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NEGOTIATION OF NEW PANAMA CANAL
TREATIES:

Background and Pros and Cons

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NEGOTIATION OF NEW PANAMA CANAL TREATIES: BACKGROUND AND PROS AND CONS

I. Summary

On June 29, 1971, the United States and the Republic of Panama resumed negotiations aimed at drafting new treaties to govern the Panama Canal and Canal Zone, thereby hoping to bring to mutually agreeable resolution an issue which has remained a source of contention and a major obstruction to amicable relations between the two nations since the original 1903 Treaty granting the United States the right to build and operate a canal through Panamanian territory entered into force.

From the Panamanian point of view, the existence of a United States controlled "enclave" in the heart of their sovereign territory has become a major affront to national dignity and national sovereignty, a matter which one longtime observer of Panamanian politics has described as "the one emotional issue capable of uniting the Panamanians." Among the major grievances voiced by Panama are the existence of a United States "government within a government" in their territory, the "overwhelming presence" of U.S. civilian and military personnel, and the inequitable sharing of economic benefits derived from the Canal.

The major source of controversy in U.S.-Panamanian relations concerning the Canal, that of retention of U.S. sovereignty and absolute jurisdiction, has posed a major dilemma for United States policy makers. The latter must reconcile the need to safeguard U.S. vital interests in the Canal with Panamanian demands for what that nation considers its lawful sovereign rights. Toward this end, the United States Government has, over the years, attempted to assuage Panamanian nationalistic sentiment

and to take the sting out of its exercise of exclusive sovereignty in the Zone. However, the basic issue at odds between the two nations has remained unaltered, and Panamanian resentment and hostility have continued to mount through the years, erupting in violent demonstrations in 1958-59 and 1964.

After the major diplomatic crisis between the two nations precipitated by the 1964 flag riots, the United States Government sought to revise its traditional canal policy and to remold its relationship with Panama along lines geared to the present day realities of international politics. Toward this end, President Johnson, in December 1964, announced that the two nations would enter negotiations with the goal of resolving their longstanding differences over the Panama Canal.

Since that time, United States policy has been predicated on the belief that mutually acceptable terms governing the status of the Canal and Zone can be arrived at without jeopardizing the rights required by the United States to operate and defend the Canal and to protect its vital security and commercial interests in the area.

Many members of Congress and a variety of interest groups within the United States have consistently opposed U.S. concessions to Panama, especially any limitations in the status of total U.S. sovereignty and jurisdiction in the Canal Zone. They have done so primarily on grounds that concessions to Panama would imperil vital U.S. interests in the Canal, since Panama has neither the resources nor the capacity nor the political stability required to manage, operate and defend the Canal effectively.

Why not?
Los Angeles
no question

II. Negotiation of New Panama Canal Treaties

A. Summary of Developments Since 1964^{1/}

In December 1964, President Johnson announced the decision of the United States Government to negotiate a new treaty with the Government of Panama which would replace the 1903 Treaty on the existing canal and recognize Panamanian sovereignty in the area, while retaining U.S. rights necessary for the effective operation and protection of the Canal.

The United States decision followed a major diplomatic crisis between this Government and Panama touched off by the January 1964 flag riots in the Zone in which four U.S. citizens and 22 Panamanians were reported killed. A major dispute developed between the two nations culminating in Panama's breaking off diplomatic relations and taking its case before the Organization of American States and the United Nations. Ties were restored only after an agreement binding upon both parties was reached under auspices of the OAS, "to seek the prompt elimination of the causes of conflict between the two countries." Treating the riot issue in his December announcement, President Johnson stated: "Last January there was violence in Panama. As I said then,

^{1/} For a detailed discussion of events leading to the United States Government decision to negotiate new treaties with Panama governing the Canal, see: "Panama-United States Relations Since the Riots of 1959, " by Rieck B. Hannifin, August 4, 1967. CRS Multilith #F-250.

'...violence is never justified and is never a basis for talks.'

But while the people of the United States have never made concessions to force, they have always supported fair play and full respect for the rights of others."^{1/}

United States and Panamanian negotiators began sessions in January 1965. An interim progress report was issued in September 1965 in the form of joint statements by Presidents Johnson and Robles on areas of agreement reached. Three new treaties would be negotiated: one to replace the 1903 Treaty and its amendments, a canal defense agreement, and a treaty permitting U.S. construction of a new sea-level canal across Panama. Important areas of agreement on the treaty governing the existing canal called for the recognition of Panamanian sovereignty over the Canal Zone and provisions for "an appropriate political, economic and social integration of the area used in the canal operation with the rest of the Republic of Panama."

