of land-use license applications.

--Use of Commission areas and facilities by Commission contractors.

Commission buildings' licensing

The United States and Panama disagree on who will authorize and bill for use of Commission buildings by third parties.

Panama believes that the use of Commission buildings by nonprofit commercial activities and by other non-U.S. Government parties (other than Commission contractors) should be licensed by Panama and that rent should be paid to its government. The Commission is of the opinion that, since it is the undisputed owner of the buildings in question, any rent charged to third-party users is payable to the Canal agency.

The result of this impasse is that both the Commission and Panama are billing individuals and organizations for use of space in Commission buildings. This double billing is creating considerable confusion for users of Commission facilities as well as for collection personnel representing both governments. Panamanian and Commission representatives are continuing discussions in an effort to resolve this dilemma or to at least agree to defer collection of rent for those licensees pending resolution of this issue at the binational level.

License format

Another important issue concerns the draft format for the land-use license, which would authorize the licensor (at that time the PCA) to revoke licenses at any time without compensation to the licensee. The U.S. position is that for the life of the Treaty any eligible licensees required by Panama to discontinue their activities for public purposes must be compensated by the Panama Government at fair market value for improvements on their license areas. A Panamanian representative has offered to stamp the licenses with a generally worded phrase stating that Panama issues the licenses according to the provisions of Article IX of the Treaty, but he would not agree to include an indemnification clause. In fact, there are indications that Panama might seek a clause which would relieve it from any responsibility for indemnifying the licensee.

License application review

The United States believes that the Treaty-related agreements clearly contemplate early U.S. notification and review of applications for use of land in the areas made available to the United States. Procedures that had been developed by the PCA for processing applications did not appear to provide for submitting them to the United States through the Coordinating Committee until after considerable review by Panama. The United States had been unsuccessful in obtaining agreement to amend the procedure at the time the PCA was dissolved.

Contractor land-use

Both Embassy and Commission representatives are of the view that Commission contractors are exempted by the Treaty from land-use licensing requirements when using Commission areas or facilities for Treaty-related purposes; their use of these areas is to be controlled by the Commission alone, subject to appropriate Treaty requirements. The PCA apparently believed, however, that all contractors in Canal areas are to be subject to the Article IV land-use licensing procedures. As of early December, both the commission and the PCA had begun billing Commission contractors using Commission areas and facilities.

CHAPTER 4

PROPERTY, FACILITIES, AND PUBLIC SERVICES

TRANSFERRED SMOOTHLY, BUT BASIC

PROBLEMS HINDER FULL IMPLEMENTATION

The transfer to Panama of property, various port and railroad facilities, and public services has proceeded smoothly, but basic problems are hindering full Treaty implementation. These include Panama's problems in determining a method of maintenance for specific shipyard facilities and in developing procedures to verify the costs in providing certain public services. Also, the quality of these services has not been assured.

PROPERTY TRANSFERS

When the Treaty entered into force, various U.S. Government agencies transferred or planned to transfer considerable property to Panama both at no cost and at fair value. Property was also transferred to the Department of Defense. No significant problems were noted. We did note that certain U.S. agencies favored Panama in disposing of certain U.S. Federal property.

The Treaty transfers to Panama the property interests of the United States in land and nonremovable improvements at such time as the United States no longer needs them to maintain, protect, or defend the Canal. The Panama Canal Act authorizes all transfers required by the Treaty and provides for a report by the U.S. President on each transfer occurring after October 1, 1979. The Act makes it clear the final transfer of the Panama Canal is not to be made prior to December 31, 1999. These matters are discussed further in the following sections.

Property transfers at no cost

As of September 30, 1979, the Canal enterprise had property, plant, and equipment worth a net book value of \$581.3 million (original cost less accumulated depreciation at time of transfer). When the Treaty entered into force, \$84.2 million of these assets was transferred to Panama at no cost and \$34.9 million was transferred to the Department of Defense. (See apps. III and IV.) An additional \$4.2 million in assets will be transferred to Panama during the early phases of the Treaty. Property initially retained by the Commission and additional acquisitions during the life of the

Treaty will also go to Panama at the conclusion of the Treaty. The net book value of such property at termination date, according to Commission estimates, will amount to \$528 million, making the total value of transfers to Panama \$616.4 million, as shown below.

Property Transfers

	<u>To Panama</u>		<u>To Defense</u>
		(millions)	
On entry into force	\$ 84.2		\$34.9
During life of Treaty	4.2		-
At end of Treaty	<u>a/528</u>		<u>-</u>
Total	<u>\$616.4</u>		<u>34.9</u>

a/Commission estimate.

Other U.S. Government agencies also transferred or planned to transfer property and facilities to Panama at no cost. On October 1, 1979, Defense transferred \$27.5 million in property and facilities. Also, we reported on June 4, 1979, 1/ that another \$33.5 million will be transferred during the life of the Treaty and about \$292 million at the Treaty's termination. These amounts do not include funds needed for real property improvements during the life of the Treaty or for relocating certain military installations and bases to facilitate Defense's Treaty-specified property transfers to Panama. To relocate the military, an estimated \$41.4 million in military construction funds is required for rehabilitation, alteration, and construction of new facilities programed over two phases. (See app. V.). Phase I, amounting to \$10.9 million, was designed to move the units displaced by Defense's Treaty-specified property transfers to their permanent locations, constructing only minimum essential facilities necessary for operations. Construction began in November 1978 and, as of entry into force of the Treaty, 99 percent of the work was completed. All necessary relocations were accomplished before October 1, 1979. Phase II, authorized for fiscal year 1980, is designed to construct permanent facilities at a cost of \$30.5 million.

In addition to Phase II construction, several smaller Treaty-related construction projects, amounting to

1/ See footnote on p. 1.

\$1.7 million, are planned for fiscal year 1980. Also additional work is planned for fiscal years 1981-83 at a cost of \$ 28.8 million. (See app. VI.)

FAA plans to transfer property and facilities valued at about \$4.1 million to Panama over a 5-year period. The turn-over was initially scheduled to begin on October 1, 1979; however, it was delayed until early 1980 because of a requirement of the Act that all agencies submit a report to the Congress at least 180 days before the transfer of any such property. As of January 1980, FAA in Washington was preparing the report for presentation to Congress.

Property offered at fair value

Property offered at fair value amounted to \$436,543. The Commission has identified property to be offered to Panama at fair value from the former Canal Zone Government and Panama Canal Company. Fair value is defined as the estimated reasonable price in dollars which that property would bring if offered for sale in the open market with a reasonable time allowed to find a buyer who knew the original cost, age, present condition, and purposes for which the property was best adapted and was capable of being used, assuming neither the buyer nor the seller was under compulsion. If this determination is not feasible, fair value could be construed as net book value. (See app. VII.)

The following schedule indicates the original costs, net book value, and fair value of property offered to Panama as of February 1980.

	<u>Original cost</u>	<u>Net book value</u>	<u>Fair value</u>
Canal Zone Government	\$ 65,421	\$ 9,109	\$ 25,652
Panama Canal Company	<u>451,676</u>	<u>102,929</u>	<u>181,540</u>
Total (note a)	<u>\$517,096</u>	<u>\$112,038</u>	<u>\$207,191</u>

a/ Numbers do not add due to rounding.

In addition, the Commission has offered to sell Panama certain Commission-owned refuse collection equipment at a fair value of \$229,352 under a proposed lease-purchase agreement presented to Panama on September 24, 1979. This increased to \$436,543 the total fair value of Commission property offered to Panama.

It should be noted that Panama has not formally accepted the proposed agreement, even though the Commission allowed it to begin using the equipment in question immediately on October 1, 1979, with the understanding that the agreement would be executed as written as soon as possible. Panama objects to the provision of the agreement that allows the Commission to reclaim all equipment if Panama does not meet agreed levels and quality of services. In this connection, the Commission has requested Embassy assistance to obtain Panama's acceptance of the agreement.

Emphasis on disposals outside the Government

The Commission and FAA have favored Panama in disposing of certain Federal property. For example (1) the Commission has offered to sell Panama certain Commission-owned refuse collection equipment which could have been used by Defense, thus resulting in the unnecessary expenditure or planned expenditure of funds by Defense and (2) FAA favored transferring property to Panama at no cost.

The Treaty prohibits the Commission from performing certain public services, such as refuse collection. As a result, Defense must provide its own garbage and trash collection service; to this end, it let a \$1.082-million contract for the service. Under the terms of the contract, the contractor uses equipment that was given to Defense by the former PCC/CZG on October 1, 1979. Defense representatives stated that this refuse collection equipment was generally in poor condition and, by its standards, was economically unrepairable. In addition, unnecessary costs were estimated at \$640,000 in fiscal year 1980 to replace the refuse collection equipment and between \$5,000 to \$10,000 in maintenance costs for the first month's operation of the equipment.

The Commission's position is that the property determination that was made is proper. Also, Commission officials said that Article III 7(a) of the Agreement in Implementation of Article III of the Treaty is the authority to give preference to Panama in disposing of Treaty-related equipment. It states that:

"The United States may, at any time, remove from the Republic of Panama, or in accordance with such conditions as may be agreed upon by the two parties, dispose of in the Republic of Panama any equipment, material, supplies or other removable property brought into, acquired or constructed in the Republic of Panama by or for the Commission. In case of disposal,

within the Republic of Panama, preference will be given to the Government of the Republic of Panama."

Furthermore, the Commission informed us that the refuse collection property disposition was in accordance with an interpretation by the Department of State in a Memorandum of Law by its Legal Advisor dated June 21, 1978, and the implementing procedures adopted by the Board of Directors of the Panama Canal Company in its resolution dated September 29, 1979. In this regard, the Secretary of Defense stated in a June 1978 memorandum that property transfers in connection with the implementation of the Panama Canal Treaty shall be in accordance with existing statutes, such as the Federal Property and Administrative Services Act, except as otherwise provided for in new legislation.

The Commission is currently in the process of changing its property disposal procedures to ensure that properties excess to the needs of Federal agencies will be offered on a preferential basis to Panama as stipulated in the Treaty. The procedural change is considered necessary because between October 1, 1979, and April 1981 the Commission plans to dispose of excess property with a fair value of about \$150,000. The property was purchased for about \$500,000.

In January 1979, the United States and Panama signed an agreement whereby FAA will continue to provide air traffic control and to train Panamanians until Panama can assume full responsibility for air traffic control and can maintain and operate the FAA equipment. The tentative time for FAA to withdraw from the former Canal Zone is 5 years, or about January 1984.

According to FAA officials, the Agency gave preference to Panama in disposing of its property and facilities because (1) Panama needs the transferred property to properly operate the air traffic control facilities being transferred and (2) the January 1979 FAA agreement with Panama allows it. It should be noted that on October 19, 1979, FAA's Chief Counsel concluded that the agreement between the United States and Panama concerning air traffic control and related services must be considered an agreement "related" to the Treaty. The agreement provides that:

"The Government of the United States will not remove from the Republic of Panama any such equipment, installations, material, supplies, or other property the remove of which would affect the quality of service the Republic of Panama will be able to provide."

The Department of State informed us that transfers such as those in question were authorized under the Federal Property and Administrative Services Act of 1949. State said that the removable property transferred to Panama in the two instances addressed clearly contribute to the performance of services by Panama which substantially benefit the U.S. Government and do so in a manner which will ultimately benefit the United States financially. The used refuse collection equipment sold to Panama permits Panama to provide these services to Commission areas relatively inexpensively. The Treaty requires the United States to reimburse Panama for the cost of providing these services; and, according to State, had the existing used equipment not been sold to Panama, new equipment would have been purchased, effectively at a cost to the United States. Not only would this have been more expensive but also it may have caused an interruption in the supply of these services to Commission areas, thus undermining a basic policy goal of the United States reflected in the Treaty and Implementing Legislation that the present quality and level of services to U.S. citizens in the Canal area be sustained to the maximum extent possible.

Similarly, State said that the transfer of certain air traffic control equipment by the FAA is part of a program to relieve the FAA of the ongoing \$5-million a year nonreimbursable cost of providing air traffic control services to Panama under Article 15 of the 1949 Air Transport Services Agreement. The equipment presently used by the FAA is necessary for Panama to be able to supply these services to the other U.S. agencies in Panama. This transfer of property, which has already permitted Panama to assume some of these responsibilities, thus contributes to the ultimate goal of relieving FAA of this ongoing costly burden. It was therefore considered to provide "substantial benefits" to the United States.

In our draft report, we raised the question as to whether these transfers were in compliance with the Federal Property and Administrative Services Act of 1949, as amended. Our position on the Commission and FAA property determinations is that such transfers to Panama seem to be authorized under the foreign excess property provisions of the Act.

FACILITIES TRANSFER

Probably the most complicated area in planning to implement the Treaty involved the ports and railroad facilities which were transferred to Panama upon entry into force of the Treaty. Overall, the transfer proceeded smoothly, but a major unresolved issue is that Panama has not determined the method of maintenance for the Balboa shipyard facilities. In

addition, the Commission assigned certain of its employees on a temporary basis to work for Panama and continues to perform certain supportive functions on a reimbursable basis in order for Panama to assume full operational responsibility for the ports and railroads.

Need to determine method
for maintenance of Balboa
shipyard facilities

The Balboa Shipyard basic installation consists of Drydock numbers 1,2,3, and Dock 8 and equipment used in the repair and maintenance of vessels and drydocks. Currently, most of the maintenance work is performed at Drydock number 1. The Treaty and related agreements give the Commission the right to use the facilities, equipment, and areas, with access to Drydock number 1 on a guaranteed basis for maintenance needs or for emergency repairs. This right includes water access required by floating equipment or vessels relative to operations of Drydock number 1.

The problem in maintenance seems to be that Panama has not found a commercial operator for the drydocks and supporting facilities. Panama has sought the interest of large U.S. firms with ship repair experience; however, potential operators expressed concern about (1) the Treaty rights of the Commission to use Drydock number 1 free of charge for both scheduled and emergency maintenance and (2) space limitations posed by the fact that the Treaty allows the Commission to retain a number of buildings in the drydock area. This will create problems with respect to the viability of a ship repair operation.

Panama sees the problem as involving two areas of consideration: (1) the future operation of the drydock as a commercial enterprise and (2) the need to reach an agreement on procedures for the Commission to use the drydock in the absence of a commercial operator.

Panama's National Port Authority is pursuing a resolution to this matter. The Commission is working out procedures for using the drydock for its maintenance requirements until such time as there is a commercial operator for the facility. An October 1979 joint U.S.-Panamanian ports report concluded that further delay in deciding on an operator may limit the short-term capability for repairing equipment essential for the continuous functioning of the Canal. Although an operator has not been selected, Panama must fulfill its obligation under the Treaty-related agreements to maintain the specific Balboa Shipyard facilities for normal Commission maintenance

and emergency repairs. Although information has already been exchanged as to future requirements, considerable equipment as well as the drydock and related facilities will still be needed by the Commission and must be properly maintained by Panama.

PUBLIC SERVICES TRANSFER

The Treaty provides that the Commission will pay Panama \$10 million a year in reimbursement for costs incurred in providing police and fire protection; maintenance, lighting and cleaning of streets; traffic management; and garbage collection. The Act requires the Comptroller General of the United States to audit annually the payments made for these services; any overpayment shall be refunded by Panama or offset against amounts payable under the Treaty. The payment is treated as an operating cost of the Commission. Costs of services disputed by the two parties are subject to a mutually binding audit, and payments during the second 3-year period are adjusted upward or downward to reflect actual costs experienced during the first 3 years.

Need to develop procedures for determining costs incurred

Panama has not developed procedures to verify the actual costs incurred in providing the Treaty-specified services. In prior Congressional testimony, 1/ we recommended that such procedures be developed.

