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LETTER DATED 13 OCTOBER 1956 FROM THE REPRESENTATIVE OF ISRAEL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I refer to the decision of the Security Council of 13 October inviting my Government to submit its views on the matter now before the Council in writing, pending an appropriate opportunity for an oral presentation.

In accordance with this invitation I have the honour to enclose herewith a statement of my Government's position on the question of free passage through the Suez Canal.

Please accept, Sir, etc.

(Signed) Abba EBAN

Permanent Representative of
Israel to the United Nations

56-26918

13 October 1956

No examination of the Suez Canal problem is accurate or complete unless it includes the experience acquired by Israel in its efforts to exercise its right of innocent passage in that international waterway. It is primarily in relation to Israel that Egypt has most consistently violated the 1888 Convention and the Security Council's Resolution of 1951. For other nations, the illicit obstruction of the Canal by the arbitrary action of the territorial power is a grave prospect. For Israel, and for States trading with her, it is an actual experience, enduring without remedy for eight years.

The current debate in the Security Council has underlined the importance of Israel's experience. While members of the Security Council have differed sharply on many things, they have been unanimous on one point. Eleven members of the Security Council have again emphasized the over-riding validity of the 1888 Convention. They have unanimously expressed the view that, under that Convention, all States have the unconditional right, for all time, to free passage for all their ships and cargoes through the Suez Canal. Not one member of the Council has admitted any reservation to that right. Indeed, most members, whether in the current debate or in its recent context, have publicly disputed Egypt's claim to exercise any restrictions against Israeli ships or ships bound to or from Israel.

Today, when the rights of the international community in the Suez Canal are under world-wide attention, Israel finds it necessary to remind the Security Council of the following facts:

First, Egypt has been violating the central provision of the 1888 Convention for eight years.

Second, Egypt is in violation of the 1888 Convention at this time.

Third, effective measures have not yet been concerted to ensure that Egypt will observe the 1888 Convention in the future.

Fourth, the refusal of Egypt to carry out its international obligations in respect of free navigation in the Suez Canal has already been determined and condemned by the Security Council, in a decision which Egypt has persistently defied.

I. The Egyptian Blockade in Practice

A discussion of Egypt's current practice in the Suez Canal requires an allusion to two statements of her legal obligations:

Article I of the 1888 Convention reads:

> "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."

On September 1, 1951, the Security Council, having examined an Israel complaint and an Egyptian counter-argument, called upon Egypt:

> "...to terminate the restrictions on the passage of international commercial ships 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 to the observance of the international conventions in force."

In May 1948, during a military intervention, launched and maintained in defiance of Security Council resolutions for a cease-fire, Egypt established a general blockade against Israel and began to visit and search ships of all nations passing through the Suez Canal. The Egyptian Government established a long list of items including ships, important categories of goods, and particularly petroleum, as subject to seizure as "contraband" if found destined for Israel. Vessels transporting or suspected of transporting such goods were detained for visit and search. Cargoes of certain categories were removed and confiscated. These enactments were later formalized in an official Decree on February 6, 1950.

In September 1950, these restrictions were enlarged by a Decree requiring a guarantee by ships' captains, and, in particular, by captains of oil tankers, that their ships would not ultimately discharge any of their cargo at any Israel port.

Another regulation, still in force, calls for the submission of log books by tankers intending to proceed southward through the Suez Canal. Vessels found to have called at any port in Israel are placed on a blacklist and denied stores, fuel and repair facilities in Egyptian ports, including those at each end of the Suez Canal.

The threat of forcible interference acts as a deterrent to the great bulk of the normal trade which would otherwise pass through the Suez Canal to or from Israel. For example, the hundreds of oil tankers which pass annually through the Canal are allowed transit only on condition that they avoid any destination in Israel. Thus the blockade operates in two forms: primarily, through the deterrent effect of Egyptian decrees and regulations; and secondarily, through active interference with vessels, in the few cases where the regulations themselves have not been sufficient to deter the attempted voyage.

(a) Blockade Decrees

The basic legislation under which the Egyptian authorities obstruct free navigation in the Suez Canal is to be found in the Decree of February 6, 1950, the Arabic text of which was published in the Egyptian Official Journal (No. 36) dated April 8, 1950.

