

STATEMENT BY SENATOR BOB DOLE BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE, OCTOBER 5, 1977

Mr. Chairman and Members of the Committee: I appreciate this opportunity to appear before the Committee today, to comment on the two Panama Canal Treaties now pending before the Senate.

You gentlemen have already had an opportunity to hear from a series of Administration witnesses on this important issue. As one who shares the responsibility of deciding whether or not these two Treaties should be ratified, I can appreciate your desire to gain as many perspectives on the issue as possible.

I, too, hope to learn a lot more about all that is involved here in the weeks ahead. But I cannot agree with many of the key assessments and conclusions about these Treaties which the Administration's spokesmen offered to you last week.

I cannot agree, for example, that our ability to continue to use the canal, and to defend the canal, is adequately guaranteed under the provisions of these Treaties. I cannot agree that our nation's economic interests are protected by granting exorbitant annuity payments to Panama, and by giving Panama a major chunk of toll revenues. I cannot agree that the United States Canal Zone territory should be turned over to Panama without the express consent of both Houses of Congress. I hope to offer some helpful perspectives at this time on how we should properly approach these Treaties in order to protect our vital interests.

On September 23, I became the first member of the Senate to introduce amendments and reservations to the Panama Canal Treaties. I want to explain why I feel this is a responsible approach to this Treaty issue. In doing so, I will review the details of the Treaty modifications I have proposed, and explain why I disagree with the Administration's spokesmen on these critical points.

A Senate Responsibility

Article II of the United States Constitution gives the President the power to make treaties with other nations "by and with the advice and consent of the Senate." Our advisory role is clear. And our responsibility to scrutinize treaties before giving our consent is evident.

Yet, the Administration seems bent upon forcing the Panama Canal Treaties through the Senate without modification. We are told that anything less than "unqualified" Senate approval will jeopardize the Treaties. General Torrijos takes the same narrow view. "The negotiations are over," he says. "The Treaties have been signed. I'm not interested in what is said."

The Treaties have been signed, but the debate has only started. Our Constitution guarantees that we, on behalf of the American people, will have the final say on Treaty proposals, and I don't think we should shirk our responsibility.

Making Modifications

The State Department tells us that amendments or reservations to the Canal Treaties would be fatal. It is likely that legally binding modifications like these would require renegotiation, at least on those particular portions of the Treaties.

But I do not think that proposing amendments should be equated with efforts to "kill" the Treaties. In fact, it is not an effort to destroy, but to improve these documents which bear so heavily on our national interests. I studied both Canal Treaties in detail, and found them grossly unacceptable in certain areas. I have offered reasonable proposals to modify those portions, in line with our Constitutional responsibility.

The Panamanians have understood our ratification system all along. They were aware of the Senate's responsibilities of review, and its right to modify, if necessary.

I say that we should amend if necessary, and register reservations if necessary, and at that point the ball is in Panama's court. If they refuse to reconsider these points, then the

blame is theirs, not ours. But I suspect that they will be ready to renegotiate rather than to lose these Treaties which give them so much.

### Begging Out With "Understandings"

One thing should be made very clear: simple "understandings" by the Senate will have no legally binding effects on the Canal Treaties. Understandings merely constitute interpretations of this or that point in the Treaties, and do not necessitate renegotiation.

However, they are our interpretations, not Panama's. When an issue or dispute arises in years to come, we will point in vain to our "understandings." The Panamanians will say: "That may be the way your Senate interpreted it, but this is what the Treaty says, and we interpret that differently."

If we really feel strongly about weaknesses or ambiguities in these Treaties, we should be bold enough to correct them in a straightforward and non-apologetic manner. If we must amend a Treaty provision to remove all doubt about its meaning, then so be it.

If we simply "buy time" now by deceiving ourselves with "understandings" that have no binding impact, the next generation may have to bear the consequences. It will, of course, be easy to soothe our consciences by attaching weak "interpretations" to the Canal Treaties. Politically, it may be a very easy thing to do.

But I say this: If we end up next year ratifying these Treaties with nothing more than a bunch of meaningless, half-baked "understandings" attached, we will have failed our Constitutional duty to the national interest and the American people.

Mr. Chairman, I would ask the Committee's permission to insert, at the end of my prepared statement, excerpts from several authoritative sources comparing the effects of Treaty amendments, reservations, and understandings.

### Amendments to Treaty

Mr. Chairman, in accord with my feeling that the Senate has a responsibility to modify these Treaties where necessary, I have introduced a series of six amendments and two reservations. The amendments would directly modify, or add to the language of the Treaties, while the reservations express specific conditions under which our agreement to ratify would be made. All of these would, in my opinion, better protect the nation's vital interests and substantially improve upon both the basic Canal Treaty and the Treaty on permanent neutrality.