On June 26, 1967, it was announced that the negotiators had reached accord on three new treaties whose provisions followed along the lines of the 1965 Presidents' joint statements: (1) Treaty between the Republic of Panama and the United States of America concerning the Panama Canal; (2) Treaty between the Republic of Panama and the United States of America concerning a Sea-Level Canal connecting the Atlantic and Pacific Oceans; and (3) Treaty on the

^{1/} Department of State Bulletin, January 4, 1965. p. 6.

Defense of the Panama Canal and its Neutrality. The draft texts were submitted by the negotiators to their respective Governments for further action.

Before action could be taken by either government, complete texts of the treaties were leaked to the press and published in both United States and Panamanian newspapers, touching off extensive criticism in both nations concerning respective U.S. and Panamanian concessions.

In Panama, which was in the process of preparing for the May 1968 presidential elections, the provisions of the draft treaties became a political football among contending factions with a majority of Panamanian politicians charging that United States "concessions" were grossly insufficient.

In the United States, various provisions of the draft texts were sharply criticized in both Houses of the U.S. Congress, particularly in the House of Representatives, for the effects they would have on U.S. rights and authority in the Canal Zone. Some 130 members of the House cosponsored resolutions opposing any form of surrender of U.S. sovereignty and jurisdiction over the Canal Zone and urging that the treaties be rejected.

While the draft treaty issue remained in abeyance, on October 11, 1968, the Panamanian National Guard overthrew newly-elected President Arnulfo Arias and established a government under supervision of its commandant, Brig. Gen. Omar Torrijos. The new Panamanian Government

temporarily shelved the canal question. The United States for its part was reluctant to broach the issue with the Torrijos Government, being uncertain whether any negotiated agreements reached with a provisional military government which came to power by extra-constitutional means would be considered binding by subsequent constitutionally-elected governments.

The Panamanian Government officially rejected the three draft treaties in a note dated August 5, 1970, from Panamanian Foreign Minister Juan Antonio Tack to Secretary of State William Rogers, on grounds that they did not "meet the objectives set forth in the joint statement issued by the Presidents of Panama and the United States of America on April 4, 1964 'to seek the prompt elimination of the causes of conflict between the two countries.'" The Panamanian Government, however, expressed its willingness to continue negotiations to seek just solutions to the conflicts between the two nations. The Panamanian Government's rationale for rejection appeared in the form of a lengthy government study published in its press on September 5, 1970, which listed the basic areas of conflict between Panama and the United States (including Panamanian sovereignty, the "in perpetuity" clause of the 1903 Treaty, unrestricted U.S. exercise of political jurisdiction and administrative authority in the Canal Zone, the large U.S. military presence in the Zone, and insufficient economic benefits to Panama from Canal operations) and pointed up the ineffectiveness of the provisions of the 1967 draft treaties in eliminating Panamanian grievances.

During both 1969 and 1970, the Torrijos Government indicated to the United States its interest in resuming negotiations on terms of a new treaty. On the strength of Panama's overtures and the increasing popular acceptance of the Torrijos Government by the Panamanian people, which appeared sufficient to win broad national backing of new canal treaties, the Nixon Administration announced the resumption of negotiations in Washington on June 29, 1971 between the two nations. ^{1/} Principal issues in the new negotiations include:

- (1) U.S. retention of rights required for effective operation and defense of the Panama Canal;
- (2) expansion of Panamanian jurisdiction and reduction or termination of U.S. sovereignty with the Canal Zone;
- (3) appropriate financial compensation from canal operations to Panama;
- (4) reduction in Canal Zone territory under U.S. jurisdiction;
- (5) expansion of canal capacity by U.S. option either to enlarge the present canal or to construct a new sea-level canal in Panamanian territory;
- (6) duration of new treaty terms and elimination of the concept of U.S. rights "in perpetuity."

Although major issues under discussion have yet to be resolved, spokesmen for both the United States and Panama have described the talks as progressing in an amiable, candid and constructive atmosphere.

^{1/} The U.S. delegation is composed of chief negotiator Ambassador Robert B. Anderson (former Treasury Secretary) and deputy negotiator Ambassador John C. Mundt, and the Panamanian representatives include Ambassador Fernando Manfredo Bernai (former Panamanian Minister of Commerce and Industry), Ambassador Carlos Lopez Guevara (former Panamanian Foreign Minister) and Ambassador Jose Antonio de la Ossa (Panamanian Ambassador to the United States).

