

**Middle East - Suez story No  
15-18: Middle East - Suez  
story No 15-18 - 35**

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Middle East / Suez story - 17

28 Sept. 56

Notes on the Suez Canal Problem

(sent to D.H. by C.A. Stavropoulos, Legal Couns.)  
as background material)

UNITED NATIONS



NATIONS UNIES

CONSTANTIN A. STAVROPOULOS

The Secretary-General

There are just notes.

But you might find  
them useful for your  
background of the question.

Constantin

28-IX-56

NOTES ON THE SUEZ CANAL PROBLEM

The purpose of the attached Notes is to provide short comments on the background material and on international participation in the operation and control of the Suez Canal. This latter question is dealt with from the point of view of:

- (i) Basic types of participation.
- (ii) Participation in particular aspects of Canal management, and
- (iii) Association with the United Nations.

The distinction between types of participation can be blurred by the treatment given to particular aspects of Canal management or association with the United Nations. If each type of participation was discussed in full detail, it would be necessary to take account of the possibility of the scaling up or down of any particular type by a repetition of the same subject matter in each case. For this reason, the three points of view set out above have been adopted.

The questions now before the Security Council in respect of the legality or otherwise of actions of the Members involved are not dealt with in the attached Notes except to the extent that details of international participation are thereby affected.

TABLE OF CONTENTS

PART I. Concessions of 1854 and 1856. Agreements between Egypt and the Company, International Agreements of 1888, 1936 and 1954

	<u>Page</u>
A. Concession of 1854 . . . . .	1
B. Concession of 1856 . . . . .	1
C. Agreements between Egypt and the Company . . . . .	2
D. 1888 Convention . . . . .	4
E. 1936 Treaty of Alliance - United Kingdom and Egypt . . . . .	5
F. 1954 Suez Canal Base Agreement . . . . .	5

PART II. Possible Forms of International Participation in the Operation and Control of the Canal

A. Introduction . . . . .	6
B. Creation of an Advisory Body . . . . .	
Composition . . . . .	7
Structure . . . . .	8
Powers and Functions . . . . .	8
Appeals . . . . .	8
Method of Establishment . . . . .	9
C. Participation in the Egyptian Canal Authority	
Relationship to the Egyptian Government . . . . .	10
Structure of the Authority . . . . .	10
Degree of Participation . . . . .	10
Levels of Participation . . . . .	10
Powers of Participants . . . . .	10
Methods and Duration of Appointment . . . . .	11
D. International Control and Operation	
Nationalization decree . . . . .	12
Independence of Operating Authority . . . . .	12
Types of authority . . . . .	12
Source of Powers of Authority . . . . .	12
Participation . . . . .	12

E. International participation with respect to Particular Matters

Introduction . . . . .	14
Rights of Passage . . . . .	14
Defense Requirements . . . . .	14
Finance . . . . .	14
Duration . . . . .	14/15
Tolls and Charges . . . . .	15
Maintenance and Development . . . . .	15
Canal Operation and Navigation . . . . .	15
Settlement of Disputes . . . . .	16
Sanctions for Violations . . . . .	16
Observers . . . . .	16

F. Possible forms of Association with the United Nations

Basic forms . . . . .	17
Contents of a Relationship Agreement . . . . .	17
Establishment of separate Bodies for particular tasks . . . . .	18
Security Council . . . . .	19
International Court of Justice . . . . .	19
Technical Assistance . . . . .	19

PART I - CONCESSIONS OF 1854 AND 1856, AGREEMENTS BETWEEN EGYPT AND THE COMPANY  
AND INTERNATIONAL AGREEMENTS OF 1888, 1936 AND 1954

A. Concession of 30 November 1854

This concession,<sup>1</sup> which was replaced in 1856 but is of interest as expressing the intention at the time, provides as follows (the Articles are summarized where possible):

(i) Article 1. A company shall be formed by M. de Lesseps under the name of the Universal Suez Maritime Canal Company for cutting a passage through the Isthmus of Suez, establishment of one or two ports, and the foundation or appropriation of two sufficient entrances.