I will not spend a lot of time describing these proposals, since I believe you have all had an opportunity to review the statement I made on September 23, at the time of introduction. I do want to emphasize, however, that I feel very strongly about the Treaty defects which prompted each of these proposals. My amendments and reservations represent sincere and earnest efforts to correct these problems, in a manner that is legally binding. Without these corrections, I think both treaties jeopardize our interests and are therefore unacceptable.

### Military Intervention and Priority Passage

Mr. Chairman, I am positively convinced of the Canal's importance to the United States' defense interests. If there was ever any question in anyone's mind about this importance, I would think that the letter to President Carter last June, signed by four former Chiefs of Naval Operations, would remove that doubt. One of those officers, Admiral Thomas H. Moorer, testified persuasively on this point before the House International Affairs Committee last week, and I would commend his testimony to the attention of this Committee.

Therefore, with respect to the Treaty on permanent neutrality, I propose to amend Article IV to specifically guarantee our authority to intervene militarily whenever we determine the Canal's neutrality to be threatened. In addition, I propose to amend Article VI to guarantee that U.S. vessels of war will have "priority passage" rights through the Canal whenever our nation is at war. Both of these points are ambiguous within the Treaty, and have been interpreted differently by American and Panamanian negotiators. It is clear that clarification of the language is badly needed. An "understanding" will not do the job.

Last week, Secretary of Defense Harold Brown testified that "we felt strongly [during Treaty negotiations] that the United States should take whatever action was necessary to maintain neutrality," and U.S. Ambassador Sol Linowitz insisted that "it is for the United States to make the determination as to how we should respond and how we should defend our rights..."

However, the Chief Panamanian Negotiator, Escobar Bethancourt was quoted in an interview on August 24 as saying that the United States will not determine when neutrality is violated, and that the Treaty "does not establish that the United States has the right to intervene in Panama."

Secretary of State Cyrus Vance testified to you that, "in practical terms, as I understand it, our ships can go to the head of the line" in gaining passage through the Canal. This is under the 'expeditious passage' clause in the Treaty. The Panamanian negotiator, on the other hand, specified that "expeditious passage does not mean privileged passage," and that if "the Gringos with their warships say 'I want to go through first,' then that is their problem with the other ships waiting there."

#### Embassy Cable

Despite efforts by the Secretary of State, Secretary of Defense, and others in the Administration to "smooth over" these discrepancies, there is no question that serious differences in interpretation still exist.

This was brought clearly to my attention earlier this week when I was handed a copy of a confidential cable sent to the State Department by our Embassy in Panama. This cable reveals just how widely our interpretation of the "intervention" and "expeditious passage" clauses differs from that of Panama's negotiators. I have already asked the Secretary of State to comment on the contents of the cable.

Rather than read it verbatim, I will summarize its contents:

Our political counselor at the American Embassy in Panama found one of the Panamanian Treaty negotiators "disturbed" last Thursday morning by testimony that had been presented before the Senate Foreign Relations Committee.

Specifically, the Panamanian Negotiator, Carlos Lopez Guevara, was said to be troubled by testimony presented on Monday regarding the Carter Administration's interpretations of the "expeditious passage" clause, and of our rights to defend the Canal's neutrality. That would be the testimony by Secretary Vance, and Ambassadors Ellsworth Bunker and Sol Linowitz.

#### No "Priority" or "Intervention" Rights

Guevara is said to have stated that "preferential" treatment for American ships was specifically rejected during the negotiations, in favor of the term "expeditious"--seen as having a far different meaning.

Furthermore, Guevara told our political counselor on Thursday that Article IV of the Treaty on Permanent Neutrality does not give the United States the right of military intervention to protect the Canal. He is quoted as follows: "Panama cannot agree to the right of the U.S. to intervene." He further urged that U.S. officials stop using the term "intervention" in describing our rights under this Treaty.

According to the cable, our counselor at the Embassy then told Guevara that certain statements by Panamanian negotiators--and I assume this refers to remarks by Escobar Bethancourt which I quoted above--are proving "difficult to explain to skeptical Senators." In response, Guevara is said to have stated that no matter how necessary in the American process, there were some things that no Panamanian government could accept.

The cable ends with a notation by our Embassy that Guevara "is influential" within his government. It is advised that the Administration is likely to be faced with "increasing irritation over--and perhaps public disavowals of--our interpretations. Any assertion which seems to claim a right to intervene in Panama's domestic affairs is almost sure to be challenged" by Panamanians.