Article I reads:

> "The searching of ships for purposes of seizing war contraband, shall take place in accordance with provisions hereunder."

Article III provides:

> "Force may at all times be used against any ship attempting to avoid the search, where necessary by firing so as to force it to stop and submit to the search. Where the search subsequently reveals that the ship is not carrying any contraband, it shall be permitted to continue its voyage."

This language should be compared with that of the 1888 Convention requiring free passage, in time of war or peace, for all vessels without distinction of flag.

Article IV states:

> "If the crew of the ship resists the search by force, the ship shall be deemed to have lost its neutrality by reason of the hostile act. In that event, a ship may be seized even if the search reveals that it was not carrying contraband and the cargo may be impounded for that reason."

This provision can hardly be said to live in the same world of language or thought as that of the 1888 Convention with its lofty concept of peace and universality.

Article VII states:

> "Where there is some special knowledge or other information giving grounds for suspicion, the ship may be searched exhaustively irrespective of its place of departure or destination."

Article X defines the commodities which:

> "shall be deemed war contraband and seized as prize."

They include "arms and munitions; chemicals and pharmaceuticals; fuel of every kind; aircraft, ships and spares for either; motor vehicles and trailers; cash, ingots of gold and silver; negotiable securities and metals, raw materials, planks and machinery."

The same Article specifies that cargoes shall be "deemed intended for the enemy:"

(a) if the cargo is loaded on a ship passing through Palestinian ports controlled by the enemy;

(b) if the cargo is shipped on a vessel proceeding to any Mediterranean port in the vicinity of a port controlled by the enemy.....;

(f) if the owner of the ship or the consignee of the cargo is associated with Israel, or if their trade is closely connected with concerns situated in Israel or dependent on such concerns;

(g) if the consignor or consignee is listed on the blacklist kept for that purpose as a carrier or contraband for Israel.

It is instructive to compare the language of these sordid enactments with the lofty terms of the 1888 Convention, consecrating the Suez Canal as an international waterway open to navigation by all ships on the highest level of universality and equality. But the 1950 Decrees are not the end of the legislative history. They are followed by other regulations, all tending to aggravate the original restriction.

Thus, an amendment to the Decree of February 6, 1950, was published on November 28, 1953, adding the following paragraph to the list of goods liable to seizure as contraband:

> "Foodstuffs and all other commodities which are likely to strengthen the war potential of the Zionists in Palestine (sic) in any way whatsoever."

The maritime powers which use the Canal have expressed their revulsion at these arbitrary restrictions. Most of them have vehemently protested against them either in the Security Council, or in their direct relations with the Egyptian Government. None of them recognizes any legality in these decrees. But they remain in force. To resist them would require more resolution than the maritime community has yet shown. This becomes apparent when we record the stringency with which these regulations are applied.

(b) The Blacklist

The Decree of February 6, 1950 establishes a Blacklist of ships which, having transgressed or been suspected of transgressing against the Egyptian blockade practices, are to be denied the free use of the Suez Canal. The latest available edition of this list contains 104 ships, inscribed between 1950 and 1955 - for the "offense" of having exercised their rights under the 1888 Convention to trade freely through the Suez Canal. The ships are of British, United States, Swedish, Greek, Norwegian, Dutch, Danish, Panamanian, Liberian, Swiss, Costa Rican and Italian nationality. Thus, all these nations have been deprived of an essential part of their rights under the 1888 Convention. Under an Egyptian law, which constitutes the standing orders of Egyptian officials in the Suez Canal, cargo carried on these ships shall "be deemed intended for the enemy" and subject to confiscation and seizure, while

the ships themselves would be denied the essential facilities necessary for passage through the Suez Canal. The existence of the Blacklist is, therefore, the most stringent of the deterrents whereby Egypt has prevented trading with Israel through an international waterway.

As a result of these illicit enactments imposed on the maritime powers, some 90 per cent of the trade which would have normally flowed through the Canal to or from Israel in the past eight years has been effectively obstructed.

(c) Punitive Measures against Ships in the Canal

Notwithstanding the Egyptian decrees, some ships have attempted to exercise the rights conferred on them by the 1888 Convention.

