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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
262037	MEMO	MEESE TO BAKER RE OBLIGATIONS PURSUANT TO PANAMA CANAL TREATY AND RELATED LEGISLATION R 3/17/2006 F97-066/6 #116	1	3/30/1988	B1
262038	MEMO	COOPER TO ATTORNEY GENERAL RE PAYMENTS TO PANAMA PURSUANT TO CANAL TREATY AND RELATED LEGISLATION R 3/17/2006 F97-066/6 #117	5	3/12/1988	B1
262039	MEMO	SHULTZ TO THE PRESIDENT R 2/26/2008 F97-066/6 #118	2	3/30/1988	B1
262040	LETTER	FROM SENATOR BYRD WITH NOTE ADDED R 5/24/2011 F97-066/6 #119	1	3/30/1988	B1
262041	MEMO	TO SECRETARY OF DEFENSE	2	3/11/1988	B1
262042	LIST	ATTACHMENT TO 262041 R 3/17/2006 F97-066/6 #121	1	ND	B1
262043	SUMMARY	RE 6/15/1987 MEETING R 3/17/2006 F97-066/6 #122	2	ND	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
262044	REPORT	ATTACHMENT OT PREVIOUS ITEM R 3/17/2006 F97-066/6 #123	1	ND	B1
262045	MEMO	LEVITSKY TO POWELL RE DELVALLE GOVERNMENT R 3/17/2006 F97-066/6 #124	1	3/8/1988	B1
262046	MEMO	RE REQUEST FROM DELVALLE GOVERNMENT R 3/17/2006 F97-066/6 #125	7	ND	B1

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Collection: Baker, Howard H. Jr.: Files
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 FOIA ID: F1997-066/6, D. Cohen
 Date: 08/04/2004

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Edwin Meese to H. Baker re obligations pursuant to Panama Canal Treaty and related legislation, 1p <i>R 3/17/06 F97-066/6 #116</i>	3/30/88	B1
2. memo	Charles Cooper to Attorney General re payments to Panama pursuant to Canal Treaty and related legislation, 5p <i>R " " #117</i>	3/12/88	B1
3. memo	George Shultz to President, 2p <i>R 2/26/08 " #118</i>	3/30/88	B1
4. letter	from Sen. Byrd, w/note added, 1p <i>R 5/24/11 F97-066/6 #119</i>	3/30/88	B1
5. memo	to Secretary of Defense, 2p	3/11/88	B1
6. list	attachment to previous item, 1p <i>R 3/17/06 F97-066/6 #121</i>	n.d.	B1
7. summary	re 6/15/87 meeting, 2p <i>R " " #122</i>	n.d.	B1
8. report	attachment to previous item, 1p <i>R " " #123</i>	n.d.	B1
9. memo	Melvyn Levitsky to Colin Powell re Delvalle government, 1p <i>R " " #124</i>	3/8/88	B1
10. memo	re request from Delvalle government, 7p <i>R " " #125</i>	n.d.	B1

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- B-7a Release could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A) of the FOIA].
- B-7b Release would deprive an individual of the right to a fair trial or impartial adjudication [(b)(7)(B) of the FOIA].
- B-7c Release could reasonably be expected to cause unwarranted invasion or privacy [(b)(7)(C) of the FOIA].
- B-7d Release could reasonably be expected to disclose the identity of a confidential source [(b)(7)(D) of the FOIA].
- B-7e Release would disclose techniques or procedures for law enforcement investigations or prosecutions or would disclose guidelines which could reasonably be expected to risk circumvention of the law [(b)(7)(E) of the FOIA].
- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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Office of the Attorney General
Washington, D. C. 20530

30 March 1988

HB
3/30

MEMORANDUM FOR HOWARD H. BAKER, JR.
Chief of Staff to the President

FROM: EDWIN MEESE III *rm*
Attorney General

SUBJECT: Obligations Pursuant to Panama Canal Treaty and
Related Legislation

Attached is a memorandum prepared by the Office of Legal Counsel, Department of Justice, which sets forth the obligations of the United States Government for payments to Panama pursuant to the Canal Treaty and implementing legislation.

You will note that our current practice of paying monies into escrow for the benefit of the lawful Panamanian Government--that which is under the direction of President Delvalle--is consistent with the Treaty and statutes.

The only additional factor is that as we continue to make payments for services being rendered, we should do so by agreement with President Delvalle's Government.

I will be happy to discuss this further with you to answer any questions you might have.

cc: Arthur B. Culvahouse
Counsel to the President

DECLASSIFIED/RELEASED
NLS F97-066/6#116
BY LOI, NARA, DATE 3/17/06



DECLASSIFIED/RELEASED

NLS F97-D66/6 #117

U.S. Department of Justice

Office of Legal Counsel

BY WJS NARA, DATE 3/10/06Office of the
Assistant Attorney General

Washington, D.C. 20530

MAR 12 1988

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Payments to Panama Pursuant to the Canal Treaty
and Implementing Legislation

This memorandum addresses the legal implications of proposals to withhold from the Noreiga regime payments relating to the operation of the Panama Canal. There are three types of payments made by the United States to Panama pursuant to the Treaty and related agreements: (1) toll and annuity payments; (2) payments for public services such as fire, police and road maintenance; and (3) transfer payments such as income tax, education tax and social security apparently paid on behalf of the Panamanian employees of the Panama Canal Commission.

For the reasons discussed below, we believe that under United States domestic law the United States is required to make the toll and annuity payments and the public service payments at the direction of President Delvalle since he is the head of the officially recognized government of Panama. While not free from doubt, we also conclude that, as a matter of domestic law, the transfer payments could be made to the regime of General Noreiga. However, all impediments under United States law to the making of any of these payments to General Noreiga's regime would be removed if President Delvalle authorized the United States government to make such payments. With regard to international law, while we have not thoroughly researched the question, we believe that our recognition of President Delvalle as the head of the legitimate government of Panama is a reasonable one, and thus that withholding payments from the regime of General Noreiga would not violate our treaty obligations. By the same token, though, making payments to the regime of General Noreiga in contravention of the wishes of President Delvalle might be considered a violation of international law.

