FREEDOM OF NAVIGATION THROUGH SUEZ CANAL

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The Suez Canal's construction was completed and opened for navigation in 1869. However, the international regime for the navigation through the Canal was established by the Convention of Constantinople of 1838. It lies at the junction of Africa and Asia, and is a gateway to East and West. It holds strategic position from geographical, commercial and military points of views. Consequently, it has become a bone of contention between the major powers to control, this crucial point on sea passage and more so often after creation of Israel. Since the creation of Israel, Egypt, of which the Suez Canal is an integral part, had been victim of three wars (1956, 1967 and 1973) and naturally then, the problem regarding navigation through the Canal arose due to its blockade by Egypt. Several questions arose from the points of views of international law and as well as politics. The purpose of this study is to discuss and analyse the problem both from legal and political points of views.

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Chapter I

Suez Canal: Construction and Significance
The Suez Canal: Construction and Significance

In the hub of Afro-Eurasia, one of the most important and oldest man-made navigable waterways in this twentieth century is the Suez Canal. It connects two open seas—the Mediterranean and the Red Sea, Egypt, which lies at the junction of Africa and Asia, is a natural gateway to East and West. It always held a strategic position from geographical, commercial and military points of view. The construction of an international canal immensely increased its importance and significance. The significance of this waterway has been recognised from the ancient times; of course, to a much less extent than now-a-days. The Suez Canal have been considered as economical, speedy, safe, and shortest that shortens the London—Bombay water route replacing the old Cape route.

The history of Egypt proves that the idea of constructing the Canal between the Mediterranean and the Red Sea goes back to the ancient times. Traditions claim that the first navigable Canal linking the Nile River with the Red Sea seems to have been built during the 2000 B.C., in reign of the Pharaoh of the 12th dynasty, Sesostris. It started from the Pelusiac north of the city of Bubastis to Wadi Numilat eastwards and then turned south through
Bitter Lake to the Red Sea. During the next many years this Canal was available to navigation.

The Canal was completely neglected after the death of Sesostiris and the political changes in Egypt prevented the maintenance of the Canal. Hence, the Canal was disused and slited up. In 973-833 B.C., the king Solomon completely ignored the route and looking for another independent route to India, constructed the Port of Ezion-Geber at the head of the Gulf of Aqaba. Attempts made to reclaim the Canal during the reign of Pharaoh Necho II in 612 B.C. failed.

A Persian King, Darius Hystaspes in 521 B.C. re-excavated and enlarged the Canal by connecting the Bitter Lakes with the Red Sea through a small Canal but it was unfit for navigation if the Nile flooded. Under


A.P.S. Bindra points out that the Canal which connected the Nile with the Red Sea was built during the queen Hatchesnput of Egypt in 1490-1475 B.C. see A.P.S. Bindra, Suez Thrombosis - Causes and Prospects, Vikas Publication, India (1969), P. 3.

2. Ibid., P. 3.
4. Ibid., PP. 3-4; UAR Year Book, 1960, P. 68.
Ptolemy Philadelphus II in 286 B.C. and Ptolemy Euergetes III in 246 B.C., the original Canal was once again made fit for navigation. It was extended via the Bitter Lakes to the Red Sea. It started at Clysma, at a route from where the Modern Sues starts. Ptolemy Philadelphus had proposed to cut the canal direct through Isthmus but abandoned his plan because of a popular belief that level of the Red Sea was higher than the Mediterranean sea which later proved wrong.  

Later, neglected Canal was found essential by Romans for commerce purposes. Hence, in 98 A.D., the Emperor Tranian reclaimed the Canal. It was renamed as "Trajan Canal" or "Roman Canal" and used for some time. It was once again out of use by the end of the third century.  

With the Arab conquest of Egypt in 7th A.D., Caliph Amr ibn-al-As reopened the Nile-Red Sea water way in 641-42 A.D. He had an idea to dig a Canal directly connecting the two seas. The idea was not put into practice on the ground that it would be comparatively more advantageous to the shipping of Christian Countries. Further, the cutting of the Isthums, it was feared, would expose the

5. Ibid., P. 4; Siegfried, Andre', op. cit., pp. 38-39.  
entire Egypt to being flooded by the Red Sea. Thus, instead of constructing a new Canal, the Arabs used for navigation the Canal of Romans and renamed it as "Canal of the Caliph". However it was finally closed in 776 A.D. by the Second Abbassid Caliph, Abu-Djaafar-Mansur to prevent its use by the people of Medina who had rebelled against his authority. Thereafter, no more was heared about it until the Napolean's Expedition of Egypt at the end of the 19th century.

Meanwhile in 1498, Vasco-de Gama succeeded in making his voyage to the South down the Western Coast of Africa, around the Cape of Good Hope route. This opened a long but useful waterway to India and Far East for trade and commerce. Thereafter, the ancient route was neglected. However, at subsequent intervals, the plan for the direct cutting of a Canal was put forward but was always opposed by Ottoman Emperor. Turkish Pasha of Egypt suggested the reopening of the Old Nile-Red Sea Canal with access to the Mediterranean. But the then Turkish Sultan, eventually, refused to permission due to heavy expenditure involved and other difficulties.

8. Ibid., P. 6.
With the passage of time, at the end of 18th century European states became more interested in this speedy route, owing to two reasons, firstly, by the 18th century trade with India increased enormously, secondly, due to de-colonization, the rivalry of colonial powers—British and French—shifted to this region. Consequently this region balance strategical more important and further construction of a Canal meant easier and speedient route. Trade from India to Europe was also became very difficult. The only solution to overcome this difficulty was to cut a Canal from Sues to Cairo or to reclaim the ancient Canal. France, too, was contemplating to reopen the old route through Egypt. 9

France, among other European states, held a leading position in the eastern Mediterranean and because of geographical location, her interest in this commercial route through Egypt was bound to be more than that of any other European States. However, French Government did not take any official step to serve her interest immediately. Though her agents and merchants were negotiating treaties in Egypt for giving the transport

9. Ibid., P. 8.
facilities. Suddenly political situation took a turn. The authority of Turkish representation had weakened in Egypt and needed to be changed. It required a more stable, strong and responsible government. In 1793, war broke out between Britain and France and in 1798 an expedition, commanded by Napoleon took place. Napoleon occupied Egypt. It is said that one of the aims of the Napoleon's expedition was to connect the two sea by cutting a Canal through Isthums of Suez.

Napoleon himself took a keen interest in the Sues Canal project. A survey was instituted and completed by J.M. Le Pire, a famous engineer. But the survey foundings were against the cutting of direct Canal between the Mediterranean and the Red Seas, as was under reign of Ptolemies. It was pointed out that cutting of a direct Canal across the Isthums of Suez was impracticable owing to the differences in the level of the two seas. The level of the Red Sea was about thirty feet higher than the level of the Mediterranean Sea. They, the surveyers, therefore, were in favour of reopening the old Nile-Red

10. Ibid., PP. 10-11; also see A.P.S. Bindra, op. cit., P.3.


But in accordance to the Encyclopaedia of Britanica, the level of the Red Sea was 33 feet higher than the Mediterranean Sea, see the Encyclopaedia of Britanica, London Vol. 17, P. 767.
sea Canal route and postpone the idea of cutting a direct Canal.

During the first half of 19th century, the project of constructing the Canal was taken up Saint Simonians who died in 1825 without taking any definite step to accomplish the object. During the first half of 19th century, the project of constructing the Canal was taken up Saint Simonians who died in 1825 without taking any definite step to accomplish the object. Then in 1834, Fournal, a Frenchman, applied for a concession to the Canal project but was refused. Again in 1841, Linant Bay prepared a detailed scheme to build a Canal between Suez and Feheraicem but failed. Then after some years in 1846, Enfentins organized an international financial group in Paris known as "the Societe'd'Etudes du Canal de Suez" in order to make complete study of the Canal project keeping in view the financial and technical aspects. By that time Britain became interested in this speedy route—Egyptian route and consequently viewed with disfavour the Canal project designed by France because of its strategic and commercial importance. Notwithstanding the advantage of this route was demonstrated by Thomas Waghorn in 1830 by making a journey from London to Bombay.

12. Ibid., p. 16.
14. Ibid., P. 62; also see schonfield, op. cit., pp. 16-17.
and in 1837 an agreement between the British government and the Peninsular and Oriental Company was concluded for the carriage of mails. Therefore, as a result of this development, British government made an alternative scheme for the construction of Railway line between Alexandria and Suez. The Suez Canal Society was quite unable to proceed further than its preliminary investigation. In fact, each contending power was trying to gain ascendancy over the other. Each power tried to include Egypt in its own sphere of influence. However, Mohamed Ali Pasha, Viceroy of Egypt, rejected both the railway and Canal projects. He accurately realised that such projects would be of no benefit for Egypt and will constitute a threat to the independence of Egypt. Of course, Mohamed Ali was in favour of granting a concession for the Canal but he held back because of the European rivalry. In 1849, Mohamed Ali died without committing himself to either project and was succeeded by Abbas Pasha. Abbas Pasha granted concession for the railway project in 1851. It was complete in 1854 by putting the Canal project on the shelf.

15. Ibid., P. 15, Marlowe, op. cit., PP. 43-49.
16. Ibid., P. 15
Upto 1854, the Canal project was even at stand still. No doubt, two projects were regarded on two different ground, that, the Canal project involved a geographical change and therefore, became an international issue and railway project was yet within internal sphere. Abbas Pasha had not ready to initiate the Canal project without an agreement between interested powers and without the approval of Ottoman Empire. On technical side, the level of two seas were surveyed repeatedly and, in 1852 Linant Bay foundout that the talk of differences between the levels of the Red Sea and the Mediterranean Sea was totally a myth. 17 The two seas lies on same level.

In 1854, Abbas Pasha died and succeeded by Mohamed Said Pasha, Said Pasha granted a concession to Ferdinand De Lesseps, a French diplomat, who happened to be a friend of Said Pasha; he lived in Egypt with his father who had been French consular-General in Egypt. On hearing the news of accession by Said Pasha, De Lesseps congratulated him, and in return, he received an invitation to

17. Ibid., P. 21
visit Egypt. On November 7, 1854, De Lesseps reached Alexandria and on November 30, 1854, he obtained the concession for the Canal project. The concession was valid for 99 years since the opening date of the Suez Canal. The Suez Canal would become, the concession provided, property of Egyptian government upon the payment of an indemnity, to be fixed by amicable agreement or by arbitration. The concession authorised for formation of an International Company known as "The Compagnie Universelle du Canal Maritime de Suez," to administer it.

It is surprising that De Lesseps obtained the concession so easily while other strived for years. Said Pasha announcement in the assembled corps of ministers and Foreign consuls about his intention of granting the concession for the Canal construction came as a bombshell to all. But the decision had been made suddenly and there was no opportunity by manoeuvering interested powers.

The construction of the Canal, however, was further delayed. The concession was officially promulgated in

18. Ibid., PP. 23-24; also see Barlowe op. cit., P. 63; Lenczowski, George. The Middle East in World Affairs (III ed.,) Cornell University Press, London (1962), P. 610. Middle East—A Political And Economic Survey op. cit., P. 147. For text of the concession of 1854 see Appendix — A.

19. See Article X of the Concession of 1854, Appendix — A.
1855 with a reservation that this need ratification by
The Ottoman Sultan before construction starts. But, at
Constantinople, the British influence was so strong that
it could successfully prevented the Sultan from approving
the concession. It considered the whole scheme as a French
political move to establish its supramacy over Egypt and
felt that a Canal would threaten its supramacy in eastern
trade commanding cape route.

In 1855, De Lesseps formed An International Scientific
Commission to examine and report on the technical aspects
of the Canal project. The expedition was very successful
and in 1856, Commission submitted their report in favour
of direct Canal between the Mediterranean and the Red
Sea.

The Commission recommended as follows:

1. The Wadi-Tumulat route was impractical owing to the
   expense involved.

2. There was no insurmountable difficulty in the direct
   route across the Isthmus.

21. See the Statement of the British Prime-Minister, Lord
    Palmerstone, Schonfield, op. cit., P. 26
22. Ibid., pp. 29-30; Marlows, op. cit., P. 64.
3. The suitable ports could be constructed at each end of the Canal; and

4. The whole project would not cost than £8,000,000 including the works connected with it.

This Commission's Report completely changed the aspects of the Canal project and upon its recommendation, The Concession of November 30, 1854 was replaced by a New Act of Concession of January 5, 1856 by the Pasha of Egypt. The Concession contained similar provisions but was subject to ratification by the Ottoman Sultan.\textsuperscript{23} The concession formulated full statutes of the Suez Canal Company and provided, inter alia, that:

In addition to a concession, the company had taken a strip of land in the Wadi-Tumilat, linking the area of the concession with the Nile for the purpose of digging a Sweet Water Canal to meet the need of the Canal zone for the period of concession; and

The company was to be freed from taxation in respect of this land and was to enjoy the benefit deriving from its concession.\textsuperscript{24}

\textsuperscript{23} Schonfield, op. cit., P. 30. Also see Lenczowski, op. cit., P. 610; Marlowe, op. cit., P. 65. For text of the concession of January 5, 1856, see Appendix - B.

\textsuperscript{24} Marlowe, op. cit., P. 65.
Owing to British opposition, De Lesseps, in 1858, placed his Canal project and the company under the protection of Napoleon III emphasizing the principle of freedom from governmental interference. In the meantime, De Lesseps was advised to go ahead the Canal project. Hence, the company ordinary shares were kept in the market. The concession (of 1856) fixed the capital at 200 million and was divided into 400,000 shares of 500 francs, each bearing statutory interest of five percent. The subscription list of shares was opened on October 1858, and closed on at the end of November 1858. Out of the 400,000 shares 207,111 shares were taken up by France, 177,642 by Egypt, and the remaining 85,006 shares which were allotted to Britain, the United States and the Soviet-Russia, were remained unsold, as they had not been purchased by those countries.25

Undoubtedly, the result was very disappointing. France had taken up more than half shares in total number. De Lesseps wanted that all Western Powers should participate, financially, in the Canal project by purchasing the reserved number of shares allotted for them. Fortunately, by that time Turkish Government recognised the utility of the Canal scheme and considered it as a domestic undertaking just like the railway. Therefore, De Lesseps did not

wait for the Sultan's ratification of the concession and started the construction work of the Canal on April 25, 1859. It was a violation of Turkish sovereignty.

However, it was not an easy task. At the early stage of construction work, Said Pasha became alarmed and realized the danger. De Lesseps, while an incurable optimist, was forced to realize that he could not hope to overcome against the forces arranged against him. The financial contradiction between De Lesseps' affirmation and Said's denial about the unsubscribed shares was another imminent problem. The French Government had also pressured Said Pasha to take up unsold shares.

A crisis was reached in 1863 when the Ottoman Sultan formally ordered to cease forthwith all the construction work on the canal by force. The Sultan demanded that the company should return certain Egyptian territory - Wadi-Tumilat in the Canal zone; he also demanded abolition of forced labour. In fact, De Lesseps succeeded in implementing the supplementary addition to the concession by which native labour for the construction work of the Canal was to be provided by Egyptian Government. Consequently, on

27. See Harlowe, op. cit., p. 65; Siegfried, Andre', op. cit., p. 73.
April 6, 1863, two notes were dispatched, one to the Ottoman Ambassador at London and Paris, and other to the Viceroy of Egypt, Said Pasha, in which ressortation of land and abolition of forced labour were conditions for the ratification of the Concession. Meanwhile, Said Pasha died on January 1863 and was succeeded by Ismail Pasha who committed himself in favour of the Canal. He agreed to take up the remaining unsold shares 85,506 as well as the 95,516 original shares allotted to Egypt. The negotiation over the questions of ressortation of land and supply of forced labour now were transferred to Paris. In 1864, it was agreed that matter be referred to arbitration, Napoleon agreed and appointed an All French Arbitration Committee in March 1864 to examine the question. The Committee made following award on July 1864:

1. The forced labour on the Canal should be abolished, which was contracted by Said Pasha to supply labours according to the company requirements. The company was awarded an indemnity of 38,000,000 francs for giving up this right.

2. The company should return lands of the Canal zones to Egypt, which Ismail Pasha considered detrimental to

Egypt's independence upon the payment of an indemnity of 84,000,000 francs by Ismail Pasha.

3. The full amount of indemnity should be paid to the company within period of 15 years.29

This agreement was accepted by both parties. Consequently, Ottoman Sultan ratified the Act of concession of 1856 on March 19, 1866.30 With the ratification of the concession, all political and diplomatic hinderences were removed from their way of the Canal's construction. The construction of Canal proceeded rapidly completed on August 1869. The Canal construction took ten years instead of six years as envisaged in the Canal's scheme. The delay was because of climatic and physical difficulties, which were minor but particular was British and French rivalry.

The Turkish Sultan was so weak in authority in Egypt that no attempt was taken even the work started without its ratification. In his individual capacity De Lesseps took steps which violated the sovereignty and rights.

29. Ibid., PP. 39-40, also see Marlowe, op. cit., P. 69, Siegfried, op. cit., P. 73, Marlowe, op. cit., PP. 212-213.
of Egypt. But when objections were raised, it sought patronage of Napoleon III. Therefore, he got things moved in such a way that the principle of Sovereignty was seemingly accepted but the provisions of award were dictated by French government.

The inauguration ceremony of the Suez Canal had taken place officially on November 17, 1869 in the presence of many crowned heads of Europe and elites of the world. The Empress of France, Eugénie, was guest of honour.\textsuperscript{31} France won diplomatic victory over all contenting powers by establishing great Suez Canal for the commercial advantage of world.

The Suez Canal is singularly direct channel starts from the Mediterranean Sea. In the inner side of the canal lies Port Said and Port Faud. The Canal then passes to Lake Balah. Again the Canal cuts to Lake Timsah. At the north-west end of Lake Timsah is situated Ismailia Canal which extends and joins the Nile River near Cairo. Along the Ismailia Canal is Sweet Water Canal. From Lake Timsah, the Canal passes to Great Bitter Lake and by Great Bitter Lake it joins Little Bitter Lake. The Canal came end of its course, The Gulf of Suez. In fact, the Suez Canal continues

\textsuperscript{31} Ibid., P. 43; also see Schonfield, op. cit., P. 42; Marlowe, op. cit., P. 70; Siegfried, op. cit., P. 75.
to the east passing through Port Twafik and then fall into the Red Sea by the harbour of Port Ibrahim.

The total cost of the Suez Canal was £ 16,000,000 of which £ 4,500,000 was subscribed by the ordinary shareholders and remaining were from Egyptian government. The cost of construction of the Canal was greatly exceeded beyond the estimated cost of Expert Commission's Report of 1855. 32

Improvement In the Suez Canal

After construction, the Suez Canal was approximately 100 miles long and varied in width between 139-300 feet at surface. The Canal had depth of 26.2 feet (8 meter) and 72.2 feet (22 meter) at bottom. The average gross tonnage of transiting ships was 17000 tons and highest authorized draught was 24.6 feet (7.5 meter). The navigation speed was 6.12 miles (10 km.) per hour. 33 The rapid growth of navigation through the Suez Canal necessitated major improvements in the water way. By 1883 the Canal became so congested that some ships chose to go through the cape route. As the British's shipping interest was greatly affected, the British consul forced the Suez Canal company to make improvements in the Canal and in its

32. Ibid., P. 71
33. UAR Year Book, 1960, P. 74; Also see The Middle East East And North Africa, 1971-72, Europa Publication Ltd., London, P. 54.
policy. Consequently, the Company fixed certain amount of Canal earning for making improvements in the Canal.

During the period 1870-1954, The Suez Canal Company had carried out seven projects for its improvement. In 1948, traffic was increased highly that the Company decided to embark on the Seventh project. It included the cutting of a by-pass Canal-Farouk Canal-between Kantara and Balah Lake on the eastern side of the Suez Canal. Work on this project began in 1949 and brought into operation in 1951 which reduced the average transit of the Canal to 24 hours. The same time, upon the recommendation of International Consultative Commission, a two years programme to double the capacity of Port Said's basin was undertaken. By the end of 1954, the Suez Canal was deepened to 14 meter and widened at bottom about 35 meter. The average speed of the ship was increased from 6.12 to 7.50 miles per hour.

34. Ibid, P. 54. Also see Asian Record, New Delhi, Nov. 12-18, 1960, p. 3633.
* International consultative Commission was composed of civil Engineers of Britain, France, Egypt, Holland and Belgium. Hoskin, Halford L., op. cit., P. 48.
36. UAR Year Book 1960, P. 74.
The eighth project for the improvements of the Canal, know as "The Nasser Project", was prepared in 1954 to widen and deepen the Canal, keeping in view the requirements of increasing traffic and increasing size of tankers. After the nationalisation of Suez Canal Company in 1956, the Suez Canal authority found shortcomings in the project. Therefore, the project was modified to achieve better results. The most important shortcoming was that the Canal, when improved, would not meet with the development of navigation, the increase in traffic and indimension and draught of ships. The authority drew up new plans which doubled the Canal capacity. The main programmes of "Nasser Project" were as follows:

1. The deepening of the Canal to pass the ships and tankers drawing 37 feet (about 46,000 tons) instead of 36 feet with tonnage of 38,000 in former plans;

2. The widening of the Canal to pace with the increase of the dimension of ships and tankers between 1850 m² and 1900 m².  

The Suez Canal Company executed this project in stages in order to make changes according to changing circumstances. The work on the project started in 1958

37. Ibid., P. 76.
and the first stage of project's work was finished in 1961. The Canal was widened to take ships of 37 feet. The second stage of project was finished in 1964 that widened and deepened the Canal to take ships of 38 feet draught. 38

In June 1975, the Canal was reopened after the Arab–Israeli conflicts of 1967 and 1973. The improvements and expansion of the Canal had been made more essential because of the vast increase in sizes of oil tankers and ships since 1967. That time the Canal allowed the passage of 70,000 or 200,000 draught ships in ballast. Hence the Company drawn out improvements programmes of the Canal. The programmes were comprised of two parts: The first part provided 150,000 draught of tankers to pass fully laden, and second part permitted to pass 260,000 draught of tankers partly laden. The Suez Canal Company contracted with the Penta Ocean Construction Company to work on the Canal. In 1976 the Company also contracted with the Penta Company for the expansion of Great Bitter Lake. 39

The first part of widening and deepening of the Canal programme was completed in December, 1980 enabling the passage of ships of 150,000 tons fully laden; 200,000

tons partly laden; and 370,000 tons unloaded and raised the maximum permissible draught of 53 feet. After widening operation, the Canal enabled to transit 90 ships per day instead of the former number 65. Port Said by-pass was opened on December 16th, 1980 and other by-passes were also constructed at Lake Timsah and Deversoir. In 1979 construction of the Sulem Canal was installed to take waters from the East Nile to Sinai. Further development programme aims to build a canal parallel to the existing Suez Canal by 1993. 40

At present, the Suez Canal is 195 km long. Its minimum depth is 33 feet and maximum depth is 53 feet and is 193 meters-365 meters wide. The average speed of the navigation is 15 km per hour since 1967.

Significance of the Suez Canal:

The construction of the Suez Canal opened a new vista to world commerce and trade. The opening of the Suez Canal virtually neglected the old trade route, Cape of Good Hope around Africa. It shorten the distance for navigation from Europe to Asia, hence, the Canal became principal channel of trade between East and West. Before the construction of this waterway the overland route was convenient

40. Ibid., PP. 137, 339.
for mail and passenger but not for the heavy merchandise, particularly owing to the expensive transits. The Suez Canal obviated this difficulty and gave an overwhelming advantage for heavy merchandise as well as for mails and passengers.