The Case of the Rimfrost

On October 31, 1952, a cargo of meat on the Norwegian vessel Rimfrost proceeding from Massawa to Haifa through the Suez Canal was confiscated. Under international pressure the cargo was returned in useless condition three months later.

The Case of the SS Parnon

On September 2, 1953, the Greek SS Parnon with a cargo of 500 tons of asphalt and a number of Israel-assembled cars, was detained in the Canal under threat of confiscation of cargo and ship. Under intensive pressure by the interested powers the ship was allowed to proceed, having lost twelve days of its journey.

The Case of the SS Rimfrost (2)

On November 4, 1953, the Norwegian vessel Rimfrost was again detained in the Canal and two boats destined for Italy were removed.

The Case of the SS Franca Mari

On December 16, 1953, the Italian ship Franca Mari with a cargo of meat and hides, was stopped on the way from Massawa to Haifa. The cargo was confiscated. The ship was eventually permitted to proceed.

The Case of the SS Triton

On December 22, 1953, the Norwegian vessel, Triton, bound from Melbourne to Genoa via Israel, with a cargo of clothing and motorcycles, was stopped in the Canal and its cargo confiscated.

The Case of the Bat Galim

On September 28, 1954, the Israel freighter Bat Galim, bound from Eritrea to Haifa with 93 tons of meat, 42 tons of plywood and 3 tons of hides, was detained in the Canal and exposed to the following treatment: Its cargo was confiscated; its crew was thrown in jail under a fictitious charge of having opened fire on Egyptian fishermen at the entrance to the Canal. False names for the alleged fishermen were fabricated. The Egyptian-Israel Mixed Armistice Commission dismissed the Egyptian story as a total fiction. By this time, the fabrication had been widely published by high officials of Colonel Nasser's Government, and had even been proclaimed in the Security Council of the United Nations. Under the influence of Security Council discussions, the Egyptian Government released the crew from prison, transferred them by land to the Egyptian-Israel frontier, and dismissed them across the boundary. The Egyptian Representative in the Security Council then gave an undertaking that the ship and its cargo would be returned. This undertaking was violated. The Egyptian Government appropriated the cargo to itself, and has now commissioned the confiscated ship to the Egyptian Navy.

It is difficult to think of a larger aggregate of offenses against international law and maritime tradition than those which Egypt compressed into the single episode of the Bat Galim. There is obstruction of free navigation; piratical seizure of a ship in an international waterway; physical violence against the persons of mariners exercising innocent passage; fabrication of charges against sailors in transit; unlawful imprisonment; the bearing of false witness from the highest tribunals of international security; dishonourable non-fulfilment of a pledge given by a member nation at the table of the Security Council. All this was done by a Government which claims to be an adequate custodian of universally established maritime rights.

The Case of the SS Fedala

On July 8, 1955, the Dutch ship Fedala was detained en route from Massawa to Haifa. Part of its cargo was confiscated and the vessel held against its master's will for three days.

The Case of the SS Pannegia

On May 25, 1956, the Greek ship Pannegia en route from Haifa to Eilat, was detained in the Suez Canal with a cargo of 520 tons of cement. The crew was not allowed ashore for three months despite the spread of sickness amongst its members. Its water provisions were cruelly limited. In a statement made at Haifa on September 10, 1956, the Greek captain, Mr. Koutales Costa, has given a full account of the inhuman harrassments to which he and his crew were subjected (S/3653).

Summary of the Egyptian Practice

It will be seen that those few ships which are not frightened off the Israeli route by the deterrent effects of Egypt's blockade legislation have been subjected, at the whim and fancy of the territorial State, to acts of force against their flag, their cargoes, the authority of their masters and the persons of their crews.

Egypt has confiscated and held goods of the value of $5,600,000 seized from ships exercising innocent passage in the Suez Canal.

Not one of the immunities prescribed by the Constantinople Convention has been held in honour by the Eg ptian Government in the record of these eight years.

It is legitimate for Israel to invite the Security Council to read the language of the Egyptian blockade laws; to scan the Blacklist of ships warned by Egypt off an international highway; to think of the ordeals of the peaceful vessels and crews listed above; and then to ask itself how all this compares with the Egyptian Foreign Minister's quotation on October 8 to the effect that the Canal "shall always be 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".

