

**Middle East - Suez story No
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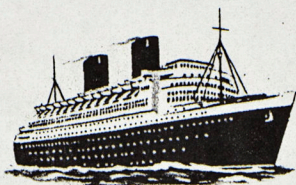
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Suez story - 15

18 Aug. 56

Cohen, Maxwell - 1 memorandum
(The U. N. and the Suez Canal Situation)
and 1 letter to D.H.

Cunard Line



R.M.S. "Queen Elizabeth"

18th August, 1956.

Personal and Confidential

My dear Secretary General,

I managed to find a very limited amount of intellectual energy aboard this mobile lotus-land and put down a few of the thoughts about the Suez and the United Nations which occupied our most pleasant luncheon the other day.

By the time I get to London next Tuesday, the morning of the 21st, the main direction of the Conference should be pretty clear.

I shall be very happy to have your comments on these few thoughts, and of course to assist in any way if I can be helpful. As you know, I shall be in Yugoslavia from the 23rd August to 24th September, and can be reached care of the United Nations Technical Assistance Resident Representative.

With kindest personal regards,

Sincerely,

A handwritten signature in cursive script that reads "Maxwell Cohen".

The Hon. Dag Hammarskjold,
Secretary General of the United Nations,
The United Nations,
New York City, N.Y.

MC:jww

Maxwell Cohen

MEMORANDUM

August 18th, 1956.

To: The Secretary-General

From: Maxwell Cohen

The United Nations and The Suez Canal Situation

I) Explanatory Note:

This Memorandum is designed to set out very briefly some of the considerations which may obtain if and when the Suez Canal situation is presented to the United Nations for a "solution." Necessarily, the facts upon which this Memorandum is based depend upon my generalised knowledge since, at the time of writing, no historical documentation is available nor has the writer had access, at sea, to the recent details of the Anglo-U.S.-French proposals, and the various counter-proposals now being discussed at the London Conference. In order to off-set, therefore, the absence of quite vital contemporary information a number of assumptions will be made and these now follow:-

II) Assumptions:

1) The Government of Egypt has the undoubted right, in law, to nationalise an Egyptian Company or to nationalise the assets in Egypt of a foreign company. Insofar as international law is concerned, the obligations of a State under such circumstances is to pay compensation in the case of foreign owners of the domestic nationalised assets, and not to commit a breach of any other international obligations, particularly those of a conventional or treaty nature. Egypt is therefore bound by the provisions of the 1888 Convention of Constantinople, as well as by the language of the Anglo-Egyptian agreements of 1936 and 1952, all of which make something more than merely national territory out of the unique waterway known as the Suez Canal. It may be said that these documents attempt to strike a nice balance between the sovereignty of the State wherein the Canal is located, and the vital inter-national interests that signatory and non-signatory states have in the use and efficient operation of the Canal. Therefore, any unilateral act of Egypt is subject to various "international obligations", particularly with respect to the free passage and efficiency alluded to in these various documents.

2) The recent nationalisation of the company owning the assets of the Suez Canal raises military, economic, and political issues for the Western powers and important commercial issues for all other States concerned with the freedom of shipping in this main artery of the world. The severity of the British reaction to nationalisation was an index of the importance of the Canal to her interests,—shipping in general and the transshipment of oil in particular,—and of course above all the strategic location of the Canal on the highroad to Asia and Australasia. Any interruption, therefore, of traffic in the Canal, from the British and French point of view, would have been a breach of the conventions to which they were parties and these legal rights would have founded the reasons for military action to restore the vital status quo if not of the company, at least of the freedom to use the Canal. However, nothing that the Egyptian Government has done so far -- except for its blundering in the first 24 hours of nationalisation when it threatened not to accept sterling cheques from the captains for their tolls, and when it compelled, by force, alien technicians to remain on duty -- has been a sufficient provocation to warrant action which could be justified, either under customary international law to prevent or punish delicts, or under the United Nations charter, which permits a limited amount of self help under article 51, and a certain initiative for the pacific settlement of disputes by the Parties under Chapter VI. At the present moment, therefore, it must be stated that no facts exist that would justify British or French use of military force and such force would be in violation not only of the Charter, but also of customary international rules governing the measure of reprisals for breaches of international agreement.

3) The present Conference represents an attempt by the U.K. with the assistance of France and the U.S.A., to do perhaps three things:-

- (a) To develop a new international regime of the Canal based upon a new treaty which would bridge the gap between technical Egyptian sovereignty and actual international control and operation.
- (b) To mobilise international opinion because, should the Conference prove unable to arrive at an agreement acceptable to two of the vital parties concerned, namely Egypt and the U.S.S.R., the U.K. could count the Conference a partial success if at least it led to a crystallized international view favouring some kind of international regime. Such a climate of opinion would be, in the U.K.'s view, a valuable bargaining instrument in any bilateral negotiations to obtain concessions from Egypt in the likely event of such negotiations between the principal parties concerned after the Conference is over.

- (c) To restore very largely the status quo ante. This is a most unlikely possibility but might conceivably have been in the minds of some of the Conference planners who had hoped that the Egyptians might be induced to have a proforma nationalisation but allow the Canal to remain very largely under the same management and administration with perhaps mixed Egyptian Government and foreign private shareholders in the company.