The Commission believes that Panama should employ an accounting system that will determine and accumulate costs applicable to each public service and provide for sufficient recordkeeping and retention of data in support of reported costs to enable an audit. The Commission has conducted preliminary discussions on the subject of cost reporting with Panama and has been advised that Panama does not presently have such a capability. Panama has hired a consultant to design a system that will enable it to uniformly account for the public service costs. However, because of the dissolution of the Panama Canal Authority, it is not known if or when such a system will be implemented.

1/ House Merchant Marine and Fisheries Committee on Nov. 30, 1977 and Feb. 26, 1979, and Senate Armed Forces Committee on Feb. 1, 1978 and June 27, 1979.

The Commission's position calls for following joint monitoring and verification procedures to assure that performance standards are met, levels of service maintained, and cost adjustments made in case of variations from required standards of levels of service. Panama, however specifies that it will ensure that the agreed standards of quality are being maintained. Cost verification appears to be a very sensitive area, especially for Panama, and mechanisms are far from being developed.

As of March 1980, Panama has submitted only one monthly invoice of one-twelfth of \$10 million for the public services it currently provides. Panama did not provide a breakdown of costs. The Commission has emphasized to Panama that it requires costs in sufficient detail to permit evaluating their reasonableness and to provide the basis for adjustments to the fixed annual payment provided under the Treaty.

The Commission has (1) suggested guidelines for the accounting treatment of the individual cost elements proposed for use by Panama which require that they be reported separately for each of the services and (2) recommended that a detailed individual costing agreement be developed for each public service.

Panama does not believe it is obligated to give the Commission detailed monthly cost information to support the public service payments. Therefore, it has raised the matter to the diplomatic level to arrive at a concept which will provide a basis for the provision of these services. Panama's rationale is that there was general agreement between the Commission and Panama on the approach and content of the system to provide the audit trail for public service costs. However, with respect to the provision of public services, it has been treated as a contractor of the Commission for the purpose of providing public services on a contractual basis. Panama believes the \$10-million payment for public services was agreed to in lieu of tax revenues that normally would have provided the funding for government services in the Canal operating and housing areas; as a result, no contractual relationship exists and the monthly invoices based on the one-twelfth amount should be sufficient. The Commission does not agree with Panama's rationale.

Panama has expressed the goal of implementing an accounting system so that costs can be properly supported within 3 years. This goal, if met, would fulfill Panama's Treaty obligation. The Act, however, specifies that the U.S. Comptroller General will audit the payment annually.

Prior to passage of this Act, the Commission advised Panama of the need to develop standard accounting principles.

The U.S. Embassy has not held formal discussions with Panama to resolve the issue of public service payments. Consideration is now being given to assigning an Embassy person to help resolve future payment issues.

Quality of public services not assured

There are no assurances of the quality of public services after they are assumed by Panama. In prior congressional testimony, we recommend that such standards be developed. 1/

The United States and Panama have not agreed on specific standards for the level and quality of Treaty-specified public services to be provided by Panama nor have they developed levels of service and performance standards for police and street lighting services. Nevertheless, Panama has provided such services for the Commission since the Treaty entered into force and has submitted one monthly invoice for the cost of services. The Commission and the U.S. Embassy recognize that standards must be agreed on and have accelerated their efforts to correct the situation. Panama believes it is difficult to develop quality standards because standards for the levels of services presently being provided either do not exist or are not well defined.

In November 1979, the Commission initiated the latest in a long line of efforts to arrive at an agreement with Panama on standards for public services. The plan called for close coordination among all parties and outlined the responsibilities of each. As of February 1980, it appeared that agreement was very close in the Coordinating Committee.

1/ See footnote 1 on p. 28.

CHAPTER 5

DEFENSE ASSUMPTION OF FUNCTIONS--SUCCESSFUL PLANNING

BUT UNRESOLVED ISSUES REMAIN

To a large extent, the Department of Defense has been planning for and continuing the operations assumed on October 1, 1979, and expanding its own services as needed. Nevertheless, several unresolved issues could adversely affect the cost and quality of postal or health services or affect who is eligible for these services. The issues pertain to (1) disagreement over procedures for air post office delivery, (2) lack of a final agreement on the U.S. Embassy's request for mail privileges for nonprofit activities, (3) lack of criteria and guidance on certain health care billing matters, and (4) lack of military exchange, commissary, and housing privileges for Panamanian health care professionals. Defense representatives and, in some cases, U.S. Embassy officials are attempting to resolve these matters.

OVERVIEW

The Treaty and related agreements allow Defense to provide education, health care, and postal services to members of the U.S. Forces, civilian components, U.S. citizen employees of the Commission, U.S. contractors, dependents of these groups, and other persons as agreed upon by the United States and Panama Governments. Defense is also providing refuse collection services to its areas and mortuary services to those who were eligible for health care services and has expanded its commissary and retail exchange operations. Prior to October 1, 1979, PCC/CZG provided these services, but the Commission is prohibited from doing so by the Treaty. In addition, Defense expanded its base operations support, such as maintenance, personnel, and procurement, because of the assumed functions.

The assumption of functions by Defense represents one of the greatest impacts of the Treaty on Defense. For example, along with the related increase in base operations support, about 2,300 personnel and about \$35 million in facilities and equipment were transferred from PCC/CZG to Defense on October 1. Defense, the Army in particular, had to recruit and hire several hundred persons to meet total Treaty-related staffing requirements, expand and renovate certain facilities, and provide for supplies and equipment for these new and expanded functions. Extensive planning was involved, both unilateral and bilateral, to provide for the many different aspects of these assumed and expanded

functions. The two largest functions, health and education, each have annual operating budgets of about \$30 million for fiscal year 1980.

Defense planning to preserve
basic PCC/CZG services

Realizing the potentially unsettling effect of the changes concerning basic services on the Panama Canal community, Defense made plans to preserve the basic PCC/CZG services to the extent practicable but consistent with Defense policies. For example, 664 staff and the buildings and equipment of the CZG Division of Schools were transferred to the newly created Panama region of the Department of Defense Dependent Schools System. Defense is using the same schools and essentially the same organization to educate basically the same students who were attending the school prior to October 1, 1979.

The Army's Health Services Command's plan provides for a complete range of health, dental, and veterinary care for all authorized beneficiaries in Panama. The plan calls for uninterrupted health services at a level consistent with U.S. Army Medical Department standards by combining the services of the U.S. Army Medical Activity and the much larger CZG Health Bureau. This entailed the transfer of nearly 1,200 CZG personnel and the resources engaged in the health care function to the Medical Activity.

Most of the same persons eligible to receive medical care prior to October 1 are still eligible; an estimated 89,000 persons, including about 44,000 Panamanian employees and dependents. Treaty-related agreements state that the Panamanian employees will be eligible for health care through the 30-month transition period. A bilateral agreement concerning their dependents states they will be eligible until Panama can provide such services, with the provision that the Joint Committee will review this arrangement prior to December 31, 1980. Those no longer eligible for health services include:

- PCC employees who were transferred to agencies of the Panamanian Government on October 1, 1979, in accordance with the Treaty.
- Persons (and their dependents) who retired from PCC after November 1, 1970.

- Persons (and their dependents) who at the time of their retirement were eligible for Federal Employees Health Benefits Insurance regardless of retirement date.
- Retirees of any other Federal agency regardless of insurance coverage or retirement date.
- Panamanian employees (and dependents) hired locally by the Commission or Defense on or after October 1, 1979.
- Private pay patients.
- Panamanian nationals employed by nonappropriated fund agencies are only eligible for services provided in conjunction with the Occupational Health Program.

The Air Post Office is serving eligible Canal area persons who formerly used the Canal Zone Postal Service. About 80 CZG postal employees were transferred to the Air Post Office system. Existing postal facilities on military bases are being used, and Defense has also spent over \$1 million to add and expand postal facilities.

To preserve the quality of all services, Defense has also (1) continued the health care sponsorship program whereby the agency pays a portion of the costs, (2) continued the home medical care program, (3) continued to operate the Canal Zone College, (4) continued the operation of two former PCC commissaries, (5) determined school eligibility and rates, and (6) expanded military exchange facilities at a cost of \$1.5 million.

UNRESOLVED ISSUES

Disagreement over procedures for Air Post Office mail delivery

Panama and the United States disagree over procedures for the delivery of Air Post Office mail from U.S. commercial carriers. The issue seems to be that Panama wants to charge the United States for mail received at and delivered from Panama's airport terminal. The United States has refused to pay such a charge, which presently is 40 cents per pound of mail. With a monthly Air Post office mail volume of about 90,000 pounds, the United States could pay

as much as \$36,000 a month in airport terminal charges. This cost would be significantly higher in 1981, when rates are expected to increase to \$1.00 a pound.

This is an important issue because it can and has affected the quality and cost of the Air Post Office in Panama. During several days after October 1, Panama interfered with mail delivery from U.S. commercial carriers and the U.S. Forces and other U.S. Government agencies did not receive mail until it was brought in by military carrier. The U.S. Forces incurred certain costs for this, but as of January 1980, they had not been determined.

Panama has proposed a solution to the mail delivery issue which appears acceptable to the U.S. Embassy and U.S. Southern Command. This matter is presently being negotiated at the diplomatic level. In the meantime, Air Post Office mail is moving smoothly; however, with no final solution, the potential exists for Panama to interfere with this mail again and thus affect the cost and quality of service.

No agreements reached on postal privileges for nonprofit activities

Panama and Defense have not reached final agreement on postal privileges for nonprofit organizations. As a result, U.S. employees of such activities as the Smithsonian Institution, Gorgas Memorial Laboratory, and churches, labor unions, and fraternal organizations do not have military postal privileges for personal use. Panama has no obligation under the Treaty or related agreements to grant such privileges. Nevertheless, final agreement has been reached on allowing the Smithsonian Institution and Gorgas Memorial Laboratory to use military postal services for their official use. As of January 1980, the issue of nonprofit activities using military postal facilities for personal use was being discussed at the diplomatic level, with the hope of extending these privileges to the affected employees.

Lack of criteria and guidance on certain health care billing matters

There is an apparent lack of criteria concerning agency sponsorship of health care costs and of guidance for billing uninsured patients. The U.S. Army Medical Activity assumed responsibility for billing and collecting for health care services as part of the transfer of function on October 1, 1979.

Criteria

Passage of the implementing legislation in September 1979 enabled the U.S. agencies to continue PCC's practice of sponsorship of health care costs, in which the agency pays a portion of the costs not covered by the insurance carrier for employees and specified nonemployees. The Commission notified the U.S. Army Medical Activity of its sponsorship amounts in October 1979. We were informed that the Medical Activity is following a similar practice for Defense's civilian employees by absorbing the amount not paid by the insurance carrier. However, according to a Medical Activity official, no criteria defines sponsoring agency or allowances to be paid. Also, as of November 1979, the sponsorship rates of other Federal agencies was not clear.

Guidance

The U.S. Medical Activity expects patients to apply for waivers of forgiveness for uninsured amounts and for Defense to absorb the cost. The Medical Activity does not know how many people are in this category or the estimated amount of debt forgiveness. Medical Activity officials say the agency does not have clear guidance on how to consider these cases.

Panamanian health care professionals lack military privileges

Panamanian health care professionals do not receive certain military privileges under the Treaty and related agreements. As of October 1, 1979, final resolution had not been reached on whether Panamanian nationals who are health care professionals employed by Defense should be eligible for privileges, such as commissary, military exchange, and housing. This issue is presently being considered at the diplomatic level.

This is of interest to the United States because Panamanian citizens represent approximately 32 percent (36 out of 111) of all physicians providing health care for the U.S. Army Medical Activity in Panama. However, Joint Committee members believe there is little danger of losing these physicians if they do not gain military privileges, since many of them received bonuses resulting from the Physicians Comparability Act, pay increases due to transfer from the CZG to Defense pay schedule, and the 7-percent Federal pay increase.

Potential considerations

The population served by Defense's community services will decrease over the next several years. We believe that, with the planning for implementation and the October 1, 1979, implementation basically completed, Defense will need to look ahead over the next several years to determine the extent of services and to program expenditures accordingly. For example, after the 30-month transition period, the Army estimates that the population eligible for health care services will decrease by half, to about 44,000. Yet, at the same time, \$12 million in renovations to Gorgas Hospital, now a Defense facility, is planned for fiscal year 1982 and another \$17 million is planned for 1981-83. Also, in 5 years, U.S. citizen employees of the Commission and their dependents will not be eligible to use the postal services, commissaries, and military exchanges. We did not, however, undertake audit work on these issues.

CHAPTER 6

EMPLOYEE PROVISIONS--SUBSTANTIAL

PROGRESS ACHIEVED

Employee provisions comprise one of the most difficult and critical areas of Treaty implementation planning. In that regard, the Commission and Defense have made substantial progress in implementing the important personnel changes required by the Panama Canal Treaty or the Panama Canal Act, including

- implementation of a hiring preference system for Panamanians;
- development of policies and procedures to increase Panamanian participation in Canal operations;
- establishment of Defense civilian personnel policies to ensure 90 per cent proportionality in the Panamanian workforce;
- development of procedures to implement other required changes; and
- action on certain social security matters.

In addition to the changes required by the Treaty and the Act, the Canal Zone Civilian Personnel Policy Coordinating Board (now called the Panama Area Personnel Board) also approved a new Panama Area Wage Base for employees hired after October 1, 1979, which meets the requirements for minimum levels of pay and annual increases set forth in the Act.

It should be noted that the Act provides for the interim application of the Canal Zone Merit System until the Panama Canal Employment System is established. In accordance with that provision, the Canal Zone Merit System continues in operation as before, except that the Treaty requirement to extend hiring preference to Panamanians has been implemented. The Canal Zone Merit System and its successor--the Panama Canal Employment System--are available to all U.S. Government agencies in the former Canal Zone, including Defense.

The Act calls for the establishment of the Panama Canal Employment System by the President after consideration of recommendations by the Commission. The Commission is already

developing the recommendations for that new system. Essentially the recommendations call for a new employment system patterned substantially after the present one, but modified to carry out unique Treaty requirements, such as the hiring preference for Panamanians. Finally the Act requires that, no later than 60 days after all members of the Board of the Commission have been appointed, the Board must adopt a Code of Conduct applicable to each of its members and to each Commission officer and employee. A proposed Code of Conduct, which has been drafted and is currently under review, is expected to be completed and forwarded for action by the Board when it is constituted.

It should be noted that the U.S. members to the Supervisory Board were appointed in December 1979; this should have been done by October 1, 1979. Also, as of early 1980, the U.S. Senate had not given its advice and consent on these appointees as required by the Act.

HIRING PREFERENCE FOR PANAMANIAN IMPLEMENTED

The system of preference for hiring Panamanians has been implemented. The Treaty provides that the United States shall establish regulations for a system of preference, when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission.

The Canal Zone Civilian Personnel Policy Coordinating Board approved a system that calls for adding 11 extra points to the numerical scores of all Panamanian applicants tested after October 1, 1979, who have at least a minimum of 70 on an assembled examination administered by the Central Examining Office. In filling vacancies competitively, the rule of three (a procedure which requires agencies to select the three eligibles with the highest scores) will apply after the point adjustments have been made. The regulations also apply to the Department of Defense. Regular veterans' preference entitlements and procedures continue to apply.

The Treaty requirement for the hiring preference system is intended to apply to initial employment only. Senior-level Commission officials feel that to apply it beyond that--for example, to promotions--would have a significantly adverse effect on employee morale and would exceed the Treaty requirement. Defense plans to evaluate the results of the hiring preference system after several months to determine whether it actually increases the number of Panamanian employees in the Defense workforce. The Policy Coordination Board

is responsible for administering the Canal Zone Merit system and coordinating a uniform system of pay and allowances among U.S. Government agencies in the former Canal Zone. The Central Examining office has the primary mission of furnishing qualified applicants to U.S. Government agencies in Panama.

