

**TESTIMONY OF ALBERTO ALEMAN ZUBIETA
ADMINISTRATOR OF THE PANAMA CANAL COMMISSION**

**BEFORE THE
COMMITTEE ON ARMED SERVICES
OF THE
UNITED STATES SENATE**

**FRIDAY, OCTOBER 22, 1999
9:30 A.M.
ROOM 216
HART SENATE OFFICE BUILDING**

GOOD MORNING, MR. CHAIRMAN. I AM ALBERTO ALEMAN ZUBIETA, ADMINISTRATOR OF THE PANAMA CANAL COMMISSION. WE APPRECIATE THE OPPORTUNITY TO BE HERE TODAY TO HELP ADDRESS QUESTIONS RAISED RECENTLY CONCERNING THE FUTURE OF THE PANAMA CANAL. WITH YOUR PERMISSION, I WOULD LIKE TO MAKE A BRIEF STATEMENT AND THEN ALLOW MR. JOSEPH CORNELISON, THE DEPUTY ADMINISTRATOR, TO BRIEFLY ADD A FEW POINTS FROM HIS PERSPECTIVE AS THE SENIOR U.S. CITIZEN MANAGEMENT OFFICIAL FOR THE PCC.

WE ARE PLEASED TO SHARE THIS PANEL WITH THESE DISTINGUISHED AND ABLE WITNESSES WHO ARE QUALIFIED TO ADDRESS THE FACETS OF THE ISSUE THAT ARE OUTSIDE OF OUR AGENCY'S EXPERTISE. MR. CHAIRMAN, I AM HOPEFUL THAT THIS COMMITTEE'S EXAMINATION OF THE ISSUE WILL CONCLUSIVELY ANSWER THE QUESTIONS YOU HAVE ABOUT THE FUTURE SECURITY OF THE PANAMA CANAL. THE CONGRESS, THE USERS OF THE CANAL AND THE PEOPLE OF THE UNITED STATES AND PANAMA NEED AND DESERVE TO KNOW THAT THE PANAMA CANAL IS NOT ENDANGERED.

LET ME BEFORE I BEGIN OFFER MY SINCERE THANKS FOR THE SUPPORT THIS CONGRESS AND THIS COMMITTEE HAVE GIVEN OUR AGENCY. AS HARD-FOUGHT AND CONTROVERSIAL AS THE CONSIDERATION OF THE PANAMA CANAL TREATY WAS MORE THAN TWENTY YEARS AGO, I HAVE BEEN ABLE TO SEE TRUE BIPARTISANSHIP IN ACTION ONCE THE UNITED STATES COMMITTED ITSELF TO THE PANAMA CANAL TREATY. THIS COMMITTEE

ESPECIALLY, WHICH HAS JURISDICTION OVER CANAL MATTERS AND IS RESPONSIBLE FOR PCC LEGISLATION EVERY YEAR, HAS BEEN ESPECIALLY FAIR AND SUPPORTIVE OF WHAT WE CALL THE SEAMLESS TRANSITION, TO ENSURE THAT THE CANAL FLOURISHES AND SERVES U.S. AND WORLD COMMERCE EFFICIENTLY WELL INTO THE NEXT CENTURY. THAT PRACTICAL COMMITMENT TO THE PROMISES THE UNITED STATES MADE IS AN INSPIRING EXAMPLE FOR PANAMA'S DEMOCRACY.

AS YOU KNOW, THE QUESTION OF WHETHER THE PEOPLES REPUBLIC OF CHINA POSES A THREAT TO THE CANAL HAS BEEN THE SUBJECT OF A LOT OF ATTENTION LATELY. I AM GLAD THAT THE COMMITTEE IS CHOOSING TO EXAMINE THE FACTS ABOUT WHAT IS HAPPENING NOW IN PANAMA. THE FOCUS OF MY TESTIMONY WILL BE WHAT THE HUTCHISON CONCESSION MEANS FOR THE CONTINUED NEUTRAL, EFFICIENT OPERATION OF THE CANAL. I WILL ALSO ADDRESS VERY BRIEFLY THE PREPARATIONS WE ARE MAKING FOR THE CANAL'S OWN CAPABILITIES TO SAFEGUARD THE WATERWAY.

