

identally, lead to war. The reactions regarding poison gas and bacteriological warfare in the past are reproduced here on a higher level.

Increased willingness to resort to international law and judicial settlement seems somewhat less likely as a result of the contemporary relaxation. The Russian coolness toward international law and adjudication (shades of 1899 and 1907!) is not a mere matter of Soviet international politics, but is in part a basic racial or national trait.<sup>2</sup> Whether this difference of attitude can be overcome or bridged remains to be seen and, in any event, would probably take many years.

Obviously, this leaves the United States with an extremely difficult choice of attitudes and policies. Probably intransigent opposition as advocated by Senator McCarthy would not produce any catastrophe and might solve the whole problem, but the guess is a little hazardous, and certainly public opinion would not support it. Extreme appeasement, on the other hand, would certainly make matters worse and would, likewise, not meet with public favor. The only solution lies in the attitude being taken at Geneva and elsewhere by President Eisenhower and Secretary Dulles of calm, patient, conciliatory negotiation. The miracle of good relations between East and West may conceivably be brought about in this way; it is perfectly certain that such a result can be brought about peaceably in no other way.

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#### THE TREATY OF 1955 BETWEEN THE UNITED STATES AND PANAMA

On January 25, 1955, the United States and Panama signed a new Treaty of Mutual Understanding and Co-operation, accompanied by a Memorandum of Understandings Reached concerning relations between the two countries arising from the construction, operation, maintenance and protection of the Panama Canal by the United States in accordance with existing treaties.

At first reading the treaty appears to be one of extraordinary generosity on the part of the United States. The President, in his letter of May 9, 1955, transmitting the treaty to the Senate<sup>1</sup> in order to receive its advice and consent to ratification, quoted from the preamble of the treaty that its purpose was "further to demonstrate the mutual understanding and cooperation of the two countries and to strengthen the bonds of understanding and friendship between their respective countries." Is the treaty more than one of *mutual* understanding and co-operation? Is there justification for the concessions it makes to the Republic of Panama, taking into account the circumstances and conditions under which it was negotiated? Is it, in other words, one-sided in the benefits it confers, as some of its critics have claimed?

In his message to the Senate the President included an elaborate explanatory statement submitted by the Secretary of State analyzing the articles of the treaty and explaining the purpose of each of them, followed

<sup>2</sup> See citation at note 119 in Nussbaum, *A Concise History of the Law of Nations* (1954, rev. ed.), p. 248.

<sup>1</sup> Senate Exec. F, 84th Cong., 1st Sess.

by an explanation of the undertakings on the part of the United States set forth in the Memorandum of Understandings. On the same day the injunction of secrecy was removed from the two documents. Hearings before the Foreign Relations Committee of the Senate took place July 15, 18 and 20, at which statements were made or submitted for the record by the Assistant Secretary of State for Inter-American Affairs, the Assistant Secretary of the Army and the Secretary of the Panama Canal Company, in support of the treaty; but also by representatives of the American Federation of Labor and other persons interested in the effect of the treaty upon the private interests of those using the Canal or employed in its operation. On July 26 the Committee on Foreign Relations submitted its report recommending that the Senate give its approval to the treaty; and on July 29 the Senate gave its approval by a vote of 72-14.

The three most significant provisions of the treaty and those in respect to which it might be expected that there would be differences of opinion are: (1) the increase in the annuity granted to Panama; (2) the concessions made by the United States in respect to the abandonment of former treaty rights of the United States in certain specific matters; and (3) the effect of the concessions upon the personal interests of the Americans residing in the Canal Zone, employees of the United States Government and others.

The increase in the annuity naturally called for first comment, since the original convention of 1903<sup>2</sup> had fixed \$250,000, which was increased in 1936<sup>3</sup> to \$430,000, and now increased to \$1,930,000, more than four times the previous annuity. The report of the Foreign Relations Committee frankly justifies the increase upon "equitable considerations, rather than any legal obligation of the United States," believing that "account should be taken of the rise in living costs and the decreased purchasing power of the dollar in the light of world conditions," observing, however, at the same time that by Article I of the treaty the parties "recognize the absence of any obligation on the part of either party to alter the amount of the annuity," lest the new treaty provision regarding annuity should be construed as calling for periodic adjustments.

But what effect would the increased annuity have upon the tolls to be charged to vessels using the Canal? And would the economies that might be called for in order to balance costs and income result in lowering the living standards of the employees of the Panama Canal Company? The President of the Pacific American Steamship Company, representing other shipowners, asked assurance that the deficit with which the Panama Canal Company would be faced would not be passed on to the users of the Canal in the form of higher tolls. While the returns from the Canal far exceeded the annuity, it was argued, legislation would be required to use the returns to meet the increase; and there was fear on the part of the shipowners that commerce would have to bear the burden of what was being done "for diplomatic or military or political reasons."

<sup>2</sup> 3 A.J.I.L. Supp. 130 (1909).

