

October 24, 1977

PANAMA : TERMS OF THE TREATIES

SUMMARY

The visit to Washington on October 14, 1977, by General Torrijos of Panama underscored the severe problems that have arisen in the series of hearings held on the Panama Canal treaties. Through the issuance of a new joint statement of clarification of some of the terms of the Neutrality Treaty, the two governments attempted to reassure the people of both Panama and the United States that the vital interests of both countries are adequately protected under the new agreement.

However, the problems exemplified in this one section of the treaties appear to reflect the general nature of the agreement itself and prospective difficulties with other sections. The following areas of controversy that have arisen, particularly in congressional hearings, are examined in detail in the main body of this paper:

*The two new treaties simply follow the general outline of the agreements in principle reached by previous administrations. By not taking into account the numerous objections raised over the years by the United States Congress over some of these principles, an inevitable conflict has arisen between the executive and legislative branches of government in the ratification process.

*At the center of the controversies over the new treaties is their fundamental purpose: transferring control of the Panama Canal and the Canal Zone to the Panamanian government over the next 22 years.

*The creation of a jointly run Panama Canal Commission to immediately replace the Panama Canal Company raises serious

problems over the continued efficient operation of the canal. The treaty mandates more Panamanian participation in employment. A five-year limit on future non-Panamanian workers may lead to a lack of sufficient skilled workers to operate the canal.

*Major control over the Canal Zone and its residents by the Panamanian government takes place in a relatively short 30-month period in contrast to the 22 years in which administration of the canal is transferred. American canal employees may leave the area rather than live under the jurisdiction of the military dictatorship that presently rules Panama.

*Prohibiting the United States from negotiating with another nation to construct a new canal without Panama's permission may foreclose a necessary option if the new canal treaties leads to either extraordinarily inefficient operation with excessive tolls or the complete closure of the canal.

*Under the economic terms of the new treaties, the Panamanian government will receive approximately \$60 million in revenue per year, or over a 2500% increase from their present direct benefits. Because Panama's share of revenue is tied to the American wholesale price index, the rate will rise at nine separate intervals over the next 22 years. A Panamanian economic minister has estimated that his government would receive a total of \$2.262 billion in 1977 dollars.

*Since the new payments to Panama are supposed to come out of operating expenses of the canal, an immediate increase in tolls from 25% to 40% will be required upon inauguration of the new treaties. This will be the largest single increase in the history of the canal and could substantially affect American export and import trade. If the increases still fail to cover expenses then the Panama Canal Commission, as a U.S. government agency, may have to seek appropriations from Congress to make up for any possible deficit.

*Conflicting interpretations of American rights to protect the canal after the year 2000 reveal potential problems with the Panamanian government in the future over the language of the treaty. While apparently resolving differences over the meaning of "expeditious passage" the joint Carter-Torrijos Statement of October 14, 1977, raises other questions about the capability of the United States to act if denied access to Panamanian territory which, after 2000, will encompass all lands surrounding the canal and even the canal itself.

INTRODUCTION

On September 7, 1977, President Carter signed two new Panama Canal treaties with General Omar Torrijos in Washington, D.C. If ratified by a two-thirds vote of the United States Senate and approved in a referendum in Panama, the treaties would establish a new framework for the operation of the Panama Canal for the next 22 years and after that period grant complete control over the canal and adjoining area to the Republic of Panama. The first treaty terminates or supersedes all previous treaties and agreements with Panama and, over a period ending on December 31, 1999, transfers control over the Panama Canal and Canal Zone to the government of the Republic of Panama. The second, much shorter, treaty provides for the "Permanent Neutrality and Operation of the Panama Canal."

In late September and early October, both the Senate Foreign Relations and the House International Relations Committees held extensive hearings on the new treaties. This analysis reviews the provisions of the two treaties, but focuses primary attention upon the various controversies that have arisen in the course of the congressional hearings. An earlier Heritage Background (No. 31) examined some of the broad general issues involved in the transfer of the canal to Panama. Another Background will later re-examine some of these same questions in the light of the new treaties; but this analysis deals only with the specific provisions of the proposed treaties and the controversies they have precipitated.

