

**The United Nations
and the
Egyptian Blockade of The Suez Canal**

**A Study
Sponsored by the
LAWYERS COMMITTEE ON BLOCKADES**

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FOREWORD

On his first visit to the United Nations Headquarters, on November 24, 1952, President Eisenhower issued a statement which concluded with these words: "I think that every true citizen of the free world will follow and does follow the activities that go on here with the keenest and most intense interest."

One such activity that, since 1948, has repeatedly engaged the attention of various officials and organs of the United Nations, is the Egyptian blockade of the Suez Canal.

The Lawyers Committee on Blockades, deeming it to be a case deserving of public attention, conducted a study of the problems involved, and published its findings and conclusions in a report entitled *The United Nations and the Egyptian Blockade of the Suez Canal*. In the preparation of its report, the Committee was assisted by an Advisory Panel of law professors of various universities.

This is an abridged edition of the aforementioned report. It is being distributed through the American Association for the United Nations and others having the cause of the United Nations at heart, and aspiring to the substitution of "right" for "might" in the settlement of international controversies.

HAIM MARGALITH, *Chairman*

New York City

June 29, 1953

INTRODUCTION

Today, more than ever before, the free world depends on such channels of international communication as the Suez Canal. Interference with its traffic not only impedes international trade and commerce, but is apt to endanger the peace of the world. As the Commission to Study the Organization of Peace* pointedly declared in November, 1951:

"To permit particular countries to take advantage of territorial propinquity, as newspaper reports indicate Egypt is doing, will certainly provoke controversy and perhaps result in threats to the peace."

The status of the Suez Canal, as an international waterway, was one of the points dealt with by John Foster Dulles in his first official statement, as Secretary of State, broadcast to the nation on January 28, 1953. In that statement, Mr. Dulles speaks of the Suez Canal as "the portion of the world and of the seaways of the world which has long been guarded and called the life-line which made it possible for Europe to be in communication with Asia." This unique status of the Canal makes its blockade by Egypt a matter of grave international concern. It poses four major problems:

1. Obligations arising under international conventions and practices.
2. Obligations arising from the Egyptian-Israeli Armistice Agreement.
3. Obligations arising from the Charter of the United Nations.
4. Obligations arising from decisions of organs of the United Nations.

* Research affiliate of the American Association for the United Nations.

The Facts

On November 29, 1947, the United Nations General Assembly adopted a resolution for the partition of Palestine into an independent Arab state and an independent Jewish state. As a result, Israel was established on May 14, 1948. The Arab powers, however, refused to accept the UN decision and, as a result, hostilities ensued. At the same time Egypt proceeded to board and search ships entering the Suez Canal and to confiscate cargoes defined by decree as "contraband."

On February 24, 1949, Egypt and Israel signed an armistice agreement under United Nations auspices, which specifically provided that neither party shall take aggressive action against the other. Nonetheless, Egypt continued to search ships moving through the Suez Canal and to confiscate Israel-bound cargoes.

This action by Egypt affects not only Israel, but other nations as well, especially the maritime powers.* These powers viewed with apprehension any measures which might deprive them of the 100-mile route from the Mediterranean to the Indian Ocean, and force them to make the long trek around the Cape of Good Hope.

Israel, calling attention to the specific terms of the armistice agreement, complained to the Mixed Armistice Commission set up under the armistice agreement. On August 29, 1949, the Commission ruled that it had the right to demand that the Egyptian government shall not interfere with the passage of goods to Israel through the Suez Canal. Egypt challenged this ruling before a Special Committee which also had been set up under the armistice agreement. The Special Committee held that the Commission did not have the right to make such a demand of Egypt.

On July 11, 1951, Israel asked the United Nations Security Council to resolve the matter; and on September 1, 1951, the Security Council ruled that Egypt's interference with Israel-bound goods was "inconsistent with the objective of a peaceful settlement between the parties and the establishment of a permanent peace in Palestine set forth by the Armistice Agreement." Therefore, the Security Council called upon Egypt to cease all such interference with commercial shipping and goods through the Canal wherever bound.

* According to the New York Times of April 28, 1953, a total of 86,137,000 net register tons of shipping passed through the Suez Canal in 1952. Out of that total, British shipping, holding first place, accounted for 28,643,000 tons. Norway held second place with 13,548,000 tons. France was third with 7,738,000 tons. Panama was fourth with 6,800,000 tons. The United States held fifth place with 6,258,000 tons.

Egypt announced that she would not abide by the decision and, in fact, has failed to abide by it ever since.

Relevant International Conventions and Practices

The doctrine that the Suez Canal should be open to all vessels at all times took shape even before it was built. It was so stipulated in the concession granted the Compagnie Universelle du Canal Maritime de Suez, on January 5, 1856. The Canal had scarcely been in operation a year when its special status was tested by the Franco-Prussian war of 1870-71. Although French nationals dominated the Suez Canal Company, the waterway remained open to both belligerents.