I AM IN A UNIQUE POSITION TO SPEAK TO BOTH THE CURRENT OPERATION OF THE CANAL AND ITS OPERATION AFTER 1999. I WAS APPOINTED BY PRESIDENT CLINTON ON AUGUST 18, 1996 AS THE ADMINISTRATOR OF THIS UNITED STATES GOVERNMENT AGENCY UNTIL ITS TRANSFER TO PANAMA AT THE END OF THIS YEAR. RECOGNIZING THE NEED FOR CONTINUITY AND STABILITY DURING THIS TIME OF TRANSITION, THE CONGRESS BY AN AMENDMENT TO THE PANAMA CANAL ACT AUTHORIZED ME

TO SERVE SIMULTANEOUSLY AS THE ADMINISTRATOR OF THE PANAMA CANAL AUTHORITY, THE PANAMANIAN GOVERNMENT ENTITY WHICH WILL OPERATE THE CANAL BEGINNING AT NOON ON DECEMBER 31, 1999.

THE PANAMA CANAL AUTHORITY HAS NOW BEEN ESTABLISHED UNDER PANAMA LAW AND I HAVE BEEN APPOINTED ITS ADMINISTRATOR. ACCORDINGLY, I AM APPEARING BEFORE YOU TODAY AS THE HEAD OF BOTH THE CURRENT AND THE FUTURE OPERATORS OF THE PANAMA CANAL.

IT IS IMPORTANT TO UNDERSTAND THE RELATIONSHIP BETWEEN THE PORTS AND THE CANAL. FOR THE NEXT THREE MONTHS, THE CANAL WILL CONTINUE TO BE OPERATED, AS IT HAS BEEN SINCE OCTOBER 1979, BY THE PANAMA CANAL COMMISSION UNDER THE TERMS OF THE PANAMA CANAL TREATY. WHEN THAT TREATY ENTERED INTO FORCE, IT TRANSFERRED THE PORTS OF BALBOA AND CRISTOBAL TO PANAMA. THUS, THE CANAL AGENCY HAS NOT OPERATED EITHER OF THOSE TERMINAL FACILITIES FOR THE PAST 20 YEARS, A SITUATION WHICH HAS NOT IN ANY WAY ADVERSELY AFFECTED THE SAFETY OR EFFICIENCY OF THE WATERWAY ITSELF.

TO ENSURE THAT THIS DIVIDED ARRANGEMENT INVOLVING THE OPERATOR OF THE CANAL ON THE ONE HAND AND THE OPERATOR OF THE PORTS ON THE OTHER WOULD BE A WORKABLE ONE, THE NEGOTIATORS FROM OUR TWO COUNTRIES INCLUDED PROVISIONS IN THE TREATY WHICH GAVE THE COMMISSION THE AUTHORITY TO VETO ANY PROPOSED CHANGE OF USE

OF THE LANDS OR WATERS IN THE PORTS OF BALBOA AND CRISTOBAL. THE COMMISSION HAS EXERCISED THIS POWER WHEN NECESSARY OVER THE PAST TWO DECADES TO ENSURE THAT OPERATIONS THERE REMAIN COMPATIBLE IN EVERY RESPECT WITH THE EFFICIENT FUNCTIONING OF THE CANAL. IN ADDITION, WHILE THE TREATY GAVE TO PANAMA JURISDICTIONAL AUTHORITY OVER VESSELS IN THE PORTS, THE UNITED STATES, THROUGH THE COMMISSION, HAS RETAINED THE SOLE AUTHORITY AND RESPONSIBILITY FOR MARINE TRAFFIC CONTROL THERE, INCLUDING THE RIGHT TO REQUIRE THAT VESSELS MOVING IN SUCH WATERS BE UNDER THE CONTROL OF COMMISSION PILOTS.

THIS SYSTEM WORKED WELL DURING THE 18-YEAR PERIOD IN WHICH PANAMANIAN GOVERNMENT AGENCIES OPERATED THE PORTS OF BALBOA AND CRISTOBAL. IT HAS CONTINUED TO WORK WELL SINCE THE PRIVATIZATION OF THOSE OPERATIONS WITH THE AWARD OF THE CONTRACT TO HUTCHISON PORTS, LTD. IN 1997.