THE FRAMEWORK OF THE TREATIES

The treaties open with reference to both the Joint Declaration of April 3, 1964, and the Joint Statement of Principles of February 7, 1974, between Panama and the United States as establishing the general framework of the new treaties. Most of the details of the two agreements implement many of the general principles laid out in these two previous agreements. But compared to the 1967 draft of an agreement, never officially ratified by either side, the 1977 treaties propose terms that are much more favorable to the Panamanian side.

In the prelude to the first treaty, the United States agrees to abrogate the previous treaties by "acknowledging the Republic of Panama's sovereignty over its territory." In several other places in the agreement, the United States also "acknowledges" Panama's sovereignty rather than "granting" it. Thus, the fundamental premise of the new treaty rests upon existing Panamanian sovereignty and the terms of the treaty only change the

nature of Panama's sovereign power over the Canal Zone. Critics of the agreement contend that the United States currently possesses sovereignty, or at least all the meaningful attributes of sovereignty, and thus the new treaty actually transfers American control.

Unlike the 1903 treaty, the Panama Canal Treaty of 1977 lasts for only 22 years. Thus, the treaty provides the mechanism for transferring all of the facilities and functions relating to the operation of the Panama Canal and Zone over to the Republic of Panama. At the termination of this treaty at noon, Panama time, December 31, 1999, the Republic of Panama will assume complete authority over the area. Only the second treaty, dealing with neutrality, extends beyond this 22-year period.

ABOLITION OF THE PANAMA CANAL COMPANY

Article III of the first treaty provides for the rights which Panama grants to the United States under the new treaty. These rights relate largely to the operation of the canal under a newly established Panama Canal Commission. This organization, governed by a 9-member board with an American majority, would assume many of the functions previously performed by the Panama Canal Company. Provided that the American members of the board should vote as a unit, the United States would continue nominal control over the operation of the Canal until the year 2000.

However, unlike the present arrangement, the activities of the new Commission are narrowly restricted under the treaty itself. Section 5, e.g., of Article III provides that the Commission will reimburse the Republic of Panama \$10 million per annum for providing "police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection." Every three years the payment will be readjusted to reflect inflation and other factors. Section 6 provides that Panama will also assume other functions, such as customs, post offices, courts, and licensing that previously were performed by the Panama Canal Company. In general Section 8 provides that "there shall be a growing participation of Panamanian nationals" at all levels of employment related to the canal.

A separate Panama Canal Consultative Committee is established under Section 7. This body, composed equally of Americans and Panamanians, will "advise on matters such as general tolls policy, employment, and training policies of Panamanian nationals in the operation of the Canal and international policies on matters concerning the Canal." Given the even number of members

on this board, potential difficulties exist in the formulation of concrete recommendations.

DEFENSE OF THE CANAL UNTIL 1999

Article IV provides the United States with the "primary responsibility to protect and defend the canal" until 1999. Critics of this section contend that too much discretionary authority has been left with the President and that the United States needs to operate more than four bases in order to adequately defend the canal.

While the United States presently has fourteen bases in the Panama Canal Zone, the new agreement would reduce this number to only four. This is not included in the main body of the treaties, but instead has become part of an executive agreement that accompanies the treaties. And even the four bases will be jointly run with the Panamanians. Because the President can act freely under an executive agreement to reduce forces at his own discretion, Senator Allen objected that too much power was granted the President to effectively phase out credible American military force in Panama well before the year 2000.

Moreover, under the treaty a board comprised of an equal number of American and Panamanian military representatives shall oversee military cooperation in defending the canal and periodically review the situation. The American forces could only take action outside the limits of their bases with the approval of this board. This has led to concerns that pressure for the removal of Americans from their existing four bases may mount well before 1999.

Some military men have also strongly criticized the effectiveness joint board governing defense decisions. They believe that defense of the Panama Canal concerns matters that require instant decisions that can only be made effectively by one supreme authority and that a coalition defense arrangement would introduce potential discord and thwart prompt action.

AMERICAN EMPLOYEES OF THE PANAMA CANAL

Articles V, IX, X, and XI govern the rights of non-Panamanian employees of the Panama Canal. While the United States will continue to operate the canal until 1999, the Republic of Panama assumes official jurisdiction over the Canal Zone upon ratification of the treaty and complete legal jurisdiction over

the area in a 30-month transition period. Thus Americans, who previously lived under the jurisdiction of the United States government, will come under Panamanian authority.

