

his background, but he's going to review the documentation as affecting the subject. It's a great pleasure to present Mr. Hynning.

CLIFFORD J. HYNNING: Moderator Storey, Chairman Re, Members of the Section and the Association, ladies and gentlemen:

I hope in presenting what I term the documentary review of the international status of the Suez Canal to state what I hope is common ground to our succeeding speakers. That is to say, I've tried here to summarize the significant documents that are agreed to by both the riparian sovereign, if I can use that somewhat inaccurate word for Egypt, and by the great maritime community of the world.

Geography is the first fact we have to start off with. The Suez Canal faces the Mediterranean on the north, the territorial sovereign of Egypt to the west, the Red Sea to the south, and until recently, the territorial sovereign of Egypt to the east. I think, however, that the recent events are not going to affect significantly the case for or against international control of the Suez from a legal standpoint. I wouldn't, of course, for one moment doubt that it will have profound political and military effects on the nature of that solution. The first document is more than one hundred years old, and that's the Firman or Decree of Concession given by the Viceroy of Egypt with the approval of the Ottoman Empire to Ferdinand de Lesseps on November 30, 1854. It is significant that at the very beginning of the Canal it was provided that:

The rates of the transit charges of the Suez Canal, arranged between the company and the Viceroy of Egypt and collected by the agents of the company, shall always be the same for all nations; no special advantage may ever be stipulated for the exclusive benefit of any of them.<sup>1</sup>

It was also provided in Article 10 that "On the expiration of the concession [99 years], the Egyptian Government shall take the place of the company; . . . and shall enter into full possession of the canal" with compensation.<sup>2</sup>

The second document is about 10 or 12 years later—the second Concession for the Construction and Working of the Suez Grand

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<sup>1</sup> 3 *Whitman Digest of International Law* 1076.

<sup>2</sup> *Ibid.*

Maritime Canal and Dependencies. Again, it has the significant provision that:

. . . it shall be open forever, as neutral passages, to every merchant vessel crossing from one sea to the other, without any distinction, exclusion, or preference with respect to persons or nationalities, in consideration of the payment of the fees, and compliance with the regulations established by the universal company, the concession-holder, for the use of the said canal and its appurtenances. (Article XIV.)<sup>3</sup>

Then, another 10 years later, we have the Convention between the Viceroy of Egypt and the Suez Universal Maritime Canal Company, which states a little more detail—they have now reached the point where there are practical questions coming up—they state that:

The maritime canal and all its appurtenances shall remain under the jurisdiction of the Egyptian police, who shall operate freely, as at any other point of the territory, so as to assure good order, public safety, and observance of the laws and regulations of the country.<sup>4</sup>

This is an English, unofficial translation of a French text. By “police” they mean, I presume, internal, domestic control of the State. They say that “The Egyptian Government will occupy within the periphery of the land reserved as an appurtenance of the maritime canal, any position or any strategic point that it considers necessary for the defense of the country.”<sup>5</sup> However, “Such occupation shall not be a bar to navigation and shall respect the servitudes attaching to the freeboards of the canal.”<sup>6</sup>

So far we are dealing here in terms of what are really bilateral agreements between the Viceroy of Egypt of the Ottoman Empire and the investors who were building the canal. We now come to the major international document affecting the status of the canal—the Convention of Constantinople of 1888. That was the date when it was signed between Great Britain, Germany, Austria-Hungary, Spain, France, Italy, the Netherlands, Russia, and Turkey. It did not go into effect, however, until 1904, when Britain entered into an agreement with France with respect to the former’s protectorate over Egypt, stating that now, at long last, this 1888 Convention would go into effect. Until that time, Britain was more or less

<sup>3</sup> 1077.

<sup>4</sup> 1078.

<sup>5</sup> 1078.

<sup>6</sup> 1078.

free-wheeling in the running of the canal through its powers as a protector. Thus the 1888 Convention went into effect in 1904 and is still in effect, and the latest declarations by Egypt to the U.N. state that it intends to comply with all the provisions of this Convention.

I have listed four articles here in the Convention of Constantinople. When you read them, you'll see one seems to be going one way, and then you'll read another one, and it backtracks. But the first provision is unique for Suez—there is no similar provision, as I understand it, with respect to the Panama Canal. It says that:

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 be subjected to the exercise of the right of blockade.<sup>7</sup>

Article 4 says 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.<sup>8</sup>

However, vessels of war aren't to resupply themselves or stay too long.

Article 10 says these provisions shall not interfere with the measures which His Majesty the Sultan might find it "necessary to take for securing by their own forces the defense of Egypt and the maintenance of public order."<sup>9</sup> However, these measures in the interest of defense and public order shall not, under article 11, interfere with "the free use of the Canal."<sup>10</sup> Now the above is the essential, international, legal regime of the Suez Canal.

We then have the next significant document, the ending, or the contemplation of the ending of British military influence in Egypt, the Anglo-Egyptian Agreement of 1936, where both Egypt and Great Britain have declared that the Canal, while being an integral part

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<sup>7</sup> 1080.

<sup>8</sup> 1080.

<sup>9</sup> 1080.

<sup>10</sup> 1081.

of Egypt, is a universal means of communication, especially an essential means of communication between the different parts of the British Empire. And this contemplates the right of the British to station forces there for a limited period of time, to work out some agreement for the withdrawal of these forces and the protection of the Canal, and if they do not agree, to go to the League of Nations.

The first action taken by the U.N. is the Security Council Resolution of 1951, adopted more or less at the request of Israel. It pointed out that the U.N. Chief of Staff of the Truce Supervision Organization was not having much effect in getting the Egyptians to open the Canal to Israeli goods and ships. It stated that this right that was being exercised by Egypt was in the opinion of the Security Council not necessary for legitimate purposes of self-defense, was an abuse of the exercise, and could not be justified. However, this resolution had no effect on Egypt, and if you look at Whiteman's *Digest of International Law*, you will find some very cynical remarks about this resolution by Secretary Dulles.

Then we have the acceleration in the time schedule for the withdrawal of British forces from Egypt and the Anglo-Egyptian Agreement Regarding the Suez Canal Base, of 1954. Again, they stated that "the Suez Canal, which is an integral part of Egypt, is a waterway economically, commercially and strategically of international importance. . . ." <sup>11</sup> And the Parties say that they are going to uphold the Convention of Constantinople that I summarized a moment ago.

Then at the time of the first Suez crisis of the mid-60's, we had a Security Council Resolution which listed what are termed "the six principles" governing the Suez Canal. The representative of Egypt in speaking before the Security Council supported these principles. They are as follows:

- (1) there should be free and open transit through the Canal without discrimination, overt or covert—this covers both political and technical aspects;
- (2) the sovereignty of Egypt should be respected;
- (3) the operation of the Canal should be insulated from the politics of any country;
- (4) the manner of fixing tolls and charges should be decided by agreement between Egypt and the users;

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<sup>11</sup> 1086-87.