B. Congressional Reaction

On December 1, 1970, the Atlantic-Pacific Interoceanic Canal Study Commission presented its final report to President Nixon, in which it recommended construction of a sea-level canal in Panama and urged that the United States Government negotiate a treaty with Panama providing for "the creation of an Isthmian canal system including both the existing Panama Canal and a sea-level canal on Route 10, operated and defended in an equitable and mutually acceptable relationship between the United States and Panama."^{1/}

The Commission's report touched off renewed critical reaction by Congressional opponents of new canal treaties, who equated the recommendations with surrender of U.S. sovereign rights and authority over the Canal Zone territory. During the 1st session of the 92nd Congress, resolutions were cosponsored by 88 members of the House of Representatives which affirmed that the United States Government should not in any way forfeit, cede, negotiate or transfer its rights, sovereignty and jurisdiction over the Canal Zone and Panama Canal to any other nation or to any international organization.

Concurrently, a proposal to modernize the existing lock canal in lieu of construction of a new sea-level canal, submitted during the first session of the 91st Congress, was reintroduced in both Houses of Congress: H.R. 712 - To provide for the increase of capacity and the improvement of operations of the Panama Canal, introduced by

^{1/} U.S. Atlantic-Pacific Interoceanic Canal Study Commission, Interoceanic Canal Studies 1970. Final Report to the President, December 1, 1970. p. 108. The Commission was appointed under Congressional authorization by President Johnson in 1965 to determine the feasibility of and the most suitable site for construction of a new sea-level canal.

Representative Daniel Flood on January 22, 1971; and identical bill S.734, introduced by Senator Strom Thurmond on February 10, 1971.

These bills provide for implementation of the Terminal Lake-Third Locks Plan, a project partially authorized by Congress in 1939, which, according to Congressional supporters, would provide for a major increase of capacity and operational improvement of the existing lock canal under existing canal treaties. Such action, supporters believe, would afford the United States the best operational canal at the least cost (as attested to by competent technical experts). Most important, this would not require the negotiation of new treaties with the Republic of Panama, thereby averting the sovereignty issue and Panamanian demands for other major concessions which would be made in any negotiations for a new sea-level canal treaty.

In addition to action in the Congress, other opponents of treaty revision in the United States are currently engaging in a heavy letter-writing campaign to the Congress, the White House and the State Department criticizing any United States Government concessions to Panama.

III. The Panamanian Position

The Panamanian Government's position concerning the status of the Canal and Canal Zone has consistently been that the United States should retain all powers necessary for continued U.S. operation and defense of the Panama Canal, and that mutually acceptable arrangements are negotiable concerning U.S. interests in either a modification of the existing canal or construction of a new sea-level canal. However, Panama insists that the negotiation of new treaties governing the existing Canal and Zone is essential in order that the causes of conflict between the two nations, especially the existence of a U.S. "government within a government" in the Canal Zone, the "exaggerated presence" of U.S. civilian and military personnel in the Zone, and the inequitable sharing of economic benefits derived from Canal operations might be resolved.

The Panamanian view concerning major issues outstanding on the Canal is outlined below.

A. Elimination of U.S. Sovereignty and Jurisdiction in the Canal Zone

Foremost among Panamanian grievances which have grown out of the terms of the 1903 Treaty is that of United States retention of sovereignty and absolute jurisdiction "in perpetuity" over the territory encompassing the Canal Zone. Since the entry into force of the original treaty, the Panamanian Government has continually and repeatedly protested the exercise of exclusive control by the United States over a strip of land bisecting its sovereign territory,

and the U.S. maintenance of what Panama has termed a "government within a government." Panama contends that over the years, the United States has created a "colonialist enclave" within its nation, today numbering approximately 40,000 United States citizens, who are subject solely to United States law and administration, enjoying extraterritorial privileges and a highly affluent life style in stark contrast to that of their Panamanian neighbors.

In the treaty negotiations, Panama is therefore insisting that the status of the Canal Zone be changed to that of an integral part of Panamanian territory, and that Panama be afforded sovereignty and jurisdiction over all civil governmental functions in the Zone (encompassing political, administrative, judicial and commercial jurisdiction).

B. Reduction of the United States Military Presence in Panama

Although the Panamanian Government has never contested the right of the United States to maintain military installations in the Canal Zone required for the defense of the Canal, Panama has long criticized what it terms the "exaggerated presence" of United States troops in Panama, and the retention of U.S. military bases in the Zone which, by the U.S. Government's own admission, are maintained for national and hemispheric defense and as logistical support for its own military operations, and not for the sole protection of the Panama Canal. Also at issue is the U.S. Army School of the Americas and other

military training schools located in the Zone and maintained by the United States for members of the Latin American military. Panama charges that use of U.S. bases for any other purpose than that of protecting the Panama Canal is in direct violation of the 1903 Treaty provisions guaranteeing the neutrality of the Canal.