The Canal's special status was again tested by the Russo-Turkish War in 1877. Russia was in a position to blockade the Canal but she assured Britain* that she would "neither blockade, nor interrupt, nor in any way menace the navigation of the Suez Canal." Again, the Canal remained accessible to both sides.

Even during the Ethiopian hostilities in 1935-36, when Italy had been recognized by the League of Nations as an aggressor, and a committee of the League had asserted that the Covenant provisions concerning aggression should supersede earlier treaties among members of the League, Italy was permitted free use of the Canal, although it was widely urged that its closing to Italian ships would have been the most effective sanction against her.

In 1882 Arabi Pasha, who then led a revolt against the Khedive, was about to destroy the Canal. It was saved by a British military expedition which appeared on the scene in the nick of time. After Arabi surrendered, Egypt virtually became a British Protectorate.

The aforementioned events brought to the fore the need for defining the Canal's status more precisely. This was achieved by the "Convention Respecting the Free Navigation of the Maritime Suez Canal" signed at Constantinople, in 1888, by the representatives of Great Britain, France, Germany, Austria-Hungary, Italy, Russia, Spain, Turkey, and the Netherlands. It remains to this day the basic instrument governing the use of the Suez Canal. Among other things, it provides as follows:

* The British Government in 1875 bought a 44% interest in the Suez Canal Company from the Khedive of Egypt, and thereafter assumed responsibility for its protection.

"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.

"The canal shall never be subjected to the exercises of the right of blockade." (Article 1, italics supplied.)

Nation after nation has scrupulously followed this Convention, frequently under the most difficult conditions. In 1898, during the Spanish-American war, the United States was assured that its fleet could pass through the Canal. During the Russo-Japanese War of 1904-1905, although Great Britain was an ally of Japan, Russia as well as Japan had access to the waterway. This was also true of both belligerents in the Turko-Italian War of 1911. In World War I Great Britain permitted German vessels to use the Canal, although not to obstruct it. In 1936 the Treaty of Alliance between Great Britain and Egypt reaffirmed the international status of the Canal as a universal means of communication.

Again, in March, 1938, an Anglo-Italian agreement acknowledged that the Constantinople Convention "guarantees at all times for all Powers free use of the Suez Canal." During World War II the Canal remained technically open to all, but actually Axis vessels made no use of it.

Such has been the practice of the past, recognized and observed through decades of war and peace by all nations. Egypt's current practice of searching and confiscating is therefore in sharp contrast to the past.

There can be no question that the principle first voiced nearly 100 years ago in 1856 and embodied in the Constantinople Convention of 1888, by which Egypt is bound, still governs the situation. *The Suez Canal must be kept open to traffic at all times, in war and in peace.* Because of its international status, Egypt cannot regard the blockade as a "domestic question" — as some of her spokesmen have declared — even though the Canal happens to be entirely within Egyptian territory.

Egypt herself at a Security Council meeting on August 5, 1947, emphasized this principle when Prime Minister Nokrashi Pasha, while asserting the absoluteness of Egyptian sovereignty over every inch of Egyptian soil, significantly declared that the Suez Canal was "an international artery open to all nations in time of peace and in time of war."

Terms of Egyptian-Israel Armistice Agreement

The Egyptian-Israel armistice agreement, signed at Rhodes on Feb. 24, 1949, in the presence of Dr. Ralph Bunche, United Nations Acting Mediator, and Lieut. General William E. Riley, United Nations Chief of Staff of the Truce Supervision Organization, makes abundantly clear the nature of the undertaking pledged by both countries.

Article I reads:

"With a view to promoting the return of permanent peace in Palestine and in recognition of the importance in this regard of mutual assurances concerning the future military operations of the parties, the following principles, which shall be fully observed by both parties during the armistice are hereby affirmed:

- "1. The injunction of the Security Council against resort to military force in the settlement of the Palestine Question shall henceforth be scrupulously respected by both parties:
- "2. No aggressive action by the armed forces, land, sea, or air, of either party shall be undertaken, planned, or threatened against the people or the armed forces of the other....
- "3. The right of each party to its security and freedom from fear of attack by the armed forces of the other shall be fully respected...."

Article II, paragraph 2, provides that:

"No element of the land, sea or military or para-military forces of either party, including non-regular forces of either party, shall commit any warlike or hostile act against the military or para-military forces of the other party, or against civilians in territory under the control of that party...."

This agreement, furthermore, states that it is to remain in force until "a peaceful settlement between the parties is achieved." In other words, it cannot be suspended.

