

UNITED STATES,
PANAMA
AND THE
PANAMA
CANAL

○ A GUIDE TO THE ISSUES

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CONCLUSION

"The Government of the U.S. should maintain and protect its sovereign rights and jurisdiction over the Canal and 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."

Senator Strom Thurmond
March, 1975

"We see a new treaty arrangement as the most practical means of protecting our interests. If we try to maintain the status quo, we will face mounting hostility in both Panama and Latin America—and possible loss of the very interest we want to preserve. But a new arrangement based on partnership promises a greater assurance of safeguarding that interest—a canal that is open, safe, efficient and neutral."

Ambassador Ellsworth Bunker
December, 1975

PREFACE

For years, the United States and Panama have been engaged in negotiations for a new Panama Canal Treaty. Observers anticipate completion of a draft treaty by the end of 1977.

These complex negotiations involve such significant economic, political and defense interests for the United States that there has been some disagreement about whether or not negotiations for a new treaty are in the United States national interest. Congress has already begun to debate the matter, even though a treaty has yet to be submitted for ratification.

A productive discussion of the merits of continued negotiations for a new treaty requires a knowledge of the facts and an understanding of the different points of view that prevail in the United States. This booklet is designed to help promote such a productive discussion. All readily available sources of information in the United States—including those that favor a new treaty and those that oppose one—have been reviewed in an effort to set out clearly, simply and objectively the factors involved in this complex issue. It is hoped that an informed understanding may be reached within the United States regarding the common interests involved in the negotiations.

The development of United States foreign policy is served by interested, informed citizens willing to share their views with their representatives in government. A more informed American public can help assure that all U.S. national interests in this foreign policy issue are considered.

SUMMARY

The negotiations under way between the United States and Panama are designed to produce a new treaty to replace the Hay-Bunau-Varilla Treaty of 1903. In that agreement, properly titled the Convention for the Construction of a Ship Canal, Panama granted the United States in perpetuity the use, occupation, and control of a zone of land in order to build, operate and defend a canal across the Isthmus of Panama. The United States was also granted all the rights, power, and authority, as if it were the sovereign, within a zone along the waterway. For these rights, the United States agreed to pay Panama an initial \$10 million, plus an annual fee. Soon after, the United States paid a French company, which had failed in an attempt to build a canal, \$40 million for its assets.

Over the years, Panamanians have come to resent the 1903 treaty bitterly. Their resentment has become a major irritant in Panama's relations with the United States, and indeed, in hemispheric relations generally. The stated objective of current negotiations is to produce a treaty which accommodates the interests of the Republic of Panama and safeguards the basic, long-term interests of the United States.

Panama's Interest In The Negotiations

Panamanians see the 1903 treaty as a set of concessions extracted from an immature new republic by unscrupulous foreign interests. They particularly object to the fact that the treaty gives the United States—forever—exclusive jurisdiction over a large tract of Panamanian territory, the Canal Zone. They also object to the size of the United States military presence in the zone, the limited economic benefits Panama receives from the canal and the amount of land in the zone that the United States does not use but that is still unavailable for Panamanian use.

United States Government Interest In The Negotiations

The goal of the United States in the negotiations is a treaty that promises greater assurance over the long term of a secure, efficient canal that is open to world shipping without discrimination. This country also seeks to reduce sources of friction with Panama and to foster a cooperative relationship, one conducive to protecting United States interests in the canal.

The Status Of The Negotiations

The most recent round of negotiations began in June, 1974. By September, 1976, agreement in principle had been reached on four major issues:

- The new treaty with Panama will have a fixed termination date.
- Under a new treaty, jurisdiction over the Canal Zone will pass to Panama gradually. The United States will retain the right to use areas necessary for the operation, maintenance and defense of the canal.

- During the life of the treaty, the United States will have the primary responsibility for operating the canal. Panamanians will gradually assume larger roles in day-to-day operations until Panama takes full responsibility for operations when the treaty expires.
- The United States will have primary responsibility for the defense of the canal during the life of the treaty. Panama will grant the United States use rights for defending the waterway and will participate in its defense as fully as possible.

Several other issues remain to be resolved. These concern the economic benefits Panama will derive from the canal, the right of the United States to expand the canal, the area the United States needs for canal operation and defense, an acceptable formula to insure the canal's neutrality after the treaty expires, the rights of United States citizens in the zone, and, finally, the duration of the new treaty.

Differences Of Opinion In The United States

The opponents of negotiations argue that the Canal Zone is sovereign United States territory not subject to negotiation and that the canal itself was bought and built and has been maintained for more than 60 years by the United States.

They say that the canal is too important strategically and economically to allow its control and defense by any other nation, especially the Panamanian

government, which they consider to be a leftist military dictatorship with ties to Cuba.

Therefore, they contend, negotiations for a new treaty are not only unnecessary but dangerous to United States security interests and should be terminated.

The proponents of negotiations, on the other hand, say that the current treaty relationship cannot assure the long-term interests of the United States in the canal. Moreover, they say that the Canal Zone is not sovereign United States territory, though the United States has all the rights and authority to conduct its activities in the zone as "if it were the sovereign."

They agree that the canal is important to United States commerce and defense, but say that this country's interest in the canal will be protected only if the waterway remains open, efficient and neutral—available to all the world's shipping. These objectives can best be guaranteed through the conclusion of a mutually satisfactory, new agreement with Panama.