In the current negotiations, Panama is seeking a reduction in the size of the U.S. military contingent stationed in the Canal Zone (currently numbering approximately 11,000 men) to the level strictly required for the defense of the Panama Canal, the phasing out of all military activities not strictly related to Canal defense, and the removal of the U.S. military training schools which have nothing to do with that function.

C. Reduction in Size of Canal Zone

The Government of Panama contends that much of the land encompassed within the limits of the Canal Zone territory has remained unused by the United States for Canal operations. Zone land lying idle offers significant potential to Panama in terms of its economic development. Panamanian negotiators are seeking a release of unused land areas in the Zone and the reduction in the physical area of the Canal Zone to that strictly required for Canal operations.

D. Increased Share of Canal Revenues and a Just Disposition of Economic Benefits Accruing from the Canal

Panama has repeatedly charged that it is not receiving a fair share of the economic benefits derived from Canal operations. In this regard, Panamanian negotiators are seeking:

(1) an increase in the present \$1.93 million annual annuity paid by the United States for use of the Canal; (2) the opening of the Zone to Panamanian commercial enterprises; (3) increased employment opportunities for Panamanians in Zone operations, a pay scale for Panamanian Zone employees equitable with that of U.S. citizen employees, and increased access for Panamanians to skilled and supervisory positions in Canal operations; and (4) the increased use of Panamanian products and services in the Canal Zone.

The resumption of new treaty talks between the United States and Panama has aroused great agitation amongst the Panamanian citizenry. The Torrijos Government has publicly adopted a hard-line stand concerning Panama's requirements for new treaty arrangements governing the Canal, and has sought support for its position in the negotiations from all levels of Panamanian society.

Since early July 1971 the Torrijos Government has mounted an intensive propaganda campaign, strongly nationalistic and anti-U.S. in sentiment, the culmination of which was General Torrijos' appearance at an October 11th rally, on the occasion of the third anniversary of Panama's revolution, in which he declared that should Panama fail to receive justice at the negotiating table, "there is only one alternative...that a generation offer its life in order for other generations to find a free nation...."^{1/}

^{1/} Foreign Broadcast Information Service, Daily Report: Latin America and Western Europe, No. 197, v. VI, October 12, 1971. p. M6.

While many political observers believe that the strongly anti-U.S. language used by Torrijos since the negotiations opened has been designed primarily to strengthen his own position in Panama and his government's position in negotiations, it is nevertheless agreed that in the present atmosphere of intense nationalism in Panama, Torrijos has the solid backing of his people.

The Panamanian Government has declared that should the negotiations with the United States fail to produce treaties embodying Panamanian objectives, it will take its case before an international body--the Organization of American States or the United Nations. In a move to gain the attention of the international community, Panamanian Foreign Minister Juan Antonio Tack, on October 5th, delivered a comprehensive report of his nation's continuing negotiations with the United States for new Canal arrangements to U.N. Secretary General Thant with a request that it be circulated among all member nations.

IV. Negotiation of New Panama Canal Treaties -- Pro and Con

A. Arguments in Support

1. Official United States Government Position

The goal of the United States in the past decade has been to achieve practicable adjustments with Panama concerning control of the Canal and Canal Zone which would not only meet the reasonable aspirations of Panama but also protect vital U.S. interests there. Foremost among U.S. concerns is the continued control and defense of the Panama Canal by this nation.

In President Johnson's announcement in 1964 of the U.S. decision to negotiate a new treaty on the existing canal, he specified that in any new treaty, "...we must retain the rights which are necessary for the effective operation and the protection of the canal and the administration of the areas that are necessary for these purposes." ^{1/} U.S. Government officials since that time have maintained that this nation has adhered to a policy of safeguarding U.S. interests in the Canal and of not affording concessions to Panama which would in any way weaken the U.S. posture in the area. These objectives continue at the core of the U.S. position in the current negotiations.

Other United States concerns include: (1) present and future canal requirements as dictated by the demands of world commerce--either by expansion of present canal capacity or the construction of a sea-level canal;

^{1/} Department of State Bulletin, January 4, 1965. p. 6.

(2) continued financial viability of the Canal enterprise and maintenance of reasonable toll levels; (3) U.S. and Western Hemisphere security.

Basic points in the United States Government rationale concerning the negotiation of new Panama Canal treaties are outlined below.

a. New treaties are essential to U.S. foreign policy concerns in Panama and the Latin American region.

