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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, D.C. 20510

MICHAEL STERN, STAFF DIRECTOR
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July 28, 1975

Dear Colleague:

We would like to call to your attention Amendment 681 to the State Department Appropriations bill. This amendment, which will be raised on the floor by Senator Harry F. Byrd, Jr., would prevent any of the funds being appropriated by the bill to be spent to negotiate "the surrender or relinquishment of any U.S. rights in the Panama Canal Zone." Such language was added on the floor of the House to H.R. 8121 by Congressman M.G. Snyder, of Kentucky, but was deleted by the Senate Appropriations Committee in the full committee mark-up last week.

In our view, the Byrd-Snyder Amendment is a clear infringement upon the power of the Executive Branch to conduct treaty negotiations. Under the Constitution, this power is granted solely to the Executive Branch. Congressional power with respect to treaties comes into force after the treaty is presented to the Senate for ratification. Senators who may oppose a new Panama Canal treaty can have an opportunity to voice their objections to it after its timely submission to Congress for review. They need not hamstring the Executive Branch at the present time by an appropriations maneuver of dubious constitutionality.


The issues involved in the new treaty negotiations are too important to us, to Panama, and to our relations with all of Latin America to be resolved in the manner contemplated by supporters of this Amendment. These matters should be confronted in a full-scale Senate debate at the time the treaty is complete and brought before us. Only then will the issues be ripe for discussion and only then will they be subjected to the kind of scrutiny which they sorely deserve. Attacking the treaty now, before it is put into final form, is wholly premature.

Never before has Congress utilized the appropriations process to dictate the shape of treaty negotiations. To vote affirmatively on the Byrd Amendment would be to establish a poor precedent and would mark an unfortunate and substantial alteration in the treaty-making process set forth under the Constitution.

We urge you to join us in opposing the Byrd Amendment.

Sincerely,


Walter F. Mondale


Mark O. Hatfield


Gale W. McGee

Mr. President:

I would like to commend the Senator from Rhode Island, Mr. Pastore, for his intelligent and extremely constructive comments on the vital question of the future of the Panama Canal. He has prepared a resolution, which I strongly support, as a substitute for the resolution of the Senator from Virginia, Mr. Byrd.

The Byrd resolution seeks to express the opposition of the Senate to any new Treaty which would provide for the surrender or relinquishment of any US rights in the Panama Canal Zone. In contrast, the Pastore Resolution would make clear that the Senate believes that any new Panama Canal Treaty must protect the vital interests of the United States in the operation, maintenance and defense of the Panama Canal.

The Pastore Resolution, in my opinion, would put first things first. The overriding goal of the negotiations with Panama is to make sure that the Canal -- a facility that is vital to American economic and defense interests -- will remain open in the future, that it will be secure, and that it will be neutral.

Obviously, there is substantial disagreement within the Congress about how this goal can best be achieved. A number of Senators, including Senator Byrd, have decided that the only way to protect the interests of the United States is by refusing to make any concessions on rights that we obtained under the 1903 Hay-Bunau-Varilla Treaty. I personally disagree with this

view. In fact, I believe that if the United States were to adopt such an attitude, the certain result would be to place the continued operation of the canal in immediate jeopardy -- the precise opposite of what the sponsors of the Byrd Amendment hope to accomplish.

Let's look at the facts.

The existing treaty was signed at the turn of the century. In effect, it establishes the Canal Zone as an American colony. The circumstances surrounding the conclusion of that agreement have been characterized by historians as representing one of the worst examples of gunboat diplomacy. Today, no country, including the United States, would accept a treaty which permits the exercise of rights "as if sovereign" on their territory in perpetuity.

Panamanian discontent with the existing state of affairs is not confined to any one political group or faction. Nor is it a passing phenomenon. Opposition to the continued colonial status of the Canal Zone is widely shared by the Panamanian people. It erupted into violent confrontation in 1964, resulting in the loss of 24 lives, and tensions were eased only by a commitment by the United States to enter into negotiations with the Panamanian Government. This commitment on the part of President Johnson, was ~~entered~~ made ~~into~~ with the full support of former Presidents Truman and Eisenhower. It has been endorsed by every succeeding Administration.

Frustration with the pace of negotiations on the part of the Panamanian Government has once again begun to build. If the United States were, at

this critical moment, to break off negotiations with Panama -- the necessary consequence of adherence to the Byrd resolution -- the result would surely be renewed confrontation; both diplomatic, and State Department experts warn violent, as well.

