

PANAMA CANAL

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ISSUE DEFINITION

The 1903 Convention for the Construction of a Ship Canal between the United States and Panama granted the United States the right to build, operate, and defend a canal across the Isthmus of Panama and to exercise "in perpetuity" full sovereign rights and authority within a specified zone contiguous to the canal. Over the years, Panamanian resentment of what it considers the inequitable terms of the treaty has made the canal issue a major irritant in United States-Panamanian relations. On December 18, 1964, President Johnson announced the nation's willingness to negotiate new canal treaties to best accommodate both United States and Panamanian interests. The Nixon-Ford administrations have essentially adopted the same policy.

Sentiment in Congress is divided between members who believe that new treaties are essential to the maintenance of good relations with Panama and other Hemisphere nations, sympathetic to the Panamanian cause, and those who oppose any change in the U.S. status in the Canal Zone area on grounds that the rights now retained are essential to national interests. Recent congressional action, however, seems weighted on the "status quo" side.

BACKGROUND AND POLICY ANALYSIS

The strategic geographical location of the Isthmus of Panama, affording the potential of a short-cut route between the Atlantic and Pacific Oceans, generated United States interest in a canal early in the 19th century. During the period, the United States concluded treaties with various nations to secure a U.S. interest in any canal constructed in the area. While the territory of the Isthmus was still a part of Colombia, the United States concluded a treaty with that nation (the Hay-Herran Treaty, signed in January 1903) providing for U.S. construction and operation of a canal across the Isthmus. After Colombia rejected the treaty, the Panamanians, many of whom had long sought an independent Panamanian nation, proclaimed their independence (November 3, 1903) with U.S. military forces standing by offshore.

On December 2, 1903, the new Provisional Government of Panama ratified a canal pact titled the Convention for the Construction of a Ship Canal (Hay-Bunau-Varilla Treaty), based substantially on the rejected Hay-Herran Treaty. Its basic provisions (1) granted to the United States "in perpetuity the use, occupation and control" of a specified zone of land through Panamanian territory for the construction, operation, and defense of a ship canal (Article I); (2) afforded the United States "all the rights, power and authority within the zone... 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" (Article III); and (3) provided for payment of U.S. compensation to Panama of an initial \$10 million and a yearly annuity (Article XIV).

Since 1903 treaty's inception, Panamanians have charged that its basic terms involve concessions extracted from an immature new republic under the advice and influence of unscrupulous individuals and foreign interests. The principal Panamanian objections are the terms of Articles I and III, which afford the United States full sovereign rights, control, and governmental

jurisdiction over a portion of Panamanian territory for a limitless duration. Other primary objections of Panama include: (1) the size of the U.S. military presence and the existence of U.S. military training facilities located in the Canal Zone; (2) the amount of U.S. annuity to Panama and allegedly inequitable sharing of the economic benefits derived from canal operations, and (3) the amount of land area within the zone unused by the United States but not available for Panamanian use.

The United States, in efforts to improve its treaty relations with Panama, has periodically altered provisions of the 1903 treaty, primarily through two additional treaties of 1936 and 1955; however, the sovereignty principle has remained unchanged. Mounting Panamanian nationalist sentiment over the canal issue erupted in serious demonstrations in 1959 and culminated in the violent anti-United States flag riots of January 1964. The incident precipitated a major diplomatic crisis between the two nations during which Panama broke relations with the United States and put its case before the United Nations and the Organization of American States.

On December 18, 1964, President Johnson announced the U.S. intention to negotiate new treaties with Panama which would abrogate the 1903 treaty, recognize Panamanian sovereignty over the Canal Zone, and end the "in perpetuity" provision, while still retaining "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." Bilateral negotiations began in January 1965, culminating in the joint announcement by the United States and Panama in June 1967 that three new draft treaties had been agreed upon. Action was never taken by either nation, however, attributable in part to the premature publication of the treaty terms in the press (which touched off considerable opposition in both countries), and to the fact that both nations were then involved in major election campaigns. In August 1970, the government of General Omar Torrijos, in power as a result of a military coup in October 1968, formally rejected the draft treaties while indicating willingness to pursue the negotiations.

