

DELEGATION OF PANAMA: DECLARATION REGARDING INCLUSION OF THE
PANAMA CANAL ZONE IN THE REPORT MADE BY THE UNITED STATES
IN THE MATTER OF NON-SELF-GOVERNING TERRITORIES
(ARTICLE 73 (e) OF THE CHARTER)

The Delegation of Panama has been apprised of the fact that pursuant to a resolution adopted on 9 February 1946, by the United Nations Assembly, the United States had filed a report on the territories under its administration, and has included the Panama Canal Zone among other territories on which information had to be transmitted to the Secretary-General, in accordance with article 73 (e) of the Charter of the United Nations.

The Delegation of Panama maintains that the Panama Canal Zone should not have been included among such territories for the reasons hereinafter set forth.

I

REQUIREMENTS OF THE CHARTER REGARDING NON-SELF-GOVERNING
TERRITORIES

Article 73 of the Charter reads as follows:

Members of the United Nations which have or assume responsibilities for the administration of territories whose people have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

(a) _____

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(c); (d) _____

(e) to transmit regularly to the Secretary-General for information purposes, subject to such limitations as security and constitutional considerations may require, statistical and other information of a technical nature relating to economical, social and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

II

INTERNATIONAL STATUS OF THE TERRITORY OF THE PANAMA CANAL ZONE

From the perusal of the above quoted article of the Charter, it may be seen that the Panama Canal Zone cannot be comprised among those territories therein referred to and on which information should be furnished to the United Nations, as per paragraph (e) thereof. On the other hand, it is easy to show that it is erroneous to include the Panama Canal Zone among those territories which can be generally classified as possessions of the United States, i.e., territories acquired by purchase, conquest, cession, annexation, or any other similar title of international acquisition or transfer of territories, as it is the case of Alaska (purchased from Russia), Hawaii (annexed), Puerto Rico (ceded by Spain after the war of 1898), the Virgin Islands (purchased from Denmark), Guam (acquired from Spain as a result of the Spanish-American war) and American Samoa (first occupied and finally acquired under a Convention signed with Great Britain and Germany).

The strip of land known as the Panama Canal Zone has neither been purchased, nor conquered, nor annexed, nor ceded, nor leased, nor its sovereignty transferred by Panama to the United States. The United States administers this strip of land by virtue of a very specific stipulation contained in article II of the Treaty concluded between the Republic of Panama and the United States on 18 November 1903, which reads as follows:

"The Republic of Panama GRANTS to the United States the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation sanitation and protection of said Canal..."

Article III of the same Treaty granted very ample "rights, power and authority" to the United States within the zone mentioned in article II,

but it stated in unequivocal terms, that Panama retained its sovereignty over the canal strip. Said articles provide that the United States was granted "the rights, power and authority which the United States would possess and exercise IF IT WERE the sovereign of the territory". The phrase "if it were" means clearly and unmistakably that IT IS NOT the sovereign, and, consequently, that the United States acquired only the power of administration or jurisdiction, while the supreme attribute of sovereignty remained in the originary sovereign, the Republic of Panama.

This interpretation of the treaty, regarding the international status of the Canal Zone is supported by no less a legal authority than that of William H. Taft, President of the United States from 1909 to 1913 and later Chief Justice of the Supreme Court.

The Summary of Information transmitted by the United States and printed by the Secretary-General (document A/73), under the heading "Panama Canal" on page 20, states:

"The following is a digest in telegraphic form of the information on social and educational conditions contained in the report on this leased territory....."

And the General Report of the Secretary-General, (document A/74, dated 21 October 1946), referring to the information transmitted by the United States on 19 August, says on page 5:

"The very great variety in the status of these territories will be noted. In particular, the Panama Canal Zone is held under lease".

The idea that the Canal Zone is a leased territory is a rather common error which undoubtedly arises out of the fact that under the Canal Treaty of 1903 the United States bound itself to pay to the Republic of Panama an annuity of \$250,000 in gold currency, (equivalent to-day to approximately \$430,000 in devalued dollars). But this annuity was not meant to be, has never been, and is not, the price of a lease. As a matter of fact, the word lease is not found in the Treaty in connection with the Canal Zone.