The toll and annuity payments are required by Article XIII(4) of the Panama Canal Treaty of 1977, TIA 10030 ("Treaty"); the public services payments are required by Article III(5) of the Treaty; the transfer payments are, at least in part, required by executive agreements entered into ancillary to the transfer of the Canal. See, e.g., Agreement Between the United States of America and Panama, Implementation of Article III, TIA 10031, Article VIII (Social Security). Statutory authority for making

the toll and annuity payments and the public service payments is provided in 22 U.S.C. 3751(a) which states: "The Commission shall pay to the Republic of Panama those payments required under paragraph 5 of Article III and paragraph 4 of Article XIII of the Panama Canal Treaty of 1977." Under 22 U.S.C. 3642(a) and 3655, the Commission is authorized to set rates of compensation for its employees. This provision, in conjunction with the authorization in section 3611 making the Commission responsible "for the maintenance and operation" of the Canal, provides the authority for the Commission to make salary payments, which authority includes the making of social security payments and the like to the Republic of Panama.

The executive branch has officially recognized President Delvalle as the head of the government of Panama. See letter from John Whitehead, Acting Secretary of State, to the Federal Reserve Board, providing certification pursuant to 12 U.S.C. 632. Under the Constitution, the power to recognize foreign governments is implied from the express grant of power in Article II to "receive Ambassadors and other public Ministers." Whether a government should be recognized is a political question whose determination is within the exclusive prerogative of the executive branch. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410 (1964); National City Bank of New York v. Republic of China, 348 U.S. 356, 358 (1955); Guaranty Trust Co. v. United States, 304 U.S. 126, 137-8 (1938). Thus, given that the executive branch has officially recognized President Delvalle as the head of the legitimate government of Panama, he would appear to be the official representative of Panama for all purposes under United States law.

President Delvalle has issued a proclamation declaring that Noreiga's regime is not authorized to receive funds owed by, or due to, the Republic of Panama, and that all such payments should be placed in escrow. His proclamation makes clear that the prohibition on payments to General Noreiga's regime extends to payments to "any public agency or entity" purporting to act on behalf of the Republic of Panama.¹ In addition, he has specifically requested that "the United States government take the necessary steps to arrange for all payments due and owing from the United States government to the government of the Republic of Panama to be placed in escrow accounts." Diplomatic Note of March 2 from Ambassador Sosa. We understand that the United States is accordingly considering transferring the toll and annuity payments and the transfer payments to an escrow account at the direction of an authorized representative of President Delvalle. However, our understanding is that, at least at the present time, it is intended that the public service payments will be made to accounts controlled by General Noreiga.

¹ A Department of State telex indicates that the Department has announced publicly that Delvalle's proclamation is a "legitimate act of the constitutional government of Panama."

As noted above, 22 U.S.C. 3751(a) provides that the Commission "shall pay to the Republic of Panama" the toll and annuity payments and the public service payments. The executive branch has recognized President Delvalle as the head of the Republic of Panama. Thus, transferring the toll and annuity payments into an escrow account at his direction would constitute a payment to the "Republic of Panama" under the statute since recognition of a government by the executive branch is conclusive as a matter of domestic law.² For similar reasons, placing the transfer payments into an escrow account at Delvalle's direction would be a lawful payment to the recognized government of Panama pursuant to executive agreements. The question that arises, however, is whether there is authority to make the remaining payments -- the public service payments -- to accounts controlled by General Noreiga.

The public service payments are covered by 22 U.S.C. 3751(a); like the toll and annuity payments, the statute provides that they "shall" be paid "to the Republic of Panama." Given that the United States officially recognizes President Delvalle rather than General Noreiga as the head of the Republic of Panama, the statutory mandate appears to forbid making the public service payments to accounts under the control of General Noreiga. Under United States law, General Noreiga and the members of his regime are not authorized representatives of the Republic of Panama. Instead, these payments apparently must be made to accounts designated by President Delvalle or his authorized representative since, under United States law, they are the representatives of the Republic of Panama.³

² The statute is a domestic law implementation of an international law obligation created by treaty. While payment to an account controlled by President Delvalle accords with the mandate of domestic law, that fact is not controlling with regard to whether the payment is in accordance with international law. Nevertheless, although we have not thoroughly researched this question, it appears to us that the United States has a strong case that President Delvalle is the head of the legitimate government of Panama under international law, and thus that the United States would not be in breach of its treaty obligations under international law by making the payments at his direction rather than at the direction of General Noreiga.

³ It might be argued that the statutory mandate to pay the Republic of Panama for those public services refers to the Republic of Panama only as a conduit for payment and so long as the Panama Canal Commission actually receives the services paid for the statutory mandate would be met. Since the statute expressly requires that the payments be made to the Republic of Panama, we do not believe that this argument provides a basis for making payments to an entity other than the recognized government of Panama.

Nor does it appear that the U.S. government has the authority under the Panama Canal Act to make an additional and parallel payment to the regime of General Noreiga for those same services. Section 3712(c)(1) of the Panama Canal Act (22 U.S.C. 3601, et seq.) provides that, except as provided in section 3713, no funds may be "obligated or expended by the Commission in any fiscal year unless such obligation or expenditure has been specifically authorized by law." Section 3713 establishes an emergency fund from which withdrawals can be made, but such withdrawals can only be made when Congress has not passed an authorization bill. Since an authorization for fiscal year 1988 has been enacted, Pub. L. 100-203, it seems clear that funds cannot be withdrawn pursuant to section 3713.

There may be another statutory source for appropriated funds which could be used to make payments to General Noreiga's regime for public services. Such a source, for instance, might be a statute which provides appropriations for emergency national security or defense expenditures. While we are now searching for such a statutory source of authority, we would note that any such authority would still have to be analyzed to determine whether such a statute would "specifically authorize" the expenditure as required by section 3712(c)(1).

The transfer payments (e.g., social security) stand on a somewhat different footing, and it might well be possible to make these payments to accounts controlled by General Noreiga's regime.⁴ They do not appear to be specifically addressed in the Panama Canal Act. Thus, unlike the toll and annuity payments and the public services payments, there is no express statutory requirement that they "shall" be paid to "the Republic of Panama." Rather, those expenses, like other salary costs, appear to be paid by the Commission pursuant to a general authorization to pay operating expenses. Section 5411, Pub. L. 100-203 (referring to "necessary expenses"). In particular, salary expenses appear to be characterized as "administrative expenses" under the Panama Canal Act. See H.R. Rep. 100-275 at 4.

Section 3712(c)(2) states: "No funds may be obligated or expended by the Commission in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations Acts." (emphasis added). The authorization bill, however, specifically authorizes the payment of salaries (which necessarily includes social security and the like), but it does not specify that social security payments must be made to the Republic of Panama. Thus, while not free from doubt, it appears that the Commission could decide to make those payments to accounts controlled by General Noreiga as part of the payment of its general salary expenses.

