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THE CANAL ZONE - PANAMA AND THE U.S.

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I.

Brief Historical Background

Early Interest

Almost two centuries ago there was evidence of multi-national interest in the construction of a connecting waterway through central America. Spain had contemplated building a canal across the isthmus as early as 1814, but the Spanish imperial power collapsed at about that time and the construction was never begun. Both the United States and Britain expressed interest in a canal either across the isthmus, or through Nicaragua. In 1878 a French company attempted to build a canal across the isthmus, but beset by graft, tropical diseases, and engineering problems the enterprise went twice bankrupt and finally collapsed in 1887. The river canal through Nicaragua begun the same year by American entrepreneurs went bankrupt three years later.

The Spooner Act of 1902 authorized the United States to negotiate with Colombia for a canal route, and if the negotiations with Colombia failed, to negotiate with Nicaragua. The Spooner Act mandated the President to obtain perpetual control of the necessary territory. Negotiations with Colombia led to the Hay-Herran Treaty of 1903. That treaty included a concession of 100 years, renewable at the option of the United States.

During the time of the negotiations Colombia was being pressed by revolutionaries. In a state of siege, the government was administratively disorganized and in financial straits. Colombia was anxious to have the canal as a source of revenue which could aid its recovery. Moreover, there existed the possibility that if the canal were not built through the isthmus of Panama, the province of Panama might well revolt. Colombia's negotiator with the U.S. wrote to the head of his government:

...the Panamanians...will never willingly submit to the opening of the canal in any other place than at the isthmus. They understand very well that the adoption of the Nicaragua route will be the moral and material ruin of Panama; and this sacrifice, which will have no compensations, may very well prove superior to the concept of a platonic patriotism.

The Hay-Herran Treaty of 1903 was ratified by the U.S. Congress, but during the seven months between the end of the civil war in Colombia (November, 1902) and the meeting of its congress (June, 1903) a number of Colombian objections to the treaty arose and the Colombian congress never ratified it. With the failure of this treaty, the United States prepared to negotiate with Nicaragua in accordance with the Spooner Act.

Creation of Panama

From the beginning Panama was geographically and psychologically separated from the rest of Colombia by the mountainous terrain. Since Colombia's independence from Spain there had been several eruptions of Panamanian discontent in an effort to establish an independent Panamanian state. Panamanians were fairly vocal in warning that should Colombia fail to ratify the treaty, rebellion would result on the isthmus. Not quite three months after Colombia's rejection of the treaty, Panama declared its independence in a virtually bloodless coup.¹ Colombia agreed to recognize the Republic of Panama in return for an indemnity of \$25 million, special transportation privileges, and a U.S. apology. The apology was never forthcoming.

Acquisition of Zone

Shortly after its declaration of independence, the provisional government of Panama offered to the U.S. what is known today as the Hay-Bunau-Varilla Treaty of 1903. This treaty incorporated the Hay-Herran treaty but also widened the Zone to ten miles and more clearly stipulated American sovereignty over the Zone. It contained a sovereignty clause which granted the U.S. "all rights, power and authority within the Zone...which the U.S. would possess and exercise as if it were the sovereign of the territory within which said land and waters are located to the entire exclusion of the exercise of the Republic of Panama of any such sovereign rights, power or authority." The treaty was amended in 1936 and in 1955, but the sovereignty and perpetuity clauses have not been disturbed.

Further, in addition to acquiring the Zone by treaty, the United States paid Panama \$10 million as "price or compensation" plus \$250,000 annuity (raised first to \$430,000 and currently at \$2,328,000).² Private claims were bought at fair market value (set by a U.S.-Panama Joint Commission).

¹A transisthmian railroad had been constructed by private American interests during 1850-1855. Uprisings in this area occurred from time to time and on at least seven different occasions the United States had sent in troops to protect free transit on the rail route, with Colombian consent. When Panama declared its independence, the railroad, adhering to a neutral position, refused to transport Colombian troops attempting to suppress the rebellion. U.S. Naval forces were on hand to prevent more Colombian troops from landing. Only one death resulted.

