

THE CASE PRESENTED TO EGYPT

7 September 1956

YOUR EXCELLENCY:

Our discussions have been conducted in an atmosphere of courteous frankness and responsibility. But they have, in our opinion, disclosed deep differences of approach and principle which it seems clear that no repetition of debate can affect. In these circumstances, we consider that it would now be helpful that my Committee should set down, in summary and objective form, the underlying purposes of the eighteen-power proposals and the nature of the reasons underlying them. This seems desirable because, as our talks have been conducted in private without records and with great informality, neither you nor we would desire that there should be in future any misunderstanding on the part of our principals or of yourself as to what we were proposing to your Government.

We were authorized to present those proposals on behalf of the following eighteen nations represented at the London Conference as follows (I put them into alphabetical order): Australia, Denmark, Ethiopia, France, the Federal Republic of Germany, Iran, Italy, Japan, The Netherlands, New Zealand, Norway, Pakistan, Portugal, Spain, Sweden, Turkey, the United Kingdom, and the United States of America. (Spain, at the London Conference, made a reservation which has been conveyed to you.)

From the outset, you will have observed that the eighteen nations have not attempted to arrive at any joint opinion as to the validity or otherwise of Egypt's nationalization decree. The London Conference felt that to have a debate on this point would be fruitless, since the Conference possessed no authority to make any judicial determination. It was therefore considered much more practical to work out constructive proposals which assumed that the act of nationalization had occurred and that the problem of the payment of compensation to the Suez Canal Company would be properly dealt with, with provision for arbitration in the event of difference, and that what was needed was the establishment of principles and methods for the future. These should be such as would both in law and in fact ensure that the Suez Canal would continue to be an international waterway operated free of politics or national discrimination, and with a financial structure so secure and an international confidence so high that an expanding and improving future for the Canal could be guaranteed.

The proposals evolved in this atmosphere have been placed before you and have been much debated between us. We have, as you know, gone beyond the mere presentation of the proposals and have sought to explain and establish what we believe to be the large questions of principle involved.

It would be tedious and unnecessary in this document to recapitulate all the discussions that have occurred on all the points of interpretation that have arisen. The simple truth is that we quite early realized on both sides of the table that there were certain central matters without agreement upon which subsidiary matters could not usefully be determined.

The two crucial proposals emerging from London were:

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1. That the operation of the Canal should be insulated from the influence of the politics of any nation; and

2. that, to enable this to be done, there should be established, under an International Convention to which Egypt would be a party, a body charged with the operation, maintenance, and development of the Canal. Such a body, we propose, should be constituted of people from various countries, including Egypt. The members would not be subject to political direction, and should be given in the Convention, with the free consent of Egypt, wide powers of management, and finance so that it could inspire confidence, deal with the future financial requirements of the Canal, and ensure a non-discriminatory and non-political management of Canal traffic. The proposed body would naturally have due regard for the laws and institutions of Egypt.

You have with complete frankness made it clear to us that the existence of such a body operating the Suez Canal would, in the view of Egypt, be a derogation from Egyptian sovereignty; that it would in substance represent a reversal of the policy announced by you on 26 July. We cannot agree with this view. Nowhere in our proposals is there any denial of Egypt's territorial sovereignty. On the contrary, the London proposals expressly recognized these rights in paragraph 2 of the resolution. The whole essence of what we have put forward is (to use a homely illustration) that Egypt's position as the landlord of the Canal being completely accepted, she should proceed by international agreement to install a tenant so constituted that the future of the Canal would be satisfactory both to its owners and to those many nations who use it. We believe, as we have pointed out, that it cannot seriously be maintained that when a landlord grants a lease of premises, that lease derogates from his ownership. The fact is that the lease is an expression of and conditional upon his ownership. On this analogy our proposals would mean that the tenant of the Canal would pay to Egypt a substantial rental which must unquestionably grow as the traffic through the Canal increases, and that in the meantime the tenant would, in the exercise of its managerial and financial powers, be constantly improving the value of Egypt's asset. Indeed, as the 'tenant' in this analogy would be a body which includes Egypt herself, the position of Egypt would be even stronger.

