

THE DEPUTY SECRETARY OF STATE
WASHINGTON

NSC UNDER SECRETARIES COMMITTEE

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MEMORANDUM FOR THE PRESIDENT

Subject: Panama Canal Treaty Negotiations

In accordance with my recommendation of March 20 and your approval conveyed to me by Dr. Kissinger on June 18, the Under Secretaries Committee initiated an Inter-Agency review of our treaty relations with Panama and is pleased to transmit its findings and its analysis of the several policy options open to the U.S. (attached).

Since undertaking this policy review two new pertinent developments have occurred. Panamanian Foreign Minister Tack has written to the Secretary of State proposing eight principles as a new basis for negotiations, and Ambassador Anderson has resigned. Although we find that the Panamanian position contained in the Foreign Minister's letter warrants probing to determine whether it offers new prospects for the negotiations, which we expect Ambassador Anderson's successor to undertake, we recommend nevertheless that Option B be adopted now and implemented in consultation with Ambassador Anderson's successor.

The Under Secretaries Committee has approved the unilateral actions not requiring congressional action which are listed in the attached, with the exception of items IV, C, 23, 24 and 25, pertaining to SOUTHCOM and proposed changes in the administration of the Canal. These approved actions will be implemented at some future date after appropriate consultations with the treaty negotiator. We shall keep you informed of the progress of the implementation of these measures.

The Committee proposes that you approve the following measures requiring congressional action which we believe would not encounter serious congressional opposition: IV, B, Nos. 5, 15, 16 and 17 which involve changing the Canal

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Zone's postal system, excluding the application of U.S. wage and health standards to Panamanian enterprises in the Zone, transferring a tract of unused land to Panama, and permitting Panama's lottery tickets to be sold in the Zone. Further we recommend that you approve in principle all of the measures listed in IV D of the attached which would be implemented when, after consultation with the treaty negotiator and with key members of the Congress, it is believed that taking such steps would advance the treaty negotiations. We consider all of these actions to be desirable for improving the negotiating climate and reducing our vulnerability to international criticism.

With respect to the questions pertaining to SOUTHCOM and the proposed changes in the Canal administration, the Under Secretaries Committee finds that further study on these matters is required to determine the advisability of these changes. I have directed therefore that such a study be undertaken and I shall be in further communication with you in this regard.

Kenneth Rush
Chairman

Attachment:

Inter-Agency Review on Panama

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PANAMA CANAL TREATY NEGOTIATIONS

I. THE PROBLEM

Nearly two years of negotiations with the present Government of Panama has resulted in very little progress toward reconciling our widely divergent positions with respect to a new canal treaty. The lack of progress has contributed to tension in Panama as well as to frequent criticism by that country and by other nations of our "colonialist presence" and, to a lesser extent, of our military presence there. It is timely, therefore, to review this situation in order to determine how best to progress toward a new, mutually satisfactory treaty, to minimize our vulnerability to international criticism, to avoid the emergence of a hostile posture on Panama's part, and at the same time to avoid jeopardizing congressional acceptance of a new treaty relationship with Panama. In this review we must also keep in mind the objective of keeping the Canal always open, efficient, and available at reasonable cost to the world's users.

II. THE NEGOTIATIONS

A. Their Current State

After six months of intensive negotiations, the U.S. side presented in December 1971 a comprehensive draft treaty offer which provided for the continuation of our rights to operate and defend the canal for an extended but specific period and which at the same time took cognizance of Panama's interest by returning to that country rights and properties we no longer required. A year elapsed before Panama replied, although Panama's negotiators had appeared to accept much of the U.S. position. During the interim, the Panamanian negotiators found that (a) General Torrijos was concentrating upon putting his domestic house in order (the "elections" of August 1972) and (b) Foreign Minister Tack and a number of his advisers believed that their negotiators' tentative concessions were too great and the U.S. offer too little. These hard-lining nationalists regarded as inadequate the 1967 draft agreements reached between representatives of previous Panamanian and U.S. governments and they insisted that a new treaty must reflect a substantial improvement over the earlier drafts.

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When negotiations resumed in December 1972, it became evident that this nationalist stance had become government policy: Panama's counter offer proposed stringent curtailment of our operational and defense rights in the short run and their elimination altogether by the century's end. Our negotiators found no signs of flexibility in this retrograde Panamanian position. Thus we were at an impasse: the gap between the two positions on major issues -- duration of a new treaty, exercise of jurisdictional and defense rights in the Canal area, and U.S. options to expand canal capacity -- appeared all but unbridgeable (Tab A).

