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IMPLEMENTATION OF THE DECLARATION ON THE STRENGTHENING
OF INTERNATIONAL SECURITY

Letter dated 28 March 1978 from the Permanent Representative of
Panama to the United Nations addressed to the Secretary-General

I have the honour to send you herewith the note verbale from this mission dated 28 March 1978, together with the following documents:

- (a) Resolution of ratification of the Treaty concerning the permanent neutrality of the Panama Canal, adopted by the United States Senate on 16 March 1978 (see appendix I);
- (b) Statement by Senator Dennis DeConcini (see appendix II);
- (c) Statement by Senator Edward Kennedy (see appendix III);
- (d) Communiqué from the Ministry of Foreign Affairs of Panama, issued on 27 March 1978 (see appendix IV).

In compliance with instructions from my Government, I request you to have the note verbale and the above-mentioned documents distributed as documents of the General Assembly under item 50 of the preliminary list.

(Signed) Jorge E. ILLUECA
Ambassador
Permanent Representative

* A/33/50.

ANNEX

Note verbale dated 28 March 1978 from the Permanent
Representative of Panama to the United Nations
addressed to the Secretary-General

/Original: English/

The Permanent Representative of the Republic of Panama to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that His Excellency Brigadier General Omar Torrijos Herrera, Head of Government of the Republic of Panama, has addressed a letter to the Heads of State and Heads of Government of the States members of the international community.

General Torrijos's letter and the documents enclosed make reference to the vote which took place on 16 March 1978 at the United States Senate on the Resolution of Ratification of the Treaty concerning the Permanent Neutrality of the Panama Canal. In this resolution, approval to the ratification was granted subject to a number of amendments, conditions, reservations and understandings, inserting among them a pre-condition to American acceptance of the Neutrality Treaty, known as the "DeConcini Amendment" (see clause (b) (1) in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3857-3858 (appendix I)).

According to its proponent, the "DeConcini Amendment" is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government", pretending that said amendment must be construed to permit the United States to intervene in Panama in the event of labour unrest, strikes, a slow-down, or under any other pretext labeled as interference with Canal operations (see text of Senator Dennis DeConcini's statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3817-3818 (appendix II)).

Not only does the amendment make no reference to the régime of neutrality, but, as stated by Senator Edward Kennedy, who opposed the DeConcini Amendment, "Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory." Now Panama is asked, in Kennedy's words, "to accept an amendment which has the ring of military interventionism - not just during this century, but for all time" (see text of Senator Edward Kennedy's statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States Congressional Record, vol. 124, No. 38, p. S3824 (appendix III) and the attached text of the communiqué of the Panamanian Ministry of Foreign Relations, dated 27 March 1978 (appendix IV)).

Since the Treaty provides for accession by all States to the Protocol whereby the signatories would adhere to the objectives of the Neutrality Treaty and agree to

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respect the régime of neutrality, the Panamanian Head of Government has considered it his duty to address this letter to the Heads of State or Heads of Government of the States members of the international community that in so many instances have offered their solidarity and support to the Panamanian nation in its long struggle to reach a peaceful solution to the Panama Canal question based on the recognition of her sovereignty over the totality of its national territory.

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APPENDIX I

Resolution of Ratification of the Treaty concerning the Permanent
Neutrality of the Panama Canal adopted by the Senate of the
United States of America on 16 March 1978

/Original: English/

Resolved, (two-thirds of the Senators present concurring therein), that the Senate advise and consent to the ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, together with the Annexes and Protocol relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-fifth Congress, first session), subject to the following--

(a) Amendments:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: 'The Neutrality Treaty provides that the vessels of war and auxilliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in the case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.'"

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(b) Conditions:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America shall have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in this Treaty shall preclude Panama and the United States from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or maintenance of defense sites after that date in the Republic of Panama that Panama and the United States may deem necessary or appropriate."