Under such circumstances, extreme nationalist and leftist groups in Panama would benefit, cutting the rug out from under those who have been pressing for a reasonable and workable agreement with the United States. They would be in a position to inflame local resentments. The canal itself, which is highly vulnerable to sabotage, would be the first target for retaliation.

We would be deluding ourselves if we failed to appreciate how serious the situation is in Panama. The violence that occurred in 1964 took place before expectations were raised by Presidential commitments and actual negotiations toward a sharing of responsibilities between the United States and Panama in the Canal Zone. If these expectations, which strike at the very heart of Panama's sense of dignity and independence, were suddenly dashed, the resulting climate would undoubtedly be much worse than that which existed a decade ago.

In the event of hostilities, the canal, in all probability, would be hit. We would be forced into armed defense of this facility. There is no certainty that we could prevent it from being sabotaged.

At the same time, we would face world censure for ^{our} failure to deal with the legitimate grievances of the Panamanian Government, and for using force to preserve the colonial status of the Canal Zone. Domestically, our nation would be divided and, I believe, ultimately, we would be forced back into negotiations. Next time, however, there would be no chance that we could conclude an agreement on terms as favorable as those that are available to us today.

In my judgment, the Pastore resolution offers an alternative that would permit us to avoid such a catastrophe. It would express the real concern of the Senate and of the American people that the canal, its operation and defense, be protected under any new treaty with Panama. This is a point of view, that unlike the provisions of the Byrd resolution, would be understandable to our neighbors in Latin America who have made the Panama negotiations a test of our intentions in the Western Hemisphere.

Mr. President, involved in the Panama issue is a crucial question of the American attitude toward smaller countries of the world. Many developing nations have come to perceive us as a country that would prefer to impose our will on them rather than deal with them as partners. Certainly, this has been the case in the Canal Zone.

By adopting the Pastore substitute for the Byrd resolution, we have an opportunity to make clear that we do want to protect our own interests, but that we also want to act in a manner that is consistent with the dignity

and rights of others.

In my judgment, there is nothing in the Pastore Resolution that any member of the Senate could oppose. This proposal simply expresses the core of what all of us, whether we agree or disagree with Senator Byrd, feel is important; the immediate and future security of the Panama Canal.

Mr. President, I hope that my colleagues will join me in supporting Senator Pastore on this important vote.

Why

- consent of Panamanian people U.S. presence at 0 level
- failure of U.S. to conclude new treaty - dignity independence will lead to flat-out confrontation
 - + diplomatic, first
 - + armed hostile action would follow
- U.S. would counter with force
- use of countering force - cold war & hot war
- reinforce troop levels - armed fortress of and
 - canal could be sabotaged -
 - for time U.S. engaged by maintaining position, after a while we would not continue the force / closed or injured canal, overwhelming world censure, we would withdraw, abandon
- objective:

7 critical issues

- ① how operated
- ② " defended
- ③ option expansion
- ④ compensation
- ⑤ dist of lands & waters U.S. & Panama
- ⑥ jurisdictional rights U.S. cedes
- ⑦ duration —

How protect U.S. interests

confidential

set of agreements - not fall apart
disclosure

duration - 1 of major issues not yet addressed
formally U.S. 50 years
Panama 25 " → end of authority
Compromise —

① agreement U.S. will control absolutely operation
of canal for lifetime of treaty

{ installations
transit ships
tolls
employee relations
right to guard

② U.S. will have "primary responsibility
for defense of canal — Can act
unilaterally against any threat
at any time

Status of forces all of military
rights we desire including exclusion
Panama police from area

U.S. involvement beyond life of
Treaty

③ agreement U.S. join in guaranteeing neutrality of canal beyond life of treaty

④ current exercise of sovereign rights can be phased out over reasonable period of time
become "use" = jurisdictional rights

future expectations

- ① adequate base structure, lands for defense & oper of canal
- ② adequate level of forces
- ③ option expand capacity
- ④ prohibition any 3rd country operating and defense for ever
- ⑤ use forever
- ⑥ increase financial contribution to Panama
increase tolls, not have traffic decline
- ⑦ protection rights present P.C. employees
- ⑧ operation of canal operators extend
defense gets underway 25-50 years

U.S. giving up

① perpetuity →

some time Panama
control op & defense
U.S. some role deferred
in future

② over time jurisdictional
attributes not really
needed over time

③ large land areas not
now used

④ Panama increasing role
over time Op & Defense
of Canal

⑤ raising level econ benefits
to Panama

⑥ giving up "canal zone"
as geo-political entity and
as a government.

~~Who~~

~~Who~~

Conflict?