In the view of many United States officials and other sources especially sensitive to the complexities of diplomacy, the 1903 Treaty has increasingly become a political liability to the United States in its dealings with Panama in particular, and the Latin American region in general. According to a September 1971 background paper issued by the Office for Interoceanic Canal Negotiations in the State Department:

Renewal of violence in Panama, possibly more extensive than experienced in 1964, might be unavoidable if the treaty objectives considered by the Panamanian people to be reasonable and just are not substantially achieved. While the U.S. has no intention of yielding control and defense of the canal to the threat of violence, it is certainly in the U.S. interest in Panama, in Latin America, and worldwide again to demonstrate, as in 1967, our willingness to make adjustments in our treaty relationship with Panama that do not significantly weaken the United States' rights to control and defend the canal. It is our intent to show Latin America and the world that the United States as a great power can develop a fair and mutually acceptable treaty relationship with a nation as small as Panama. Such a treaty must, therefore, be founded upon common interests and mutual benefits. 1/

1/ U.S. Department of State, Office for Interoceanic Canal Negotiations, "Background on Panama Canal Treaty Negotiations," September 1971. pp. 3-4

The 1903 Treaty provisions awarding the United States absolute sovereignty and jurisdiction over an area of land within the territorial boundaries of Panama have been a source of continuing Panamanian irritation and hostility toward the United States since the treaty entered into force. The discord has steadily grown in intensity through the years, regardless of how close a relationship was otherwise maintained with succeeding Panamanian Governments, leading to critical periods in U.S.-Panamanian relations in 1958-59 and 1964, and culminating in the 1964 severance of diplomatic relations between the two nations and Panamanian Government charges of U.S. aggression before the Organization of American States and the United Nations.

Although over the years the United States Government has made adjustments in the original agreement, most notably through two supplementary treaties in 1936 and 1955, the most objectionable aspect of the Canal Zone arrangements from Panama's viewpoint, that of U.S. sovereignty in perpetuity, has remained in force. United States officials believe that only when the sovereign status of the United States in the Zone is eliminated by means of new treaties will this nation gain a solid footing for continued amicable relations with Panama.

A correlative point in support of negotiating a new status for the Canal is the potentially damaging effect which the Canal issue might have on United States relations with other Latin American nations. At a time when an intensely nationalistic spirit has become a major element influencing the foreign policy posture of many of the Latin American nations,

United States retention of land within the sovereign territory of a sister nation only serves to fuel the fires of anti-Americanism and provide greater impetus to charges of continuing "Yanqui imperialism." The Canal issue, therefore, could potentially serve as a rallying point for increased anti-United States sentiment throughout Latin America and present an uncomfortable obstacle in this nation's path toward a sound and amicable level of relations with Latin America.

Renunciation of U.S. sovereignty and the return of jurisdiction over the Canal Zone to Panama would, in terms of overall U.S. foreign policy objectives in the Latin American region, constitute a practical demonstration of U.S. goodwill, counteracting the U.S. colonialist image in Latin America, and reinforcing current trends in U.S. relations with the region which have been tailored increasingly toward partnership and cooperation rather than coercion, and justice rather than force.

- b. New treaties are essential to United States interests in the construction of a new sea-level canal.

The existing lock canal is fast reaching its capacity to handle current traffic and, due to the advances of modern ship technology, is unable to handle the larger ships increasingly in use in recent years. On December 1, 1970, the Atlantic-Pacific Interoceanic Canal Study Commission submitted its sixth and final annual report in which it recommended construction of a new sea-level canal on the site of Route 10 in the Republic of Panama, situated 10 miles west of the present canal beyond the borders of the Canal Zone.

Should the United States Government wish to implement the Commission's recommendations concerning construction of a new sea-level canal, a mutually acceptable accord must be reached with the Government of Panama, and such agreement cannot be arrived at without a settlement concerning the sovereignty and jurisdictional status of the existing Canal and Canal Zone.