For many years, the supporters of negotiations argue, Panama has considered the treaty to be heavily weighted in favor of the United States, and Panama's consent to the United States presence has declined. If the United States tries to maintain the status quo, they say, it will face mounting hostility in Panama and the rest of Latin America and, perhaps, the loss of the very interests it wants to preserve. A modern treaty arrangement which accommo-

dates Panamanian interests will, they contend, promise greater assurance of safeguarding the national interests of the United States.

THE BACKGROUND

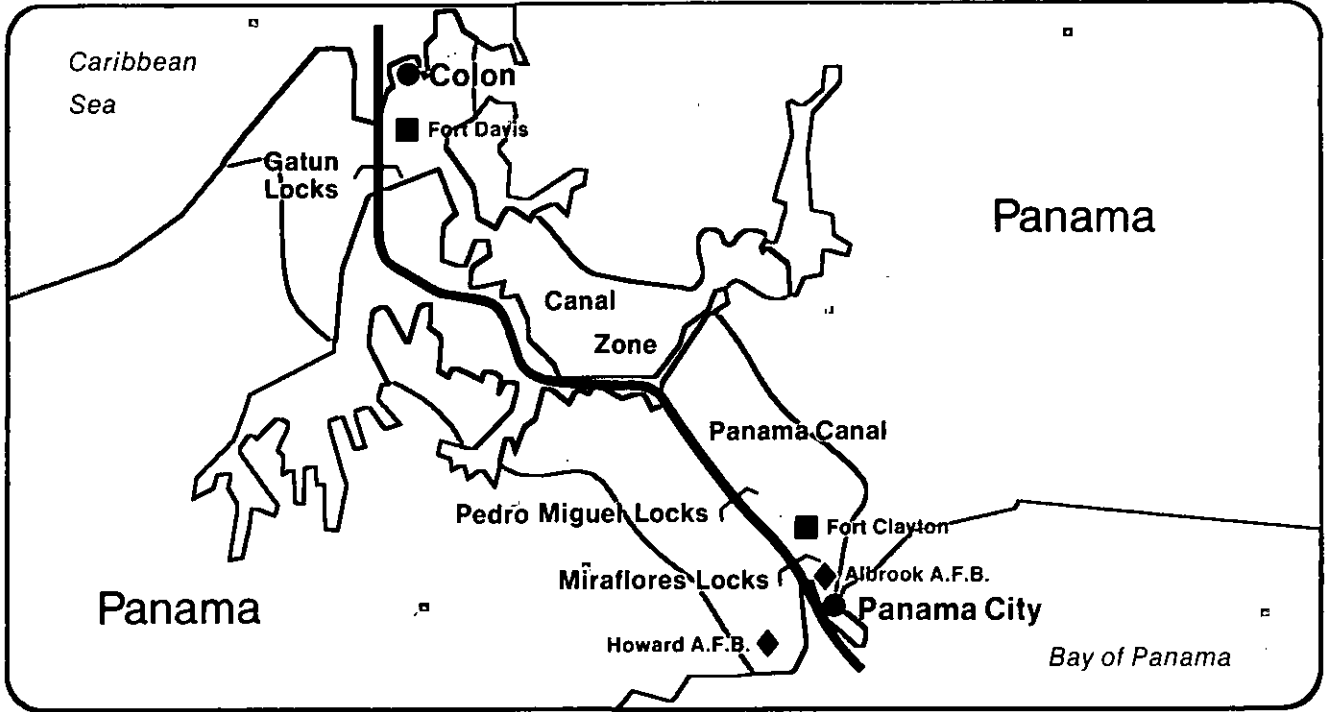
History

The strategic location of the Isthmus of Panama, with its potential as a short route between the Atlantic and Pacific Oceans, generated United States interest in a canal early in the 19th century. The area was then a part of Colombia, and the United States concluded a treaty with that nation for the construction and operation of a canal. Early in 1903 the Colombian Senate rejected the treaty, and by November of that year separatists in Panama had proclaimed their independence and had begun to negotiate with the United States for a treaty of their own. The United States military forces in the area hindered Colombian efforts to put down the Panamanian revolt, and almost immediately, thereafter, the United States recognized the new country.

The Hay-Bunau-Varilla Treaty

On November 18, 1903, the United States and the new Republic of Panama signed the Hay-Bunau-Varilla Treaty, which authorized the construction and operation of a canal across Panama. The agreement was named for its principal architects, Secretary of State John Hay of the United States and Philippe Bunau-Varilla, a French national who negotiated the treaty in the name of Panama. Mr. Bunau-Varilla also had an interest in selling to the United States the remaining assets of the defunct French company which had unsuccessfully tried to build an earlier canal. On December 2, 1903, the provisional government of Panama ratified the treaty.

Canal Zone



CONTRASTING VIEWS OF THE TREATY NEGOTIATIONS

There are differing opinions in the United States on the negotiations for a new canal treaty, as there are on any question so complex. And this issue is unusually complex; so much so that a point of view on one facet of the controversy does not necessarily represent a position fully in favor of or opposed to treaty negotiations. Opinions on both sides are mixtures of various interpretations and conclusions.