The ships which have attempted to pass through the Canal to Israel are few in number, but this fact aggravates and does not diminish Egypt's offence. The blockade works principally through the existence of the regulations and their

deterrent effects and only secondarily through active assault and confiscation. With tanker traffic entirely intimidated by the inclusion of some 75 tankers on the Blacklist and with Israeli flagships confiscated at sight - two categories which would account for the great bulk of normal traffic, have been entirely excluded from the waterway. The more traffic passing through the Canal for non-Israeli destinations, and the fewer for Israeli destinations, the more effective and drastic is the blockade proved to be.

II. The Legal Position - 1888 Convention

(a) Violation of the Constantinople Convention

It remains to compare the current Egyptian practice with Egypt's legal obligations in the Suez Canal. Paramount amongst these is the central injunction of the 1888 Convention providing 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 war without distinction of flag."

In subsequent articles the Convention further develops the theme of universality and non-discrimination in the use of the waterway. Embarrassed by the sheer emphasis with which the Convention forbids discrimination, Egypt has sought a slender refuge in Articles IX and X, which empower the territorial State to take measures for the security of its own forces and for the defence of Egypt.

The Egyptian Government has claimed that the security of Egyptian armed forces would have been threatened by the arrival of frozen meat on the Rimfrost; of plywood and hides on the Bat Galim; of cement on the Pannegia and of Australian motorcycles to Genoa via Haifa. It claims that Egypt's capacity of self-defence would be injured if tankers passing through the Suez Canal were not prevented from depositing crude oil for refining in Haifa, both for domestic consumption and for export to Europe. The argument is without substance, and has no legal basis. Even if the safe arrival of these frozen meats and fuel oils, these hides and motorcycles were seriously considered by Egypt to be detrimental to her "security," this would give her no right to deny them free passage through the Suez Canal. Egypt's reliance on Articles IX and X to justify her blockade restrictions is decisively closed by Article XI which reads:

> "the measures which shall be taken in the cases provided for in Articles IX and X of the present treaty shall not interfere with the free use of the Canal."

Representatives of Egypt in the Security Council, seeking to base their blockade practices on Articles IX and X, have always refused to recognize the existence of Article XI. This Article is a complete refutation of their effort to reconcile their restrictions with the text of the 1888 Convention.

In observations outside this Council Egyptian Representatives have fallen back on a new argument. They admit that the 1888 Convention provides for free passage through the Suez Canal even in time of war, and even to "belligerents." They go on, however, to assert that this freedom applies only to "belligerents" who are at war with countries other than Egypt. According to this argument, a user of the Canal at war with any state except Egypt can enjoy the plenitude of his rights; but when Egypt chooses to call itself a "belligerent," its adversary loses his rights under the 1888 Convention.

There is no foundation for this theory. It is indeed specifically ruled out by Article IV of the 1888 Convention which reads as follows:

> "The maritime canal remaining open in time of war as a free passage, even to the 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... even though the Ottoman Empire should be one of the belligerent powers."

It is, of course, a truism that in terms of the 1888 Convention, Egypt is the equivalent of the Ottoman Empire.

The conclusion is clear: even if Egypt possessed rights of "belligerency," she would not be legally permitted to perform "any act having for its object to obstruct the free navigation of the Canal."

(b) International Opinion on the 1888 Convention

The text of the 1888 Convention is sufficient in itself to disqualify the Egyptian restrictions. If any further argument were needed, it could be found in the view of other signatories to the Convention. Egypt cannot be the sole judge of the validity of its own obligations. It cannot unilaterally interpret a multilateral treaty in its own interest.

