

DEPARTMENT OF STATE  
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

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Spanish

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Panama, September 9, 1963

~~Confidential~~

Dear Mr. Secretary:

In due course I received Your Excellency's "confidential" note dated July 18 last, with reference to my memorandum of April 24 last and the list attached thereto, covering eight principal and five additional points.

Satisfactory agreement was reached on only two of those eight principal points: recognition in the Canal Zone of exequaturs issued by Panama to foreign consuls, and withholding of the income tax that all non-United States employees working in the Zone must pay to Panama.

I shall refer briefly to the six remaining principal points, in the order in which they appear in the list:

1. Flying the Panamanian flag in the Canal Zone.

On this point a partial agreement was reached, to the effect that the Panamanian flag will be flown at all places where the civil authorities fly the United States flag in the said Zone, while the matter of flying the Panamanian flag at the military posts and on ships passing through the Canal still remains pending and unsolved. Referring to these two aspects, Your Excellency comments that "it is not opportune to discuss other aspects of the question of the flag at this time."\*

His Excellency  
Dean Rusk,  
Secretary of State of the United States of America  
Washington, D.C.

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\*Translator's note: This is a translation from the Spanish; the original English is not available in LS.

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To Panama the question of flying its flag at all places in the Canal Zone, without exception, where the flag of the United States is flown, is of fundamental importance. Panama's rights in this matter derived principally from its sovereignty over all of the Canal Zone, which was never ceded to the United States. This was acknowledged by President Eisenhower when he authorized the flying of the Panamanian flag in the so-called Shaler Triangle, "in recognition of the fact that titular sovereignty over the Canal Zone lies with the Republic of Panama."\*

Furthermore, in the General Treaty of 1936, express reference was made to the "joint and vital interest" of both Panama and the United States in the Canal; and in the 1955 Treaty it was also expressly stipulated that Panama, along with the United States, has "vital interest in the effective protection of the Canal." This being so, that is, with Panama having sovereignty over all of the Canal Zone and a vital interest in the Zone's defense, there is no plausible reason whatever to hold that the Panamanian flag should fly in some places in the Zone and not in others. In regard to the flying of the Panamanian flag at military posts in the Zone, it should be recalled that, pursuant to Article XXIII of the Convention of 1903, the armed forces of the United States may be used in the Canal Zone only for "the safety or protection of the Canal," in which, I repeat, the treaties currently in force recognize the "vital interest" of Panama, jointly with that of the United States. This is more than sufficient reason why our two flags should fly together at the military posts, as a demonstration of the joint vital interest of our two countries in the defense and protection of the Canal, above all when it is a question, as indeed it is, of <sup>which</sup> places over/ the Republic of Panama has sovereignty.

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The Government of Panama considers that the flying of the Panamanian flag on ships passing through the Canal, in recognition of Panama's sovereignty over the lands and waters thereof, could not engender jurisdictional problems of any kind, in as much as the United States, pursuant to the Treaties of 1903 and 1936, and as long as those Treaties are in force, has jurisdiction over the Canal in matters relating to its maintenance, operation, sanitation, and protection, which jurisdiction, granted for those four specific purposes, can be no obstacle to recognition of Panama's sovereignty and to paying it the respect to which it is entitled.

2. Use of postage stamps in the Canal Zone.

The Government of the United States sought, through an Executive Order issued June 24, 1904, to exercise full sovereign powers in the Canal Zone, as if it were part of the territory of the United States. The reaction in Panama and the protest of the Panamanian Government were so sharp and vehement that President Theodore Roosevelt had to send his Secretary of War, William H. Taft, to Panama in order to assuage public feeling by making the necessary arrangements, which culminated in the conclusion, in December 1904, of the so-called "Taft Agreement." Among the things which Panama claimed and obtained at that time was the use of Panamanian postage stamps on mail of the Canal Zone, that right being set forth in the said Agreement as follows: "All mail matter carried in the territory of the Canal Zone to or through the Republic of Panama to the United States and to foreign countries shall bear the stamps of the Republic of Panama properly crossed by a printed mark of the Canal Zone Government."

The Taft Agreement, which was the result of an accord reached between the two Governments, was in force from December 1904 to May 1924, when it was unilaterally disregarded by the Executive Branch of the United States. During those twenty years only Panamanian postage stamps were used in the Canal Zone.