— this set negotiations are last time
around politically —

— these set agreements best we
can ever achieve. worse in
wake of confrontation

TALKING POINTS ON BYRD AMENDMENT

1. What the Amendment would do

- It would prevent any of the funds provided in the bill from being used to negotiate "the surrender or relinquishment of any US rights in the Panama Canal Zone."
- This would, in effect, terminate all negotiations with the Panamanian Government on the future of the Canal Zone.

2. Summary of Arguments against Amendment

- Senators Pastore, Hruska and other members of the Appropriations Committee rightly rejected the Byrd Amendment when it came before them for consideration. The Amendment goes far beyond the proper Constitutional role of the Congress, in determining not whether to accept or reject a treaty, but whether the President can negotiate at all.
- A survey by the Library of Congress shows that Congress has never before passed an amendment cutting off funds for Presidential negotiations. Thus, the Byrd Amendment, if adopted by the Senate, would be an unprecedented intrusion into the Constitutional functions of the Executive Branch.
- The Senate will have an opportunity to vote on the results of the negotiations if and when a new treaty is signed. If the final agreement is not acceptable to the Senate, it has all of the authority that is required to reject the agreement at that time.
- In the interim, if members wish to express their views on the substance of the negotiations, there are alternative means of doing so. One method would be to seek action on a sense of the Senate resolution, to advise the President of the reservations and concerns of this body. This approach is already being pursued by Senator Thurmond and others who have joined him in cosponsoring S. Res. 97.
- To refuse even to discuss the future of the Canal Zone with the Panamanians would break further with a commitment made by President Johnson, with the full support of former Presidents Truman and Eisenhower, more than a decade ago, and reaffirmed by every Administration since. It would undoubtedly be regarded as a bitter insult not only by Panama, but by her sister republics in Latin America and by other Third World countries as well.

- The danger of such action to the interests of the United States was expressed in a July 28 editorial in the Post saying that a collapse in the negotiations "would be a catastrophe in terms of our relations with Panama."
~~"would be a catastrophe in terms of our relations with Panama."~~

The editorial warns that "The continued security of the canal and of the 40,000 Americans who live in the Canal Zone would also be put at risk for the Canal Zone is virtually indefensible against sabotage, and Zonites could all too easily become targets of outraged Panamanian nationalists and calculating leftists. Beyond that, the Amendment would produce an immediate crisis in our relations with the rest of Latin America and a disgrace for the United States in the eyes of all who have seen in the canal negotiations a test of the United States' capacity to deal fairly with small and weak countries."

3. Constitutional Arguments

- Article II, Section 2, of the Constitution grants the President exclusive authority to make Treaties, provided 2/3 of the Senate concurs. The Supreme Court, in interpreting the Constitution defined the limits of Congressional responsibilities in this area by saying:

"the President makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and the Congress itself is powerless to invade it.

- Never has the Congress, through the withholding of appropriations prevented the President from entering into negotiations toward the conclusion of a Treaty with another country.

*In 1906, a floor amendment was proposed to prevent appropriated funds from being used for US representatives to attend a Pan-American Congress unless the program for the Conference included a discussion of reciprocal trade relations among the participating countries.

This amendment, like all similar proposals, was rejected.

- While the Executive Branch has often rightly been criticized for attempting to side-step its responsibilities to seek the advice and consent of the Senate, through the device of concluding "executive agreements" rather than treaties, the Administration has provided ample assurances that the results of the negotiations with Panama will be submitted to the Senate for ratification. In fact, President Ford told the Appropriations Committee in a letter on

July 21st that "we will be communicating closely with the Congress as the discussions continue. Of course, any treaty which may be agreed upon will be submitted to the full constitutional process, which means that the Senate will have an opportunity to review it under the advice and consent procedures."

4. Why a new treaty is necessary

- The Hay-Bunau-Varilla Treaty with Panama is 72 years old. The circumstances leading up to the signing of that agreement were highly questionable, reflecting the worst in what came to be known as "gunboat diplomacy."
- Today, no nation, including the United States, would accept a treaty which permits the rights "as if sovereign" on foreign land in perpetuity.

Leaving aside the legitimate grievances of the Government of Panama, there are purely pragmatic grounds for the negotiations:

We are negotiating to

- protect the fundamental American interest in the open, efficient, secure and neutral operation of the Canal
- prevent the Canal issue from continuing to build tensions that would seriously jeopardize our ability to adequately operate and defend a facility as vulnerable as the canal.
- prevent major hemispheric problems from developing with other countries who have made our handling of the negotiations a test of our intentions towards Latin America
- avoid violent confrontation, like that which occurred in 1964, resulting in the loss of 24 lives. It is likely that such violence would reoccur if there is a breakdown in the negotiations.
- The choice for the United States is not between the old Treaty and a new treaty, but between a new treaty and the probable consequences if the negotiations fail.