Concomitantly it became clear that Panama had decided to seek to wring concessions from the U.S. by marshalling international sympathy for its charge that the U.S. maintains a colonial enclave and excessive military presence on Panamanian territory. As a first step in this campaign, Panama publicly revealed the detailed negotiating positions of both parties, in violation of our mutual understanding to negotiate privately. In doing so Panama sought to demonstrate that failure to progress in the negotiations resulted from U.S. insistence upon thwarting Panama's aspiration to "perfect its independence" by ending U.S. colonialism.

Secondly, the hard-lining nationalists successfully maneuvered the United Nations Security Council into holding a session in Panama so that Panama's "cause" would receive world-wide attention. A majority of the participants, some of them otherwise friendly to the U.S., were critical of the extent of our military presence and of our exercise of perpetual extra-territoriality in the Canal Zone. Their attitude was reflected in their vote supporting a Panamanian resolution (only the UK abstained) which we were forced to veto since it recognized Panama's interests, but not ours. Although Panama did gain some sympathy abroad, U.S. public opinion -- another Panamanian target -- was generally unsympathetic to Panama's tactics. Nevertheless there is a strong possibility Panama will pursue its efforts in international fora, particularly at the next General Assembly where we cannot veto.

That the U.S. could effectively negate Panama's effort to obtain meaningful treaty concessions through international pressure was not lost upon the practical General Torrijos. Some intelligence reports indicate that he believes he was

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misled by Foreign Minister Tack and his coterie of nationalistic advisers, and that the entire UNSC adventure had brought no concrete results, only expenditure of scarce funds. Despite having gained some international sympathy for its cause the Panamanian government apparently has come to realize that its goals were not thereby advanced, and may have adopted a more conciliatory posture. It has turned down the volume of normal anti-U.S. invective in the media it controls. In early May, Foreign Minister Tack wrote to the U.S. negotiator in somewhat softer tones and hinted at some negotiating flexibility. Later that month in Buenos Aires Tack delivered a letter to Secretary Rogers in which he once again, in a seemingly conciliatory fashion, urged that detailed negotiations continue -- this time on the basis of a set of principles which he proposed.

B. Future Prospects

Current indications are that Panama continues to desire a new treaty and that General Torrijos is taking somewhat greater personal interest in the matter. He has maintained that in order to achieve a new treaty two steps are essential: agreement at a very high level between the two governments as to the basic principles that would govern the new treaty relationship (after which the negotiators would work out the appropriate treaty language); and some unilateral measures by the U.S. that would enable Panama to be more forthcoming in its position. Foreign Minister Tack's proposed eight principles may be an outgrowth of Torrijos' views. Although these principles mask serious differences between us, and fully support Panama's known treaty position, there is much in them that we can accept at the outset and we can attempt to negotiate a mutually acceptable version. (Tab B shows the difference between Panama's proposed principles and those the USC believes are acceptable). Whether Panama actually has adopted a more flexible approach requires further probing. Negotiation of these principles offers one opportunity for ascertaining Panama's intent.

In any event, we do not believe that substantial progress toward agreement can be made rapidly. Even the most optimistic view of what Panama might agree to and the U.S. Congress accept encompasses lengthy negotiations and intensive lobbying with the Congress.

As these extended negotiations play out, we can expect mounting Panamanian frustration. It could conceivably result in forceful action against our presence in Panama, either spontaneous or staged by Torrijos. We can also expect recurring political attacks upon the nature of our presence in Panama from both friends and enemies.

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In sum, the treaty positions between the two governments diverge significantly; there are some hints of flexibility on the Panamanian side that require further probing; we are in for a long process during which we can expect a considerable amount of international criticism to which we are vulnerable; and there is no certainty the process will end in agreement.

III. ALTERNATIVE STRATEGIES FOR THE U.S.

In light of the foregoing, we believe the U.S. should continue its efforts to reach agreement with Panama on a new Canal Treaty while minimizing our vulnerability to international criticism, keeping Panamanian tension within tolerable limits and avoiding actions which would jeopardize congressional acceptance of a new agreement. The following three options represent different strategies for accomplishing this objective.