²Not rent, as sometimes alleged, but rather payment to cover a loss of the annual franchise payment to the Panamanian Railroad as a result of American acquisition of sovereignty.

Property transfers in addition to private titles and claims include property in Panama City and Colon (1943) - \$11,759,956; water system in those two cities - \$669,226; and 1955 Treaty transfers - \$22,260,500.¹

II.

Importance to the United States and to the Western World

Economic Importance

The Canal is important to the United States and to the entire free world; to close it would cause considerable dislocation in the economies of the Western world. For example, an average of about 70% of all cargo sent through the Canal either originates in or is bound for the United States. Japan sends about one-third of its oceanic trade through the Canal, and when viewed in terms of specific trade patterns² curtailment of its use of the Canal could bring economic disruption not only to Japan but also to the United States and the rest of the Western world. Great Britain is consistently second or third largest user of the Canal, with over 60% British-registered shipping crossing the oceans via the Panama Canal.

For Latin American countries, the trade through the canal is quite significant. The trade in particular between the countries of South America's West Coast and the Gulf and East Coast states of the United States relies heavily upon the use of the Panama Canal. For example, Nicaragua, El Salvador, and Ecuador send respectively 55.1%, 68.1%, and 72.4% of their oceanic trade through the Canal. Countries such as Australia and New Zealand rely on the Canal to reach vital European markets. All have a keen interest in the smooth and indiscriminatory operation of the canal.

It is not only the volume of trade passing through the Canal, but its diversity which is also an important factor in the significance of the Canal. The diversity of the trade passing through the Panama Canal can be contrasted with that going through the Suez Canal--chiefly oil--and for that reason too, disruptions in economies would be more severe if the Panama Canal were

¹Compare:

1803 Louisiana Purchase.	\$15.0 Million
1821 Florida Purchase.	\$ 6.7 Million
1848 Mexican Cession, including California	\$15.0 Million
1853 Gadsden Purchase.	\$10.0 Million
1867 Alaska Purchase	\$ 7.2 Million

²Coal and coke shipped from Hampton Roads through the Canal to Japan, and back again through the Canal as steel, automobiles and ships; also shipments to Brazil, where Japan has a sizable market, and to Western Europe.

to be inoperative than were the Suez to be closed. Not to be overlooked is the amount of fuel saved by each ship in avoiding the additional 8,000-mile journey around the Horn.

In sum, continued access for all countries, and at reasonable rates, is important to the economies of the entire Western world. For these reasons the issue of a new treaty is to be viewed as broader than a U.S.-Panama, or U.S.-Latin American concern.

Military Importance

The military importance of the canal can be easily recognized when it is realized that the distance around the Horn represents several weeks of additional sailing time when compared to the route across the isthmus. Our modern Navy stresses smaller, speedier ships, nuclear power, and independent missile capability. The Panama Canal is an important aspect of our assurance of speed and mobility.

Except for the large aircraft carriers, our Naval fleet can travel through the Canal, thus allowing our Naval planners a great deal of flexibility and versatility. Without the use of the Canal, the United States would need a larger ("two-ocean") navy, larger storage and harbor facilities on both the East and West Coasts, and provide additional merchant ships and escorts, and fuel. Interocean mobility would be threatened, both for the United States and for our allies.

III.

Benefits to Panama

Income generated by the Canal makes a large contribution to the Panamanian economy. During 1976 it included over \$29 million generated in direct purchases in Panama by U.S. government agencies; over \$108 million in wages to non-U.S. citizens employed in the Zone; expenditures in Panama of U.S. employees of over \$39 million; and an annuity of over \$2 million. The United States has contributed substantially in various ways to Panama's well-being. Construction of the Canal encouraged a large infusion of capital and employment; U.S. health officers' battle against yellow fever transformed the Zone as well as Panama City and Colon from a tropical graveyard into a relatively healthful location; U.S. constructed and maintains the Transisthmian Highway; and is constructing the Balboa Bridge. The United States has also contributed to various technical and special assistance programs, and U.S. private investments amount to about 50% of private capital invested in Panama.