(ii) Article 2. The Director of the Company shall be appointed by the Egyptian Government and selected as far as practicable, from the shareholders most interested in the undertaking.

(iii) Article 3. The term of the grant is 99 years from the day of opening.

(iv) Article 6. Tariffs for passage shall be agreed between the Company and the Viceroy of Egypt. They shall be equal for all nations and no particular advantage can be stipulated for the exclusive benefit of any one country.

(v) Article 10. At the expiry of the concession, the Egyptian Government will take the place of the Company, enter into full possession of the Canal and all connected establishments. The indemnity payable to the Company for the relinquishment of its plant and movables shall be agreed or arbitrated.

(vi) Article 11. The statutes of the Company and any variations therein shall be submitted to the Egyptian Government for approval.

(vii) Article 12 (the final article). Co-operation of Egypt is promised.

(viii) Articles 4, 5, 7, 8 and 9. These deal with financial matters, acquisition of lands, importation of necessary materials and the like.

B. Concession of 5 January 1856

This concession,<sup>2</sup> which replaces that of 1854, provides as follows (the Articles are summarized where possible):

(i) Article 1. The Company founded under the previous concession shall execute at its own risk and cost:

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1. Taken from the English text in "The Suez Canal in World Affairs" by Schonfield.

2. For English text see Schonfield, "The Suez Canal in World Affairs".

(a) The Maritime Canal.

(b) An irrigation canal joining the Nile to the Maritime Canal.

(c) Two branches from the irrigation canal for irrigation and supply.

(ii) Article 9. A special commissioner may be appointed at the official headquarters of the Company to represent the rights and interests of the Egyptian Government. If the principal office of the Company is not in Egypt, a superior agent properly empowered shall represent the Company at Alexandria.

(iii) Article 14. Egypt, subject to the concurrence of Turkey (then the territorial Power), declares that the Maritime Canal and its ports shall always remain open for neutral passage to every merchant ship crossing from one sea to the other on payment of dues and observance of regulations established by the Company.

(iv) Article 15. The Company can grant no advantage or favor to any vessel, company or individual not granted to all others on the same conditions.

(v) Article 16. The term of the Company's existence is 99 years from the completion of the works and the opening of the Canal to large vessels. At the expiry of the term, the Egyptian Government enter into possession of the Canal upon condition that the working stock, appliances and stores employed and provided for in the naval department of the enterprise shall be taken over also and paid for as agreed or as decided by sworn appraisers. The Article then goes on to specify what shall happen if the concession is extended. It never was.

(vi) Article 17. The Company is authorized to levy tolls and charges, which they may modify, subject to prior publication, non-discrimination, and a stated maximum for the simple right of passage through the Canal.

(vii) Article 21. The Articles of Association of the Company are approved. Authority is given for its constitution in the form of "Societes Anonymes".

(viii) Article 22. The co-operation of Egypt is promised.

(ix) Article 23 (the last article). Revocation of all previous inconsistent provisions. The present concession alone shall constitute the law in question.

(x) Other articles. These deal with details of the construction of the Canal and ports (Articles 3-7), rights of the Company, lands and such like (Articles 2, 8, 10 - 13) reserve of 15% of the net profits to Egypt in return for land concessions and other rights (Article 18) (not taken up) and various other administrative details.

#### C. Agreements between the Company and Egypt.

There are a considerable number of such agreements. They deal with such matters as finance, irrigation and sweet-water canals, lands, use of Egyptian workmen, and

in 1936-37, the appointment of two Egyptian Directors, the payment of an annual rental of £E 300,000 and the employment on the staff of the Company of Egyptians (so that by 1958 one-third of the staff would be Egyptian).