Three other options have been contemplated but ruled out as likely to be counter-productive: (1) attempting to force Panama into a settlement on our terms through economic sanctions; (2) attempting to attract Panama into such a settlement through large-scale economic largesse; and (3) retaining in perpetuity our right to operate and defend the Canal as well as our jurisdiction over U.S. citizens, while conceding unilaterally and without Panamanian acquiescence all else that we have offered Panama to date.

- A. Continue as at present to negotiate seriously, in an effort to draw Panama closer to our position without further major concessions, and continue our forthcoming attitude on non-treaty related matters such as economic and military assistance.

By selecting this option we would have decided that Torrijos is testing the firmness of our negotiating position and that eventually, once we have made a few more minor concessions and he is convinced he can do no better, he will decide that something for his people is better than nothing and settle on terms only slightly more favorable to Panama than those we now offer. We would also have decided that we would accept the risk of an outbreak of Panamanian hostility against the Zone due to frustration over lack of progress.

Advantages:

- (1) Would safeguard for the time being our essential rights and properties.
- (2) Would divest us of no major bargaining chips in the negotiating process.

(3) Might lessen over the short run the conceivable risk of hostility emerging in Panama as a result of our forthcoming attitude on non-treaty related matters.

(4) Would be within our estimation of what the Congress would accept.

Disadvantages:

(1) Would be based on the very slight prospect that Torrijos would conclude a treaty not incorporating some major U.S. concessions.

(2) Would over time raise the risk of forceful action against the U.S. presence on the part of Panama.

(3) Would not reduce our vulnerability to world criticism.

B. Continue as at present to negotiate seriously without further major concessions at this time; maintain our forthcoming attitude on non-treaty-related matters such as economic and military assistance; and take selected unilateral actions not requiring congressional approval as well as propose to the Congress a selected group of unilateral actions requiring its approval, whenever any or all of such actions would (1) improve the general negotiating atmosphere; or (2) obtain an approximately equivalent concession from Panama in the treaty negotiations; or (3) reduce U.S. vulnerability to international criticism.

This option is based on the assumption that despite lack of progress to date, there remains a reasonable chance of reaching agreement with Panama on a new canal treaty. It is also based upon the belief that by making these unilateral concessions Panama might become more flexible in its position. It recognizes that in order to reach agreement with Panama, however, greater flexibility in the U.S. treaty position will eventually be required as well. Hence, unilateral US action to make some of the overdue changes in the Canal Zone should proceed regardless of failure to reach early agreement. These actions would serve to reduce our vulnerabilities, both in Panama and internationally, even in the absence of negotiating progress.

Three categories of unilateral actions are proposed under this option:

(1) those listed in this report that can be accomplished by Executive action (less IV C 23, 24, and 25).

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(2) those measures listed in the report requiring congressional action which are not expected to encounter serious congressional opposition (IV B 5, 15, 16, and 17),

(3) those listed in the report that are expected to encounter resistance in the Congress but which would have significant effect in the status of the Canal Zone (IV D 26, 27, and 28).

None of the proposed actions go beyond what we have already offered or been prepared to offer in the negotiations, nor do they represent a large enough portion of our total treaty offer to impair our negotiating position or our ability to continue operating and defending the canal.

Implementation of each of the proposed actions would be on an ad hoc basis, taking into consideration the progress of the negotiations, the political atmosphere in Panama, and the attitude of the congressional leaders concerned with Panama policy.

Consideration of substantial changes in the U.S. treaty offer would be deferred until the results of the other proposed actions are known.

Advantages:

(1) Might produce, through skillful use of unilateral actions during the negotiations process, progress toward a settlement safeguarding all our essential prerogatives and thus maximizing chances for Senate ratification.

(2) Would preserve all of our major bargaining chips.

(3) Would avoid wide-spread, serious congressional focus on and debate over the canal issue.

(4) Might relieve Panamanian tensions and help preclude a potentially hostile posture.

(5) Would to some degree improve our international posture.

Disadvantages:

(1) Might not be sufficient to reach an agreement.

(2) Would stimulate criticism from a numerically limited but vocal group of members of the Congress opposed to any treaty alteration of our presence in Panama.

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(3) Would basically retain the status quo in the Canal Zone by leaving unaffected jurisdiction, land, perpetuity, the annuity, etc.

(4) Would give up some of our bargaining chips.

(5) Might cause some morale problems among the personnel of the Canal Company and Zone government.

(6) Might, if handled improperly, make Panama feel that the U.S. is not serious about the negotiations.