⁴ Although we understand that a decision has been made to withhold these payments from General Noreiga's regime, we address the issue in the event our understanding is incorrect or there is a

On the other hand, while we believe that such payments could probably be made lawfully as a matter of domestic law, they might well -- assuming President Delvalle did not consent to them -- constitute a violation of the international obligations of the United States since we have at least some treaty obligations to make those payments to designated instrumentalities of the Panamanian government. For instance, the executive agreement referred to above states that the Commission will make social security payments to the Social Security System of the "Republic of Panama."

The legal impediment to making the public service payments to General Noreiga's regime, as well as any questions about authority to make the transfer payments to his regime, would be eliminated if President Delvalle or his representative were to authorize such payments. President Delvalle represents the Republic of Panama. Any payment he directs would constitute a payment to the Republic of Panama under section 3751(a). Thus, the option of obtaining his consent should be considered if it is decided that there is a need to make the public service or other payments to accounts controlled by General Noreiga's regime.



Charles J. Cooper
Assistant Attorney General
Office of Legal Counsel

⁴ (Cont.) change in policy.

States by Republic of Panama for salaries and other employ-

reimbursement of the United States by the Republic of and other employment costs of employees of the Commission the Republic of Panama in the operation of activities that Government as a result of any provision of the Panama related agreements, which reimbursement is provided for 10 of that Treaty, the Commission shall be deemed to be rica.

College

her provision of law, the President, through the appropriate of the United States, shall, until January 1, 2000, operate known as the "Canal Zone College". Such institution asofar as practicable, the level of services which it offered r 1, 1979.

Sept. 27, 1979, 93 Stat. 480, amended Pub.L. 99-223, § 5(c), Dec.

Pub.L. 99-223 subsection (d) of be available" in added "employ- citizens of the

ment. Amend- e as of Oct. 1, 223, set out as a tile.

Effective Date. Section effective Oct. 1, 1979, see section 3304 of Pub.L. 96-70, set out as a note under section 3601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-70, see 1979 U.S. Code Cong. and Adm. News, p. 1034. See, also, Pub.L. 99-223, 1985 U.S. Code Cong. and Adm. News, p. 2656.

Subpart IV—Postal Matters

service

shed and governed by chapter 73 of title 2 of the Canal ued on October 1, 1979.

73 of such title 2 relating to postal-savings deposits, postal money orders, and the accounting for funds shall propose of meeting the obligations of the United States al savings and money orders and disposition of funds.

n of funds by Commission

possession of and administer the funds of the postal (a) of this section and shall assume its obligations. States Postal Service may enter into agreements for ty and the assumption of administrative rights or the outstanding obligations of the postal service his section. Any transfer or assumption (including or assumption) pursuant to this subsection shall be or in such amounts as are provided in advance in

e from or through United States

l Zone from or through the continental United States States Postal Service to the military post offices of the Republic of Panama. Such military post offices shall y services and shall accept such mail to the extent Canal Treaty of 1977 and related agreements. The onnel, records, and other services to such military post

offices to assure wherever appropriate the distribution, rerouting, or return of such mail.

(Pub.L. 96-70, Title I, § 1331(a)-(d), Sept. 27, 1979, 93 Stat. 481.)

Effective Date. Section effective Oct. 1, 1979, see section 3304 of Pub.L. 96-70, set out as a note under section 3601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-70, see 1979 U.S. Code Cong. and Adm. News, p. 1034.

Library References

Post Office ②=1, 12, 18, 22.
C.J.S. Post Office §§ 2, 3, 17, 25, 31.

Subpart V—Accounts with Republic of Panama

§ 3751. Payments to Republic of Panama

(a) Payments required under Panama Canal Treaty; annual audit

The Commission shall pay to the Republic of Panama those payments required under paragraph 5 of Article III and paragraph 4 of Article XIII of the Panama Canal Treaty of 1977. Payments made under paragraph 5 of Article III of such Treaty shall be audited annually by the Comptroller General and any overpayment, as determined in accordance with Understanding (1) incorporated in the Resolution of Ratification of the Panama Canal Treaty (adopted by the United States Senate on April 18, 1978), for the services described in that paragraph which are provided shall be refunded by the Republic of Panama or set off against amounts payable by the United States to the Republic of Panama under paragraph 5 of Article III of the Panama Canal Treaty of 1977.

(b) Excess operating revenues

In determining whether operating revenues exceed expenditures for the purpose of payments to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977, such operating revenues in a fiscal period shall be reduced by (1) all costs of such period as shown by the accounts established pursuant to section 3721 of this title, and (2) the cumulative sum from prior years (beginning with the year in which the Panama Canal Treaty of 1977 enters into force) of any excess of costs of the Panama Canal Commission over operating revenues.

(c) Retroactive taxation

The President shall not accede to any interpretation of paragraph 1 of Article IX of the Panama Canal Treaty of 1977 which would permit the Republic of Panama to tax retroactively organizations and businesses operating, and citizens of the United States living, in the Canal Zone before October 1, 1979.

(d) Accumulated unpaid balances

Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 at the termination of such Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and nothing in such paragraph may be construed as obligating the United States to pay after the date of the termination of the Treaty any such unpaid balance which has accrued before such date.

(e) Toll rates; payment of costs of operation and maintenance of canal with unexpended funds

As provided in section 3792(b) of this title, tolls shall not be prescribed at rates calculated to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977. Moreover, no payments may be made to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 unless unexpended funds are used to pay all costs of operation and maintenance of the canal, including but not limited to (1) operating expenses determined in accordance with generally accepted accounting principles, (2) payments to the Republic of Panama under paragraphs 4(a) and 4(b) of such Article XIII and under paragraph (5) of Article III of such Treaty, (3) amounts in excess of depreciation and amortization which are programed for plant replacement, expansion, and improvements, (4) payments to the Treasury of the United States under section 3793 of this title, (5) reimbursement to the Treasury of the United States for

date of the Panama Canal Revolving Fund Act, shall be transferred to the Panama Canal Revolving Fund;

"(B) the unexpended balance of appropriations to the Commission, as of the close of business on the day before the effective date of the Panama Canal Revolving Fund Act, shall be transferred to the Panama Canal Revolving Fund, and such amounts, including amounts appropriated for capital expenditures, shall remain available until expended;

"(C) the assets and liabilities recorded before such effective date under the 'Panama Canal Commission Fund' shall be recorded under the Panama Canal Revolving Fund; and

"(D) the Panama Canal Emergency Fund shall be terminated and the remaining balance shall be transferred to the Panama Canal Revolving Fund.