While any simplified presentation of such complicated issues may fail to take note of some technical points, what appears below is an attempt to be objective in outlining the opinions of opponents and proponents of the treaty negotiations.

that the United States limits Panamanian participation in commercial enterprises in the Canal Zone.

The dissatisfaction resulting from these complaints erupted in serious demonstrations in 1959 and in 1964 led to riots in which three United States soldiers and 21 Panamanians were killed.

Negotiations for a New Treaty

In December, 1964, President Johnson, after consulting with former Presidents Truman and Eisenhower, committed the United States to negotiate a new treaty.

The negotiations began in January, 1965, and culminated in a joint announcement in June, 1967, that draft treaties had been completed. No action on the draft treaties was taken by either nation and in August of 1970, the Panamanian government of General Omar Torrijos formally rejected them. Panama did, however, indicate a willingness to pursue further negotiations. Several proposals by both governments were offered in 1971–72 without success. In 1973 Ambassador Ellsworth Bunker was appointed by President Nixon to renew the talks.

In February, 1974, Secretary of State Kissinger of the United States and Foreign Minister Tack of Panama signed a statement of principles that is the basis for the negotiations now under way.

Guidelines for Current Negotiations

In summary, the principles provide that that the 1903 treaty will be replaced by a new one, which will have a fixed termination date; that the United States jurisdiction over Panamanian territory will be returned promptly to Panama; that Panama will grant to the United States, for the duration of the treaty, the right to use the land, water and airspace necessary for the operation, maintenance and defense of the canal and the right to regulate the transit of ships through the canal; that Panama will receive an equitable share of the benefits derived from the canal's operation and will participate in the operation and defense of the canal during the life of the treaty, assuming full responsibility for operations thereafter; and, finally, that Panama and the United States will agree on the provisions that will govern any expansion of the canal.

The Canal And The Canal Zone

The Canal Zone is about 10 miles wide and 51 miles long. It extends across the Isthmus of Panama from the Atlantic to the Pacific, cutting the Republic of Panama in half.

By the terms of the 1903 treaty, the Canal Zone is under the jurisdiction of the United States and is administered under United States laws. The Canal Zone government is, by law, an independent agency of the United States government. It is headed by a governor, who is appointed by the President of the United States for a four-year term.

Canal Operations and Tolls

The governor also serves as the president of the Panama Canal Company, a corporation wholly owned by the United States government. The Company is responsible for all of the operations directly involved in the movement of ships through the canal. It also controls vessel repairs, harbor terminals, a railroad across the isthmus, an electrical power system, a water system, a communications system, living quarters, retail stores and a supply ship operating between the zone and the United States.

Traditionally, the President of the United States appoints the Secretary of the Army as the sole stockholder of the Company, and names a Board of Directors, which oversees the Company's affairs. Approximately 80 percent of the Canal Company's employees are Panamanian, and the rest are United States citizens.

The Company sets toll rates for the canal with the approval of the President of the United States. By statute, tolls must be set to cover costs but are not intended to produce a profit. Since 1974, however, costs have exceeded revenues, and the Company is attempting to close the gap with several measures, including an increase in tolls.

Toll rates did not change for the first 60 years of the canal's operation. In 1974, however, due in part to rising costs, tolls were increased by 19.7 percent. Merchant vessels now pay \$1.08 a ton for laden ships and 86 cents a

ton for unloaded ships. A further increase of about 19.4 percent has been proposed.

Annuities to Panama

Under the 1903 treaty, the United States paid Panama \$10 million initially and an annual fee (beginning in 1912) of \$250,000 in gold. When the United States abandoned the gold standard, Panama received an equivalent annuity of \$430,000. As a result of the treaty revisions, the annual payment was raised to \$1.9 million. That figure has since been adjusted to allow for the devaluation of the dollar, bringing the annual payment by the United States to Panama to \$2.3 million.

The Economic Picture

The Panama Canal has always been of considerable value to United States commerce. In 1975, about twelve percent of all United States export and import waterborne tonnage used the Panama route. Forty-five percent of the cargo moving through the canal came from the United States, and 23 percent was bound for United States ports.

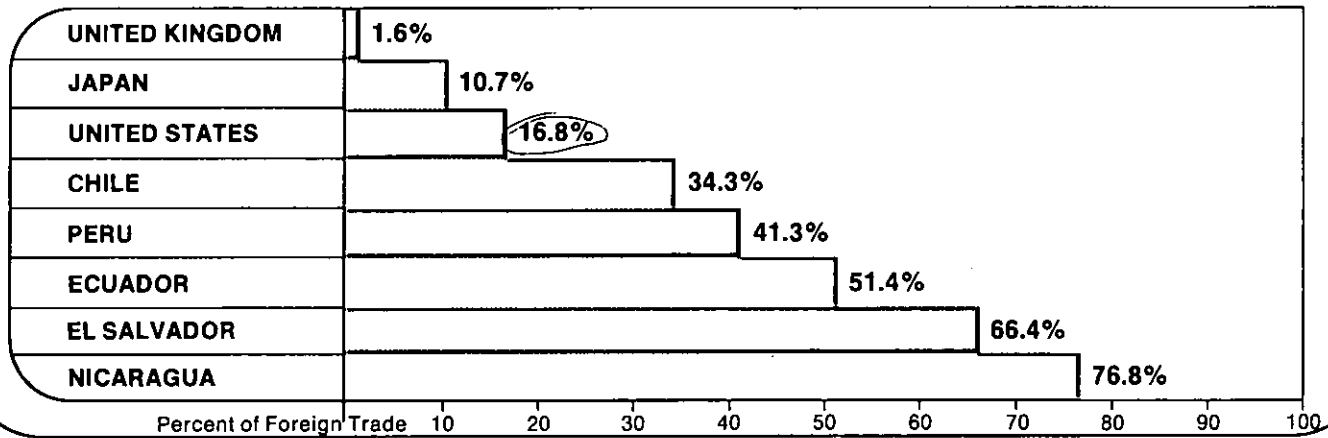
Despite such statistics, however, the canal is not considered the critical United States trade route that it once was. A Library of Congress study indicates that there are many alternative routes for most important products and commodities. And the use of larger vessels and other means of transportation may serve to limit canal traffic in the future. Nevertheless, for shippers of cer-