The Suez Canal, in comparison to the Panama Canal and the Kile Canal, is considered to be the most important and significant. The Panama Canal which connects the Atlantic Sea with the Pacific Sea, provide navigation between East and West of two Americas; The Kile Canal also, that connects the North Sea with the Baltic Sea, provides navigation between Western Europe and Eastern Australia. But the Suez Canal is used for navigation between the whole West and the entire East. Not only this, physically the Suez Canal is connecting two seas directly free from any obstacle while the Panama and Kile Canals on are provided with locks to overcome the differences in levels.41

The economic significance of the Suez Canal can be easily understood. The economy in mileage realized varies between 47 and 59 percent by replacing old cape route. Whilst the quantities of fuel saved varies between 50-70

41. UAR Year Book, 1960, p. 71.
percent according to the tonnage and speed of the ships. The increasing volume of traffic through the Suez Canal is also constituting good measures of world trade development, particularly in the European Countries. The significance of the Suez Canal for the economy of Western nations is also a considering factor. Its importance increased constantly closely following the economic expansion of the European and Asian Nations. Coupled with the Middle East oil, the Suez Canal plays vital role in the western economic system.

Other routes were at disadvantage, compared with the Suez passage being much longer, involving higher costs and more shipping space. The result was that European nations became more and more dependent on the Suez Canal for obtaining raw materials necessary to their expanding industries. A prolonged closing of the Canal inevitably meant damage in the economies of Western European nations, difficult and costly adjustment with far reaching consequences. It can well be estimated that about 90 percent oil from Middle East is shipped through the Canal to Europe and Western Hemisphere, for instance, in 1966, 166,800,000 tons of oil, produced in the Middle East and Far East, was shipped through the

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42. UAR Year Book, 1960, P. 71
Canal. Out of 166,800,000 tons oil, 151,100,000 tons was
destined to Europe, 10,700,000 tons to Western Hemisphere,
4,000,000 tons to Africa and 1,000,000 tons to unspecified
places. 43

The importance and significance of the
Suez Canal for world economy could be realised if one could
recall the critical situation prevailing during the Arab-
Israeli Conflicts of 1956 and 1967 and the Suez Canal
was closed for navigation. Firstly, the Canal was closed in
October 1956 for a period of five and half months owing to
trianggression-Israeli-Anglo-French invasion. It had gr\v
consequences for Asia and Europe as 50 million tons of
traffic were diverted from their normal courses. The traffic
could only reached through much longer and costly cape
route.*

The closure of the Canal led to many far-reaching
consequences. Firstly, the Western nations were being
deprieved of all oil supply. This resulted in one of the
worst oil crisis in Western Europe till April 1957.
Secondly, shortage of petroleum reserve in Western Europe
as the result of which may important industries were

43. Naidu A.G., US Policy towards the Arab-Israeli
also see Kissino's Contemporary Archives, London, Vol.

* See Appendix -

H. Table II.
severely affected because of the lack of industrial energy. Consequently prices of most commodities went up, and thirdly great fall in the stocks exchange was recorded in all countries due to interruption of traffic in the Suez Canal. It was then realized that closure of the Canal may have disastrous effect on Western industry and economy.

The Suez Canal was reopened for navigation in 1957. Within the next ten years, the Suez Canal was further closed from June 6, 1967 to 1975 and with all disastrous consequences. The negotiation for the opening of the Canal were dispearting because each side adopted an attitude of rigid intransigence. Israel refused to withdraw from occupied territories and the Canal zone until full navigational rights to it are recognised and guaranteed. Following the closure of the canal, the old Cape route was revived. Consequently transportation cost increased which resulted in 40 percent increase in transportation cost per trip. The Western Europe, the USA and Japan, who heavily depended upon West-Asian Oil, were worst sufferer. John Campbell, Managing Editor of the foreign policy, stated

44. UAR Year Book, 1960, P. 72
that the closure of the Suez Canal had cost the US and Western Europe together $3.4 billion a year. In supporting his argument, he quoted, the US government estimates which said that Western Nations had incurred an additional expenditure of 4 billion dollars a year on imports from the Middle East due to the closure of the Canal. Out of this one billion dollars was borne by the US, 2.5 billion dollars by Western Europe and the rest by the non-communist states. 45 Supporting Campbell's statement, representative Saymor Halperon said that the closure of the Suez Canal led to the suspension of the Mediterranean service by some of American shipping Companies like American Isbrandtsen of New York.46

However, it should be noted that temporary loss of the Canal facilities was not so severe to the Users' nation as it was in 1956. In fact, at the time of the Suez crises, shipping companies had made plans to turn their ships through Cape route. It should be noted that many tankers then built were too huge in size and capacity for the Canal that major oil interest found it possible to get along without the Canal. Since then, the United States became less


46. Ibid., PP. 112-113.
dependent upon the Canal. The Users' List of 1966 discloses 2.4 percent of total traffic by USA, Britain and France, also other Western European nations which traditionally relied on the Canal for their imports of oil from the Middle East, had found alternative sources of supply in Libya and Algeria. Therefore, Britain's 60 percent oil shipped through the Canal in 1956, now remained only 25 percent by 1966. France total traffic was also decreased to 37 percent only through the Canal in 1966. 47

On the other side, the Soviet Russia was also not deriving any advantage by the closure of the Suez Canal. During cold war, it became increasingly involved in Middle East Affairs. The short sea route from Odessa to the Red Sea, Persian Gulf, Indian Ocean and Far East was then became more important for her. By 1966, the Canal's traffic showed Russia as leading exporter of oil products Southbound, totalling 5,618,000 tons, approximately 3.7 percent of the Canal traffic. 48

As a sequel of the Canal's blockade, Egypt was obviously the chief sufferer. Egypt lost £ 100 million annually from the Canal revenues. "The Nasser projects"

48. Ibid., pp. 171-172.
was also at stand-still; about two third of her oil producing capacity was lost; and her tourist trade was severly curtailed. No doubt, the Soviet Russia was helping Egypt to overcome economic difficulties. Egypt's losses arising from the war amounted to some 500 million dollars of which 310 million dollars could be attributed to the closure of the Canal. India and Pakistan were also greatly suffered by the closure of the Canal. According to a specialists, both countries imports 400,000 and 500,000 tons of grain per month. Shipping rates also went up high from $ 8 to $ 18.50 a ton since the Canal's closure. The closure of the Canal had dislocated the Company programme of improvements in the Canal.

The Suez Canal, therefore, has plays a significant role in the Commerce and trade of the world. If again the Suez Canal is closed, its disastrous effects will be realized all over the world. In addition to Petroleum and oil, the essential commodities are also transported through the Suez Canal. Seventy-five percent of total oil transportation takes place through this route. Of course, passenger traffic is of no significance as air traffic is speeder and cheaper.

49. Ibid., P. 171.

50. Africa Diary, New Delhi, 10-16 December 1967, P. 3703.
CHAPTER 11

FREEDOM OF NAVIGATION THROUGH THE SUEZ CANAL
FREEDOM OF NAVIGATION THROUGH THE SUZE CANAL

In the era of rapid development of world trade and commerce, navigation through waterways are most practicable means for travel and transportation. Even in an age of air navigation, their utility for the transportation of heavy and bulky commercial goods remained unchallenged, while the speed, cost and distances make route through ocean by air more preferable, eventhen, waterways neither can be ignored nor their importance be minimized. Therefore, navigation through waterways, whether man-made or nature gifted, by reason of their purpose and character are allowed to all ships. The waterways are not only economically significant for world transportation but also their geographical locations make them strategically and consequently politically very important as the Suez Canal.

Canals are inland waterways and part of that respective state through which territory these run, when a canal is built within the territory of a state: and does not connect two parts of open seas, it is known as the national or internal Canal. The navigation through national canals are under the exclusive jurisdiction of territorial

sovereignty of the respective states. Merchant ships enjoy a right of passage in national canal even in the absence of treaties, but war ships may not be allowed to pass without special arrangement or agreement, for instance the Corinth Canal.*

On the other hand, an international canal may be defined as an artificial waterway connecting two parts of the open seas, even if it lies in the territory of one or more than one state, and subject to an international regime whereby freedom of navigation is guaranteed for the ships of all nations of the world. The Permanent Court of Justice paved the way to understand true nature of an international canal. The Treaty of Versailles of 1919 had provided in its Article 380 that:

"The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all


* The Corinth Canal, lies wholly within the Greek Territory, free to the merchant ships of all nations even in the absence of an international agreement.

nations at peace with Germany on terms of entire equality. 4

The Permanent Court of International Justice held in
The Wimbledon Case, 1923, as a result of the terms of
Article 390, as follows:

"... The Canal has ceased to be an internal and
national navigable waterway, the use of which by the
vessels of states other than the riparian state, is left
entirely to the descretion of that state, and that it has
become an international waterway intended to provide under
treaty guarantees easier access to the Baltic for the
benefit of all nations of the world." 5

Therefore, a distinction can be made between a
national and an international canal not by any geographical
sector inherent in it but by the regime of navigation
prevailing in it. If navigation is left entirely to the
territorial state, the canal is a national canal, if, on
the other hand, there is freedom of navigation internationally

4. Hance Osborn, *International Transportation And Communi-
cations-Frontier Peace Treaties International Organisation*,
Oxford University Press (1946), P. 168.

5. Joseph, A., Obieto, S.J., op. cit., P. 23; also see Orfield,
Lerter B. and R. Edward D., Re., *Cases and Materials on
International Law*, the Bobbs Merrill Company, INC (1950)
PP. 271-288; Survey of International Affairs, British
Institute of International Affairs, 1920-23, PP. 233-234;
Corbett, P.B., *Law and Society in Relations of states*
For the impact of the Wimbledon Case on the status of
International Canals see Benne, Avram, *The Evolution of the
Suez Canal Status 15. 1869 to 1956: A Historic-Juridical
guaranteed for all the nation of the world i.e., an international regime is established, the canal is called an international canal. The criterion, thus, established is not geographical but a legal one. It implies the existence of an international regime guaranteeing freedom of navigation for all nations of the world. The same notion of international canal was asserted by the German supreme court in *The Kiel Canal Collision Case* (1950) that the "true character of an international waterway is freedom of navigation." The Suez, the Panama and the Kiel Canals are international Canals.

International regime of a canal may be established only by consent of territorial sovereignty. The canal through which territory it runs, forms part of the territory of that state and according to the accepted principle of "Territorial sovereignty", nothing may be done within the boundaries of a state without the consent of its sovereign. Therefore, it follows that the canal, being an artificially constructed waterway requires essentially the consent of its sovereign state. Further, the canal must be governed under an international regime consented by the territorial sovereign. Unless the double consent

(firstly to construction and secondly to the establishment of international regime), a canal can not be called an international canal. The sovereign state have complete discretion to decide for their own purpose, political, economical or strategical, to open the canal for the navigation of other nations upon the payment of tolls. The sovereign state may also recommend such other conditions as the sovereign find it necessary for the guidance and maintenance of free navigation through canal, to protect against destruction and damages. In the case, if the canal has been built but has not been subjected to an international regime, it will not be called an international canal. For example, the Kiel Canal having been constructed by Germany wholly within its territory connects two open seas—the Baltic and the North Sea—was until 1919, an internal waterway holding both bank and controlling the Canal navigation completely. But by the Treaty of Versailles (Articles 380-386) which was ratified by Germany, the Kiel Canal has ceased to be an internal or national waterway and has became an international waterway. The Corinth Canal, which connects the Gulf of Aegina with Gulf of Corinth, Greek, exclusively controlling

its navigation, hence it is an internal canal in the absence of an international regime and at the consent of sovereign state.8

The international regime may be established on the canal be consent-express or tacit. The express consent, which may be either through a multilateral treaty or through an universal declaration, would be in the nature of a promise to allow freedom of navigation through the canal to all nation; a promise which rennounce its sovereignty over the canal. It is, in fact, auto-liminations allowing other nation to use the canal for navigation. This has also to be accepted by the international community. The mere use of the canal by ships of other nations would be considered as tacit indication of the wish of that nation to accept the international regime.9

International regime may also be established by a multilateral treaty stipulating for freedom of navigation for all the nations of the world, signed by all states or by some states substantial number of states and accepted to all non-signatories. In the case when the treaty has been concluded among some states, the non-signatories has

right to use the Canal according to the provision of international regim either by their express or tacit consent, or in some cases by customs developed in due time. 10

The Suez Canal is the most important intercontinental Canal between the East and West, connecting the Mediterranean sea with the Red Sea. It was constructed by Ferdinand De lesseps under a concession granted by Said Pasha in 1854 which was replaced by the Concession of 1856 and was approved by the Ottoman Sultan in 1866. The Suez Canal was opened for navigation in 1869.

The Concession of 1854 and 1856, and the Ottoman Firman of 1866, did not set up proper rules of free navigation through the Canal. However, Article 14 of the 1856 Concession provided as follows:

"The Grand Maritime Canal from Suez to Pelusium and the Ports appertaining thereto, shall always remain open as a neutral passage to every merchant ship crossing from one sea to another, without any distinction, exclusion, or preference of persons or nationalities, on payment of the dues and observance of the regulations established by the Universal Company lessee for the use of the said

10. Ibid., pp. 34-35.
Canal and its dependencies."

Further Article 15 expressly forbade the Company to discriminate in favour or against of any ships, company or party. 11

The Concession of 1856, therefore, did not provide rules and obligation for warships of belligerent states during wartimes. In the beginning, due to absence of any rule, the warships of belligerent states used the Canal freely. In 1870-71, French and German warships passed through the Canal without hinderances. The Declaration of Porte of 1873 declared the Canal open to the passage of warships of different states even in time of hostilities. 12

But, Egypt being under the suzerainty of Turkey, the Russo-Turkish war, 1877, produced a very critical situation. The Suez Canal passes through Egyptian territory and consequently under the circumstances was related in Turkey being belligerent would logically not permit free to passage to the enemy ships. The blockade was imminent and natural. Though Turkey was at the time the only legal sovereign of Egypt but the British government, in 1877, announced that any attempt to blockade or interfere with

11. See Appendix - A.
the Canal or its approaches would be regarded by Her Majesty's Government as a menace and a grave injury to the commerce of world. It would also be incomparable with the maintenance of neutral policy.\textsuperscript{13} As the result of British decree, no hostility did take place within the Canal. Meanwhile Britain had become heavily dependent on the Canal. The control of Canal, by then, had become strategically and commercially very important from the British point of view. In 1875, British government purchased Egyptian shares of the Company. Hence, it controlled the Company's operation and established a strong position to defend the Canal in the absence of any international or national arrangement. In 1882, revolt broke out in Egypt which endangered the free navigation through the Canal. Then the viceroy of Egypt authorised the British forces to occupy all places of the Canal that were necessary to safeguard the Canal. Britain wholly occupied the Egypt as a veiled protectorate until 1914.\textsuperscript{14}


As has been said, no hostile act was committed within the Suez Canal though remained free to warships of both belligerent states during the Russo-Turkish war. But the situation led to provide an agreement to safeguard the Canal from hostilities, damage or interruption to navigation by belligerent states. Thus, after the occupation of Egypt, in 1882, Britain pressurised other powers to enter into an agreement to preserve and guarantee the freedom of navigation to all ships through the Canal. In fact, Britain wanted to preserve her right to defend the Canal from an act of aggression against Egypt in any circumstances so long her occupation of Egypt continued. Therefore, in 1883, the then British foreign secretary, Lord Granville, issued a Circular Note to the powers, proposing the desirability and necessity of conclusion of an international agreement for regularizing the use of the Suez Canal during peace and war. He stated that "we wish to suggest that free passage through the Suez Canal in time of peace and war be secured to all sea-faring nations under an international guarantee of the Powers." It should be noted that the proposed terms in Circular Note made it clear that any suggestion for neutralization:

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would not be acceptable. He said "we can never agree to the Suez Canal being neutralised." In substance, it did not propose to regularise its use in time of peace and war just by declaring the Canal to be free for the passage of all ships in any circumstances, and forbidding hostilities within its boundaries.

Negotiation continued until 1888. In 1885, the Seven Powers Ambassadorial Conference held at Paris also discussed the international regime of the Suez Canal. At the French initiative, a provision for an International Canal Commission was incorporated in the draft treaty of the Conference, but the Conference ended without any conclusion.17

In 1867, Anglo-Ottoman negotiation further took place to frame an agreement. It provided that "this maritime Canal shall always be free and open, both in time of peace and war for the passage of warship and merchant ships without distinction of the flags on payment of the dues and in conformity with the regulations actually in force or with those which may hereafter by promulgated ...."18 This Convention was ratified by Britain but the

16. Ibid., p. 376.
Sublime Porte did not ratify it owing to the opposition of France and Russia. In fact, they were not agreed, by the provision of Article 5 of this Convention. Finally in 1888, a draft convention was prepared by the British foreign office. It had been accepted by all the powers concerned and on October 29, 1888, a convention was signed at Constantinople, known as The Convention of Constantinople of 1888 or The Suez Canal Convention of 1888. It was signed by the representatives of nine powers, namely, Great Britain, France, Germany, Austria-Hungary, Italy, Russia, Spain, Turkey and the Netherlands. The freedom of navigation through the Suez Canal, thus, were regulated by the Constantinople Convention of 1888.* According to its Preamble, the Convention established a definite system.

19. Article 5 of the Convention of 1887 provided that:
*At the expiration of three years from the date of the present convention, Her Britannic Majesty's Government will withdraw its troops from Egypt. If at that period the appearance of danger, in the interior or from without, should render necessary the adjournment of the evacuation, the British troops will withdraw from Egypt immediately after the disappearance of this danger.* Nevertheless, "The Government of Her Britannic Majesty is authorized by this convention to send, if there are reasons to fear an invasion from without, or if order and security in the interior were disturbed, troops into Egypt, which will take the measures necessary to remove these dangers. In taking these measures, the commanders of these troops will act with all the regard due to the right of the Sovereign Powers." Ibid., P. 202.

* See Appendix - C.
"destined to guarantee at all times for all powers the free use of the Suez Maritime Canal."\(^\text{20}\)

Under Article 1 of the convention, the Canal is to be freed and opened both during time of peace and war to every ship of commerce and war without distinction of flag. The Canal can not be blockaded and the contracting parties pledged not to violate the provision or to interfere in the free use of the Canal. The Convention of 1888, neutralised the Canal. According to Article 4 no right of war, no act of hostility, nor any act intended to obstruct the free navigation is to be committed in the Canal, in its Ports of access within three sea miles form these ports, even if Turkey is one of the belligerent states.

During wartime, Article 4 says, the Suez Canal is to be opened for the belligerent warships in accordance to the terms of Article 1, and subject to the same restrictions in order to avert hostilities in the Canal waters. Belligerent warships must pass through the Canal without any delay except in case of distress. In case of distress it would not stay there more than twenty four hours.

Article 5 provides that warships of belligerent states shall not embark or disembark either troops, munitions or materials in the Canal and in its ports of access except in case of accidental hindrances not exceeding 1,000 men-of-war with a corresponding amount of war material. The Convention further provides under Article 7 that power are not allowed to keep any warship in the waters of the Canal. Nevertheless, they may station only two warships in the ports of access of Port Said and Sues but this right shall not be exercised by belligerents.

The Convention reserved "the sovereign rights" of the Turkish Sultan; it also reserved the rights and immunities of the Khedive of Egypt. The Convention authorised the Sultan and khedive to take measures necessary for the defence of Egypt and the maintenance of "public order", but provided that such measures "shall not interfere with the free use of the Canal." 21 Egyptian and Turkish government were required to take necessary measures for insuring the execution of the said Convention and agents of signatories powers in Egypt shall be charged to watch over its execution under Article 8. In case of any event

22. See Article 10, and 11 of the Convention of 1888, Appendix - C.
threatening the security or free passage, the agents of signatories powers were to inform the Egyptian government the danger in order that government may take proper steps to insure the protection and free use of the Canal. In a sense, the Convention provided for an international supervision of the Canal. They had power to demand the suppression of any work or the dispersion of any assemblage on either bank of the Canal, the object or effect of which might to interfere with the liberty and entire security of the navigation.\textsuperscript{22} The Convention stated in Article 14, that the duration of the Convention was not limited by the duration of the acts of the Concession of the Universal Suez Canal Company.

Subsequently, this Convention was ratified by all contracting parties. However, Britain refused to accept the international supervision provided by Article 8 during the duration of its occupation of Egypt. Nonetheless, it preserved certain reservation concerning her right to utilize the Canal for safeguarding her position in Egypt. Britain declared that she, if need, be in the interest of Britain, might consider itself free to disregard the term of the Convention of 1868. Consequently,

\textsuperscript{22} See Article 8, Appendix - C.
France refused to ratify the Convention and the Convention did not come into force. It came into force after the Anglo-French Declaration of April 8, 1904 in which France accepted British reservation.

It is then crystal clear that Convention, more or less provided for neutralisation of the Canal and Canal zones, it however, should not be confined with neutrality which is an act of war. In accordance to international law, neutrality does not allow the passage of belligerents forces across the territory. Consequently, belligerent warship would have not been allowed to pass freely through the Canal. However, it established international regime in the Canal for the purpose of safeguarding it from acts of hostilities, damage or any attempt to close it to the detriment of world navigation.


* In its popular terms, 'Neutrality' denotes the attitude of a state which is not at war with belligerents and does not participate in the hostilities. In its technical sense, however, it is more than an attitude, and denotes legal status of a special nature, involving a complex rights, duties and privileges at international law, which must be respected by belligerents and neutral alike. See Starke, J.G., op. cit., p. 611; Oppenheim, Vol. II, op. cit., p. 653.
Since 1888, the Canal was freely used by the commercial ships as well as warships of belligerent states. During the American-Spanish War (1898), Russo-Japanese War (1904-5) Turko-Italian War (1911-12) the warships of belligerents passed through the Canal freely. During Russo-Japanese War, Russian warships enroute to the Pacific were allowed to use the Canal, despite of the fact that Japan was an ally of Britain. Britain, being "de-facto sovereign" control Egypt and reserved its right to take steps, if needed, in its defence to justify that it was neutralised. At the outset of World War I, Britain assumed de-facto responsibility for defence, enforcement and control of international arrangement governing navigation of the Canal. The entry of Turkey into war on side of Germany and against Britain a strange situation arose—both from legal and political point of views. Egypt, who nominally under Turkish Suzerainty was still under occupation of Britain. Britain, now, declared Egypt as its "Protectorate".


* 'Protectorate' or a 'protected state' arises in practice when a state puts itself by treaty under the protection of a strong and powerful state, so that the conduct of its most important international business and decision on high policy are left to the protecting state. See Starkie, J.G., op. cit. (6th Ed.) P. 130.
in 1914 and as the result of which became responsible for its defence and foreign affairs. All Egyptian ports, hence, became belligerent ports and British troops were stationed at all strategic areas along the Canal.

The Canal, during the world war I, was open to all the allied and neutral powers. From 1914-1918, the navigation through the Canal continued on the principle of "business as usual" with minor interruption owing to the German Submarines activities in the Mediterranean. It was apparent that in the event of a war involving the Power "de-facto" in control of the Canal, the responsibility for the defence of the Canal might become incompatible with the duty of securing free navigation for ships of all nations. Therefore, the defence of the Canal was obviously incompatible with the admission of enemy shipping to it. Britain treated the Suez Canal in the same manner as it treated other waterways under her control. Enemy ships were subjected to the same restriction as were imposed in British territorial waters.

After the end of world war I, the Peace treaties


26. Schonfield, op. cit., P. 72; Colombos, op. cit., P. 175; Benno, Avram, op. cit., P. 82-85.
the Treaty of Versailles (Article 152)*, The Treaty of Trianon (Article 91), ** and the Treaty of St. Germain (Article 107)*** - the signatories of these treaties consented to transfer all powers conferred on the Turkish sultan by the Convention of 1888 relating to the free navigation of the Suez Canal to Britain. Therefore, the Convention of 1888 was revised, and Turkey renounced all her rights and title over Egypt by the Treaty of Lausanne in 1923. 27

Meanwhile, in 1922, Britain declared Egypt as an independent state, as the result of which the Canal became a part of Egyptian territorial water. However, the declaration of

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* Article 152 of the Treaty of Versailles provided: "Germany consents, so far as she is concerned, to the transfer to His Britannic Majesty's Government of the powers conferred on His Imperial Majesty the Sultan by the Convention signed at Constantinople on October 29, 1888, relating to the free navigation of the Suez Canal."