"(b) Upon completion of the transfers of funds under subsection (a)—

"(1) amounts attributable to interest on the investment of the United States in the Panama Canal which accrued before January 1, 1986, shall be transferred from the Panama Canal Revolving Fund to the general fund of the Treasury; and

"(2) such amounts as were appropriated to the Commission in the fiscal year which ended September 30, 1980, and for which the Commission has not reimbursed the general fund of the Treasury, shall be transferred to the general fund of the Treasury.

✓ "(c)(1) There shall be deposited in the Panama Canal Revolving Fund, on a continuing basis, toll receipts and all other receipts of the Commission. Except as provided in section 1303 and subject to paragraph (2), no funds may be obligated or expended by the Commission in any fiscal year unless such obligation or expenditure has been specifically authorized by law.

✓ "(2) No funds may be obligated or expended by the Commission in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations Acts.

"(3) No funds may be authorized for the use of the Commission, or obligated or expended by the Commission in any fiscal year in excess of—

"(A) the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year, plus

"(B) the amount of revenues deposited in the Panama Canal Revolving Fund before such fiscal year and remaining unexpended at the beginning of such fiscal year.

Not later than 30 days after the end of each fiscal year, the Secretary of the Treasury shall report to the Congress the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year.

"(d) With the approval of the Secretary of the Treasury, the Commission may deposit amounts in the Panama Canal Revolving Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Commission and the Secretary may agree.

"(e) The Committee on Appropriations of each House of Congress shall review the annual budget of the Commission, including operations and capital expenditures."

(b) **CONFORMING AMENDMENTS.**—(1) The section heading for section 1302 is amended to read as follows:

"PANAMA CANAL REVOLVING FUND".

(2) The item relating to section 1302 in the table of contents of the Panama Canal Act of 1979 is amended to read as follows:

"1302. Panama Canal Revolving Fund."

SEC. 5423. EMERGENCY AUTHORITY.

(a) **GRANT OF AUTHORITY.**—Section 1303 (22 U.S.C. 3713) is amended to read as follows:

"SEC. 1303. If authorizing legislation described in section 1302(c)(1) has not been enacted for a fiscal year, then the Commission may withdraw funds from the Panama Canal Revolving Fund in order to defray emergency expenses and to ensure the continuous, efficient, and safe operation of the Panama Canal, including expenses for capital projects. The authority of this section may not be used for administrative expenses. The authority of this section may be exercised only until authorizing legislation described in section 1302(c)(1) is enacted, or for a period of 24 months after the end of the fiscal year for which such authorizing legislation was last enacted, whichever occurs first. Within 60 days after the end of any calendar quarter in which expenditures are made under this section, the Commission shall report such expenditures to the appropriate committees of the Congress."

(b) **CONFORMING AMENDMENTS.**—(1) The section heading for section 1303 is amended by striking out "FUND" and inserting in lieu thereof "AUTHORITY".

(2) The item relating to section 1303 in the table of contents of the Panama Canal Act of 1979 is amended by striking out "fund" and inserting in lieu thereof "authority".

SEC. 5424. BORROWING AUTHORITY.

(a) **GRANT OF AUTHORITY.**—Subchapter I of chapter 3 of title I (22 U.S.C. 3711 and following) is amended by adding at the end thereof the following new section:

"BORROWING AUTHORITY

"SEC. 1304. (a) The Panama Canal Commission may borrow from the Treasury, for any of the purposes of the Commission, not more than \$100,000,000 outstanding at any time. For this purpose, the Commission may issue to the Secretary of the Treasury its notes or other obligations—

"(1) which shall have maturities (of not later than December 31, 1999) agreed upon by the Commission and the Secretary of the Treasury, and

"(2) which may be redeemable at the option of the Commission before maturity.

"(b) Amounts borrowed under this section shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977.

"(c) Amounts borrowed under this section shall increase the investment of the United States in the Panama Canal, and repayment of such amounts shall decrease such investment.

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pursuant to this Treaty and
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ned Forces of the Republic
h paragraph 5(b) of Annex B
ntation of Article IV of

this Treaty at such time as such units are made avail-
able to the Republic of Panama.

(d) Upon termination of this Treaty, all
real property, and non-removable improvements that
were used by the United States of America for the
purposes of this Treaty and related agreements, and
equipment related to the management, operation and
maintenance of the Canal remaining in the Republic of
Panama.

3. The Republic of Panama agrees to hold the
United States of America harmless with respect to any
claims which may be made by third parties relating to
rights, title and interest in such property.

4. The Republic of Panama shall receive, in
addition, from the Panama Canal Commission a just and
equitable return on the national resources which it
has dedicated to the efficient management, operation,
maintenance, protection and defense of the Panama
Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal
operating revenues computed at a rate of thirty hundredths
of a United States dollar (\$0.30) per Panama Canal net ton,
or its equivalency, for each vessel transiting the Canal,
after the entry into force of this Treaty, for which tolls
are charged. The rate of thirty hundredths of a United
States dollar (\$0.30) per Panama Canal net ton, or its
equivalency, will be adjusted to reflect changes in the
United States wholesale price index^[1] for total manufac-
tured goods during biennial periods. The first adjustment

¹ See related letter, p. 102.

shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars (\$10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars (\$10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

ARTICLE XIV

Settlement of Disputes

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make

every effort to resolve the matter by negotiation in the appropriate committee pursuant to this Treaty and related agreements. If, however, after such effort, appropriate, through diplomatic channels, in the event the Parties are unable to resolve the matter through such means, the Parties shall, in such cases, agree to submit the matter to mediation, arbitration, or to any other method of the peaceful settlement of disputes that the Parties mutually deem appropriate.

Article III (5) of the Treaty

15

ibilities by means of
called the Panama Canal
tuted by and in conform-
States of America.
Commission shall be super-
members, five of whom
States of America, and
nationals proposed by
tment to such positions
in a timely manner.
ic of Panama request
remove a Panamanian na-
ard, the United States
request. In that event,
pose another Panamanian
United States of Amer-
manner. In case of
f the Board at the ini-
America, both Parties will
each agreement concerning
f Panama shall propose
appointment by the
stead.
of America shall employ
America as Adminis-
ion, and a Panamanian
through December 31, 1989.
anian national shall
and a national of the

United States of America shall occupy the position of
Deputy Administrator. Such Panamanian nationals shall
be proposed to the United States of America by the
Republic of Panama for appointment to such positions
by the United States of America.