tain commodities—coal and coke, for instance, and petroleum products—and for certain regions of the United States, the Panama Canal remains an important commercial link.

World Trade

The canal is more important to the commerce of Panama and some other Latin American nations than it is to that of the United States. More than 29

Countries With Major Portion of Foreign Seaborne Trade Using Canal



percent of Panama's foreign trade passes through the canal. Some 25 percent of its foreign exchange earnings and nearly 13 percent of its gross national product are directly or indirectly attributable to the waterway.

More than 50 percent of the foreign trade of Nicaragua, El Salvador, and Ecuador moves through the canal, as does more than 25 percent of the exports and imports of many other Latin American nations.

Of course, the canal's importance extends far beyond the hemisphere, for 5 percent of the world's seaborne trade uses it. Trade between the East Coast of the United States and Asia accounts for nearly 40 percent of the total canal traffic and is therefore, the major canal trade route.

Of total canal traffic moving from the Atlantic to the Pacific, some 12.5 percent is bound for the West Coast of the United States, 10.5 percent for South America and nearly two-thirds for Asia, principally Japan. About two-thirds of the traffic from the Atlantic to the Pacific originates in the United States.

Of the goods which passed from the Pacific to the Atlantic in 1975, only 12.5 percent originated in the United States. Most of the goods originated in South America—24 percent—or in Asia—37 percent. The remaining tonnage started out in Canada, Central America or Oceania. About 39 percent of all this West to East trade through the canal was destined for United States east and Gulf Coast ports. Another 40 percent was bound for Europe.

Most of the cargo moving through the canal is industrial raw materials and grains, which lend themselves to shipment by sea. Among such cargoes, fossil fuels—coal, coke, and petroleum—predominate, accounting for about 36 percent of the annual traffic. By contrast, finished products—iron and steel manufactures, for instance, or machinery and equipment—represent less than 10 percent of the canal's tonnage.

Transit Capacity

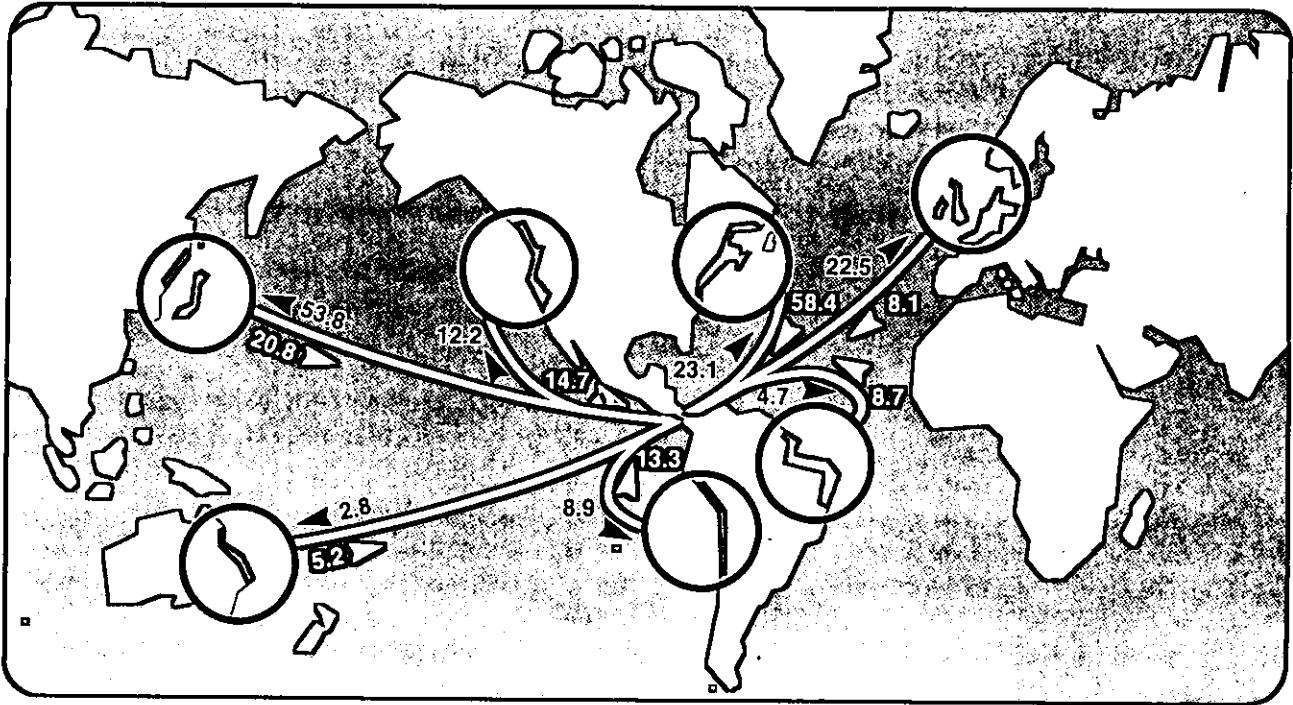
Currently, there are fewer than 15,000 transits through the canal each year, and its capacity is estimated at 26,000 transits a year. Projections suggest that this capacity will not be reached until early in the next century.