C. Continue negotiations but with a substantially improved treaty offer.

In selecting this option we would have decided that the only means of concluding a new treaty which would safeguard our vital interests in the Canal for an extended period would be to offer significant new concessions either by interpreting existing presidential guidelines more broadly or seeking liberalized guidelines. These concessions might include (a) a reduction in the period of duration of the new treaty to 35 years; (b) a rapid and complete return to Panama of civil and criminal jurisdiction over non-U.S. nationals; (c) the return to Panama of substantially greater land and water areas; and (d) the elimination of our requirement for a firm option to build a sea-level canal.

Advantages:

(1) Would enhance the chances of a successful negotiation.

(2) Would enhance our international prestige.

(3) Would go far toward satisfying Panama's aspirations and thus contribute to an improved relationship with Panama.

Disadvantages:

(1) Would increase congressional opposition, perhaps enough to prevent treaty ratification, or, if it were ratified, to prevent implementation of the treaty through appropriations and other legislation. Congressional failure to ratify or implement a new treaty would cause a serious deterioration in our relationship with Panama.

(2) Might still not be enough to result in a new treaty.

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(3) Could complicate significantly our ability to continue operating and defending the canal.

(4) Would forfeit the benefits of a sea-level canal.

IV. THE NATURE OF UNILATERAL U.S. ACTIONS.

In the second of the foregoing options the possibility of unilateral U.S. actions is envisaged. Some of these actions could be taken by the Executive Branch alone, and others by proposing legislation to the Congress. None of these would affect the status quo in the Canal Zone. They fall broadly into three categories: actions related to acknowledgment of Panamanian sovereignty; actions related to U.S. operations in the Canal Zone; and actions related to the U.S. military presence in the Zone.

Another category of actions, each requiring legislation, would represent significant concessions to Panama and would alter the status quo in the Zone. Each is within the framework of what we have already offered to Panama in the negotiations or have been prepared to offer.

A. Actions Related to Panama's Sovereignty

1. Authorize the flying of Panamanian flags throughout the Canal Zone and on commercial vessels transiting the Canal.

Currently Panama's flag is flown together with the U.S. flag at 18 sites on land, and we do not suggest to transiting commercial vessels that they fly Panama's flag in addition to our own as a matter of courtesy. This action would involve flying the Panamanian flag in a position not superior to our own.

This action could be taken by the Executive.

Advantage:

(1) Would be an action of unusual significance to Panama because it was the issue of flags which catalyzed the 1964 riots.

Disadvantages:

(1) Would encounter some hard-core congressional and public opposition.

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(2) Could lead to some conflict with Panama over the positioning of flags which would be difficult to resolve in view of U.S. legislation.

2. Authorize implementation of Joint U.S.-Panamanian police patrols within the Zone.

Panamanian police would have no power of arrest.

This action could be taken by the Executive.

Advantages:

(1) Would strengthen not only Panama's sense of sovereignty but also its sense of increasing participation in the life of the Canal area.

(2) Would be well-received internationally.

Disadvantage:

(1) Would cause hard-core congressional opponents to object to what they would likely interpret as being an exercise by Panama of jurisdictional functions in the Zone.

B. Actions Related to U.S. Operations.

3. Authorize private and public use by Panama, in conformity with applicable U.S. legislation, of piers and drydocks and other infrastructure facilities, as well as of land and water areas and airfields, which are in excess of U.S. requirements.

Though we cannot transfer these resources outright without legislation, the Executive could authorize their use by Panama. However, Panama's use of these resources would be made difficult by disparities between Panama's wage levels and the higher U.S. ones which Panama would have to adhere to in the Zone, and by the fact that U.S. courts would retain jurisdiction in matters arising from Panama's use of the resources.

Advantages:

(1) Would benefit Panama's private-and public-sector economies in terms of commercial-industrial expansion.

(2) Would somewhat lessen Panamanian unemployment, now a contributor to tensions.

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Disadvantages:

(1) Might not be accepted by Panama because of disparities between Panamanian and Canal Zone wage rates, and court systems, and between technical U.S. standards of operation and Panamanian ones.

(2) Would raise with hard-core congressional critics the spectre of Panamanian "competition" and use of rights formerly reserved to the U.S.

(3) Would pose problems of security and access.

4. Require use of Panamanian license plates on private vehicles of all residents of the Canal Zone at cost of manufacture and administration.