(d) Should the United States of America
remove the Panamanian national from his position as
Deputy Administrator, or Administrator, the Republic
of Panama shall propose another Panamanian national
for appointment to such position by the United States
of America.

4. An illustrative description of the activities
the Panama Canal Commission will perform in carrying
out the responsibilities and rights of the United States
of America under this Article is set forth at the Annex.
Also set forth in the Annex are procedures for the dis-
continuance or transfer of those activities performed
prior to the entry into force of this Treaty by the
Panama Canal Company or the Canal Zone Government which
are not to be carried out by the Panama Canal Commission.

✓ 5. The Panama Canal Commission shall reimburse
the Republic of Panama for the costs incurred by the
Republic of Panama in providing the following public
services in the Canal operating areas and in housing
areas set forth in the Agreement in Implementation of
Article III of this Treaty and occupied by both United
States and Panamanian citizen employees of the Panama
Canal Commission: police, fire protection, street

maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars (\$10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.

7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation

of Panamanian nationals in and international policies Canal. The Committee's recommendations full co of such policy decision

8. In addition to nationals at high management Commission, as provided for Article, there shall be Panamanian nationals at all employment in the aforesaid of preparing, in an order the assumption by the Republic bility for the management the Canal upon the termination

9. The use of the with respect to which the granted rights pursuant to and legal status of United and employees operating in suant to this Article, shall ment in Implementation of

10. Upon entry into United States Government Canal Company and the Canal to operate within the term Panama that formerly const

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THE SECRETARY OF STATE
WASHINGTON

NLRR F97-0666/b #118

BY CW NARA DATE 2/24/08

~~SECRET~~

March 30, 1988

MEMORANDUM FOR THE PRESIDENT

From: George P. Shultz

Subject: Panama

The crisis in Panama has put vital U.S. interests in great jeopardy.

Allowing Noriega to prevail would undermine us in a number of critical areas:

-- Central America: Congress' failure to provide funding for the Nicaraguan Resistance has called into question the commitment of the U.S. to democracy in Central America. Losing Panama when we have virtually unanimous Congressional and public support for strong action will send an infinitely more powerful signal about lack of U.S. resolve to our friends in the region and to our Cuban, Soviet and Sandinista adversaries. The House Democrats will use an Executive Branch failure in Panama to avoid blame for their own failure to support democracy in Central America.

-- Civilian Democratic Rule: One of the greatest successes of your Administration has been the return to civilian rule throughout most of the hemisphere. But if Noriega gets away with a coup, the military in El Salvador, Honduras, Ecuador and elsewhere will be tempted to follow suit.

-- The War on Drugs: We have been pressing the governments of Colombia, Mexico, Honduras, Bolivia and other countries to take decisive action against drug traffickers despite heavy intimidation. If we are seen to have backed down to an indicted drug trafficker like Noriega, our credibility will be irreparably damaged.

-- The Panama Canal and U.S. Bases: The JCS reluctantly supported the Canal Treaties based on a judgment that the Canal and bases could not function in a hostile Panama environment. A Noriega win will create precisely what they feared. Even if Noriega ultimately goes, the continuation for a protracted period of his rule will create that hostile atmosphere, threatening the bases and the Canal. Moreover, the security situation for our installations and people is now at his sufferance and is deteriorating.

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DECL: OADR

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-2-

The time to act is now. Time is increasingly destructive of our position in Panama. The longer we wait, the more we are faced with a stark choice between a Noriega victory and direct U.S. military action.

-- The general strike is unraveling. We cannot expect the Panamanians to keep the economy shut down beyond this week. And we do not want to be left with an economic basket case even if Noriega ultimately leaves.

-- Noriega is consolidating his power within the PDF and the society; his very ability to hang on is strengthening him.

-- The opposition is losing hope of success. Their leadership has been arrested and intimidated. They lack ability to communicate due to Noriega's total control of the media.

-- Delvalle is a wasting asset. He needs to come out of hiding to provide the sort of political leadership the opposition needs.

We need two basic decisions now:

-- Simple prudence dictates that DOD should immediately augment our forces in Panama to protect U.S. installations and personnel. We cannot remain hostage to the fear that anything we do that presents a chance of winning will provoke retaliation by Noriega that we are unable to handle. Nor can we afford another Beirut because we failed to take adequate security precautions in a crisis. Our people are already very harassed.

-- We need to get Delvalle and his advisors to safehaven on our bases. We cannot afford to have him captured or to remain incommunicado if we are to preserve the option of attempting to succeed through Panamanian political action. We may ultimately be compelled to take direct military action to remove Noriega, but doing nothing now virtually ensures that result by eliminating all intermediate options.

I ask that you direct that the foregoing prudential steps be taken pending the completion of full-scale operational plans now being developed by the PRG.

~~SECRET~~

THE WHITE HOUSE
Office of the Press Secretary

ADDITIONAL ECONOMIC
MEASURES CONCERNING PANAMA

The President has directed that the following additional measures relating to Panama be implemented to help encourage General Noriega to comply with the instruction of President Delvalle to relinquish his post.

(1) United States Government payments due the Government of Panama are to be deposited in an account of the Government of Panama at the Federal Reserve Bank of New York.

(2) The Department of Justice will participate in actions by private parties who have debts to the Government of Panama to declare that President Delvalle is the leader of the recognized Government of Panama. The Secretary of the Treasury will assist in the establishment of an account to be available for the deposit of funds in accordance with court orders.

(3) The Internal Revenue Service will allow U.S. taxpayers a U.S. tax credit for Panamanian taxes paid into an account at the Federal Reserve Bank of New York. This account will be set up at President Devalle's instruction.

These measures are in addition to the following actions that were announced on March 11:

- (1) Withdrawal of trade preferences available to Panama under the Generalized System of Preferences and the Caribbean Basin Initiative.
- (2) Increased scrutiny of Panama by the Immigration and Customs Services in order to apprehend drug traffickers and money launders.
- (3) Placing in escrow certain payments by the Panama Canal Commission to the Government of Panama.

The United States remains committed to the goal of restoring democratic government and constitutional order in Panama. When that goal is achieved, the United States is fully prepared to work with the Government of Panama to help restore quickly Panama's economic health.