Not one signatory of the Constantinople Convention has ever been found to uphold Egypt's view that the restrictions against Israel are compatible with the Convention. On the other hand, those signatories of the Convention and other powers who have expressed themselves on the subject at all, have invariably held that Egypt's restrictions against Israel violate the Convention. On August 16,1951 the Representative of the Netherlands said in the Security Council:

> "I now come, briefly, to the Convention of Constantinople of 1888. My Government is of the opinion that, even apart from the question as to whether Egypt can claim to be considered as a belligerent, the Egyptian measures of restriction in the Suez Canal are inconsistent with preamble and with Articles 1 and 11 of the Convention. The rights and duties resulting from the Convention are quite clear. The general principle of the free use of the Canal in time of war as in time of peace, without distinction of flag, determines the language and the meaning of the Convention throughout its contents. The free use of the Canal is the paramount general interest. In Articles 9 and 10 provisions are made to ensure that such free use will not deteriorate into abuse, but even such measures as Egypt is entitled to take under those provisions shall, according to Article 11 "not interfere with the free use of the Canal;" not only with the use, but with the free use.
>
> "In the light of this, in our opinion, very clear and unequivocal language, my Government considers that the Egyptian restrictions on the free use of the Suez Canal are undoubtedly incompatible with the Convention of Constantinople of 1888."
>
> (533rd Meeting, Security Council
> August 16, 1951)

Similar statements, declaring the Egyptian restrictions to be contrary to the 1888 Convention, were made by the Representative of Belgium on January 4, 1955. The views of the British and French Governments are also on record. Non-signatories, representing many other legal traditions, have similarly found incompatibility between the Egyptian practices and the Constantinople Convention. This was attested by the Representative of Brazil in the Security Council on January 3, 1955; by the Representative of New Zealand on January 13, 1955; by the Representative of Colombia on March 28, 1954; by the Representative of Peru on January 13, 1955; and by the Representative of Denmark on March 28, 1954.

On September 27, 1956, the President of the United States of America described the Egyptian restrictions on Israeli-bound shipping as "a black mark", "most unjust" and as "not in accord with the 1888 Convention".

(c) The Security Council's Jurisprudence

All the grounds on which Egypt bases its discrimination against Israel shipping and commerce were examined and rejected by the Security Council in its discussions of the Suez Canal problem in 1951, 1954 and 1955.

Egypt has based its alleged right to exercise these restrictions on the doctrine of a "state of war." Even if Egypt possessed "belligerent rights" she would still have no right under the 1888 Convention to obstruct freedom of passage in the Canal to any ship of any flag at any time, in peace or in war. This is stated categorically in Articles I, IV and XI. But the Security Council has determined that Egypt does not, in fact, possess any rights of belligerency in the Suez Canal, or anywhere else. The theory of belligerent rights was the central theme of the Security Council's discussions in 1951. By the time it reached the Council, this doctrine had been rejected by the authorities responsible for interpreting the Rhodes Agreement of February 1949, which defines Egyptian-Israel relations in the aftermath of hostilities. The Rhodes Agreement was concluded pursuant to a resolution of the Security Council in the presence of its representative Dr. Ralph Bunche. Addressing the Security Council on July 26, 1949, Dr. Bunche interpreted the law of the Armistice Agreements as follows:

> "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."

The same matter was discussed in the Egyptian-Israel Mixed Armistice Commission frequently between 1949 and 1951. The United Nations Chief of Staff reported his findings to the Security Council on June 12, 1951. Discussing the provisions of the Armistice Agreement against the commission of "aggressive or hostile acts," the United Nations Chief of Staff said:

> "It is quite clear to me that action taken by the Egyptian authorities in interfering with passage of goods destined for Israel through the Suez Canal must be considered an aggressive action. Similarly I must of necessity consider that the interference with the passage of goods is a hostile act... In my opinion this interference is an aggressive and hostile act."

Against this background, the Security Council adopted its resolution of September 1, 1951. A study of that resolution reveals how comprehensively the Security Council put its authority behind the case for the complete cessation of Egypt's restrictions:

In the first two paragraphs of its resolution the Security Council recalled its previous resolution of August 11, 1949, and November 17, 1950, which interpreted the Armistice Agreements as including "firm pledges against any further acts of hostility between the parties".

In its third paragraph the Security Council drew attention to the report of the Chief of Staff of June 12, 1951, expressing the opinion that the Egyptian interference with shipping "jeopardised the effective functioning of the Armistice Agreement". In the same Report, the Chief of Staff had referred to this Egyptian practice as a "hostile and aggressive act" and as a policy the continuation of which had definitely not been envisaged by the parties when they set their hands to that Agreement at Rhodes.