In an agreement dated 22 February 1866<sup>1</sup>, the law governing the Company is set out. This part of the agreement (Article 16) reads:

"La Compagnie Universelle du Canal Maritime de Suez etant Egyptienne, elle est regie par les lois et usages du pays; toutefois, en ce qui regarde sa constitution comme Societe et les rapports des associes entre eux, elle est, par une convention speciale, reglee par les lois qui, en France, regissent les Societes anonymes. Il est convenu que toutes les contestations de ce chef seront jugees en France par des arbitres avec appel, comme sur arbitre a la Cour Imperiale de Paris.

"Les differends en Egypte entre la Compagnie et les particuliers a quelque nationalite qu'ils appartiennent, seront juges par les Tribunaux Locaux suivant les formes consacrees par les lois et usages du pays et les traites.

"Les contestations qui viendraient a surgir entre le Gouvernement Egyptien et la Compagnie seront egalement soumises aux Tribunaux Locaux et resolues suivant les lois du pays.

"Les preposes, ouvriers et autres personnes appartenant a l'administration de la Compagnie, seront juges par les Tribunaux Locaux, suivant les lois locales et les traites pour tous delits et contestations dans lesquels les parties ou l'une d'elles serait indigene.

"Si toutes les parties sont etrangeres, il sera procede entre elles conformement aux regles etablies.

"Toute signification a la Compagnie par une partie interessee quelconque en Egypte sera valablement faite au siege de l'administration a Alexandrie."

Further agreements were made in 1949 and 1956. These dealt with increases in payments to Egypt, foreign exchange regulations, increase of senior Egyptian members in the Company, pilots and other like matters.

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1. This is the same date as appears in the Preamble to the 1888 Convention. The Preamble is apparently in error, the translation of 2 Zilkáde 1282 should be 19 March 1866, which was the date of the Firman in question.

D. The Convention of 1888.

(i) Parties. This Convention was concluded between (taking the list in the order given in the Preamble) Great Britain, Germany, Austria-Hungary, Spain, France, Italy, Netherlands, Russia and Turkey. Provision was made for further adherences (Article 16) but there have been none.<sup>1</sup> The powers of Turkey, the territorial Power, were transferred to Great Britain after the First World War. Consent to this course is contained in the various Peace Treaties.

(ii) Intention. The intention of the parties as stated in the Preamble is to "establish . . . a definite system destined to guarantee at all times, and for all the powers, the free use of the Suez Maritime Canal, and thus to complete the system under which navigation of this Canal has been placed by the Firman . . . dated 22 February 1866<sup>2</sup> . . . and sanctioning the concessions . . .".

Comment: It is not necessary for the purposes of these Notes to deal with the question whether the system thus to be created was intended to treat the operation of the Canal and the guarantees in the Convention as one whole.<sup>3</sup>

(iii) Substance. In general, the Convention provides for freedom of navigation through the Canal in peace and war to commercial and war vessels, without distinction as to flag, and is not limited to the duration of the Company's concessions. Apart from the provisions of the Convention the sovereign rights of Egypt (and Turkey) were unaffected (Art. 13. Some system of international association with the operation of the Canal was provided in Article 8. This provides:

"The agents in Egypt of the signatory powers of the present treaty shall be charged to watch over its execution. In case of any event threatening the security or the free passage of the canal, they shall meet on the summons of three of their number under the presidency of their Doyen, in order to proceed to the necessary verifications. They shall inform the Khedival government of the danger which they may have perceived, in order that that government may take proper steps to insure the protection and the free use of the canal. Under any circumstances, they shall meet once a year to take note of the due execution of the treaty.

"The last mentioned meetings shall take place under the presidency of a special commissioner nominated for that purpose by the Imperial Ottoman Government. A commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman commissioner.

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1. Mr. A. M. Stuyt mentions: China, Denmark, Greece, Japan, Norway, Portugal, and Sweden. This statement has been checked but no authority for it can be found in any Treaty reference series.
  2. This date should be 19 March 1866.
  3. The Convention is not, however, limited in duration to the duration of the Company's concessions (Art. 14). Those concessions provide for the entry into possession of the Canal of the Egyptian Government after 99 years (if not extended) and this was presumably foreseen. Alternatively it may be possible to argue that the Convention presupposed the concession and that termination of it by Egypt before 1968 is a breach of the Convention. Also that after 1968 Egypt would be obliged to take some action regarding the operation of the Canal which would safeguard the rights of the other parties to the Convention. A similar argument would perhaps be founded on the basis of an international servitude.