4) The Conference is likely to fail to achieve anything more than a highly vocal international opinion to the effect that nothing must be done to interrupt the free flow of traffic and the efficiency and continuing development of the Canal. Moreover, if this is all that is accomplished, then no other Conference sponsored by one or more interested powers is likely to get any farther unless great changes take place in the present Egyptian regime and Colonel Nasser is replaced by persons more agreeable to Anglo-French-U.S. opinion. Since Colonel Nasser's replacement is quite unlikely without a major political upheaval in Egypt, it may be assumed that the absence of an agreement at the present Conference, and the continuing insistence upon its rights by Egypt, supported by the U.S.S.R., may leave the situation in a kind of stalemate. The logical consequences of that stalemate are not a second Conference, sponsored by one or more powers, but rather a passing of the matter to the United Nations for some kind of action. The matter then comes to the United Nations with a clearly enunciated world concern that the Canal must be open and efficient but with no formulas that are able to make the bridge between Egyptian ownership and management and international desire for reasonableness and efficiency in the operation.

III) What Can the United Nations do?

1) It is desirable from the beginning to assume that this is not the kind of matter which should proceed to the Security Council, unless of course there is force or the threat of force which justifies such a reference. It must be assumed that Colonel Nasser will not use force to interrupt traffic in the Canal and that the U.K. and France will not use force if such interruption does not take place. Nasser would be committing a great tactical blunder affecting his whole career if he were to risk any such interruption and he is not likely to do so. Moreover, the divergent policies being followed at the present time by the U.S.S.R. and the Western powers with respect to Egypt at least in appearance, are likely to render any discussions in the Security Council quite ineffective in the results arrived at, and no draft resolution is likely to satisfy all the veto-holding powers.

For these reasons, it must be assumed that if a request is made of the United Nations that it consider the Suez Canal problem and

take a responsibility for it, the organ primarily concerned would be the General Assembly, perhaps with the co-operation of the Economic and Social Council, although this might needlessly complicate matters.

2) Presumably, the Secretary-General could be asked to place the subject upon the Agenda of the 11th Assembly which is only three months hence, within which time much preliminary thought could be given to a regime for the Canal that would satisfy the demands of Egyptian nationalism and the concern of the great Western powers for a fair and efficiently operated Canal system.

3) The General Assembly could, in my opinion, help resolve this problem to the satisfaction of most parties by the following kind of formula embraced in a suitable solution:-

- (a) Egyptian sovereignty over the Canal would clearly and finally be proclaimed by the Resolution.
- (b) The special character of the Canal as a vital international waterway would be proclaimed with equal vigour.
- (c) The language of the several Conventions since 1888 referring to the international aspect of the Canal and Egyptian obligations thereunder, should be re-stated in the body of the Resolution -- at least that part of the language of the treaties emphasizing the international character of the Canal and the universal interest in its free use by all States, and in its efficient operation.
- (d) The stumbling block in all of the present debates, and equally if the United Nations became seized of the question, is the sense of security that the great maritime States would have in the fair and efficient operation of the Canal under Colonel Nasser. Egyptian nationalism is not likely to accede to the notion of a formal international regime comparable to the Danubian or Rhine Commissions. At the same time, Egypt is not likely to object to a special technical committee appointed under a G.A. Resolution and responsible to the G.A., and perhaps to the Secretary-General between G.A. meetings, which would maintain a 'watching brief' with respect to the fair and efficient operation of the Canal by the now nationalised company.
- (e) Finally, and perhaps most important, the Resolution could solve the problem of British and Egyptian face by providing that the technicians required for the efficient operation of the Canal shall be supplied by the Technical Assistance

Administration of the United Nations, or any other appropriate Specialised Agency, which officials, and technicians, both for managerial and technical purposes would be "seconded" to the nationalised company in much the same way as seconding techniques were worked out between the U.N.T.A.A. and Bolivia and Indonesia in 1951/52. These officials would have long-term contracts and be technically employees of the nationalised company, but they would retain a special United Nations status for purposes of their privileges, immunities, protection, etc. In this way, a very large number of the present employees with their rich experience in running the Canal could be re-employed as United Nations experts and in the future others would be hired through the mechanism of the United Nations, thus ensuring a high level of technical competence and a sufficient margin of juridical independence from the State of Egypt so as to guarantee the most efficient use of their services.

One last point here needs careful consideration. Who will decide the basic financial policy of the nationalised company? That is to say, who will decide what portion of the earnings of the company will be retained by the Government and what portion will be used for further developmental efforts to improve and extend the facilities of the Canal? It is desirable that the Resolution of the G.A. be sufficiently clear on the managerial structure contemplated in order to assure a continuing high level of Canal development. Perhaps the simplest solution, with face-saving all round, would be for the Resolution to state that the company shall apply from its profits, not less than "X" percent per annum for developmental purposes, leaving the balance to be employed by the owners, the Government of Egypt, as it may see fit.

In all of this, the sanction will be the supervisory committee referred to above, appointed by the G.A. as well as the strong influence on policy and administration that will be provided by the United Nations recruited and supplied managerial and technical personnel.

IV) Conclusions:

There are many unforeseeable difficulties in the Suez situation -- political, technical and polemical. Not the least of these problems will be the suggestion by Egypt or the U.S.S.R. that all international waterways of importance, e.g., the Panama Canal, should be subjected to international regimes if the Suez is to be so regulated. The advantage of the above proposals is that it does not affect the sovereignty of Egypt and yet it assures, through the method of

technical assistance and G.A. supervision, almost as much as could be expected from a purely international regime itself.