In paragraph 4 the Security Council noted that Egypt had not complied with the earnest plea of the Chief of Staff that they "desist from the present practice of interfering with the passage through the Suez Canal of goods destined for Israel".

In paragraph 5, which constitutes what the representative of France was later to describe as "the legal foundation of the Security Council's action", the Security Council determined that "the armistice regime is of a permanent character so that neither party can reasonably assert that it is actively a belligerent or requires to exercise the right of visit, search and seizure for any legitimate purpose of self-defense".

In paragraph 6 the Security Council determined that maintenance of the Egyptian restrictions is inconsistent with the central purposes of the Armistice Agreement.

In paragraph 7 the Security Council disqualified the Egyptian practice on general grounds of international maritime law by defining it as "an abuse of the exercise of the right to visit, search and seizure".

In paragraph 8 the Security Council categorically dismissed the Egyptian contention that the Egyptian practice could be justified on the grounds of "self-defence".

In paragraph 9 the Security Council condemned the attempt of the Egyptian Government to impose its legislation and its policy of hostility to Israel upon other countries, noting that those restrictions represented unjustified interference with the rights of nations to navigate the seas and to trade freely with one another, including the Arab States and Israel.

Finally, in paragraph 10, the Security Council 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 required for technical considerations of safety or for the observance of international conventions.

Thus, the Security Council's resolution of September 1, 1951 makes a specific judgement on every one of the issues involved in the case before it. In that discussion, and those which ensued in 1954 and 1955, some 18 Member States of the United Nations, in their capacity as Security Council members, have recorded, by speech and vote, their unreserved condemnation of Egypt's blockade practices. The States thus on record in Security Council debates are: The United States, the United Kingdom, France, Netherlands, Belgium, Denmark, Colombia, Peru, Brazil, Cuba, Ecuador, Turkey, Yugoslavia, Australia.

On the other hand, no member of the Security Council at any time has raised a voice in favour of Egypt's alleged rights to practice these encroachments.

(d) Further Implications of the 1951 Resolution

The Security Council's resolution of 1951 gave judgement not only against Egypt's blockade practices, but also against the doctrine of "belligerency" on which they were based.

In its 1954 discussion the Security Council developed this jurisprudence further. It established the doctrine of Egypt's obligation to allow free passage not only in the Suez Canal but also in the Gulf of Aqaba as well. This was enunciated on behalf of the majority by the United Kingdom who said:

> "The second part of the Israel complaint concerns interference with shipping in the Gulf of Aqaba. I have already referred to paragraph 5 of the 1951 resolution, which laid down that "since the armistice regime...is of a permanent character, neither party can reasonably assert that it is...a belligerent or requires to exercise the right of visit, search and seizure for any legitimate purpose of self-defence". That is a general principle which applies not only in the Suez Canal, but also in the Gulf of Aqaba, and indeed anywhere else."

The Representative of France pointed out:

> "The terms used (in the 1951 Resolution) are obviously intended to constitute a general formula applicable not only to passage between Suez and Port Said, but also in the Mediterranean, the Red Sea and the Gulf of Aqaba itself. Logically, it is not possible to deny Egypt the status of a belligerent in the Canal whilst granting that status in the adjacent areas."

The Representative of the United States and others spoke in similar vein.

In the 1955 discussion (the Bat Galim case) the question of the right of Israel flagships was considered for the first time. Israel's merchant fleet had only then begun to develop to the point where this subject became of practical importance. The consensus of the Security Council was clearly expressed in conformity with Article I of the Constantinople Convention, which provides for free passage through the Suez Canal for all ships "without distinction of flag". It is

clear from this Article that the right of free navigation belongs to Israeli flagships, as to all others, on a level of complete equality. This was clearly enunciated by the Representative of the United States who said on January 4, 1955:

> "Thus we cannot fail to state our view that Egyptian restrictions on ships passing through the Suez Canal, whether bound to or from Israel, or whether flying the Israel or some other flag, are inconsistent with the spirit and intent of the Egyptian-Israeli General Armistice Agreement, contrary to the Security Council resolution of September 1, 1951 (S/2322), and a retrogression from the stated objectives to which both sides committed themselves in signing the armistice agreement. We cannot fail to state, therefore, that we look to Egypt to give effect to these decisions and agreements."