"They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation."

Comment: This provision is vague in relation to Articles 9 and 10. These Articles provide exceptions regarding the defense of Egypt (Article 10) and for measures to be taken by Egypt (and Turkey, the then territorial Power) to ensure the execution of the Treaty (Article 9). Both of these Articles provide that the provisions of Article 8 shall not interfere with the measures taken under them.

Furthermore, no instance of the operation of Article 8 can be found. Great Britain did not formally adhere to the Convention until the signature of the Anglo-French Agreement of April 8, 1904, and then on condition that paragraphs (i) and (ii) of Article 8 should remain in abeyance.<sup>1</sup> There is therefore the question whether the provisions of Article 8 can now be regarded as dead, or whether notwithstanding its past history, it can now be reactivated.

E. Treaty of Alliance of 1936 between the United Kingdom and Egypt.

The independence of Egypt was proclaimed on March 15, 1922. The declaration reserved to the discretion of HMG in the United Kingdom, inter alia, the security of communications of the British Empire in Egypt and the defense of Egypt against foreign aggression or interference, until such time as agreements could be concluded between the United Kingdom and Egypt. The Treaty of Alliance of 1936 was the outcome of negotiations after 1922. It terminated the military occupation of Egypt (Article 1), established an alliance (Article 4) and provided for the defense of the Canal by British Forces in co-operation with Egyptian Forces (Article 8) until such time as the Parties agreed the Egyptian Forces were able to carry out this task by its own resources. After 20 years this question could be submitted to the Council of the League if the Parties disagreed. The Article opens with these words:

"In view of the fact that the Suez Canal, whilst being an integral part of Egypt, is a universal means of communication as also an essential means of communication between the different parts of the British Empire, . . .".

F. Suez Canal Base Agreement of October 1954.

This is an Agreement between the United Kingdom and Egyptian Governments. It provides for the withdrawal of British Forces and for various matters dealing with the Suez Canal Base. It terminates the 1936 Treaty of Alliance. The Suez Canal itself is referred to in Article 8. This provides:

"The two Contracting Governments recognize that the Suez Maritime Canal, which is an integral part of Egypt, is a waterway economically, commercially and strategically of international importance, and express the determination to uphold the Convention guaranteeing the freedom of navigation of the Canal signed at Constantinople on the 29th of October, 1888.

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1. See Schonfield, op cit, p. 52.

PART II - POSSIBLE FORMS OF INTERNATIONAL PARTICIPATION IN THE OPERATION AND CONTROL OF THE SUEZ CANAL

A. Introduction

On 26 July 1956 the Suez Canal Company was nationalized as an Egyptian Limited Company and transferred to the Egyptian State with all its assets and commitments. The administration of the navigation traffic on the Canal was taken over by an independent body subject to the Egyptian Ministry of Trade.

Since that time a number of proposals for international participation in the operation and control of the Canal have been made.

This part of this paper deals first with:

(i) Basic types of international participation with reference to proposals made by Governments.

There are three basic types of international participation mentioned in this Part of the paper. The use of three types does not assume that only three types are possible. Some of the matters covered in each type are interchangeable with other types. It is therefore possible to increase or decrease the effect of any of these three types by suitable addition or subtraction of particular items. For this reason, the paper also deals with:

(ii) Possibilities of international participation with respect to specific matters such as tolls and charges, pilots, finance and other like matters affecting the operation, maintenance and development of the Canal, and passage through it.

The third section of this Part of the Paper deals with:

(iii) Possible forms of association with the United Nations.

Conclusions about international participation need not be reached solely by considering the effect of association with the United Nations and of the treatment of specific matters on the various possible types of participation. The three subheadings given above can be regarded as three independent points from which to view the participation problem. Taken in this way, three differing sets of conclusions, each cutting across the other, could be reached.