In case a greater capacity is required, two options have been considered. A third lane of locks could be added to the existing canal at an estimated cost of \$1.7 billion, or a new sea-level canal could be built at an estimated cost of more than \$5 billion. Thus far, there has been no conclusive evaluation of the economic or military need for or the technical feasibility of either expansion project.

The Defense Situation

The canal is an important defense asset to the United States, for it eases the task of shifting military forces and supplies between two of this country's major areas of strategic interest. The canal will remain important so long as the United States depends upon the sea for large-scale military logistic support. The fact that large aircraft carriers cannot use the canal and that nuclear

Major Trade Routes Using The Panama Canal (in millions of tons)



Principal Commodities and Cargoes

	% Transit Tonnage	Tonnage (in Millions)
Coal and Coke Petroleum and Products Chemicals and Petrochemicals	37.8%	52.8
Grains Agricultural Commodities	17.8%	24.9
Ores and Metals	9.5%	13.3
Manufacturers of Iron and Steel	8.0%	11.2
Nitrates, Phosphates and Potash	6.7%	9.4
Lumber and Products	4.1%	5.7
Canned and Refrigerated Foods	3.0%	4.1
Other	13.1%	18.5

submarines would have to surface during transit tend to diminish the waterway's importance for strategic purposes, though not necessarily for logistic flexibility. The canal's vulnerability to attack is one of the reasons for the development of United States contingency plans of alternative routes for the movement of military forces and supplies.

The United States is responsible for the defense of the canal and the Canal Zone. It has in the zone a military community of about 22,000, including dependents. The actual combat and support forces total about 9,400. There are four United States administrative installations in the zone encompassing 22 sub-bases. For most situations involving a military invasion in the Canal Zone or for the protection of the entire canal from hostile attack or sabotage, contingency plans require reinforcements from the United States.

Because the efficient operation of the canal depends upon a delicate balance of natural and man-made elements, the Defense Department has acknowledged that, while a sufficient force could defend the waterway, there can be no guarantee that it would remain open continuously. In particular, the Pentagon says, it would be extremely difficult to prevent canal closure by an air attack or by skilled sabotage.

CONTRASTING VIEWS OF THE TREATY NEGOTIATIONS

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pears below is an attempt to be objective in outlining the opinions of opponents and proponents of the treaty negotiations.

Purpose Of The Negotiations

Q *Why is the United States negotiating a new treaty?*

Opponents: The State Department and the President are giving in to pressures from radical elements in and outside of Panama. The United States government is mistakenly attempting to appease anti-American and Communist interests in Panama and the rest of the hemisphere. Pressure to cede the Canal Zone to Panama stems not from the wishes of the Panamanian people, but from the propaganda of left-wing and extreme nationalist groups. It is unnecessary for the United States to respond to these pressures since its interests are protected by the terms of the present treaty.

Proponents: The United States recognizes that the existing treaty was negotiated more than 70 years ago and requires adjustment if it is to continue to serve the United States and Panamanian interests. For many years, Panama has considered the treaty to be heavily weighted in favor of the United States, and Panama's consent to continued United States presence on Panamanian territory has declined. Since it is much more prudent to operate and defend the canal with Panama's cooperation than without it, a new treaty arrangement is the most practical means of protecting United States interests in the canal.

Q *How can United States interests in the canal best be served?*

Opponents: The United States interest in the canal is too great to be negotiated. The ill-advised talks should be brought to a close in as amicable a manner as possible, and the United States should reassert its rights and authority in the area.

This would allow the United States to accomplish two essential goals: the retention of its undiluted sovereignty, indispensable to the effective operation of the canal, and the modernization of the canal in the future.

Proponents: United States long-term interests are jeopardized by the existing treaty, which has generated increasing dissatisfaction among Panamanians. Given the reliance of each party on the other in the operation of the canal and growing interdependence among all nations, a new arrangement based on partnership promises a greater assurance of safeguarding the basic United States interest—continued access to a well-run canal that is open to the shipping of all nations.

Q *What would the consequences be if the negotiations with Panama failed?*

Opponents: Minimal and salutary. Breaking off the negotiations would undoubtedly entail some diplomatic complications but there would be no conflict or retaliation by Panama in as much as it needs the canal for its economy. Moreover, the termination of negotiations would end United States cooperation with a policy that contributes to the perpetuation of the Torrijos regime. It would make clear to Panama and to adventurist Marxists that the United States will not relinquish its interests in the canal. Furthermore, it would reaffirm and maintain the United States strategic position in the Caribbean-Gulf of Mexico area.