2. Other Views in Support of New Panama Canal Treaties

a. The 1903 Treaty as an Anachronism

A principal point advanced by proponents of new Canal treaties is that due to the changing nature of international political relationships, the 1903 Treaty has become an anachronism. According to this view, the terms of the original treaty which afforded the United States the status of absolute sovereignty over a portion of land within the territorial boundaries of another nation, while corresponding to U.S. foreign policy practices at the time and considered then as a necessary element in safeguarding vital United States interests in a newly-founded republic, have become inconsistent with the realities of international political dynamics in the latter part of the 20th Century. This view was advanced at the Sixth Hammarskjold Forum (New York City, May 1964), as follows:

If we remember the setting in which the Canal Zone was secured from the newly-founded Republic of Panama, it becomes somewhat easier to understand why some should see the very existence of the Zone as an anachronism. The formula of the 1903 treaty comes from the turn-of-the-century leases of territory for military bases. The ways in which we secure military rights abroad have undergone tremendous change since that time. Leased areas gave way to military bases which remained subject to the sovereignty of the grantor state; and in turn military bases have

yielded to the provision of military facilities, often jointly used by the host state and the foreign state. The modern pattern disregards territorial boundary lines between mine and thine and instead allocates jurisdiction between the two states on a functional basis. If we were building the Panama Canal today, we would do it without a Canal Zone which looks suspiciously to Panamanians like a foreign colony set down on its territory. 1/

The character of existing international political dynamics has resulted in changing trends in U.S. foreign policy practices, geared toward greater sensitivity to the national interests of other countries, and to concepts of the mutuality of interest and enlightened accommodation required in the best interests of United States relationships with the world community.

b. The 1903 Treaty in a moral view.

Continued U.S. sovereignty in the Canal Zone is opposed by some on a moral basis. Under this argument, the United States should rectify an unjust situation primarily because of its moral obligations as a world power. According to this line of reasoning, the terms of the 1903 Treaty affording the United States perpetual control over the Canal Zone were inherently unjust, the product of the U.S. practice of "gunboat diplomacy" under the administration of President Theodore Roosevelt, by which this nation promoted Panama's revolt from Colombia and then applied its political advantage to negotiate a treaty for the construction of a canal with the new republic whose terms, even at that time, were admitted

1/ Richard R. Baxter, (Professor of Law, Harvard Law School), in "The Panama Canal: Background Papers and Proceedings of the Sixth Hammarskjold Forum", New York, May 28, 1964, published for the Association of the Bar of the City of New York by Oceana Publications, Inc., Dobbs Ferry, New York, 1965. p. 40.

to be "very satisfactory, vastly advantageous to the United States, and...
not so advantageous to Panama."^{1/}

It is further contended that the existence of a United States possession within the sovereign territory of another nation is humiliating to that nation's pride. A recent letter to President Nixon from 14 U.S. Catholic priests performing service in Panama gave expression to this view:

We wonder how the people of the United States would feel if a foreign power were to control the Mississippi River and 5 miles of territory on both sides of same-- flying its own flag there, having its own schools, courts, police, postal service, and so forth. No matter what treaty would have been signed beforehand, we are certain that the American people would never tolerate such an affront to its national dignity. ^{2/}

c. The 1903 Treaty as a target for elements hostile to the United States.

Although opponents of renunciation of U.S. control in the Canal Zone contend that such action risks the domination of the Canal by elements hostile to this nation, proponents of a change in the U.S. status there view the relationship between the United States presence in the Canal Zone and the threat of hostile, subversive or communist elements in a different perspective. According to their argument, the United States, by its continued control of the Zone against the wishes of Panama, risks as great a threat to its interests in terms of utilization of this highly sensitive, emotional and nationalistic issue against this nation by elements

^{1/} Secretary of State John Hay in a letter to Senator Spooner, January 20, 1904, quoted in Dwight Carroll Miner, *The Fight for the Panama Route*. New York, Columbia University Press, 1940. p. 375.

^{2/} Text of letter of 14 Catholic priests to President Richard M. Nixon, September 28, 1971, quoted in Foreign Broadcast Information Service, *Daily Report: Latin America and Western Europe*, No. 196, v. VI, October 6, 1971. p. M2.

hostile to the United States either within or outside of Panama as would the converse renunciation of U.S. sovereignty and jurisdiction.

Viewed in these terms, it is conceivable that continuation of the U.S. presence might well prove to be far more successful in implementing the interests of elements hostile to this nation to the extent to which Panamanian unrest and hostility against the United States is prolonged. Moreover, the prolonging of this source of friction through continuance of the current U.S. posture in the Zone risks potential utilization by political extremists within Panama to put in power a government essentially hostile to the United States.