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No agreement could be reached on this point because the personal representatives of President John F. Kennedy insisted on a wording by which Panama would expressly recognize that Panamanian postage stamps could be used in the Zone jointly with postage stamps of the United States. The acceptance of such an arrangement would have been equivalent to destroying the basic principle of the Panamanian position on this important question.

4. Corridors under full Panamanian jurisdiction through the Canal Zone.

I am gratified to know that this question, in so far as a corridor on the Pacific side is concerned, "is being actively considered" and that the Department of State "hopes to be able to submit a detailed proposal shortly."\*

However, as Your Excellency notes, "the transfer of jurisdiction" over the corridors "constitutes a treaty revision which requires the approval of the Senate."\* This means, then, that it will be impossible to reach an agreement on this point until the Government of the United States indicates that it is willing to revise the existing treaties.

5. Treatment of Panamanian workers in the Canal Zone.

On this point the only agreement reached relates to the establishment of a Binational Labor Advisory Commission, to hear complaints and claims and to recommend to the Governments of Panama and the United States in the Canal Zone such solutions as it considers appropriate.

The Government of the Canal Zone granted wage increases beginning in July of this year and has promised other increases for July 1964. It has also begun to give more opportunities for work to Panamanians in jobs that previously were held only by

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Americans and it has begun to reduce the number of so-called sensitive jobs. But the fact is that these measures taken by the Canal Zone Government in favor of Panamanian workers were not the result of agreements between the personal representatives of Presidents Chiari and Kennedy but were unilateral acts of the Canal Zone Government. Furthermore, these measures do not meet the aspirations of the labor unions of Panamanian workers in the Zone, who consider that there are still discriminations against them and who are constantly exerting pressure on the Government of Panama to insist on full satisfaction of their wants.

6. Opening of the Canal Zone market to all Panamanian products and services.

I have read with interest Your Excellency's comment on this point, to the effect that "there is some misunderstanding on this point," because you have been informed that "Panamanian nationals sell directly to consumers in the Canal Zone and that home deliveries of Panamanian products and goods are made in the Canal Zone."\* Perhaps I was not sufficiently explicit in this respect in my conversation with Your Excellency on April 23 or in my Memorandum of the following day. There are no problems in regard to sales and deliveries in the military areas, but in the civilian areas those problems do exist with respect to the sale and home delivery of Panamanian goods and products which compete with similar products produced or distributed by the Commissaries. This is the case, for example, with bread, milk, ice cream, meat, poultry, etc.

But since this point cannot be settled without amending Article III of the General Treaty of 1936, no advance can be made until the United States Government shows a willingness to enter into discussions for a revision of the existing treaties.

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Your Excellency is correct in your understanding that the Government of Panama is interested in revising Article III (5) of the General Treaty of 1936, in order to make possible the establishment of private Panamanian commercial activities in the Canal Zone. Within a few days I could send Your Excellency a draft amendment of the said paragraph.

8. Port facilities in Panamá and Colón.

I am happy at Your Excellency's comment to the effect that "the United States has declared, in principle, its desire to make pier facilities available in Cristóbal," and your statement that "authorization of the Congress is not considered necessary for such lease agreements."\*

This matter was discussed a number of times by President Chiari's personal representatives with the personal representatives of President Kennedy, and it was always thought that the leasing of piers in Cristóbal to the "Free Zone of Colón" would be a provisional solution whose temporary success would depend on the scope and freedom of action of the "Free Zone of Colón" and on the Panamanian authorities in the management and administration of the leased piers and their services.

A change of boundaries, putting the piers under Panamanian jurisdiction, which would be the only possible permanent solution, would require revision of the treaties.

The following are the five additional points that I included in my Memorandum of April 24 last: (a) Widening of the Boyd-Roosevelt Highway; (b) reconstruction of the highway from Arraiján to Chorrera; (c) recognition of Spanish as an official language in the Canal Zone; (d) the problem of potable water for the cities of Panamá and Colón; and (e) the return to Panama of large areas of land located in the Canal Zone.

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These points, Your Excellency suggests, may be "the subject of separate communications through normal diplomatic channels."\*

It is pertinent to clarify that points (a), (b), and (d), which are of relative importance, might be covered by government-to-government arrangements, but points (c) and (e), which are of fundamental importance, would require revision of the treaties currently in force.