Numerous special assistance programs have been instituted for the benefit of Panamanians, such as cooperative education programs, apprenticeship programs, office service intern programs, leadership programs, and Latin American student assistant employment programs.

In 1975, U.S. economic aid to Panama amounted to \$21.8 million. During 1976, total payments and income flow to Panama generated by the Zone amounted to \$243.2 million. With a population of only two million, it can easily be seen why per capita income is the highest in Central America.

IV.

Toward a New Treaty

Demonstrations

In 1960 President Eisenhower allowed some Panamanian students attending school in the Zone area to fly the Panamanian flag beside the American flag and in this manner encouraged the Panamanians to believe that they did have some sovereignty within the Zone. This act clearly violated the 1903 treaty. Moreover, the House reflected this view by passing by a 382-12 vote a resolution opposing display of the Panamanian flag on U.S. Canal Zone territory. This unwarranted and arbitrary indication that the United States did not have complete sovereignty over the Zone encouraged further demands by the Panamanians for some control over the Zone.

In January, 1964, extensive rioting took place in conjunction with a further dispute surrounding the flying of Panamanian flags in the Canal Zone. The Panamanians did little to restore order and before the rioting ended, four Americans and eighteen Panamanians were killed and \$200 million in property damage took place. Limited American force was used to help restore order and Panama broke off diplomatic relations and charged aggression against the United States before the Organization of American States. At the time President Johnson stated that "...violence is never justified and is never a basis for talks." But in September he announced the United States would engage in negotiations with the Panamanian government.

Kissinger-Tack Principles

The basic concepts of the Joint Statement between the U.S. and Panama were established by President Johnson after the Communist-inspired riots of 1964. Offered as a panicked response to a manipulated crisis, the concepts are now offered as a permanent solution. These principles have served as the basis for discussions regarding the new treaty. In brief, they are as follows:

1. The treaty of 1903 and its amendments will be abrogated by the conclusion of an entirely new interoceanic canal treaty.
2. The concept of perpetuity will be eliminated. The new treaty concerning the lock canal shall have a fixed termination date.

3. Termination of United States jurisdiction over Panamanian territory shall take place promptly in accordance with terms specified in the treaty.
4. The Republic of Panama shall be the sovereign over the Panama Canal Zone. During the life of the treaty, Panama shall grant to the United States the right to use the lands, water and airspace necessary for operation, maintenance and defense of the Canal and the transit of ships.
5. Panama will have a "just and equitable share" of the benefits derived from the operation of the Canal in its territory.
6. Panama shall participate in the administration of the Canal and will have total responsibility for the operation of the Canal upon the termination of the treaty. Panama shall grant to the United States the rights necessary to regulate, operate, maintain and protect the Canal, and to take specific steps related to those ends as agreed upon in the treaty.
7. Panama shall participate with the United States in defense of the Canal.
8. There shall be bilateral provisions for new projects to enlarge and improve the Canal. These shall be incorporated in the treaty.

Summary of Major Arguments

In Favor:

1. The United States is entering upon a new era in its dealings with Latin America, and, indeed, with the entire underdeveloped world. Secretary Kissinger spoke of a "new dialogue" with Latin America. The trip to Central and South America by the First Lady indicates President Carter's strong interest. Many of the regimes are nationalistic, militaristic and socialistic to an unprecedented degree. They are more confident of themselves and can no longer be counted on to support the United States as they did in the past. Even our closest allies in Latin America publicly favor a revision in the status quo. They support Panamanian aspirations and will judge the United States by how we respond.