Talks resumed in June 1971, and on February 7, 1974, Secretary of State Henry Kissinger and Panamanian Foreign Minister Juan Antonio Tack signed a statement of general principles which would serve as guidelines for the new Panama Canal treaties. Principal terms include: (1) elimination of the "in perpetuity" provision of the former treaty, with provision for a fixed termination date for the new canal treaty; (2) termination of U.S. sovereignty and jurisdiction in the Canal Zone, with the United States granted the rights, facilities, and land necessary for U.S. operation and defense of the canal for the duration of the new treaty; (3) Panamanian participation in the administration and defense of the canal, with provision for the eventual reversion of canal operation and control to Panama upon termination of the new treaty; and (4) a just and equitable sharing of the economic benefits derived from the canal. At the present time, negotiations on the specific terms of the treaty are said to be proceeding satisfactorily.

The basic principles at issue in consideration of new Panama Canal treaties are whether or not the United States should maintain its current status of unlimited sovereignty and full governmental jurisdiction within the Canal Zone, and whether the United States should continue to assume full responsibility for operation and defense of the present canal indefinitely. Since canal negotiations began, U.S. officials have been confident that an accommodation could be reached which would meet the reasonable aspirations of Panama while safeguarding U.S. vital interests in the canal and Canal Zone and in no way weakening the United States posture in the area.

In the view of the United States Government, some members of Congress, and other proponents of new treaties, reaching a reasonable and mutually acceptable accord with Panama on this highly sensitive issue is essential to U.S. foreign policy and security concerns with regard to Panama and to the Latin American region as a whole. They see the issue cast in the context of the changing nature of international political relations wherein the increasing economic and political interdependency of nations is causing the United States and other nations to forge new relationships based on mutual equality, cooperation, and respect. Proponents argue that in today's world the 1903 treaty is an anachronism which will continue to serve as a rallying point for Panamanian and other Latin American nationalist sentiment directed against the United States. In like manner, the treaty provides a ready target for elements hostile to the United States outside the region.

A further factor bearing on the issue of new treaties relates to future U.S. and world commercial interests and to U.S. and allied defense concerns. The demands of rapidly increasing world commerce and the advent of modern shipbuilding technology resulting in vessels of much greater size will require major expansion of the capacity of the present canal and probably eventual construction of a sea-level canal in the area. The United States option to expand and modernize the present canal and to construct a sea-level canal in Panama along the route recommended by the Atlantic and Pacific Interoceanic Canal Study Commission are both issues in the current canal treaty negotiations.

Negotiation of new Panama Canal treaties has met substantial opposition in the U.S. Congress, the Department of Defense, and among a variety of interest groups in this country. The principal argument advanced by opponents is that if vital U.S. commercial and strategic interests are to be safeguarded the United States must continue to exercise sole responsibility for the operation, control, and defense of the canal, and must retain absolute sovereignty and U.S. jurisdiction within the Canal Zone area. Also of major concern is United States acceptance of treaty provisions which would limit or reduce the current U.S. military presence in the Canal Zone. Opponents cite the vital strategic function performed by the U.S. military in the Canal Zone in terms of protecting U.S. interests in the canal directly and in serving as deterrent to the ambitions of powers hostile to the United States, thereby safeguarding national security and hemisphere defense interests as well.

Other arguments advanced by opponents of new treaties include: (1) the mandate for permanent U.S. sovereignty and control of the canal and Canal Zone was legally vested in the United States by the 1903 treaty, duly signed and ratified by Panama, and all rights and titles to lands now under United States control were justly purchased by the U.S. Government; (2) under terms of the treaty the United States undertook to construct, and for the past 60 years has continued to effectively maintain, operate, and defend the canal to the benefit of all the world's nations and at a U.S. taxpayers net investment of almost \$6 billion; (3) the continued efficient U.S. operation of the canal has resulted in major economic benefits for Panama, providing a major contribution to the Panamanian economy and affording it the highest per capita income in Central America and the fourth highest in Latin America; and (4) Panama's history of political instability and its lack of technical and managerial expertise and other required resources demonstrates that Panama does not possess the capacity to effectively manage, operate, and defend the canal.