(c) Reservations:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States by the American Battle Monuments Commission, including the display of the flag of the United States, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

(2) The flag of the United States may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

(3) The President--

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States; and

(B) shall have announced, immediately after the date of exchange of the instruments of ratification, plans, to be carried out at the expense of the United States Government, for--

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(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and

(ii) transporting to the United States for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i); and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B) (i) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) Understandings:

(1) Paragraph 1 (c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

- (1) the costs of operating and maintaining the Panama Canal;
- (2) the competitive position of the use of the Canal in relation to other means of transportation;
- (3) the interests of both Parties in maintaining their domestic fleets;
- (4) the impact of such an adjustment on the various geographical areas of each of the two Parties; and
- (5) the interest of both Parties in maximizing their international commerce.

The United States and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this Treaty" in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxilliary vessel of the United States or Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in the annexes or the Protocol relating to the Treaty, or in any other agreement relating to the treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

(5) The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

APPENDIX II

Statement made by Senator Dennis DeConcini in the Senate
of the United States of America on 16 March 1978

/Original: English/

Mr. President, I thank the Chair for his indulgence in calling the Senate to order.

For the last three (3) months, I have argued that the treaties as drafted did not appear to contain sufficient safeguards for the United States. But I have also stated publicly that I believed a new treaty with Panama was essential; that history had bypassed the era of simple colonialism when large powers bullied the small. Until recently, I believed that it would be possible for the Senate to make some constructive amendments to the treaty that would satisfy the needs of Panama - but not at the sole expense of the American people. However, as every member of this Chamber knows, the administration was unwilling to accept the slightest changes in the text of the agreement.

Because of this recalcitrance, I suspect that a number of potential supporters of the treaty were lost. Together with Senator Ford, I offered a number of amendments to the treaty. When it became clear that no amendments except the so-called leadership amendments would be accepted, I began to search for alternatives that would accomplish the desired objectives.

After extensive consultations with experts from the executive, Congress, and the academic community, I became convinced that it would be possible to achieve a clearer understanding of American rights and responsibilities under the treaty through the device of an amendment to the resolution of ratification in the nature of a condition precedent to American acceptance of the treaty itself. Such a condition will be binding on the Republic of Panama.

Therefore, I have recast my amendments in this form. I have assured the President that if my amendment No. 83 to the resolution of ratification is accepted by the Senate that I will vote in favor of the Neutrality Treaty. In turn, the President assured me yesterday in a meeting we had at the White House that he would accept and support my amendment. To the best of my knowledge, that is how things stand as of this moment.

I would like to stress that I am offering this amendment in the name of the people of Arizona. Like Senator Ford, I too have crossed my State and spoken personally to hundreds, perhaps thousands of concerned citizens. As a whole, my constituents do not approve of the Panama Canal treaties. However, they are willing to accept their necessity if American rights to insure open and free access to the canal are clearly spelled out. That is all my amendment intends - but that much at least is essential.

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AMENDMENT NO. 83, AS FURTHER MODIFIED

Mr. DeCONCINI. Mr. President, I would like to call up my amendment No. 83, as modified. I would ask, Mr. President, to further modify such amendment. A few of these changes are purely technical and drafting changes.

The PRESIDING OFFICER. The Senator will suspend until the clerk states the amendment.

Mr. DeCONCINI. Mr. President, I have the clarified drafted change amendment that I would ask the clerk to state.

The PRESIDING OFFICER. The clerk will state the amendment.

The second legislative clerk read as follows:

The Senator from Arizona (Mr. DeCONCINI) and Mr. FORD propose amendment numbered 83, as further modified, as follows:

Before the period at the end of the resolution of ratification, insert the following:

"subject to the condition, to be included in the instrument of ratification of the Treaty to be exchanged with the Republic of Panama that, notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be".

Mr. DeCONCINI. Mr. President, the changes are technical and draft changes. The one substantive change is to include the phrase "according to its constitutional processes," after the words "to take such steps as it deems necessary" and before the words "including the use of military forces."

I send to the desk a clean copy and I thank the Chair and the clerk for reporting the same.