By the Treaty of 1903, the Republic of Panama made many grants and concessions to the United States, and for all the concessions made the

United States agreed to pay as compensation the sum of ten million dollars immediately and an annuity of \$250,000 from the year 1912, in accordance with the following stipulation; in accordance with article XIV of said Treaty:

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

As a matter of fact, the annuity was and is no compensation at all. The reason for the annuity was that among the concessions made by Panama to the United States was the transfer to the right Panama had, under the contract with the Panama Railroad Company, to receive from this private Company, which the United States had absorbed, the above stated sum of \$250,000 in lieu of all taxes. Thus the Government of the United States, as assignee of the right to collect that sum, received from the Company \$250,000 and turned over exactly the same amount to the Republic of Panama. It is clear, therefore, that there is no such thing as a lease, in the sense of the international leaseholds existing, for instance, in China for some time, and that the international status of the Panama Canal Zone is determined by the fact that its use, occupation and control was granted for the specific purposes of building, maintaining, operating, sanitating and protecting a Canal between the Atlantic and Pacific Oceans.

III

DEMOGRAPHIC CONDITIONS IN THE CANAL ZONE

It is evident, that the non-self-governing territories the Charter has in mind are territories inhabited by a native population, permanently attached to the soil, which for some reason has not attained the full measure of self-government, and which, if placed under an international trusteeship, must be educated and prepared for self-government, in accordance with article 76 of the Charter, which states as one of the basic objectives

of the trusteeship system, the following:

"(b) To promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government of independence as may be appropriate to the particular circumstances of each territories and its peoples and the freely expressed wishes of the peoples concerned and as may be provided by the terms of each trusteeship agreement."

Now, the Panama Canal Zone is a strip of land without any such kind of inhabitants. There is no native population. There is no permanent population. There is not an homogeneous people, that aspires to self-government or independence or can attain one or the other.

In accordance with the purposes for which "use, occupation and control" of the Canal Zone were granted, that strip of land is inhabited only by officials, employees and labourers of the Panama Canal, by the Army and Navy forces maintained in the Zone and adjacent waters for the protection of the Canal, and by the families of all these persons.

Of the 44,688 inhabitants living in the Zone in 1945, 31,032 were employees and labourers of the Canal or the Panama Railroad, 6,685 belonging to the so-called "gold roll" and 24,347 to the so-called "silver roll", denominations which bear no relation to currency but serve to draw the color line between those who work for the Canal.

These employees and their families do not constitute a permanent population. They live in the Canal Zone, while they are engaged in working for the Canal. As a matter of fact, the Treaty between Panama and the United States signed 2 March 1936, provides in article III, paragraph 2, that no persons are allowed to live in the Canal Zone except those who directly or indirectly are engaged in or connected with the operation, maintenance, sanitation and protection of the Canal. When a person living in the Canal Zone has ceased to work for or in connection with the Canal, he must quit the Zone. Consequently, the population of that territory changes constantly, and is not one that has any interests attached to the soil or any political aspirations to self-government or

to independence.

Furthermore, the almost totality of the employees belonging to the so-called "gold-roll" are American citizens, while the great majority of the labourers in the so-called "silver-roll" are West Indians of British nationality or other aliens, the native Panamanians forming a very small minority.

There was a native population in the Canal Zone at the time the administration of that strip of land was turned over to the United States. But in 1913, the President of the United States issued the so-called Depopulation Order, by which all lands within the Canal Zone were declared necessary for the construction, maintenance, operation, sanitation and protection of the Canal, and, consequently, those Panamanian citizens who had their lands, farms, and homes in the Canal Zone were obliged to leave that area. All lands were expropriated and there is no private ownership of real estate in the strip of territory. The Canal Zone, therefore, became in the fullest sense what it is today, a sort of administrative reservation, directly under the authority of the War Department and devoted exclusively to the purposes of maintaining, operating and protecting the maritime highway which connects the Atlantic and the Pacific Oceans. The Panama Canal Zone is bound to be what it is today or else revert to the jurisdiction and full control of the Republic of Panama.

From the above stated facts the following conclusions are to be drawn:

- (a) That the Republic of Panama is and has never ceased to be, the sovereign of the strip of land known as the Panama Canal Zone;
- (b) That the United States have only acquired by treaty, "the use, occupation and control" of the Canal Zone;
- (c) That such "use, occupation and control" have been granted for the specific purposes of the "construction, maintenance, operation,

sanitation, and protection of the Canal".

(d) That the Canal Zone is not a POSSESSION or a part of the political domain of the United States.

(e) That the Panama Canal Zone is a territory without a native, permanent, homogeneous population.

(f) That the inhabitants of the Canal Zone have no interests attached to the soil, and do not and cannot have political aspirations to self-government or independence.

(g) That the Panama Canal Zone can only be administered as a strip of land exclusively devoted to the purposes of maintaining, operating and protection of the Canal.

It follows that there is no ground on which the Panama Canal Zone should be reported among the non-self-governing territories referred to in Article 73 (e) of the Charter. Its inclusion among the territories and possessions of the United States and among territories reported in pursuance of the aforesaid provision of the Charter, is a manifest error which the Delegation of Panama expects will be corrected by such means as are appropriate.