The Commission has also developed a hiring preference policy for outside hires, which include civil service or Panama Canal employment system status eligibles. Such eligibles will be given hiring preference and the nonselection of qualified Panamanians will require written justification to the Commission's Personnel Director. For persons who were already employed prior to the effective date of the Panama Canal Treaty and were involuntarily separated by reason of the Treaty and entitled to priority reemployment consideration without restriction, no priority employment consideration will be applied on the basis of nationality.

DEVELOPMENT OF POLICIES AND PROCEDURES
TO INCREASE PANAMANIAN PARTICIPATION
IN CANAL OPERATIONS

The Commission has developed policies and procedures to increase Panamanian participation in Canal operations. The establishment of a system of employment preferences for Panamanian nationals must be considered in light of the Treaty requirement that:

"there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid Commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty."

The Treaty contains various provisions designed to implement this policy. First, recruitment of personnel from outside Panama for the Commission shall be generally limited to persons possessing requisite skills and qualifications not available locally. Second, the United States will establish training programs in order to increase the number of Panamanian nationals qualified to assume positions with the Canal Commission. Third, the United States must establish a policy for periodic rotation of U.S. citizen employees and other non-Panamanian employees. Fourth, an exchange of information will be set up concerning available positions and applicants.

These provisions are intended to significantly increase the number of Panamanian nationals employed at all levels of the Commission.

Policies have been developed that would implement for the Commission the changes required by the Treaty.

Recruitment outside Panama

The Treaty provides that:

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

To reduce the need for recruitment outside Panama, the Commission has implemented a policy establishing training programs for Panamanian employees and apprentices and increasing the participation of Panamanian nationals at all levels and areas of employment in the Commission.

Also, this policy provides that, before the Commission will authorize recruitment outside Panama, a significant recruitment effort will be made to fill the position with a qualified applicant from the local labor market. This policy is to be applied in a manner consistent with the Treaty requirement concerning hiring preference for Panamanian citizens and applies to hiring actions on or after October 1, 1979.

It should be noted that the PCC/CZG's policy was to recruit locally, and about 90 percent of all recruitment was done within Panama. Only those positions requiring very special skills not yet available in Panama were recruited from outside Panama. In recent years, this included such categories as medical personnel, attorneys, engineers, Canal pilots, tugboat masters, machinists, and shipfitters. A Commission representative expressed optimism that some of those skills are becoming more readily available within Panama and that an intensified recruitment effort will prove this to be the case. For example, Panamanian Canal nautical school programs are seen as a valuable resource toward preparing Panamanians to meet Commission needs.

Training

The Treaty provides that:

"The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Commission as positions became available."

To comply with this requirement, the Commission is emphasizing training that will:

- Identify Panamanian employees that have the potential to occupy supervisory and managerial positions and determine their training needs.
- Reestablish a cooperative education program in an effort to employ Panamanian students in trainee positions related to their professional fields of study.
- Provide career counseling to assist Panamanian employees in the advancement of their careers.
- Coordinate closely with Panamanian authorities on the availability of scholarships in naval and maritime academies in the United States.
- Expand the U.S. apprentice training program.

Plans have been drawn and funds budgeted to expand industrial school facilities to train more Panamanians each year in technical skills.

Rotation

The Treaty provides that:

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

On October 1, 1979, the Commission implemented a policy whereby, except for employees recruited for positions requiring nontransferable or nonrecruitable skills, non-Panamanian Commission employees hired on or after October 1, 1979, shall be required to rotate out of their employment with the Panama Canal Commission in the Republic of Panama no later than 5 years from the date they arrive at their duty stations on the Isthmus. Employees subject to the rotation policy will normally be employed on career or career-conditional appointments.

The policy requires the Commission's Personnel Director to (1) establish a program for return placement assistance for employees subject to rotation and (2) obtain from each such employee, as a condition of employment, a written agreement stating that the employee is subject to the rotation policy; will enroll in the return placement assistance program prior to the expiration of the maximum 5-year tour of duty; and within a specified period of time prior to the expiration of such duty will accept transfer to a position outside the Republic of Panama, if such position is offered, or be subject to termination of employment at the end of such tour of duty.

The 5-year rotation policy will not apply to employees who were employed by PCC/CZG immediately before entry into force of the Treaty and who were subsequently appointed to positions in the Panama Canal Commission without a break in service or who were separated by reduction in force on September 30, 1979, and reappointed to positions in the Panama Canal Commission before April 1, 1980.

To enhance the Commission's ability to recruit and retain qualified individuals, Canal pilots are excluded from this policy. Continued exclusion of Canal pilots will be examined periodically, and additional occupational categories or individual employees may be excluded from coverage for sound administrative reasons. Any employee appointed to a position deemed to be excluded from this policy will not in the future be subject to the policy unless he has a break in service of more than one day and is subsequently reappointed to a position which is not excluded. Service only with the Panama Canal Commission will be counted toward the 5-year employment limitation. The service need not be continuous but must have been rendered after September 30, 1979. Extensions of tours of duty beyond 5 years will be granted only when no qualified Panamanians are available for the positions or when determined by the Administrator of the Commission.

Bilateral mechanism to increase exchange of information

Under the Treaty, the United States shall periodically inform the Republic of Panama of available positions within the Panama Canal Commission.

The Commission has developed and is using procedures for the exchange of information between the United States and Panama as to the availability of positions and qualified applicants. The procedures consist of providing Panama with quarterly reports and 5-year projections showing basically the types and numbers of positions available and the probable source the Commission will use to fill a position. In addition, as a general practice, the Commission issues a weekly newspaper, the Spillway, and also provides information to the public on available Commission positions.

Potential consideration

A potential consideration is whether the collective actions taken by the Commission will implement the basic Treaty policy of increasing the number of Panamanian nationals it employs at all levels. This is necessary if the Panamanians are to assume full responsibility for the operation of the Canal on Treaty termination.

The concept of preference for Panamanian applicants is an additional and important means of implementing the basic Treaty policy. A potential matter for consideration is whether this system will result in a real and effective increase in Panamanian employment in order to fulfill the U.S. commitment to increase Panamanian participation in Canal operations. In practical terms, therefore, the system of preference must be looked at in the context of the entire range of measures taken to implement the concept of increasing Panamanian employment in the Commission.

Finally, the related question must be considered regarding the application of the U.S. veterans' preference in light of U.S. Treaty obligations. The Canal Zone Civilian Personnel Policy Coordinating Board has received protests from veterans' organizations. The U.S. Office of Personnel Management in September 1979 concluded that the Treaty's Panamanian hiring preference and the Veterans Preference Act may be harmonized and that both should be given force and consistently applied.

DEFENSE'S CIVILIAN PERSONNEL
POLICIES ESTABLISHED

Defense has established civilian personnel policies to ensure proportionality in its Panamanian workforce. Defense's civilian employees are not covered by the same provisions of the Treaty as employees of the Commission. Rather, they are covered by the Agreement in Implementation of Article IV of the Treaty, called a status of forces agreement, or SOFA.

More specifically, the SOFA, in conformity with the principles of the Panamanian labor laws, requires that U.S. Forces establish employment preferences in all levels for Panamanian applicants possessing the requisite skills and qualifications. Accordingly, the U.S. Forces will endeavor to ensure that the number of Panamanian nationals they employ in relation to the total number of civilian employees will conform to the 90 percent proportion established under Panamanian law.

The SOFA also provides that there shall be no wage discrimination on the basis of nationality, sex, or race. Payments by the U.S. Forces of additional remunerations to persons of any nationality, including Panamanian citizens, who are recruited outside of Panama and must therefore change their place of residence shall not be considered to be discrimination.

Defense has established basic policies on rotation of civilian employees, training, and recruitment which are important to achieving the proportion established under Panamanian labor laws. These and other matters are discussed below.

Panamanian hiring preference
and proportionality

Defense has extended hiring preferences to Panamanians in accordance with (1) the regulations established and issued by the Secretary of the Army and the Central Examining Office and (2) the system approved by the Panama Area Personnel Board.

Defense views the Panamanian hiring preference as one way of achieving the SOFA requirement that U.S. Forces endeavor to insure that the number of their Panamanian national employees conforms to the proportion established under Panamanian law. At present, Panamanian law requires that 90 percent of the civilian workforce be Panamanian. This does not represent a major change from the goal of 85 percent which the Army component of the Southern Command has had

for the past 3 years. It does, however, represent a serious civilian challenge for all Defense activities in Panama.

To meet the challenge of proportionality, the Southern Command has suggested that component commands (Army, Air Force, and Navy):

- Initiate a position review with the objective of eliminating "dead end" positions and creating "bridge" positions which would enable Panamanians to qualify for higher level positions.
- Establish and fund intern and apprentice positions based on a review of anticipated staffing needs.
- Use training programs with a view toward using more student coops.
- Carefully review the need for "security positions." Such positions should be limited to those requiring more than occasional access to classified documents and information. Organizational structures should be reviewed to determine if security aspects of a position can be assigned elsewhere.

Even without the Treaty, the Southern Command believes that these actions should be taken to reduce the need to recruit individuals from the United States. The cost of employing locally available individuals is substantially less than the cost of individuals recruited from the United States.

Rotation

Prior to October 1, 1979, Defense had a policy for rotating certain civilian personnel. Since then, members of the civilian component, except Panamanian citizens and resident aliens in Panama, are subject to the Defense instruction, "Rotation of Employees from Foreign Areas and the Canal Zone." The instruction provides that employees recruited from outside of Panama will be required to rotate within 5 years from entry on duty in Panama and that U.S. citizen employees hired locally will be given appointments not to exceed 5 years.

Other exceptions to the mandatory rotation system include employees (1) continuously employed overseas by the U.S. Forces since on or before April 1, 1966, and who have no agreement regarding mandatory return to the United States and

(2) who transferred from PCC/CZG through a transfer of function and who have no agreement providing for mandatory return to the United States.

Defense is identifying various categories of employees, such as dual citizens and U.S. citizens married to Panamanians, to determine whether they are permanent residents and, hence, excluded from the rotation policy.

Training

The Southern Command believes training is important to increase Panamanian participation in the workforce and to provide avenues for Panamanians to move to skilled and management jobs. It is using training as one approach to reach its goal of a 90-percent Panamanian workforce. In addition, the Command's civilian personnel policy on training provides that concerted effort will be made to provide training which will equip Panamanian nationals with the skills, knowledge, and abilities to compete successfully for more responsible positions. The policy calls for the following types of training, among others, to be made available to all civilian employees.

- Orientation for new hires.
- Formal apprenticeship or helper programs for those who lack experience but show potential for becoming trades or crafts workers.
- Skills training to help current employees do their jobs better.
- Supervisory and managerial training at basic and advance levels of responsibility.

Recruitment

Although no specific SOFA provisions apply to U.S. Forces recruitment from the United States, the Southern Command has established a basic policy of making maximum use of local citizens and residents in filling positions before transferring or recruiting civilian employees from outside Panama. Personnel transferred or recruited from outside Panama will, in general, be limited to key personnel, training personnel, those regarded as essential for reasons of national security, and those possessing required skills not available locally or elsewhere on the Isthmus. According to Defense, in effecting this policy the system of Panamanian preference will be fully applied by U.S. Forces components.

DEVELOPMENT OF PROCEDURES TO
IMPLEMENT OTHER REQUIRED CHANGES

Other personnel policies have been or are being developed and reviewed which would implement for the Commission and Defense other changes required by the Treaty or the Act. These include policies governing labor-management relations and special placement.

Labor-management relations

The Treaty recognizes the rights of employees to negotiate collective contracts with the Panama Canal Commission and states that labor relations shall be conducted in accordance with forms of collective bargaining established by the United States. This includes such features as the right to an equitable appeals process, protection against abuse of the Merit System, and incentives and awards for good work and skillful management. The Act has the effect of making the Commission's labor-management relations subject to Title VII (Federal Service Labor-Management Relations) of the Civil Service Reform Act of 1979.

The Commission developed a policy in November 1979 which recognizes and fully supports the right of its employees, without regard to citizenship, to negotiate collective contracts. The policy became effective immediately, even though it is still under review by the Commission, and requires the Commission to meet with its employees or their exclusive representatives and to negotiate in good faith on the terms and conditions of employment as authorized by law for incorporation into a written contract.

Specific responsibilities for designated labor-management employee relations officials are outlined below.

--Industrial Relations Officer. To assure that labor-management relations within the Commission are carried out in conformance with statutory and regulatory requirements and overall civilian personnel policies and practices, the Industrial Relations Officer has been designated the principal spokesman for management in such matters. He will serve as the primary contact for conducting union business and coordinate, as necessary, with the Personnel Director and other bureau directors, since union business will be concerned for the most part with personnel policies and working conditions.

--Management officials, supervisors. The above designation does not relieve other management officials and supervisors of their responsibilities for carrying out day-to-day dealings with union officials, shop stewards, etc. However, the Industrial Relations Officer will be kept fully informed of all matters of interest and/or concern to management and the unions.

--Labor Counselor. The Labor Counselor, a qualified attorney (or attorneys) designated by the General Counsel, is available to provide advice and assistance to the Industrial Relations Officer and Personnel Director and their staffs on such matters as drafting collective bargaining agreements, third-party proceedings, grievance resolutions, arbitration representation, management training (including instructor assistance), and review of personnel-labor relations policies and procedures. In coordination with the Personnel Director and/or the Industrial Relations Officer, he is also available to advise and assist the Equal Opportunity Director and other management officials upon request.

For Defense, the SOFA states that the terms and conditions of employment of Panamanian personnel shall conform with the general principles contained in the Panamanian labor laws. As of January 1980, the Southern Command had not developed a labor relations policy but intended to develop one in the near future which is expected to provide guidance on the recognition of labor organizations and impasse and arbitration procedures. It should be noted however, that individual component commands have issued general internal policies on handling labor relations matters.

Special placement

The Panama Canal Treaty provides that persons employed by PCC/CZG prior to entry into force of the Treaty who are displaced from their employment as a result of U.S. discontinuance of certain activities pursuant to this Treaty, will be placed by the United States to the maximum extent feasible in other appropriate jobs with the U.S. Government in accordance with U.S. Civil Service regulations. The Act provides this placement assistance for U.S. citizens employed in the former Canal Zone by U.S. Government agencies other than PCC/CZG.

In April 1978, the Office of Personnel Management implemented a program to provide special placement assistance to displaced U.S. employees, and it is responsible for developing and administering a Federal Government-wide placement program. The program was advertised throughout the bureaus, divisions, and units of PCC/CZG as well as in local newspapers, and a special program information packet was sent to all displaced career or career-conditional employees.

The program had two priority levels for former Canal Zone employees

- Priority level 1, consisting of those U.S. citizen employees of PCC/CZG and other Federal agencies in the Canal Zone who are involuntarily separated as a direct result of implementation of the Treaty.
- Priority level 2, consisting of U.S. citizen employees of the PCC/CZG who wish to obtain other Federal employment in the United States even though they are not scheduled for separation.

Employees are subject to removal from the program if they accept a continuing position in the Federal Government or decline offers they had previously indicated would be acceptable.

As of October 1, 1979, there were 42 displaced U.S. employees in the Special Placement Assistance program. The program's Director stated that most of the participants would be placed. Defense civilian employees were not in the program since there was no Defense reduction in force; however, it is expected that some employees may be eligible during the Treaty's lifetime.

According to the Commission's Director of the Special Placement Assistance program, the program's success suffered because (1) of a lack of knowledge about PCC/CZG on the part of U.S. agencies in the United States and (2) some U.S. agencies which were considering PCC/CZG employees for employment sent them position availability notices with short suspense dates, which in many instances had expired by the time the employee received the notice, resulting in the employee not being considered for the position.

The Commission has reported this situation to the Office of Personnel Management in Washington and the Office, in turn,

has notified U.S.-based Government agencies to give more consideration to PCC/CZG employees. The Commission Director believes that this step has improved the program.