** Article 91 of the Treaty of Trianon provided: "Hungary consents, so far as she is concerned, to the transfer to His Britannic Majesty's Government of the powers conferred on His Imperial Majesty the Sultan by the Convention signed at Constantinople on October 29, 1888, relating to the free navigation of the Suez Canal."

*** Article 107 of the Treaty of St. Germain provided: "Austria consent, so far as she is concerned, to the transfer to His Britannic Majesty's Government of the Powers conferred on His Imperial Majesty the Sultan by the Convention signed at Constantinople on October 29, 1888, relating to the free navigation of the Suez Canal." See Oppenheim, L., op. cit. Vol. I, PP. 481-482; The Suez Canal-A selection of Documents, op. cit., P. 56; schonfield, op. cit., PP. 73-74.

27. Ibid., P. 74; Benno, Avram, op., cit., PP. 66.
Independence contained provision of reservations regarding the Canal for Britain which Britain had been continuously preserving under the Convention of 1888. Britain took the sole responsibility of the security of the Canal and defence of Egypt against direct or indirect aggression, she declared with other reserved points of free navigation in Canal. The Anglo-Egyptian Agreement of 1936 further affected the international status of the Canal. The Suez Canal was recognised as an integral part of Egypt. The agreement acknowledged special rights of British regarding the defence of the Canal, Article 8 provided that "Until such time as the High Contracting Parties agree that the Egyptian Army is in a position to ensure by its own resources the liberty and entire security of navigation of the Canal, authorises his Majesty the King and Emperor to station forces in Egyptian territory in the vicinity of the Canal, with a view to ensuring in co-operation with the Egyptian forces the defence of the Canal." The Agreement also authorised Britain to use Egyptian ports and other means of communication. Therefore, special position occupied by Britain in


29. See Appendix - D.
relation to the Canal remained unaffected by the independence of Egypt.

During World War II, Britain adopted a sever attitude towards the defence of the Canal. She decided to perform its legal responsibility more vigorously as it was necessary from the strategic point of views in the situation created by war. Enemy aerial and submarine activity in the Canal dangerous for the allied navies. Italy, as Axis powers, tried to seize the Canal but Britain in conjunction with Egypt took precautionary measures to guard against sudden seizure of the Canal by Italy. However, the Suez Canal was blocked for seventy six days during the war. 30

The experiences of World War II lay out the attitudes of Great Powers towards the Canal. The Canal became the point of struggle for powers and the Suez Canal Convention of 1938 was remained useless during the hostilities. The entire attitude of the belligerents had become abnormal. Therefore, the question of respecting its integrity as an international waterway did not arise. It is expressly laid down in Article IV of the Convention of 1938 that the Canal shall remain open in time of war as a free passage, even to the warships of belligerent according to the terms of article I of the Convention. The contracting

agreed that any act of hostility, right of war, or any act obstructing the navigation of the Canal shall not be committed in the Canal and its ports of access within three sea-miles from those ports. But, both Italy and Germany, bombed and mined the Canal and Canal zones as long as they had ascendancy in the air to do it in defiance of Article IV of the Convention of 1888. Even neutral ships using the Canal had not escaped the attack of Axis powers. It is to be noted that during both world wars, Britain had not completely complied with the provisions of free passage and non-blockade of the Canal. Britain stopped, captured and searched neutral ships in the Canal suspecting to be involved in carrying contraband cargo. It should be remembered that Britain, Italy and Germany were parties to the Convention of 1888.

After the Suez Canal Base Agreement of 1954, which secured total evacuation of British forces from Egypt, the sole responsibility for the maintenance of the Suez Canal was transferred to Egypt, except in the event of an armed attack on any country which is a party to the

31. See Article IV, Appendix - C.
33. For text of the Suez Canal Base Agreement see Appendix - E.
treaty of Joint-Defence between Arab League state or Turkey. Both parties expressed determination to uphold the Convention of 1888. In 1956, Egyptian government proclaimed the nationalisation of the Suez Canal Company, hence, all funds rights and obligations of the Canal Company were transferred to Egypt. The nationalisation constituted great controversy and on October 29, 1956, Israel invaded Egyptian territory. Later on, Britain and France took military action against Egypt in order to safeguard the use of Canal. They (Britain & France) declared that they are in the Canal zones to secure the free navigation and in self-defence.

After the end of hostilities, Egyptian government made a declaration, on April 1957, on the Suez Canal regarding arrangements for its operations, tolls, management and the Canal code etc., in accordance with the Constantinople Convention of 1888 and the United Nations Charter. Egyptian government declared that:

"It remains the unaltered policy and firm purpose of the Government of Egypt to respect the terms and spirit of

34. See Article IV, Ibid;
35. See Appendix - G.
Israel in February 1949, the hostilities came to an end but Egypt maintain a blockade against Israel. The restrictions were consolidated by the king Farouk by a decree of 1950. The decree provided that "on the procedure of ships and air planes searches and seizure of contraband goods in connection with the Palestine war." Article II provided for inspection of the ships manifest and Cargo "so as to ensure that it contain no arms munitions, war materials or other articles considered as contraband and shipped directly to institution or person on Palestinian territory." However, Egypt limited the list of contraband goods destined for Israel and liable to seizure, like, arms and war materials, fuel or oil of all kinds, airplanes and Prize goods etc. The decree under Article IV allowed to use force against ships attempting to avoid search, and ships found not involved in carrying contrabands were to be allowed to continue their voyage. Consequently, all ships, regardless of their flags were subjected to the confiscation of forbidden good, more particularly crude and refined oil, passing through the Canal even when their destination were openly not Israel.

38. Ibid., p. 533; also see Lenczowski, George, op. cit., p. 616.
The United States, Britain and other Maritime
Users of the Canal lodged protest against Egyptian
government. The blockade of the Canal affected interests
of 3 major powers. In July 1951, Israel brought the
question in the UN Security Council and complained that
Egypt had violated:

Firstly, International law by exercising the right of
belligerency in peacetime;

Secondly, The Armistice Agreement of February 1949;

Thirdly, The Suez Canal Convention of 1888.39

In the ensuing debates, representatives of Britain,
United States, and France, supported Israel. They also
submitted a resolution condemning Egypt for her restric­
tions imposed on Israeli shipping. The resolution stated
that the imposition of these restrictions raised legal
question of freedom of navigation through the Suez Canal
and contributed toward the tension in the Middle East.40
It also affected the shipping interests of other maritime
powers, particularly transportation of oil to the
Haifa refinery.

39. Ibid., PP. 616-617; Benno, Avrum, op. cit., PP. 119-120.

40. Lenczowski, George, op. cit., P. 618, also see the Joint
Draft Resolution S/1899, United Nations year Book, 1950
PP. 318-319.
On September 1, 1951, the resolution was put to vote and adopted by which unjustified Egyptian practice. It called upon Egypt "to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound, and to cease all interference with such shipping beyond that essential to the safety of shipping in the Canal itself and the observance of the international convention."^41

Nevertheless, Egypt continued blockade against Israeli shipping despite the Council's injunction. In 1953, Egypt again extended the list of contraband to cover foodstuff and other commodities and blockaded Israeli port-Mahth-in the Gulf of Aqaba. Israel, thus, again complained against Egypt on January 1954. Thus, its representative said that all these acts constituted a violation not only of the Constantinople Convention but also of the Security Council's resolution of 1951. On March 1954, New Zealand submitted a draft resolution by which the Security Council recalled its resolution of September 1951, and called upon Egypt to comply with

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* The Resolution of 1951 was adopted by eight votes in favour (Brazil, Ecuador, France, The Netherlands, Turkey, the United States, Britain and Yugoslavia) and Three absents (China, USSR and India).
with that resolution in accordance to obligation of the United Nations Charter. This resolution was not adopted as the Soviet Russia vetoed it. 43

During the Security Council's debates, the representative of Egypt explained his government policy. He maintained that a state of war had existed and continued to exist between Egypt and Israel in capacity of members of the Arab League and ally of members of the League since 1948. Therefore, such situation gave belligerents' rights, particularly the incontestable right to visit, search and seizure of ships in their territorial waters. He contended that its action neither violates international law, nor the Constantinople Convention of 1888, nor the Armistice Agreement of 1949 or the UN Charter. It had never decreed a blockade nor it had abused its rights. As regards the Armistice Agreement, the representative held that it stopped the active military hostilities but not belligerent rights as no peace treaty had been concluded between both states. He claimed that Israel had violated the Armistice Agreement by expelling peaceful Arab population.

43. Ibid., P. 64.
across the Egyptian border, by raiding certain localities in the neutral frontier zone, and by illegally attacking Egyptian territory. In his opinion, the existing Arab-Israeli relations could hardly permit to be considered as a peace. He asserted that the Convention of 1888 specifically allowed Egypt to take self-protective measures in the Canal zones, and that despite these restrictions on Israeli shipping, freedom of navigation through the Canal remained unimpaired. Egyptian government did not deny from the restrictions, and declared that until peace was established and so Egypt's very existence was threatened by aggression, his country has to exercise its sovereign rights of self-defence and self-preservation.

However, the legality of Egyptian actions demands discussion, since, the right of visit, search and capture constitute 'a right of war and an act of hostility,' which were prohibited by the Constantinople Convention of 1888 (article 4), these measures constituted an interference with the free and open use of the Canal in time of peace as well as war. Therefore, the question whether and to what extent the Constantinople Convention respecting the free navigation

of the Suez Canal derogated from the usual rules of visit, search and seizure, demand analysis. No doubt, the legal position was debatable. Egypt justified its continued action—the so-called breach of one part of the Convention i.e. the right of free navigation. Egypt argued that the question is related to the defence of the Canal which is the responsibility of Egypt. The problem had been decided by the Prize court of Alexandria more extensively in the cases of the Flying Trader (December 2, 1950) and field. 45 Prize court interpreted the expression "the defence of Egypt and the maintenance of Public order" 46 a situation which "involves the non-application of Article 4 of the Convention."

The court stated that Egypt was truly a belligerent state possessing the right of any capture 'jure belli', hence, Egypt has the right to take any necessary measures for its defence. Article 10 provides that Articles 4, 5, and 7 shall not interfere with the measures which the Sultan of Turkey and Khejive of Egypt might find it necessary to take for securing the defence of Egypt. In

45. Leo Gross, "Passage through the Suez Canal of Israelound Cargo and Israeli Ships," op. cit., pp. 535-536; For case of the Flying Trader see Lauterpacht, International Law Report, 1950, p. 440. Also see the Case of 46. See Article 10 of the Convention of 1888, Appendix - C.
This way the provisions of articles 4, 5, and 7 do not contradict Article 10 of the Constantinople Convention. Every armed conflict or hostilities to which Egypt is a party, particularly with its neighbour, raises inevitably the question of the defence of its territory. Therefore, Article 11, which provides that measures taken by Egypt and Turkey under Articles 9 and 10 must not "interfere with the free use of the Canal", 47 cannot be constructed as a restrictions upon the rights of Egypt. The court held that in effect "the provision of Article 11 could be restricted the natural rights of a state to preserve its own existence, a right which can not be subjected even of express renunciation." 48

As regards Article 1 regarding the free passage through the Canal in time of "peace and war", the court stated that such restrictions taken by Egypt did not interfere with freedom of navigation.

It should be noted that Britain, even any other maritime power, did not raise any legal or other objection.

47. For provisions of articles 4, 5, 7, 9 and 11, see Appendix - c.

against Egyptian restriction in 1948, when both Britain and Egypt were responsible for the defence of the Canal, under the 1936 Agreement Britain was also a co-guarantor, with Egypt, for the right of free navigation through the Canal. Therefore, it was probable that Britain might apply pressure on Egypt to compel to restore the right of free navigation so long as Britain was a Co-guarantor of the security of the Suez Canal.

The question of free passage of Israeli ships through the Canal once again arose after the nationalisation of the Suez Canal Company. It was considered at London Conference (August 16-23, 1956). The representatives of Israel and other governments pointed out that Egypt had defied the Security Council's resolution of 1951 which reaffirmed in 1954, and that under the terms of the Convention of 1888, Israeli ships was entitled to go through the Canal, and that Egypt was not entitled to bar it as it was doing.\(^49\) Military action taken by Israel in 1956, Israeli governments claimed, was due to Egyptian restriction against its shipping.

During 1957-1967, freedom of navigation was not very satisfactory. Various question regarding the regime

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of the Suez Canal and the years old disputes of Israeli shipping remain in dispute. Two months after the Declaration of 1957, Egyptian authority further imposed restrictions and detained ships on charter to Israel through the Suez Canal. Not only Israeli ships and goods but also foreign ships carrying goods bound for or coming from Israel refused passage through the Canal.50

Israel's government protested against Egyptian interference with peaceful traffic through the Canal. Israel realised doubt about the willingness of Egyptian government to comply with its international obligation i.e. the Constantinople Convention of 1888, the Security Council's resolution of September 1951 and of October 13, 1956, and the Declaration of 1957 of Egyptian government.51 However, Egypt had been continuously imposed restriction against Israeli shipping. In 1960, Nasser had restated his policy with regard to the passage of Israeli ship through the Canal. He declared that Israeli Cargoes will never be allowed to transit through the Canal so long it remained tide up with political problem of the Area.52 In fact, passage through the Canal was subjected to the changing political demands


of Egyptian foreign policy. For instance, in spite of Israeli shipping, in 1961, Egyptian government refused all technical aid in the Canal zone to the ships of Turkey and Iran because they refused to recognise the Syrian Republic; also in 1961, during Goa crisis, Egyptian government refused to pass Portuguese ship carrying troops and munition through the Canal because Egypt intended to foster independence of a colonial territory, hence, both were political matter.

In 1967, situation in the Middle East took a turn. In May 1967 United Nations emergency forces withdrew from Egyptian territory on demand of Egyptian government. On May 23, 1967, Egypt closed Strait of Tiran and Gulf of Aqaba to Israeli shipping. Consequently on June 5, 1967, Israeli forces attacked on Egypt and several other Arab countries. On June 6, 1967, Nasser closed the Suez Canal by reason of Israeli attack against ship that were found in it and two days later the canal was definitively closed to navigation. The hostilities came to end by June 10, 1967 when all parties accepted cease-fire order in compliance of the Security Council's resolution.

The Suez Canal, however, remained closed till 1975. The closing of the Canal, though important in itself as a

53. Ibid., P. 130.

principle and affecting commercial interest of the world, was also a contributory cause to the problem concerning the whole Middle East situation. Various attempts had been made on several occasion for the clearance and opening of the Canal; During the session of the security Council and fifth emergency session of the General Assembly, in 1967, member states of the United Nations had submitted several resolutions and all resolutions contemplated the question of freedom of navigation through the Canal and other waterways in the area in accordance to international law. But all attempts failed. Egyptian government had repeatedly voiced its determination not to open and clear the strained ships in the Canal so long Israel was ready to evacuate territory occupied by her during the 1967 war.

Between 1967-1973, there was no peace and the Canal remained closed. Both parties determined the state of war. Consequently, on October 6, 1973, Egyptian forces crossed the Suez Canal and attacked on Israel. Egypt occupied some part of territory in the Suez Canal area. On October 23, both Israel and Egypt accepted the cease-fire. It is apparent

55. See the resolutions introduced by representatives of the United States, Albania, Yugoslavia, Trinidad and Tobago co-sponsored by Twenty Latin American States at the General Assembly session; and the resolution introduced by the representatives of India, Mali and Nigeria, The Soviet Russia and the United Kingdom (which was adopted) at the Security Council session. United Nations Year Book, 1967, pp. 194-209, 245-256.

that the years long stalemate between Egypt and Israel come to end after the 1973 war. Negotiation continued between both parties for a permanent peace. In 1975, Egypt opened the Suez Canal for navigation. In 1975 Egypt and Israel signed the

**Intermediate Disengagement Agreement** by which both parties agreed to resolve all disputes by peaceful means.\(^{57}\) And on March 26, 1979 Egypt and Israel signed a peace treaty, known as **Camp David Agreement.**\(^{58}\) The state of war terminated between both states. Israel agreed to return occupied territory and withdraw all its armed forces behind the armistice line. On the other hand, Egypt recognized that ships of Israel and cargoes destined to or from Israel shall enjoy the right of free passage through the Suez Canal and its approaches to the Gulf of Suez and the Mediterranean Sea on the basis of the Constantinople Convention of 1888 without discrimination.\(^{59}\) Therefore, problem regarding freedom of navigation between Egypt and Israeli through the Canal settled.

To sum up, it must be observed that the freedom of navigation through the Suez Canal was too much subjected to the changing political circumstances of Egypt and demands

\(^{57}\) *Middle East and North Africa*, 1979-80, P. 74.


\(^{59}\) *See Article V of the Camp David Agreement*, *Ibid.*, P. 81.
of its foreign policy, particularly in case of Arab-Israel conflicts. The Canal was an important instrument in the hands of foreign power, before nationalisation of the Company, and then in the hands of Egyptian government, utilized whenever it was found convenient in order to foster the aims of their foreign policy. The Canal is too much a part of Egypt and its leverage value in international politics has been actually so increased that it will always be very difficult for Egypt to refrain from using it for its own purpose.
CHAPTER III

NATIONALISATION OF THE SUEZ CANAL

COMPANY: POLITICAL ASPECTS
Nationalisation of the Suez Canal Company:

Political Aspects

On the fifth anniversary of the Egyptian Revolution, addressing the nation, the then Egyptian President, Gamal Abdul Nasser, decreed nationalisation of the Suez Canal Company. He informed the nation that the income from Canal now onwards will be used for building Aswan High Dam. A Decree under Law No. 285, concerning nationalisation was issued on 26th July 1956 which provided:

"The Universal Company of the Suez Maritime Canal (Egyptian Joint-Stock Company) is hereby nationalised. All its assets, rights and obligations are transferred to the nation and all the Organisations and Committees that now operate its management are hereby dissolved."  

Consequently, Company's shares in Egypt were frozen. Egyptian government seized all its assets, rights and obligations in Egypt. Its managing authorities were dissolved and an Egyptian authority was established to operate and manage the Canal. The officials, employees and workmen of the Company were ordered to continue to work under the conditions of imprisonment, ordered not to leave their post without permission of new established body.  

1. See Appendix E  
2. See Articles 4 and 5 of the Decree, Ibid.
The Nationalisation Decree promised that stockholders and holders of the foundation bond shall be compensated for their shares and bonds they possess, in accordance to the value estimate at the closing rate of the Paris Stock Exchange on the day preceding the enforcement of the law. The compensation was to be paid when Egypt had received all the assets and property of the Company including those located aboard. However, Nasser paid compensation on the basis of average price of shares for the preceding six months.

The nationalisation of the Suez Canal Company was not a hasty act done to defy Western Powers. There were various factors concerning Egyptian interests vis-a-vis Western interests which interacted and produced a tangle web of tension and disagreements. The important factors were Arab-Israel hostility, Egyptian nationalism, quest for arms and Soviet intrigues and the Soviet patronage to Egypt.

Egypt imposed restrictions on Israeli shipping bound to or from Israel, and Arab guerrilla used Egypt as a base to raid Israel. Israel, Israel exasperated and in retaliation made a massive, counter raids into Gaza Strip on February 28, 1955. This reprisals raid once again assumed

3. See Article 2, Ibid.

international status and was considered an acute danger to international peace and security. Nasser had adopted a stronger attitude towards Israel and tried to obtain Western armaments to match the Israeli strength. He requested the United States for armaments but in spite of considerable discussion received nothing. The United States department knowing that Nasser had no money and asked for payment in cash.\(^5\) The United States did not want payment in Egyptian cotton and Egypt had no dollars to spare.\(^6\) Eisenhower in his memoirs has disclosed that he suggested that "this financial agreement weighed as much with as his obligation to maintain the balance between Israel and its neighbours."\(^7\)

Nasser could not get arms free under the Mutual Security Act because he had not accepted the stipulations of that act and had already rejected a military advisor group.

At the same time, France secretly supplied arms to Israel as 'quid pro quo' for Egyptian aid to Algerian rebels. In fact, France and Israel had a lot in common in facing

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5. Ibid., P. 21.


the Arabs. Nevertheless, the Three Powers (United States, Great Britain and France) which continuously refused to sale the most needed armaments to Egypt, at the same time they supplied arms and armaments to their client—Israel—as a gift. Nasser's protest, against the increasing supplies of sophisticated and modern armaments to Israel, was rejected by the Three Powers. Hence, the situation became tense. In fact, Britain, United States and France, as self-appointed guardian of peace in Middle East, had monopolised the sale and distribution of armament. Their policy aimed at starving the Arabs and more particularly Nasser revolution. By adopting this policy, they contradicted their own Tripartite Declaration of 1950 because it was incompitable with the western scheme for the Middle Eastern Defence.

After the western powers refusal to supply arms to Egypt and at the same time arming Israel pushed Egypt to look towards the Soviet Russia. In May, Nasser made a


* In May 25, 1950, the Governments of United States, Great Britain and France signed a Tripartite Declaration in which they recognised that the Arab states and Israel all need to maintain a certain level of armed forces for the purpose of assuming their internal security and their legitimate self defence. All applications for arms or war material for these countries will be considered in the light of these principles. They declared their opposition to the development of an arms race between Arab and Israel, and would try and balance inflow of arms to two sides. See Nutting, Anthony No end of A lessons: The Story of Suez, Constable, London (1967), PP. 178-179. For detail of Tripartite Declaration see J.C. Hurewitze, op. cit., Vol. II, PP. 308-309.
final appeal to the United States and threatened to turn
to Russia if Egypt was thwarted. Consequently, negotiation
began with the Soviet Russia and continued till June. On
September 27, 1955 Nasser announced the conclusion of
an agreement with Czechoslovakia to purchase substantial
quantities of arms in exchange of Egyptian cotton and rice.9
Nasser’s action invoked protest and warnings from Britain
and the United States. The United States administration
dispatched a Middle East Expert, George V. Allen, to try
and prevent the Czech-arms agreement but failed.10 Nasser
claimed that arms required are for the self-defence and
survival of Egyptian integrity and sovereignty. He
argued that Egypt was an independent country, thus, entitled
to get arms for wherever and whatever it wished. Egypt
could not be blamed for turning to another source to get
arms. The arms agreement was purely a commercial trans­
action,11 the Egyptian President declared.

Another factor was the tension between Egyptian
nationalism and Western influence in Egypt, particularly

P. 23; Williams, Ann. Britain And France in The Middle
(1969), P. 120; Finer, Herman. Dulles over Suez–The
Theory And Practice of His Diplomacy, Heinemann, London
(1964), P. 27.

10. Ibid., P. 22.

to British influence. British interest had deep roots in Egypt since 1875. In 1956 Egypt had unilaterally abrogated the Anglo-Egyptian treaty of 1936 and had rejected a Western plan for a Middle East Defence organisation. Again in 1955 Western powers imposed the Baghdad Pact* on the Arab world which aimed at containing the Soviet Union penetration into Middle East. The Arab and the Egyptian leaders rejected the pact. Nasser opposed the pact and undertook to expose the military and aggressive nature of the Baghdad Pact. He denounced it as a neo-colonial threat to Arab independence. For him, an integrated defence force or a joint command would only perpetuate Western dominance. To counter it, Egypt signed a Mutual pact with Saudi Arabia and Yemen. These states offered Jordon to replace the British subsidy, but King Hussain of Jordan refused to accept the offer. However, Nasser successfully persuaded in his struggle to keep Jordan from joining the Baghdad Pact. Not only this, Nasser embraced "active neutralism" starting with the Afro-Asian Conference

* The Baghdad Pact was signed by Turkey and Iraq in 1955 which was later joined by Britain on April 4, 1955. Pakistan joined it in September 1955 and Iran in Nov. 1955. The United States representatives became members of the economic and military committees although the USA did not join the Pact. Iraq ceased to take part in arrangements relating to the Pact in 1958 and withdrew in March 1959. On August 1959 the organisation was renamed The Central Treaty Organisation, see Little, Tom. op. cit., PP. 260-262.

at Bandung in 1955 and called for a war of liberation against the colonial domain in the Arab world. He cultivated relations with Tito, Sukarno and Nehru. Therefore, Nasser's policy of Arab neutralism resulted in a struggle between Britain and Egypt in several countries of Middle East.