Congressional and other opponents of new treaties believe that the United States can continue to make adjustments to improve its relationship with

Panama under the existing treaty. Concern for U.S. retention of absolute sovereignty and complete jurisdiction and control of the canal and Canal Zone has resulted in the introduction of numerous resolutions in this and prior Congresses calling upon the United States Government to retain the full rights and status which it now enjoys.

One legislative approach by opponents of new treaties has been the introduction of legislation to implement an earlier proposal to modernize the existing lock canal in lieu of construction of a sea-level canal through Panamanian territory, one of the chief areas of negotiation in the current treaty talks. They argue that implementation of the Terminal Lakes-Third Locks Plan, a project partially authorized by Congress in 1939, would provide for a major increase of capacity and operational improvement of the existing lock canal under present treaty provisions. Such action, supporters believe, would afford the United States the best operational canal at the least cost. It would also obviate the need for new treaties with Panama, thereby eliminating a confrontation with Panama over demand for major concessions that would almost certainly be made in negotiations for a sea-level canal through its territory. Critics of the existing treaties contend that this approach overlooks the basic issue, which is Panamanian dissatisfaction with the status quo.

Meanwhile, the State Department remains hopeful that the draft of a new treaty can be completed by the fall of 1975.

LEGISLATION

In the 94th Congress, the following bills concerning the Panama Canal issue have been introduced:

H.Res. 23 (Flood)

Declares it to be the sense of the Senate that: (1) the Government of the United States should maintain and protect its sovereign rights and jurisdiction over the Canal Zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any of these sovereign rights, power, authority, jurisdiction, territory, or property that are indispensably necessary for the protection and security of the United States and the entire Western Hemisphere; (2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, authority, or property, tangible or intangible, except by treaty authorized by the Congress and duly ratified by the United States; and (3) there be no cession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in Article IV, Section 3, Clause 2 of the United States Constitution.

H.Res. 23 was introduced on Jan. 15, 1975, and referred to the House Foreign Affairs Committee. (Identical resolutions introduced include: H.J.Res. 136, and House Resolutions 24, 40, 61, 63, 74, 75, 92, 105, 127, and 128.)

H.R. 198 (Flood)

Panama Canal Modernization Act. Directs the Governor of the Canal Zone, under the supervision of the Secretary of the Army, to prosecute the work necessary to increase the capacity and improve the operations of the Panama Canal through the adaptation of the Third Locks Project (House Doc. no. 210,

76th Congress) at a total cost not to exceed \$950 million.

Establishes the Panama Canal Advisory and Inspection Board, composed of five members appointed by the President by and with the advice and consent of the Senate, to study and review plans and designs for the Third Locks Project.

Gives the Board powers to carry out the provisions of this Act. Requires the Board to submit an annual report to the President and Congress on the progress of its work.

H.R. 198 was introduced on Jan. 14, 1975, and referred to the House Merchant Marine and Fisheries Committee. (Identical bill introduced is H.R. 199.)

HEARINGS

U.S. Congress. House. Committee on Foreign Affairs.

Subcommittee on Inter-American Affairs. Panama Canal, 1971.

Hearings, 92d Congress, 1st session, on H. Res. 74, 154, 156, and other resolutions. Sept. 22 [and] 23, 1971. Washington,

U.S. Govt. Print. Off., 1971. 173 p.

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U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Inter-American Affairs and International Organization and Movements. Committee on Merchant Marine and Fisheries.

Subcommittee on Panama Canal. United Nations Security Council meeting in Panama. Hearings, 93d Congress, 1st session.

Apr. 3, 1973. Washington, U.S. Govt. Print. Off., 1973. 34 p.

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Panama Canal. Panama Canal briefings.