Under Article V, called the "Principle of Nonintervention," employees of the Panama Canal Commission must "abstain from any activity incompatible with the spirit of the treaty. Accordingly they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama." This section has engendered great apprehension because the Canal Zone will be a part of the Republic of Panama under the treaty; hence, the military government of Panama will have complete discretion over interpreting what constitutes "the internal affairs" of Panama.

Article XI grants to the United States "the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents" and military forces for some offenses. But this right only exists for the 30-month transition period and grants to Panama a wide latitude in other areas. Similarly, the United States will only "retain police authority and maintain a police force" in certain specified areas for the transition period.

Given the present animosity between many Americans currently living in the Zone and the Torrijos government, the new treaties have raised serious questions whether sufficient skilled Americans will remain in Panama to run the canal if the new treaties are ratified. Many have already left simply in anticipation of the new agreement; other Zonians have purchased guns for defense. Violence may erupt if the agreement is ratified and the government of Panama attempts to assert its new jurisdiction over the Canal Zone by attempting to collect the privately owned guns which then will be illegal under Panamanian law.

In response to questions raised about prospective problems that Americans citizens working in Panama may entail, the State Department points out that they "will enjoy rights and protection similar to those of large concentrations of U.S. government employees elsewhere abroad." Also, even if Americans are arrested under Panamanian laws, they retain the right under the treaty to await trial and serve out their sentence, if convicted, in U.S. custody.

EMPLOYMENT WITH THE PANAMA CANAL COMMISSION

Under the treaty other changes pertain to future employees of the Panama Canal Commission, the agency given responsibility for actually running the canal itself. As stated above (Article III) Panamanians must be given increasing participation in the operations of the canal. In order to encourage this, Article X provides that "Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission...shall be at least twenty percent less than the total number" now employed by the Panama Canal Company. Thus, if Americans do not voluntarily leave, they will be required to do so. At present a reduction of this size appears likely to occur naturally.

Moreover, under Section 5 of the same article, any new non-Panamanian employees of the canal will only be allowed to work for a maximum of five years. This mandated rotation will presumably prevent the continuation of the present American community that has often provided several generations of canal employees. But at the same time, it may make it difficult to continue to fill the most skilled positions, although some exceptions to the five-year policy may be granted. This requirement for a maximum service of five years is counter to the lessons of experience in the operations of the Panama Canal. Employees have always sought jobs in the past on the basis of a career of civil service rather than temporary assignment.

In order to accomplish this arbitrary reduction of non-Panamanian personnel, the Commission will "periodically inform the Republic of Panama...of available positions" that become open and Panama shall provide "Panamanian nationals claiming to have skills and qualifications" necessary for the jobs. In order that certain skilled personnel will qualify for positions, the United States "shall recognize the professional licenses issued by the Republic of Panama."

The ostensible control that the Panamanian government will exercise over the future employees of the canal has led to some criticism by both Americans and Panamanians now working in the Canal Zone. American employees express the fear that people lacking sufficient qualifications may be placed in jobs simply to satisfy the requirements of the Panamazation formula for overall employment objectives. Moreover, black Panamanians have voiced their concern that the current non-discriminatory hiring policies of the Panama Canal Company will be replaced by Panamanian government prejudice in hiring.

Finally, Senator Griffin pointed out in the Senate hearings that some questions exist as to whether current procedures for

electing union representatives will continue and just what conditions may be imposed, under Panamanian law, over negotiations for new contracts. He expressed the fear that workers benefits may have the lowest priority in the allocation of revenues collected by the Commission.

SEA-LEVEL CANAL OR A THIRD LANE OF LOCKS

Of the various portions of the proposed agreement, Article XII dealing with the building of another canal contained one of the most unexpected provisions. This very short section of the main treaty provides for the joint study by Panama and the United States of possibly building a sea-level canal.* It also grants to the United States the right "to add a third lane of locks to the existing Panama Canal." If the United States exercises this right, the new lane of locks would be governed by this same treaty and turned over to Panama in 1999. Some have pointed out that under the 1903 treaty the United States already has authority for "expansion and new construction" for the existing canal and thus no new permission is necessary. But beyond existing American rights the new terms have raised other concerns.