Nasser's policy and actions hit American and British interests in Egypt and in entire Arab world. After the "Czech-arms deal", Britain and the United States became worried about letting the Soviet Russia into the Middle East and thence into Africa. For Western interest, it was Western thinking, that if Egypt became habitual Soviet customer it would be disastrous. Therefore, they followed a policy of conciliation towards Nasser. They agreed to sell arms and began to consider lending money to start work on the Aswan High Dam. On December 16, 1955, Britain and the United States agreed to finance Egypt to construct the Aswan Dam. Britain had doubted about the economic value of this project and knew that it would cause difficulties with the Sudan. Even then Britain and the United States agreed to support it in order to keep the Soviet Russia out of Africa and thereby wanted

to limit the Soviet arms deal. International Bank for Reconstruction and Development (World Bank) also agreed in assisting Egypt to construct the Aswan Dam. The work on the Aswan Dam required ten to fifteen years for completion. The total estimated cost for the construction of first stage of the Dam was estimated to $70 million. Out of which the United States, Britain and world Bank agreed to contribute respectively 56 million dollars, 14 million dollars and 200 million dollars. 14

It is interesting to note that in October 1955, the Soviet Russia agreed to provide aid for Egypt for building the Aswan Dam on more favourable and liberal terms independently. 15 But Nasser refused to accept aid. In neutralism to counter balance arms from Eastern powers ousting of British troops, Nasser decided for the loan offer for the Dam in preference to the Soviet Russia offer. He refused probably owing to his firm belief in the principle of Non-alignment of which he, with Pt. Nehru and Nkroum, was architect and which was the only


15. Ibid., p. 155; also see Finer, Herman, op. cit., p. 39.
method to prevent cold war. However, the Aswan offer
did not change Nasser attitude. The Western powers could
not prevent the arms agreement, nor had stopped Nasser's
anti-western campaign. Nasser also continued to attack
the Baghdad Pact.

The dismissal of General John Bagot Glubb from
Jordan irritated British because this shattered British
position in the Arab world. The "Suez Group" in British
Parliament pressurised Eden, the then Prime Minister
of Britain, to renounce all money lending for the Dam.
Eden was criticised as having "backed the wrong horse
when he had put faith in Nasser as future guardian of
the Suez Canal." Like Britain the United States was also
suspicious of political disadvantage of being a creditor
of Egypt. The United States seriously doubted policies
followed by Egypt and was considered as a definite tilt
towards the Soviet Russia. In May 1956, Egypt recognised
the Peoples Republic of China; and in June 1956, Russian
Foreign Minister, Dimitri Shepiloy, visited Cairo. During
his visit arms supplied from communist countries were
displayed. It was also rumoured that the Russian Foreign
Minister had offered an interest free loan of 50 million

dollars.\textsuperscript{17} Nasser, in fact, was as has already been followed policy of non-alignment which seemed Egyptian national interests and which was never liked to the western statesmen and diplomats. So bitter was the United States that George Humphery, Secretary of the United States Treasury, criticised Egypt as follows: "Egypt was holding an option on the Western offer while shopping round for a better offer from Russia."\textsuperscript{18}

Nasser and his financial adviser also disliked the Western budgetary control - the conditions attached to the loan by the United States and world Bank. The US States Department laid down that all contracts must be on a competitive basis; and Egyptian internal economy must be managed and supervised by the United States to avoid inflation. The World Bank supported this condition, and further added that it would review the investment programme and proposed to adjust total public expenditure to Egyptian financial resources.\textsuperscript{19} Thus, Nasser claimed that the Western lenders of the loan wanted the financial control. The real interest of western creditors, Nasser claimed, was to establish dominance over

\begin{itemize}
\item \textsuperscript{17} Ibid., P. 190; also see Williams, Ann. op. cit., P. 121; Thomas, Hugh. op. cit., P. 31.
\item \textsuperscript{18} Ibid., P. 31.
\item \textsuperscript{19} Finer, Herman, op. cit., P. 39; Rondont, Pierre. op. cit., P. 155.
\end{itemize}
Egypt. Nasser utterances apparently pro-Soviet policies, consequently irritated the United States and Britain. The American Congress too became hostile against the loan. The Egyptian arms deal with the Soviet Czech, the United States and British diplomats thought would lead to the reduction of domestic capacity of Egypt to complete the Dam as a substantial domestic resources will have to be invested for arms purchase, and consequently repayment of the loan would not possible for Egypt. Therefore, the commitment to finance Egypt for construction of the Dam was considered as worthless. Britain persuaded the United States to withdraw the offer for loan. Nasser policy, on the other hand, had been widely appreciated at home and he became the hero of Egyptian nation.

In the end of June, The United States financial year ended without making any firm commitments regarding the loan. The Senate Appropriation Committee announced that funds previously granted for the Aswan Dam would be again consulted. Nasser realised the intention of Western Powers that they were not interested in going ahead with their proposal for the Dam. Dr. Ahmed Hussain, the then Egyptian Ambassador to the United States, was

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instructed to ascertain the realities and if possible, finalise the Western proposal for the loan. On July 19, 1956, the United States decision, that the American offer regarding the finances for Dam had been withdrawn, was conveyed to the Egyptian Ambassador by John Foster Dulles, the then US secretary of states. In a press communique Dulles announced that "recent development had not been favourable to the success of the project and the US government had concluded that it is not feasible in the present circumstances to participate in the project. Agreement by the riparian states had been achieved and the ability of Egypt to devote adequate resources to assure the project's success had become more uncertain than at the time the offer was made." 22 On July 20, 1956, Britain withdrew its offer on the same ground. Thereupon the World Bank's contribution was considered to have been automatically withdrawn as it was dependent upon the Anglo-American loan. 23 The withdrawal news was broken to Nasser at a time when he was attending a conference.


23. Thomas, Hugh, op. cit., P. 33.
in Yugoslavia in Nehru and Tito presence, Nasser irritated at the manner of the withdrawal of the loan, and refuted the charge that Egyptian economy was not able to sustain its local share. It was a breach of faith and an insult to Egypt's dignity; Nasser declared, it was Western conspiracy to push Egypt back into conditions of poverty and feudalism. Russian Foreign Minister, Shepilove's denial to make any firm offer to construct the Dam at this juncture further frustrated and hurt Nasser. It was apparent that there was no immediate aid for the Aswan Dam from any side though the Soviet Russia expressed to help other Egyptian industrial projects. Thus the Aswan Dam which was enormously and prosperously important for its agriculture power and industry was shattered by the action of the United States and Britain, and by Russian betrayal.

Immediately, Nasser decided to nationalise the Suez Canal Company in retaliation of Western refusal of the loan for the Aswan Dam. On July 26, 1956, he announced the nationalisation of the Suez Canal Company. In his speech, he vehemently criticised Western policy of

23. Thomas, Hugh, op. cit., p. 115.
24. Ibid., P. 35; Rondont, Pierre, op. cit., P. 156.
Colonialism', 'Imperialism' 'domination', and 'exploitation'. He declared "a battle against imperialism, and methods and tactics of imperialism which was created by imperialism in an offer to annihilate our nationalism in the same way as it annihilate Palestine." Nasser declared "If rumor in Washington ties to make out that Egyptian economy is not strong enough to warrant American aid, I reply choke with rage, but you will never succeed in ordering us about or in exercising your tyranny over us, because we know our path, the path of freedom, honour and dignity... We Egyptian will not allow any coloniser or despot to dominate us politically, economically or military. We shall yield neither to force not to the dollar." He further declared that "we shall build the High Dam on the skulls of 120,000 Egyptian workmen who died in building the Suez Canal. We shall industrialise Egypt and compete with the West .... with the revenue from the (Suez Canal) Company. We shall not look to Britain and the USA for their $ 70,000,000 grants ..... Egypt will build the Aswan Dam without pressure from any nation." He said that there had been a "Conspiracy" between the world Bank, Britain and the USA to "trick" Egypt into building the dam and then to impose conditions on Egypt affecting her independence.

and integrity."  

Nasser's act of nationalisation meant to serve two basic purposes—firstly, removal of limitation on Egyptian Sovereignty owing to the Canal Company and secondly, to minimize the influence of Western powers in Egypt and the Middle East as a whole. There is no doubt that, in taking over the Canal Company, Nasser wished to get two national interests served—restitution for the refusal of loan and provision of an alternative national source to finance the Dam.

The Suez Canal, which belongs to Egypt, had become an instrument of exploitation and domination by Big Powers rather to benefit the Egypt. In 1875, the Khedive Ismail of Egypt had sold its shares of the Company, and in 1880 right to 15 percent of its profit. Even after the independence of Egypt, foreign character and foreign interest of the Company with its monopolitics to control the Canal made it appear in the eyes of Egyptians an "another relic of the colonial era" and "a state within a state." For many years, Egypt drew no direct income.


Mohamoud Younes effectively carried the operation and management of the Canal without any hinderence, hence, the belief of Western powers that Egypt could not run the Canal satisfactorily and efficiently, was proved wrong. But none of the earlier events gave Nasser an opportunity for nationalisation of the Company. Now, Nasser took offence at the manner of the withdrawl, needed a bold gesture to rebuff the West. Britishers had already been driven out of the Suez Base in May 1956 in accordance with the 1954 Agreement.

The nationalisation of the Company affected every Canal users, but the worst affected were Britain and France. Since the opening of the Canal, it was managed and operated by France and British who had dominating position in the administration and operation of the Canal and the Company. The Canal's takeover jeopardized substantially economic interests of France and Britain. Traffic through the Canal was important for Britain and France. About 40 percent of the French oil supply passed through the Canal, though less than Britain. For Britain, the Canal had become as an important net work of communication since 1875; its ships were the largest users of the Canal, carrying both imports and exports in large volume; and from 60 to 70 percent of the oil required for British economy passed through
the Canal from the Middle East. Therefore, it posed the gravest threat to Anglo-French interest. The British statesmen afraid of the Canal's mismanagement by Egyptian apprehended more loss. Therefore, they considered the nationalisation of the Canal Company not only as an act of provocation but also as a blow to their economy.

On the other hand, the United States took a different stand. It was comparatively less important for US as for Britain and France. The United States shipping was a large Canal user and the US business had oil concession but neither was crucial for the US economy. Its financial stake in the operation of the Canal was nil. The containment policy had undoubtedly increased the Canal's importance for the United States for dealing with the world communism. The Presidential election due has also in the eyes of the US public opinion increased the importance and significance of the Canal. Consequently the Presidential candidate has taken together this in dealing the Suez Canal question. The United States statesmen made legal approach to the question of Canal. Dulles said that in law, Egypt had as a sovereign power the right to annual the concession operating in her territory on the payment of compensation which promised.

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30. Ibid., PP. 25; William, Ann. op. cit., P. 123.
The British government consulted the United States and French governments. Eden, said that "The Unilateral decision of the Egyptian government to expropriate the Suez Canal Company without notice and in breach of the concession of 1856, effect the right and interests of nations, and thus created a serious situation." Later on economic sanction were applied by the United States, Britain and French governments against Egypt; and all assets of Egyptian government and the Company aboard were frozen. Britain ordered ban on the exports of war materials to Egypt. Military action was also considered. Britain and France planed to use force with an object to seize the Canal. But the plan was abandoned because their armed forces needed time to prepare for the attack. Another reason for not using force immediately was that the United States was not supporting their aggression policy as the use was convinced that nothing has been done against international law unless Egypt violated it. Therefore, Dulles persuaded British and French Prime Ministers to settle the Suez Canal question through peaceful negotiation.


On July 29, 1956, Three Powers, the United States, Britain, and France met at London to discuss the question.

On August 2, 1956, they issued a Joint communique which condemned "the arbitrary and Unilateral seizure of by one nation of an international agency which has the responsibility to maintain and to operate the Suez Canal so that all the signatories and beneficiaries of the Treaty of 1888 can effectively enjoy the use of an international waterway upon which the economy, commerce and security of much of the world depends." This situation is more serious, they claimed, in its complications because the Egyptian government nationalise the Canal Company to serve purely its own interest rather than international interest. They agreed to call a Conference of the Signatories of the 1888 Convention and other maritime nations. The aim of the Conference was "to establish an arrangement under international system designed to assure the continuity of the operation of the Canal as guaranteed by the Convention of 1888 consistently with legitimate Egyptian interest." This conference was held


35. Finer, Herman, op. cit., p. 149.
at London from August 16 to 23, 1956 known as "the First
London Conference." It was attended by 22 nations out of
24 invited nations. Egypt and Greece refused to attend
the conference. During the discussion in the conference,
Nikos proposed to constitute an International Board,
known as the Suez Canal Board, vested with the rights of
the maritime powers as stated in the Convention of 1888.
This Board, responsible to the United Nations, was to
operate, maintain, develop and enlarge the Canal. A
Machinery of governments for these purpose was to be set
up between Egypt and other maritime nations to safeguard
their respective interest in it. Egypt's sovereignty, the
proposal made it clear, to be respected; and "the operation
of the Canal would be insulated from the influence of the
politics of any nations." Sanctions would be applied for
any violation of the convention by any party to it or by
any nation, in accordance with the principles of the United
Nations. This proposal was supported by 18 nations, India,
the Soviet Russia, Ceylon and Indonesia did not support
it because, in their opinion, "any international control
would impinge the Sovereignty of Egypt." 36

36. Finer Herman, op. cit. P. 149. Also see United Nation
Year Book, 1956, P. 19; Suez Canal Company and Decision
taken by the Egyptian government, op. cit., PP. 72-73; Suez Canal Problem, op. cit., PP. 269-290; Pearson, L. B.,
the crisis in the Middle East, October-December 1956,,
An alternate proposal made by India, recommended the operation of the Canal by Egypt. However, Egypt, the proposal made clear, will be assisted by an International Advisory Body of the Canal users in operation of the Canal. The proposal was supported by the Soviet Russia, Ceylon and Indonesia but it was rejected by 18 nations.\(^{37}\)

Consequently, "the Bulles proposal" was adopted and a "Mission" under the leadership of Australian Prime Minister, Robert Menzies, was sent on September 3, 1956 to present the proposal to Egyptian government. Menzies tried pursuade Nasser to accept the proposal. He argued that a grave international situation had been created by the nationalisation of the Canal Company.\(^{38}\) Nasser rejected the proposal. Nasser, in return, argued that this proposal challenged the right of Egypt and sought to reimpose foreign domination over Egypt. Egypt had a legal right to nationalise the Suez Canal Company, he claimed, and it was the 'threat'


\(^{38}\) The Mission consisted of Five nations—Australia, The United States, Ethiopia, Persia and Sweden.

of Britain and France which had created the grave situation. Nothing would induce him to consider any settlement which derogated Egypt from her right to run the Canal as an Egyptian national undertaking.\(^{39}\) Nasser, however, agreed for negotiation and to form a body for reviewing the Convention of 1888 to ensure freedom of navigation; to plan improvements in the Canal; and to fix equitable tolls.\(^{40}\) Nasser proposal was accepted by 21 nations for consideration at the second London conference.

In the second London conference, convened on September 19, 1956, Dulles proposed the creation of an autonomous body, known as 'The Suez Canal User's Association (SCUA) - the User's Association will be the organisation of shipowners rather than nations that would collect the tolls, employing its own pilots and other officials to secure proper passage through the Canal. It was to co-ordinate traffic and act generally on behalf of the Users of the Canal. Egypt, the Dulles plan proposed, would be paid shares from the Canal income. But the idea of Suez Canal User's Association failed. Nasser denounced it as an association for waging war, and unjustifiable attempt to Egypt's sovereign rights.\(^{41}\)

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addition to it, major differences arose between the United States and Britain on the User's Association function. Britain did not agree for any payment to Egypt and desired that all income from the Canal has to be paid to it by Users directly. Dulles argued that such British denial would be tantamount to provocation and will not be accepted by Nasser. He insisted on his proposal payment of shares to Egypt. The negotiation failed. 42

Therefore, Britain and France requested the Security Council to consider the situation created by "Egyptian action." Egypt, too, requested for an urgent meeting of the Security Council to consider the action taken against it by some powers, particularly by Britain and France. Egypt pointed that Anglo-French action violated the UN Charter and was source of danger to international peace and security. On September 26, 1956, the Security Council placed both items in its agenda and gave preference to the Anglo-French item. The question was discussed at several formal and informal meetings of the Council. The meetings of the Council were also attended by the representative of Egypt. The representatives of Britain and France submitted a draft resolution (S/3671) on October 13, 1956, consisting of two

42. Nutting, Anthony, op. cit., P. 64.
The first part of the resolution consisted of six principles:

1. Free and open transit through the Canal;
2. Respect for sovereignty of Egypt;
3. Operations of the Canal without any political interferences;
4. Fixation of tolls and charges through an agreement between Egypt and Users;
5. Allotment of a portion of the Canal income to proceed the development of the Canal; and
6. Decision of a dispute between the Company and Egyptian government through arbitration. 43

The second part of the resolution provided to internationalise the Canal Authority on the basis of the U.N. proposal "(already discussed) and to recognise the Suez Canal User's Association which would work in cooperation with Egyptian's authority." 44

The resolution was put to vote on the same day. The first part of the resolution was unanimously adopted, whereas the second part of the resolution was vetoed by the Soviet

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44. United Nations Year Book, op. cit., P. 23.
92)

Russia hence, was not adopted. Egypt opposed the second part of the resolution by saying that "it would make the Canal a prey of the politics of many nations." However, Nasser was under pressure from co-leaders of Non-alignment movements by Nehru, and from Arab world, particularly by Saudi Arabia, to adopt a flexible attitude, consequently, Nasser's attitude softened. The economic pressure imposed by the Western Powers was also unbearable. He agreed to negotiate and Dr. Fawzi and Selwyn Loyed, the Foreign Minister of Egypt and Foreign Secretary of Britain respectively stated negotiation on October 13, 1956 which continued till October 19, 1956 under the Chairmanship of UN Secretary General, Dag Hammarskjöld. Dr. Fawzi put forwarded the following three principles to be the basis of negotiation. Firstly, the establishment of a system of co-operation between Egypt and the Canal users within the framework of Egyptian sovereignty and user interest; Secondly, adoption of a system of tolls and charges free from exploitation and guaranteeing fair treatment; and thirdly, the allocation of a reasonable part of the Canal revenues for its development and improvements. The Egyptian Foreign Minister was ready to consider any suggestion for an organised co-operation


46. Ibid., P. 23.

between Egyptian authority and the Canal users without prejudice to Egyptian's right of ownership. He made it clear that Egypt could not accept any kind of international body to control the Canal. He agreed to establish the necessary procedures for the settlement of disputes; to negotiate on methods of fixing tolls and charges between Egypt and Users; and to confirm Egypt's acceptance of all obligations arising from the Constantinople Convention and rules and regulations hitherto governing the Canal administration. He, however, made it clear that the every thing should be settled within the framework of Egyptian sovereignty. Dr. Fawzi accepted the six principles formula proposed by Selwyn Lloyed, seemingly showed enthusiasm to Dr. Fawzi's proposal and they decided to meet again at Geneva on October 29, 1956. 48

By that time, Anglo-French military plan to attack Egypt was prepared. Britain and France were contemplating to use force since the beginning of the dispute. Eden had already instructed the Chief of Staff to prepare a plan to occupy and secure the Canal. On August 2, 1956, Eden announced that certain precautionary measures of military nature were being taken by the British government; and

48. Ibid., p. 77
Roservists had been called up and units of army, navy and airforce, transferred to the Eastern Mediterranean. 49

Similar measures were taken by France. In fact, since the nationalisation of the Company, the British and the French governments had decided that Nasser must not be allowed to get away with the seizure of the Canal. The object must be to 'undo' Nasser's action and put the Canal firmly in international control. In addition to put the Canal under international control, they also wanted to teach Nasser a lesson. The international control of the Canal was into Anglo-French eyes meant to Nasser's humiliation.

The intended Anglo-French military plan alarmed Eisenhower and Dulles and they tried to persuade Britain and France to restrain their action only to the extent to get the normal functioning of the Canal and to refrain to resort force. Any attempt to try and get Nasser deposed, the US considered unadvisable. Dulles made it clear that the US "was with Britain on every point except the use of force." 50 There were many reasons for opposing the force:

49. Schonfield, M.S., op. cit., P. 151; Bowie, Robert R., op. cit., P. 22; Finer, Herman, op. cit., P. 63.

50. Ibid., P. 93 Monroe, Elizabeth, op. cit., P. 196; Bowie, Robert R., op. cit., P. 32.
Firstly, failure to exhaust peaceful means in conformity with the UN charter would outrage public opinion in the United States and elsewhere. Secondly, it would facilitate the Soviet penetration in the Middle East as a supporter of Arab independence. And finally, it would revive memories of "Imperialism" and "Colonialism", offending many Afro-Asian nations, and would drive even the Arab hostile to Nasser, to unite behind him.

Israel, which was already kept informed by Britain and France about their intended plan, was signalled to attack Egypt first. Consequently Israel planned for a military operation against Egypt in order to break the blockade of Port of Eilat to Israeli shipping, and to eliminate the Fedayeen bases in Gaza strip and Sinai desert. France, the closest ally of Israel since 1954, was able to conclude an agreement on October 10, 1956 to attack Egypt. The inner stories go on that first Israel and France prepared the military plan and later, French Foreign Minister, Christian Pineau, successfully persuaded Eden to collaborate with Israel. Britain too

51. Ibid., P. 324; Also see Dayan, Moshe, Diary of the Sinai Campaign, Harper & Row, New York (1966) PP. 20-22.
was thinking in term of military solution but military
involvement, Britain desired should not jeopardize Jordan
with which Britain had a Defensive Treaty. Whereas Israel's
intention was that the "military plan" should also include
occupation of Jordon. France advised Britain to negotiate
with Israel in this regard to evolve a common strategy. 52
Israel was also eager to seek British help to use its
canberras based in Cyprus to control Egyptian airfields.

On October 16, 1956, negotiation took place in
strict privacy without any advisers present. A plan for
attack on Egypt was decided. The second meeting held on
October 23, 1956 and was attended by Ben Gurion, Peres
and Moshe Dyan of Israel, Mollet and Pineau of France,
and Selwyn Lloyd and Sir Patrick Dean of Britain. A
treaty was drawn up and signed by three states. 53 It
was part of the Treaty that first Israel will attack
and then a warning will by Britain and France to Egypt
and Israel in order to seek a pretext to intervention.

52. William Ann, op. cit., PP. 127-128; Nutting, Anthony,
op. cit., P. 110.

53. Ibid., P. 127; also see Schonfield, H.S. op. cit.,
P. 155; Bindra, A.P.J. op. cit., PP. 4142; Howat,
R.C., op. cit., PP. 255-256; Calvocoreci, Peter,
Suez-Ten years After, Pantheon, New York, (1967) PP.
99-100.
For detail of the 'collision plan' of three powers-
Israel, Britain & France see Finer Herman, op. cit.,
(Chapter - XIII), PP. 324 etseq.; Nutting, Anthony,
op. cit., PP. 90 et seq.
Consequently, on October 29, 1956, Israeli forces attacked Egypt. The same day according to plan, an ultimatum was presented to the Egyptian and Israeli Ambassadors in London by the British and French governments. The ultimatum announced that "outbreak of hostilities between Egypt and Israel threatens to disrupt the freedom of navigation through the Suez Canal upon which the economic life of many nations depended." Therefore, "Government of United Kingdom and France are resolved to all in their power to bring about the cessation of hostilities, and to safeguard the free passage of the Canal. The ultimatum requested the Government of Egypt:

"to cease all warlike action on land, sea and air forthwith;

"to withdraw all Egyptian forces to a distance of ten miles from the Canal; and

"in order to guarantee freedom of transit through the Canal and in order to separate the belligerents, to accept the temporary occupation by Anglo-French forces of key position at Port said, Ismailia and Suez."