Hearings, 93d Congress, 1st session Apr. 13, 1973. Washington, U.S. Govt. Print. Off., 1973. 78 p.

Briefings concerning treaty negotiations and current activities of the Panama Canal and Canal Zone.

"Serial no. 93-8"

----- Panama Canal treaty negotiations. Hearings, 92d Congress, 1st and 2d sessions on treaties affecting the operations of the Panama Canal. Washington, U.S. Govt. Print. Off., 1972. 371 p.

Hearings held Nov. 29, 30; Dec. 2, 6, 10, 1971; Jan. 17-18; July 24; Aug. 10, 1972.

"Serial no. 92-30"

----- Panama canal treaty negotiations. Hearings, 92d Congress, 2d session. Washington, U.S. Govt. Print. Off., 1972. 373-511 p.

Addendum to hearings held Nov. 29...Dec. 10, 1971; Jan. 17...Aug. 10, 1972.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on Inter-American Affairs. Report on United States relations with Panama...pursuant to H. Res. 113, 86th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1960. 98 p.
(86th Congress, 2d sesssion. House. Report no. 2218)

OTHER CONGRESSIONAL ACTION

According to U.S. legislative procedure, new canal treaties signed by the United States and Panama would be submitted solely to the Senate for ratification; however, many opponents of new treaties in the House of Representatives have raised the issue that House approval is necessary before any U.S. territory or property under U.S. jurisdiction within the Canal Zone can be ceded to Panama. House members cite as legal justification for their position the United States Constitution, Article IV, Section 3, Clause 2, which states "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." House members who support this position contend that "Congress" must be interpreted as both the Senate and the House of Representatives, and therefore any new canal treaties providing for the disposal of U.S.-controlled territories or properties would be invalid unless the required approval of both Houses were obtained. Language to ensure House jurisdiction had been included in House and Senate resolutions recently introduced. Furthermore, the issue was examined at length during hearings on December 2, 1971, by the House Merchant Marine and Fisheries Committee's Subcommittee on the Panama Canal concerning "Panama Canal Treaty Negotiations" (pp. 95-147).

CHRONOLOGY OF EVENTS

- 06/26/75 -- The House of Representatives, 246-164, amended the Department of State Appropriations Bill (H.R. 8121) to bar use of any funds to negotiate the surrender of any U.S. rights in the Panama Canal Zone.
- 02/07/74 -- Secretary of State Henry Kissinger and Panamanian Foreign Minister Juan Tack signed a Statement of Principles establishing eight guidelines for new canal treaties.
- 11/26/73 -- U.S. Chief Negotiator Ellsworth Bunker met with Panamanian Foreign Minister Juan Antonio Tack in Panama to discuss new canal treaties.
- 09/13/73 -- U.S. Ambassador-at-Large Ellsworth Bunker was officially confirmed as the new chief U.S. Panama Canal negotiator. (Former representative Robert Anderson resigned in July 1973).
- 03/21/73 -- The United States vetoed a U.N. Security Council resolution referring to a new Panama Canal treaty which would

"guarantee full respect for Panama's effective sovereignty over all of its territory," on grounds that the treaty negotiations were a bilateral matter. (Of the 15 Security Council members, 13 voted in favor of the resolution, and one abstained).

