

MEMORANDUM

NATIONAL SECURITY COUNCIL

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INFORMATION

April 9, 1976

MEMORANDUM FOR: BRENT SCOWCROFT *RS*

FROM: STEPHEN LOW *SL*

SUBJECT: The Sovereignty Issue in the Panama Canal Negotiations

BD

The United States is engaged in negotiations to modernize the Panama Canal treaty because it considers this to be the best way to protect its long-term interest in preserving access to the Canal. Whether we have full sovereignty or ownership over the Canal is not central to the issue. The fact that most legal judgment indicates there are limitations to our sovereign status there is not a reason for negotiating a new treaty.

Nevertheless, if the issue of sovereignty continues to be raised, it should be clarified, with the understanding, however, that it is a complicated legal matter on which considerable difference of opinion exists.

Under the 1903 treaty and its subsequent revisions in 1936 and 1955, the US acquired in perpetuity the "rights, power, and authority" it would have "if it were sovereign of the territory". This acquisition of certain rights is contrasted with the 1803 Louisiana Purchase which ceded to the US "forever and in full sovereignty the . . . territory with all its rights and appurtenances" and the Alaska acquisition in which the Russian Emperor ceded to the US all his territory and dominions in this continent.

The Frenchman who negotiated the treaty for the Panamanians wrote that "the United States, without becoming the sovereign, received exclusive use of the rights of sovereignty, while respecting the sovereignty itself of the Panama Republic". William Howard Taft wrote President Teddy Roosevelt in 1905 that "the truth is that while we have all the attributes of sovereignty . . . the treaty seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama."

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There are significant differences between the Panama situation and our acquisition of sovereign territory in the Louisiana Purchase, Alaska, Hawaii, and even the Virgin Islands.

- Persons born in the Zone are not automatically American citizens or nationals as are those born in the US and all its other territories and possessions. (Only those born of one or two US parents are citizens.)
- Not every American may reside in the Zone; we are limited by a treaty with Panama on which categories of Americans may reside there. Others are prohibited from doing so. (For the most part, only employees of the Canal Company, of the Zone Government, and of certain business firms permitted to operate in the Zone and their dependents may reside there according to the 1936 treaty.)
- We continue to pay an annual fee to Panama for the rights we exercise there; there was no outright purchase.
- All US law does not apply in the Zone (like customs duties). The Supreme Court has found that the ports of the Zone are foreign for purposes of transportation of US mail.
- Our rights in the Zone continue to be limited by international treaties which also recognize certain Panamanian rights.

The United States Supreme Court decision of 1907 (Wilson vs. Shaw) is often quoted to prove that the US "owns" the Canal. In that case, a disgruntled taxpayer challenged the power of the US Government to expend funds for canal construction in the Zone. The Court found that the US could expend such funds there or elsewhere and added that, "It is hypercritical to contend that the title of the US 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." It is also contended that US sovereignty follows from the simple fact of having been granted in perpetuity the right to act in the Canal in the same way it would "if it were sovereign".



At the 1974 Universal Postal Union Congress and in other international congresses, the United States has officially taken the position that we recognize the Zone as constituting territory of the Republic of Panama while holding that the United States, under the Treaty of 1903, has the authority to operate specific services in the Zone.

The argument can go on and become very complex, as well as sterile. The important point is that it is not central to continuing the negotiations, which are based on an assessment of our national interests. Furthermore, discussion of the issue is highly irritating to the Zonians, who are hypersensitive to any aspersions cast on their fully equal status. Whenever possible, therefore, it seems better to avoid the argument.

Talking Points

- This is a complicated legal matter quite separate from our need to continue these negotiations which is based on national interest.
- Nevertheless, it is quite clear that the right of sovereignty which the US acquired in the Zone is limited. For instance:
 - Everyone born in the Zone is not automatically an American citizen.
 - Not every American can live in the Zone.
 - All US laws do not apply in the Zone.
 - We continue to pay Panama for the rights we exercise there.
 - The Supreme Court has found that in some cases and for some purposes the Zone can be considered foreign territory.
- On the other hand, the Court has found that in some cases and for some purposes the Zone is US territory.



-- We are continuing these negotiations because the last three Presidents have all examined the matter carefully and found that our national interest in preserving access to the Canal over the long term is better served by negotiating a new arrangement with Panama.