B. Opposition to Negotiation of New Panama Canal Treaties

Foremost among the issues of concern to opponents of negotiating new Panama Canal treaties is the need for continued maintenance of United States sovereignty and jurisdiction over the Canal and the Canal Zone. Those who oppose negotiation assert that any accommodation arrived at between the United States and Panama which would in any way change the U.S. status in the Canal Zone would severely hamper this nation's effectiveness in exercising the control necessary to ensure that vital U.S. interests will be protected. Supporters of this view cite several bases in defense of their position: (1) that U.S. sovereignty in the area is a right legally granted by the Republic of Panama by terms of the 1903 bilateral treaty ratified by both nations; (2) that retention of full U.S. sovereignty and jurisdiction is necessary for the continued effective operation and defense of the Canal and is therefore essential to the protection of U.S.

strategic and commercial interests served by the Canal; (3) that because of the grant of U.S. control over the Canal Zone, the United States constructed, and has continued to operate and defend the Panama Canal for the past 67 years, at a U.S. taxpayers net investment of over \$5 billion; and, (4) that renunciation of U.S. sovereignty by treaty is contrary to the provisions of the U.S. Constitution.

1. United States sovereignty as a treaty right.

The United States Government acquired full sovereign rights, power and authority in perpetuity over the territory encompassed in the Canal Zone by treaty grant from Panama, according to terms of the 1903 Convention for the Construction of a Ship Canal [the Hay--Bunau-Varilla Treaty], ratified and proclaimed by the governments of the United States and the Republic of Panama in February 1904. The pertinent articles of the compact read as follows:

Art. II. The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land...for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed;...

Art. III. The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement... which the United States would possess and exercise if it were the sovereign of the territory...to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

The United States acquired the property specified through direct purchase from its owners and has paid to the Republic of Panama an annual remuneration fixed by treaty for its right to exercise total control over

the Canal Zone territory. For the past 67 years, the United States has duly fulfilled its treaty obligations in constructing, maintaining, operating, and protecting the Canal on terms of entire equality and under just and equitable tolls. In addition, the United States Government has voluntarily liberalized original treaty arrangements through two supplementary treaties in 1936 and 1955 to the benefit of Panama. In demanding renunciation of U.S. sovereignty, the Panamanian Government is violating its obligations undertaken in the 1903 Treaty.

2. Protection of Vital United States interests served by the Panama Canal.

As a principal justification for continued U.S. control of the Panama Canal and Canal Zone territory, advocates of continued unlimited sovereignty have long cited the vital role of the Canal as a strategic crossroads of the Western Hemisphere, indispensable to United States interests in terms of national and Western Hemisphere security and inter-oceanic commerce.

a. U.S. National Defense Interests

From the standpoint of national defense, through two world wars, the Korean and Cuban crises and the war in Southeast Asia, the Panama Canal has served as a vital link in this nation's chain of defenses, providing the shortest and easiest route for flexible deployment of military forces and the accelerated transport of military materiel and vital raw materials, as well as serving as a major civilian and military communications link between the Atlantic and Pacific Oceans.

Advocates of U.S. control cite further the continuing strategic significance of the Canal to the United States, even in an age of advanced technological developments in warfare. In July 1970, in testimony before the House Subcommittee on Inter-American Affairs, Gen. George R. Mather, former Commander in Chief of the U.S. Southern Command, testified concerning the continuing importance of the Canal and Canal Zone to U.S. security:

[The Panama Canal] continues to be important to our national defense, even in this age of nuclear weapons, and our separate Atlantic and Pacific fleets. Large carriers cannot transit the canal, but nuclear submarines do. The canal thus provides a capability for prompt redeployment of this element of our strategic capability. More important to our overall defense posture in these times when defense dollars must be so judiciously allocated are the same economic advantages that concern commercial shippers. The millions of tons of cargo that have passed through the canal each year during the Southeast Asia conflict would have added greatly to the financial burden of our operations had some alternate route been forced upon us...

Perhaps the most significant defense contribution of the Panama Canal today is the one it makes toward defense economy. The increasing cost of modern weapons has resulted in relating our national defense to what we can afford rather than what we need. With this thought in mind, the economic advantages of uninterrupted use of the Canal in support of operations in Southeast Asia alone argue strongly for its continued availability...1/

b. Hemisphere Defense Interests

Intertwined with aspects of the national security role of the Canal is the equally important area of hemisphere defense. It is

1/ Gen. George R. Mather, U.S. Army, Commander in Chief, U.S. Southern Command, in testimony before the Subcommittee on Inter-American Affairs, House Foreign Affairs Committee, Hearings on "Cuba and the Caribbean," 91st Congress, 2nd sess., July 10, 1970. pp. 59, 63.

argued that the United States presence in the Canal Zone serves as an outpost thwarting the ambitions of powers hostile to the United States, a constant reminder to those nations of U.S. determination to prevent subversion in Latin America. Supporters of this view contend that this function served by the Canal Zone is especially vital today in view of Fidel Castro's continuing open espousal of support for communist revolution in the Hemisphere and recent Soviet missile-equipped submarine activity in the Caribbean.

c. Commercial Importance

In terms of the Panama Canal's commercial importance to the United States, according to statistics, approximately 70 percent of the total cargo tonnage transiting the Canal in recent years has represented exports from or imports to the United States or commodities in the U.S. intercoastal trade. It is maintained that the Canal has proved itself an indispensable lifeline in United States trade activities, affording an economical and efficient transport route, especially significant at a time when this nation is striving to improve its competitive position in the world market.