*confrontation would risk losing what we want to protect most and involve costs that would be unacceptable to the United States.

*partnership would give Panama a direct interest in contributing to the effective operation and defense of the canal; and it could also signal the beginning of a new and better climate for the resolution of mutual problems affecting countries in the Western Hemisphere.

Whether or not a satisfactory agreement can be concluded with Panama to achieve these objectives, it is too soon to say at the present time. However, a decision by the Congress to end the discussions would virtually guarantee a sharp breach

in our relations with Panama, it would strengthen the hand of nationalist groups in that country who are pressing for extreme action, and it would gravely undermine the US ability to ensure the immediate and long term security of the Canal.

The Senate's decision on this issue is of crucial importance because of earlier House action to approve an amendment identical to that being offered by Senator Byrd today. Unless the amendment is defeated, there is every chance of a serious crisis in the Canal Zone.

For all of these reasons, the Byrd Amendment should be rejected.

MEMO TO SENATOR
FROM FRANK \

RE: Panama Canal Negotiations

Secretary Kissinger gave a speech in Houston, on March 1. In that speech he talked about the new opportunity in Latin America. He spoke of shaping a structure of international relations based on cooperation rather than force and negotiation rather than confrontation. He went on to say that "cooperation among nations is consistent with respect for national sovereignty". One of the most difficult situations facing US policy in this regard is status of the Panama Canal.

Kissinger recognized in his speech that a non-policy has been in play regarding Latin America. One of his main attempts at showing "the United States is prepared to contribute to Western Hemisphere cooperation" is through the renegotiation of a new Panama Canal Treaty.

Background

At a time when other nations are attempting to gain control over their natural resources, Panama is extremely anxious to gain control over its most important natural resource -- its geography. The continuation of US "absolute sovereignty" over a strip that bisects Panama serves not only as an economic inhibitor to the growth of that country, but as a rallying point for increased anti US sentiment throughout Latin America. It simply reinforces a notion older than the Treaty itself, that America is still a colonial power and employing the gunboat diplomacy from the turn of the century. The idea of a "leased area" in another country -- a turn-of-the-century phenomenon -- has given way to the idea of "base rights" where the sovereignty belongs to the grantor state.

According to the 1903 Hay-Bunau-Varilla Treaty, Panama granted to the United States, in perpetuity, the use, occupation and control of what now encompasses the Canal Zone (550 square miles) and gave power, within the zone, to exercise as if it were sovereign of the territory.

Discussions for the renegotiation of a treaty have been going on since 1964. Major disputes have accompanied these negotiations, including a break in diplomatic relations at one point. Under the auspices of the Organization of American States, ties were restored on the premise that both parties "seek the prompt elimination of the causes of conflict between the two countries."

After Secretary Kissinger and Panamanian Foreign Minister Juan Antonio Tack signed an agreement of guiding principles for the conclusion of a treaty on February 7, 1974, rapid progress had been made toward the final drafting. At the present time, they are about half-way through the major issues to be negotiated.

The guiding principles agreed upon by Foreign Minister Tack and Secretary Kissinger include:

1. abrogation of 1903 treaty and amendments and conclusion of a new interoceanic canal treaty
2. concept of perpetuity eliminated. The new treaty would have a fixed date. (25 years has been suggested by Panama, 30 years has been mentioned by Ambassador-at-Large Bunker)
3. termination of US jurisdiction over Panamanian territory to take place shortly after signing of treaty.
4. Panamanian territory in which canal is situated will be returned to the jurisdiction of Panama. As territorial sovereign, Panama will grant to the US (for the duration of the new treaty) the right to use lands, waters, airspace which may be necessary for the operation, maintenance, protection and defense of the canal and transit of ships. (Panama's position has consistently been that the US should retain all powers necessary for continued US operation and defense of the Canal).
5. Panama should receive an equitable share of the benefits derived from the Canal. (Currently, the US pays Panama approximately \$2.3 million a year for the use of her territory by the Canal Company. As of February 1975, the figure offered by the US to Panama is between \$25 and \$50 million, with Panama's request being around \$100 million).
6. Panama would participate in the administration of the canal. The treaty would provide that Panama will assume total responsibility for the operation of the canal upon the termination of the treaty.
7. Panama would participate with the US in protection and defense of the Canal.
8. Recognition by both Panama and the US that new projects to enlarge the capability of the canal might be possible.