The ultimatum also warned that if at the expiry of that period "one or both Governments have not undertaken to comply with our requirements, the United Kingdom and French forces will intervene in whatever strength may be
necessary to secure compliance."

Egypt refused to accept the ultimatum and on October 31, 1956 on the expiry of the time of ultimatum, the British and French forces intervened and attacked on Egyptian airfields. By November 2, 1956, Israel had captured Gaza strip and crossed the Sinai Peninsula. Egyptian forces had retreat and Israeli forces had thrust deep into Egyptian territory.

The Tri-aggression (Anglo-French-Israel) against Egypt was vehemently criticised by many nations of the world. On October 29, 1956, the United States brought to the attention of the security Council against Israel armed attack on Egypt territory in violation of the Armistice Agreement of 1949, and requested to consider steps for the immediate cessation of hostilities. The security Council considered the matter on October 30, 1956. The United States requested the Council to act promptly to determine that "a breach of peace has occurred." The United States submitted a draft resolution which:

- Calls upon Israel immediately to withdraw its armed forces behind the armistice lines;

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Calls upon all members to refrain from the use of force or threat of force in the area in any manner inconsistent with the purposes of the UN, to assist the UN in ensuring the integrity of the Armistice Agreement, and to refrain from giving any military economic assistance to Israel until it has not complied with the resolution.

A paragraph properly was added in the US Resolution by which the Security Council call upon Israel and Egypt for immediate cease-fire. The Soviet Russia too submitted a draft resolution demanding immediate withdrawal of Israeli forces behind the armistice lines. China added a paragraph in it which call upon Israel and Egypt for immediate cease-fire. Both resolutions were vetoed by negative vote of Britain and France. The representatives of Britain and France claimed that the US resolution affirmed Egyptian policy of annihilation of Israel, expansion of Egyptian imperialism, open intervention in French internal affairs, direct material assistance to rebillions and Egypt's illegal seizure of an international waterway. Both representatives were attempting to stop any action of the

57. Ibid., P. 27.
Security Council.\(^{58}\)

The Council's meetings were also attended by the representatives of Egypt and Israel. Egyptian representative said that Israel had committed most serious act of armed aggression since the conclusion of Armistice Agreement between Egypt and Israel. He claimed that armed and unprovoked attack on Egypt constituted an act of war and demonstrated beyond any doubt the aggressive and expansionist aims of Israel's policy. He demanded that Council should declare Israel as an aggressor to be expelled from the UN and to apply on her the measures under Chapter VII of the UN Charter.\(^{59}\) In response of Egyptian's charges Israeli representative argued that Fedayeen raid from Egypt had created a breach of peace by invading the territory of Israel. Israel had taken security measures which its force have felt bound to take in the exercise of "our's country inherent right to self-defence."\(^{60}\) He rejected charges of aggression.

On October 30, 1956, Egyptian representative in the Security Council said, regarding the ultimatum of Britain and France, that the Suez Canal area and the Canal itself were an integral part of Egypt. Egypt had been the

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60. Ibid., P. 26.
victims of Israel aggression which invaded its territory and it had been obliged to use force. Therefore unilateral attempt of Britain and France to settle a question, already before the Security Council, was an entirely unjustifiable violation of the UN Charter. Thereupon, British and French representatives asserted that military action taken by them was to restore peace and safeguard the Canal.

All the resolutions put before the Security Council vetoed by Britain and France. Hence, Yugoslavia proposed to convene a special emergency session of the General Assembly under "Uniting for Peace Resolution (1950)." The resolution was put to vote and adopted by seven nations in favour to two against (Britain and France) and two abstained (Australia and Belgium). The first emergency session of General Assembly was held on November 1, 1956. At the session the United States submitted a draft resolution which urged upon all the parties involved in hostilities in the area agree to an immediate cease fire, and as part thereof halt the movement of military forces and arms into the area, urges the parties to the armistice agreements promptly to withdraw all forces behind the armistice lines, to desist from raids across the armistice lines.

61. Finer, Herman op. cit., P. 391; also see United Nations Year Book, 1956, P. 28.
into neighbouring territory; Recommends that all member
states refrain from introducing military goods in the area
of hostilities and in general refrain from any acts which
would delay or prevent the implementation of the present
resolution; Urges that, upon the cease fire being effective,
steps be taken to reopen the Suez Canal and restore secure
freedom of navigation; Requests the Secretary General to
observe and report promptly on the compliance with the
present resolution to the Security council and to the
General Assembly for such further action as they may deem
appropriate in accordance with the Charter. 62 It was put
to vote and adopted, on November 2, 1956, by 64 votes in
favour to 5 negative (Britain, France, Israel, Australia
and Newzealand) with 6 abstention.

On November 3, 1956, the United States submitted
two other draft resolutions; first resolution was concerned
with the settlement of major problem between Arabs and
Israel; Second aimed at finding a solution for the Suez
Canal question. 63 The same day, India, jointly with 18
other Arab, African and Asian states, submitted a draft

62. See The draft Resolution 997 (ES-1). Ibid., P. 531; also
see United Nations year Book, 1956, P. 28; GAOR, Annexes
1-10, November 1956, Agenda item 5, PP. 2-3 quoted in
Zindani, Abdul wa'id Aziz, op. cit., PP. 127-128.

63. Draft Resolutions A/3272 and A/3273. Ibid., P. 128;
resolution. It reaffirmed the US resolution and authorised the Secretary General of UN to arrange with the parties concerned for the implementation of cease-fire and halting military forces behind the armistice lines.\textsuperscript{64} Canada also submitted a resolution which requested the Secretary General to submit within twenty four hours a plan for the establishing up of an emergency international United force to secure and supervise the cassation of hostilities in accordance with the terms of the Resolution 997(ES-1).\textsuperscript{65} Both resolutions were adopted on November 4, 1956.

On November 4, 1956, Egypt accepted cease-fire resolution of November 4, 1956. Israel ceased hostilities on November 5, 1956. Sincethen, British and French forces occupied Port Said and proceeded along the Canal. On November 5, 1956, The Secretary-General addressed a "sideshow" to the British and French governments to cease fire- They replied that they would agree to stop further military operation if the Secretary-General would confirm that Israel and Egypt had accepted an unconditional cease-fire international forces to be set up and would be competent to secure the US Resolution objectives (997 (ES-1)).\textsuperscript{66}

\textsuperscript{64} Draft Resolution A/3275. Ibid., P. 128; UN year Book, 1956, P. 29.

\textsuperscript{65} Draft Resolution A/3276. Ibid., P. 128; UN year Book, 1956, P. 29.

After confirmation, British and French government accepted cease-fire on November 7, 1956. By that time their forces had occupied Port Said and Ismailia. After the cease-fire, Egyptian government demanded immediate withdrawal of all foreign forces in its territory at the Assembly meeting. On November 7, 1956, the Assembly adopted 19 powers proposal calling upon Israel's immediate withdrawal behind the armistice lines and withdrawal of British and French forces. The resolution was adopted by 65 votes to one (Israel) with 10 abstention. Therefore, British and French forces withdraw completely till December 22, 1956. But Israel did not comply with the resolution. Israeli government wanted to withdraw from Egyptian territory only after the conclusion of an agreement through the UN. She demanded that Egypt should renounce the state of war with Israel; abandoned her policy of boycott and blockade against Israel; and enter into direct peace negotiation with Israel. However, all Israeli forces withdrew from Egyptian territory till March 8, 1956 and the United Nations Emergency Forces were established there. Egyptian sovereignty over the Canal was established.

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68. Ibid., p. 130. See the letter of Israeli Foreign Minister, Mrs. Golda Meir to UN Secretary General, A/3320, Finer, Herman, op. cit., p. 466.
Chapter IV

Nationalisation of the Suez Canal

Company: Legal Aspects
Nationalisation of the Suez Canal Company: Legal Aspects

The nationalisation of the Suez Canal Company and the Suez war must be placed among the most futile diplomatic and military episodes in the history of the Middle East. There arose a number of legal questions concerning the act of nationalisation; Israel's invasion upon Egyptian territory; and the Anglo-French military action against Egypt.

As regards the act of nationalisation, the Suez Canal was an integral part of Egyptian territory and was under control of Egyptian territory. It, therefore, entitled Egypt to nationalise the Company as a legitimate exercise of the powers of sovereignty. The expropriation of the Company was also a matter falling within Egypt's domestic jurisdiction. The nationalisation was both legally and morally justified under international law for a public purpose provided adequate compensation was paid to shareholders for the unexpired period of Concession.¹

The Nationalisation Decree provided for payment, the payment was made afterward. However objections were raised by the Three Powers Britain, France and the United States against the lawfulness of the act of nationalisation on the following grounds:

1. "... international character of the Company in terms of its shareholders, directors and operating personnel."

2. "The arbitrary and unilateral seizure by one nation of an International Agency which has the responsibility to maintain and operate the Canal."

3. "The action taken by Egypt, having regard to all the attendant circumstances threatens the freedom and security of the Canal guaranteeing by the Constantinople Convention of 1888."

The legality of the nationalisation depended upon the status of the Company whether it was an Egyptian or French Company or was an international agency entitled to

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* On April 29, 1958 an agreement was reached and signed on July 13, 1958 on matter of compensation between Egypt and Suez stockholders whereby Egyptian Government undertook to pay £ 28,300,000 to the shareholders over a period of five year in full settlement of all claims. See United Nations year Book, 1958, P. 66 et seq; Lauterpacht, The Suez Canal Settlement, Stevens & Sons Ltd. London (1960) PP. 3, 6-33.

special treatment. "The Universal Company of the Maritime Canal of the Suez" was officially established by the Concession of January 5, 1856 which replaced the Concession of 1854. But the Concession of 1856 did not clearly draw up the status of the Company. Article 73 of the statute of the company under the Concession of 1856 provided that "the Company being organised, with the approval of Egyptian Government, as a Joint stock Company by analogy to the joint-stock companies authorised by the French Government, is governed by the principles of these latter companies." It further provided that "Although having its company seat at Alexandria, the Company elects legal domicile and assignment of jurisdiction at its administrative domicile in Paris where all writs must be served." 3

The Concession of 1856 was ratified by Ottoman Sultan known as the Firman of Sultan, on February 22, 1866. Article 16 of the Firman of 1866 clearly stated that "the Universal Suez Canal Company, being Egyptian, is governed by the laws and customs of the country; however, with respect to its status as a company and relations between

its shareholders, it is, by special agreement, governed by the laws which, in France, govern joint-stock companies. It is agreed that all disputes of this nature will be judge in France by arbitrators subject to appeal, as over-arbitrator, to the Imperial Court in Paris."

It is also agreed that "Disputes in Egypt between the Company and individuals of any nationality shall be judge by local courts according to the procedures established by the laws and customs of the country and by treaties," and "Disputes which arise between the Egyptian Government and the Company will also be placed before local courts and decided according to the laws of the country." Article 9 of the Firman of 1966 also provided that "the Maritime Canal and all its appurtenances shall remain the jurisdiction of Egyptian police who shall operate freely as any other point of territory, so as to assure good order, public safety and observance of the laws and regulations of the country." 4

Analytically the applicable law could be Egyptian, French and extraterritorial law under the capitulatory

4. Ibid., p. 40; also see White Paper on the Nationalisation of the Suez Canal Maritime Canal Company, op. cit., p.33.

5. Ibid., p. 32. For legal aspects of the Act of Concessions of 1854, 1856 and Firman of 1866 see Benno, Avram op. cit., pp. 23-27.
system. But the interpretations of the terms of the Concession of 1856 and Firman of 1866 clearly established jurisdiction of the Egyptian court and laws. Nevertheless the referred Concession and Firman of Sultan makes it clear that Egyptian sovereignty over the Canal has always remained unimpaired. The Concessions (1854 and 1856) were an act of internal law and were grants by which a right was given to a private company to construct the Canal.

By granting Concession, Egyptian sovereignty was not altered; nor any part of it was transferred to the Company. However Egyptian sovereignty over the Canal and Egypt as a whole had been divided since 1841 between Egypt and Turkish Sultan. The Viceroy of Egypt had legal capacity to grant concessions for construction of the Canal. But the Concessions were expressly subjected to the Sultan's ratification in compliance with the formalities of Turkish law. Undoubtedly the Concession of 1856, confirmed by the Sultan in 1866, was act of internal government which fell outside the range of activity of international law. 6

Further, in 1882, Britain became "de-facto" sovereign of Egypt as well as the Canal. Egypt, though declared independent in 1922, did not legally obtain

sovereign right over the Canal until 1936. The Anglo-Egyptian Agreement of 1936 had recognised the Suez Canal as an integral part of the Egypt. "However, during its occupation the British government had recognised" the Egyptian character of the Suez Canal Company. And finally after the evacuation of all the British troops from the Canal zones, Egyptian sovereignty was fully established over the Canal as well as over the whole country.

Another legal factor connected with the sovereignty of Egypt is that the Canal was Egyptian property temporarily operated by the Company which could never have the right to dispose it. The terms of the Company's existence was fixed for 99 years since the opening of the Canal.

7. See Article 8, Appendix - D.

8. The British government had recognised the Egyptian national character of the company and its submission to Egyptian law many times specifically in 1925, 1939 and 1942. In the Gold Currency case of 1939, (The outline of case was not stated) British Agent Stated: It (The Suez Canal Company) is Egyptian because it is granted a Concession which has for its object Egyptian public assets and because its legal principal centre is in Egypt." Ibid., pp. 59-61. White Paper on Nationalisation of, the Suez Maritime Canal Company, op. cit., pp. 59-61.

9. See Article 3 of the Concession of 1854, Appendix-A; Article 16 of the Concession of 1856, Appendix-B.
According to Article 10 of the Concession of 1854 and Article 16 of Concession of 1856 after the expiration of the Concession, the Egyptian government will take place of the Company, and enjoy all its rights without reservation, and will also enter into full possession of the Canal with all the establishment thereof upon payment of indemnity to the Company agreed by amicable agreement or by arbitration.

The argument related to the act of nationalisation was the administration of the Canal, different from sovereignty and property. Administration implied maintenance and operation of the undertaking. The Egyptian government, as a territorial sovereign, might operate the Canal itself or with the aid of intermediaries. Instead it chose a different method i.e., through a Concessionary Company. Both Concessions were expressly provided that grant was made to construct the Canal and, then, later to operate the Canal for 99 years. Article 17 of the Concession of 1856 stipulated that:

"to indemnify the Company for the expenses of construction, maintenance and working, charged upon them by these presents, we authorise the Company henceforth,

10. See Appendices A and B.
and during the whole term of their lease, to levy and received for passage through and entrance into the Canals and Ports thereunto appertaining, tolls and charges for navigation, piloting, towage or harbour dues. 11

Therefore, Egypt put the Company in charge of administration and later operation of the Canal. The Company, being Egyptian, was solely responsible to Egyptian government and had neither right nor obligations with regard to international community. In fact, it was in contact with such a community in more than one way, and had to act as an intermediary between it and Egyptian Government. The interests of the Canal Company lay in having the greatest possible number of ships pass or navigate through the Canal as freely and as cheaply as possible. Then, it is definite that the Contractual right of the Company in respect to its function in Egypt was governed by Egyptian law not by international law. Undoubtedly, the Suez Canal Company has always an unique, or one must say Universal character by virtue of its capitals, board of directors and operating personnel which represented several nationality, and perior to all factors by virtue of its purpose and responsibility to assure efficient

11 See Appendix - B.
operation of the Canal to entire world. But it does not
mean that it was an international agency; the Company
has come into existence by a contract and the contractual
aspect should not be ignored. Consequently, Three Powers
claim to the Company being an international agency has no
validity. There is no provision to indicate that the Company
was an international agency entitled to special status,
nor such conception was ever contemplated by those concerned
in its formation.

The last factor concerned with the legality of
nationalisation was The Convention of Constantinople of
1888. Three powers claimed that nationalisation violated
vested international rights—right of passage enjoyed by
all nation. But the Convention of Constantinople of 1888,
which guaranted freedom of navigation, was in no way
related to the ownership of the Canal Company. The act of
nationalisation did not threaten the freedom of navigation
and security of the Canal provided by the Convention
of 1888. The Convention of 1888 provided that its principles
were to be apply regardless of the ownership and of the
operation. 12 According to Article 14 of the Convention

12. Lenczowski, George, op. cit., P. 627; Johnson, Paul,
op. cit., P. 45; Pillai, R. Vasudev, op. cit.,
PP. 9 - 11.
of 1888," the High Contracting Parties agree that the
engagements resulting from the present Treaty shall not
be limited by the duration of the acts of Concession
of the Universal Suez Canal Company."

Thereupon, the Western powers and a number of contem-
porary writer emphasize on the preamble of Convention of
1888 in which reference of the Firman of 1866 and the
Concession of 1856 were made. The Preamble declared" to
establish a definite system designed to guarantee at all
times, and for all powers, the free use of the Suez Maritime
Canal, and thus to complete the system under which the
navigation of this Canal has been placed by the Firman
of His Imperial Majesty, the Sultan...., and sanctioning
the Concession of His Highness, the Khedive...." It
should be noted that the purpose of the Convention of
1888 was not to accord international protection to the right
of navigation through the Canal. The purpose of the
Convention was not only" to confirm" the existing system
of freedom of navigation but was also intended" to complete"
the system of free navigation. Because the Concession of
1856 drew rules and regulations of navigation for merchant-
ships only. However, the Concession of 1856 established a
international regime that all nations of the world acquired

13. See Appendix - C.
and 149.
the right to send through the Canal their merchant vessels in time of peace (Article 14). Therefore the Concession of 1856 by Article 14 was an offer to the international community of a perpetual right of passage through the Canal without transmitting its legal character. The Convention of 1888 enlarged this right to include all kind of navigation in time of peace as well as in time of war. Any interpretation of the Concession and firman to justify the Company as an international agency will be misleading. An impartial interpretation would reach to the conclusion that these never meant to recognize the Company as an international agency. Therefore, the claim of Three Powers concerning the status of the Company as an international agency must be rejected. The Suez Canal Company, in spite of its name, its importance and nationality of its shareholders was an Egyptian Company. It was subject in all respect to the laws of Egypt and to the jurisdiction of its legitimate government. Thus, Egyptian government nationalised it as any other Egyptian enterprise. The minimum standard required by


The representative of Belgium supported the Egyptian position at the Security Council by saying that "The word "to complete" referred to in the preamble was designed to establish a close and unquestionable connexion between the act of Concession establishing the Company and the Convention affirming at the International level, the principal freedom of navigation with the inevitable consequences that Company and the system without violating the convention." See UN Security Council official record, 11th year, 737th meeting, p. 25.
international law for the protection of aliens was fully provided by the Nationalisation Decree (Article 1, Para. 2 providing compensation). The nationalisation of the Suez Canal Company was legal and valid.

Israeli armed attack on Egyptian territory, which was followed by Anglo-French military attack, had created a grave international situation. It was undoubtedly an aggression on the pretext of self-defence to protect their so-called interest in the Canal and Canal zone. It was, in fact, a pre-planned conspiracy between Israel, Britain and France. It was tri-aggression in violation of international law, a breach of purposes and principles of the United Nations Charter, and it violated the Armistice Agreement of 1949 concluded between Egypt and Israel, by crossing the armistice lines. This view shared by majority of member-states of the UN and world public opinion.* In a speech on November 1, 1956, Pt. Nehru, the then Prime Minister of India, declared:

"The Anglo-French action in Egypt as " naked aggression" which would not be tolerated by the self-respecting and independent nations of Asia and Africa."

He went on to say that "there has been the sudden invasion

* India, Pakistan, Ceylon and many Asian, African and Arab nations denounced the actions of Israel, Britain and France and declared them "aggressor". Australia and Newzealand supported their action.
of Egypt by Israel in breach of an armistice and of the
UN charter. In these disputes our sympathies have been
for the Arab nations. They have had a raw deal and this
must be remedied. But we have no enmity toward Israel.
I am not thinking of Israel being wiped out. The fact
remains that it is a case of clear and naked aggression
on Egypt by Israel. Every member of UN should try to stop
it and resist it. But Britain and France issued an
ultimatum to Egypt. The Suez Canal was functioning
properly. If there was any danger to the Canal it was from
Israel, which advanced 90 miles inside Egypt. Britain had
been a force for peace in the past two years and because
of this my sorrow and distress is all the greater for the
amazing adventure which Britain and France have entered
into."16 Nehru was supported by members of the United
Nations.

The action of Israel had violated international law
by using force against Egypt. The United Nations Charter
prohibit the use of force in international relations of
states. The Preamble of the Charter refer to acceptance
of principle that "armed forces shall not be use, save

15209; also see Bayre, James, op. cit., pp. 249-250;
Nehru's Speeches, Delhi Publication Division 1949-1958,
in the common interest." The Charter provides under Article 2 (3) that "all Members shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered."
Article 2(4) further provides that "all Members shall refrain in their international relation from the threat or use of force against the territorial integrity or political independence of any state or in any other case inconsistency with any purpose."

The Charter, thus, prohibit aggressive war by state and in the Charter its members renounced the right not only to resort to war and measures of force, short of war, but also threats of wars and acts falling short of it. A member of the United Nations can use force only in violation of the obligations of the Charter as Israel did. There was clearly use of force against the territorial integrity and political independence of Egypt. The use of force by a member of the United Nations (Israel) was in violation of the United Nations Charter. The Charter asserts the

18. ibid., P. 4.
primary purpose of the United Nations "to maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situation which might lead to a breach of the peace." (Article 1 (2)).

Article 24 of the Charter confers upon the Security Council primary responsibility for the maintenance of peace and security (Chapter VI and VII). The members of the United Nations seek a solution by various means of pacific settlement of the disputes which are likely to endanger international peace and security. If they failed to settle the dispute, they are bound to submit it to the Security Council under Article 37 and the Security Council will take proper action. In case, the Security Council fails to settle the dispute by pacific means then the Security Council, according to Article 39, is authorised to determine the existence of any threat to the peace, breach of peace or act of aggression and make recommendation or decide

19. Ibid., P. 3; also see Grenville, J.A.S., op. cit., P. 248.

20. For pacific settlement of disputes see Articles 33-38 (Chapter VI) of the UN Charter, Brownlie, Ian., op. cit., PP. 12-13; Grenville, J.A.S., op. cit., PP. 252-253.
what enforcement measures are to be taken to maintain
or restore peace and security. (under Articles 41-50,
Chapter VII). Article 41 provides that "the Security
Council may decide what measures not involving the use of
armed forces are to be employed to give effect to its
decisions, and it may call upon the Members of the
United Nations to apply such measures. These may include
complete or partial interruption of economic relations
and of rails, sea, air, postal, telegraphic, radio, and
other means of communication and the severance of diplomatic
relations." Article 42 says "Should the Security Council
consider that measures provided for in Article 41 would
be inadequate or have proved to be inadequate, it may
take such action by air, sea, or land forces as may be
necessary to maintain or restore international peace and
security. Such action may include demonstrations, blockade,
and other operations by air, sea, or land forces of Member
of the United Nations." 21 By Article 25 the "Member of
the United Nations agree to accept and carry out the
decisions of the Security Council in accordance with the

The frequent inability of the Security Council to discharge primary responsibility, assigned to it by Charter, has changed powers of the Security Council and the General Assembly. The inability of the Security Council to decide matters relating to international peace and security owing to the excessive use of veto, the importance of the Security Council had been lowered in the eyes of the nations and the General Assembly became the only hope of maintaining world order. In the present case, the Security Council, as in other cases, was totally failed to solve the hostilities between Egypt and Israel endangering to peace and security of that region. Israel had appealed many times to the Security Council against the actions of Egypt which had been conducting by her, since 1949, but unable to take any firm action. Though the Security Council adopted a resolution in 1951 amounts to an international order but no steps whatever had been taken to implement it. No one followed up the Security Council's resolution. The Soviet Russia had indeed vetoed the Second Security Council's resolution in 1954 in favour of Egypt.