Potential consideration

There appears to be a potential for conflict between the Treaty requirements and those of the Act. For example, the SOFA calls for adherence to principles of Panamanian labor law whereas the Act provides for compliance with U.S. labor law and the application of Title VII.

ACTION ON SOCIAL SECURITY MATTERS

Major initiatives taken or in progress to implement the provisions of the Treaty and related agreements with regard to social security matters fall mainly into two areas. The transfer of retirement benefits and the payment of the 13th month contribution.

Transfer of retirement benefits

Article VIII of the Agreement in Implementation of Article III of the Treaty provides for the transfer to the Social Security System of Panama of funds equal to the amount of employee/employer contributions held for certain PCC/CZG employees who become employed by Panama as a result of the Treaty. This transfer is at the election of the employee. However, it should be noted that these employees are no longer covered by the U.S. Civil Service Retirement System, and they can obtain a refund of their contributions from the United States if they do not want to transfer them into the Panamanian system.

As of January 1980, no Commission employees had elected to transfer their retirement contributions to the social security system of Panama. Therefore, Commission and Embassy officials are presently considering what steps if any to take to eliminate this option.

Payment of 13th month employer contribution

There is disagreement between Panama and the United States and among U.S. agencies on the Isthmus as to the responsibility of U.S. employers and their employees for the 13th month social security payment.

According to Article VIII (Social Security) of the Agreement in Implementation of Article III and Annex C (Application

of Panamanian Social Security) of the Agreement in Implementation of Article IV of the Treaty, the Commission and Defense acquired formal commitments vis-a-vis worker-employer contributions which must be transferred to Panama's social security fund, according to the coverage of each employee who might be incorporated into the Panamanian social security system, in conformity with the rates established by law regarding social security in Panama. For the incorporation of new Commission employees, it is necessary to determine the contribution to be paid by the Commission, in its capacity as employer, to Panama's social security system.

The 13th month benefit is calculated on the basis of one day's salary for each 11 days of effective work, continuous or discontinuous. This bonus should be paid in three proportionate (equal) parts, on April 15th, August 15th, and December 15th of each year. In Panama's private sector, the 13th month benefit is one month's salary divided into thirds, two of which are paid directly to the worker on April 15 and December 15. The remaining third is paid to the Panamanian social security fund on August 15. In the public sector, there is the same division and payment schedule, but the limit paid for the 13th month is \$400; that is, persons earning more than \$400 receive total payments of \$400.

Although there is no conflict over the normal employer and employee contributions to the social security system, the novelty of the 13th month contribution in terms of the system anticipated has produced some problems. The internal U.S. dispute has been referred to the Departments of State and Defense in Washington for resolution. A single U.S. position will then be forwarded to the Panamanians. The issue is among the most difficult created by the Treaty and related agreements, as it involves the application of a foreign social security system to employers operating predominately under U.S. law.

The delay in the solution of this matter has not prevented the enrollment of employees, temporary as well as permanent, hired by the Panama Canal Commission as of October 1, 1979, as outlined in the Agreement in Implementation of Article III and IV of the Panama Canal Treaty.

Potential considerations

A potential consideration is whether the U.S. Congress should be consulted on any deliberations concerning the elimination of the option for certain PCC/CZG employees to

transfer their benefits to Panama's social security system. As previously mentioned, this option is required by the documents associated with the Panama Canal Treaty.

Another important consideration is whether the agreement reached with Panama on the 13th month benefit will amount to increased costs for the Commission and Defense; in that sense, it will be an additional cost resulting from implementation of the Panama Canal Treaty and related agreements.

MINIMUM LEVELS OF PAY
AND ANNUAL INCREASES

The Treaty provides that:

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

The Act provides that:

"(b) (1) Effective October 1, 1979, each individual employed by an Executive Agency or the Smithsonian Institution, whose permanent duty station is located within an area or installation in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, shall be paid basic pay at a rate of not less than \$2.90 an hour.

"(2) Effective October 1 of each succeeding calendar year, the rate of basic pay for each individual referred to in paragraph (1) of this subsection whose basic pay is not fixed in relation to rates of basic pay for the same or similar work performed in the United States shall be increased by an amount equal to not less than 2 percent of the rate of basic pay for that individual in effect immediately before that date."

The Canal Zone Civilian Personnel Policy Coordinating Board has approved salary and wage policies for new hires and onboard employees. These policies apply to all U.S. Government agencies in Panama.

The Board approved a new pay system--designated the Panama Area Wage Base--for employees hired in Panama on or after October 1, 1979, which meets the requirements for minimum levels of pay and annual increases set forth in the Act. According to Defense, this pay system is most generous in comparison with Defense's original concept of locality wages. The principal features are (1) an entry wage of not less than \$2.90 an hour, (2) annual step adjustments of 2 percent effective on October 1 of each succeeding calendar year, (3) identical step placement when promoted from one grade to another, (4) minor interim adjustments for compatibility with present Canal Zone wage base schedules, (5) no special wage categories 1/, and (6) wage policy for apprentices entering after the 1979 class will be the same. New employees hired from outside Panama on or after October 1, 1979, are being compensated on the U.S. wage base schedule, regardless of nationality or place of hire. According to Defense, the Commission is challenging this position because it may be discriminatory.

For onboard employees, the Canal Zone Personnel Policy Coordinating Board approved the continuation of the current wage system. Commission onboard employees will continue to receive pay increases in the same manner as in the PCC/CZG, with the exception of the Fair Labor Standards Act minimum wage adjustment. Employees who received all or part of the pay adjustments resulting from minimum wage increases will receive instead the full annual pay adjustments applicable to their respective wage categories.

For onboard Commission and Defense employees, pay schedules will continue to be adjusted by a tax allowance. 2/ The Secretary of the Army has approved a Panama Area Personnel Board recommendation to eliminate the tax allowance for these employees on October 1, 1980, subject to necessary congressional appropriations. No tax allowance adjustment will be applied to pay rates under the Panama Area Wage Base. The tropical differential (additional compensation amounting to 15 percent of base pay to recruit and retain a qualified and

1/ As of January 1980, the Panama Area Personnel Board was exploring the possibility of special wage categories for critical skills, such as doctors, auditors, comptrollers, machinists, and others.

2/ An allowance for taxes which operate to reduce the disposable income of U.S. citizen employees in comparison with the disposable income of non-U.S. citizens.

adequate work force from the United States) will continue to be applicable to former PCC/CZG employees who continue with the Commission without a break in service and who are eligible to receive it and to eligible Defense employees. New employees will be paid the tropical differential regardless of citizenship if they are recruited outside Panama.

The special wage categories in force in PCC/CZG on September 30, 1979, will be continued as needed for onboard employees. Any employee hired locally on or after October 1 for a position that was classified in the police, fire, or postal groups prior to October 1 will be hired under the appropriate classification grade and rate of pay of the Local Non-Manual schedule. This recognizes the fact that in the recent past as well as in the foreseeable future, all vacancies in these categories have been and will continue to be filled from the local labor market. Positions in the canal navigation, floating equipment, and power branch categories will continue to be compensated from the U.S. wage base schedule for both old and new employees.

Former PCC/CZG employees who were separated on September 30, 1979, by reason of the reduction in force and who are reemployed by the Commission between October 1, 1979 and April 1, 1980, will be regulated by the same pay provisions previously applicable to them in the PCC/CZG. Former employees who were transferred with their function to Department of Defense activities in the Republic of Panama on October 1979 and who subsequently return to the Panama Canal Commission without a break in service will be eligible for all pay and employment benefits to which they would have been entitled had they not been transferred.

Cost of living allowances

The Treaty authorizes the United States to pay additional remuneration over and above basic compensation to certain categories of employees. Accordingly, the Act provides that U.S. citizen employees of the Commission may be paid an allowance to offset the cost of living increases which may result from termination of eligibility to use military postal, commissary, and exchange privileges. This will occur in October 1984, 5 years after the Treaty enters into force. The method of determining the cost of living allowance has not yet been decided upon.

The former Panama Canal Zone Governor estimated the first-year cost of the cost of living allowance at \$10 million to \$11 million, based on 15 percent of the 1980 average wage adjusted for a 7-percent inflation factor. In testimony

before the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee on February 26, 1979, we pointed out that there are different methods of computing a cost of living allowance and that several factors, such as the rate of inflation, salary base, and number of employees entitled to the allowance, make it very difficult to estimate the cost. The former Governor's method is one way. Another way would be the one presently used by the Department of State and the Office of Personnel Management. This method is based on a survey of the cost of living at a given post, exclusive of living quarters, as compared with Washington, D.C. The computation recognizes that consumption patterns vary and are responsive to a host of factors, including marital status, family size, income level, and post classification. The State Department recognizes that these variables affect employee expenditures and designed its foreign area cost of living allowances accordingly. It computes separate "with family" and "without family" spendable income levels for application of the allowance percentage and supplements the "with family" allowance for each child living with the employee.

Potential considerations

The minimum pay levels and annual increases may create a situation whereby two U.S. Government employees, working side by side and performing the same or similar duties, will earn different wages. New hires will receive smaller percentage increases in general annual pay adjustments than the onboard employees.

A potentially more serious and complex consideration may be whether the new Panama Area Wage Base will equalize the wage levels in Panama while respecting the workers' interests according to the Treaty and will not jeopardize Panama's income derived from the Canal. A senior-level Commission official told us that the Panama Area Wage Base is geared to eliminate discriminations in pay between Commission and Panama workers over the next 20 years. Panama has also taken action to lessen the wage differences and has raised the minimum wages for employees in the former Canal Zone to \$2.90 an hour. Nevertheless, the Commission expects that at the end of the 20-year period, the Commission's wages will still be slightly higher than Panama's.

Since the purpose of the cost of living allowance is to compensate U.S. citizen employees of the Commission for higher living costs as a result of losing military benefits 5 years

after entry into force of the Treaty, a potential consideration is that the allowance be computed so as to recognize individual circumstances and needs such as marital status, family size, and income level.

CHAPTER 7

CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS

CONCLUSIONS

The Panama Canal Treaty established a new cooperative relationship between the United States and Panama for operation and defense of the Panama Canal. The Panama Canal Commission, U.S. Southern Command, U.S. Embassy, and Panama have made good progress in planning for the implementation of the Treaty. The transfer to Panama of various port and railroad activities, certain health and sanitation services, vehicle registration and licensing, and utility billing and rate setting in certain locations outside canal operating areas proceeded smoothly and with no apparent impact on Canal operations or living conditions of the general public. Also, commercial retail operations, such as the Balboa theater, restaurant, and bowling alley were satisfactorily transferred to Panama for operation by private interests.

The Panama Canal Commission and the Department of Defense have made substantial progress in implementing the important personnel changes required by the Treaty or the Act, including

- implementation of a hiring preference system for Panamanians;
- development of policies and procedures to increase Panamanian participation in Canal operations;
- establishment of Defense civilian personnel policies to ensure 90 percent proportionality in the Panamanian workforce;
- development of procedures to implement other required changes; and
- action on certain social security matters.

The Canal Zone Civilian Personnel Policy Coordinating Board approved a new Panama Area Wage Base for employees hired after October 1 which meets the requirements for minimum levels of pay and annual increases set forth in the Act. It should be recognized that employee provisions is one of the most difficult and critical areas of Treaty implementation planning.

Although progress has been made in the above areas, the following basic unresolved issues and problems hinder full implementation of the Treaty.

- Terminating of U.S. jurisdiction in the former Canal Zone.
- Transfer to Panama of considerable property, port and railroad facilities, and certain public services.
- The Department of Defense's assumption of certain functions previously performed by PCC/CZG.

With regard to termination of U.S. jurisdiction, the unresolved issues include (1) assurance of procedural guarantees, (2) impact of Panamanian laws on terms and conditions for business and nonprofit activities, (3) taxation of U.S. contractors, (4) customs reporting, and (5) land-use licensing matters.

Property, port and railroad facilities, and public service transfers to Panama proceeded smoothly; however, Panama needs to determine a method of maintenance for specific shipyard facilities and to develop procedures to verify the costs of providing certain public services. Also, the quality of these services has not been assured. It should also be noted that the Commission and the Federal Aviation Administration have favored Panama in disposal of certain Federal property.

To a large extent, Defense was successful in planning for and continuing the assumed operations on October 1, 1979, and in expanding its own services as needed. However, unresolved issues which could have adverse effects include disagreement with Panama over procedures for Air Post Office mail delivery and lack of a final agreement on Air Post Office privileges for nonprofit activities; lack of criteria and guidance on certain health care billing matters; and lack of military exchange, commissary, and housing privileges for Panamanian health care professionals.

The Commission, U.S. Southern Command, U.S. Embassy, and Panama recognize these unresolved issues and problems and are working to correct them. For example, Panamanian attorneys have been hired to assist in analyzing Panamanian laws in order to ensure that procedural guarantees are contained in Panama's criminal procedures. A Panamanian decree has been passed that is expected to assure some of the procedural

guarantees, and Panama has reintroduced legislation that may deal with the guarantees on an individual basis. Also, resolutions are being pursued on the use and maintenance of the port shipyard facilities. Furthermore, Panama has proposed a solution to the U.S.-Panamanian disagreement over the delivery of Air Post Office mail that appears acceptable to the United States. It should be noted, however, that the recent dissolution of the Panama Canal Authority has held up further U.S.-Panamanian bilateral actions on these important unresolved issues and problems.

Finally, we identified situations that should be considered by the Federal agencies and by others as Treaty implementation proceeds. These include such considerations as whether the:

- System of preference will result in a real and effective increase in Panamanian employment to fulfill the U.S. commitment to increase Panamanian participation in Canal operations.
- New minimum pay levels and annual increases provided for in the Act create a situation whereby two U.S. Government employees working side by side and performing the same or similar duties will earn different wages.
- New Panama Area Wage Base will (1) equalize the wage levels in Panama while respecting the workers' interests according to the Treaty and (2) not jeopardize Panama's income derived from the Canal.
- Cost of living allowance can be computed so as to recognize individual circumstances and needs, such as marital status, family size, and income level.

RECOMMENDATIONS

We recommend that the Secretaries of State and Defense and the Administrator of the Panama Canal Commission closely monitor the extent to which basic unresolved issues and problems impede full Treaty implementation and, through concerted action among the principal U.S. Government agencies and Panama as appropriate, work to resolve these matters without further delay. Such actions should include encouraging Panama to:

- Take the necessary steps to insure that procedural guarantees are assured for persons specified in the Treaty.
- Modify existing laws that adversely affect the terms and conditions for operating business and nonprofit activities in the former Canal Zone.
- Develop procedures for verifying the costs incurred in providing Treaty-specified public services.

Recommendations to improve U.S. Government interagency coordination are made in chapter 8.

AGENCY COMMENTS

We provided a draft of the report to the involved U.S. Government agencies, and their comments have been incorporated to the extent considered appropriate. The Commission and Defense provided written comments. (See apps. VIII and IX.) Defense and State expressed no objections to the conclusions and recommendations in this chapter. The Administrator of the Commission also agreed with our recommendations and stated that he will continue to work on the unresolved issues and problems in the months ahead. However, he stated that implementation of the Treaty was an enormous and complex job that was successfully carried out and that the unresolved issues are complex and are not likely to be susceptible to quick resolution. From that perspective, he said he considered the report "disappointing in overall balance and in its seeming emphasis on a comparatively few unresolved issues."

CHAPTER 8

POTENTIAL FOR BETTER

INTERAGENCY COORDINATION

Effective coordination among the three U.S. Government agencies responsible for implementing the Treaty is important to avoid duplication of effort, present a single and consistent U.S. position on issues, and maximize economy and efficiency in Treaty implementation.