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On July 23 of this year the discussion committee, composed of personal representatives appointed by Presidents Chiari and Kennedy, pursuant to the Joint Communiqué which they issued in Washington on June 13, 1962, terminated its work. Consequently, all of the points of dissatisfaction of Panama by reason of the Canal, the treaties that govern it, and the interpretations and implementation of those treaties by the United States of America, now have to be discussed and negotiated between the two Governments, through regular diplomatic channels, but such work will lead to nothing practical and permanent if the revision of the treaties is not approached with frankness.

In his letter of September 8, 1961, the President of Panama explained to the President of the United States the necessity and desirability of undertaking that revision.

President Kennedy's reply was received in a letter dated April 30, 1962, in which, among other things, he stated the following: "The central question has consisted in the possibility of constructing in the future an interoceanic sea-level canal in the region of the Isthmus." "According to our estimates it will be necessary to carry out research on scientific and engineering questions for several years in order to complete the evaluation."\*

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President Kennedy added that "meanwhile, there are a number of temporary measures that could be advantageously discussed by representatives of our two Governments."\*

In a letter dated May 17, 1962, the President of Panama acknowledged receipt of the letter of April 30, 1962 from the President of the United States and, among other matters, with a clarity and preciseness directly designed to set forth a Panamanian position that could lend itself to no doubt, made the following statement:

"I am in full accord with Your Excellency that, quite apart from the question of a possible sea-level canal, there are a number of matters that can be discussed by representatives of our two Governments in an effort to find solutions that will maintain and strengthen their relations on the basis of mutual respect and sincere friendship, but, as I have already stated to you, this would imply the revision of the existing treaties between our two nations." (Note: The underlining is mine.)

President Chiari accepted the invitation extended to him by President Kennedy to pay an official visit to the United States in June 1962. During that visit President Chiari orally reiterated to President Kennedy the points of view that he had previously expressed by letter and, in addition, he set forth in detail a number of causes of dissatisfaction on the part of Panama in its relations with the United States.

As a result of that visit and the conversations held between the two Presidents, they issued a Joint Communiqué in which they agreed "upon the principle that when two friendly nations are bound by treaty provisions which are not fully satisfactory to one of the parties, arrangements should be made to permit both nations to discuss these points of dissatisfaction."

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As a necessary consequence of the principle thus agreed upon, the two Presidents agreed to appoint "high level representatives to carry on such discussions."

The personal representatives of the two Presidents worked for a year, from July 13, 1962 to July 23, 1963. In the course of their labors, the Panamanian representatives submitted for discussion some of the questions that President Chiari had brought up to President Kennedy in Washington, and they reserved others to be taken up after agreement on the first ones had been reached.

Your Excellency will recall that when I had the honor of being received at the Department of State in April of this year, the personal representatives of the two Presidents, after having worked for nine months, had barely managed to reach fully satisfactory agreement on two points that required no revision of the treaties: the matter of the exequaturs and the withholding of the income tax. The sole purpose of my visit, during which I encroached upon Your Excellency's valuable time which you perhaps needed to devote to world problems of more importance to the Government of the United States than the affairs of Panama, was to try to see if an effort might be made for the personal representatives of the Presidents to reach a prompt settlement on the matters that had already been submitted by the Panamanian representatives. Notwithstanding Your Excellency's clearly favorable response to my proposal, it was impossible to reach any new agreement on any of the points during the months of May, June, and part of July, a situation that gave full justification for the desire of the President of Panama to have the discussions of the representatives brought to a close, which was done on July 23 of this year.

Among the questions of vital importance to Panama which President Chiari laid before President Kennedy in Washington in June of last year, there is one which the Panamanian presidential

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representatives did not submit to the United States presidential representatives because they understood the futility of doing so in view of the fact that all matters implying revision of the treaties had been eliminated from the discussions. I am referring to the financial benefits which Panama has received and continues to receive because of its contribution toward making possible, first, the construction, and, then, the operation and maintenance of the Panama Canal, which has been the key to the power of the United States and continues to be the support of that power and the protection of the immense shipping interests of the United States and other nations.

To the damage that Panama suffers from the limited financial benefits it receives, as unjust compensation for having granted the Canal concession, must be added the fact that in the economic expansion so urgently required by all of the underdeveloped nations of the world, the Canal is day by day becoming a greater obstacle to Panama in regard to the adequate development of its economy. This is so, not because the Canal in itself is a hindrance to that development, but because of the way in which the Canal is administered and because the activities maintained there by the Government of the United States, which are unrelated to the purposes for which the Canal concession was granted under the existing treaties, prevent Panama from taking full advantage of its geographic position, which is Panama's and hers alone.