In paragraph 3a of our proposals, there is a reference to 'institutional arrangements'. As we felt that this phrase might be regarded as admitting of a variety of applications, we undertook the task of illustrating what it meant. We pointed out that what we were saying was merely illustrative and was not designed to narrow the broad significance of the proposals themselves. But, as we have said, one form of 'institutional arrangement' which comes readily to mind is to be seen by reference to the case of the International Bank for Reconstruction and Development. That bank was created by agreement among a considerable number of nations. It was not incorporated under the law of any one country. It owes its existence to the agreement of many countries. Its powers are defined by an international document. Without being in the technical sense incorporated under some pre-existing law it has, in fact, by its articles, wide powers of borrowing and lending, and banking generally. The International Bank succeeds in its purpose, not only because it has extensive powers, but also because in its capital structure and growth it has enjoyed the unquestioned confidence of a great variety of member nations. Its existence has not so far as we know been regarded as derogating from the sovereignty of any nation, even though it enjoys a wide immunity from national laws.

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We have become conscious of your firmly held view that there is no occasion for a canal authority possessing an international character, because of your Excellency's belief that Egypt is herself capable of conducting and ensuring the future of the Canal, and has never challenged the 1888 Convention or its declarations about the freedom of the Canal.

To answer this point, we found it necessary to put before you quite frankly and objectively certain considerations which, from the point of view of the eighteen nations we represent, nations who among them represent over ninety percent of the traffic passing through the Canal, are of vital significance. The traffic through the Canal has almost reached what might be described as saturation point. Even to maintain it in its present shape requires the constant services of a highly skilled, experienced, and specialized engineering and transportation staff. This staff has been built up over a long period of years. There has been an increasing intake of Egyptian personnel, but the great majority of the key employees are still nationals of other countries. From the point of view of Egypt herself it is desirable that there is complete mutual confidence among those actually operating the Canal, the Government of Egypt, and the users of the Canal.

But the matter does not end there. It is clear that as a result of increased traffic Egypt can enjoy very substantial and increasing benefits from the Canal if the Canal can retain the confidence of its principal users. The number of tankers passing through the Canal could double or treble in a few years if such confidence exists. To deal with such traffic, expansion of the Canal will be necessary. Whether expansion consists of widening, deepening, constructing by-passes or even duplicating the Canal, the capital costs will be substantial. If these costs are to be met over a period of time from Canal revenues without serious current reductions in Egypt's income from the Canal or without the imposition of burdensome increases of dues, they must be derived from funds accruing from an increase in traffic - an increase which would come only if the users would maintain confidence in the Canal - and it must be remembered that increased dues would impose grievous burdens upon those many millions of people in the world who, in the long run, pay the costs and charges incurred by the cargoes they ultimately buy or sell. If expansion should not be necessary, it would be because the users' confidence would be lacking and many of them would have found ways to avoid remaining dependent on the Canal. The benefit, therefore, which Egypt might have gained would be materially lessened.

We have, therefore, in the interest of Egypt and the users urged that the structure of the body actually conducting the Canal operations should be such as to inspire world-wide confidence and bring about a capacity to raise the necessary capital sums because of a prevailing feeling of security on the parts of those who may be asked to provide them.

In short, what we have proposed is that, Egypt's sovereignty being fully recognized, the actual operation, maintenance, and expansion of the Canal should be reposed in a body (established under international convention), which would include people from various nations, including of course Egypt, with extensive financial powers and responsibilities. As we believe that an international waterway like the Suez Canal should not become an instrument of the political policy of any nation or nations, we proposed that the members of this body should not be the mere delegates of any nation or be under any obligation to observe political instructions. On the contrary, we proposed that the parties to the convention should select them with regard to their personal qualities of ability, integrity, and experience. It is true in a sense that our proposed convention would be an arrangement made between governments and that original

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appointments to the proposed authority would be made by governments. But we firmly believe that, with good will and good faith, persons so appointed could serve in a non-political manner in this case as readily, for instance, as do the judges of the Permanent Court of International Justice.

As we have throughout emphasized, it is essential that if it is to be a truly international waterway as envisaged by the 1888 Convention, there should be no politics in the Suez Canal, whether those of Egypt or of any other nation.

Your Excellency has told us with clarity and frankness that you do not believe that the Canal could be excluded from the politics of Egypt, since it is part of Egyptian territory and assets. To this we have pointed out that, if the Canal is to remain fully available for any of Egypt's political purposes, subject only to the 1888 Convention, then the many nations using the Canal will have to realize that their pattern of overseas trade will be at any time subject to the decision of Egypt alone. We are, of course, conscious of your own view that these considerations are adequately met by the guarantee of freedom under the 1888 Convention. But if that Convention is to contain the only limitation, it seems clear to us, as we have pointed out, that there could be, for political purposes, many discriminations in traffic and marshalling control which did not fall foul of the Convention; that, Canal dues being within Egypt's sole control, differences of opinion as to their level will almost inevitably be fixed by reference to Egyptian budgetary needs with the strong possibility that they would be raised to the maximum that the traffic could bear; and that future development of the Canal might well be controlled by local budget considerations, a danger which independent finance by a special international body would entirely avert.