Overall, coordination among the three agencies has been good, given the complexity and variety of the problems and time constraints for planning and carrying out Treaty implementation. Through formal and informal coordination efforts, the agencies have to a large extent avoided duplication of effort and maximized economy and efficiency in planning. However, improvements to the coordination structure are desirable so that Treaty implementation, which will continue through 1999, is accomplished in the most economical, efficient, and effective manner.

INTERRELATED RESPONSIBILITIES

The responsibility of the three principal agencies overlap in planning for the Treaty both before and after its implementation, and this situation poses great potential for duplication of effort. The Embassy has full responsibility for coordinating the transfer of functions to be assumed by Panama pursuant to the Treaty as well as for providing authoritative Treaty interpretations and negotiating bilateral agreements directly with Panama for specific U.S. agencies; the Commission has responsibility for planning and coordinating activities affecting the operation, management, or maintenance of the Panama Canal; and Defense--through the U.S. Southern Command--is responsible for planning and coordinating activities affecting the U.S. Forces and military-related aspects of the protection and defense of the Canal.

The three agencies have other interrelated responsibilities.

--The Embassy is responsible for assessing the effect of Panama Canal Commission plans and activities on U.S. objectives in Panama and for making appropriate observations thereon in Panama and in Washington. To enable the Embassy to discharge its responsibility, the Commission must keep the Embassy fully and

currently informed of all of its activities and operations, including proposed initiation of major activities or operations or changes in policy, in reasonable time to permit the Embassy to comment prior to their initiation.

--A Joint Committee, composed of a U.S. and a Panama representative and their deputies, has been established on the Defense side to constitute the means of communication and information between the U.S. Forces and Panama for such matters as use of Defense sites, criminal jurisdiction over members of the U.S. Forces or civilian component and dependents, civilian employment, and import duties. A Coordination Committee was established on the Commission side to serve essentially the same function as the Joint Committee. It is composed of one U.S. and one Panama representative and interfaces with the United States and Panama on such matters as housing, use of land and water areas by the Commission, licensing of land to others, import duties, and criminal jurisdiction over U.S. citizen employees and dependents.

--The U.S. Embassy monitors the Joint and Coordinating Committees and their subordinate subcommittees to consult and advise on the interpretation and implementation of the Treaty and related agreements.

In addition to the overlaps in responsibility, the three agencies conduct many similar activities and operate in consonance with an October 1978 memorandum of understanding concerning the coordinated discharge of responsibilities of the Embassy and Panama Canal Commission. Defense and the State Department also concluded a separate agreement outlining Defense's day-to-day coordination procedures with the Commission and the Embassy for proposed agreements with Panama.

The formal mechanism for interagency coordination in Panama is the Panama Review Committee. It began in the early 1960s to serve as the principal forum for the U.S. agencies in Panama to discuss coordinating their policies and activities. It also serves as a forum for the exchange of reports and information and for the coordination of actions and proposals relating to the implementation of the Panama Canal Treaties as they bear upon U.S.-Panamanian

relations. Presently, it is concerned with policy matters that affect the major U.S. agencies and the international consequences of U.S. initiatives in Panama.

The Panama Review Committee is composed of the Ambassador to Panama, who also serves as the Chairman; the Administrator of the Commission; and the Commander-in-Chief of the U.S. Southern Command. The members are to endeavor to resolve promptly any differences they may have and, if necessary, will refer such matters through appropriate channels to Washington. The Committee is supposed to meet periodically or at the request of any member.

Monthly meetings were held from at least January 1 to December 31, 1979, and we were provided with the minutes for these meetings. Approaches and techniques of coordinating Treaty implementation were apparently discussed on several occasions in connection with (1) a proposed Committee agreement on consultations among U.S. Government agencies in Panama prior to presentation of positions to Panama and during negotiations, (2) the composition of the Coordinating and Joint Committees, and (3) a discussion of what coordination involves. Most of the topics, however, related to various types of policies and activities, such as the use of piers and drydocks, removable property transfers, terms and conditions for operation of private businesses and non-profit organizations, Panamanian preference in procurement, and general discussions on the progress of Treaty implementation planning. The Commission's view is that, inasmuch as agency heads are the participants in the Panama Review Committee discussions, it is not expected that they will consider Treaty implementation matters except in the broadest terms or in the settlement of policy issues.

Coordination also should occur through meetings and discussions in the Panama Review Committee's subcommittee, known as the mini-PRC, which was established for Treaty implementation planning. It is composed of a senior-level representative from each of the three agencies. The Commission's view is that, while the Mini-PRC does discuss a wide range of Treaty implementation matters concerning Defense, the Commission, and the U.S. Embassy, it is not responsible for the mechanics of the Treaty implementation planning process.

We recognize that each agency enjoys considerable independence of action. Nevertheless, we believe the agencies must deal with certain common problems, and we identified several areas where, in our opinion, the agencies could benefit by sharing experiences about innovations in treaty implementation and jointly undertaking activities.

PROBLEMS IN COORDINATION

In one area, the composition of two important binational committees does not fully represent the three agencies and, therefore, from an overall Federal viewpoint, does not provide for efficient operation. In other areas, similar activities were being carried out differently by the three agencies and, in some cases, these differences resulted in similar issues being treated differently.

The following examples, one of which is generally discussed in another section of this report in greater detail, illustrate areas where greater coordination could benefit the three agencies.

Composition of the Coordinating and Joint Committees

There is no full Embassy membership on either the Coordinating or Joint Committees. In our view, to coordinate effectively, an Embassy representative should serve as a deputy on each committee. The Agreements in Implementation of Articles III and IV of the Treaty provide for the establishment of the committees, and the United States and Panama are authorized to designate one representative and one or more deputies on a parity basis for each committee. The actual establishment of the two committees was agreed to by an exchange of diplomatic notes between the two countries on October 1, 1979, when the Treaty entered into force.

The committees basically serve as the channels for consultation, communication, and coordination between the United States and Panama in matters pertaining to the implementation of the Treaty-related agreements. As of January 1980, the Coordinating Committee was composed of one senior-level Commission official assigned as the U.S. representative while the Joint Committee consisted of a senior military officer designated as the U.S. representative and four additional military officers designated as deputies to act for the U.S. representative in his absence. No deputies were designated to the U.S. side of the Coordinating Committee.

The Embassy's role on these two committees is basically that of consultant and advisor on interpretation and implementation of the Treaty and related agreements. This is essentially the same role the Embassy had on the Binational Working Group and the Joint Working Committee--the predecessors to the Coordinating and Joint Committees--prior to the Treaty becoming effective. It should be noted that, on the

Joint Committee, the Embassy representative attends both planning and development sessions on the U.S. side as well as regular meetings. In the latter case, Defense makes a judgment in advance of each meeting on whether Embassy participation is appropriate and beneficial. When such participation is not deemed necessary, the Embassy representative does not attend the meeting but is briefed after it.

For the Embassy not to be a full member of the Coordinating and Joint Committees is for it not to be fully engaged in the work of the Committees and the bilateral relationship between the United States and Panama. We believe the Embassy's presence on the Committees is needed to present a consistent and fully coordinated U.S. position on issues and to demonstrate that the U.S. positions put forward in the committees are likely to be sustained if they are appealed to the diplomatic level. As of now, there is great potential for issues that cannot be resolved at the committee level to be referred to diplomatic channels in hopes of receiving more favorable response.

We noted that a number of issues on important topics, such as the disposition of removable property, terms and conditions for business activities, marine bunkering, import duties, taxation of contractors, fiscal matters, and payments of certain social security contributions, were forwarded to the diplomatic level for resolution. We believe full Embassy representation would have facilitated resolution of these matters at the binational working level.

There is general agreement among the three agencies that the Embassy should be fully informed of the workings of the Coordinating and Joint Committees. The Commission and the U.S. Southern Command, however, do not believe that full Embassy participation on these committees is necessary to ensure coordination. They believe coordination is presently being carried out in an excellent manner. In addition, they object to full Embassy membership because the committees are primarily concerned with operational matters which are not subject to the direction of the Embassy. (See p. 69.) On the other hand, the U.S. Embassy not only agrees with but also supports our position on the need for full Embassy participation on the committees in order to achieve effective coordination throughout the Treaty period.

In sum, to fulfill its coordination responsibility, the Embassy must have more status and authority than has been previously accorded it. In our view, this means full membership on the Coordinating and Joint Committees. Agencies do

not like to be coordinated, since this involves interference in what they consider to be "their business."^{1/} The Embassy should therefore be a full member of these two committees in order to

- carry out its responsibility under the Act for coordinating the transfer to Panama of those functions that are to be assumed by Panama pursuant to the Treaty;
- provide authoritative Treaty interpretations; and
- be involved in bilateral negotiations among the Commission, the Southern Command, and Panama.

Compliance with procedural guarantees

There is disagreement on whether the procedural guarantees specified in the Treaty-related agreements are provided for in Panama's law (see ch. 3). The agencies have recognized that their past efforts in analyzing Panamanian law for compliance with the procedural guarantees needed improvement, and all three are modifying their approaches. The Commission and the Southern Command have each hired a Panamanian lawyer to analyze current and proposed Panama law to determine whether the guarantees exist. The Embassy has requested approvals from the State Department in Washington to obtain a Panamanian lawyer.

We believe, however, that the three agencies should work together closely in their use of Panamanian lawyers. Otherwise, their actions could result in duplication of effort and inconsistent agency positions.

Criteria for coordinating agreements

The three agencies have no common criteria for coordinating agreements reached with Panama. The Southern Command has issued formal, written guidelines specifically outlining the procedures for coordinating agreements. In contrast, the Commission has issued no written guidance on this matter. We noted that this lack of more clearly defined procedures has caused some problems. For example, in more than one

^{1/} Coordinating U.S. Development Assistance: Problems Facing the International Development Cooperation Agency, Feb. 1, 1980 (ID-80-13.)

instance, U.S. and Panamanian officials chairing subcommittees have appeared at Binational Working Group meetings expressing confusion over how to proceed with proposed agreements.

The Commission and the Southern Command require coordination of agreements with other U.S. agencies after Panama's concurrence has been obtained at the subcommittee level. The Embassy believes that the agreements should be coordinated with it at the subcommittee level during the drafting stage. Since all three agencies have an interest in coordinating agreements, they should work together to develop uniform criteria for coordinating agreements. We pointed this out in a September 1979 memorandum to the agencies.

In a November 1979 reply, the Commission stated that:

"It was decided at the outset that subcommittee activities would be decentralized to the extent that subcommittees were granted some independence and permitted to coordinate with each other on matters of mutual interest. Problems affecting several areas would be surfaced with U.S. members of the Binational Working Group for review. In addition, the progress of subcommittee activities was periodically reviewed by Panama Canal Officials and the Binational Working Group and policy guidance was provided as deemed necessary. The appointed representatives of DOD and the U.S. Embassy were invited to subcommittee meetings and meetings of the Binational Working Group and could easily monitor our activities and suggest desired changes. Further, the Phase 1 plans of the Binational Working Group subcommittees were sent to the U.S. Embassy and U.S. Southern Command for coordination prior to submission to the Binational Working Group. In view of the above, we feel that Panama Canal efforts to insure U.S. Government coordination in Joint Panama Canal/ Republic of Panama planning were reasonable."

The Southern Command and the Commission are still entering into agreements with Panama and the need for uniform procedures continues.

Records on U.S.-Panama agreements

According to senior-level Commission personnel, no central inventory of the number and status of agreements

was maintained in Panama. Commission employees informed us that the Commission had no comprehensive list of all agreements concluded or being concluded with Panama. We believe that such a comprehensive list is needed. The Southern Command has a system for determining the status of its proposed agreements.

It was not until after the Treaty entered into force that the question of the status of the agreements was raised. Upon initiative by Panama, it was agreed that there was a need to catalog and prioritize the remaining subcommittee tasks, including updating the information on the status of all unfinished subcommittee business. There is an opportunity for the Commission, in coordination with Defense and the Embassy, to establish an agreement reporting system which would provide for (1) a cumulative list of all agreements reached or being negotiated with Panama and (2) persons with substantive knowledge of the agreements to identify factors, such as costs and benefits to the United States and relationships to long- and short-term policy objectives, so that agreements the Commission considers important can be readily identified.

During discussions on our report in January 1980, senior-level Commission officials advised us that in November 1979 the Commission assigned a staff member the responsibility for the status of all agreements. This is a good step.

CONCLUSIONS

Although the agencies have to a large extent been reasonably effective in minimizing problems from the overlap of Federal responsibility in planning and preparing for the Treaty both before and after its implementation, there is potential for improvement. Adequate steps have not been taken to insure that the agencies act in concert to operate effectively and efficiently. This could be achieved through full Embassy membership and participation on the Coordinating and Joint Committees. In view of the fact that entrance of the Treaty into force is at a relatively early stage, we believe that now is the time to arrange for effective coordination.

RECOMMENDATIONS

We recommend that the Secretaries of State and Defense and the Administrator of the Commission work together to provide for full Embassy membership on the Coordinating and Joint Committees. Such representation could help to minimize the incentives to resort to diplomatic levels and facilitate the formulation of fully coordinated U.S. Government policies.

AGENCY COMMENTS

The Department of State concurred with our conclusions and recommendations. The Commission and the Department of Defense said that (1) overall, coordination has maximized economy and efficiency in planning for Treaty implementation, (2) every system can be improved, and (3) the three agencies could institute management measures to enhance coordination. However, the Commission and Defense took strong exception to the need for full Embassy membership on the Coordinating and Joint Committees in order to ensure coordination between them and the U.S. Embassy. Defense considers the coordination issue as separate and distinct from the question of "full representation" on the Joint Committee. It stated that the confusion of these two different organizational objectives has retarded development of a more effective coordination environment by equating coordination with representation and thereby diffusing efforts to arrive at concrete coordination procedures that are mutually satisfactory. Accordingly, Defense suggested that chapter 8 be deleted from the report.

The Department of Defense endorsed the Southern Command's position opposing full Embassy membership in the Joint Committee because:

"1. It could create a legal conflict with already established law exempting U.S. military personnel under the command of a unified commander from the direction of the U.S. Ambassador.

"2. Article III of the Agreement in Implementation of Article IV of the Panama Canal Treaty provides that the Joint Committee will refer unresolved issues "to the two Governments," in effect establishing the Embassy and their diplomatic channels as the legitimate and necessary method of addressing sensitive problems. As a 'court of appeal' those involved in the diplomatic process should be able to function more effectively if they have a clear perspective undistorted by previous association with difficult lower-level negotiations. Conversely, the diplomatic process may be impaired by a partisan perspective resulting from prior advocacy of a particular position. This separation of the Joint Committee and diplomatic channels was obviously the intent of Article III of the Agreement in Implementation of Article IV. Furthermore, the State Department has criticized the practice of having the same personnel take

part in subcommittee and diplomatic forum discussions on a given topic because it often results in a mere reiteration of previously stated positions.

"3. The U.S. Southern Command Coordination Plan for Panama Canal Treaty Implementation was the result of extended negotiations between the State Department and the Department of Defense. This plan clearly does not contemplate a co-equal status of the Embassy and the Southern Command on the Joint Committee, nor does it even contemplate "full representation" for the Embassy in a deputy status. The Embassy representative to the Joint Committee, as provided for in the Coordination Plan, has a very vital role to play in terms of advising the U.S. representative and his deputies on political matters, interpreting the Treaty, and acting as the conduit for consultation between the Southern Command and the Embassy in accordance with the provisions of 22 U.S.C. 2680a and the Case Act as amended. The current Southern Command-Embassy Organizational contacts are structured on this basis and, as the draft GAO report notes, the results have maximized economy and efficiency, while avoiding duplication. This relationship involves daily contact at the working and policy levels in the formulation and articulation of U.S. Southern Command positions vis-a-vis the Panamanian National Guard. The Embassy is fully engaged in the work of the Joint Committee and in the bilateral relationship between the two military forces as they affect government-to-government relations.