Basic Types of International Participation

By reference to proposals made by Governments, there are three basic types of international participation. These are:

- (i) Creation of an advisory body; operation and control of the Canal remaining with the Egyptian Government.
- (ii) Participation in the Egyptian Corporation controlling the Canal.
- (iii) International operation and control of the Canal.

B. Creation of an Advisory Body

One category of this type of participation was put forward at the London Conference by India. The matters noted in this section are composition, structure, powers, relationship with or appeals to other bodies, and the method of establishment. Many of these matters are interconnected, e.g., structure and composition will be partially determined by the powers to be granted, composition will be affected by structure and vice versa. These matters are however dealt with separately for ease of reference and to avoid the duplication of notes. The functions of this body would be advice and recommendation on canal management and control.

(i) Composition.

The body could consist, at its highest level, of:

- (a) Representatives of governments.
- (b) Experts, in a personal or representational capacity.
- (c) Expert representatives of private users, such as shippers, ship operators and the like.
- (d) Private persons of good standing.

All of the above would require the necessary staff of advisers and possibly technicians and observers.

More than one of the different categories could be used if the structure of the body so allowed, e.g., if there were two defined parts or committees, one could consist of governmental representatives and the other of shipping or navigation experts.

The appointment of the participants in the body could be provided by:

- (a) Appointment by governments.
- (b) Election by interested governments.
- (c) Appointment of some or all by an international organization.
- (d) Election of some or all by an international organization.
- (e) Appointment or election by a separate body created for the purpose.

The above methods could apply throughout all levels of participation in the advisory body. Some form of Secretariat would be required, and this could be provided by an international organization or by the interested governments. The chief secretarial officer could be elected or appointed.

(ii) Structure.

An advisory body would presumably require some or all of the following:

- (a) A secretarial staff.
- (b) A system of collection of information and perhaps of inspection.
- (c) A technical level to advise on the material collected and to assess the technical details of short and long-term canal operation, navigation, maintenance and development.
- (d) An economic level.
- (e) A policy level capable of assessing the advice and results of all other levels and of formulating the advice or recommendations of the whole body.

(iii) Powers, and Functions

An advisory body might require all or some of the following:

- (a) Rights of inspection of canal maintenance, development, navigation and operation.
- (b) Rights of attendance on, participation without vote in or inspection of the details of, the general policy formulated by the operating authority or responsible government.
- (c) Rights and duties of approaching, laying recommendations before, or reporting to, various levels of the operating authority, members of the Egyptian Government responsible for the operating authority or generally, all interested governments, any associated international organization, or some appellate body.
- (d) To demand or establish some form of arbitration or expert assessment of specific matters, the status of the results of the arbitration or assessment to be defined.
- (e) To establish a suitable headquarters and to acquire necessary facilities. The status of the body, including privileges and immunities would require definition.

(iv) Appeals.

Some or all of the following may be required:

- (a) The status of the advice of the body will require definition together with the rights and duties of the responsible government in relation to that advice.

(b) A right of appeal where the arrangements in respect of the advisory body were not carried out or were obstructed.

(c) A right to approach interested governments and/or a specially constituted or existing outside body in those cases where the advisory body concluded that the policy, operation, maintenance or development of the Canal required such course following refusal of the responsible government to accept its advice.

(d) A similar right of approach where interference with the Canal, direct or indirect, existed, was threatened or was possible, including such matters as would be within the competence of the Security Council.

(e) A definition of the rights of interested governments either generally, following action by the advisory body, or following any appellate procedure.

(v) Method of establishment.

(a) By international instrument concluded between the interested governments, including Egypt.

The instrument could be a general Treaty replacing or reaffirming the 1888 Convention or a separate instrument.

(b) By the United Nations.

Second Type of International Participation

C. Participation in the Egyptian Canal Authority.

One category of this type of participation was put forward at the London Conference by Spain.

This section has notes on relationship with the Egyptian Government, structure of the authority, degree of participation, level of participation, rights of participants, methods and duration of appointment and relationship to interested governments and outside organizations and bodies.