Nonetheless, Egypt insists upon looking upon the agreement as a mere suspension of hostilities, leaving belligerent rights intact. For example, the Egyptian delegate maintained before the Security

Council on July 26, 1951, that all armistices are simply agreements between belligerent forces for a temporary cessation of hostilities; and that Egypt's right of visit and search, therefore, could not be questioned.

Israel, however, points out that this agreement specifically states that it is not a mere suspension of hostilities, but a permanent and irrevocable renunciation of all hostile acts. Israel cites, too, the official interpretation of Dr. Bunche, who negotiated the agreement on behalf of the United Nations. In July, 1949, Dr. Bunche declared:

"The Armistice Agreements are not the final peace settlement but the only possible interpretation of their very specific provisions is that they signal the end of the military phase of the Palestine situation. The objective should now clearly be to restore normal conditions of peace to the fullest possible extent. The entire heritage of restrictions which developed out of undeclared war should be done away with. There should be free movement for legitimate shipping and no vestiges of the war-time blockade should be allowed to remain, as they are inconsistent with both the letter and the spirit of the Armistice Agreements."

This statement was not challenged by Egypt. On the contrary, Mahmoud Fawzi,* Egyptian delegate to the United States, told the Security Council immediately thereafter:

"The conclusion of the Armistice Agreements marks the end of an important stage of our dealing with the Palestine question. The present report of the UN Acting Mediator makes it clear that the fighting in Palestine has ended. We further read in the report that the Agreements have proved effective in practice and that the Acting Mediator sees no reason why they should not continue to do so. To this may be added... certain expressions which we heard today from several quarters. We heard the UN Acting Mediator say that these Armistice Agreements are tantamount to a non-aggression pact. We heard the distinguished spokesman of Israel say that they are a provisional settlement, and that these Agreements have no time limit.

"I am purposely making these quotations, or rather transliterations, of what I understood the Acting Mediator and the spokesman of Israel to have said today.

* Now Foreign Minister of Egypt.

"As to the question of Palestine, the Armistice Agreements concerning it abound in unequivocal assurances and commitments not to resort to force or even plan to threaten to resort to force in its settlement."

It is difficult to reconcile these statements with Egypt's claim that a state of war still exists and that hostile acts may be performed as belligerent rights of war.

Lieut. Gen. Riley, United Nations Chief of Staff of the Truce Supervision Organization,* declared:

"The action of the Egyptian authorities in this instance is, in my view, entirely contrary to the spirit of the General Armistice Agreement and does, in fact, jeopardize its effective functioning. It was certainly never contemplated at Rhodes that what is, in effect, an act of blockade, or at least an act undertaken in the spirit of blockade and having the partial effect of one, would be continued by one of the parties to the General Armistice Agreement more than two years after it had been signed."

Obligations Arising from the Charter and from Decisions of Organs of the United Nations

The question arises: can Egypt claim unilateral rights of belligerency against Israel? Can any member of the United Nations claim such rights against a fellow member of the United Nations? The answer is no. Members of the United Nations are pledged to refrain from the threat or use of force except on behalf of United Nations purposes.

As the British delegate to the Security Council observed on August 1, 1951:

"... If Egypt were involved in actual hostilities, she would no doubt be justified in taking measures for her own defense. ... Hostilities are not in progress and have not been in progress for two and a half years. It cannot even be maintained that Egypt is under any imminent threat of attack from Israel. We must therefore conclude that the claim to exercise belligerent rights for the defense of Egypt cannot be sustained and must be considered as an abuse of belligerent rights as those rights are recognized in international law."

* Resigned April 24, 1953.

It was a month later, September 1, 1951, that the United Nations Security Council adopted its resolution calling 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 interferences with such shipping."

Despite this resolution and despite her pledges in the Armistice Agreement to engage in no further acts of hostility, Egypt has persisted, and still persists, in her unilateral action in visiting, searching and seizing cargoes bound for Israel passing through the Suez Canal.

Conclusions

1. Egypt's interference with the passage of goods through the Suez Canal runs counter to:

- a) The Suez Canal Convention of 1888.
- b) The Egyptian-Israel General Armistice Agreement.
- c) The Charter of the United Nations.
- d) Decisions of Organs of the United Nations.

2. The failure of members of the United Nations to accept and carry out the decisions of the Security Council, as required by Article 25 of the Charter, can only lead to a weakening of the Organization as an instrument for the preservation of peace.

3. The situation described in the present study calls for action to reduce tension in the Middle East and to prevent a threat to the peace from developing in that area.

4. Termination of the blockade of the Suez Canal would constitute a step toward peace in which Egypt itself has made its interest known, and which is vital for the welfare of its own people as well as for the welfare of the peoples of the entire region.

5. In the event an early settlement of the controversy is not reached, and Egypt persists in interfering with the passage of goods through the Suez Canal, appropriate steps ought to be taken by the Security Council with a view to implementing its resolution of September 1, 1951.