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103D CONGRESS
1ST SESSION

H. CON. RES. 2

Expressing the sense of the Congress that the President or the Congress should abrogate the Panama Canal Treaties of 1977 and the Neutrality Treaty and the Congress should repeal the Panama Canal Act of 1979.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. CRANE submitted the following bill; which was referred jointly to the Committees on Foreign Affairs and Merchant Marine and Fisheries

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CONCURRENT RESOLUTION

Expressing the sense of the Congress that the President or the Congress should abrogate the Panama Canal Treaties of 1977 and the Neutrality Treaty and the Congress should repeal the Panama Canal Act of 1979.

Whereas the Panama Canal is a vital strategic asset of the United States;

Whereas Article 163 of the 1972 Constitution of the Republic of Panama provides that ''The President alone . . . [shall] conduct foreign relations . . . . and enter into international treaties and agreements . . .'';

Whereas the Panama Canal Treaties of 1977 were signed by General Omar Torrijos Herrera, the head of Panama's Defense Forces, who was neither the President of Panama nor a duly elected official of the Government of Pan-

ama, and not by Demetro B. Lukas, the President of Panama, as required by the Constitution of Panama;

Whereas this violation of Panama's Constitution regarding competence to conclude treaties renders the Panama Canal Treaties of 1977 invalid under international law, including Article 46 of the Vienna Convention on the Law of Treaties, to which the United States conforms, and therefore subject to termination by the Republic of Panama at any time;

Whereas the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal is also subject to repudiation by the Republic of Panama because six modifications to the Treaty contained in the resolution of ratification of the United States Senate, including the DeConcini Reservation asserting the unilateral right of the United States to intervene to protect the Panama Canal, were never submitted to a national plebiscite, as required in Article 274 of the Constitution of Panama;

Whereas Panama's instruments of ratification concerning the Neutrality Treaty, which contain counter-reservations denying the right of the United States to intervene unilaterally in order to protect the Panama Canal, were never submitted to the United States Senate for approval, in violation of established procedures for the ratification of treaties under the Constitution of the United States;

Whereas the Neutrality Treaty confers no explicit legal right upon the United States either to maintain defense forces in Panama or to enter Panama to defend the Panama Canal against an external or internal threat after the year 1999;

Whereas both the United States and the Republic of Panama are signatories to the charters of the United Nations and the Organization of American States, which guarantee the territorial inviolability of an independent State and therefore prohibit unilateral intervention or entry upon the sovereign territory of another country without its permission;

Whereas the Neutrality Treaty limits the right of the United States to defend the Panama Canal on the high seas, without express permission to enter Panamanian territory, and therefore fails to provide adequate protection for the national security of the United States;

Whereas the Neutrality Treaty does not prohibit the Republic of Panama from entering into an agreement with a third country, including Cuba or Nicaragua, for the joint or exclusive operation and control of the Panama Canal;

Whereas Article III of the Panama Canal Treaty of 1977, providing for the operation of the Panama Canal through 1999, stipulates that four of the nine members of the Board of the Panama Canal Commission must be citizens of Panama who are proposed by the Panamanian Government for appointment and are subject to removal by the Panamanian Government;

Whereas these provisions in the Panama Canal Treaty regarding the appointment and removal by Panama of the Panamanian members of the Board improperly restrict the President's appointment and removal powers under Article II, Section 2 of the Constitution of the United States and are inconsistent with the Supreme Court's ruling in Buckley vs. Valeo, 424 U.S. 1 (1976), holding that all such members of a United States Federal agency

are ''officers of the United States'' who are subject to Senate confirmation;

Whereas all ''officers of the United States'' must be citizens of the United States, and all such officers must therefore take an oath to defend the Constitution and may be impeached and removed from office for treason, bribery, or other high crimes and misdemeanors;

Whereas the Panamanian members of the Board of the Panama Canal Commission are appointees to a United States Federal Agency and are exercising the powers and responsibilities of ''officers of the United States,'' but are foreign nationals and are therefore ineligible under the Constitution of the United States to serve as members of the Board of the Commission; and

Whereas the Panama Canal Act of 1979 is the implementing legislation for the Panama Canal Treaties of 1977: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the President or the Congress should immediately abrogate the Panama Canal Treaties of 1977 and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and that the Congress should repeal the Panama Canal Act of 1979.

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