On January 13, 1955 the President of the Security Council (Sir Leslie Munro, New Zealand) summed up the Bat Galim case as follows:

> "It is evident that most representatives here regard the resolution of 1 September 1951 as having continuing validity and effect, and it is in this context and that of the Constantinople Convention that they have considered the Bat Galim case."

The Security Council was clearly aware that if Egypt had the right to commit belligerent acts of its choice against Israel, it would follow that Israel could commit belligerent acts of its choice against Egypt. This was regarded as a specially compelling reason for bringing Egypt's violation to an end.

The United States Representative said:

> "The United States is firmly of the opinion that the restrictions which Egypt is exercising over ships passing through the Suez Canal are inconsistent with the spirit and intent of the Armistice Agreement... The result of this hostile act is the engendering of hostility in return which places in jeopardy the peace and stability of the area."

Three years later, this was echoed by the Representative of Brazil:

> "Should we accept the Egyptian thesis we should be bound to recognise any measures of reprisal adopted by the Israel Government. It is obvious that in the exchange of hostile acts that would follow we could hardly expect to lay the foundations of a definite solution to the Palestine problem."

III. The Future

The Security Council has no more urgent task in the Suez Canal problem than to secure the implementation of its existing decision. If the Security Council and the chief maritime powers had shown greater zeal in resisting the violations of the 1888 Convention during the past eight years they would be in a stronger position to defend its integrity today.

The Government of Israel invites the Security Council to consider some of the grave implications which will arise if these abuses are allowed to endure:

If the violation is any longer condoned, it is bound to spread over a larger field. No nation has a greater or a lesser right than Israel to the free use of the Suez Canal. If Egypt is entitled to interfere with ships, cargoes or crews bound for Israel, she is equally entitled to interfere with the ships, cargoes or crews of every other State. This is clear from the fact that any distinction between Israel's rights and those of other States has been specifically repudiated by the Security Council itself. Those who have now understood the dangers of Egypt's policy on navigation in the Canal will, no doubt, agree that no nation can effectively assert its own rights, if it condones the denial of an equal and identical right to other nations.

The Egyptian violations inflict a great injury on Israel, which she is not bound passively to endure. The extent of this injury can be illustrated by one item alone. About 70 per cent of the traffic through the Suez Canal consists of oil tankers. If Egypt obeyed the international law these tankers would be as free to sell their oil at the Israeli port of Haifa as anywhere else. But owing to Egypt's punitive measures, which have put 75 tankers on the Blacklist, these vessels refrain from attempting to serve the Israel market. Israel has thus found it necessary to purchase her fuel from other sources than the tanker traffic, and then to convey it without using the Suez Canal. Since the Security Council's Resolution of 1951, it is estimated that Israel has paid 44 million dollars more for her fuel supply than she would have paid if a situation of law prevailed in

the Suez Canal. This takes no account of the incidental losses to Israel through handicaps inflicted on the petro-chemical and refining industries, the obstruction of Israel flagships from inter-oceanic voyages and the increased cost to Israel of her growing trade with Africa and Asian nations.

Many countries have a much greater fuel import requirement than Israel; and others depend even more than she on the Suez Canal. Israel's experience illustrates the economic outrage to which they may be exposed, and from which they have no present guarantee except the dubious one of Egypt's sufferance.

Israel itself has no obligation to suffer this abuse. Much has been said in the Security Council's debate on the need to base peace on foundations of justice and international law. Such peace as now exists in the Suez Canal is based in large measure on acquiescence of the violation of justice and international law. To endure an injury passively is, in effect, to encourage its repetition and its aggravation.

The Egyptian violations would be serious enough if they deprived only one nation of its rights under the 1888 Convention. When universality is violated in one instance it ceases to exist at all. In fact, however, many nations have suffered encroachments on their sovereignty through the impact of Egypt's restrictions.