The controversy has focused on the one section of this article that reads in its entirety as follows:

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third states for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

*Technically no sea-level canal can exist because of the variations of water levels caused by the tides in the two oceans. Thus a sea-level canal actually would be a tidal-locks canal so that the differing levels could be adjusted. Thus one set of locks would still be necessary.

Section 2b clearly means that the government of Panama would have the power to prevent the United States from either building or even negotiating to build another canal anywhere in the hemisphere without their consent. Critics have contended that this provision locks the United States into the present treaty and consequently regardless of what might transpire in the next twenty-two years, the United States has no alternative other than using the present canal. Thus even with a change in government in Panama or the closing of the canal for whatever reason the United States could not pursue an alternative route.

In exchange for this veto power, the United States presumably has the right under Section 2a of this article to prohibit Panama from building a sea-level canal anywhere in her own territory with any other country. Supporters of the new treaty have pointed out that at present Panama could negotiate with the Soviet Union to build a sea-level canal, but under this section of the new treaty the United States would have to assent.

During the Senate hearings on the treaties, it was revealed that supporting documents on Article XIII indicated that under Section 2a the United States only had a right to "first denial" of a proposal to build a sea-level canal in Panama. In other words, Panama could pose terms for a sea level canal unacceptable to the United States and in this manner would free herself of any restrictions on her course of action under Section 2a. Furthermore, if a nation such as the Soviet Union offered to simply lend the money to Panama to build a canal then this section would not apply.

The prospective role of a sea-level canal becomes important in any discussion of having a canal that can accommodate the largest supertankers and aircraft carriers. Senator Gravel pointed out in his testimony that the costs of building a sea-level canal (now estimated at \$5.29 billion by the Army Corps of Engineers) could be compensated for by the amount of money saved over several decades of transporting upwards of 500,000 barrels of oil per day from Alaska to the Gulf states area. Costs presumably would fall from the present \$2.83 per barrel for Panamanian transshipment to about \$2.18 per barrel with a sea-level supertanker. Senator Gravel supported the proposed treaties as paving the way for a new sea-level canal agreement.

On the other hand, Senator Thurmond dismissed serious discussion of sea-level canal because Panama would either lose all of her jobs related to operating the locks or charge prohibitively high tolls even for the sea-level canal. With the difficulties that have arisen with the present canal, he contended that the United States should not enter any future canal arrangement with Panama. Others pointed out that even if Panama entered into an

agreement with the Soviets to build a sea-level canal, the United States could satisfy her basic needs by simply maintaining complete control over the present canal.

Another objection to this section arose among conservation and environmental groups who object to the principle of a sea-level canal. Congressman Leggett testified before the Foreign Relations Committee that extreme marine biological hazards would be involved in having a salt water channel between the oceans. Moreover, conservation groups do not believe that the present wildlife sanctuaries adjacent to the canal will be adequately protected when transferred over to the Panamanian government.

ECONOMIC TERMS OF THE NEW TREATY

Aside from the defense and national security issues dealt with below, the new economic arrangements under the proposed treaty have probably generated the strongest opposition. The new formula for compensating Panama for the use of the canal over the next 22 years would mean an increase of direct revenue for the Panamanian government of approximately \$57 million or over a 2500% increase from the present amount.

Article XIII outlines these new, complicated economic arrangements and also provides for the transfer of the current physical assets of the Panama Canal Zone. This means all of the buildings, dock facilities, the Panama Railroad, and eventually all housing, schools, stores, and other properties currently belonging to the Panama Canal Company or the United States government. Panama would take immediate title to most of these assets and others, such as the four military bases, by 1999.

Section 4 of Article XIII provides for three devices for compensating Panama for the use of the canal:

1. Panama shall receive 30 cents for each net ton for each vessel transiting the canal. This, however, is only the base figure. After the first five years, this figure "will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods." Each two years thereafter the figure will be adjusted, presumably upwards. Thus during the life of the treaty, this figure would rise on nine separate occasions by the amount the United States wholesale price index rises every two years.

2. The present fixed annuity of \$2.3 million would immediately rise to \$10 million and remain at that figure for the duration of the treaty. Over the life of the treaty this would amount to \$220 million.
3. Finally, "An annual amount of up to \$10 million per year" would be paid to Panama out of operating expenses of the canal if any surplus exists. If no surplus in revenues exist in any given year then "the unpaid balance shall be paid from operating surpluses in future years." Thus the maximum amount collected under this section would be \$220 million also.