2. The situation, as it now stands, is potentially violent. There have been riots and demonstrations in the past. The Panamanian government has served notice that it will become a "thorn" to the United States if a submitted treaty is rejected. Panamanian Ambassador Gabriel Lewis, for example, warned that if the negotiations fail, there will be such a storm of protest that the U.S. "will have no other alternative than to let it (the Canal) go." Violence could disrupt transit and make it politically embarrassing for the U.S. to continue to cling to the Canal.

Even if sufficient forces were brought in to give full protection to the Zone, a single saboteur could still succeed in closing the Canal. A new treaty, by fostering a friendly relationship with Panama, is most conducive to protecting U.S. interests in a free and open Canal.

3. During the life of the treaty the United States would retain primary responsibility for the operation and defense of the Canal. Gradually during this period Panama will assume more operational responsibility until it has the necessary expertise to assume full control. This time period will be at least twenty years; certainly long enough for Panamanians to learn how to operate the Canal. The transition phase, likewise, means that it would not be until the year 2000 that the U.S. retires as the principle party in the defense and operation of the Canal. This provides a considerable length of time to prepare all the parties concerned, both in Latin America and elsewhere, on the implications of the new relationship.

4. During the life of the treaty the United States will retain its base rights (although they will probably be reduced in number) and will retain its rights to intervene militarily. Furthermore, there is a proposed second treaty to be signed by other nations, guaranteeing the Canal's open and nondiscriminatory usage after Panama takes control. This document would also give the United States the right to intervene if the Canal became threatened or if access should be denied.

5. Panama has an economic self-interest in keeping the Canal operative; it derives more income from the Canal than from any other source.

Opposed

1. The United States has a legal right to remain in the Canal Zone "in perpetuity" and as "if it were sovereign" according to the 1903 treaty with Panama. The United States acquired the Zone by treaty and also by direct purchase, it has operated it evenhandedly for all nations since it was first opened in 1914. The decision of the Supreme Court in the 1907 Wilson v. Shaw case held that the United States has legal sovereignty and ownership for the purposes enumerated in the 1903 treaty.¹ This ruling was reaffirmed in 1972.

2. To relinquish the statutory right to remain in the Zone amounts to a classic giveaway, opposed by a majority of the American public.² The building of the canal is an American achievement which amounted to the technological "moonshot" of its time, and which has remained a testimony to American creativity and ingenuity.

¹Wilson v. Shaw, 204 U.S. 24, 1907. "This new republic (Panama) has by treaty granted to the U.S. rights, territorial and otherwise...It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate."

²Opinion Research Corporation poll conducted May, 1975; 76% answered "no" when asked "Should the U.S. give up its sovereignty over the Panama Canal?"

3. The Canal has great importance for U.S. military and economic policies. A significant amount of total U.S. trade passes through its locks. Although our aircraft carriers are too large to transit the Canal, all other naval vehicles can. In limited war situations such as Korea and Vietnam the Canal has great importance for both supply and military vessels. The necessity for the United States to maintain absolute control over the operations and defense of the Canal is even more evident during emergency or crisis situations where quick response and unquestioned access are necessary.

4. Although all Latin American nations have publicly called for a new treaty, there is ample reason to believe that this is more of a pro forma diplomatic stance taken out of necessity rather than conviction. If the United States relinquishes the Canal, our power and standing both in Latin America and throughout the world would diminish. This is particularly the case in the light of recent U.S. retreats from other areas of the world. A Canal treaty seen in this perspective would be interpreted as another example of the continued erosion of American willpower and influence.

5. Panama is a weak and unstable country controlled by a nationalist dictator known for pro-Communist sympathies. General Torrijos is on excellent terms with Fidel Castro and he has on several occasions deliberately embarrassed the United States in front of "third world" audiences. There is the possibility that in the hands of Torrijos the Canal might fall under Communist influence, or that the United States might be denied access. Almost certainly tolls would rise dramatically. In short, once the United States relinquishes control, it will be subject to the intentions and capabilities of Panama's dictator, none of which can be fully anticipated.