THE KEY POINT I WANT TO STRESS WITH THE COMMITTEE IS THIS ONE: THE CURRENT SYSTEM, WHERE THE OPERATOR OF THE CANAL EXERCISES AUTHORITATIVE CONTROL OVER CANAL WATERS AND CANAL PILOTS, WILL BE CONTINUED AFTER 1999, FOR THE PURPOSE OF MAKING SURE THAT EFFICIENT OPERATION OF THE PANAMA CANAL CONTINUES. THE REPORTS THAT HAVE BEEN CIRCULATED IN SOME MEDIA OUTLETS AND BY SOME PRIVATE ORGANIZATIONS INDICATING OTHERWISE ARE JUST FLATLY

AND UNEQUIVOCALLY WRONG.

I APPRECIATE THIS OPPORTUNITY TO SET THE RECORD STRAIGHT. MR. CHAIRMAN, THE REPUBLIC OF PANAMA CONSIDERS THE CONTINUED SAFE, EFFICIENT AND NEUTRAL OPERATION OF THE CANAL A MATTER OF SUCH FUNDAMENTAL IMPORTANCE THAT IT HAS ADDED A NEW TITLE TO ITS CONSTITUTION WHICH DEALS WITH THAT SUBJECT. MORE SPECIFICALLY, ARTICLE 309 OF THAT CONSTITUTION WILL ESTABLISH THE CANAL AS THE INALIENABLE PATRIMONY OF THE PANAMANIAN NATION AND WILL REQUIRE THAT THE WATERWAY REMAIN OPEN TO THE PEACEFUL AND UNINTERRUPTED TRANSIT OF SHIPS OF ALL NATIONS. PANAMA'S CONSTITUTION GOES ON IN ARTICLE 310 TO PROVIDE THAT THE CANAL WILL BE OPERATED BY THE PANAMA CANAL AUTHORITY, AN AUTONOMOUS LEGAL ENTITY WHICH IS TO HAVE EXCLUSIVE CHARGE OF THE ADMINISTRATION, OPERATION, CONSERVATION, MAINTENANCE AND MODERNIZATION OF THE WATERWAY.

PANAMA'S LAW NINETEEN OF JUNE 19, 1997, THE STATUTE IMPLEMENTING THESE CONSTITUTIONAL PROVISIONS, REAFFIRMS THESE REQUIREMENTS AND FURTHER EXPANDS UPON THEM BY STATING IN ARTICLE FIVE THAT THE FUNDAMENTAL OBJECTIVE OF THE AUTHORITY IS THAT THE CANAL ALWAYS REMAIN OPEN TO THE PEACEFUL AND UNINTERRUPTED TRANSIT OF VESSELS FROM ALL NATIONS OF THE WORLD, WITHOUT DISCRIMINATION, IN ACCORDANCE WITH THE CONDITIONS AND REQUIREMENTS ESTABLISHED IN THE NATIONAL CONSTITUTION,

INTERNATIONAL TREATIES, THIS LAW, AND THE REGULATIONS IMPLEMENTED UNDER IT. THAT SAME ARTICLE ALSO STATES THAT, BECAUSE OF THE NATURE OF THE HIGHLY ESSENTIAL INTERNATIONAL PUBLIC SERVICE PROVIDED BY THE CANAL, ITS OPERATION SHALL NOT BE INTERRUPTED FOR ANY REASON WHATSOEVER.

IN ADDITION, PANAMANIAN LAW GIVES THE PANAMA CANAL AUTHORITY, OR PCA, EVEN MORE DOMINION OVER CANAL OPERATIONS THAN HAS BEEN ENJOYED BY THE PANAMA CANAL COMMISSION AND THE OTHER U.S. AGENCIES THAT HAVE OPERATED THE WATERWAY SINCE ITS OPENING IN 1914.