We have stated and restated that the setting up of such a body as we have proposed would create such a feeling of assurance in the minds of all user nations that the necessary financial provision could be secured, the burden of such matters being no longer the sole responsibility of Egypt herself. We have further emphasized that, under our proposals, there would no longer be private shareholders or dividends. The one nation which would obtain an assured annual net revenue from the Canal would be Egypt.

Your Excellency has repeatedly and vigorously explained to us that the setting up of a Suez Canal body of the kind envisaged in our proposals would, to the eyes of Egypt, represent either foreign domination or seizure. We have pointed out that the truth is that no arrangement for the tenancy of the Canal can be either domination or seizure if it is freely agreed to by Egypt. And it is, as you know, that willing and free agreement which all of our negotiations have been designed to secure.

It remains only to emphasize two other large matters which arise in the course of our proposals.

The first was our proposal that the new body, having been constructed by international convention, should be brought into relationship with the United Nations. This was done in the case of the International Bank by an agreement with the United Nations which had the effect of making the bank a 'specialized agency' under the Charter but which, of course, did not affect the freedom of the bank in the conduct of its business. Association between our proposed body and the United Nations in a similar fashion could, we believe, give great

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satisfaction all around the world and, if adopted, would considerably strengthen international confidence and security.

We also proposed an Arbitral Commission to settle disputes. There might be disputes as to the equitable return which Egypt should have from the Canal. There might, in the course of the years, be other disputes involving one or more of the constituent nations. Any such matters, if they could not be resolved by agreement, should be arbitrated upon by an independent commission enjoying international confidence. Our proposal did not mean that such an Arbitral Commission would be the authority to deal with the normal problems which arise in the course of management, such as claims which might arise in relation to the employment of people or contracts with subsidiary contractors. To the extent to which contracts might be entered into in respect of such normal matters, they would be contracts made, for the most part, in Egypt and we did not contemplate that in respect of such matters the normal jurisdiction of the Egyptian courts should be excluded. It would be only in any dispute of a genuinely international character that the jurisdiction of the Arbitral Commission would be invoked.

At the London Conference, it was agreed by all the nations represented that any arrangement entered into must be completely fair to Egypt and must pay scrupulous regard to Egypt's territorial sovereignty. Our whole presentation of the matter to Your Excellency has been made in that spirit and with that desire. It is for this reason that we have repeatedly pointed out that, while representing nations who are users of the Canal, we are deeply and urgently concerned in obtaining the highest possible measure of confidence and an effective and practical guaranteed freedom and future for the Canal. There are in our proposals marked advantages for Egypt which we have discussed at length but which we now summarize as follows:

- (a) Egypt's ownership of the Canal being recognized, it is to her great advantage to have the Canal maintained and improved and made more profitable as the years go on;
- (b) the future financial burdens involved in such maintenance and improvement would be carried and handled by the new body and therefore Egypt would in fact be relieved of them;
- (c) Egypt alone would draw profit from the Canal;
- (d) a just and fair method of compensating the shareholders of the Suez Canal Company would have to be agreed upon;
- (e) the dangerous tension now existing internationally would be relaxed on terms satisfactory to the user nations and entirely consistent with Egypt's proper dignity, independence and ownership, and thus a world contribution would be made to the peaceful settlement of international problems.

It is the understanding of the Committee that you have taken the position that you are unable to accept the basic proposals put before you. I would be grateful if Your Excellency would inform the Committee whether or not its understanding is correct, supplementing your statement with such views as you may care to express. If, unfortunately, the understanding of the Committee is correct, the task entrusted to the Committee by the eighteen powers of presenting and explaining these proposals and ascertaining the attitude of the Egyptian Government with respect to them would have been carried out. In such an event, there would appear to be no alternative other than for the Committee to request Your Excellency to receive

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it at your earliest convenience so that it may be prepared, after a final conversation with you, to take its leave.

I am, Sir,
Yours sincerely.
(Signed) R. G. MENZIES.

His Excellency,
Gamul Abdul Nasser,
President of the Republic of Egypt.