6. Torrijos' regime has been a consistent violator of human rights inside Panama. In light of President Carter's emphasis on human rights, especially since that issue has taken on important symbolic and concrete meaning throughout Latin America, the United States would be guilty of bold hypocrisy in relinquishing the Canal.

7. Over the last decade the Soviets have made monumental strategic gains at the expense of the West. The Kremlin has moved into a number of power vacuums during this time and is expected to attempt to gain control over the Canal, either remotely or directly, should the United States relinquish its treaty rights. The Canal is seen as a vital "choke point" in part of a global power struggle directly related to the security of the United States and the West.

In fact, the Soviets, who do not even have diplomatic relations with Panama, have recently concluded tentative economic and commercial agreements with Panama. It is fully expected that the Soviets will move to supply engineers to operate the canal lock system as a preliminary move toward further influence over operation and control of the canal as the Americans withdraw.

V.

Special Interests

U.S. Banks

Maintaining the favorable climate for international banking currently enjoyed in Panama is one major reason cited by those who allege that the rush toward a new treaty is propelled by special interests. In 1970, Torrijos reorganized the country's banking laws to allow international banking transactions free of taxation, together with other advantages, which resulted in the unprecedented expansion of the banking industry in Panama. Today, it is alleged that those institutions, having provided loans to Panama's sagging economy, favor a new treaty with increased annual payments in order to insure that Panama will be able to repay its debts to these institutions.

It has been noted that the chief co-negotiator of the new treaty, sits on the board of directors of a bank that has made a number of risky loans to Panama's troubled economy. This situation has raised questions of possible conflict of interest among the Congress and the public.

It is noteworthy in view of these facts that Mr. Linowitz's appointment was a special short-term appointment of only six months, thus precluding the opportunity for the Senate to question him regarding possible conflicts of interest through the formal procedure of advice and consent. The rush toward agreement to the broad treaty concepts came just hours before the Linowitz appointment expired.

Panama Economy

Economic conditions in Panama have grown steadily worse over the years. Panama's indebtedness has grown from \$167 million when Torrijos took power to approximately \$1.5 billion currently. It is estimated that debt service alone will consume 39% of that country's budget this year (compared with 7% in the United States), and Panama's Department of Planning indicates that to refinance loans coming due, together with the deficit of \$139 million, will require a total of \$323.6 million. A document from the Department of Planning for Panama states (in translation) that "...it will be extremely difficult to syndicate loans with the commercial banks in the amounts previously mentioned...." Also, "...the relation between servicing the debt, and current revenues...suggest a deteriorating capacity to service this debt...."

A confidential memorandum sent last October by the U.S. Embassy in Panama to the U.S. State Department implies that the increase in commercial loans has made the situation worse, and "permit Panama to defer grappling with the core problem...." It states further that "much of the capital inflow of the past three years has aggravated Panama's economic malaise by exacerbating its debt service burden without enhancing overall productivity."

The financial situation has been aggravated by government measures which result in pricing Panama's exports out of the world market, through imposition of minimum wage, price supports, and rent control.¹

In light of the above, the timely and generous financial arrangements arrived upon this week will be crucial to Torrijos in shoring up his sagging regime. He had originally requested a payment from the United States of \$5 billion, together with an annuity of \$300 million until the year 2000; he was persuaded to accept the current figure of about \$50 million per year, plus a generous military and economic aid package of approximately \$350 million.

VI.