Therefore, the General Assembly realised to prevent

22. Ibid., p. 10.

* The Security Council took decision only in Case of Korea, 1950, and created Unified Command in Korea. It was possible solely because of the fortuitous absence of the Soviet representative.
the matters relating to peace and security from being "frozen" on the Security Council Agenda, it should assume of the responsibility of the Council. Consequently, the General Assembly adopted "the Uniting for Peace Resolution" in 1950. Its intention was to create a nucleus of collective security outside the Security Council. The Resolution provides:

"If the Security Council, because of the lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly will consider the matter immediately with a view to making appropriate recommendations to members for collective measures including in the case of a breach of peace or act of aggression, the use of armed force, when necessary to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in an emergency special session within twenty four hours of the request therefore ....


The General Assembly played an important role in effecting the cease-fire and withdraw all foreign forces from Egyptian territory. The action of the Security Council had proved fail because of the negative vote cast by Britain and France, then first special session of the General Assembly was convened on November 1, 1956 under "The uniting for Peace Resolution."

In no way, the action of Israel was in pursuance of United Nations decision, or on recommendation of the Security Council. Therefore, Israel committed an "act of aggression." The only question remained was that whether the action of Israel could be justified under Article 51 necessary for individual or collective self-defence. Article 51 of the Charter provides that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any such action as it deems necessary"
in order to maintain or restore international peace and security.\textsuperscript{25} Therefore, Article 51 permits to have recourse to armed action in self defence when it is itself the object of an armed attack and when such attack is directed against any state or states whose safety, existence and independence are deemed in danger. It is also a practical recognition of the fact that in the absence of an effective machinery of the United Nations for the suppression of the act of aggression, a member can take necessary action in self-defence. The right to use force in self-defence is permitted only so long as the Security Council has not taken the necessary step to maintain international peace and Security. From this point of view it is an exceptional right. It should be noted that the prohibition of Article 2(4) is absolute in character except in pursuance of self-defence.\textsuperscript{26}

Israel justified its military operation against Egypt on the basis of Article 51. It asserted that the action was a necessity in self-defence against the repeated Egyptian "Fedayeen raids" across the armistice line, against

\textsuperscript{25} Brownlie, Ian, op. cit., P. 16; Fenwick, Charles, op. cit., P. 795.

Continued blockade of the Suez Canal and the Gulf of Aqaba to Israeli shipping, and against the continued threats implied by Egypt’s assertion that it is at war with the object of eliminating Israel. Israel declared that military operation had been necessitated by continuous Egyptian attack on land and sea communication of Israel. It aimed at causing destruction and depriving the people of Israel of the possibility of peaceful existence. The 'Fedayeen raids,' Israel claimed, formed part of Egyptian Army and operated under Egyptian military since 1948. Until 1955, Egypt denied responsibility for "Fedayeen raids" but later on, she officially recognised the 'Fedayeen' as national heroes. Israel’s frontiers were quite indefensible against this kind of infiltration. "The object of military operation," thus, Israel Foreign Ministry declared, "was the liquidation of Fedayeen basis in Sinai peninsula from which the commando units of Egyptian army had spread in Israel by act of indiscriminate murder, mining and sabotage."  

Israel justified its operation against Egypt on the ground that there was danger to its existence. Since its


28. Keesing's Contemporary Archives, November 13-10, 1956, p. 15173. Also see the statement of Mr. Eben, Israeli representative of the UN, Ibid., p. 15186.
coming into existence, she was being attacked by the armies of Lebanon, Syria, Jordan, Iraq and Egypt. Hostilities ended by a series of Armistices Agreements that were signed in 1949, with each of those states except Iraq. However, the Arab states had continuously refused to recognise its existence. Egyptian government insisted again and again that Egypt considered herself to be still at war with Israel. Consequently Egypt justified its blockade of the Suez Canal and Gulf of Aqaba to Israeli shipping. This blockade, Israel claimed, was clearly in violation of the Convention of 1888, Armistice Agreement of 1949 and in violation of the Security Council's resolution of 1951 which called upon Egypt to stop the blockade forthwith. But the blockade had continued ever since. Israel said that Egypt's blockade against Israel's shipping were at great cost to its economy because all trade had stopped to and from Israel. Not only this, the member states of the Arab League organised an active boycott against Israel even when she was an elected member of the United Nations. They allowed no trade or communication of any sort between its members and Israel. Several international agreements were cancelled by the member states of the

League. They also boycotted all international conferences and meetings of the United Nations specialised Agencies in case an invitation to Israel, too, had been sent to attend these conferences and meetings. All these measures had very grave consequences over Israel. The boycott of Israel by the Arab states seemed to be inconsistent with the purpose and principles of the United Nations Charters, which requires that 'all Member have agreed to fulfil in good faith the obligations of the Charter, Article 2(2), and “to develop friendly relations among nations based on respect for the principle of equal right and self-determination,” (Article 1(2)). Israel asserted, since 1948, Egypt continued to make war against Israel by all means at her disposal. Military deployment in Sinai and massive bases which Egypt had built up in the area of Israeli could only be intended for forthcoming operation against Israel. She said that Egyptian preparation for invasion were accelerated with the Soviet Russia assistance and the Soviet arming of Egypt was a serious threat and immediate danger to its security. For Israel it was increasingly serious when Egypt nationalised the Suez Canal Company... 


* Israel produced documents captured at Gaza to prove that Egyptian plan to invade Israel being prepared. In a copy of "Most secret" Training directive, Para 1, states that Every officer must prepare himself and his subordinates for the Inevitable struggle with the object of realising our noble aim namely the annihilation of Israel and her destruction in the shortest possible time and in the most brutal and cruel battles.” Henriques, Robert, op. cit., PP. 40-41.
because this use of force, used in nationalisation of the Company, in the opinion of Israel was a triumph of Arab nationalism. Further, the announcement of formation of a Joint Egyptian - Jordanian-Syrian Command, Israel thought, was directed against it. In addition, there was domestic pressure on Israeli government to take steps against Fedayeen raids which interrupted lives and life of Israel’s civilians. However, it was clear to Israel that she will not be getting support in the United Nation.

One may agree with Israel arguments but even then it was hard to reconcile with Israel’s resort to force. Israel situation was undoubtedly unique and its arguments were not implausible but her attempt to justify her action in taking protective measures against grievances and future threat or danger of war from Egypt seemed to be not very valid. Article 51 of the Charter confirms the right of self-defence in case of “an armed attack occurs” as distinguished from anticipated attack or from various forms of unfriendly conducts falling short of armed attack. A state may use force only in “instant and overwhelming necessity for self-defence.” The use of force for the redress of grievances or for the determination of future danger must not be justified. However, Quincy Wright points out the
term "Threat" in the provisions of the United Nations Charter is clearly intended to refer to imminent danger of attack, creating the instant and overwhelming necessity for self-defence," that customary international law has held justified military self-defence, for example, in the Caroline case (1838). But of such a threat, he questioned constitutes an act of aggression, permit or does not permit individual or collective self-defence" under the Charter is not altogether clear because such a threat might be short of an armed attack. 32

International law does not prohibit war rather it permits as a function of a sovereign state, however, only defensive war (Justum-Bellum). But a state resort to war in violation of international law, it considered aggressive war (Unjustum-Bellum). The United Nations Charter had not defined clearly the term "aggression." The provision of the Charter refers" the armed attack" recognised in four type of situation -- the breach of peace, threat to peace, situation endangering international peace and security, and situation likely to impair friendly relations among nations. "Aggression" as a term of international law

has been defined as "a resort to armed forces by a state when such resort had been duly determined, by a mean which that state is bound to accept to constitute a violation an obligation."

The Pact of Paris (1928) and the United Nations Charter too forbid the use of force. The legality to recourse to force in self defence could not be judged by Israel herself. The International Military Tribunal set up at Nuremberg to try German war-ring leaders in its verdict, given in 1946, said that "to initiate a war of aggression is not only an international crime, it is the supreme international crime differing only from other war crimes in that it contain within itself the accumulated evils of the whole."

However, only "Justum bellum" is permissible; in case aggression is allowed. But it is too difficult to define an aggression. In 1974, The General Assembly adopted a Resolution on the Definition of Aggression. The United Nations Special Committee, after seven years of labour


could produce an 8 Articles definition of 'Aggression'
but expressed its inability to give an exhaustive definition.
The Special Committee defined "aggression" as the use of
armed forces by a state against the territorial integrity
and political independence of another state or in any other
means inconsistent with the Charter of the United Nations"
Article 2 of the resolution says that "The first use of
armed force by a state in contravention of the Charter shall
constitute "Prima facie" evidence of an act of aggression,
although the Security Council may, in conformity with the
Charter, concluded a determination that an act of aggression
has been committed would not be justified in the light of
other relevant circumstances, including the fact the acts,
concerned on their consequence are not of sufficient
gravity." Therefore, one may reach to conclusion that
Israel's action could not be justified legally. She was
guilty of aggression and had committed an act of aggression
by violating Article 3 of the resolution of the General
Assembly. Article 3 provides that military occupation,
annexations, bombardment or use of any weapons by a state
against another, blockade of ports or coast, attacks on
land, sea, or airforce, and sending by air on behalf of a
state of armed bands groups, irregulars and mercenaries.

35. See the Resolution 3314 (XXIV) United Nations Year
Book, 1974, PP. 847-848.
The documents pleaded inability to exhaust test and gave
the Security Council the right to determine what other
acts constituted aggression. 36

Israel assertion that blockade of the Canal was
illegal but during war, it may be argued that ships of
opposing belligerents are not to be permitted to transit
through the Canal. In both World Wars, thus, ships of
Axis Powers were not permitted to use either the Panama
nor the Suez Canal. Of course, Egyptian blockade against
Israel is contrary to the Convention of 1921, Armistice
Agreement and the Security Council resolution. The Egyptian
Contention to justify its continuance of war, had also been
not supported by many experts on the ground that United
Nations Charter prohibits "a state of war" initiated by and
Member of the United Nations and is in contravention to
Article 2(4) of the Charter. However, the endeavour to
justify Israel's invasion could not be considered to create
such condition of necessity to justify action in self-defence.
Egypt had adopted this policy against Israel shipping
since 1949 even when the British troops were in occupation
of the Canal and the Canal operated by the Suez Canal
Company. Its policy had been accepted by both Britain and
the Company. It should be argued that these measures

36. Ibid., P. 847. Also see Hindustan Times, New Delhi,
dated April 14, 1974.
did not differ from similar decrees issued, with the full approval of Egypt-British ally, between 1939-1945, which were designed to control enemy and neutral shipping during the World War II. Then, no protest were raised by maritime powers. 37

Many nations argued that Israel had violated the Armistice Agreement of Egypt and Israel by invading the Egyptian territory across the armistice line. Article 1 (2) of the agreement provided that "no aggressive action by the armed forces of either party shall be undertaken against by the armed or the armed forces of the other." 38

On the other side, Israel contended that Egypt had already violated the Armistice Agreement by making systematically armed raids into its territory. However, Israel had never recognised the continuance of a state of war and accordingly refuted Egyptian blockade and interference with its shipping. But it is doubtful whether in case of violation of the Convention and the Armistice Agreement by one party confer any right upon the other party to take forcible retaliatory action. What action, if any, entitled Israel to take for these violation, International law does not provide any precise and satisfactory answer. 39 Israel's invasion could

not be justified if it is accepted that Egypt violated the Armistice Agreement. Undoubtedly Article 40 of the Hague Regulation of 1907 provides that "a serious violation of an armistice by one party gives the other the right to denounce it and in case of urgency hostilities may be reopened without formal denunciation." But this provision is unsatisfactory. Experts agree that the ordinary action does not confer the right to denounce an armistice agreement. Practically, the aggrieved party can only determine whether the violation is serious or not, and similarly the question regarding the determination of urgency, the aggrieved party will have to determine the action to be taken.

It is concluded that nationalisation and the denial to Israeli shipping does not serve ground to justify Israel's legal position. Israel weakened its position by the collusion with Britain and France. Israel's case for self-help or self-defence was less clear. She had not exhausted efforts for a peaceful solution. In fact, Israel thought that the Sinai Campaign success would put an end to border attacks; it could provide a buffer on Egyptian territory against further Egyptian attacks; Israel main

aim was to seize control of the Canal with Anglo-French co-operation which would open the Canal and also Gulf of Aqaba, to Israeli Shipping. Success may, it was preserved will lead towards toppling Nasser and humiliation and demoralisation of Arabs.

Like Israel, Anglo-French "intervention" in Egypt was too, an act of aggression. Their action in the Suez Canal and Canal zones were clearly a use of force against the territorial integrity and political independence, thus, violated Article 2 (4) of the Charter. International law forbids intervention which is more than mere interference and much stronger than mediation and diplomatic suggestion. To fall within the terms of prohibition, it must be dictatorial interference, in opposition to the will of the particular state affected and almost always serving by designs or implication to impair political independence of that state.41

Britain and France pretended in the Israel-Egyptian conflict a threat to their vital interest. They argued several justifications for their intervention including the necessity to stop hostilities; necessity to defend the Suez Canal from stoppage of traffic; necessity to prevent

nationalisation of the Suez Canal Company by Egypt; and the necessity to establish a regime for the Canal assuring future freedom of navigation. Their ultimatum and the arguments later made, in support of their so-called intervention or aggression asserted a right to act as a "volunteer policemen" to use force to separate Israel and Egypt in order to protect the Canal akin to the right in some municipal system for a private citizen to intervene to put down a breach of peace if the police failed to do so. 42 During the course of discussion in the General Assembly, the representatives of Britain and France reminded Japan's justification of her intervention in China as a "police action" during the League of Nations. Britain and France, therefore, had also labeled their aggression in Egypt as a "Police action." British representative, Sir Pierson Dixon, argued that the action of France and the United Kingdom is not aggression, what we have undertaken is a temporary police action necessitated by the turn of events in the Middle East and occasioned by the imperative need not only to protect the vital interest of my own and many other countries, but also to take immediate measure for the

restoration of order." Therefore, he claimed the right to defend their vital interest. Selwyn Lloyd, in course of the Commons debate, argued that the Charter permitted the use or threat of force lawfully on the express authority of the United Nations or in self-defence. He argued that self-defence, "undoubtedly include a situation where the lives of the states national abroad are in imminent danger.""44

The preponderent reaction was to condemn their action as inter alia a breach of the United Nations Charter (Article 2 (4)), nor could that their action be justified with the exceptional right of collective self-defence within the meaning of Article 51. The only interest that have been considered under the Charter sufficiently vital to justify military self-defence were actual or perhaps immediately threatened attack on territory or armed forces of state. Egypt had not been guilty of any armed attack against Britain and France. Accepting the "bona-fides" of the justification in the ultimatum, it should be noted

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44. Finer, Herman, op. cit., P. 379.
that it was a narrow exception to Article 2 tailored to circumstances not likely to recur frequently. But it must not be subjected to the dangers of some border theory which would have permitted force at any time in support of vital interest as each nation saw them. Consequently, this theory was not accepted by majority of nations.45

The United Nations Charter provides that it is a duty of state or states to do nothing until the security Council has determined on a course of action and only if the Council called on them to apply the necessary measures (under Articles 41, 42, 43 (Chapter VII)). It should be noted that the enforcement action can only be taken in pursuance of a pronouncement envisaged in Article 39 and determining the existence of a threat to peace, a breach of peace or an act of aggression. Thus, the state must subordinate the exercise of any such exception rights of intervention to their primary obligation under the Charter, where the Charter permits, intervention or armed action must not be regarded as the threat or use of force against the territorial integrity or political independence of any state.

The legal pretence of Britain and France interfered with their objectives. The claim of separating the combatants rang false when Israeli forces were not close to

the Canal. In their initial announcement of the ultimatum, they had clearly stated that our main purpose in intervening was to stop war between Egypt and Israel, then why, one wonders, the British and French representatives vetoed the cease-fire order which supported by majority of the Security Council’s member including all other Great Powers on October 30, 1956? If the object was to stop war between Israel and Egypt, one questions, then why Anglo-French forces continued to attack Egypt for twenty-four hours even after acceptance of cease-fire order by the parties concerned? Besides, Eden gave another explanation. He said that “Our purpose in taking individual action was to put teeth into the United Nations and force its member to create an international force.”\(^46\) But they made no attempt to get such a force created until condemned by the Security Council and the General Assembly. Creation of emergency force proposed by General Assembly met opposition from Britain and France. However, later on, they, as a face-saving device, made their withdrawal conditional the establishment of a peace-keeping force. Therefore, the decision to draw up their intervention as a “peace-keeping” was undoubtedly an attempt to provide” a clock of legality.\(^47\)


It testified to barrier which had been built up against resort to force on the basis of the Canal dispute. It was also an act of desperation. Since they could not persuade Eisenhower to resort to force, Anglo-French justification for taking the action was not only contradictory but also manifestly dishonest. Their intervention was a disguised attempt to regain control of the Canal and was motivated by a desire to topple Nasser. In addition, it was a determination to prevent the Soviet influence and infiltration in the Middle East and to prevent a precedent encouraging other Arab states to nationalise. In case of France, determination to prevent propaganda inciting Algerian nationalism and aid to insurgents.

The British and French statesmen and diplomats contended that Nasser could not be trusted and expected to operate the Canal in accordance of the Convention of 1888 terms. They could not place reliance in the promise of a man who had only a few month ago announced not to curtail the Concession of the Company. They argued that Egypt, who had already defied the Security Council and world opinion by continuing her blockade against Israel. Therefore, Egypt could refuse our ships passage or if allowed them to continue to use the Canal, it could be on her terms. They also referred to the danger of “extortionate tolls” being charged and the Canal deteriorating because of mal-administration.

But all these dangers were speculative and more distant and could not be put forward as a justification for their actions. Since nationalisation, Nasser asserted that the Convention of 1888 would remain in effect and was binding upon Egypt which would conform to its terms. Egypt would in no way interfere with the navigation through the Canal after the take-over except in case of Israel, and indeed would put through the Canal volume of traffic as greater as in past. On July 28, 1956, Nasser himself pledged that Egypt would not hamper the traffic and he assured that tolls would not be raised. On July 31, 1956, an Official Press hand out, attributed to Nasser, declared that nationalisation would in no way affect Egypt determination to meet it international obligation. 49 Further, Nasser stated Egyptian policy regarding the freedom of navigation in a letter to Manges on August 12 and September 9, 1956. He expressed a desire to sponsor a Conference of all users and signatories of the Convention of 1888 to review and reaffirm the Convention of 1888 and to consider further agreement to guaranteeing freedom of navigation through the Canal. Nasser also asserted that future of the Canal depended on the co-operation between the Users and Egypt of which the Canal is an integral part. 50 Not only this, at the

49. Ibid., P. 15, Suez Canal Nationalisation & After (July 19 to September 18, 1956) Lok Sabha Secretariat, New Delhi, 1956, P. 4.

50. Ibid., PP. 15 and 17; Nowat, P.C. op. cit., P. 206.
United Nations, Egypt accepted the Six principles proposed by Selwyn Lloyed and approved by the Security Council. Egypt was also agreed for negotiation. Hence, Dr. Fawzi proposed a more liberal Egyptian policy for negotiation during the private talks with Selwyn Lloyed on October 13, 1956.51

Therefore, one can conclude, that Egypt never denied international obligations to observe under the Constantinople Convention. Egypt had already observed during the period it operated the Canal from July to November, 1956, until the Canal was blocked upon Israeli invasion. It administered the Canal efficiently without raising tolls and without discrimination except Israel. Throughout the period all the ships of all nations (except Israel), including of Britain and France, continued to pass without hinderance between Port Said and Suez. Egypt had not committed any act that could justify use of force legally. Undoubtedly, Egypt nationalised the Company but had not done any injury to the British and French lives and properties. It did not stop the British and French shipping through the Canal despite the refusal of owners to pay dues to Egyptian Canal authority. The pilots had already been withdrawn, Nasser's

51. Nutting, Anthony, op. cit., pp. 73-77.
declaration concerning the Canal's Administration and Navigation of April 24, 1957 was implemented. Hence the British and French assumption that Egypt could not be trusted to observe obligation of the Convention of 1888 proved wrong. In any case, international law does not justify Anglo-French military actions in Egypt. It was a case of an aggression.

52. See Appendix C. Also see Memorandum From the Egyptian Government, Dated March 18th, 1957. The Suez Canal Company and Decision taken by The Egyptian Government, op. cit., p. 100.
CHAPTER V

CONCLUSION
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The Suez Canal is a most important, an oldest intercontinental Canal. It lies wholly in the territory of Egypt and connects two high seas directly. A Concession for construction of the Canal was granted by Mohamad Said Pasha in 1854. The Concession of 1854 was replaced by the Concession of 1856. The new Concession was approved by the Turkish Sultan in 1866. The construction work of the Canal was started in 1859 and completed in 1869. The Suez Canal was officially opened for navigation on November 17, 1869 in the presence of many crowned heads of the world.

Immediately, the Suez Canal became more practicable bigger and busier waterway for international commerce and trade. Traffic through the Canal increased enormously. The Suez Canal is economically, strategically and militarily significant for the entire world. It saves time and money by shortening the distances between East and West. It saves fuel. When this Canal was closed from June 1967 to 1975 by Egypt, the World traders lost millions of dollars.

The Suez Canal was free and open to the merchant ships of all nations without any discrimination. The Concession of 1854, 1856 and the Firman of 1866 did not set up complete system of navigation in all times to all kinds of ships. Of course, international regime was established.
by Article 14 of the Concession of 1856. The interested powers felt the necessity of an agreement to safeguard the Canal from hostilities, damages and interruption of navigation by belligerent states in wartime. The efforts, therefore, were made and on October 29, 1888 the Convention of Constantinople was signed by nine major powers. The Convention established a complete system of navigation. It provided that the Suez Canal should be free and open to every ship of commerce and war in time of peace and war without distinction of flag. The Canal should neither be blocked, nor any act of hostility or war intended to obstruct the navigation in the Canal should be committed in it within three sea miles limits. The Convention placed responsibility for the defence of the Canal upon Egypt and Turkey without any interruption or interference in the free use of the Canal.

The Convention of 1888 did not come into force before the Anglo-French Declaration of 1904. France refused to ratify the convention because Britain, who had occupied Egypt since 1882, reserved her right to use the Canal for safeguarding her position in Egypt.

Since 1882 to 1954, Britain assumed de facto responsibility for the defence of the Suez Canal and its navigation.
In 1914, Egypt became a 'Protectorate' of Britain and in 1923 by the Treaty of Lausanne Turkey transferred all its rights and title over the Suez Canal to Britain conferred in the Convention of Constantinople of 1888. In 1922, however, Britain granted Egypt independence but reserved sole responsibility for the defence and security of the Canal. Further, under the Anglo-Egyptian Agreement of 1936, the Suez Canal was recognised as an integral part of Egyptian territory but Article VIII gave Britain the responsibility of the Suez Canal's defence. In fact, Britain merely recognised an existing state of affairs as her position remain unaffected. Egypt became sole sovereign of the Suez Canal only after the evacuation of all British troops from the Suez Canal zones in 1954. Both parties expressed determination to uphold the Convention of Constantinople of 1888.

During the two World Wars, the Suez Canal became a point of struggle. It was closed for enemy shipping but was opened both for neutrals and allies states. Britain, as de-facts sovereign, was made responsible for the defence of the Canal. However, during World War I, navigation through the Canal was interrupted by submarine activities of Germany. But Britain freely used the Canal for her purpose. During the World War II, enemy aviation and submarine activities made navigation in the Canal hazardous for allied states.
The Convention of Constantinople of 1888 was violated.

Since Palestinian War (1948-1949) to the Suez Crises (1956), the Suez Canal was blockaded to Israeli shipping by Egypt on the ground of existence of war between two states. Israel protested against the blockade and complained to the Security Council. Britain, France, the United States and other maritime users, too, protested against the Egyptian blockade as their interests were affected. The Security Council adopted a resolution which condemned Egypt’s blockade. Even then, the blockade was not withdrawn till Tri-aggression (1956).