In his testimony before the Senate Foreign Relations Committee, Secretary of State Vance estimated that "Panama would initially receive about \$60 million per year under this formula, which would apply until the year 2000." He further pointed out that "All of these payments are made from Canal revenues. Panama will thus have a strong interest in insuring unimpeded and efficient use of the canal."

The United States does not directly pay these amounts to Panama, but instead they must be derived from revenues generated by traffic through the canal. Thus the United States Congress will never vote directly upon these payments to Panama; they are incorporated in the expenses of operation of the canal by the new Panama Canal Commission. But since the Panama Canal Company currently operates the canal at a slight loss, the only manner in which these new expenditures can be met would be through substantial increases in the tolls of ships transiting the canal. However, in the Senate hearings on the treaty, Senator Griffin indicated that if a deficit does occur then the United States government may be forced to provide the balance of funds because the Panama Canal Commission is a United States government agency.

The American treaty negotiator Sol Linowitz has already estimated that the tolls under the new treaty would probably rise immediately by 25% to 30% to cover the new expenditures and avoid a further deficit. An increase of this amount would constitute the largest single increase since the canal began operating in 1914 and still might only temporarily cover anticipated expenditures. The Panama Canal Company has projected an increase of 40% to meet the new expenditures. The escalator clause in the 30 cents per ton levy coupled with the Panamanian incentive to guarantee a surplus of \$10 million each year would probably produce further increases.

Various projections have been calculated in order to estimate the total economic benefits that the new treaty bestows upon the Panamanian government. Using Secretary of State Vance's estimate of \$60 million per year over the life of the treaty would lead to a total of \$1.32 billion coming into the Panamanian treasury. Senator Harry Byrd has similarly estimated an amount of \$1.15 billion, but both of these figures are in 1977 dollars. In a speech to the Panamanian National Assembly on August 19, 1977, Panamanian Planning and Economic Policy Minister Nicolas Ardito Barletta estimated that his government would receive a total of \$2.262 billion in 1977 dollars. The variations undoubtedly reflect differing calculations of anticipated volume of traffic through the canal and future changes in the toll structure as well as benefits Panama will receive from other operations they will assume in the Canal Zone.

Supporters of these new arrangements contend that the previous payment of \$2.3 million constituted inadequate compensation for Panama's major asset, her geographic location. In the hearings Senator Percy pointed out that the United States pays other nations comparable amounts of money in order to lease military bases on their territory. Others recalled that last spring Panama demanded \$5 billion, including an initial \$1 billion lump sum down payment, for the American right to operate the canal for the next 22 years. Thus Panama substantially moderated her demands and therefore the \$60 million per year figure is not unreasonable. But most importantly, as Secretary Vance stated, the payments should derive completely from canal revenues and therefore "the treaties require no new appropriations, nor do they add to the burdens of the American taxpayer."

Opponents of the payments point out that the \$2.3 million annuity figure only represents a small part of the total revenues the canal pumps into the Panamanian economy. Including wages, retirement benefits, purchases of goods and other items, the estimated gross amount of income flow into Panama from the Canal Zone last year amounted to \$243.2 million. They further note that only through the construction of the canal by the United States did Panama begin to benefit substantially by her location. Senator Byrd estimates that the canal and assets in the adjoining zone constitute a \$7 billion investment in itself, and thus additional payments may bring to \$10 billion "the overall cost of the Panama Canal treaties." Opponents simply deny that Panama had any right to demand any amount of money and that American rights over the zone exist in the 1903 treaty and this makes the situation fundamentally different from other military base agreements. Finally, the method of payment is considered a subterfuge in that the consumers and producers of all goods passing through the canal will have to pay the costs of the increasing tolls. With 68% of all shipping either originating or termi-

nating at United States ports, American citizens will ultimately pay a substantial percentage of the costs involved in the new treaty.

CONFLICTING INTERPRETATIONS OF THE NEUTRALITY TREATY

While the first treaty, examined above, deals extensively with the arrangements for operating and transferring the canal and Canal Zone over to Panama over the next 22 years, the second treaty has engendered the most controversy, eventually prompting another visit to Washington by General Torrijos on October 14th and the issuance of a joint clarification statement. The second treaty entitled "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal" is designed to provide for the security of the canal after the termination of the first treaty. However, even before the initial appearance of the text of this treaty, conflicting interpretations of its key provisions arose.