Currently all residents of the Zone receive Canal Zone plates for their private vehicles at reduced cost and little inconvenience.

This could be accomplished by Executive action.

Advantage:

(1) Would benefit Panama's sense of sovereignty.

Disadvantage:

(1) Would lead hard-core congressional critics to regard this as another chipping away at the U.S. privileged position.

5. Authorize elimination of the Zone's postal system and establishment of an APO for official mail and use by authorized personnel, allowing Panama to handle other mail in the Canal Zone.

Currently the Canal Zone government issues its own stamps. This would probably require congressional action.

Advantage:

(1) Would benefit Panama's economy.

Disadvantages:

(1) Would cause complaints from Zone inhabitants as a result of inferior Panamanian service.

- (2) Would lead to some hard-core congressional criticism.
6. Direct increased elective instruction in all Canal Zone schools of the Spanish language and Panamanian culture and history.

This action could be taken by the Executive.

Advantage:

- (1) Would be welcomed by Panamanians, particularly those opinion-leaders whose children are in Zone schools.

Disadvantages:

- (1) Would involve additional costs for school authorities.
- (2) Would lead to some hard-core congressional criticism.
7. Authorize the fullest implementation of policies aimed at maximizing employment opportunities in the Zone for Panamanian nationals, on a totally non-discriminatory basis.

These policies have encountered resistance from labor unions and American employees.

This action could be taken by the Executive.

Advantages:

- (1) Would benefit Panama's economy, in which unemployment is widespread, through increasing the number of jobs for Panamanian nationals in the Zone.
- (2) Could facilitate the eventual transition to Panamanian Canal operation.

Disadvantages:

- (1) Would be difficult to implement because there is some paucity of technically-qualified Panamanians, though that might be remedied by intensified Canal Zone training programs.
- (2) Would be resisted by American employees and their objections would reach the ears of congressional critics.
- (3) Would decrease the U.S.' ability to operate the Canal in an emergency.

8. Authorize establishment of a Joint Commission with Panama to study the resolution of urban problems created by the Zone's presence.

The Zone cuts Panama in two parts and severely circumscribes normal urban growth.

This action could be taken by the Executive.

Advantages:

(1) Would help ameliorate problems caused in large measure by the presence of the Canal Zone.

(2) Would involve Panamanians more with the Canal area, which should help in the transitional period.

Disadvantages:

(1) Might be rejected as U.S. gimmickry by Panama.

(2) Would be viewed by congressional critics of the hard-core variety as an open invitation to Panama to move in on portions of Zone land.

(3) Would require congressional transfer of land areas to permit full implementation.

9. Direct the termination of the Canal Zone Bus Service as an American-owned private enterprise operating in the Zone by cancellation of its license by Canal Zone Governor.

This action can be taken by the Executive.

Advantages:

(1) Would allow a Panamanian commercial enterprise to provide a needed service in the Canal Zone.

(2) Would remove an irritant from the relationship between the Canal Zone Government and the Panamanian government.

Disadvantages:

(1) Would be difficult to implement since U.S. minimum wage laws would apply to those Panamanian buses servicing the Canal Zone. The Panamanian government might object to this, but without congressional action it cannot be avoided.

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(2) Might lead to criticism from hard-core congressional critics.

10. Authorize the Canal Zone Governor to solicit appointment of a Panamanian liaison officer to the Canal Zone Government/Panama Canal Company.

This action could be taken by the Executive.

Advantages:

(1) Would improve the U.S. image through having a Panamanian actively associated with Canal operations.

(2) Would be responsive to the Panamanian desire to participate in Canal administration.

(3) Would be an indication of a forthcoming U.S. attitude with respect to a partnership with Panama.

Disadvantages:

(1) Might elicit Panamanian complaints that the liaison officer had no real voice in canal operations/administration.

(2) Could result in claims by Canal Zone residents and hard-core Congressmen that the U.S. had made a major concession to Panama.

11. Authorize the Governor to require the withholding of Panamanian income tax from employees of private businesses in the Zone who are subject to Panamanian taxation.

This action could be taken by the Executive.

Advantages:

(1) Would aid Panama's economy through collection of additional taxes at no cost to the Panamanian government.

(2) Would improve the U.S. and Canal Zone Government's image by demonstrating positive cooperation with the Panamanian government.

Disadvantage:

(1) Would make some employees who previously had not been paying taxes unhappy.