ROBERT C. BYRD
WEST VIRGINIA

United States Senate
Office of the Majority Leader
Washington, DC 20510-7010

March 30, 1988

His Excellency Mohammad Zia-ul-Haq
President of Pakistan
to be delivered via Ambassador Marker,
Ambassador of Pakistan to the United States

Dear Mr. President:

Please be assured of my continued support for your government and your continued courage and efforts to resolve the Afghanistan problem to the mutual benefit of the Peoples of Afghanistan and Pakistan. I am aware of the pressure which the Soviet Union is placing upon you to make concessions in the Geneva negotiations and want to assure you that only an agreement which maintains the integrity of our commitments among the U.S., Pakistan and mujahideen should be entertained. I believe any proposal by the Soviets that a symmetrical moratorium on the provisions of military aid to the Kabul government and the mujahideen be anything but official, public, reciprocal and verifiable is not in our interests and should be rejected. Further, I fully support the standard set by President Reagan that assistance to the mujahideen not be cut off until he deems the Soviet troop withdrawal to be "irreversible."

Sincerely,

Robert C. Byrd
Robert C. Byrd
Majority Leader

Gen. Powell

Colin: Senator Byrd wanted the President to see this before he makes any decision on the Soviet's March 31 demand for US + Pakistani accession to their proposal.

- Dick Sanchez

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NLRR F97-06666 #119
BY RW NARA DATE 5/24/11

THE WHITE HOUSE
WASHINGTON

14 Mar

Sen. BAKER,

FYI.

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262041 MEMO

2 3/11/1988 B1

TO SECRETARY OF DEFENSE

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

~~SECRET~~ ~~NOFORN~~

Possible Panamanian action against US presence and the Panama Canal in ascending order of intensity include:

*Rhetoric

- insults (inflammatory statements)
- accusations and innuenda (allegations of treaty violations)
- unofficial threats and leaks to known intelligence sources (470th MI Bn)

*Harassment

- official threats: protests
- detainments including "holding" personnel in Carcel Modelo while awaiting interrogation
- false arrests including confiscations of offending vehicles and/or equipment
- interrupt telephone services to US installations
- interrupt communications

*Hostile Initiatives

- renewed cooperation with Libya
- nationalization of assets
- passport and visa controls for TDY personnel
- retaliate against US business interests (nationalize or implement restrictive legislation)
- close trans-isthmian highway to US use

*Restrictions

- denial of intelligence operations or providing fallacious intelligence data
- movement inhibitions and convoy delays/detention
- denial of facilities, worker slow-down or stoppage, and the use of public services for harassment through interruption or other curtailment
- ban on military operations: airspace or other transportation controls through the use of "non-canal defense" allegations
- restrict US military and dependents to US installations
- close Torrijos International Airport to US airlines/citizens

*Assaults

- random isolated incidents
- condoned vandalism
- compromising intelligence agents and operations
- sabotage of facilities and equipment
- intimidation of personnel and terrorism
- sabotage Panama Canal
- sabotage communications facilities/antennae fields

*Armed Confrontation

- with leftist (tendencia) extremists stopped by the PDF
- with leftist (tendencia) extremists unrestrained by the PDF
- direct "accidental" confrontation (overreaction), including deadly force
- attempt physically to prevent access to US assets (e.g. Howard AFB)
- (least likely) open engagement between PDF and US troops

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NLS F97-066/6#121
BY 105 NARA, DATE 3/17/06

Meeting Summary

Date: June 15, 1987

Location: Senator Baker's Office

Time: 4:25 PM

Participants: Senator Baker, former U.S. Ambassador Jordan, former Panamanian Ambassador Gabriel Lewis, Ambassador Lewis' son, Edwardo, and John Tuck.

Summary

Senator Baker received an update on the situation in Panama from Former Panamanian Ambassador Gabriel Lewis. The Ambassador described recent events leading to his departure from Panama, and a course of action to be pursued to rid Panama of General Noriega. The Ambassador requested some specific assistance in keeping in communication with the U.S. Embassy in Panama via a secure communication system. Senator Baker indicated no commitment of assistance in helping Ambassador Lewis to achieve his overall goal; he did however, indicate that he would encourage the NSC to be in touch with Ambassador Lewis.

Discussion

Senator Baker was updated on the situation in Panama. The early portion of the meeting was a 15-minute monologue by Amb. Lewis on the events leading up to his departure from Panama.

Amb. Lewis talked briefly of a plan that has been prepared to rid Panama of Noriega, a copy of which he later gave to Senator Baker and is attached.

Amb. Lewis stated that the U.S. Ambassador came to Lewis to apprise him informally that there were many human rights violations in Panama and that the Congress might cut off aid to Panama. Amb. Lewis then arranged to pass this information to members of General Noriega's entourage.

Amb. Lewis indicated that Fred Warner (?) provided the necessary safety for he and his family. Warner indicated, "I want you to know that the lives of you and your family are in my hands." Amb. Lewis indicated that he was at a party at his residence with the Chamber of Commerce when a military helicopter flew over showing 50 caliber machine guns. The Costa Rican Amb. provided transportation to the airport and a plane for Lewis and his family from Panama to Costa Rica. Amb. Lewis held a press conference in Costa Rica after safely landing there.

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NLS E97-066/6 #122

BY 125 NARA, DATE 3/17/06

Amb. Lewis' son indicated that the group had succeeded in pulling off the mask of Noriega. That they would get rid of him, but that the way to do it is to make his own guard ask him to leave. Sen. Baker asked when would this happen? Lewis indicated that they were going to try to do it as soon as possible. Amb. Lewis indicated that Panama has nothing to sell but confidence and services, nothing else to export. Amb. Lewis indicated that the U.S. might try to reduce aid to Panama or at least condition it to improved human rights. Amb. Lewis indicated that he had been meeting with the U.S. Amb. and that the U.S. has a good team in Panama. Lewis described how money is taken by Noriega through the sale of passports and registration fees for shipping. Lewis then indicated that he did not seek action by Sen. Baker or the U.S. government at this time. Sen. Baker asked how Noriega and Castro would get along. Lewis indicated very well. Sen. Baker discussed the Noriega and Baker conversations in the late 70's and how Noriega indicated that if the Panama Canal treaty was not agreed to, Noriega would blow it up. Sen. Baker inquired who would take Noriega's place. Lewis discussed a three-party interim arrangement until elections could be held.