Congressional Approval

The Administration is aware that it will have a difficult time in persuading the Senate to ratify the new treaty, and the American public to accept it. According to Congressional leaders, current count in the Senate is around fifty favorable votes, with a total of sixty-seven needed for approval. Polls indicate that the majority of the American public opposes any treaty which relinquishes sovereignty over the Zone and control of the canal.²

Although ratification will be difficult, the next few months are viewed as more favorable for proponents than the months approaching, or during, 1978, which is an election year for one-third of the members of the Senate. In addition, the fact that the agreement was reached at a time when Congress is not in session is seen as advantageous in diminishing the possibility for protests from Members of Congress. Further, most of the comprehensive package of payments to Panama is presented in a way which would not require Congressional action, reducing the possibility for friction and disagreement with that body.

Ratification of a new treaty is effected by agreement of two-thirds of the Senate. However, the House of Representatives is also expected to participate in the debate on the broad package of proposals designed to relinquish the Canal, as disposition of U.S. territory and other property of the United States is involved; Article IV, Section 3, Clause 2 of the United States Constitution provides that only the Congress has the authority to dispose of "the Territory or other Property belonging to the United States." As one Member of Congress warned upon hearing of the conceptual agreement:

The House will not abide by an agreement which unilaterally relinquishes U.S. territory, nor will the House abide by back-door loans and grants to Panama made without its consent.

¹See Congressional Record, February 22, 1977, page S2820.

²See "The Canal Treaty: Words of Caution," by Charles Maechling, Jr., The New York Times, Monday, August 8, 1977, p. C23.

VII.

Consequences

Two interrelated considerations should be examined as the terms of the actual treaty are studied. The first is the necessity for the Canal to remain open at all times to international shipping. The second is to assure American sovereignty until the turn of the century when the property and territory would be ultimately relinquished.

Currently, two treaties govern the status of the Canal. The Hay-Bunna-Varilla treaty of 1903 discusses the rights of the United States and is described earlier. The Hay-Pauncefote treaty of 1900 is between the United States and Britain wherein the United States pledges to keep any canal across the isthmus free and open to all nations, without discrimination. Panama has no such obligation, and would not be hindered from either denying transit or imposing discriminatory tolls.

Secondly, the proposed new treaty would require the gradual ceding to Panama of control over the operation of the Canal. However, any comprehensive transfer of jurisdictional rights before the turn of the century could be interpreted as a ceding of sovereignty. With sovereignty prematurely divested, (either by implication or otherwise) it would not be difficult to harass the United States on every matter not specifically dealt with in the treaty. If sovereignty is to be transferred over a period of time, it should occur at the conclusion of the agreement.¹

Should sovereignty be prematurely relinquished under the new treaty, the power of the new sovereign to evict would invite international pressures to that end, and agitation would be encouraged and intensified. The pattern of revolutionary turmoil and frequent changeovers in governments indicate that Panama would not be resistant to such pressure.

A lesson can be drawn from the Suez Canal, where an ostensibly private company, with British government participation, operated under the sovereignty of another country. Rights retained by the British to protect their property, and the declaration of the Convention of Constantinople guaranteeing right of passage to vessels of all nations were of no avail when Egypt expropriated and later closed the Canal. Similarly, a new treaty with Panama as sovereign would not insure unimpeded passage through the Canal nor would it particularly deter expropriation of the Canal.

It is believed that Panama intends to raise the tolls substantially once it controls operation of the Canal. Panama's representatives have made statements to the effect that they would like the tolls to be raised sharply, and that they do not intend to "subsidize" world shipping.

¹See "The Canal Treaty: Words of Caution," by Charles Maechling, Jr., The New York Times, Monday, August 8, 1977, p. C23.

With respect to security of the Canal, the control of the Zone is as important as is control over the Canal. The Zone acts as a buffer area for any disturbances which may occur. This defensive buffer will be lost should the Zone merge into Panama, and the Canal would then be truly indefensible.

It is unreasonable to believe that the transfer of sovereignty would remove an irritant and bring about improved relations with Panama and Latin America. In attempting to appease and accommodate hostile ideological elements, the United States ignores a valid lesson of history.