CONTRARY TO WIDELY CIRCULATED REPORTS ABOUT CANAL PILOTAGE, THE PCA IS GIVEN, IN ARTICLES 57 AND 58 OF ITS ORGANIC LAW, SOLE STATUTORY AUTHORITY OVER THE TRANSIT OF VESSELS THROUGH THE WATERWAY, OVER ALL OTHER ACTIVITIES RELATED TO NAVIGATION IN THE CANAL AND ADJACENT PORTS (INCLUDING THOSE AT BALBOA AND CRISTOBAL), AND OVER MARINE TRAFFIC CONTROL AND PILOTAGE OF VESSELS MOVING THROUGH THE CANAL AND IN THOSE ADJACENT PORTS. IN OTHER WORDS, THE PCA WILL HAVE THE SAME AUTHORITY AS THE COMMISSION NOW HAS TO REQUIRE ANY VESSEL MOVING TO OR FROM THE PORTS OF BALBOA OR CRISTOBAL TO DO SO UNDER THE COMMAND AND CONTROL OF A PANAMA CANAL PILOT.

MR. CHAIRMAN, THE BOTTOM LINE IS HUTCHISON WILL NOT HAVE ANY AUTHORITY AT ALL OVER ANY ASPECT OF THE OPERATION OF THE PANAMA CANAL ITSELF. DECISIONS AS TO THE ORDER OF TRANSITING VESSELS AND THE CONDITIONS UNDER WHICH SHIPS MAY PASS THROUGH THE WATERWAY WILL BE WITHIN THE SOLE PROVINCE OF THE PCA, AND THE AUTHORITY OF THAT AGENCY MUST BE EXERCISED IN ACCORDANCE WITH THE TERMS OF THE CONSTITUTION OF PANAMA, THE ORGANIC LAW OF THE PANAMA CANAL AUTHORITY, AND THE NEUTRALITY TREATY.

GIVEN ALL OF THESE LEGAL AUTHORITIES, MR. CHAIRMAN—I SUBMIT THAT THERE CAN BE NO REASONABLE DOUBT THAT IT IS THE PCA, AND THE PCA ALONE, WHICH WILL POSSESS AND EXERCISE ALL AUTHORITY OVER THE OPERATION OF THE WATERWAY. NEITHER HUTCHISON NOR ANY OTHER ENTITY HAS BEEN OR WILL BE EMPOWERED TO INTERFERE IN ANY WAY WITH THAT OPERATION.

THIS CONTROVERSY SEEMS TO HAVE BEEN GENERATED FROM A PROVISION IN THE CONTRACT BETWEEN HUTCHISON AND THE GOVERNMENT OF PANAMA WHICH IS TO THE EFFECT THAT IF A PILOT IS NOT AVAILABLE WITHIN 30 MINUTES TO MOVE A SHIP WITHIN A PORT THEN HUTCHISON MAY BY REGULATION PERMIT A SHIPOWNER TO EMPLOY ITS OWN PILOT TO MOVE THAT VESSEL.

THE FIRST POINT TO KEEP IN MIND IS THAT THIS CONTRACTUAL

PROVISION DOES NOT PERTAIN TO VESSELS TRANSITING THE CANAL. MOREOVER, PCA RULES WILL NOT EVEN PERMIT VESSELS TO MOVE IN OR OUT OF THE PORTS WITHOUT CANAL PILOTS. THOSE RULES WILL BE IDENTICAL TO THOSE NOW IN EFFECT WITH THE COMMISSION IN REQUIRING A PANAMA CANAL PILOT TO BE ABOARD AND IN CONTROL OF THE NAVIGATION AND MOVEMENT OF A VESSEL IN A PORT ADJACENT TO THE CANAL.

WHATEVER AMBIGUITIES THE PORT CONTRACT MIGHT OTHERWISE HAVE CAUSED CONCERNING THE AUTHORITY OF THE PORT OPERATOR VIS-A-VIS THE CANAL OPERATOR WITH REGARD TO PILOTAGE IN THE PORTS WERE PUT TO REST IN THE LAW WHICH GAVE EFFECT TO THE PORT CONTRACT.