On July 26, 1956, Nasser declared the nationalisation of the Suez Canal Company upon the payment of adequate compensation for unexpired period. The act of nationalisation was a result of certain chronological events. In 1955, Egypt after Israeli armed raids into Gaza strip, approached the United States for arms but got nothing. Consequently, Egypt approached Czechoslovakia to purchase substantial quantities of arms which materialised. The agreement dramatically changed the situation. The United States and Britain were alarmed. The agreement meant for them Russia presence in Egypt-Czechoslovakia-being an ally of the Soviet Russia. The United States had already been giving
aid to Israel and other Arab states as a device to keep the Soviet Russia out of that region and to maintain influence in those states. But by Czech-Egypt arms deal, Russia gained a firm foothold in the Middle East. Then, the United States with Britain and World Bank proposed to finance the construction of the Aswan Dam. The proposal intended to dissuade Egypt moving closer towards the Soviet Russia. Egypt was holding negotiation with the Soviet Russia and continue to attack the Baghdad pact and anti-Western campaign. This incensed the United States and Britain. Therefore, the United States cancelled the Aswan Dam proposal by citing that Egyptian economy was too unstable to face burden. Britain and World Bank promptly withdrew their offers.

The cancellation of the Aswan Dam proposal annoyed Nasser. He, then, nationalised the Suez Canal Company to build the Aswan Dam from its income. The nationalisation of the Company was a stroke on policy and interests of Britain, France and the United States. The Three Powers challenged the legality of the nationalisation and contended that nationalisation of the Company has avowedly made to serve national purpose rather than international purpose of the Canal. From strict legal point of view, the Suez Canal Company was an Egyptian Company operated in its territory
and governed by the laws and customs of that country (Article 16 of the Firman of 1866). Consequently, nationalisation of the Suez Canal Company, under international law was justified and legal like any other act of nationalisation anywhere in the world (for example nationalisation of Anglo-Iranian oil company). Further, there was no evidence to justify that the Company gave up its international character. The nationalisation accelerated the expiration of the Concession by twelve years but then Nasser promised to pay adequate compensation which was paid in 1958. Nasser’s act was also undoubtedly politically motivated. Nasser nationalised the Canal Company in retaliation for Western refusal to finance the Dam. It was to defy Western influence and interest, and to demonstrate independence and sovereignty of Egypt.

Nationalisation brought a major international crisis. The Three Powers applied economic sanction against Egypt. The British and French governments planned to use force immediately to seize the Canal and allowed their forces to move to Eastern Mediterranean and Cyprus. But their plan was abandoned because the United States did not support the use of force and persuaded both Britain and France for peaceful negotiation. However, negotiation took place but Britain and France were not in favour of
negotiation even when Nasser agreed to negotiate and accepted
the six-principles proposed by Britain. Main objective was
to keep on the fiction of negotiation before resort to
force because Britain and France needed time to make
their armed forces ready and to gain United States support
to get oil supply in case of the Canal blockage or cutting
of pipeline and to stand off the Soviet Russia threat.
The use of force was consistent with their policy through-
out the crisis and decision to do so was taken among
Britain, France and Israel in strict privacy. On October
29, 1956, Israeli forces invaded Egyptian territory which
was later joined by Anglo-French military forces. The
trio-aggression was strongly condemned by the United
States, the Soviet Russia and most of the Arab-Asian
nations. The aggression outraged the feeling of Arab
states. Both the United States and the Soviet Russia
appealed the United States Security Council to consider
steps for an immediate cessation of hostilities and
withdrawal of all foreign powers from Egyptian territory.
The Security Council failed to take concrete action
because of the negative vote cast by Britain and France.
Then, the General Assembly, first time under its Special
Emergency Session, was able to stop war and compelled all
foreign forces from Egyptian territory to withdraw and established UN Emergency Forces in the Suez Canal zones on the consent of Egypt. This was done under the Uniting for Peace Resolution.

Legally, Anglo-French-Israeli military action was in violation of international law and the UN Charter (Article 2, 51, 3 and 4). Their action was in no way in pursuance of UN decision nor on the recommendation of the Security Council. Though they put forward several justifications trying to be fitted into context of international law and right of self-defence. Israeli claimed the right of self-defence against the repeated Fedayeen raids, continued blockade of the Suez Canal and Gulf of Aqaba to its shipping and to the continued threat implied by Egyptian's assertion of existence of war with object of eliminating Israel. But all this do not provide excuse to resort to force in self-defence. Under international law, a state can use force in case of an armed attack only (Article 51 of the UN Charter). The use of force by Israel for the grievances or for future danger was illegal.

Similarly, Britain and France claimed right of "collective self-defence" under Article 51 of the Charter
in order to protect their vital interest. They argued that in order to stop hostilities, to keep open the Canal for traffic, and to establish a regime for the Canal assuring for future freedom of traffic, they are sending their forces. But their claim to act as a "volunteer policemen" could not be justified by international law and the UN Charter. The Member states could not take military action without authorisation of the Security Council. Therefore, the action of all the three states violated the territorial integrity and political independence of Egypt. Consequently, the action of all the three states was against international law. The Tri-aggression was also politically motivated. For them, Nasser became a symbol and apparent source of difficulties. Britain and France were troubled primarily by the erosion of their historic position in the Middle East owing to the series of action and policies taken by Nasser. The nationalisation of the Suez Canal Company further reinforced distrusts and hostility and challenged their historic role and interests. Nasser success was considered by them a threat to undermine Anglo-French interests and encourage other Arab states. If attack had succeeded, Britain would have again occupied the Suez Canal zone, French would be
benefited by the overthrow of Nasser and thereby end Egyptian support for the Algerians; and Israel would annex the Sinai Peninsula to their state and open Suez Canal for shipping. But they failed in their motives. Britain and France lost their position, honour and prestige, British economy jeopardized and the Suez Canal was blocked by Egypt. The Suez Canal and its Company stayed in the unfettered control of Egypt.

Throughout the Suez Crisis, the Soviet Russia supported Egypt against western powers. The main objective of the Soviet Russia was to use the crisis to enhance its position and influence in the Middle East and to divert the attention of the world nations from its own illegal intervention in Hungary.

The United States took an active role in the Suez crisis against her allies - Britain and France. Its policy in the crisis was largely dominated by efforts to resolve the dispute peacefully, to prevent to resort to force, to observe UN Charter principles and obligations. Its support for UN principles was reinforced by many practical and political factors. The basic interests of the United States in the region was to preserve stability
and minimize Soviet penetration as far as possible.

The United States was also deterred from adopting and supporting the Anglo-French action because of its interests in the Panama Canal. Since the United States was not prepared to accept international operation of the Panama Canal which is at strategically very important for her. Therefore, the Suez Canal was not so crucial for its economy but was important in the context of its global strategy and in its struggle to contain the communist Russia. Further, support to its allies would have made condemnations of the Soviet intervention in Hungary difficult. Consequently, the United States pressurised Britain to evacuate from the Suez Canal Zones. It intended to fill the "vacuum." It was the result of the United States attitude during the crisis that Egypt moved closer to the United States since 1973, in spite of many strains (1967 and 1973 Arab-Israeli wars) and made ultimately Camp David Agreement possible.

Since the nationalisation of the Suez Canal Company, navigation of the Canal is governed and regulated by the Egyptian Declaration of 1957, confirming the Convention of Constantinople of 1858. Flags have no meaning; ships of all nation welcome to navigate through the Suez Canal.
APPENDICES
APPENDIX - A

TEXT OF FIRMAN OF CONCESSION

Granted by the Khedive Mohammed Pasha al-Said to
Ferdinand de Lesseps

Our friend Mons. Ferdinand de Lesseps, having called our attention to the advantages which would result to Egypt from the junction of the Mediterranean and Red Seas, by a navigable passage for large vessels, and having given us to understand the possibility of forming a company for this purpose composed of capitalists of all nations; we have accepted the arrangements which he has submitted to us, and by these presents grant him exclusive power for the establishment and direction of a Universal Company, for cutting through the Isthmus of Suez, and the construction of a canal between the two Seas, with authority to undertake or cause to be undertaken all the necessary works and erections, on condition that the Company shall previously indemnify all private persons in case of dispossession for the public benefit. And all within limits, upon the conditions and under the responsibilities, settled in the following Articles.

ARTICLE I:

Mons. Ferdinand de Lesseps shall form a company, the direction of which we confide to him, under the name of the UNIVERSAL SUEZ MARITIME CANAL COMPANY, for cutting through the Isthmus of Suez, the construction of a passage
suitable for extensive navigation, the foundation of appropriation of two sufficient entrances, one from the Mediterranean and the other from the Red Sea, and the establishment of one or two ports.

ARTICLE II:

The Director of the Company shall be always appointed by the Egyptian Government, and selected, as far as practicable, from the shareholders most interested in the undertaking.

ARTICLE III:

The term of the grant is ninety-nine years, commencing from the day of the opening of the Canal of the two Seas.

ARTICLE IV:

The works shall be executed at the sole cost of the Company, and all the necessary land not belonging to private persons shall be granted to it free of cost. The fortifications which the Government shall think proper to establish shall not be at the cost of the Company.

ARTICLE V:

The Egyptian Government shall receive from the Company annually fifteen per cent of the net profits shown
by the balance sheet, without prejudice to the interest and dividends accruing from the share which the Government reserves the right of taking upon its own account at their issue, and without any guarantee on its part either for the execution of the works or for the operations of the Company; the remainder of the net profits shall be divided as follows: Seventy-five per cent to the benefit of the Company; ten per cent to the benefit of the members instrumental in its foundation.

ARTICLE VI:

The tariffs of dues for the passage of the Canal of Suez, to be agreed upon between the Company and the Viceroy of Egypt, and collected by the Company's agents, shall be always equal for all nations; no particular advantage can ever be stipulated for the exclusive benefit of any one country.

ARTICLE VII:

In case the Company should consider it necessary to connect the Nile by a navigable cut with the direct passage of the Isthmus, and in case the Maritime Canal should follow an indirect course, the Egyptian Government will give up to the Company the uncultivated lands belonging to the public domain, which shall be irrigated and cultivated at the expense of the Company, or by its instrumentality.

The Company shall enjoy the said lands for ten years free of taxes, commencing from the day of the opening of the canal; during the remaining eighty-nine years of the grant, the Company shall pay tithes to the Egyptian
Government, after which period it cannot continue in possession of the lands above mentioned without paying to the said Government an impost equal to that appointed for lands of the same description.

ARTICLE VIII:

To avoid all difficulty on the subject of the lands which are to be given up to the Company, a plan drawn by M. Linant Bey, our Engineer Commissioner attached to the Company, shall indicate the lands granted both for the line and the establishments of the Maritime Canal and for the alimentary Canal from the Nile, as well as for the purpose of cultivation, conformably to the stipulations of Article VII.

It is moreover understood, that all speculation is forbidden from the present time, upon the lands to be granted from the public domain, and that the lands previously belonging to private persons and which the proprietors may hereafter wish to have irrigated by the waters of the alimentary Canal, made at the cost of the Company, shall pay a rent of... per feddan cultivated (or a rent amicably settled between the Government and the Company).

ARTICLE IX:

The Company is further allowed to extract from the mines and quarries belonging to the public domain, any materials necessary for the works of the canal and the erections connected therewith, without paying dues; it
shall also enjoy the right of free entry for all machines and materials which it shall import from abroad for the purposes of carrying out this grant.

ARTICLE X:

At the expiration of the Concession the Egyptian Government will take the place of the Company, and enjoy all its rights without reservation, the said Government will enter into full possession of the Canal of the two Seas, and of all the establishments connected therewith. The indemnity to be allowed the Company for the relinquishment of its plant and moveables, shall be arranged by amicable agreement or by arbitration.

ARTICLE XI:

The statutes of the Society shall be moreover submitted to us by the Director of the Company, and must have the sanction of our approbation. Any modifications that may be hereafter introduced must previously receive our sanction. The said statutes shall set forth the names of the founders, the list of whom we reserve to ourselves the right of approving. This list shall include those persons who labours, studies, exertions or capital have previously contributed to the execution of the grand undertaking of the Canal of Suez.

ARTICLE XII:

Finally, we promise our true and hearty co-operation, and that of all the functionaries of Egypt in facilitating
the execution and x carrying out of the present powers.

To my attached friend

FERDINAND DE LESSEPS

of high birth and elevated rank

Cairo, 30th November, 1954.

The grant made to the Company having to be ratified by his Imperial Majesty the Sultan, I send you this copy that you may keep it in your possession. With regard to the works connected with the excavation of the Canal of Suez, they are not to be commenced until after they are authorised by the Sublime Porte.

3 Ramadan, 1271

(The Viceroy's Seal)

A true translation of the Turkish text

KOENIG BEY,
Secretary of Mandates to
His Highness the Viceroy.

Alexandria, May 19th, 1855.
APPENDIX - B

CHARTER OF CONCESSION AND BOOK OF CHARGES

for the Construction and Working of

THE SUEZ GRAND MARITIME CANAL AND DEPENDENCIES

We Mohammed-Said Pasha, Viceroy of Egypt, considering
our charter bearing date the 30th November, 1954, by which
we have granted to our friend M. Ferdinand de Lesseps
exclusive power to constitute and direct a Universal Company
for cutting the Isthmus of Suez, opening a passage suitable
for large vessels, forming or adapting two sufficient entrances,
one on the Mediterranean, the other on the Red Sea, and
establishing one or two ports, as the case may be:

M. Ferdinand de Lesseps, having represented to us
that in order to constitute a company as above described
under the forms and conditions generally adopted for companies
of that nature, it is expedient to stipulate beforehand
by a fuller and more specific document, the burdens,
obligations, and services to which that company will be
subjected on the one part, and the concessions, immunities,
and advantages to which it will be entitled, as also the
facilities which will be accorded to it for its administra-
tion, on the other part:

Have decreed as follows the conditions of the
concession which is the subject matter of these presents.
I CHARGES

ARTICLE I:

The Company founded by our friend M. Ferdinand de Lesseps in virtue of our charter of the 30th November, 1854, shall execute at its own cost, risk, and damage all the necessary works and constructions for the establishment of:

1st A canal navigable by large vessels between Suez on the Red Sea, and the Gulf of Pelusium on the Red Sea, and the Gulf of Pelusium on the Mediterranean;

2nd A canal of irrigation adapted to the river traffic of the Nile, joining that river to the above-mentioned Maritime Canal;

3rd Two branches for irrigation and supply, striking out of the preceding canal, and in the direction respectively of Suez and Pelusium.

The works shall be completed within the period of six years, unavoidable hindrances and delays excepted.

ARTICLE II:

The Company shall have the right to execute the works they have undertaken, themselves and under their own management, or to cause them to be executed by contractors by means of public tender or private contract under penalties. In all cases, four-fifths of the workmen employed upon these works shall be Egyptians.
ARTICLE III:

The Canal navigable by large vessels shall be constructed of the depth and width fixed by the scheme of the International Scientific Commission.

Conformably with this scheme, it will commence at the port of Suez; it will pass through the basin of the Bitter Lakes and Lake Timsah, and will debouch into the Mediterranean at whatever point in the Gulf of Pelusium may be determined in the final plans to be prepared by the engineers of the Company.

ARTICLE IV

The Canal of Irrigation adapted to the river traffic, according to the terms of the said scheme, shall commence in the vicinity of the city of Cairo, follow the Wadi Tumilat (ancient land of Goshen), and will fall into the Grand Maritime Canal at Lake Timsah.

ARTICLE V:

The branches from the above Canal shall strike out from it above the debouchure into Lake Timsah, from which point they shall proceed, on one side to Suez, and on the other to Pelusium, parallel to the Grand Maritime Canal.

ARTICLE VI:

Lake Timsah shall be converted into an inland harbour capable of receiving vessels of the highest tonnage.

The Company shall moreover be bound, if necessary:
1st To construct a harbour of refuge at the entrance of
the Maritime Canal into the Gulf of Pelusium;
2nd To improve the port and roadstead of Suez so that
it shall equally afford a shelter to vessels.

ARTICLE VII:

The Maritime Canal, the ports connected therewith
as also the Junction Canal of the Nile and the branch
canals, shall be permanently maintained in good condition
by the Company and at their expense.

ARTICLE VIII:

The owners of contiguous lands desirous of irrigating
their property by means of water courses from the Company's
canals shall obtain permission so to do in consideration
of the payment of an indemnity or rent, the amount whereof
shall be fixed according to Article 17 hereinafter recited.

ARTICLE IX:

We reserve the right of appointing at the official
headquarters of the Company a special commissioner, whose
salary they shall pay and who shall represent at the Board
of Direction the rights and interests of the Egyptian
Government in the execution of these presents.

If the principal office of the Company be established
elsewhere than in Egypt, the Company shall be represented at
Alexandria by a superior agent furnished with all necessary powers for securing the proper management of the concern and the relations of the Company with our Government.

II. CONCESSIONS

ARTICLE X:

For the construction of the Canals and their dependencies mentioned in the foregoing articles, the Egyptian Government grants to the Company free of impost or rent, the use and enjoyment of all lands not the property of individuals which may be found necessary.

It likewise grants to the Company the use and enjoyment of all uncultivated lands not the property of individuals which shall have been irrigated and cultivated by their care and at their expense, with these provisos:

1st That lands comprised under the latter head shall be free of impost during ten years only, to date from their being put in a productive condition;

2nd That after that period they shall be subject for the remainder of the term of concession, to the same obligations and imposts to which are subjected under like circumstances, the lands in other provinces of Egypt;

3rd That the Company shall afterwards, themselves or through their agents, continue in the use and enjoyment of these lands and the water-courses necessary
to their fertilisation, subject to payment to the
Egyptian Government of the imposts assessed upon
lands under like conditions.

ARTICLE XI:

For determining the area and boundaries of the
lands conceded to the Company under Article X, reference
is made to the plans hereunto annexed, in which plans the
lands conceded for the construction of the Canals and their
dependencies free of impost or rent, conformably to clause
1 is coloured black, and the land conceded for the purpose
of cultivation, on paying certain duties conformably with
Clause 2 is coloured blue.

All acts and deeds done subsequently to our charter
of the 30th November, 1854, the effect of which would be to
give to individuals as against the company either claims
to compensation which were not then vested in the ownership
of the lands, or claims to compensation more considerable
than those which the owners could then justly advance,
shall be considered void.

ARTICLE XII:

The Egyptian Government will deliver to the Company
should the case arise, all lands the property of private
individuals, whereof possession should be necessary for
the execution of the works and the carrying into effect of
the concession, subject to the payment of just compensation
to the parties concerned.
Compensation for temporary occupation or definitive appropriation shall as far as possible be determined amicably; in case of disagreement the terms shall be fixed by a court of arbitration deciding summarily and composed of:

1st An arbitrator chosen by the Company;
2nd An arbitrator chosen by the interested parties;
3rd A third arbitrator appointed by us.

The decisions of the court of arbitration shall be executed without further process, and subject to no appeal.

ARTICLE XIII:

The Egyptian Government grants to the leasing Company, for the whole period of the concession, the privilege of drawing from the mines and quarries belonging to the public domain, without paying duty, impost, or compensation, all necessary materials for the construction and maintenance of the works and buildings of the undertaking. It moreover exempts the Company from all duties of customs, entrance dues and other, on the importation into Egypt of all machinery and materials whatsoever which they shall bring from foreign countries for employment in the construction of the works or working the undertaking.

ARTICLE XIV:

We solemnly declare for our part and that of our successors, subject to the ratification of His Imperial Majesty the Sultan, that the Grand Maritime Canal from Suez
Pelusium and the ports appertaining thereto, shall always remain open as a neutral passage to every merchant ship crossing from one sea to another, without any distinction, exclusion, or preference of persons or nationalities, on payment of the dues and observance of the regulations established by the Universal Company lessee for the use of the said canal and its dependencies.

ARTICLE XV:

In pursuance of the principle laid down in the foregoing Article, the Universal Company can in no case grant to any vessel, company, or individual, any advantage or favour not accorded to all other vessels, companies, or individuals on the same conditions.

ARTICLE XVI:

The term of the Company's existence is fixed at 99 years reckoning from the completion of the works and the opening of the Maritime canal to large vessels.

At the expiration of the said term, the Egyptian Government shall enter into possession of the Maritime Canal constructed by the Company, upon condition, in that event, of taking all the working stock and appliances and stores employed and provided for the naval department of the enterprise, and paying to the Company such amount for the same as shall be determined either amicably or by the decision of sworn appraisers.

Nevertheless, if the Company should retain the concession for a succession of terms of 99 years, the amount
stipulated to be paid to the Egyptian Government by 
Article XVIII, hereinafter recited, shall be raised for the 
second term to 20 per cent, for the third term to 25 
per cent, and so on augmenting at the rate of 5 per cent 
for each term, but so as never to exceed on the whole 
35 per cent of the net proceeds of the undertaking.

ARTICLE XVII:

To indemnify the Company for the expenses of 
construction, maintenance and working, charged upon them 
by these presents, we authorise the Company henceforth, 
and during the whole term of their lease, as determined by 
Clauses 1 and 3 of the preceding Article, to levy and 
receive for passage through and entrance into the canals 
and ports thereunto appertaining, tolls and charges for 
navigation, pilotage, towage or harbour dues, according 
to tariffs which they shall be at liberty to modify at all 
times, upon the following express conditions:

1st That these dues be collected, without exception 
or favour, from all ships under like conditions;

2nd That the tariffs be published three months 
before they come into force, in the capitals 
and principal commercial ports of all nations 
whom it may concern;

3rd That for the simple right of passage through 
the Canal the maximum toll shall be ten francs 
per measurement ton on ships and per head on 
passengers, and that the same shall never be 
exceeded.
The Company may also, for granting the privilege of establishing water-courses, upon the request of individuals by virtue of Article VIII, receive dues, according to tariffs to be hereafter settled, proportionable to the quantity of water diverted and the extent of the lands irrigated.

ARTICLE XVIII:

Nevertheless in consideration of the concessions of land and other advantages accorded to the Company by the preceding Articles, we reserve on behalf of the Egyptian Government a claim of 15 per cent on the net profits of each year, accord to the dividend settled and declared by the General Meeting of Shareholders.

ARTICLE XIX:

The list of Foundation Members who have contributed by their exertions, professional labours, and capital to the realisation of the undertaking before the establishment of the Company, shall be settled by us.

After the said payment to the Egyptian Government, according to Article XVIII above recited, there shall be divided out of the net annual profits of the undertaking one share of 10 per cent among the Foundation Members or their heirs or assigns.

ARTICLE XX:

Independently of the time necessary for the execution of the works, our friend and authorised agent, M. Ferdinand de Lesseps, shall preside over and direct the Company, as
original founder, during ten years from the first day
on which the term of concession for 99 years shall begin
to run, by the terms of Article XVI above contained.

ARTICLE XXI:

The Articles of Association hereunto annexed of the
Company established under the title of THE SUEZ MARITIME CANAL
UNIVERSAL COMPANY, are hereby approved, and the present
approval shall have force as an authority for its constitu-
tion in the form of Societes Anonymes to date from the
day when the entire capital of the Company shall be completely
subscribed.

ARTICLE XXII:

In witness of the interest which we feel in the success
of the undertaking, we promise to the Company the loyal
co-operation of the Egyptian Government, and we expressly,
by these presents, call upon the functionaries and agents
of all our administrative departments to give aid and prote-
cction at all times to the Company.

Our engineers, Linant-Bey and Mougel-Bey, whose
services we place at the disposal of the Company for the
direction and conduct of the works ordered by the said
Company, shall have the superintendence of the workmen,
and shall be charged with the enforcing of regulations
respecting the execution of the works.

ARTICLE XXIII:

All provisions of our charter of the 30th November,
1854, and others which are inconsistent with the clauses
and conditions of the present book of charges, which alone
shall constitute the law in respect of the concession to
which it applies, are hereby revoked.

Done at Alexandria, 5th January, 1856.