A. The Right of Intervention

In particular, attention has focused on two key articles of the treaty dealing with the right of the United States to act unilaterally to maintain the neutrality of the canal and the right of the United States warships to priority passage through the canal.

Article IV reads as follows:

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two contracting Parties.

The Carter Administration has contended that under this article the United States has the authority to intervene unilaterally to protect the neutrality of the canal. Secretary Vance maintained in his prepared statement to the Senate Foreign Relations Committee that, "after the year 2000...the United States will have a permanent right to maintain the canal's neutrality, including the right to defend the Canal if necessary." The language of Article IV "means there is no limit under the Treaty on the freedom of the U.S. to assure permanently the Canal's neutrality."

However, on August 19, 1977, Dr. Romulo Escobar Bethancourt, the Head of the Panamanian negotiating team, provided a different version of the neutrality treaty in an address to the Panamanian National Assembly. He examined at length the negotiating process and maintained that it remained "stalled until the United States gave up the idea of its guaranteeing the Canal's neutrality." He alluded back to the first article of the second treaty which states that "The Republic of Panama declares that the Canal...shall be permanently neutral...." By denying the United States the right to join in this declaration Escobar maintained that declaring "the Canal's neutrality was an act relating to Panama's sovereignty." Therefore, he concluded that "we are not giving the United States the right to intervene." In a press conference on August 22, Escobar flatly stated that "The neutrality pact does not provide that the United States will say when the neutrality is violated."

When confronted at the hearings with Escobar's statements, Ambassador Linowitz asserted that he thought "too much is being made of a statement that was made by the negotiator in Panama which has not been repeated...." But he also asserted that "We are under no obligation to consult with or seek approval from any other nation or international body before acting to maintain the neutrality of the canal." When General George Brown testified before the same committee, he expressed a view similar to Linowitz's, but with less assurance: "In my judgment, these provisions insure that the U.S. ability and unilateral right to defend the canal against any external threat remain unimpaired."

B. Expeditious Passage

Similar difficulties developed over the meaning of Article VI of the treaty which provides that "vessels of war and auxiliary vessels" of the United States and Panama "will be entitled to transit the canal expeditiously." In his national assembly speech, Escobar asserted that in the course of the negotiations the United States sought preferential rights of passage, but "after long discussions they (the American negotiators) accepted the U.S. warships could not be granted preferential rights." He maintained that by granting any preferential right to United States warships would violate "the neutrality treaty and was contrary to the objective of the treaty we were negotiating." When asked about this at a press conference, Escobar rather inelegantly stated, "if...the gringos with their warships say, 'I want to go through first,' then that is their problem with the other ships there."

In the Senate hearings, Secretary Vance indicated a differing interpretation of this section. When asked what the right to

transit the canal expeditiously meant, Vance responded that "in practical terms, as I understand it, this means our ships will go to the head of the line." Ambassador Linowitz admitted that he was disturbed by the statements of Escobar, but asserted that "some people very high in the Panamanian government has assured us that we will not hear similar statements in the future."

But only one week later still more disconcerting statements emerged from Panama. Senator Dole released the text of a confidential State Department cable that indicated the two views of Escobar had been confirmed by another Panamanian negotiator. Carlos Lopez Guevara told American Embassy officials that he found discussions of the treaty in the U.S. Senate hearings disturbing and that neither preferential passage nor intervention were granted to the United States under the neutrality treaty.

In a major televised address on October 3, Guevara elaborated at length on the same points raised in the cable. On the questions of intervention he stated the following:

It is sad to see highly responsible officials in the United States say that this neutrality treaty grants the right of intervention. It is sad to note this inconsistency, not only because there is nothing in this treaty to serve as a basis for such a claim, but also because the term "intervention" has been left out of international diplomatic jargon since World War II, since the time when the UN Charter was signed.

Similarly he stated quite simply that "expeditious does not mean priority or preferential treatment." He noted that the term priority appeared in the 1967 treaty but was "rejected by the Panamanian negotiating team" in the 1977 treaty. He directly contradicted Secretary Vance by saying, "I have heard it said that expeditious means 'ahead of the line' (quoted phrase spoken in English) at the front of the line. And from where does this interpretation come, when the history of the negotiations reveals that every notion of preferential treatment was rejected?"