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(2) Might lead hard-core congressional critics to term such a practice unlawful and challenge the Governor's right to collect taxes for a foreign government.

12. Authorize Panamanian National Guard use of the Cape Mala and the Ancon Cove parcel of Taboga Island for training purposes.

This action can be taken by the Executive, but it could require legislative action if the Panamanians do not agree to Canal Zone Code firearms permit requirements.

Advantage:

(1) Would demonstrate U.S. willingness to cooperate with Guard authorities.

Disadvantage:

(1) Would be difficult to implement if the Guard balked at compliance with U.S. law which requires that firearms be registered as they enter the Zone.

13. Authorize establishment of selected Panamanian commercial enterprises in the Canal Zone.

This action can be taken by the Executive.

Advantage:

(1) Would benefit Panama's economy.

Disadvantages:

(1) Could cause some complaints from Zone residents as a result of inferior merchandise/services.

(2) Might cause some congressional criticism.

14. Authorize Panamanian use of Fort San Lorenzo as a tourist attraction.

This action could be taken by the Executive.

Advantages:

(1) Would enhance the U.S. image.

(2) Would increase contact between Panamanians and Americans.

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Disadvantage:

None

15. Authorize Transfer of Old France Field to Panama for expansion of the Colon Free Zone.

Panama has long sought an area to expand the Free Zone.

This would require congressional action.

Advantages:

- (1) Would benefit Panama's private economy very substantially in terms of commercial expansion and employment creation.
- (2) Would increase contact between Panamanians and Americans.

Disadvantage:

- (1) Would encounter some congressional opposition.
16. Authorize exclusion of the Canal Zone minimum wage coverage and Occupational Safety and Health Act, with respect to non-U.S. citizens in private business.

This would require congressional action.

Advantage:

- (1) Would eliminate the main deterrent to Panamanian business enterprises being established in the Canal Zone.

Disadvantage:

- (1) Would occasion congressional opposition.
17. Authorize sale of Panamanian lottery tickets in the Zone (except on defense sites).

This would require congressional action.

Advantages:

- (1) Would contribute to Panama's economy.
- (2) Would enhance relations with Panama.

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Disadvantage:

(1) Might give rise to some congressional and public criticism.

18. Authorize the transfer to Panama of the properties and buildings thereon formerly occupied by the U.S. Consulate in Colon City.

The U.S. has no further use for this facility and has been unable to sell it. Panama desires the property for expansion of the Colon Free Zone or for use as a school.

This action could be taken by the Executive.

Advantages:

(1) Would contribute to alleviation of a problem in U.S.-Panamanian relations.

(2) Would constitute a significant gesture to Panama.

(3) Would reduce excess U.S.G. property.

Disadvantages:

(1) Might involve some legal complications in implementation.

19. Direct that those civic action/community relations programs now conducted in Panama by the military be expanded.

The Armed Forces have an on-going civic action/community relations program which is carefully coordinated with a GOP representative to be certain that Panama approves of the projects, but some expansion is desirable.

This action could be taken by the Executive.

Advantages:

(1) Would provide positive and high impact programs which show the recipients (usually lower class Panamanians) that the U.S. is interested in improving their lives.

(2) Would provide training in civic action for other Latin American military students attending training facilities in the Canal Zone.

(3) Would provide a "people-to-people" atmosphere between the Panamanians benefitting from the program and the U.S. personnel involved.

Disadvantage:

(1) Might require additional funding.

20. Direct the establishment of a Joint U.S.-Panamanian Military Committee to discuss and solve matters of mutual interest relating to protection and defense of the Canal.

This action can be taken by the Executive.

Advantages:

(1) Would provide Panama a voice in matters of mutual military interests.

(2) Would cement ties between the two Armed Forces.

(3) Would further demonstrate to Torrijos that the U.S. is willing to consult with Panama on matters of importance to both countries.

Disadvantage:

(1) Might occasion some criticism from hard-core congressional elements who could term such action as a breach of security with respect to the Canal.

21. Establish a Joint Panama-U.S. committee on procurement of Panamanian products for resale in the Canal Zone.

This action could be taken by the Executive.

Advantage:

(1) Would provide a mechanism to enhance Panama's business interests and economy through increase sales of Panamanian products.

Disadvantage:

(1) Would occasion some criticism from local U.S. personnel.