- 06/29/71 -- The United States and Panama resumed negotiations on new canal treaties.
- 12/01/70 -- The Atlantic-Pacific Interoceanic Canal Study Commission, in its final report, recommended construction of a sea-level canal in Panama and urged the U.S. Government to negotiate a treaty with Panama concerning the existing canal and sea-level canal providing for their operation and defense "in an equitable and mutually acceptable relationship between the United States and Panama."
- 09/01/70 -- The Panamanian government notified the United States that the three draft Panama Canal treaties of 1967 were unacceptable as a basis for resuming treaty negotiations.
- 08/20/70 -- The United States announced the termination of an agreement with Panama permitting it free and exclusive use of the Rio Hato region for military training. (Rio Hato was the only area in Panama outside the Canal Zone being used by U.S. troops).
- 10/11/68 -- Colonel Omar Torrijos, head of the Panamanian National Guard, led a military coup which overthrew President Arnulfo Arias, and assumed leadership of the nation.
- 06/26/67 -- President Johnson and Panamanian President Robles announced that agreement had been reached on the "form and content" of three new canal treaties, governing administration of the existing canal, the defense and neutrality of the existing canal, and the possible construction of a sea-level canal.
- 09/24/65 -- President Lyndon Johnson and Panamanian President Marco A. Robles issued a joint statement announcing that three new Panama Canal treaties would be negotiated and outlining certain principles to be included in the new treaties. (United States and Panamanian negotiators began talks concerning the terms for a new Panama Canal treaty in January 1965.)
- 09/22/64 -- The President signed P.L. 88-609 authorizing the establishment of the Atlantic-Pacific Interoceanic Canal Study Commission to investigate the feasibility of a more suitable site for the construction of a sea-level canal. (Commission members were appointed on April 18, 1965).
- 04/03/64 -- The Organization of American States published a joint declaration of the Governments of Panama and the United States in which they agreed to reestablish diplomatic relations and to designate Special Ambassadors to seek the prompt elimination of the causes of conflict between the two countries. (Diplomatic relations were established

and the ambassadors appointed on April 4, 1964.)

- 02/04/64 -- The OAS Council voted to invoke the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) in the dispute between the United States and Panama (the first time that the regional defense machinery had been utilized in a dispute involving the United States).
- 01/29/64 -- The Panamanian Government called upon the Council of the Organization of American States to take up its charges of aggression against the United States as a result of the Canal Zone flag riots.
- 01/10/64 -- Panama suspended relations with the United States, charged the United States with aggression at the United Nations, and filed a complaint with the Inter-American Peace Committee of the Organization of American States, following rioting over the display of the U.S. flag. (Relations were officially broken on January 17, 1964).
- 01/10/63 -- United States and Panamanian conferees announced agreement concerning the flag issue in the Canal Zone to the effect that the Panamanian flag would be flown in the Zone at all points where the U.S. flag is flown by civilian authorities.
- 06/13/62 -- President Kennedy and visiting Panamanian President Roberto Chiari issued a joint communique stating that representatives of the two nations would be named to discuss points of dissatisfaction concerning the Panama Canal and Canal Zone within the perimeters of the existing canal treaties. (Talks began in July 1962 and ended in July 1963).
- 11/16/61 -- The Panamanian National Assembly unanimously adopted a resolution calling for the abrogation of canal treaties with the United States and the negotiation of a new treaty to include affirmation of Panamanian sovereignty over the Canal Zone and a fixed date for the turnover of the canal to Panama.
- 09/08/61 -- Panamanian President Roberto Chiari, in a letter to President Kennedy, requested a revision of the Panama Canal treaty. (President Chiari formally announced his government's desire to negotiate a new canal treaty on September 11, 1961).
- 02/02/60 -- The House of Representatives passed H. Con. Res. 459, expressing the sense of Congress that any variance in the traditional interpretation of the Panama Canal treaties, especially with respect to territorial sovereignty, should be made only by treaty.
- 11/28/59 -- Rioting broke out as Panamanian demonstrators attempting second time to enter the Canal Zone to implant the Panamanian flag were turned back by Panamanian and U.S. forces.