To my devoted friend of high birth and elevated rank,

Mons. Ferdinand de Lisseps.

The concession accorded to the Suez Canal Universal
Company, requiring the ratification of His Imperial Majesty
the Sultan, I remit you this authentic copy in order that
you may constitute the said Financial Company. As regards
the works for cutting the Isthmus, the Company may execute
them as soon as the authorisation of the Sublime Porte has
been accorded to me.

Alexandria, the 26 Rebi-al-akher, 1272 (5th Jan., 1856)

(The Viceroy's Seal.)

Translated according to the original in the Turkish
language, deposited in the Archives of the Cabinet.

Kornig Bey,
Secretary of Mandates to
His Highness the Viceroy.
APPENDIX - C

TEXT OF CONVENTION

Between Great Britain, Germany, Austria-Hungary, Spain, France, Italy, The Netherlands, Russia, and Turkey, respecting the free navigation of the Suez Maritime Canal. Signed at Constantinople, October 29, 1888.

ARTICLE I:

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal in time of war as in time of peace.

The Canal shall never to be subjected to the exercise of the right of blockade.

ARTICLE II:

The High Contracting Parties, recognising that the Fresh Water Canal is indispensable to the Maritime Canal take note of the engagements of His Highness the Khedive towards the Universal Suez Canal Company as regards the Fresh Water Canal, which engagements are stipulated in a Convention bearing the date of 18th March, 1963, containing an expose and four articles.
They undertake not to interfere in any way with the security of that Canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

ARTICLE III:

The High Contracting Parties likewise undertake to respect the plant, establishments, buildings, and works of the Maritime Canal and of the Fresh Water Canal.

ARTICLE IV:

The Maritime Canal remaining open in time of war as a free passage, even to ships of war of belligerents, according to the terms of Article I of the present Treaty, the High Contracting Parties agree that no right of war, no act of hostility, nor any act having for its object to obstruct the free navigation of the Canal, shall be committed in the Canal and its ports of access, as well as within a radius of three marine miles from those ports, even though the Ottoman Empire should be one of the belligerent Powers.

Vessels of war of belligerents shall not revictual or take in stores in the Canal and its ports of access, except in so far as may strictly necessary. The transit of the aforesaid vessels through the Canal shall be effected with the least possible delay, in accordance with the Regulations in force, and without any other intermission than that resulting from the necessities of the service.

Their stay at Port Said and in the roadstead of Suez shall not exceed twenty-four hours, except in case of distress.
In such case they shall be bound to leave as soon as possible. An interval of twenty-four hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile Power.

ARTICLE V:

In time of war belligerent Powers shall not disembark nor embark within the Canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the Canal, men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

ARTICLE VI:

Prizes shall be subjected, in all respects, to the same rules as the vessels of war of belligerents.

ARTICLE VII:

The Powers shall not keep any vessel of war in the waters of the Canal (including Lake Timsah and the Bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Said and Suez, the number of which shall not exceed two for each Power.

This right shall not be exercised by belligerents.

ARTICLE VIII:

The Agents in Egypt of the Signatory Powers of the present Treaty shall be charged to watch over its execution.
In case of any event threatening the security or the free passage of the Canal, they shall meet on the summons of three of their number under the presidency of their Doyen, in order to proceed to the necessary verifications. They shall inform the Khedival Government of the danger which they may have perceived, in order that Government may take proper steps to insure the protection and the free use of the Canal.

Under any circumstances, they shall meet once a year to take note of the due execution of the Treaty.

The last-mentioned meetings shall take place under the presidency of a Special Commissioner nominated for that purpose by the Imperial Ottoman Government. A Commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman Commissioner.

They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the Canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

ARTICLE IX:

The Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present Treaty, take the necessary measures for insuring the execution of the said Treaty.

In case the Egyptian Government shall not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary
measures to respond to such appeal; shall give notice thereof to the Signatory Powers of the Declaration of London of the 17th March, 1885; and shall, if necessary concert with them on the subject.

The provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which shall be taken in virtue of the present Article.

ARTICLE XI

Similarly, the provisions of Articles IV, V, VII, and VIII, shall not interfere with the measures which His Majesty the Sultan and His Highness the Khedive, in the name of His Imperial Majesty, and within the limits of the Firmans granted, might find it necessary to take for securing by their own forces the defence of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this Article provides, the Signatory Powers of the Declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four Articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defence of its other possessions situated on the eastern coast of the Red Sea.
ARTICLE XI:

The measures which shall be taken in the cases provided for by Articles IX and X of the present Treaty shall not interfere with the free use of the Canal. In the same cases, the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

ARTICLE XII:

The High Contracting Parties, by application of the principle of equality as regards the free use of the canal, a principle which forms one of the bases of the present Treaty, agree that none of them shall endeavour to obtain with respect to the Canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover, the rights of Turkey as the territorial Power are reserved.

ARTICLE XIII:

With the exception of the obligations expressly provided by the clauses of the present Treaty, the sovereign rights of His Imperial Majesty the Sultan and the rights and immunities of His Highness the Khedive, resulting from the Firmans, are in no way affected.

ARTICLE XIV:

The High Contracting Parties agree that the engagements resulting from the present Treaty shall not be limited by the duration of the Acts of Concession of the Universal Suez Canal Company.
ARTICLE XV:

The stipulations of the present Treaty shall not interfere with the sanitary measures in force in Egypt.

ARTICLE XVI:

The High Contracting Parties undertake to bring the present Treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

ARTICLE XVII:

The present Treaty shall be ratified, and the ratifications shall be exchanged at Constantinople, within the space of one month, or sooner, if possible.

In faith of which the respective Plenipotentiaries have signed the present Treaty, and have affixed to it the seal of their arms.

Done at Constantinople, the 29th day of the month of October, in the year 1888.
APPENDIX - D

ANGLO EGYPTIAN AGREEMENT OF AUGUST 26, 1936

Treaty of Alliance between His Majesty, in respect of the United Kingdom, and His Majesty the King of Egypt.

(Ratifications exchanged at Cairo on December 22, 1936)

ARTICLE VIII

In view of the fact that the Suez Canal, whilst being an integral part of Egypt, is a universal means of communication as also an essential means of communication between the different parts of the British Empire, His Majesty the King of Egypt, until such time as the High Contracting Parties agree that the Egyptian Army is in a position to ensure by its own resources the liberty and entire security of navigation of the Canal, authorises His Majesty The King and Emperor to station forces in Egyptian territory in the vicinity of the Canal, in the zone specified in the Annex to this Article, with a view to ensuring in co-operation with the Egyptian forces the defence of the Canal. The detailed arrangements for the carrying into effect of this Article are contained in the Annex hereto. The presence of these forces shall not constitute in any manner an occupation and will in no way prejudice the sovereign rights of Egypt.
It is understood that at the end of the period of twenty years specified in Article 16 the question whether the presence of British forces is no longer necessary owing to the fact that the Egyptian army is in a position to ensure by its own resources the liberty and entire security of navigation of the Canal may, if the High Contracting Parties do not agree thereon, be submitted to the Council of the League of Nations for decision in accordance with the provisions of the Covenant in force at the time of signature of the present treaty or to such other person or body of persons for decision in accordance with such other procedure as the High Contracting Parties may agree.

(Articles and Annexe to Article VIII omitted)
APPENDIX - E

ANGLO-EGYPTIAN AGREEMENT REGARDING THE SUEZ CANAL
BASE, OCTOBER 19, 1954

Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Egyptian Government Regarding the Suez Canal Base

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Egypt,

Desiring to establish Anglo-Egyptian relations on a new basis of mutual understanding and firm friendship,

Have agreed as follows:

ARTICLE 1:

Her Majesty's Forces shall be completely withdrawn from Egyptian territory in accordance with the Schedule set forth in Part A of Annex I within a period of twenty months from the date of signature of the present Agreement.

ARTICLE 2:

The Government of the United Kingdom declare that the Treaty of Alliance signed in London on the 26th of August, 1936, with the Agreed Minute, Exchanged Notes, Convention concerning the immunities and privileges enjoyed by the British Forces in Egypt and all other subsidiary agreements, is terminated.
ARTICLE 3:

Part of the present Suez Canal Base, which are listed in Appendix A to Annex II, shall be kept in efficient working order and capable of immediate use in accordance with the provisions of Article 4 of the present Agreement. To this end they shall be organised with the provisions of Annex II.

ARTICLE 4:

In the event of an armed attack by an outside Power on any country which at the date of signature of the present Agreement is a party to the Treaty of Joint Defence between Arab League States, signed in Cairo on the 13th of April, 1950, or on Turkey, Egypt shall afford to the United Kingdom such facilities as may be necessary in order to place the Base on a war footing and to operate it effectively. These facilities shall include the use of Egyptian ports within the limits of what is strictly indispensable for the above-mentioned purposes.

ARTICLE 5:

In the event of the return of British Forces to the Suez Canal Base area in accordance with the provisions of Article 4, these forces shall withdraw immediately upon the cessation of the hostilities referred to in that Article.

ARTICLE 6:

In the event of a threat of an armed attack by an outside Power on any country which at the date of signature
of the present Agreement is a party to the Treaty of Joint Defence between Arab League States or on Turkey, there shall be immediate consultation between Egypt and the United Kingdom.

ARTICLE 7:

The Government of the Republic of Egypt shall afford over-flying, landing and servicing facilities for notified flights of aircraft under Royal Air Force control. For the clearance of any flights of such aircraft, the Government of the Republic of Egypt shall accord treatment no less favourable than that accorded to the aircraft of any other foreign country with the exception of States parties to the Treaty of Joint Defence between Arab League States. The landing and servicing facilities mentioned above shall be afforded at Egyptian Airfields in the Suez Canal Base area.

ARTICLE 8:

The two contracting Governments recognise that the Suez Maritime Canal, which is an integral part of Egypt, is a waterway economically, commercially and strategically of international importance, and express the determination to uphold the Convention guaranteeing the freedom of navigation of the Canal signed at Constantinople on the 29th of October, 1888.

ARTICLE 9:

a) The United Kingdom is accorded the right to move and British equipment into or out of the Base at its discretion
b) There shall be no increase above the level of supplies as agreed upon in Part C of Annex II without the consent of the Government of the Republic of Egypt.

ARTICLE 10:

The present Agreement does not affect and shall not be interpreted as affecting in any way the rights and obligations of the Parties under the Charter of the United Nations.

ARTICLE 11:

The Annexes and Appendices to the present Agreement shall be considered as an integral part of it.

ARTICLE 12:

a) The present Agreement shall remain in force for the period of seven years from the date of its signature.

b) During the last twelve months of that period the two Contracting Governments shall consult together to decide on such arrangements as may be necessary upon the termination of the Agreement.

c) Unless both the Contracting Governments agree upon any extension of the Agreement it shall terminate seven years after the date of signature and the Government of the United Kingdom shall take away
or dispose of their property then remaining in the Base.

ARTICLE 13:

The present Agreement shall have effect as though it had come into force on the date of signature. Instruments of ratification shall be exchanged in Cairo as soon as possible.

In witness whereof the undersigned, being duly authorised thereto have signed the present Agreement and have affixed thereto their seals.

Done at Cairo, this nineteenth day of October, 1954, in duplicate, in the English and Arabic languages, both texts being equally authentic.

(Annexes and appendices omitted)
NATIONALIZATION LAW

July 26, 1956

Law No. 285 of 1956 Nationalizing the Universal Company of the Suez Maritime Canal

In the Name of the Nation.
The President of the Republic;
Having regard to the two Firmans of the 30th November 1854 and of the 5th January 1856 on the subject of a concession relative to passage in the Suez Canal and of the establishment of an Egyptian joint stock company for that purpose;
Having regard to Law No. 192 of 1947, relative to the concession of public services;
Having regard to Law No. 317 of 1952, relative to individual contracts of work;
Having regard to Law No. 26 of 1954, relative to joint-stock companies, limited partnerships and to limited liability companies;
The council of State having been consulted;

ARTICLE I:

The Universal Suez Maritime Canal Company S.A.E. is hereby nationalized. All its funds and rights and obligations connected therewith are transferred to the State. All bodies and committees at present existing for
its administration are dissolved. Shareholders and holders of foundation bonds will be compensated for the shares and bonds they possess, at their value estimated at the closing rate on the Paris Bourse prior to the date on which this Law entered into effect. Payment of this compensation shall take place after completion of the handover to the State of all the funds and property of the nationalized company.

ARTICLE II:

An independent body shall undertake the management of the traffic in the Suez canal. This body shall be a juristic person and shall be attached to the Ministry of Commerce. A decision shall be issued by the President of the Republic for the formation of this body, which shall have in the administration of this utility all the necessary powers for this end without being bound by Government rules and regulations. Without prejudice to the control of the State audit over the final balance sheet the body shall have an independent budget drafted on the lines followed in commercial enterprises. The financial year shall begin on July 1 and end on the last day of June each year. The budget and the final balance sheet shall be approved by a decision of the President of the Republic. The first financial year will begin from the date of the entering into effect of this law and will end on the last day of June, 1957. The body is authorized to delegate one or more of its members to carry out its decisions or to carry out whatever, tasks it entrusts to him or them. It is authorized to form from amongst
its members and other, technical committees to assist it in researches and studies. The body shall be represented by its president before judicial, governmental and other quarters, and in its transactions with others.

ARTICLE III:

All funds and rights of this nationalized company in the Republic of Egypt and abroad shall be frozen. Banks, bodies and individuals are forbidden to dispose of these funds in any way or to spend any sums or to settle any claim or liabilities except by a decision of the body provided for in Article II.

ARTICLE IV:

The body shall retain all the present officials, employees, workmen of the nationalized company. They must continue to carry out their duties. No one of them is in any way or for any reason, authorized to leave or relinquish his post except with the permission of the body provided for in Article II.

ARTICLE V:

He who contravenes the rules of Article II shall be punished with imprisonment and fine equal to three times the amount involved in the case. He who contravenes the rules of Article IV shall be punished with imprisonment in addition to his being deprived of any right to gratuity, pension or compensation.
ARTICLE VI:

This decree shall be published in the Official Gazette and shall have the power of law. It shall enter into effect on the date of its publication. The Minister of Commerce is to issue the necessary decisions for its execution.

The present decision shall bear the seal of the State and shall be executed as one of its laws.

DECISION

The President of the Republic

Having regard to Article Two of Law No. 285 of 1956 relative to the nationalization of the Universal Company of the Suez Maritime Canal

DECIDES

Art. 1 The composition of the authority for the administration of the Suez Canals:

(Here follows a list of 12 names)

Art. 2 The Minister of Commerce is charged with the execution of the present decision, which will enter into force on the date of its publication (26.7.1956).

(Gamal Abdel Nasser.)
DECLARATION ON THE SUEZ CANAL

APRIL 24, 1957

In elaboration of the principles set forth in their memorandum dated March 18, 1957, the Government of Egypt, in accord with the Constantinople Convention of 1888 and the charter of United Nations, make hereby the following Declaration on the Suez Canal and the arrangements for its operation.

Reaffirmation of Convention:

1. It remains the unaltered policy and firm purpose of the Government of Egypt to respect the terms and the spirit of the Constantinople Convention of 1888 and the right and obligations arising therefrom. The Government of Egypt will continue to respect, observe and implement them.

2. Observance of the Convention and of the Charter of the United Nations:

While reaffirming their determination to respect the terms and the spirit of the Constantinople Convention of 1888 and to abide by the Charter and the principles and purposes of the United Nations, the Government of
Egypt are confident that the other signatories of
the said Convention and all others concerned will be
guided by the same resolve.

3. Freedom of navigation, tolls and development of the
Canal:

The Government of Egypt are more particularly
determined:

a) To afford and maintain free and uninterrupted
navigation for all nations within the limits of and in
accordance with the provisions of the Constantinople
convention of 1888;

b) That tolls shall continue to be levied in accordance
with the last agreement, concluded on April 28, 1936,
between the Government of Egypt and the Suez Canal
Maritime Company, and that any increase in the current
rate of tolls within any twelve months, if it takes
place, shall be limited to 1 per cent, any increase
beyond that level to be the result of negotiations,
and failing agreement, be settled by arbitration ac-

c) That the Canal is maintained and development in
accordance with the progressive requirements of modern
navigation and that such maintenance and development shall include the 8th and 9th program of the Suez Canal Maritime Company and such improvements to them as are considered necessary.

4. Operation and Management:

The canal will be operated and managed by the autonomous Suez Canal Authority established by the Government of Egypt on July 26, 1956. The Government of Egypt are looking forward with confidence to continued co-operation with the nations of the world in advancing the usefulness of the canal. To that end the Government of Egypt would welcome and encourage co-operation between the Suez Canal Authority and representatives of shipping and trade.

5. Financial arrangements:

a) Tolls shall be payable in advance to the account of the Suez Canal Authority at any bank as may be authorised by it. In pursuance of this, the Suez Canal Authority has authorised the National Bank of International settlement to accept on its behalf payment of the canal tolls.
b) The Suez Canal Authority shall pay to the Government of Egypt 5 per cent of all the gross receipts as royalty.

c) The Suez Canal Authority will establish a Suez Canal Capital and Development Fund into which shall be paid 25 per cent of all gross receipts. This fund will assure that these shall be available to the Suez Canal Authority adequate resources to meet the needs of development and Capital expenditure for the fulfillment of the responsibilities they have assumed and are fully determined to discharge.

6. Canal Code:

The regulations governing the Canal, including the details of its operation, are embodied in the canal code, which is the law of the Canal. Due notice will be given of any alteration in the code, and any such alteration, if it affects the principles and commitments in this Declaration and is challenged or complained against for that reason, shall be dealt with in accordance with the procedure set forth in paragraph (7) (b).
7. Discrimination and Complaints relating to the Canal Code:

a) In pursuance of the principles laid down in the Constantinople Convention of 1856, the Suez Canal Authority, by the terms of its charter can be in no case grant any vessels, company or other party any advantage or favour not accorded to other vessels, companies or parties on the same conditions.

b) Complaints of discrimination or violation of the canal code shall be sought to be resolved by the complaining party by reference to the Suez Canal Authority. In the event that such a reference does not resolve the party or the Authority, to an arbitration tribunal composed of one nominee of the complaining party, one of the Authority and a thirds to be choosen by both. In case of disagreement. Such third member will be choosen by the President of the International Court of Justice upon the application of either party.

c) The decision of the arbitration tribunal shall be made by a majority of its members. The decision shall be binding upon the parties when they are
rendered and they must be carried out in good faith.

d) The Government of Egypt will study further appropriate arrangements that could be made for fact finding, consultation and arbitration on complaints relating to the canal code.

3. Compensation and Claims:

The question of compensation and claims in connection with the nationalisation of the Suez Canal Maritime Company shall, unless agreed between the parties concerned, be referred to arbitration in accordance with the established international practice.

9. Disputes, Disagreements or differences arising out of the Convention and this Declaration:

a) Disputes or disagreements arising in respect of the Constantinople Convention of 1888 or this Declaration shall be settled in accordance with the Charter of the United Nations.

b) Differences arising between the parties to the said Convention in respect of the interpretation or the applicability of its provision, if not otherwise resolved, will be referred to the
International Court of Justice. The Government of Egypt would take the necessary steps in order to accept the compulsory jurisdiction of the International Court of Justice in conformity with the provisions of Art. 36 of its statute.

10. Status of this Declaration:

The Government of Egypt make this declaration which re-affirms and is in full accord with the terms and spirit of the Constantinople Convention of 1888, as an expression of their desire and determination to enable the Suez Canal to be an efficient and adequate waterway linking the nations of the world and serving the cause of peace and prosperity.

This declaration, with the obligations therein, constitute an international instrument and will be deposited and registered with the Secretariat of the United Nations.
## APPENDIX - H

### TABLE I: SUEZ CANAL TRAFFIC, 1869 - 1983

Total Transits and Tonnage

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</tr>
<tr>
<td>1954</td>
<td>13,215</td>
<td>102,493,851</td>
</tr>
<tr>
<td>1955</td>
<td>14,668</td>
<td>115,756,398</td>
</tr>
<tr>
<td>1956</td>
<td>13,291</td>
<td>107,006,000</td>
</tr>
<tr>
<td>1957(Apr./Dec.)</td>
<td>10,958</td>
<td>89,911</td>
</tr>
<tr>
<td>Year</td>
<td>Total Number of Transits</td>
<td>Net Suez Tonnage</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>1958</td>
<td>17,342</td>
<td>154,479</td>
</tr>
<tr>
<td>1959</td>
<td>17,731</td>
<td>163,386</td>
</tr>
<tr>
<td>1960</td>
<td>18,734</td>
<td>185,322</td>
</tr>
<tr>
<td>1961</td>
<td>18,148</td>
<td>187,059</td>
</tr>
<tr>
<td>1962</td>
<td>18,513</td>
<td>197,837</td>
</tr>
<tr>
<td>1963</td>
<td>19,146</td>
<td>210,498</td>
</tr>
<tr>
<td>1964</td>
<td>19,943</td>
<td>227,991</td>
</tr>
<tr>
<td>1965</td>
<td>20,289</td>
<td>246,317</td>
</tr>
<tr>
<td>1966</td>
<td>21,250</td>
<td>274,250</td>
</tr>
<tr>
<td>1967 (Jan-May)</td>
<td>9,652</td>
<td>127,825</td>
</tr>
<tr>
<td>1976</td>
<td>16,806</td>
<td>187,759</td>
</tr>
<tr>
<td>1977</td>
<td>19,703</td>
<td>220,477</td>
</tr>
<tr>
<td>1978</td>
<td>21,266</td>
<td>242,260</td>
</tr>
<tr>
<td>1979</td>
<td>20,363</td>
<td>266,171</td>
</tr>
<tr>
<td>1980</td>
<td>20,795</td>
<td>281,305</td>
</tr>
<tr>
<td>1981</td>
<td>21,577</td>
<td>324,356</td>
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<tr>
<td>1982</td>
<td>22,545</td>
<td>363,538</td>
</tr>
<tr>
<td>1983</td>
<td>25,000</td>
<td>n.a.</td>
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</table>

n.a. - not available.
### TABLE II: COMPARATIVE DISTANCES IN SEA

#### MILES AND DAYS

<table>
<thead>
<tr>
<th>Sea Routes</th>
<th>Miles</th>
<th>Days</th>
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<tbody>
<tr>
<td></td>
<td>Via Suez</td>
<td>Via Cape</td>
</tr>
<tr>
<td></td>
<td>Via Suez</td>
<td>Via Cape</td>
</tr>
<tr>
<td>London to Persian Gulf</td>
<td>6,400</td>
<td>11,300</td>
</tr>
<tr>
<td>London to Bombay</td>
<td>6,014</td>
<td>3,695</td>
</tr>
<tr>
<td>London to Bombay</td>
<td>6,260</td>
<td>10,720</td>
</tr>
<tr>
<td>London to Calcutta</td>
<td>7,933</td>
<td>11,450</td>
</tr>
<tr>
<td>London to Colombo</td>
<td>6,702</td>
<td>10,350</td>
</tr>
<tr>
<td>London to Singapore</td>
<td>8,240</td>
<td>11,575</td>
</tr>
<tr>
<td>London to Penang</td>
<td>7,950</td>
<td>11,285</td>
</tr>
<tr>
<td>London to Sydney</td>
<td>11,630</td>
<td>12,450</td>
</tr>
<tr>
<td>London to Wellington</td>
<td>12,650</td>
<td>13,250</td>
</tr>
<tr>
<td>London to Hongkong</td>
<td>9,860</td>
<td>13,015</td>
</tr>
<tr>
<td>Netherlands to Indonesia</td>
<td>9,502</td>
<td>11,150</td>
</tr>
<tr>
<td>Naples to Basawa Eritrea</td>
<td>2,178</td>
<td>10,850</td>
</tr>
</tbody>
</table>

**Note:** According to Mindra, A.P.S., Suez Thrombosis, distances between London to Bombay Via Suez and Via Cape of Good Hope are 6,200 to 10,700 miles.
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