Lewis indicated that Mario Diaz would be Panama's best man but he was not willing to take the job. Lewis asked for Sen. Baker's help to shorten the time to change the situation in Panama, to keep the leftists at bay, and suggested some friendly persuasion on the part of the Southern Commander. Sen. Baker indicated that this was a matter of major significance which should be brought to the attention of President Reagan and the Secretary of State. Senator Baker made no promises or commitments.

Amb. Lewis indicated that he had the names of non-corrupt citizens of Panama. The number two man in Canal Company was mentioned.

Amb. Lewis discussed his efforts in Costa Rica to raise world consciousness. Senator Baker warned him to be very careful. Amb. Lewis asked if he could talk on a secure line to the U.S. Amb. in Panama because he could be useful in supplying information to him. Sen. Baker again advised him to be very careful and to stay in touch.

Amb. Lewis stated he would like to hear from Sen. Baker after the Senator analyzed his thoughts. Sen. Baker indicated that he would like to perhaps ask Amb. Lewis to speak to others in the Administration and indicated that the next step is to talk to the NSC.

PANAMA AFTER GENERAL NORIEGA

An interim government should be established. It should:

- be headed by a respected Panamanian patriot
- represent the major political elements
- complete its tasks in a fixed period of time (perhaps 6 months)

Its main tasks should be to:

- restore order
- keep the government working
- prepare for free elections of a new President and Vice Presidents
- arrange for the writing of a new constitution
- reorganize the armed forces as a professional and non-political organization subject to civilian authority
- reorganize the judiciary to make it an independent branch of government with the highest professional standards and free of political influence

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NLS F97-0666/6-123
BY LOJ, NARA, DATE 3/17/06



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United States Department of State

Washington, D.C. 20520

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March 8, 1988

MEMORANDUM FOR COLIN L. POWELL
THE WHITE HOUSE

Subject: Recognition of the Delvalle Government

The attached memorandum sets forth the legal basis for U.S. recognition of the Delvalle government and its request that we place into escrow U.S. obligations due and owing to Panama.

Richard W. Mueller
for Melvyn Levitsky
Executive Secretary

Attachment: As stated

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DECL: OADR

DECLASSIFIED
NLS F97-066/6 #124
BY LOI, NARA, DATE 3/17/06



United States Department of State

Washington, D.C. 20520

~~CONFIDENTIAL~~

MEMORANDUM

SUBJECT: U.S. Recognition of the Delvalle Government's
Request that U.S.G. payments due to the Government
of Panama be placed in an escrow account

Summary:

- It is for the Executive Branch to decide what regime it wishes to recognize in Panama.
- In choosing to recognize the Delvalle regime, the United States has chosen to recognize the regime in Panama that appears to have the best legal claim to represent Panama.
- Delvalle had the right to fire Noriega under Panama's laws and constitution.
- The Legislative Assembly has the constitutional power to remove Delvalle through a judicial impeachment process, but it did not act in accordance with its own rules, which, inter alia, require a notice and fair hearing.
- The U.S.G. has already taken significant steps of a legal character under 12 U.S.C. 632 based upon its recognition of the Delvalle government by certifying to banks in the U.S. which are confronted with conflicting claimants to Panama's accounts, that Ambassador Sosa's authority with respect to such accounts is respected and recognized by the Secretary of State.
- The United States Government has been asked by the Delvalle Government to place all obligations due and owing to Panama in escrow accounts.
- Such obligations include payments under the Panama Canal Treaty.

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DECL: OADR

DECLASSIFIED
NLS F97-066/6 #125
BY LOT, NARA, DATE 3/17/06

~~CONFIDENTIAL~~

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- It would be incongruous for the U.S.G. not to abide by the Delvalle government's wishes in relation to U.S.G. obligations owing to Panama, having already stated support for the Delvalle regime and in light of the Acting Secretary of State's certification under 12 U.S.C. 632.

Discussion:

On March 1, 1988 Panamanian Ambassador Juan B. Sosa presented to the Department of State a diplomatic note which requested:

"that the United States Government take the necessary steps to arrange for all payments due and owing from the United States Government to the Government of the Republic of Panama to be placed in escrow accounts in the United States Treasury or elsewhere as the United States Government may deem appropriate, in order to ensure that such funds are held in trust for the people of the Republic of Panama pending the restoration of lawful authority."

This request is consistent with the Proclamation by President Delvalle, also on March 1, that in part states:

"Payments of debts, taxes, fees or other obligations due and owing to the Republic of Panama, the Government of the Republic of Panama or any public agency or entity thereof should be held, until further notice, in escrow in trust for the Republic of Panama."

The United States is obligated pursuant to the Panama Canal Treaties to make certain payments to the Government of Panama. There is no basis to distinguish those payments from those referred to on March 1 by Ambassador Sosa and President Delvalle. Thus, Canal Treaty payments fall within the scope of those obligations due and owing the Republic of Panama which the Delvalle government requests be placed in escrow.

As a result of events in Panama on February 25 and 26, 1988, President Delvalle and Solis Palma both claim to be the President of Panama. In the circumstances in Panama, it is the pre-existing Delvalle government which is challenged by a Solis Palma regime that seeks power through a coup. The United States may determine which person and government it will recognize. Our Treaty obligation to make payments to the

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Government of Panama is beyond challenge; our recognition of the Delvalle government implies that the U.S. payments will be directed to that recognized Government of Panama and not the Noriega regime which we consider to have no legal status.

1. General U.S. Recognition Policy

Decisions concerning recognition, as well as the policies that are to govern recognition decisions, are committed by the Constitution and precedent entirely to the Executive Branch. Over the last thirty years, the United States has ceased its earlier practice of formally "recognizing" new governments that come to power, particularly through coups or other extra-constitutional means. In order to avoid appearances of approval of those governments and the means by which they came to power, we have generally taken the view that no question of recognition arises. The issue is, rather, one of whether to continue diplomatic relations. We often go through a period in which we maintain low level contacts as the situation evolves. At an appropriate point, we simply state that diplomatic relations continue.

In instances in which different entities claim to be the legitimate representatives of a foreign state, as is now the case in Panama, the United States Government has occasionally taken a position as to which of the claimants it has considered to be the legitimate government. Examples include the Marcos/Aquino transition in the Philippines and the 1979 U.S. recognition of the Peoples Republic of China as the sole legitimate government of China.

At bottom, recognition remains inherently a political act and determination. We are free to pronounce upon it when we see a significant foreign policy benefit for doing so. However, one sound basis for choosing between competing regimes would appear to be which of them has the most compelling legal status under the governing laws and constitution.