"4. Both Article III of the Agreement of Implementation of Article IV and the Charter, which was negotiated with the Panamanian National Guard in the precursor to the Joint Committee, call for binational representation on a parity basis. Full Embassy representation would require National guard agreement and appropriate adjustment on their part. They have indicated they are not in accord with such adjustment. The basic reason advanced for the 1977 Panama Canal Treaty was to secure Panama's partnership in the defense and operation of the Canal enterprise; therefore, the Panamanians on the Joint Committee have a legitimate voice in determining binational

military organization. Any attempt to ride roughshod over their wishes must be viewed as a return to paternalism and counterproductive to the intent of the Treaty." (See app. VIII.)

The Commission also shares these views, stating that "full Embassy participation on the Coordinating Committee would result in a degradation of this agency's authority on Canal operational matters which the Congress, in the implementing legislation, has sought to avoid." The Commission believes that "the proper Embassy role should continue to be that which it fulfilled on the Binational Working Group--valued advisors on anticipated Commission positions and knowledgeable observers of the Panama scene." The Commission also stated that the subjects addressed within the Coordinating Committee are preponderantly operational in nature, and it is the Panama Canal Commission which is charged by the Treaty to manage, operate, and maintain the Panama Canal, its complementary works, installations, and equipment and to provide for the orderly transit of vessels through the Panama Canal. Further, the Commission stated that "if the Commission is assigned the responsibility for Canal operations, it must have the authority to carry out that mission. Giving the Embassy 'equal authority' on the Coordinating Committee, as your report proposes, would necessarily dilute the Commission's authority in the area of Canal operation and management." 1/

In rebuttal, rather than discuss each point separately as structured, we will generalize, but will nevertheless cover all major agency comments. First, in commenting on our draft report, the State Department said that:

"The October 1, 1979 entry into force of the Treaties fundamentally altered the environment in which the Panama Canal is to be operated and defended. The Canal activities are now taking place in territory under the jurisdiction of the Republic of Panama and pursuant to agreements which, in contrast to the sweeping authority exercised under the 1903 Treaty

1/ GAO did not intend to imply that the authority of the Commission official who is the U.S. representative to the Coordinating Committee would be diminished by full Embassy membership. In fact, an Embassy official serving as a full member would be in a position to keep the Ambassador fully informed of Committee activities.

by U.S. officials in the former Canal Zone, grant the United States specified and limited rights. In effect, the Treaties, for the first time, place the Canal in the Republic of Panama, which, also for the first time, has a role in its operation and defense.

"Each of the three principal U.S. Government entities in Panama--the United States Embassy, the Panama Canal Commission (PCC) and Headquarters, United States Forces, Southern Command (SOUTHCOM)--now functions in the same Panamanian environment, as contrasted to the previous situation in which the Embassy operated in Panama and the former Panama Canal Company/Canal Zone Government.

"The new circumstances require the closest possible coordination among all three entities in order to carry out United States commitments under the Treaties and the intent of Congress in the Panama Canal Act of 1979, PL 96-70. Since no single agency or official below the President has overall authority for our relations with Panama and the operation and defense of the Canal, and since these matters are so unavoidably intertwined, close and effective coordination is not only good management but crucial to the lasting protection of United States interest in Panama.

"Consequently, the GAO report properly stresses the importance of coordination in Panama among the Embassy, PCC and SOUTHCOM through the primary mechanism of the Panama Review Committee (PRC). An indispensable element of this coordination process involves the timely exchange of information at all levels of evolution of policy from development through decision to application. Undoubtedly, Embassy membership on the Joint Committee and the Coordinating Committee would significantly facilitate this process.

"The absence of full Embassy membership on these two bodies is in contrast to the situations that exist in other like committees around the world as well as those existing on the other binational bodies established by the Panama Canal Treaties. Both the Board of the Panama Canal

Commission and the Consultative Committee have Defense and State officials as members and the Joint Environmental Committee includes State and EPA officials (the latter having served for over 20 years in the Department of Defense)."

Second, according to the U.S. Ambassador, no case has been made that full Embassy involvement on the various binational committees would be detrimental to U.S. interests. The Ambassador, also said that:

"I think it would be a disservice to allow the impression to stand that only the Department of State and the GAO believe it strange that the Ambassador of the United States and his staff are either excluded altogether or demeaned to the status of observers when important discussions are taking place between representatives of the Government of Panama and representatives of the two largest USG agencies in Panama. I also believe it to be strange, and highly undesirable.

"The closest parallel to the U.S.-Panama Coordination Committee is the system of U.S. military joint committees with foreign governments in countries where we have status of forces agreements. For reasons which have been found to be sound over the years, U.S. Ambassadors are represented on joint committees, and that representation does not seem to have affected adversely operational concerns of the U.S. military. The purpose of both is consultation with a foreign government and harmonization, to the extent possible, of the activities of the U.S. Government agencies in a foreign country with the expectations and constraints of the foreign government. In Panama these functions are a major part of U.S. foreign policy here. That such consultation may involve operational matters of the military, or of the canal, does not render them unsuitable for discussion in a committee on which the Embassy is represented. Embassies more or less routinely discuss ship visits and military aircraft clearance, for example, with foreign governments. It is also the case that not all of the material discussed in the Coordinating Committee is operational in nature. Indeed, the

principal focus of U.S.-Panamanian concerns for operation of the canal falls within the Board of the Panama Canal Commission."

Third, without full and unqualified U.S. Embassy membership on the Coordinating and Joint Committees, there is no assurance that the Embassy will be able to detect and become involved in negotiations among the Panama Canal Commission, U.S. Southern Command, and Panama in time to prevent the conclusion of agreements or arrangements which could lead to political difficulties between the two countries. Further, the Commission and the Southern Command will be very significant influences in Panama for years to come, and they will deal with Panama primarily in the two Committees.

Finally, many unresolved issues and problems that remain to be worked out can become potential irritants in U.S.-Panama bilateral relations as time goes on. Thus, the Embassy must be in a position to deal with them before they escalate to the level where the Embassy has to negotiate with Panama's Foreign Ministry or its representatives on a matter which could have been handled in the Coordinating and Joint Committees.

CHAPTER 9

MINOR UNRESOLVED

ISSUES AND OTHER MATTERS

Minor unresolved issues include telephone utility costs, health and sanitation, military post office imports, criminal jurisdictional matters, the Commission's authority to settle and pay certain claims, and settlement of marine accident claims.

Other matters also require some discussion. As a result of the Treaty, the Smithsonian Institution will need additional personnel and funding in fiscal year 1980. Finally, the Federal Aviation Administration will not recoup expenses involved in training Panamanian nationals in air traffic control techniques.

MINOR UNRESOLVED ISSUES

Telephone utility costs

Panama maintains that the Commission's telephone utility rates are too high in the areas transferred to Panama. The Treaty provides for the Commission to supply utility service to areas transferred to Panama on October 1, 1979. Panama reimburses the Commission its costs for providing such services.

According to Commission officials, the Commission's goal is full cost recovery for the provision of this service. However, the residential rate to the areas transferred to Panama does not include general overhead, which amounts to about \$25,000 in unrecovered costs per year. Commission officials indicated that the Commission has decided that after 1 year the rates will be increased to reach full recovery within 30 months.

Health and sanitation

The unresolved issues include

- authority in the U.S. housing areas for disease vector control, regulation of door-to-door peddlers, and maintenance of environmental health standards and
- Panamanian inspectors entering U.S. civilian homes for health-related purposes.

Commission representatives do not believe that these unresolved issues create a health threat. Inspections are continuing, and door-to-door food peddlers are not trying to do business in the housing areas. However, Commission representatives indicated that these matters may have to be elevated to the diplomatic level if they are not resolved soon.

According to Commission representatives, the Commission's concern about Panamanian inspectors entering U.S. civilian houses is that it believes that the Treaty guarantees that U.S. housing is inviolable. The representatives indicated that Panama law permits sanitation inspectors the right of entry for any health-related purpose, whereas this would be allowed by U.S. inspectors only under special circumstances. The Commission representatives regard such entry as unacceptable.

Military post office imports

Panama questions whether a limit ought to be set on the number or dollar amount of items imported through the military post offices. The Treaty calls for duty-free import of "reasonable" amounts, but the U.S. Southern Command does not believe specific limits should be set. Such limits could be unfair to large families. The Command has indicated that Panamanian authorities might review customs declarations and challenge amounts on a case-by-case basis.

Criminal jurisdictional matters

Defense and Panama have not resolved several criminal jurisdictional matters concerning official duty certificates, custody receipt and request procedures, and the source of criminal process papers.

The basic area of disagreement is that Panama wants all requests concerning criminal jurisdiction matters to be formal, written requests, funneled through the Joint Commission. Defense opposes this process unless there is a time limit to prevent lengthy delays.

Commission authority to settle and pay certain claims

There is some question whether the Commission has the authority to settle and pay certain claims against PCC/CZG. Currently 137 actions (92 admiralty and 45 civil cases) are

pending against the former Canal agencies in the U.S. District Court on the Isthmus. Damages demanded by the plaintiffs in three suits exceed \$50 million.

The Act states that:

"All property and other assets of the Panama Canal Company shall revert to the United States on the effective date of this Act, and except as otherwise provided by law, the United States shall assume the liabilities, including contractual obligations, of the Panama Canal Company then outstanding. The Commission may use such property, facilities, and records of the Panama Canal company as are necessary to carry out its functions."

However, according to the Administrator of the Commission, the Act does not specifically state that the Commission has the authority to settle and pay outstanding claims against PCC/CZG. The Commission stated that it appears that Congress intended the Commission to settle and pay claims against the Company for

--injury to, or loss of, property or for personal injury or death arising from the operation of the Canal or related facilities or appurtenances; and

--injuries to vessels, or to their cargo, crew, or passengers, which occur in the Panama Canal (including the locks) and waters adjacent thereto.

As a result, in December 1979 the Commission requested our advice at the earliest possible date on the propriety of its plan to dispose of (1) claims which were presented to PCC/CZG but which they did not dispose of prior to their dissolution on October 1, 1979, and (2) claims arising after that date. The Commission has discontinued the payment of ship accident claims until clarification is received. The Comptroller General has ruled that the Panama Canal Commission may assume liability for, and can settle and adjust, those claims that arose against PCC/CZG prior to October 1, 1979. (See B-197052, Apr. 22, 1980.)

Settlement of marine accident claims

The Commission is uncertain how the Congress intends to handle certain marine accident claims. The Act states that

the Commission shall not adjust or pay claims for damages or injuries arising by reason of the presence of vessels in the Panama Canal or adjacent waters outside the locks where the claim exceeds \$120,000. It stipulates that, for these claims, the Commission must submit the claims to the Congress in a special report containing the material facts and its recommendations. The provision raises two immediate questions.

--How will the claims reported to Congress be settled?

--What funds will be used to pay the claims?

If the Commission is required to pay claims over \$120,000, this expense will not have been reflected in the toll base, since they were not included in the marine accident cost estimates for fiscal year 1980.

Through the reserves for marine accidents, the Commission is, in effect, self-insuring against normal business risks. The practice has been to charge the estimated annual cost of accidents to expense, which establishes a reserve. The reserves are included in the tolls base for the purpose of recovering marine accident costs from Canal users. On this basis, \$7 million in marine accident costs were booked in 1978 and \$15.7 million in 1979, of which \$8 million was included in the Company's March 1979 proposal for a tolls increase. This was reduced to \$6 million for the October 1 tolls increase on the basis of the liability limitation contained in the Act. The \$6 million estimated cost for ship accidents in 1980, which includes a factor for inflation, is also projected in the Commission's 1980 Budget Amendment and provides \$4.3 million for accidents inside and \$1.7 million for accidents outside the locks.

Estimated liabilities charged to the reserve for marine accidents in 1979 amounted to \$16 million; of that total, \$12 million was for 13 accidents occurring outside the locks that amounted to more than \$120,000.

OTHER MATTERS

Smithsonian Institution needs additional personnel and funds

As a result of the Treaty and related agreements, the Smithsonian Institution needs an additional five positions and \$377,000 for fiscal year 1980 for the added administration, security, conservation, and education responsibilities. The Institution in Panama conducts advanced biological studies on

the ecology, behavior, and evolution of tropical organisms. It also promotes education and conservation in the tropics.

When the Treaty entered into force, services that were available from the former PCC/CZG and from Defense, such as personnel administration, mail delivery, customs, and labor and immigration services, as well as commissary access, ceased to exist. The Institution needs two new positions and \$32,000 for administrative personnel to carry out these functions. An additional \$108,000 is needed to compensate staff for the losses of the 15-percent tropical differential and commissary and post exchange privileges. This compensation will take the form of housing and cost of living allowances, which will be provided according to schedules developed and used by the Department of State for U.S. employees overseas. A further \$81,000 is needed to offset the expected higher costs of buying utilities and supplies from Panama instead of from the Commission.

Treaty implementation requires the establishment of closer program and administrative ties between the Institute, the State Department, U.S. Department of Interior, and different Latin American countries. The Institution needs an additional \$8,000 in travel funds to fulfill these demands.

Additional staffing and funding requirements needed by the Institution as a result of the Treaty include (1) a new position and \$50,000 for an education assistant and for an education officer; the individuals filling these positions are expected to actively participate in matters handled by the Joint Commission on the Environment created by the Treaty and (2) an additional two positions and \$98,000 for the development of a natural educational park modeled after the national parks in the United States and Canada. This is in keeping with the environmental provisions in the Treaty.

A Smithsonian Institution representative in Panama advised us that, in November 1979, a subcommittee of the Committee on Appropriations for the Department of Interior and related agencies approved an additional four positions and \$233,000. The Institution has requested additional supplemental funding of \$348,000 for fiscal year 1980.

FAA failure to recoup training expenses

The FAA in Panama does not recoup the expenses involved in training Panamanian nationals in air traffic control

techniques. It is intended that the United States recoup in whole or in part, whenever possible, the expenses involved in furnishing the training.

According to the FAA, the bulk of the training expenses are attributable to the five U.S. instructors needed for incountry training, an estimated \$335,000 a year. We computed the costs based on data provided by the FAA in Panama. The instructors are scheduled to be phased out between fiscal years 1980-82. Other training expenses pertain to U.S.-based training for Panamanian nationals, but FAA has not determined the total cost.

FAA's rationale for not recouping or attempting to recoup the training costs are that:

- Panama cannot take over FAA air traffic control responsibilities by 1984 if it has to reimburse the United States for training costs.
- It would be a hindrance and extra burden to FAA's work if the agency had to recoup training expenses.
- In the long run, the savings to the United States by Panama taking over FAA operations by 1984 will far outweigh any training expenses that could be recouped.

Regarding the last point, FAA informed us that it has instituted a number of measures which have resulted in avoiding significant costs. For example, in September 1978 it eliminated an Air Defense Radar facility which was costing approximately \$500,000 a year. In addition to reducing seven positions at the field facility, FAA instituted a program of not replacing employees that would ultimately be replaced by Panamanians. Since beginning the program, FAA's onboard strength has dropped from about 110 to a current staff of 84. The staff is already augmented by a number of Panamanian employees.