Proponents: Perilous. If the United States fails to achieve a new treaty with Panama, the issue could produce a bitter political dispute which would affect

the efficient operation of the canal and could possibly result in the closing of the canal or damage to its facilities. Such a development would adversely affect United States interests in the canal as well as all relations, political and economic, with the countries of Latin America. Moreover, relations would be impaired with all nations which rely on the canal for their trade and commerce.

Q *How do other governments view the negotiations?*

Opponents: With quiet alarm. United States policies in operating the canal have been recognized as fair to all nations that use it. American allies who depend on the canal would question the United States determination to defend its vital interests—as well as their own—if the United States gave up control of the canal. While some Latin American governments may publicly support Panama in the negotiations, in private they favor the retention of full control by the United States.

Proponents: With satisfaction and anticipation. Latin America sees the handling of the negotiations as a test of United States political intentions in the hemisphere. In May, 1975, the General Assembly of the Organization of American States unanimously endorsed the concept of a new treaty, and most governments in Latin America have expressed support for it. A substantial number of member countries of the United Nations favor the conclusion of a new treaty. Some foreign leaders have even suggested internationalization of the canal. While other governments throughout the world recognize

Economic Issues

Q *How can the economic value of the canal best be protected?*

U.S. interests in the canal, they expect the United States to work out an arrangement with Panama that will guarantee the continued operation of the canal in service to world commerce and trade.

Opponents: By standing firm. The best way to preserve the canal's economic value would be to retain sovereignty and jurisdiction over the Canal Zone, which is indispensable to assuring its efficient maintenance and operation; and to begin a modernization program, which could be accomplished at relatively low cost and in a short time with every assurance of success.

These actions would allow an increase in traffic and would thus increase the benefits Panama receives from the canal.

Proponents: By being reasonable. The canal's long-term economic value derives from its being efficient and fully operational. Tolls cannot be collected and goods cannot be shipped if the canal is closed. If the United States tries to maintain the status quo with Panama, it runs the risk of increased political discontent, which could possibly result in damage to or the closing of the canal. A cooperative and mutually agreeable management of the Panama Canal, reflected in a new treaty, would best assure the canal's continued availability to the commerce of both countries as well as to the rest of the world, preserving its economic value for all.

Any new treaty would protect United States long-term interests by including guarantees of continued efficient and neutral operation of the canal after Panama assumes the responsibility for its management.

Q *What would be the impact of greater Panamanian participation in and eventual control of the operation of the canal?*

Opponents: Chaos. The Panama Canal is a highly technical operation requiring the close coordination of many elements. It cannot be maintained by a small, technologically underdeveloped country or by one that is, like Panama, without adequate financial competence. Nor could the canal ever be modernized by Panama. Under Panamanian control, tolls would probably rise dramatically, driving away carriers whose operations are sensitive to toll increases.

Proponents: Progress and amity. There is little basis on which to argue that Panama would not be able to keep the canal operating efficiently and economically. Panama has the technological competence and managerial skills to assume greater participation in and control of canal operations. In fact, Panamanians already comprise more than 80 percent of the employees of the Panama Canal Company. While only a small percentage of these employees now serve in management positions, it is reasonable to assume that after a period of United States training, Panamanians will be able to take an increasing share of the burden in operating the canal.

Defense Issues

Q *Has the strategic importance of the canal diminished in recent years?*

Opponents: Not significantly. The Caribbean, Gulf and canal waters continue to offer mobility, flexibility and versatility to United States military forces at a minimum cost. The canal provides for the rapid deployment of ships from the Atlantic to the Pacific and back again, and history has repeatedly demonstrated the logic and the urgency of such a capability. During

both world wars and the Korean and Vietnam conflicts, the canal was used heavily for the transfer of both combatants and supplies.

Beyond the logistic considerations, however, the United States military presence in the canal serves as a strategic deterrent to increasing Communist influences in the area—both Cuban and Soviet.

Proponents: Substantially. Nevertheless, the canal is still very important to the security interests of the United States. However, as a result of developments in modern warfare, the canal has become more vulnerable to temporary closure by air attack or sabotage. Because of that vulnerability, alternative routes have been developed for the movement of military forces and supplies. Furthermore, large aircraft carriers cannot use the canal and nuclear submarines, which would have to surface during any transit, are not likely to use it in wartime. These factors tend to diminish the importance of the canal for strategic purposes, but not necessarily for logistic purposes.

Moreover, the most likely source of increased Communist influence is exploitation of the Panamanian dissatisfaction with the existing treaty. The best deterrent to a Cuban or Soviet threat would be a treaty that gives Panama a role in the defense of a canal in which it has a major stake.

Opponents: By retaining control. Control of the canal by any nation other than the United States would threaten the security of the canal and United States interests in it. The presence of the United States and its control, opera-

Q *How can the defense of the canal best be assured?*

tion and defense of the canal must continue to insure the security of the waterway. The retention of United States sovereignty and ownership rights is the only way to assure control of canal operations and defense and the continued availability of the canal to United States security needs.

Proponents: By cooperating. Even now, security for the canal and the Zone depends upon cooperation between the Panamanian and United States governments. Although the area can be defended, even in a hostile environment, it would be impossible to insure the canal's continued operation in the face of a significant deterioration in the relationship between the United States and Panama.