2. Was Delvalle's removal of Noriega legal?

Two basic questions arise: did Delvalle have the power to act alone; and, were there procedures he was required to follow or showings of cause he had to make in any formal sense?

Article 35 of the Law of Formation of Defense Forces (Law 20 of 29 September 1983) states:

"The commander in chief of the Defense Forces of the Republic of Panama can be replaced in his post only by the president of the republic for the following causes:

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- 4 -

1. Retirement
2. Death
3. Obvious or grave disobedience of the constitutional and/or legal order
4. Obvious incapacity."

Unlike many other actions of the President of Panama under the constitution, it appears that the action of removal of the commander in chief may be taken without the participation of the responsible minister. (Notably, contrariwise, Article 23 on appointments clearly spells out the role of the responsible minister regarding appointments.) Thus, on the matter of removal, Delvalle had the power to act alone. On the matter of appointments, he did not.

In the resolution of the Legislative Assembly on February 26, 1988 purporting to oust Delvalle, the President's authority to act alone to remove Noriega is not mentioned. It is his failure to act with the responsible minister in relation to appointments which is noted critically. (This issue is discussed in detail below.)

If Delvalle had the power to act alone, did he do it properly? First, did he properly invoke a cause listed in Article 35 of Law 20; and, second, did he follow any necessary procedures? So far as we know, Delvalle did not provide Noriega with a written notice of termination wherein the precise grounds for termination were set forth. In public statements Delvalle cited Noriega's indictment by a U.S. grand jury. This opens an argument for Noriega that Delvalle acted without proper cause. However, Delvalle is not outside his constitutional authority in firing Noriega. Delvalle's statements may be interpreted to fall within the required parameters and, if needed, remaining infirmities in the reasons given for firing Noriega can be corrected through clarifications.

A foreign ministry communique alleges that Delvalle did not follow certain procedures. (Panama 2214 of February 28, 1988). It cites Law 20 of 1984 which appears to be the same Law 20 cited above. We are unaware of any procedures in that Law or otherwise relating to termination of the commander in chief. From what we can see, it appears as if the procedures referred to by the Foreign Ministry are those in Article 23 of Law 20 that relate to appointments, not the power to dismiss the commander in chief.

3. Is the Legislative Assembly's removal of Delvalle legally proper?

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- 5 -

Opposition legislators issued a declaration on February 27 stating that the Legislative Assembly's action did not follow procedures set out in Law 49 of 1984 and that various alternate legislators did not have the right to act and therefore there was no quorum. These charges appear to be true. While the Legislative Assembly has the constitutional power to remove the President, the rump session purporting to remove the President was fundamentally flawed in a number of important respects, each of which would negate the effect of the Assembly's action.

The rump legislative session clearly followed no norms of fairness and due process, which one would expect in such impeachment situations. Indeed, it appears not to have been properly convened. As we understand it, a quorum of the Legislative Assembly is required before the Assembly may go into extraordinary session. That quorum appears not to have existed. Second, for the Legislative Assembly to consider removal of officials as called for under Article 154 of the Constitution, it must convene itself under Article 146 of the Constitution into a judicial forum. That appears not to have been done.

Third, the Legislative Assembly sought to oust Delvalle citing Articles 186(1) and (3) of the constitution. Evidently, since Delvalle related the removal of Noriega to the U.S. indictment and not more specifically to reasons for removal given in Article 35 of Law 20, the charge under Article 186(3) is that he did not protect the sovereignty of the Republic. Even if such a case could be made, however, under Article 186 the penalty for such a breach of duty is not removal -- "ordinary law" is to be applied. We understand that in that case the Assembly must first send the Attorney General a bill of particulars of the infractions committed by the President in order to determine if it is a punishable offense. If so, the matter is referred to the Credentials and Internal Justice Commission, which in turn makes preparations for the President's day in court before the Assembly. A Commission composed of a proportionate number of all Assembly members is then selected to choose a trial date and appoint a person to act as the prosecuting attorney. The accused is given an opportunity to be heard and is entitled to a defense attorney. After hearing, the Assembly retires and by secret debate and ballot decides the issue. Obviously, this procedure was not followed.

Removal is the remedy under charges brought under 186(1) -- that the President exceeded his constitutional powers. We do not believe a legitimate case can be made that he did so. Presumably, he did so by: a) removing Noriega without cause

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(i.e. bootstrapping the 186(3) charge); (2) removing him without the approval of the responsible minister; or, (3) appointing Noriega's replacement without the approval of the responsible minister. As previously noted, the removal argument doesn't withstand scrutiny. The appointment argument may be valid but we believe Delvalle did or could remedy any flaws in his appointment of a new commander in chief by new ministerial appointments. Under Article 178 of the constitution the President acting alone may freely appoint and remove ministers. The Delvalle representatives indicate that he appointed a new Minister of Government and Justice who participated in his appointment of Colonel Justines as the new head of the PDF. The charge that he exceeded his constitutional powers by removing Noriega without cause is not convincing. Delvalle clearly had the power to act. His reasons given for his actions are subject to interpretation and amendable. Any flaws do not rise to the level of an abuse of constitutional powers. Thus, the purported removal of Delvalle by the rump Legislative Assembly is without legal foundation.

4. U.S. Government Legal Actions:

The United States government chose to recognize the Delvalle government, and in doing so recognized the government which appears to have the best legal basis for existence under Panama's laws and constitution. With this in mind, on March 2, 1988 Acting Secretary of State Whitehead certified to the Federal Reserve Banks and other insured banks that Ambassador Sosa, representative of President Delvalle, and acting pursuant to the March 1, 1988 Presidential declaration, is the accredited representative of the Government of Panama in the United States. This certification was made for the purposes of 12 U.S.C. 632 which creates a lawful presumption that a bank which acts on the basis of representations contained in such certifications is absolved from liability.

Conclusion:

In the light of the foregoing, it would be incongruous for the United States Government not to honor the request of the Delvalle Government to place U.S. obligations due and owing Panama into escrow accounts. The Delvalle Government was the constitutional government of Panama prior to February 25. President Delvalle's removal of Noriega as commander in chief was a lawful act and the Legislative Assembly's attempt to oust Delvalle was fundamentally unlawful. The United States remains free to support and recognize Delvalle, has done so, and has so certified under provisions of U.S. law that have enormous

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economic consequence. Not to honor the request of the Delvalle Government would create an enormous inconsistency in U.S. recognition policy toward Panama, and could conceivably have adverse consequences for the legal effect of the Acting Secretary's certification to protect U.S. banks.

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