PANAMA CANAL COMPANY/CANAL ZONE GOVERNMENT
SUBCOMMITTEES OF THE BINATIONAL WORKING GROUP

- | | |
|---|------------------------------|
| 1. <u>LAND AND WATERS</u> | 13. <u>FISCAL MATTERS</u> |
| A. Surveys | A. Importation |
| B. Land Use Licensing | B. Taxation |
| C. Public Facilities | |
| D. Historical Monuments | 14. ROADS AND STREETS |
| 2. <u>PORTS AND RAILROAD</u> | 15. FIRE AND PROTECTION |
| A. Ports | |
| B. Railroad | 16. EMPLOYEE DOCUMENTATION |
| 3. HOUSING | |
| 4. COMMERCIAL SERVICES | 17. LICENSING AND REGULATION |
| 5. BUSINESS ACTIVITIES | 18. JURIDICAL |
| 6. NONPROFIT ORGANIZATIONS | 19. CLAIMS |
| 7. HEALTH AND SANITATION | 20. PERSONNEL |
| 8. SOCIAL SECURITY | 21. POLICE |
| 9. <u>UTILITIES</u> | 22. ENVIRONMENTAL |
| 10. GARBAGE, TRASH COLLECTION AND STREET CLEANING | 23. LIAISON |
| 11. SCHOOLS | |
| 12. POSTAL SERVICES | |

U.S. SOUTHERN COMMAND SUBCOMMITTEES OF
THE JOINT WORKING COMMITTEE

1. LANDS AND WATERS
 - A. Surveys
 - B. Land Use Licensing
 - C. Military Community Support Facilities
 - D. Environmental
 - E. Housing
 - F. Historical Monuments
2. PORTS AND RAILROAD
3. BUSINESS ACTIVITIES AND NONPROFIT ORGANIZATIONS
4. COMMUNITY SERVICES
 - A. Health and Sanitation
 - B. Schools
 - C. Postal Services
5. PUBLIC SERVICES
 - A. Power
 - B. Water
 - C. Sewers
 - D. Garbage, Trash Collection, and Street Cleaning
 - E. Roads and Streets
 - F. Fire Protection
 - G. Vector Control
6. TELECOMMUNICATIONS
7. CUSTOMS MATTERS
8. LEGAL
9. PERSONNEL ADMINISTRATION
 - A. Civilian Employment
 - B. Employee Documentation
 - C. Social Security
10. LAW ENFORCEMENT
 - A. Licensing and Registration
 - B. Police

NET BOOK VALUE OF PROPERTY TRANSFERS TO
PANAMA ON OCTOBER 1, 1979

Panama Canal Company	(thousands)
Channel, Harbors	\$ 8,201
Thatcher Ferry Bridge	12,911
Marine Bunkering	4,193
Harbor Terminal	5,938
Employee Housing	34,985
Supply Division	2,738
Railroad Division	2,298
Other	<u>2,793</u>
	<u>\$74,058</u>
Canal Zone Government:	
Roads, Streets, and Sidewalks	\$ 4,542
Street Lighting System	1,198
Miscellaneous Government Buildings	2,552
Other	<u>1,837</u>
Total	<u>\$10,129</u>
GAO note: Values as of Feb. 5, 1980	<u><u>\$84,187</u></u>

Source: Panama Canal Commission

NET BOOK VALUE OF PROPERTY TRANSFERS TO
DEPARTMENT OF DEFENSE ON OCTOBER 1, 1979

Canal Zone Government:	(thousands)
Division of Schools	\$16,736
Other Civil Function Facilities	823
Gorgas Hospital and Clinics	11,553
Coco Solo Hospital and Clinics	2,504
Other Health and Sanitation Facilities	1,985
General Facilities	91
Work in Progress	506
	<u>\$34,199</u>
Panama Canal Company:	
Supply Division	330
Motor Transportation Division	164
Other	<u>222</u>
	<u>\$ 717</u>
Total	<u><u>\$34,916</u></u>

GAO note: May not add due to rounding;
Values as of Feb. 5, 1980.

Source: Panama Canal Commission

MILCON CONSTRUCTION SUMMARY FOR TREATY DAY RELOCATIONS

Phase I Minimum Essential Construction
work performed in fiscal year 1979 (millions)

HQ 193d Inf Bde relocation to Albrook and Clayton	\$ 3.4
210th Avn Bn relocation to Howard, Kobbe and Albrook	3.4
470th MI Gp to Corozal	0.7
Post Offices	1.1
Miscellaneous (PD); guard booths, and fencing)	1.4
Communications	0.3
Engineering Designs & Contract Administration	0.6

Total Phase I \$ 10.9

Phase II Balance of Construction for Relocations
Work to be contracted and performed in fiscal year 1980

Army: HQ 193 Inf Bde relocation to Clayton and Tropic Test Center	\$ 10.7
210th Avn Bn to Howard and Kobbe	10.2
470th MI Gp to Corozal (incl costs to move F&A to Bldg 519)	2.0
Tropic Test Center	.5

Army total \$ 23.4

Air Force:

Security fencing (Howard & Albrook), guard towers, kennels, and miscellaneous	\$ 4.6
---	--------

Air Force total \$ 4.6

Design, administration, and contingencies	2.5
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Total Phase II \$ 30.5

December 1979 estimate by project, appropriation approved by Congress was \$30.5 million.

OTHER MILCON TREATY-RELATED CONSTRUCTION
(fiscal year 1980)

		(millions)
Army	1980 Relocation of medical warehouses to Corozal	\$ 0.7
	1981 Ft. Clayton Dental Clinic	2.5
	Construct AAFES Warehouse	4.2
	1982 Renovation of Gorgas Hospital	12.0
	Renovation of Coco Solo Hospital	2.6
	1983 Relocate activities from Gulick to Davis	7.5
	Army total	\$29.5
Air Force	1980 Relocation of Transmitter Site at Curundu to Howard area	1.0
	Air Force total	\$ 1.0

Source: U.S. Southern Command

PCC/CZG POLICY ON FAIR VALUE OF REMOVABLE PROPERTY

TO BE OFFERED TO PANAMA

SUBJECT. Policy on establishment of fair value of removable property to be offered to the Government of Panama under the treaty

REFERENCES.

- A. Supply and Community Service Director requests development of simple technique for determining fair value of items to be offered for purchase to the Government of Panama. (1/8/79)
- B. Draft proposal on simple valuation method presented to Supply and Community Service by Financial Vice President. (2/22/79)
- C. Concurrence with draft proposal by Supply and Community Service Director. (2/23/79)

BACKGROUND. In addition to assets required to be transferred to the GOP under the treaty, there are other items of removable property which will be offered for purchase by Panama at fair value. These include items used in support of public service functions and property located in certain areas or functions that will be transferred to Panama.

Normal procedure for establishing fair value of plant items to be excessed is found in Section 89.6 of the CZAR and involves individual inspection and evaluation of each item. The large number of items that require valuation makes impractical the application of the normal procedure; a simplified method of establishing fair value has been developed in its place.

DISCUSSION. For removable plant assets, minor items and furniture pool items, the net book value constitutes a fair value except for those items which are carried at or near zero net book value. In a random sample of fully depreciated removable property items still carried on the books of the Company/Government, it was determined that the extended life of these items exceeded 30% of the established service life. In practice, this additional life over and above the original service life is a result of the Company's preventative maintenance program. The concept of extending the useful life of assets whose service life has already been completed is set forth in Engineering Valuation and Depreciation (Marston, Winfrey and Hempstead; McGraw Hill; New York.)

For furniture and fixture items, small tools, and the like, Company policy is to capitalize the initial complement of items purchased, stop depreciation at 40% of costs, and charge future purchases of replacement items to operating expense. Since, in theory, the continuous replacement of items maintains the value of the full complement at 60% of the original costs, it appears reasonable to establish the fair value of such items at 60% of the initial purchase price.

For Storehouse inventory stock items, the fair value is established as the inventory cost plus freight.

ACTION RECOMMENDED. Approval of attached draft memorandum to Bureau Directors setting forth policy and responsibilities.

APPROVED/DISAPPROVED

W. R. Balfour
President
Date: 9 April 1979
COORDINATION.

W. D. Bjorseth

W. D. Bjorseth
Financial Vice President
FV- (52-3194)

MAR 13 1979

Supply and Community Services	Concur	<u>WDB 3/13</u>	Nonconcur	_____
Executive Planning Staff	Concur	<u>WDB 3/16</u>	Nonconcur	_____
General Counsel	Concur	<u>WDB 3/28</u>	Nonconcur	_____
Executive Secretary	Concur	<u>WDB 3/29</u>	Nonconcur	_____

DISPOSITION AFTER ACTION. Return to Financial Vice President to arrange for duplication and distribution.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Bureau Directors and Heads of Independent Units DATE:

FROM : Financial Vice President In reply refer to:
FV-

SUBJECT: Policy on establishment of fair value of removable property
 offered to the Government of Panama under the treaty

Purpose. This memorandum describes the policy governing the establishment of fair value of removable property items offered for purchase by the Government of Panama under the treaty. For these items, this policy supersedes the provisions of CZAR-89.6 relating to the establishment of fair value.

Policy.

a. For removable plant assets, minor items and furniture pool items, the fair value shall be the net book value or 30% of original cost, whichever is greater. When the original cost is unknown, a fair value will be established by the Valuation Engineer, Plant Accounting Branch and the Excess Disposal Manager, Division of Storehouses.

b. For furniture and fixture items, small tools and like items generally costing less than \$100, a standard fair value price list will be developed by the Valuation Engineer and the Excess Disposal Manager, using the following criteria: where the cost to purchase the item can be determined through catalogs or price quotation information, the standard fair value of the item will be established at 60% of the purchase cost. Where the cost to purchase the item cannot be determined, a fair value will be estimated by the Valuation Engineer and the Excess Disposal Manager.

c. For Storehouse inventory stock items, the fair value will be the inventory cost plus freight. The inventory cost is the standard cost of the item.

W. D. Bjorseth

Distribution A

(48527)

PANAMA CANAL COMMISSION
APO MIAMI 34011
OFFICE OF THE ADMINISTRATOR

MAR 17 1980

Mr. J. Kenneth Fasick, Director
International Division
United States General Accounting Office
441 G Street, N.W.
Washington, D. C. 20548

Dear Mr. Fasick:

We have reviewed the GAO draft report to the Congress entitled "Implementing the Panama Canal Treaty of 1977 - Good Planning but Many Issues Remain." The first draft was presented for our review on January 17, 1980, and informal comments were provided in a meeting on January 30, 1980, with members of my staff and Mr. Frank Zappacosta of your office, Mr. John Competello of the Latin American Branch, and three GAO staff members. Mr. Competello has since provided us a revised draft which incorporated many of the corrections and changes suggested in that meeting. We appreciate the inclusion of those changes as well as some modification in general tone made in this revised draft of the report. However, we still must take exception to certain general areas of the draft, as well as point out significant factual and textual errors which you may wish to correct.

In the way of general background, I must say that all of us who participated in the implementation of the Panama Canal Treaty recognized it as an enormous and complex job which was carried out successfully only because of the total commitment and capabilities of the people of the Canal organization, USSOUTHCOM elements, and the Government of Panama who participated. The magnitude and complexity of that job cannot be overstated, and the potential for confusion and chaos was everywhere. It is difficult for a nonparticipant to appreciate the severity of the constraints which bound the planners on both sides, including the difficulties of coordinated planning with personnel of diverse agencies of a foreign government; the magnitude and scope of the transfer of functions involved; and the economic and legal burdens under which all of the participants labored until the eleventh hour. In addition, the Canal organization personnel had to plan the disestablishment of two agencies and the establishment of a new agency, at the same time that they were managing operations that would be transferred, others that would be ongoing in nature, and still others that would be terminated entirely. The impact on people throughout the planning period was extremely traumatic. In my view, the absence of disruption on October 1, 1979, and the level of cooperation that has existed since that date, are per se the best evidence of the outstanding planning which led up to the entry into force of the Treaty. Implementation was, in short, a success. It is from that perspective that we find the draft GAO report disappointing in overall balance and in its seeming emphasis on a comparatively few unresolved issues.

Mr. J. Kenneth Fasick

MAR 17 1980

First, I should say that as regards those unresolved issues, such as the uncompleted actions by the Government of Panama to furnish procedural guarantees in connection with its criminal procedures; and to modify existing laws which may impact adversely on businesses and non-profit activities which operated in the former Canal Zone; and to develop a system for reporting its costs for providing Treaty-specified public services; I find that the GAO recommendation on page 86 of the draft report, that I work with the heads of the other principal U.S. Government agencies in Panama to resolve those matters without further delay, is in consonance with the direction I have taken since I assumed responsibility for managing the operations of the Panama Canal. We will, of course, continue to proceed on the same basis in the months ahead. However, I would be less than candid if I did not point out that these are complex issues which touch on the politically sensitive nerve of sovereignty, and they are not likely to be susceptible of quick resolution.

Next, I wish to comment on the observations made concerning Panama Canal Company-owned refuse collection equipment made available to the Republic of Panama (p. vi of the digest and pp. 33-36 of the draft report). As discussed in the informal meeting of January 30, we take exception to those observations. Our position is that the report erroneously concludes that the refuse collection property was excess property. Excess property regulations were used as guidelines only, as the situation actually did not involve excess property, and therefore, the regulations were inapplicable in this case. Excess property is defined in the FPMR 40 CFR 101-43.001-6 as personal property which the Federal agency no longer requires for its needs and the discharge of its responsibilities. The Treaty transferred certain public services in the Canal housing and operating areas to Panama with the Commission paying Panama \$10 million a year for performance of these services. One of these services was refuse collection, a function which impacts dramatically on the critical elements of health and sanitation. In this regard, it was readily apparent to the Company that the use of this property would not be excess as it would still be required for the needs of the Commission in the event that it resumed these responsibilities. Early in the planning phase, the GOP indicated that they would require Company property in order to perform the function they were assuming. Later it was surfaced that the GOP was considering requesting the Company to continue collecting its own refuse (with an appropriate off-set to the public service payment), as they might not be operationally capable on October 1, 1979. Arrangements then were undertaken to effect a lease purchase contract between PCC and the GOP for the subject refuse collection equipment. This agreement calls for title to the equipment to remain with the Commission until such time as Panama has paid the total fair value plus interest and, during this period, the Commission could recapture the property and once again assume responsibility for the performance of this function if required.

The phrasing in the report indicates that the transfer of the property should have been processed in accordance with Title II of the

Mr. J. Kenneth Fasick

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Federal Property & Administrative Services Act of 1949 (63 Stat. 377). However, excess property guidelines used here are applicable to foreign excess property, and therefore, Title IV (40 USC 511) was applied rather than Title II. Title IV vests the head of the Agency with certain discretionary powers in the disposal of foreign excess property. Furthermore, the refuse collection property disposition was in accordance with an interpretation by the Department of State in a Memorandum of Law by its Legal Advisor dated June 21, 1978, and the implementing procedures adopted by the Board of Directors of the Panama Canal Company in its resolution dated September 29, 1979. Accordingly, the property determination that was made is considered proper.

Third, I wish to register my strong exception to the GAO recommendation on page 101 of the draft report that the U.S. Embassy, USSOUTHCOM, and the Commission should seek to reach agreement on full Embassy representation on the Coordinating and Joint Committees. On behalf of the Commission and its relationships with various agencies of the Government of Panama, I share the views expressed by USSOUTHCOM on pages 102 and 103 of the draft report in support of that Command's statement of exception to the same GAO recommendation. In addition, you should note that the Coordinating Committee is established pursuant to the Agreement in Implementation of Article III of the Treaty and is charged with the performance of a number of functions specifically indicated in that Agreement. Such functions include use of Canal operating and housing areas; land-use licensing for purposes determined to be compatible with the management, operation, and maintenance of the Canal; the responsibility for marine traffic control in Canal waters; matters pertaining to management, operation, and maintenance by Panama of the Ports of Balboa and Cristobal and of the Panama Railroad; maintenance of standards of safety, fire prevention, and oil pollution in the Ports; use of communications networks, installations, and frequencies; exemptions from Panama customs; and a number of other subjects specified in the Agreement. These subjects to be addressed within the Coordinating Committee are preponderantly operational in nature, and it is the Panama Canal Commission which is charged by the Treaty "... to manage, operate, and maintain the Panama Canal, its complementary works, installations, and equipment and to provide for the orderly transit of vessels through the Panama Canal." If the Commission is assigned the responsibility for Canal operations, it must have the authority to carry out that mission. Giving the Embassy "equal authority" on the Coordinating Committee, as your report proposes, would necessarily dilute the Commission's authority in the area of Canal operation and management.