The critical factor in the defense of the canal is not United States sovereignty but a cooperative relationship with Panama. Under a new treaty, the United States would retain the defense rights it needs, but Panama would be able to participate in the defense of the canal. A new canal treaty that fosters this cooperative relationship would be most conducive to a secure canal.

Opponents: No. Panama's small National Guard is not comparable either in size or in fighting effectiveness to the United States military presence in the Canal Zone. The National Guard could not successfully defend itself against a Cuban attack. Moreover, the National Guard is commanded by a Marxist general, Omar Torrijos, who heads the Panamanian regime. His irresponsible leadership would threaten the security interests of the United States.

Q *Can the Republic of Panama defend the canal?*

Political Issues

Q *Does the present government of Panama have the authority to represent Panama?*

Proponents: Yes, in cooperation with the United States. United States forces are presently in the Canal Zone to provide limited security for the canal. It would be difficult or impossible to insulate the zone from sabotage or guerilla attack without full cooperation from Panama. The Panamanian National Guard can assume increasing responsibility for the defense of the canal, though in the event of a serious security threat, reinforcement from the United States would be necessary.

Opponents: No. In October, 1968, the National Guard overthrew the legal, constitutionally elected government of Panama. The resulting military regime, led by Torrijos, was imposed by force and does not represent the 1.7 million people of Panama.

Proponents: Yes. United States policy stresses the need to deal with governments that are in power. This policy has determined United States relations with the government of General Torrijos, a military regime that has maintained its power for eight years. General Torrijos' powers as the "constitutional" leader of Panama were confirmed by the nation's 505-member Constituent Assembly, which was chosen in general elections in 1972.

Beyond these considerations, the canal issue is of such importance to Panamanians that it transcends the question of which government is in power. Past governments, both military and civilian, have registered their dis-

satisfaction with the treaty. It is virtually certain that future governments would press even more forcefully for a new treaty.

Q *Is the Panamanian government communistic?*

Opponents: Certainly. The government of Panama is dominated by leftist radicals. The Communist Party is operating openly. The principal government officials—including the chief of state, Torrijos—are considered to be Marxists.

Proponents: Hardly. The Torrijos regime is, perhaps, strongly nationalist and populist, but it is not communistic. It is a mixture of political elements, including those of the left, who support Torrijos and his program.

As a manifestation of its political independence—not of its ideological preferences—Panama established relations with Cuba in 1974, as did other Latin American countries. The economy of Panama, far from being communistic, encourages a strong and dynamic private sector.

A new treaty mutually acceptable to Panama and the United States would strengthen Panama's relations with the United States. It would remove the major issue being exploited by the Communists and make Panama less vulnerable to pressures from the left.

Q *What assurance is there –given Panama’s many changes of government in 73 years of independence –that a new treaty will be honored by subsequent administrations?*

Opponents: None. Panama has been a land of endemic revolution, endless intrigue and governmental instability. There is no assurance of stability in a country that has changed governments some 60 times in little more than 70 years. Only four presidents ever completed their four year term in office. If there is no assurance of stability in Panama, there is no assurance of stability for the canal, should control be transferred to Panama.

Proponents: Sufficient. Panama has had a relatively stable political history since its independence. The statistics some alarmists quote for governmental changes include the instances in which vice presidents have been sworn in as acting presidents while presidents were travelling abroad—a formality that is required by the Panamanian constitution. Since 1946 Panama has had 13 governments; Italy has had 39. In the same period France has had 34 Premiers, the United States six presidents and the United Kingdom nine Prime Ministers.

For many years, Panama has objected to the canal treaty, but it has without exception adhered to the terms of the agreement, no matter who happened to be in power. A new, more satisfactory treaty should be even more firmly supported and observed. Moreover, the treaty is an emotional, nationalistic and economic issue in Panama. If a treaty is negotiated that removes some of the long-standing grievances of the Panamanian people, it should be honored even more readily by subsequent governments.

Legal Issues

Q *Does the United States own the Canal Zone?*

Opponents: Absolutely. The Canal Zone and the Panama Canal are constitutionally acquired territory. They are the property of the United States, paid for and developed by the United States.

Proponents: No. The \$10 million the United States paid Panama under the 1903 treaty was not for the purchase of the Canal Zone, but in compensation for the rights, power and authority the United States would exercise there.

The United States does have title to some property in the zone, but property may be owned by one country or individual and still be subject to the sovereignty of another country.

Q *Is the status of the Canal Zone in relation to the United States comparable to that of Alaska or the states formed from the Louisiana Purchase?*

Opponents: Yes. There are similarities, at least historically. As territory over which the United States exercises sovereignty in perpetuity, the Canal Zone has similar legal status to that which any other land the United States acquired has had in the past. In as much as Panama ceded to the United States the entire territory comprising the Zone, the Zone was obtained in the same manner as Alaska and the Louisiana Purchase. The relinquishment of the Canal Zone by the United States would, therefore, be analogous to the return of the Gadsen Purchase to Mexico or Alaska to Russia.

Proponents: No. The status of the Canal Zone is not the same as that of Alaska, Louisiana or, for that matter, the Virgin Islands.

The 1903 treaty is clearly different from such treaties of cession as the Louisiana Purchase or the Gadsen Purchase because in the Canal Zone the

United States acts under the treaty as “if it were the sovereign” while in the other territories it became the sovereign.