If Panama were to receive fair compensation for its participation in making the construction and operation of the Canal in its territory possible, and if the Government of the United States were to limit itself, in accordance with the treaties, to the Canal's maintenance, operation, sanitation, and protection as a seaway, which it is and nothing more; but leaving Panama free to avail itself of the economic potentialities of its geographic position in world trade, the Alliance



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for Progress would have no problems to solve in Panama and the gratuitous or almost gratuitous aid by which the Government of the United States is accustomed to assist nations in the throes of economic or fiscal crisis would not be needed in Panama.

But neither can the recognition of fair financial compensation for Panama by reason of the Canal be achieved without revision of the treaties.

From the explanations which I have given in this already long letter, it may be seen most clearly that the lack of success in the discussions between the personal representatives appointed by our Presidents was due to the definite and undeniable fact that Panama's points of dissatisfaction in its relations with the United States cannot be solved within the narrow framework of the treaties that now govern those relations or within the frame of mind of the Americans who live in the Canal Zone and who appear to have--and boast about it--preponderant influence in certain circles in Washington as to how Panama's problems are regarded and settled there.

The Government of Panama does not question the rights that the United States may have for "the efficient maintenance, operation, sanitation, and protection of the Canal," but it does maintain that the United States is not entitled to any activity, jurisdiction, or authority that does not answer those four purposes, to which the concessions made to it by Panama are subject.

The termination, by reason of their obvious fruitlessness, of the discussions between the personal representatives of the Presidents should offer a good opportunity to put an end to methods which have definitely proved not to be a suitable means for fully solving the problems and dissatisfaction of Panama which stem from the treaties in force between our two countries and from the manner in which those treaties are interpreted and implemented by Your Excellency's Government.

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As has been repeatedly stated by President Chiari to President Kennedy, both orally and in writing, the Government of Panama considers that the initiation of frank, open, sincere negotiations for the revision of all treaties in force between our two nations is the only way to find just, equitable, and lasting solutions for both parties.

However, until such revision takes place--and matters will come to that sooner or later--the Government of Panama is willing to continue to discuss with Your Excellency's Government provisional or temporary measures that may be put into effect, provided that they help to alleviate the grave problems that weigh upon Panama by reason of the Canal, and provided that such measures can be adopted with some promptness, in order that the discussions may not become merely means for delaying action, as did those between the personal representatives of the Presidents.

I fully understand, Mr. Secretary, that Panama does not have the necessary ways and means to force or hasten the solution of these serious problems that are created for it by the existence and operation of the interocean canal. But this harsh reality does not prevent the Panamanian Government and people from insisting, as tirelessly and vigorously as possible, on pressing their just claims until they obtain, sooner or later, full satisfaction; the delayed solution of these problems has been, is, and will continue to be a permanent source of resentment that can lead to anger or despair, with unpredictable consequences if it is not eliminated in time.

The Government of Panama does not doubt the sincerity of the statements made by President Kennedy and by Your Excellency, when you expressed your desires to maintain and strengthen relations between our two countries on the basis of mutual respect and genuine friendship. There may perhaps be factors which prevent the White House and the Department of State from carrying out their good intentions toward Panama.



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If Your Excellency's Government believes that it is still not opportune to initiate the over-all revision of the treaties, or if it is not prepared for that, things will continue as they are and history will carry them along within the currents prevailing in Latin America and in the whole world in general. But there must be no self-deception or illusions that temporary or secondary measures or agreements are going to correct the ills that Panama suffers as a consequence of the Convention on the Isthmian Canal of 1903 and the unilateral interpretations which the Government of the United States has been applying to it--ills that subsist despite the Treaties that later modified some of the provisions of that Convention.

Your Excellency may be sure that nothing in this letter should be interpreted as reluctance on the part of Panama to contribute, in all ways reasonably within its power, to making the cordial friendship that should exist between our two nations firm and lasting. On the contrary, every word in this note comes from the strong desire that our Governments may arrive at the necessary understandings so that their relations may develop normally on bases of mutual respect, reciprocal consideration, justice, and equity, with strict adherence to the principles of international law and ethics.

I avail myself of this occasion to renew to Your Excellency the assurances of my highest, most distinguished, and most cordial consideration.

[s] Galileo Solís

Galileo Solís  
Minister of Foreign Affairs

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