#### We Cannot Accept Ambiguity

Mr. Chairman, I have decided to include this cable as part of my testimony for a very important reason. It demonstrates beyond a doubt the vast differences in interpretation of the most important part of these Treaties--that portion which deals directly with our vital national defense interests.

It appears that the Panamanian officials are trying to sell one version of the Canal Treaties to their people, and that the President is presenting a totally different picture. This may be good strategy for gaining ratification, but where does it leave us in years to come during a period of crisis?

From the standpoint of our national defense interests, it is essential that the United States have unilateral authority to step in and defend the canal militarily at any time. It is also essential that we have a clear-cut right to priority passage through the canal, especially during wartime.

We cannot accept ambiguity on these points. The Senate must clarify our defense rights by amendment, not by weak interpretations that have no legal and binding effect. Otherwise we will be haggling over "understandings" at some critical point in the future when our national security is directly at stake. I believe my amendments will provide the best acceptable assurance for our defense needs.

#### No Restrictions on Location of New Canal

Treaty Amendment #1 ensures that the United States will not be committed to construct a new sea-level canal in Panama, if we should decide at some point that a new interoceanic route is desirable. Article XII of the Panama Canal Treaty would, in fact, bind the United States to construct such a canal in Panama. Yet, there is no commitment on the part of Panama to agree to permit construction of the canal--we are only prevented from constructing one elsewhere.

I certainly don't suggest that we rush right down and build a new canal in Central America. That project may or may not be vital to U.S. defense and economic interests at some point in the distant future. But the President has been talking a good deal lately about a new sea-level canal, and I suspect that the vast majority of American people will want to know first why we are giving up one canal in order to build another. They want to know why we would commit ourselves to build another in the same country that is now demanding possession of the old one.

My amendment will strike that section of Article XII which would foreclose our options, and substitute in its place a clause specifically rejecting any restrictions on U.S. negotiations with other countries, for the right to construct a new canal somewhere in the Western Hemisphere. In my opinion, it is absolutely necessary that this freedom of choice is maintained.

#### Reduce Payments

My second amendment would reduce Panama's share of the canal operating revenues, as outlined in Article XIII of the basic Treaty. The payment provisions concern many Americans, because we already seem to be giving up so much under this Treaty.

I really think this "pay-away" plan is a puzzle. Are we providing rent, ransom, or "conscience" money?

The United States currently pays the Panamanian government an annuity of \$2.3 million. By State Department estimates, Article XIII will provide Panama with between \$60 and \$70 million per year. Panamanian estimates place the figure at between \$70 and \$80 million per year. It is a windfall in any case, particularly when we consider the value of real estate and equipment that will be given without charge to the Panamanian government under the Treaty terms.

#### Cut Payment in Half

The amendment I am proposing would reduce the payments provided in Article XIII by more than one-half. First, it would reduce Panama's share of the canal's annual operating revenues from 30¢ per-net-ton to 15¢ per-net-ton for each vessel transiting the canal. Second, it will eliminate altogether the biennial adjustment of this rate according to changes in the U.S. wholesale price index, as is mandated in the Treaty. Finally, my amendment will strike that provision supplying Panama with "up to" \$10 million per year depending upon revenues. Although this provision is billed as contingent upon the profitability of the canal in any given year, it in fact guarantees payment of the full annuity "from operating surpluses in future years" whenever annual revenues are insufficient.

Even with this amendment, the Panamanians are still provided a fixed annual annuity of \$10 million, plus an equitable share of canal revenues, plus receipt of U.S. loans and zonal property. No one, I think, can seriously dispute the generosity of this arrangement.

### Minimize Shipping Costs

By reducing Panama's share of canal revenues, we reduce the pressure for immediate toll increases. The canal is already operating at a deficit, and the Governor of the Canal Zone testified before this Committee last week that the Treaty provisions will probably add to the need for an immediate toll increase of twenty-five to forty percent. Of course any significant increases in shipping costs will adversely affect our ability to compete for foreign markets and could have serious negative effects on the American farmer.

Much of midwestern grain supplies, for example, are shipped to the Orient through the canal. Higher tolls would decrease American agriculture's ability to compete with Australia, Canada, and other exporting nations for Asian markets. Thus, we help protect our economic interests by assuring only reasonable and equitable payments to Panama.

### No Payment if Canal is Closed

Finally, my amendment provides that the fixed annual annuity will cease during any period in which the canal is inoperable. It would be unfair and irresponsible to continue that payment during a time in which the canal is closed, whether due to natural catastrophe, functional breakdown, or intentional sabotage. The United States would be expected to bear the major economic burden of reopening the canal in any case. It simply does not make sense for the U.S., through the Panama Canal Commission, to continue paying Panama for a passage route that is out of order. My amendment will protect the United States on this point.