In discussing Egypt's practices in the Suez Canal, mention has been made above of some 20 nations whose rights under the 1888 Convention have been violated. A country which desires to trade with Israel through the Suez Canal and is prevented from so doing by Egypt thereby suffers prejudice to its sovereign rights. Egypt herself has a formal right not to trade with Israel. But Egypt has no right to prevent other nations from trading with Israel through the Suez Canal or in any other way. The maritime nations are not colonies of Egypt. Their commercial policies are not subject to Egypt's control. What they sell to Israel, or what Israel sells to them, whether through the Suez Canal or by any other route, is a matter for their and Israel's exclusive sovereign discretion. Thus, so long as Egyptian restrictions persist all nations are in practice, or in potentiality, deprived of some part of their sovereign rights.

The Security Council itself observed this fact when in its 1951 Resolution it stated that:

> "The restrictions on the passage of goods through the Suez Canal to Israeli ports are denying to nations at no time connected with the conflict in Palestine valuable supplies required for their economic reconstruction, and that these restrictions together with sanctions applied by Egypt to certain ships which have visited Israeli ports represent unjustified interference with the rights of nations to navigate the seas and to trade freely with one another, including the Arab States and Israel."

It is unfortunately true that this violation of international law has existed for several years and does not derive specifically from the action taken by Egypt on July 26. But the long duration of this abuse makes its removal not less, but more, urgent. It would be illogical for the international community to attempt to ensure itself against future illegalities, while allowing existing ones to continue on their perilous course.

In any new projects designed to ensure and guarantee respect for the 1888 Convention, the Government of Israel claims specific guarantees for its own rights. It has been gratifying in recent weeks to observe a strong surge of world opinion in favour of guaranteeing freedom of navigation in the Suez Canal for the ships of all nations without distinction of flag. But in view of the special experience of the past eight years the general statement of this doctrine is not adequate, unless it is specified that the principle must be applied to Israel as to any other State. Similarly, the experience of the past eight years conclusively proves the necessity for effective measures of implementation to prevent or correct violations.

Israel's rights are fully established in law and do not stand in need of further adjudication. On the basis of the 1888 Convention; of the 1951 Resolution, and of the overwhelming consensus of international opinion, Israel's right to free passage exists as an axiom and prior assumption in international law. The Government of Israel is at this moment endowed with full legal competence to exercise this right. It does not lie under the onus of proving the legality of its rights either in general or in any particular case. If Egypt desired any relief from the full application of the 1888 Convention the onus would

be upon her to seek it, and, in any case, to avoid any interference with navigation through the Suez Canal, whether bound for Israel or anywhere else. It is important that in any future provisions for the adjudication of violations nothing should be done which would throw any doubt on the existing jurisprudence with respect to the 1888 Convention and the Security Council Resolution of 1951. On October 8 the Egyptian Foreign Minister reaffirmed his Government's long standing declaration stating that the Suez Canal "shall always be open as a neutral passage to every merchant ship crossing from one sea to another without any distinction, exclusion of preference of persons or nationalities, on payment of dues and observance of the regulations established." If this declaration is sincere, Egypt cannot continue to maintain its discrimination against Israel in the Suez Canal.

The maritime nations have one obvious method of vindicating their own rights, and those of others, under international law. This would be by refusing in practice to submit to the restrictions which they have frequently condemned. To show deference to the Egyptian restrictions; to refrain meekly from doing lawfully things which those regulations unlawfully forbid; to exclude Israel from normal patterns of trade through the Suez Canal in deference to Egypt's blockade practices - to do this is to become associated, beyond any right or necessity, with Egypt's violations of international law.

The maritime nations, under the 1888 Convention and the 1951 resolution have the right to trade freely with Israel through the Suez Canal. It is surely their legal and moral duty now to exercise that right in practice, and to lay upon Egypt the responsibility for any consequences which would arise from its violation.

On October 12, 1956, the Secretary-General of the United Nations read to a meeting of the Security Council a list of six principles to which Egypt, as well as France and the United Kingdom, had agreed. These principles include the following:

> "1. There shall be free and open transit through the Canal without discrimination overt or covert."
>
> "3. The operation of the Canal shall be insulated from the politics of any country."

These formulations cannot possibly be reconciled with the continuation, for a single day, of Egypt's overt discrimination against Israel in pursuance of a purely national policy condemned by the international community.

If this statement does not mean the immediate end of discrimination against Israel in the Suez Canal, it means nothing at all.