I also would like to ask that Senator CANNON, Senator CHILES, Senator NUNN, Senator LONG, Senator TALMADGE, Senator PAUL HATFIELD, and Senator HAYAKAWA be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

The purpose of this amendment is quite simple, Mr. President. It is designed to establish a precondition to American acceptance of the Neutrality Treaty. That precondition states that regardless of the reason and regardless of what any other provision of the Neutrality Treaty might say or what interpretation it might be

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subject to, if the Panama Canal is closed, the United States has the right to enter Panama, using whatever means are necessary, to reopen the canal. There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as to the means necessary to insure that the canal remains open and accessible.

A good deal of the discussion involving the Panama Canal treaties has centered upon threats to the canal which might come from third parties - more specifically - the Communist countries. While this concern is certainly justified, I have been equally bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly government; political riots or upheavals - each of these alone or in combination might cause a closure of the canal. In February 1975, for example, there was a "sickout" which disrupted the efficient operation of the canal. Yet as I read the treaties, there does not appear to be any specific guarantee that a disruption of the canal arising out of internal Panamanian activities can be swiftly and adequately dealt with.

Although General Torrijos has brought a welcome degree of stability to Panama in recent years, it can be argued that the history of Panama is one of substantial political instability and turmoil. Under normal circumstances, the United States would not or should not contemplate intervening in the internal affairs of another nation. However, there are extremely unique and special circumstances surrounding the relationship between the United States and Panama. Since the beginning of this century, the United States has exercised de facto sovereignty over the Panama Canal Zone, and has been responsible for the defense and operation of the canal. We have maintained this control over the canal for one very simple reason: The Panama Canal is vital to the security, economic and military of the United States. This fact must be recognized in any treaty which contemplates a fundamental change in the American-Panamanian relationship.

The amendment contains a very specific reference to the use of military force in Panama. I believe these words are absolutely crucial because they establish the American right - which I am not convinced is adequately provided for either in the body of the treaty or the leadership amendment - to take military action if the case so warrants. It further makes it clear that the United States can take military action on Panamanian soil without the consent of the Panamanian Government.

The question of consent is also crucial. Since the main thrust of this amendment is directed toward situations in which the canal is closed because of internal difficulties in Panama - difficulties like a general strike, a political uprising, or other similar events, the consent of the Panamanians to take action would not make sense. If America is to have any rights at all under this treaty, it must have the right to act independently to protect the canal and to keep it open.

I believe that the question of an attack on the canal by a third party aggressor is adequately dealt with in the treaty. There seems to be little

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question that under such circumstances the United States does have the right to act with the Panamanians to protect and defend the canal. Thus, my concerns have centered around two problems. The first is the one expressed in the amendment now on the floor. The other is the question of a continued military presence.

We have just adopted an amendment by Senator NUNN that I had the privilege of cosponsoring. It provides that the United States and Panama may conclude an agreement providing for a continued American military presence in Panama after the year 2000. This change is important because it may be vital to both countries to provide for such presence while at the same time not disrupting the regime of neutrality that is established.

It was my desire, and the desire of Senator NUNN, to allow for a continued presence without a new treaty that would, by its very nature, call into question the regime of neutrality. It is much more appealing to have that right embodied in the very document that creates the regime of neutrality. Therefore I complement the Senator from Georgia in his efforts to gain acceptance of the military presence reservation.

I hope the Senate will support the amendment I offer to the resolution of ratification providing for America's right to keep the canal open. I am also happy to announce that the President of the United States has endorsed this change, and has indicated that he believes it to be a constructive step in fulfilling the goals of the Neutrality Treaty.

I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the canal. It recognizes the very special relationship that the Panama Canal has to American security.

I certainly hope, Mr. President, that if this right is attached to the treaty it will never need to be exercised. Yet, it is important that the American people know that should the need arise, the United States has sufficient legal sanctions to act.

Mr. President, I commend this change to my colleagues and urge their support.

Mr. President, I ask for the yeas and nays on this amendment.

APPENDIX III

Statement made by Senator Edward Kennedy in the Senate of the
United States of America on 16 March 1978

/Original: English/

MILITARY INTERVENTION IN PANAMA

Mr. President, we have before us an amendment to the resolution of ratification of the Panama Canal Neutrality Treaty which would permit the "use of military force in Panama" by either party, "if the canal is closed or its operations interferred with".