### Extension of Transition Period

Consistent with the intent of Article XI of the basic Panama Canal Treaty, to provide for an "orderly transition" of jurisdiction over the Canal Zone, I propose an amendment which would extend the period for transfer of jurisdictional arrangements. This Treaty is being marketed by the Administration as a "23-year" transition document. Careful reading of the Treaty provisions, however, suggests that this is not a 23-year transition treaty--it is a 30-month transfer of title.

Article XI returns full jurisdiction over the Canal Zone to Panama as soon as the Treaty enters into force, and transfers all U.S. judicial, administrative, and regulatory authority to Panama within 30 months. After that, American citizens will be subject to Panamanian law, and subject to Panamanian civil and criminal justice as well.

This does not constitute "orderly transition." I don't know of many Americans who are willing to subject themselves to Panamanian justice and authority. This provision will drive Americans out of Panama. I believe we will see a mass exodus of U.S. engineers, pilots, and other canal personnel within the next two and one-half years if this provision prevails.

My amendment will permit the Panama Canal Consultative Committee to study the issue after the Treaty takes effect and, with the benefit of actual experience, make a recommendation as to when the period of transition should formally end. However, in no case will this be prior to January 1, 1990. This date coincides with transfer of the administration of the Panama Canal Commission from U.S. to Panamanian leadership. It is logical that primary U.S. authority over both the canal and the Canal Zone should expire at about the same time. By doing so, we will allow for a more orderly and gradual phase-out of American employees in the area, and of judicial and administrative control over them.

### Human Rights

I have proposed both an amendment and a reservation to address the human rights question. My amendment would protect the civil and political rights of those who live and work in the Canal Zone region. My reservation conditions Treaty ratification on the understanding that the Panamanian government will make "significant progress" towards observing the human rights of all its citizens during the basic Treaty period.

For an Administration which has made the subject of human rights a basic element of its foreign policy, particularly towards Latin America, the White House has been strangely silent on the issue with respect to the Panama Canal negotiations. President Carter calls General Torrijos "an enlightened dictator." I'm not sure I understand exactly what that term means, but most of us are familiar with the extremely poor human rights record in Panama as identified by "Freedom House" and by Panamanian exile groups.

Why have we ignored the human rights issue altogether in Panama, while the Administration lambastes other Latin American nations on this point? I don't know the answer. But in the interest of moral principle, as well as consistent foreign policy, it's important that we address the subject of human rights observance within Panama. My amendment and my reservation will do this for the benefit of both U.S. citizens in Panama and for Panamanian citizens.

#### Transfer Canal Zone Property

Finally, my second reservation reaffirms the constitutional responsibility of the House of Representatives to participate in transfer of ownership of the Canal Zone territory. Without reviewing all of the historical precedents and court decisions which support this argument, I will simply say that disposal of Canal Zone "territory and property" clearly falls within the realm of Article IV, Section 3, paragraph 2 of the United States Constitution. As such, not only two-thirds of the U.S. Senate but a majority of the U.S. House of Representatives must approve the proposed Treaties.

My reservation clearly states that, before the Canal Treaty enters into force, "The Congress" must adopt appropriate legislation to transfer the Canal Zone to the Republic of Panama. This would protect the right and the responsibility of the House of Representatives to participate in this significant decision.

#### No Apologies

Mr. Chairman, I want to say that the people of the United States owe Panama no apologies for our involvement with the canal. The generosity of our government in building the canal, in operating and maintaining it for 65 years, and in thereby enhancing the standard of living for Panamanians, requires no remorse on our part. Free of any sense of guilt, we should proceed to analyze these Treaties in an objective and responsible manner.

But the Panamanian government officials must know that we will never relinquish our presence in the Canal Zone because of veiled threats or direct pressures. They must know that we reserve all rights to intervene when the security of the canal is threatened, and that we expect priority passage for our ships during periods of crisis. They must be told that we expect to see substantial progress in the area of human rights, and that we expect to share a reasonable, but not exorbitant amount of the canal tolls with them.

I have outlined the reasons why I cannot support the Panama Canal Treaties in their present form. I have offered reasonable proposals for amending the Treaties to protect our vital national interests.

You gentlemen will have an influential voice in determining the final form of these Treaties that is voted on by the Senate. It's my opinion that the Treaties will not be approved unless modified. It's my own opinion that they should not be approved unless modified in a way that is truly effective--that is, by direct amendment or reservation.

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