THIS IS PANAMA'S LAW 5 OF JANUARY 16, 1997 WHICH YOU NO DOUBT HAVE HEARD REFERRED TO IN CONNECTION WITH THIS SUBJECT. WHAT YOU MAY NOT HAVE HEARD, THOUGH, IS THAT LAW 5 STATES UNEQUIVOCALLY THAT HUTCHISON'S PORT CONTRACT MAY NOT BE INTERPRETED SO AS TO CONTRADICT OR DIMINISH THE AUTHORITY OF THE PCA IN ANY WAY, AND SPECIFICALLY NOT IN MATTERS OF MARINE TRAFFIC CONTROL OR THE PILOTAGE OF VESSELS THROUGH THE CANAL OR ADJACENT PORTS. FURTHER, IF ANY CONFLICT WERE EVER TO ARISE BETWEEN THE PORT CONTRACT ON THE ONE HAND AND THE PCA'S ORGANIC LAW AND IMPLEMENTING REGULATIONS ON THE OTHER, LAW 5 STATES THAT THE LATTER ARE TO TAKE PRECEDENCE.

FOR ALL OF THESE REASONS, MR. CHAIRMAN, I CAN ASSURE THE COMMITTEE THAT HUTCHISON HAS NO AUTHORITY WHATSOEVER TO INTERFERE WITH, DICTATE OR INFLUENCE THE OPERATION OF THE CANAL, NOR WILL IT EVER BE ALLOWED TO DO SO.

MR. CHAIRMAN, I WOULD LIKE TO BRIEFLY ADDRESS THE MATTER OF CANAL SECURITY IN GENERAL. THE NEUTRALITY TREATY PROVIDES THAT BOTH PANAMA AND THE UNITED STATES MAINTAIN THE CANAL'S REGIME OF NEUTRALITY.

WHAT PEOPLE MAY NOT KNOW IS THAT THE PCC HAS BEEN WORKING AGGRESSIVELY TO PREPARE AN IN-HOUSE SECURITY CAPABILITY THAT PROVIDES THE SURVEILLANCE AND RESPONSE CAPABILITY TO ADDRESS THE TYPES OF THREATS THAT THE CANAL IS MOST LIKELY TO ENCOUNTER. WE WERE FORTUNATE TO BE ABLE TO UTILIZE THE SERVICES OF RETIRED GENERAL WAYNE A. DOWNING, FORMER COMMANDER-IN-CHIEF OF THE UNITED SPECIAL OPERATIONS COMMAND, TO ASSIST US IN OUR YEAR 2000 SECURITY PLAN FOR THE PANAMA CANAL. HE HAS PROVIDED A VERY RECENT ASSESSMENT FOR US AND ALSO DID SO BACK IN MARCH 1997. I BELIEVE THAT THE PCC HAS BEEN VIGILANT IN ENSURING TO THE LARGEST DEGREE PRACTICABLE THAT IT CAN PROVIDE FOR ITS OWN SECURITY WITH IN-HOUSE ASSETS AND CAPABILITIES.

MR. CHAIRMAN, AS YOU KNOW THE UNITED STATES AND PANAMA HAVE PUT A GREAT DEAL OF EFFORT OVER THE LAST TWENTY YEARS TO PREPARE FOR THE TRANSFER AND MAKE IT A SUCCESS. I HAVE BEEN PROUD TO PLAY A PART IN THE EFFORT. THIS COMMITTEE AS WELL HAS INVESTED A LOT OF TIME IN UNDERSTANDING THE TRANSITION AND SUPPORTING THE CHANGES WE HAVE MADE TO PREPARE FOR DECEMBER 31 OF THIS YEAR.

AS IMPORTANT AS THE CANAL IS TO THE PEOPLE OF THE UNITED STATES, BOTH IN ITS HISTORY AND TO ITS ECONOMY, YOU CAN IMAGINE HOW IMPORTANT IT IS TO THE PEOPLE OF PANAMA. AS A PANAMANIAN CITIZEN, I CANNOT EMPHASIZE ENOUGH HOW SERIOUSLY PANAMA TAKES THIS RESPONSIBILITY. I WOULD LIKE TO OFFER MY WORD TO EVERY MEMBER OF THIS COMMITTEE THAT PANAMA WOULD NEVER TAKE AN ACTION TO JEOPARDIZE THE OPEN AND NEUTRAL OPERATION OF THE WATERWAY. THAT BOTH IS OUR PROMISE IN THE NEUTRALITY TREATY AND A PREREQUISITE FOR A SUCCESSFUL AND VITAL PANAMA CANAL.

THANK YOU.