Opponents of new treaties assert that inasmuch as the Panama Canal and the Canal Zone are vital to U.S. commercial and security interests, in order to ensure that those interests will be effectively safeguarded and that the waterway will continue to operate on an efficient, neutral and equitable basis, accessible to ships of all nations, the United States must retain all of the powers it currently exercises under the 1903 Treaty.

3. U.S. Taxpayers Investment.

According to statistics presented by opponents of renunciation of U.S. control in the Canal Zone, such action would result in a loss of over \$5 billion, representing the total net investment of United States taxpayers in the construction and subsequent maintenance, operation and defense of the Canal from 1904 through FY 1968.^{1/}

4. Unconstitutionality of renunciation of U.S. sovereignty by treaty.

Another issue raised by opponents of new Panama Canal treaties, especially by members of the House of Representatives, is that of the unconstitutionality of transferring any rights within the Canal Zone to Panama solely through treaty provisions.

According to terms of the United States Constitution, in Article IV, Sec. 3, Clause 2, "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States..." Thus, the United States Congress, which includes both the Senate and the House of Representatives, retains the power to transfer any United States territory or property under U.S. jurisdiction. It is contended that if the United States were to enter into a new treaty with the Republic of Panama which provided for the disposal of any of the territory currently within the Canal Zone boundaries or any properties therein, including buildings, equipment, etc., to the Panamanian

^{1/} Congressional Record, August 3, 1971. p. H7802; September 13, 1971. p. H8355. See also, Congressional Record, May 10, 1967. pp. H5321-H5324 for breakdown of U.S. Government operation and defense expenditures for the Canal and Canal Zone through FY1966, supplied by the Secretary of the Army.

Government, even if such a treaty were ratified by the Senate, such action would be illegal until the required approval was also obtained from the House of Representatives.^{1/}

5. Objections to Panamanian Control

Opponents of United States negotiation, cession or transfer of the sovereign rights exercised by this Government under existing Panama Canal treaties to the Government of Panama basically reject such action on two grounds: first, that Panama does not possess the technical and managerial expertise required to operate and maintain the Canal at levels necessary for its effective functioning; and second, and most important, the traditionally unstable nature of Panamanian politics and government poses an implicit threat to the security of U.S. interests served by the Canal and Canal Zone.

In the latter case, as evidence to support their position, opponents cite the fact that in the 67 years since Panama became a republic, there have been 58 changes of government. In the last 10 years, Panama has witnessed 11 changes of government. Given the proven mercurial nature of Panamanian politics, should the United States cede control of the Canal to Panama, this nation could seriously jeopardize its interests in the area in the event that a regime hostile to the United States gained power in Panama. Supporters of this view contend, moreover, that such a climate of political

^{1/} A detailed discussion of this issue appears in: "Disposal by Treaty of United States Property Rights in Panama," by Rieck B. Hannifin, November 14, 1967. CRS Multilith (JXL428 For. Latin America).

instability as exists in Panama is readily subject to subversive influence and pressures by external hostile interests, including communist aspirations for power, which would ultimately result in control of this strategic waterway by enemies of the United States, thereby endangering not only U.S. interests, but the security of the entire Western Hemisphere as well.

APPENDIX A

A Short List of Sources of Further Information on United States Relations
With Panama Concerning the Panama Canal

Hammarskjold Forums. The Panama Canal; background of the Sixth Hammarskjold Forum. New York, May 28, 1964, by Richard R. Baxter and Doris Carroll. Dobbs Ferry, N.Y. Published for the Association of the Bar of the City of New York by Oceana Publications, 1965.

Hannifin, Rieck B. "Panama-United States Relations since the Riots of 1959," August 4, 1967. CRS Multilith F-250.

----- "Disposal by Treaty of United States Property Rights in Panama, November 14, 1967. CRS Multilith (JX1428 For. Latin America.)

U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Inter-American Affairs. Report on United States Relations with Panama. 86th Congress, 2nd sess., August 31, 1960. CRS Multilith (JX1428 For. Latin America.)

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