The Congress took pains to avoid the development of such a situation when it enacted the legislation implementing the Treaty. Section 1110 of

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Public Law 96-70 specifies that "The Commission shall not be subject to the direction or supervision of the United States Chief of Mission in the Republic of Panama with respect to the responsibilities of the Commission for the operation, management, or maintenance of the Panama Canal" Rather, the Commission is required by law only to "keep the Ambassador fully informed with respect to all activities and operations of the Commission." While the Commission, like the two former Canal agencies, has kept the American Ambassador fully informed in Treaty implementation matters and will continue to do so, it is submitted that "full Embassy participation" on the Coordinating Committee which you advocate would result in a degradation of this agency's authority on Canal operational matters which the Congress, in section 1110 of the implementing legislation, has sought to avoid.

The agreement in Implementation of Article III of the Treaty further provides that the Coordinating Committee shall refer any matters it is not able to resolve "... to the two Governments for their consideration through appropriate channels." Similarly, the Treaty itself, in Article XIV, recognizes that involvement of diplomatic officials in settling disputes is to be an alternative to, rather than a part of, the work of the various committees established by the Treaty documents. In my judgment, these provisions establish the proper channel for full Embassy participation. On the Coordinating Committee, I believe that the proper Embassy role should continue to be that which it fulfilled on the Binational Working Group--valued advisors on anticipated Commission positions and knowledgeable observers of the Panama scene. The assertions on pages 104-105 of your report notwithstanding, with Embassy representatives attending Coordinating Committee meetings as advisors, continuation of this relationship should provide them full opportunity "to detect and become involved in negotiations" between the Commission and agencies of the Government of Panama in order to safeguard overall U.S. consistency in interpreting the Treaty. In this regard, we note the statement on page 96 of your report to the effect that the Embassy will "provide authoritative Treaty interpretations."

In addition to the major points discussed above, there is enclosed a listing of detailed comments that address factual and textual errors, as well as errors in view attributed to the Canal organization. While no attempt was made to edit the draft report in all respects, the enclosures presents the significant detailed comments on the GAO document which I hope will assist you in the preparation of the final report.

MAR 17 1980

Mr. J. Kenneth Fasick

Thank you for providing us an opportunity to comment on this important draft report before its publication.

Sincerely yours,



D. P. McAuliffe
Administrator

Enclosure

cc:
Asst. Sec. Army (CW)
CINC, USSOUTHCOM
American Ambassador, Panama
GAO (Int. Div., L.A. Branch, Mr. Competello)
DOD Rep. for PC Treaty Affairs (Lt. Gen. W. Dolvin)

PANAMA CANAL COMMISSION
COMMENTS ON THE DRAFT GAO REPORT
"IMPLEMENTING THE PANAMA CANAL TREATY
OF 1977--GOOD PLANNING BUT MANY ISSUES REMAIN"

DIGEST

1. Page i, last paragraph. Officials of the former PCC/CZG started formal implementation planning with Panama in early 1978, not mid-1978, as stated in the first sentence. This fact was recognized by GAO in an earlier report, "Background Information Bearing Upon Panama Canal Treaty Implementing Legislation," ID-79-33, June 4, 1979, and also in this draft report, page 7 first paragraph.
2. Page v, second sentence after subheading. Here and throughout the report the problem with respect to public services is misstated. The problem is not that Panama has not developed procedures to verify the cost of providing public services. It is that Panama has not yet developed a system for reporting costs. Only when Panama has a cost reporting system that can provide sufficient and appropriate cost data will it be possible for anyone to verify those costs. (See p. 111.)

CHAPTER 1

INTRODUCTION

1. Pages 2 and 3, paragraph entitled "Jurisdiction." The paragraph on jurisdiction contains several substantive errors. First, the Canal Zone Government's existence was terminated by Public Law 96-70, not by the Treaty--The United States retains only primary jurisdiction over some of its nationals for offenses committed in certain areas for the transition period. Thereafter, Panama will exercise exclusive--rather than primary--jurisdiction, except in a very limited number of cases. Finally, while the paraphrase of the Article IX provision dealing with private activities is essentially accurate, it does not incorporate the construction placed upon words "same terms and conditions" by the Department of State and, accordingly, will mislead anyone not familiar with that interpretation.

CHAPTER 2

FRAMEWORK TO IMPLEMENT THE TREATY

1. Page 7, first paragraph, fourth line. The statement, "The bulk of the treaty planning took place in Panama." could convey the meaning that the Government of Panama did the bulk of planning to implement the Treaty. All agencies concerned--PCC/CZG, U.S. Southern Command, U.S. Embassy, and the Government of Panama--did enormous amounts of

planning, and it would be unfair to suggest that one agency did more than another. (See p. 6.)

2. Page 11, last paragraph, second sentence. The statement that the Panama's National Port Authority (NPA) was created to operate the Balboa and Cristobal ports is incorrect. The NPA was an existing agency that was charged with the additional responsibility to operate these two ports. A significant change, as a result of the dissolution of the PCA, is that the NPA has now assumed the responsibility for operating the Panama Railroad. (See p. 9.)

CHAPTER 3

TERMINATION OF U.S. JURISDICTION--MAJOR UNRESOLVED ISSUES REMAIN

1. Page 19, second paragraph. In reference to the delays in obtaining procedural guarantees from Panama, the report gives the impression that the Commission has somehow been at fault for Panama's delay in assuring procedural guarantees provided for in the Treaty. It is not the Commission's responsibility to "assure" Panama's compliance. Also, the reference to the absence of Panamanian legal expertise should be rewritten to make it clear that it refers to Panamanian legal expertise on the U.S. side. (See p. 15.)
2. Page 22, second paragraph. The position stated in the last three sentences is the position of the U.S. Embassy rather than that of the Commission. (See p. 17.)

CHAPTER 4

PROPERTY, FACILITIES, AND PUBLIC SERVICES TRANSFERRED SMOOTHLY BUT BASIC PROBLEMS HINDER FULL IMPLEMENTATION

1. Page 36, second paragraph. The draft states that the Commission is changing its property disposal procedures. This carries the implication that Commission policies are not presently in line with Federal policies. The change presently being made to disposal policies is to assure that properties excess to the needs of Federal agencies will be offered on a preferential basis to the Government of Panama, as stipulated in the Treaty. (See p. 25.)
2. Page 37, first complete paragraph, last two sentences. The sentence sequence of the last two sentences appears to be reversed. The use of loan labor by Panama contributed toward the smooth transfer of facilities. As presently worded in the report, the implication is that the use of loan labor added to the problem of determining the method of maintenance for the Balboa shipyard facilities. (See p. 26.)

3. Page 39, top of page. The conclusion in the last sentence appears to be misleading as to who is required to maintain the drydock and equipment. Panama's National Port Authority must properly maintain considerable equipment as well as the drydock and related facilities to meet the Treaty mandated needs of the Commission. (See p. 27.)
4. Page 39, last paragraph, second sentence. The wording of this sentence is misleading in that it implies that cost adjustments for public services will be made annually. The Treaty and section 1341 of the Panama Canal Act of 1979 clearly intends for cost adjustments to be made prospectively triennially, effective with the second three-year period which begins on October 1, 1982. (See p. 28.)
5. Page 41, first full paragraph. To date, Panama has submitted only one invoice for public services. It did not provide a breakdown of costs. (See p. 29.)
6. Page 43, first paragraph, seventh line. Panama has not submitted invoices for ". . . the costs incurred in providing the services." Rather, one monthly invoice was received, stated at one-twelfth of the annual Treaty specified payment. (See p. 29.)
7. Page 43, last paragraph, first sentence. The statement is made that in November 1979 the Commission initiated a plan to develop such standards, as if this were the first work done on it. Actually, the Panama Canal organization was working on standards for public services during 1978 and 1979. The reference to the November 1979 plan should specify that it was the latest in a long line of efforts to get Panama to agree on standards. (See p. 30.)

CHAPTER 5

DOD ASSUMPTION OF FUNCTIONS-- SUCCESSFUL PLANNING BUT UNRESOLVED ISSUES AND CONCERNS REMAIN

1. Page 50, paragraph continued from previous page. The statement that there is a lack of criteria for defining sponsoring agencies and the allowance to be paid may apply to other Federal Agencies in the area, but it is inaccurate if it pertains to the Commission. As stated in the report, in October 1979, the Commission notified MEDDAC of the categories of patients the Commission would sponsor and the sponsorship amounts the Commission would pay for each patient category. (See p. 34.)

CHAPTER 6

EMPLOYEE PROVISIONS--SUBSTANTIAL PROGRESS ACHIEVED

1. Page 53, first three lines. The wording here may be misleading regarding the applicability of the Panama Canal Employment System to agencies other

than the Panama Canal Commission. Pursuant to Public Law 96-70, agencies other than the Panama Canal Commission may elect to have the employment system made applicable, in whole or in part, to their personnel in the Republic of Panama. (See p. 37.)

2. Page 54, first full paragraph, first two sentences. These two sentences indicate that "senior level Commission officials" felt that extending Panamanian preference beyond initial hiring--for example, to promotions--would have a significant adverse effect on employee morale. While this is accurately stated, officials feel that a more important reason for not extending such preference is that it would exceed the Treaty requirement to ". . . establish a system of preference when hiring employees, for Panamanian applicants. . ." (paragraph 2(a), Article X of the Panama Canal Treaty of 1977). (See p. 38.)
3. Page 56, top of page, 8th and 9th lines. The discussion of Treaty provisions designed to implement the basic policy of increasing the number of Panamanians in the work force seems to reach the wrong conclusion. These provisions are not intended to increase the number of Panamanians "applying for any given position." Rather, they're intended to increase the number of Panamanians employed at all levels of the Commission. (See p. 39.)
4. Page 57, end of second paragraph. The identification and role of the Nautical School is inaccurate. An accurate statement would be: "For example, the Panamanian Nautical School Program is seen as a valuable resource toward preparing Panamanians to meet Commission needs." (See p. 40.)
5. Page 61, last two paragraphs. In questioning whether the actions taken by the Panama Canal Commission will result in increasing participation of the Panamanian employees at all levels of the organization, the GAO makes no mention of the Treaty provision that requires that within five years there must be a 20 percent reduction in the number of U.S. nationals employed by the Commission who previously worked for the Panama Canal Company on September 30, 1979. This provision by itself will increase the number of Panamanian employees in the organization, and, along with the collective actions taken by the Commission, as outlined in the GAO report, will without question assure increasing participation of the Panamanian employees at all levels in the Commission. (See p. 42.)
6. Page 78, last paragraph. The reference to a tax allowance should be accompanied by an explanation that the tax allowance was subtracted from the U.S. wage rate schedule to arrive at pay schedules for non-U.S. citizen employees so as to equalize the take-home pay for employees for the same grade. The elimination of the tax factor will result in higher pay for non-U.S. citizens, but will not affect the pay of U.S. citizens. (See p. 53.)

7. Pages 80-81, Cost of living allowance. The GAO discussion of the State Department method of calculating a COLA is irrelevant. The Treaty and the Panama Canal Act of 1979 provide a COLA to make up the difference for loss of military privileges. The actual determination of the COLA will be based upon a future study to determine the additional cost of living as defined in the Panama Canal Act of 1979. In contrast, the State Department method for computing a COLA uses Washington, D.C. as a base, and has no bearing upon the issue at hand. (See p. 54.)

CHAPTER 8

POTENTIAL FOR BETTER INTERAGENCY COORDINATION

1. Page 92, top of page and first complete paragraph. In the discussion of the PRC and the MINI-PRC, GAO presents only the Commission's view on the function of these two groups. GAO should include the views of the Embassy and U.S. Southern Command, the other members of the PRC and MINI-PRC. Their views would seem to be essential to achieve proper perspective and balanced reporting. (See p. 62.)
2. Page 92, last paragraph. The concluding paragraph of the section "Interagency Coordination" implies that agencies do not work together on mutual problems. That is not a true statement; see comment 4 below. (See p. 63.)
3. Page 97, top of page. The implication here is that the sole job of the lawyers to be hired by the Commission is to analyze current and proposed Panamanian law dealing with procedural guarantees. This is not the case. Rather the job is to provide expertise on Panamanian laws in general. The DOD and the Commission have common issues that would require Panamanian lawyers; however, it should be clear that because of the different mission, rights and obligations granted each organization under the treaties, each will be addressing legal issues that in most cases are of no concern to the other. Given this perspective, it is not clear what point GAO is trying to make. (See p. 66.)
4. Page 100, second paragraph, first and fourth sentences. The last part of the first sentence states that ". . . no mechanism exists to insure that the agencies act in concert to operate effectively and efficiently." This statement is inaccurate in view of the existence of the PRC and MINI-PRC, which coordinate overall policy matters. Also, there is a well established framework of interagency coordination for the review of proposed agreements and arrangements. (See p. 66.)

CHAPTER 9MINOR UNRESOLVED ISSUES
AND OTHER MATTERS

1. Page 106, section on telephone utility costs. The discussion of the telephone rate issue is incomplete in that it does not go into the protracted discussion the Commission had with the PCA over this matter and of the Commission effort attempting to keep the rate as low as possible. (See p. 75.)
2. Page 109, last paragraph, first sentence. The Commission is not "uncertain" as to how to resolve certain marine accident claims. Rather, the Commission does not yet know what the Congress of the United States intends to do with the claims submitted to it in accordance with paragraph b, Section 1415 of the Panama Canal Act of 1979. (See p. 77.)
3. Page 110, second paragraph, first sentence. This sentence implies that the Commission just recently established reserves for marine accidents. However, the Commission, like its predecessor the Panama Canal Company, self-insures against normal business risks through use of reserves for marine accidents. Also, this paragraph has confused transactions recorded by the PCC/CZG with those recorded by the Commission. (See p. 78.)
4. Page 110, second paragraph, seventh line. The "\$10 million in 1979" should read "15.7 million in 1979." (See p. 78.)
5. Page 110, last paragraph, first sentence. The statement about 1979 marine accidents is inaccurate. The sentence should read, "Estimated liabilities charged to the reserve for marine accidents in 1979 amounted to \$16 million, of that total, \$12 million was for 13 accidents occurring outside the locks. . . ." (See p. 78.)

GAO note: Changes have been made since the draft report was submitted for agency comment, including appropriate changes based on these comments from the Commission. Page numbers in parentheses refer to the final report.



INTERNATIONAL
SECURITY AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

In Reply Refer to:
1-02186/80

12 March 1980

MEMORANDUM FOR MR. FRANK M. ZAPPACOSTA, U.S. GENERAL ACCOUNTING OFFICE

SUBJECT: Draft GAO Report on Panama Canal Treaty Implementation

The following comments are offered on your revised draft Chapter 8, "Potential for Better Interagency Coordination," in addition to the informal comments on the overall report provided to you and Mr. Elliot Smith during our 27 February meeting.

DoD considers that interagency coordination on Panama Canal Treaty Affairs is working well. We welcome suggestions from any source that would improve treaty implementation but consider that the recommendations in Chapter 8 of the referenced GAO report would not only fail to achieve the intended result but would be counterproductive. We have encouraged closer cooperation and coordination within the Panama Review Committee (PRC) and have observed continued improvement in this area. We do, however, strongly resist any recommendation that has the effect of dictating to either USCINCSO or the Administrator the manner in which he should accomplish his mission.

Accordingly, DoD endorses the USSOUTHCOM comments and Commission views and non-concurs in the report's recommendations with respect to agency participation in the bi-national treaty related committees or with respect to internal PRC procedures. We suggest that the report reflect these considerations and that Chapter 8

be deleted from the report.

L. W. JACKLEY
COL USA

Special Assistant for
Panama Canal Treaty Affairs

(485250)





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