Senator Dole brought the cable to the attention of the Foreign Relations Committee and Senator Stone elaborated upon the Guevara's speech. This led to demands by many members of the committee for some clarification of the terms of the Neutrality Treaty. Senator Church stated tersely: "Let it be clear that the Senate is not likely to ratify these treaties if crucial provisions are being interpreted differently by the principal parties, the governments of the United States and Panama."

Senator Clark attempted to dismiss the points raised by Dole by asserting that only General Torrijos, as the dictator of

Panama, should be listened to in regards to how Panama interprets the treaty. He referred back to the statement by General Torrijos in Washington that the new treaties "places us under the Pentagon's defense umbrella." Ambassador Linowitz had earlier referred to this same quotation to ward off questions raised by Escobar's comments. However, the same night that Lopez Guervara repudiated Vance's interpretation of the neutrality treaty, a third Panamanian negotiator, Aristides Royo, attempted to clarify the "umbrella" quotation. He noted that "it has been said that Panama is placing itself under the Pentagon umbrella, as if this umbrella had been opened by these treaties--which are precisely treaties that for a 22-year period will be closing the Pentagon umbrella over the Republic of Panama."

C. The Views of General Torrijos

While a consistent pattern of answers has emerged from the three Panamanian negotiators, General Torrijos himself has had few public comments on the various disputed portions of the treaty until he made his second visit to Washington. This is not surprising because in the United States Ambassadors Bunker and Linowitz have been the principal interpreters of the new treaty and President Carter has made few public statements about the treaties other than in response to questions.

However, the few remarks by General Torrijos before his visit to Washington on the question of the right of intervention appear to be consistent with the views of his negotiators. In a report to Panama made while travelling in Yugoslavia on October 1, 1977, he related that while in Washington for the signing ceremony in September, he saw Linowitz testifying on television:

He was saying the United States has a right to act freely if the canal is threatened in any way, and unilaterally, that is, whenever they decide to do so and permanently, that is per saecula saeculorum. Religions have a right to speak about perpetuity. This is the ingredient they use to promote their product. I did not want to listen any more. My position in this regard is clear and public. For there to be intervention, there must be a people who want to be intervened.

The Panamanian leader clarified this somewhat further in a speech to a student federation congress in Panama on September 15, 1977. He commented on some misconceptions that have developed about the treaty:

I am not afraid, nor am I denying, that we signed a clause which if misinterpreted by future U.S.

generations could give place to intervention. But I am not afraid because I know the youth that we are producing. And in order for there to be intervention, there must be a people willing to accept intervention, and these people have no intention of accepting it.

Much earlier this year, presumably even before any final draft of the neutrality section could have been completed, General Torrijos already spoke confidently about Panamanian rights after the year 2000. In an interview with a Mexican newspaper in March, Torrijos related the following:

Some Americans feel that certain canal rights should be preserved after 1 January 2000, but they forget that the agreement signed by the Panamanian and U.S. governments clearly states that the treaty will be valid only until 31 December 1999. After that moment, the duties and responsibilities will be assumed by our country solely and exclusively.

With differences in interpretations threatening the passage of the treaty, the Carter Administration invited General Torrijos to return to Washington. This led to the issuance of new statement of understanding of the two most controversial sections of the neutrality treaty. The Carter-Torrijos statement of October 14th indicated that

The correct interpretation of this principle (Article IV) is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

This new interpretation, by referring to "each" country, appeared to indicate a right by the United States to unilaterally act to keep the canal open.

However, at the same time the second part of the statement emphasized that

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

This restatement of the Panamanian view of interference may once again cause some difficulties because after the year 2000 the present Canal Zone and the canal itself will by definition be Panamanian territory with the rights of the United States limited to the provisions of the Neutrality Treaty. Moreover, even assuming a distinction between the canal and Panama, it raises the further question of how the United States could act to defend the canal if prohibited from using Panamanian territory, or the land adjacent to the canal, particularly defending it from Panama.