I am opposed to this amendment. It stirs up what is already an emotional issue in Panama, without adding to rights of the United States already recognized by the treaty.

From the outset, the people of Panama - and all of Latin America - have rightly opposed U.S. military intervention in their internal affairs. That is why the negotiators, the administration, and the Senate leadership have all carefully defined and limited the expression of our military rights to the defense of the neutrality of the Panama Canal. Even the reservation on defense arrangements, adopted by the Senate yesterday, provided that Panama and the United States could jointly - I emphasize jointly - agree to American military deployments, after the year 1999, which facilitate performance of "responsibilities to maintain the regime of neutrality" over the Panama Canal.

Now we have an amendment which starkly insists on our right to use military force in Panama - always the most sensitive issue from its standpoint as a small, proud, sovereign state.

Now we have an amendment which makes no reference to the regime of neutrality which it is our responsibility to defend.

Now we have an amendment which could - but must not - be construed, instead, to permit the United States to intervene militarily on almost any pretext. A strike, a slowdown, even inefficient operation of the canal could - but must not - be used as a pretext to use force, in order to "restore the operations of the canal".

Mr. President, Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory. Now we are asking Panama to accept an amendment which has the ring of military interventionism - not just during this century, but for all time.

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I recognize that acceptance of this amendment may facilitate ratification of the Panama Canal Treaties. If the amendment is accepted, I believe that our Nation is honorbound to strictly limit its interpretation and not, as General Torrijos warned in Washington last October, to allow the treaties to "become an instrument of permanent intervention" in Panama.

Fortunately, our right of military action continues to be defined by article IV of the Neutrality Treaty, as amended by the Senate.

This is our right "to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal".

This is our right to assure "that the canal will remain open, secure and accessible".

This is not a right to take action "against the territorial integrity or political independence of Panama", prohibited under article IV of the treaty.

This must not be a right to intervene in the Panama Canal on any pretext labeled as interference with canal operations.

With these understandings, Mr. President, we can hope to avoid continuing confrontation between Panama and the United States. Without them, we can look forward to a continuation of the unfairness and the resentment which has characterized our treaty relationship since 1903.

APPENDIX IV

Communiqué from the Ministry of Foreign Affairs of Panama,
issued on 27 March 1978

/English/

/Original: Spanish/

In our communiqué issued on 16 March, we expressed the decision of the Government not to issue any statement regarding what the Senate had agreed to in relation to the Treaty concerning the permanent neutrality and operation of the Panama Canal. We gave as the reason for such a decision the fact that the Panamanian people had approved two treaties, that is to say, the Neutrality Treaty and the Treaty on the Panama Canal. Until the Senate decides the fate of the latter, it will not have responded to the decolonization programme approved by the Panamanian people.

We also stated in the above-mentioned communiqué that the Government as a whole would study the conditions under which the Senate had given its advice and consent to the Neutrality Treaty and those that it might attach to a decision on the Treaty on the Panama Canal. We have begun that process. But inasmuch as the liberation process is a national undertaking and since, before taking any decision, each citizen must have full knowledge of all the understandings of the Senate regarding the treaties, the Ministry of Foreign Affairs has deemed it appropriate to publish the text of the Senate resolution concerning the Neutrality Treaty without waiting for the official text to be delivered to us through the usual channels.

We are living a crucial moment in our history. Now, more than ever, our country demands from its sons serenity, dignity and a sense of national unity.

Panama sees its future with the serenity of a country engaged in an irreversible process of decolonization.

We must remember that only the peoples that love freedom can be free. Panama has opted for its definitive freedom. In this process we have the decisive support of the peoples of the whole world, as was seen from the session of the Security Council held in Panama in March 1973. On that occasion the world, faced with the veto of the United States delegation, vetoed the United States for not removing the causes of the conflict engendered by the presence of a foreign Government within Panamanian territory.

We recommend to our fellow citizens to study objectively the documents published today in Spanish and English, so that they might assist the Government in taking the most patriotic decision which, as stated by General Omar Torrijos Herrera, Head of the Government of Panama, will be taken within the framework of a great national consensus.