During the past year, negotiating teams led by Ambassador Bunker and Foreign Minister Tack have held numerous meetings and have reached "preliminary" agreement on the future administration of the canal and jurisdiction over the Zone. Conceptual agreement rather than details of treaty language have been reached on some of the following issues:

administration
jurisdiction
defense
economic compensation

land and water use

ARGUMENTS IN FAVOR

1. Moral point of view, it would be a long-overdue rectification of an unjust situation.
2. A new treaty taking Panama's sensitivities into consideration -- as well as America's strategic interests -- would go a long way toward opening a real dialogue with not only Panama but the rest of Latin America.

ARGUMENTS AGAINST

Opposition to any relinquishment of sovereignty by the US over the Canal is being spearheaded by Strom Thurmond and Representative Daniel Flood (Pa). Thurmond is the initiator of S. Res. 97 which basically states that no property or transfer of sovereignty of the Canal can be given to Panama without prior authorization by the Congress (Art. 4 of the Constitution). This stresses that both the Senate and House have to agree as opposed to the Treaty alternative undertaken by the Department of State.

Thurmond was quoted in the NYTimes: "Sovereignty is the nub of the issue. The continued exercise of sovereignty (US) is the only way to keep the Canal operating efficiently and continuously. . . ."

Much of this type of argument is based on the fear that

1. Panama's government is unstable -- 58 Governments in the last 67 years (11 changes within the last decade). Such instability would open up the area to elements hostile to the United States.
2. Panama's government is hostile to the United States. It is true that strongman General Omar Torrijos Herrera has, at times, taken a rather strident attitude toward the US. However, most officials believe that this was done to
 - a. curry favor with the Panamanians over the Canal issue and
 - b. strengthen his negotiation position with the United States.

Formerly anti-American sentiment has developed into a positive working relationship that has been evidenced in current negotiations between the two teams. Panama is extremely conscious of the opposition to a new treaty -- especially in the House -- and has been working to define a treaty that answers some of the objections likely to be raised. This forthcomingness has been shown in two major areas of concern:

1. US continued military presence. US wants a presence until the end of the century with a guaranteed renewal clause. Panama would like an option rather than a commitment in this regard.)
2. Full Panamanian control of the Canal. Realizing its position vis-a-vis Congress, Panama realizes that no immediate move in this direction is possible and that obtaining jurisdiction

over the zone and gradual full control of the canal is the best possible solution.

Fears of hostile elements gaining a stronghold position in Panama /the concern of individuals like Thurmond and Flood/ may be less realistic than the actual resentment caused by the failure to renegotiate a more enlightened treaty. A spokesman from the State Department related that

"the choice is not just between a new versus an old treaty. The choice is between a new treaty and what will happen if one is not achieved. A new treaty is a measure of our intention toward all of Latin America."

The sovereignty issue goes to the very heart of the matter between the US and Panamanian relations. As was mentioned, the Canal has become a symbol of a large country taking advantage of a smaller one. If the current opportunity is not realized, the flexibility of the Panamanian government would lessen. Regardless of the political persuasion of the leader of Panama, "the Canal will be a major issue until a treaty acceptable to Panama is signed."

With regard to the defense of the Canal. It goes without saying that since it is Panama's most important resource, it has the most to lose from any damage that might be done. Giving it the chance to play a role in this vital matter can only give Panama a further incentive.

As the situation stands now with regard to protecting the Canal, both the State Department representative and various articles that I have read state that it is almost impossible to protect the Canal. It could be closed by relatively unsophisticated means -- damage to the locks or dams supplying water.

Possibility of a Sea-level Canal

This idea has not yet been negotiated, and chances are that the existing Canal will not become saturated until at least the year 2000.

As of February 1975, General Torrijos seemed to indicate a "reduced importance" to this matter. he felt that the possibility was "more and more remote" because of the cost of excavation. The State Department representative also mentioned that the Sea-level Canal was much easier to maintain and would need less personnel. This may be one reason why Torrijos is in favor of extending the existing Canal rather than building a new one.

Canal and US Security

The canal is still important in economic and military terms, but is probably less today than in earlier periods. The canal is a positive convenience but because of its vulnerability it should not be totally relied upon.

Defense economy has been stressed in terms of the materials that were shipped to Southeast Asia during the conflict. Also, the alternate sea routes are vulnerable to weather conditions, and plagued by lack of fueling facilities.

Nuclear carriers cannot go through the Canal, but submarines can.

The zone is also important for US military communications facilities and for air and naval transit bases.



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