The final portion of the clarifying statement directly repudiated the earlier view of Guevara presented above and provided that "expeditious passage" meant that "in case of need or emergency," United States vessels of war could "go to the head of the line of vessels in order to transit the Canal rapidly." This right apparently would be guaranteed by the Panamanian operators of the canal after the year 2000.

While most Senators lauded these clarifying statements, some have raised further questions about the new language and what precisely it means. Some questioned the status of the statement since neither President Carter nor General Torrijos even signed it. Senator Dole, who had highlighted these problems, proposed that the new clarifying language be directly incorporated in the text of the treaty in order to prevent future conflicting interpretations of this portion of the treaty. But this may only reflect the kinds of problems that may arise in other sections of the treaty not yet subject to such fastidious analysis.

C. Other Considerations in the Neutrality Treaty

Beyond the two articles examined above some questions have arisen over two other sections in this treaty. Under Article III the treaty provides that "vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the canal..." This requirement has created a concern as to whether in time of war enemies of the United States would have equal rights of passage through the canal as do American ships. According to the Panamanians, for genuine neutrality to exist this right must be granted.

General George Brown has acknowledged this interpretation but dismisses its significance as follows:

We would depend on our military power on the approaches to the canal to prevent a nation belligerent to us from passing. The treaty says they can pass

through the canal but there is nothing that says they can pass to it.

This assertion has raised the broader question of the capacity of the United States to protect the sea lanes without having access to any base of support or surveillance in Panama. Similarly, if the United States can adequately defend the canal from a posture at sea, then why has the United States maintained 14 bases in the Panama Canal Zone. In his testimony, Admiral Moorer, former Chairman of the Joint Chiefs of staff, maintained that only by remaining in Panama with military force can the United States satisfactorily protect the sea lanes and her vital interests in the entire southern Caribbean region.

Finally, despite the strong assertions of neutrality that permeate the treaty, particularly as interpreted by Panama, one section conspicuously asserts discriminatory treatment among nations using the canal. Part 2 of Article VI allows "the Republic of Columbia toll-free transit through the canal for its troops, vessels and materials of war." Moreover, Panama may grant "the Republic of Costa Rica with the right of toll-free transit." These two nations have been among the the strongest supporters of a new treaty and under it they obtain special privileges. This obviously sets a precedent for granting special rights to the United States, however, Panama has consistently maintained that such privileges would violate the neutral spirit of the agreement.

CONCLUSION

Thirteen years of sporadic negotiations preceded the final drafting of the new Panama Canal treaties. Nonetheless, the final provisions of the agreement have raised an enormous range of questions before the Senate Foreign Relations Committee. Since much of the skepticism focuses on major provisions of the treaties, many Senators have already proposed amendments, or changes, in the actual text of the treaties which would require renegotiations with the Panamanian government. At present it appears that neither the Carter Administration nor the Panamanian government would be amenable to any substantive changes in the actual agreement. Thus possibly only a direct vote by the Senate against the treaties would precipitate new negotiations.

In most of these areas of concern, no simple clarifications or restatements of the meanings of the language can resolve the difficulties. The attempted clarification of parts of the neutrality treaty have resolved some doubts, especially

concerning the meaning of expeditious passage. Nonetheless, the definition of Panamanian territorial integrity may prevent effective action by the United States without Panamanian consent and no right exists to defend the canal from a threat from Panama itself, such as a strike closing the canal.

At the most fundamental level no convincing case has been presented that the new treaties can protect America's vital security and economic interests better than the present treaty. Instead, the current confrontations with the Panamanian government may lead to a much broader range of conflict under the new treaties. But once the treaties are ratified the United States loses control over the Canal Zone and thus most of her leverage in dealing with the Torrijos regime.

The new treaties will probably precipitate serious problems involving the continued employment of skilled workers necessary to run the canal, a substantial rise in tolls that will have severe repercussions on world commerce and particularly the price of goods in the United States, and eventually a conflict with Panama over American security rights in protecting the canal. The new treaties would transform the concept of the Panama Canal from its operation as a vital artery of world commerce into an enterprise designed to satisfy the economic and nationalistic desires of one nation. Other considerations will certainly figure in the final decision of the Senate on ratification, but the specific terms of the treaties have certainly raised, rather than resolved prospective problems inherent in transferring the canal over to Panamanian control.

By Jeffrey B. Gayner
Policy Analyst