- 11/24/59 -- Deputy Undersecretary of State Livingstone Merchant, on an official mission to Panama, declared that the United States "recognizes that titular sovereignty over the Canal Zone remains in the Government of Panama."
- 11/03/59 -- The Governor of the Canal Zone called for U.S. Armed Forces to quell a riot resulting from Panamanian demonstrators attempting to implant the Panamanian flag within the Zone.
- 09/25/59 -- The Government of Panama formally requested that the Panamanian flag be flown in the Canal Zone.
- 01/25/55 -- The United States and Panama signed the Treaty of Mutual Understanding and Cooperation which revised, redefined or renounced certain rights of the United States and Panama provided in the basic 1903 canal treaty and the 1936 treaty, and increased the annual annuity to Panama to \$1,930,000.
- 03/02/36 -- The United States and Panama signed the General Treaty of Friendship and Cooperation which revised, redefined or renounced certain rights of the United States and Panama provided in the original 1903 canal treaty, and increased the annual annuity to Panama to \$430,000.
- 03/01/22 -- The United States and Colombia exchanged ratifications of the Thomson-Urrutia Treaty (signed on April 6, 1914) whereby Colombia recognized the exclusive U.S. title to the Panama Canal.
- 08/15/14 -- The Panama Canal was opened to navigation.
- 04/18/06 -- Secretary of War William H. Taft, in testimony before the Senate Committee on Inter-oceanic Canals, stated:
"(Article III of the Panama Canal treaty) is peculiar in not conferring sovereignty directly upon the United States, but in giving to the United States the powers which it would have if it were sovereign. This gives rise to the obvious implication that a mere titular sovereignty is reserved in the Panamanian Government."
- 02/23/04 -- The U.S. Senate approved the Hay-Bunau-Varilla Treaty. (The treaty was officially proclaimed by President Roosevelt on February 26, 1903.)
- 01/20/04 -- Secretary of State John Hay, in a letter to Senator Spooner concerning the Panama Canal treaty, wrote: "we shall have a treaty..vastly advantageous to the United States, and, we must confess...not so advantageous to Panama....You and I know too well how many points there are in this treaty to which a Panamanian patriot could object."
- 12/02/03 -- The provisional government of Panama ratified the Hay-Bunau-Varilla Treaty.
- 11/18/03 -- The United States and Panama signed the Convention for the

Construction of a Ship Canal (Hay-Bunau-Varilla Treaty) granting the United States sovereign rights and authority "in perpetuity" over a specified zone of land in Panamanian territory for the construction, operation and protection of a ship canal.

- 11/06/03 -- The United States recognized the new Republic of Panama, which had declared its independence from Colombia three days earlier.
- 08/12/03 -- The Colombian Senate unanimously rejected the Hay-Herran Treaty.
- 01/22/03 -- The United States and Colombia signed the Hay-Herran Treaty granting the United States a 100-year lease (with option for renewal) on a specified zone of land across the Isthmus of Panama, with the exclusive right to construct, operate, and protect a ship canal.
- 06/02/02 -- The U.S. Congress enacted the Spooner Act authorizing the President to acquire the assets of the former French canal company and to acquire a specified strip of land and additional rights and territory from Colombia for the construction and operation of a ship canal.
- 11/18/01 -- The United States and Great Britain signed the Hay-Pauncefote Treaty granting the United States the exclusive right to construct, regulate, and manage a ship canal across Central America.
- 00/00/99 -- In 1899 the U.S. Congress passed a law directing the President to name a commission to examine all practical routes for the construction of a ship canal across Central America.
- 00/00/98 -- In 1898 President McKinley, in a message to Congress, stated that a maritime highway across the Central American isthmus and its control by the United States was indispensable to U.S. commercial interests and territorial expansion.
- 05/18/78 -- In 1878 a French interoceanic canal company procured a concession from the Government of Colombia to build a maritime canal through its territory. (The French canal enterprise collapsed in 1889).
- 12/12/46 -- In 1846 the United States and New Granada (Colombia) signed the Treaty of Peace, Amity, Navigation, and Commerce guaranteeing the rights of sovereignty and property possessed by Colombia over the Isthmus of Panama and the neutrality of the Isthmus, and guaranteeing to the United States free right of way or transit across the Isthmus.
- 03/02/39 -- In 1839 the House passed a resolution requesting the President to negotiate with other interested nations concerning the construction of a ship canal across the Isthmus of Panama. This followed by four years a similar Senate action.

05/18/26 -- In 1826 Secretary of State Henry Clay proposed that delegates from the United States and the newly independent South American republics meeting at the Congress of Panama consider a joint undertaking to construct a canal across the Central American isthmus.

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