<sup>3</sup> 34 *ibid.* 139 (1940). The increase took into account the depreciation of the dollar.

In line with the attitude of the shipowners, representatives of the American Federation of Labor, while insisting that they were not opposed to the treaty, asked for modifications to assure them that the direct or indirect costs resulting from the treaty should not be passed on to the civilian employees in the Canal Zone:

The obligations which our Government has to its citizens who are serving it in the Canal Zone should not be subordinated to its desires to improve the Panamanian economy.

By the terms of the new treaty the United States concedes to Panama certain rights of taxation which Panama had renounced under the treaties of 1903 and 1936, and transfers to Panama certain property rights granted to the United States under the earlier treaties but believed to be no longer necessary. Panama will now be entitled to levy income taxes on Panamanian citizens who work in the Canal Zone, regardless of their place of residence, and on other non-United States citizen employees residing outside the Zone—both groups being previously immune under the treaty of 1903. United States citizen employees continue to remain exempt.

The [Foreign Relations] committee concurs with the executive branch that the present tax situation is inequitable and that its continuance would serve no real interest of the United States.

Among the other provisions intended to benefit the Panamanian economy is the restriction of the privileges of purchasing at Canal Zone commissaries and other sales stores and of importing articles duty-free into the Zone, limiting them to residents of the Zone, as well as United States citizen employees of the Zone and members of the United States armed forces. Articles produced in Panama, when purchased for use in the Zone, will be exempted from the provisions of the "Buy American Act"; while the United States on its part agrees to withdraw from sales of supplies to ships passing through the Canal. The United States was, however, unwilling to meet the Panamanian demand that the United States purchase all articles needed in the Zone, except war material, from Panamanian sources, believing that this would have involved the United States "in a subsidization of the Republic's economy." On the other hand the United States agrees not to import from abroad, for resale within the Zone, certain luxury or tourist items upon which Panamanian stores would have to pay import duties and thus be unable to compete with Canal Zone duty-free imports.

Panama had long complained of the dual-wage system prevailing in the Canal Zone resulting, it was alleged, in discrimination against Panamanians performing the same work done by citizens of the United States. The Memorandum establishes a single basic wage scale for all employees regardless of whether the employee is a United States or Panamanian citizen. It was objected, in testimony before the Foreign Relations Committee, that this would have the effect of lowering the pay of American citizens in respect to positions normally filled from the local labor market. But the

Committee found that only a small number would be affected by the provision, and that it was important to remove discriminations that had long been a source of irritation to Panama.

The provisions of the treaty and of the Memorandum with respect to transfers of property from the United States to Panama are intricate; but with two exceptions the land and improvements are within the jurisdiction of Panama and they are not believed by the Canal authorities to be required for canal purposes. The transfers of the areas in Colon call for a revision of the boundary of the Canal Zone, which is defined in Article VI of the treaty. The United States abandons the monopoly granted to it by the treaty of 1903 over railroad and highway transportation across the Isthmus in territory under the jurisdiction of Panama, but at the same time agrees to seek legislation to build a bridge across the Canal at the town of Balboa, west of Panama City, pursuant to the 1942 Agreement. On its part Panama leases free of cost certain small areas adjacent to the United States Embassy; and it agrees to reserve exclusively for the purpose of maneuvers and military training an area of land in the Rio Hato region which the United States had been permitted to use during the last war but not after the war.

Lastly, by Article IV of the treaty the United States waives its right under the 1903 treaty to prescribe and enforce in perpetuity sanitary ordinances in the cities of Colon and Panama, the provision being considered justifiable in view of the evidence that the Republic was fully competent to take over the function.

The conclusions set forth in the report of the Foreign Relations Committee were that the two instruments were "just and equitable, giving due regard to the vital interests of the United States and the Republic of Panama"; and that they safeguarded the defenses required for the security of the Canal and the welfare of United States citizens and armed forces employed in the Zone. While the Committee was "fully conscious of the substantial economic benefits" which would flow to Panama, it believed that the economic development of this strategically important nation was of direct concern to the United States. "A strong and stable Panama," said the report, "means greater security for the canal and better living conditions for our citizens on the isthmus," at the same time eliminating a number of points of friction and dissatisfaction.

No one can read the texts of the two documents, one in treaty form and the other a series of understandings clarifying and supplementing the treaty, without a feeling of respect for the position taken by the Department of State and for the response of the Foreign Relations Committee to the issues of policy presented to it. Clearly the agreement was not between two parties of equal bargaining power; clearly the United States gave more than it received in specific concessions. But at the same time equally clearly the United States was wise in taking into account that the terms of the earlier treaties no longer represented what was just and equitable under the changed conditions of the present day. The stability,

economic as well as political, of Panama became a vital concern to the United States from the time the independence of Panama was recognized and the building of the Canal undertaken; and it is equally a vital concern today. It is to the credit both of the Department of State and of the Senate that this vital concern has been recognized, and recognized without weakening in any way the essential interests of the United States in the practical administration of the Canal or in its defense and security.

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