The statute conferring citizenship by birth in the Canal Zone is different from that traditionally applied to persons born in the United States or its territories. People born in the Canal Zone of parents who are not United States citizens do not acquire United States citizenship. But anyone born in the United States or in most any United States territory acquires United States citizenship automatically.

Other territorial purchases by the United States have specified one-time payments for land. But the relationship with Panama has always required annual payments for the rights, powers and privileges granted. Moreover, under the treaty, Panama retains all reversionary rights in the Canal Zone, while the rights of the United States are clearly defined and limited.

Q *Does the United States have sovereignty over the Canal Zone?*

Opponents: Certainly. With the 1903 treaty the United States replaced Panama as sovereign in the zone. And both the 1936 and 1955 treaties reaffirmed United States control over the zone. The payment of \$10 million gave the United States full rights of sovereignty in perpetuity.

Proponents: No, it doesn't. The treaty of 1903 did not confer sovereignty, it granted rights that were to be exercised by the United States as “if it were the sovereign.” As early as 1905, United States officials acknowledged that Panama retained at least titular sovereignty over the zone. This recognition

was reflected in the 1936 treaty, in which the zone was referred to as “territory of the Republic of Panama under the jurisdiction of the United States.”

Q *What have the United States courts held on the legal status of the Canal Zone?*

Opponents: That it is U.S. territory. In the 1907 case of *Wilson v. Shaw* the Supreme Court of the United States said: “It is hypercritical to contend that the title of the United States to the Canal Zone is imperfect and that the territory described does not belong to this nation because of the omission of some of the technical terms used in ordinary conveyances of real estate.”

As recently as 1972, the court termed the Canal Zone “unincorporated territory of the United States” over which Congress “has complete and plenary authority” (*United States v. Husband*). Therefore, the modification of the international status of the Canal Zone is a matter requiring the concurrence of both Houses of Congress.

Proponents: Nothing definitive. The rulings of the United States courts do not provide a basis for any definitive conclusion with respect to the international status of the Canal Zone, nor were they intended to do so. Rather, rulings have been made for the sole purpose of extending the effect of a specific provision of United States law to the Canal Zone or of exempting the Zone from its application.

The case of *Wilson v. Shaw* did equate the Canal Zone to territory belonging to the United States, but only to the extent necessary to warrant the expenditure of public funds within the zone.

In other cases, the Court has held the zone to be foreign territory for other purposes. For example, its ports are considered foreign ports for the purposes of the transportation of mail (*Luckenbach Steamship Co. v. United States*). And in the 1948 case of *Vermilya Brown v. Connell*, the Supreme Court described the Zone as “admittedly territory over which we do not have sovereignty”.

Q *Is sovereignty essential to the protection of United States interests in the Canal Zone?*

Opponents: Yes. If the Canal is to be operated efficiently for the benefit of all nations, it is indispensable that the United States retain its exclusive sovereignty over the zone. Without such sovereignty, the canal would be subject to nationalization by Panama, and be open prey to Cuba and the Soviet Union.

United States sovereignty over the Canal Zone is infinitely better for United States interests and for the protection of world commerce than any other negotiated arrangement.

Proponents: No. Sovereignty is not central to the basic issue of how best to assure United States interest in the Canal over the long term. A fully functional, open and neutral canal is not contingent upon continued United States exercise of sovereign-like rights. These objectives can be achieved through a new treaty under which rights and responsibilities are shared and the common interests of both countries are realized.

Q *Will United States citizens employed in the zone be protected under a new treaty?*

Opponents: Probably not. It is unlikely that a new treaty would provide United States employees sufficient protection or guarantee their status. The morale of Canal Zone residents is very low now, as recent labor disputes and opinion surveys have shown. Their morale has been drastically eroded by the belief that the canal will be turned over to Panama and that their jobs will be sacrificed. Whatever protection is afforded under a new treaty would end with termination of that treaty.

Proponents: Of course. United States objectives in the negotiations include a guarantee of fair treatment for United States citizens in the Canal Zone. While the legal status of United States residents will change under a new treaty, any new arrangement will guarantee them the same rights and protections enjoyed by other concentrations of United States employees abroad.

Q *If the 1903 Treaty grants rights "in perpetuity" to the United States, why must the United States negotiate a new treaty?*

Opponents: Why indeed? There is no need for the United States to negotiate a new treaty that surrenders United States sovereignty. The treaty now in force gives the United States, in perpetuity, all the rights it needs to operate and defend the canal and protect United States interests in the canal. The United States should not surrender sovereignty merely because of threats to the canal.

Proponents: Common sense. It is clear that perpetuating the exercise of total United States jurisdiction in the Canal Zone as the United States has for more than 70 years will not assure the long-term interests of the United States, let

alone Panama. The treaty signed in 1903 must be revised and adjusted to deal with the new realities of the 1970's—and to respond to Panama's legitimate grievances. Only in this way can the United States preserve the interests the perpetuity clause in the original treaty was designed to protect.

CONCLUSION

This booklet has reviewed the issues involved in the complex negotiations for a new Panama Canal treaty. It has gathered together and explained the facts. It has presented the arguments for and against negotiations.

Now it's up to you.

It is most timely that you share your views on this important subject with other citizens and your representatives in Congress. A more informed American public can help assure that all United States national interests in this vital foreign policy issue are considered and served.