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22. Authorize approaching Panama concerning the training and equipping of an engineer detachment for civic action type of operations by the National Guard.

Organization, training, and O&M funds levels have been programming starting in FY 75. Final approval is needed.

This action can be taken by the Executive.

Advantages:

(1) Would provide Panama with a unit which could execute high impact and helpful civic action projects such as road construction, light bridging, well drilling, etc.

(2) Would enhance U.S.-Panamanian relations by giving Torrijos a unit which would improve his image in the interior.

Disadvantage:

(1) Might cause some criticism from certain sectors of U.S. and Panamanian society of the U.S. providing military assistance to a "military government."

C. Actions Related to the U.S. Military Presence

The Interagency Group considered three actions in this category:

23. Transfer the Southern Command from the Canal Zone.
24. Appoint a Civilian to head the Canal Zone Government.
25. Transfer responsibility for administration of the Canal and Canal Zone from the Department of Army to the Department of Transportation, the Maritime Administration, or to a newly-created autonomous entity.

Thorough discussion of these items revealed basic disagreement, essentially between the Departments of State and Defense, and it was decided that further study of these questions was required before recommendations could be made as to the desirability and feasibility of taking such measures.

D. Actions Related to More Major Concessions to Panama

The measures described below are also desirable and would require congressional approval. Because they involve

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somewhat greater unilateral concessions than those described above, they risk engendering greater congressional controversy. Such controversy could adversely affect the negotiations and therefore they should be implemented only after consultations with the treaty negotiator and with the Congress to ensure that taking these measures would advance rather than hinder the negotiations. These measures, which require further study and agreement between the interested agencies on the exact composition of each, are:

26. Propose legislation to transfer the following Canal Zone land and facilities to Panama.
 - selected portions of the previously-offered undeveloped land areas in the vicinities of Panama City and Arraijan
 - Shaler Triangle
 - Rainbow City
 - one or two piers at Cristobal
27. Propose legislation to authorize the application of Panamanian law by Panamanian courts in certain civil and criminal matters in the Canal Zone involving only Panamanian nationals.
28. Propose legislation to increase the annuity to Panama substantially, although by a lesser amount than has been offered in negotiations. 1/

1/ OSD does not concur with the proposal in item 28 concerning the substantially increased annuity. Non-concurrence is based on the fact that the monetary amount of the annuity is a major U.S. quid and should be offered only within the framework of the negotiations. It is felt that this exceeds the scope of the concept of taking small unilateral actions to improve the atmosphere of negotiations.

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ARA Inter-Agency Group
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THE US AND PANAMANIAN NEGOTIATING POSITIONS ON MAJOR ISSUES, AS THEY EMERGED DURING THE 1971-1972 TALKS

Panama's Position

The Panamanians are asking for a new treaty which would terminate no later than 1994 with a possible short extension if the US expands the canal's capacity. They want full jurisdiction over the canal area no later than five years after the signing of a treaty. They would grant the US use of very limited land and water areas for the exclusive purpose of operating, maintaining, and protecting the canal.

Panama would have primary responsibility for the protection of the canal from local threats, in cooperation with the US. Defense from external threats would be multinational and conducted from outside Panama. US forces in the area would be strictly limited.

The new treaty would stipulate a five-year limitation on an option for the US to build either a sea-level canal or a third set of locks. Finally, Panama would expect greatly expanded financial and economic benefits from the canal under the new treaty (Panama's negotiators have hinted at \$50 to \$100 million a year).

The US Position

The US is willing to abrogate the 1903 treaty and devise a new treaty relationship. It wants a treaty that would last about 50 years, with options to extend it 35 years from the completion of construction if third locks are built or 40 years if a sea-level canal is built. But it wants an open option (beginning in 15 years at the earliest and extending possibly up to the end of the century) to decide on whether and how to expand the capacity of the canal.

In any case, the US wants to retain certain jurisdictional rights in order to operate, maintain, and protect the waterway during the life of the treaty. Panama would gain immediate jurisdiction in criminal and civil cases involving only Panamanians in the canal area, but most other types of jurisdiction would be passed to the Panamanians over a transition period of up to 15 years,

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e.g., joint patrols with the Guardia Nacional during the transition period, after which Panama would get exclusive police authority. The US would still retain the right to maintain security guards around US property and employee residences, as well as certain other rights directly connected with canal operations.

