

The Panama Canal and its False Security and Defence

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The article refers to the international legal status of the Panama Canal and the international situation in the second decade of the 21st century. It highlights the degree of defencelessness of the interoceanic highway in terms of security and defence. Despite the fact that the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal supports the neutrality of the water road by guaranteeing free transit to ships of all countries, this prerogative may be questioned as the international situation becomes complicated and the rivalry between the global great powers aggravates. The article proposes to improve the canal's security mechanisms against cyber and defence dangers through the installation of the anti-missile defence system in the Panama Canal.

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Contrary to many predictions concerning Russia's role in the international arena, after the collapse of the Soviet Union, the world witnessed the annexation of the Crimean Peninsula in 2014, ending the ephemeral dominance of the unipolar system following the collapse of the USSR, in which the United States ruled as an all-powerful country for 23 years, and geoeconomics seemed to have supplanted geopolitics.

Since then, the international system has undergone radical changes, leading to the emergence of a multipolar (tripod) system based on the decisive role of three countries: the United States, Russia and China. Such a system also has unprecedented features compared to past multipolar systems, since the current system is also characterized by the fact that a new force is being built into it, which challenges the existing legal and political order on the planet, the People's Republic of China, which adopting a revisionist position, reserves the right to be bound or not by the Treaties agreed upon prior to its foundation (1949). The foregoing finds expression in the refusal of that country to comply with the Ruling of the Permanent Court of Arbitration (PCA) based in The Hague (7.12.2016), based on Annex 7 of the United Nations

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Convention on the Law of the Sea (Convención, 1982: 220), denied the alleged historical rights of China over any of the claimed islands since “they are legally rocks that do not create an exclusive economic zone or a continental shelf” (Corral, 2016: 6). In addition to this is the outright refusal to recognize its borders with India, set at the time when India was ruled by the United Kingdom, thus questioning a peaceful solution to the border conflict, based on the principle of *uti possidetis iure*.

The reality in question is accompanied by other additional peculiarities, which conspire against the world peace and security. They are: the approval in 2020 of reforms to the Constitution of the Russian Federation of 1993, which establishes the priority of the constitution of that country, over international law, as well as the prohibition of negotiations on the cession of territories, even if they were obtained by force, that is contrary to international law, e.g., Crimea and the Kuril Islands.

The foregoing is worrying since “States are not obliged to enter into international treaties, but vice versa, sanctions are established in the event that a State is forced to enter into an international treaty,” but “the State that ratifies the treaty is really obliged to comply with its provisions, to incorporate them into its domestic legislation; Contracts must be executed in good faith, or *pacta sunt servanda*” (Becerra, 2006: 294).

Secondly, it highlights the specificity of the nuclear tripod, on which the international system rests today. To tell the truth, what actually exists is a bipolar system, where one of the poles is two-headed, since a tacit alliance operates between Russia and China in all orders, which in the end, contrary to the typical stability of the systems bipolar, in this case, that particularity is absent and we are rather witnessing a permanent systemic imbalance, marked by the prospect of international nuclear blackmail, to impose its designs on the world.

Faced with such a scenario, the Republic of Panama and in particular its interoceanic canal, currently, are not only exposed to a conventional attack by a country enemy of the United States, but we also live in a context of hybrid war, where an attack that could be perpetrated by a terrorist organization and even by an anti-American state, which, camouflaging itself in a non-military vessel, causes a breakdown not only capable of making the international waterway useless, but also eliminating the provision of water to the terminal cities of the metropolitan area, without the possibility of clearly identifying the attacker.

These are real threats that today exceed the known war inventory domains (land, sea, air and space), since cyberspace must now be included. Faced with this reality, the obligatory question is: “What is the real defence and security capacity of the Panama Canal to repel a sophisticated attack against its critical infrastructure?” The answer is obvious: simply none, since it lacks strategic technological-scientific advantages that allow it to defend the interoceanic route by creating a safe environment that guarantees its competitiveness. There is no doubt about the extreme vulnerability of the Panama Canal in the event that a nuclear conflict breaks out, anywhere on the planet, involving the United States, China, Russia, Iran or North Korea; since the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (Treaty: 1-3) with which it is clothed, will be turned into wet paper, especially because even in “peacetime”, it can be made useless as a result of a cyber attack. The examples of those were the virtual attack on the “SolarWinds” company, which provides the “SolarWinds” Orion network to the Departments of Commerce, State Department, the Treasury, the Army, the Pentagon and the Presidential Office of the United States (Flores, 2021) and the cyberattack on the pipeline system from Texas to New York – “Colonial Pipeline” (Krauss, 2021).

Roughly identified threats that loom over the Panama Canal in the 21st century, contrary to those who strongly defend its defensive inoculation based on the Neutrality Treaty (Informe, 1990: 82); the truth is that it will not be useful, if the channel does not drastically raise its standards not only of security, but also of defence, in such a way that it is capable of thwarting the types of threats indicated and those not incorporated here. This is based on the increasingly rarefied international climate, where certain powers, based on their military might, try to destroy the territorial integrity of neighbouring countries or in other latitudes, such as Latin America, impose dependent governments. It is evident that such governments, not only are suspicious of the international legal status of the Panama Canal, but that their manifest alignment with extracontinental powers seriously compromises the security of the interoceanic highway.

For all the above and contrary to what is established in article V of the Neutrality Treaty, which at the time states that “After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.” (Treaty: 2), the truth is that the Republic of Panama later held a referendum in which it was decided that “the Republic of Panama will not have an army”, a measure that was set forth in Article 310 of the Panamanian Constitution (Constitución, 2012: 148).

As can be seen, such citizen opinion makes it impossible to comply with the aforementioned article V of the Neutrality Treaty. As if that were not enough, it is necessary to add that with respect to Article V of the Neutrality Treaty, the United States introduced Condition 2 or Nunn Reserve, which states that “nothing in this Treaty will prevent the Republic of Panama or the United States of America, in accordance with their respective constitutional procedures, enter into any agreement or arrangement between the two countries to facilitate, at any time after December 31, 1999, the fulfillment of their responsibilities, to maintain the neutrality regime established in the Treaty, including agreements or arrangements for the stationing of any US military forces or the maintenance in the Republic of Panama of defence sites of the United States after that date, which the Republic of Panama and the United States of America may deem necessary or appropriate” (Tratados del Canal 1980: 264-265).

Considering what has been outlined, both at the international and national levels, it would not come as a surprise, that if facing the danger of imminent attack or sabotage to the Canal, by any of the indicated or hidden methods, by extracontinental powers, in militant collaboration of certain Latin American governments and even Panamanian nationals related to such powers, the United States would decide to disregard its obligation to guarantee free transit through the interoceanic route to ships of manifestly enemy countries.

For preventing the cases of non-adherence to the Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal by nuclear powers such as China, the only member of the Security Council of the United Nations that has not done so, and the manifest hostility of certain powers, it is imperative to provide the Panama Canal in the field of security, with a system to combat cyber threats beyond the traditional armed conflict, which is capable of stopping malicious cybernetic activity and in the field of defence, degrading the potential enemy deterrent, with an antimissile defence system, which at least in a basic way, protects the waterway from imminent attacks by belligerents who consider the Canal as a vital part of the economy and defence of the United States and therefore also surreptitiously keep the Panamanian Canal as their military objective.

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