There would be a substantial reduction in land and water areas used by the US in operation, maintenance, and protection of the canal, and even these lands could be opened to Panamanian development with US consent. The US would retain the right to defend the canal in peace or war, the power of decision in this area remaining with the US.

Finally, there would be a substantial increase in financial benefits to Panama from the operation of the canal, i.e., a royalty on tonnage amounting to some \$20-\$25 million annually at present traffic rates (compared with a \$2.1 million annuity at present) and the expectation of steady growth in income to Panama during the life of the treaty.

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ESSENTIAL PRINCIPLES WHICH WILL SERVE
AS A BASIS FOR A NEW CANAL TREATY

(Based on Principles Contained in Tack's
Letter to the Secretary Dated May 21, 1973)

Tack's Statement of Principles

1. The 1903 treaty must be abrogated. The two countries are willing to conclude an entirely new interoceanic canal treaty.
2. The concept of perpetuity is rejected. The new treaty concerning the lock canal shall have a fixed termination date.
3. The exercise of any type of jurisdiction by the United States in Panamanian territory shall rapidly cease, at the end of the transition period agreed upon.
4. The so-called Canal Zone shall be returned to full Panamanian jurisdiction. The Republic of Panama, as territorial sovereign, is willing to grant the Government of the United States, for the duration of the new treaty on the interoceanic canal, the right to use the lands and waters proved to be essential for the operation and maintenance of the canal,

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Proposed U.S. Statement of Principles

1. The two countries will conclude an entirely new interoceanic canal treaty, which will abrogate the 1903 treaty.
2. The concept of perpetuity will be eliminated. The new treaty concerning the lock canal shall have a fixed termination date.
3. Termination of U.S. jurisdictional functions in Panamanian territory shall begin promptly, in accordance with terms specified in the new treaty.
4. The territory in which the Canal is situated shall be returned to the jurisdiction of the Republic of Panama. The Republic of Panama, as territorial sovereign, shall grant the Government of the United States, for the duration of the new treaty on the interoceanic canal, the rights, privileges and immunities necessary to regulate the passage of traffic through the canal

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Tack's Statement of Principles

the transit of ships, and the protection of vital installations.

5. The Republic of Panama shall have a just and equitable share in the benefits, in proportion of the total benefits that the United States and world trade derive from Panama's geographic location.

6. The activity of the United States Government shall be limited to the administration of transit through the inter-oceanic waterway. The activities of the United States Government shall be those which have a direct relation to the operation, maintenance, and protection of the canal, as shall be specified in the treaty.

7. The United States of America shall exercise, in the facilities for protection, such activities as may be expressly stipulated in the treaty, for duration of the treaty.

8. The Republic of Panama is willing to include in that same treaty pro-

Proposed U.S. Statement of Principles

and operate, maintain, and protect and defend the canal, and the use of the land, waters and airspace required for these purposes.

5. The Republic of Panama shall have a just and equitable share in the economic benefits of the canal operation.

6. The Treaty shall make provision for supporting services and facilities which may be maintained by the United States for the purpose of the operation, maintenance, protection and defense of the canal.

7. The U.S. shall exercise defense responsibilities and activities as provided in the treaty.

8. The treaty shall make provision authorizing the Government of the United States

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Tack's Statement of Principles

visions authorizing the Government of the United States to construct a sea-level canal along what has been designated Route 14, on the following conditions: (a) the United States will notify Panama of its decision to construct the sea-level canal along Route 14 within a reasonable period to be negotiated, following the entry into force of the new treaty, and if it should fail to do so its right in that respect would lapse; (b) Panama would retain full jurisdiction in the area that would be occupied by the sea-level canal; and (c) with respect to the sea-level canal, the life of the treaty shall have a limited duration, with a specified termination date.

Proposed U.S. Statement of Principles

to construct additional locks and channels for the existing canal or to construct a sea level canal on a mutually agreed route on the following conditions: (a) The United States will notify Panama of its decision to construct additional locks and channels for the existing canal or to construct the sea level canal within a reasonable period following the entry into force of the new treaty, and if it should fail to do so its rights in these respects would lapse; (b) Panama would retain jurisdiction in the area that would be occupied by the augmented lock canal or the sea level canal, but would grant to the United States with respect to the sea level canal, the same rights specified in Principle 4 with respect to the inter-oceanic canal and (c) in the event of the construction of the new locks or the sea level canal, the life of the treaty shall be extended to a new specified termination date to be agreed upon in the new treaty.