(i) Relationship to the Egyptian Government.

The nationalization decree refers to the establishment of an independent body to operate the Canal, responsible to the Egyptian Ministry of Trade. If the details of participation in the Egyptian authority are to be clear, the precise relationship of this body to the Egyptian Government would have to be settled. Otherwise the situation could arise where the participants in the Egyptian authority would be placed in the position of administrators of Government decisions.

(ii) Structure of the Authority.

The structure of the authority may have to be specified or made available in some detail. If this is not done, the implications of participation may not be apparent.

(iii) Degree of Participation.

This relates to the ratio between Egyptian and other participants. If the Egyptian participants are in the majority, the role of the others might degenerate in serious matters to an advisory one. If other participants are in a majority, a system of international operation and control is approached.

It may be possible to solve such a difficulty by, inter alia:

(a) Balancing participation between Egyptian and allied participants on the one hand, and other participants on the other, together with the appointment of an independent Chairman (with a casting vote) appointed or elected in accordance with a defined system or by the United Nations.

(b) Balancing participation as above, but reserving certain over-all rights of veto to the Egyptian Government;

(c) Giving weighted votes to non-Egyptian participants in certain matters.

(d) Giving control of aspects of the Canal to various Committees of the Authority, some committees being controlled by non-Egyptian participants.

(iv) Levels of Participation.

Participation could extend from places on the Board of Directors or Governors of the authority, membership of the administrative, technical and other levels of the authority and employment of some international staff by the authority, e.g., dredgers, pilots, engineers and the like.

(v) Powers of Participants.

This depends on the solution to all of the above matters. In addition, there could be considered:

- rights of appeal or of reporting by minority directors to interested governments or to the United Nations.

(vi) Methods and Duration of Appointment.

These details should be contained in the instrument establishing the system. Appointment could be by nomination or election. If the number of non-Egyptian participants is less than the number of interested governments, methods of choice and rotation will be required. Participants could be representatives of governments, government or private experts, or private persons of good standing.

(vii) Other Relationships.

Consideration could be given to:

(a) Relationship to the United Nations, including rights of transmitting minority reports.

(b) Appeals by minority participants to the responsible government, interested governments and outside organizations.

(c) Settlement of disputes arising out of the arrangements made or arising in the authority over specific matters.

(d) Attitude of interested governments in the event of alleged mis-handling of the Canal or interference, direct or indirect, threatened or actual.

Third Type of International Participation

D. International Operation and Control.

One category of this type of participation was put forward at the London Conference in the form of the 18 - power proposals.

This section deals with the effect of this type on the nationalization decree, the independence of the operating authority, the type of operation method, participation and relationship aspects.

(i) Nationalization Decree.

The decree would not be revoked. Further Egyptian legislation would however be required.

(ii) Independence of Operating and Controlling Authority.

International operation and control would not be achieved if the independence of the authority were not assured.

(iii) Types of Authority.

(a) Governmental organ.

(b) Subsidiary organ of the United Nations.

(c) Consortium of private user interests. (c.f. Anglo-Iranian Oil Solution).

(d) A new general company open to general subscription.

(e) Combinations of the above.

(iv) Source of Powers of Operating Authority.

Apart from the necessity of making due provision under the local law, the sources could be:

(a) From international instrument.

(b) By contractual arrangements with safeguards between a treaty body and the Egyptian Government.

(c) From General Assembly resolution with prior international agreement, followed by an agreement between the United Nations and Egypt and other interested States.

(d) Contractual arrangements with safeguard between a non-governmental authority and the Egyptian Government.

(e) Contractual arrangements with safeguards, including definition of the position of the Egyptian Government, with the existing Egyptian body.

(v) Participation.

This would depend on the type of authority established. Consideration could be given to the grant of additional voting rights to Egypt as territorial Power or to the number of Egyptian senior participants.

Consideration would also be given to the employment of international staff, including the possibility of employing a certain percentage of Egyptian personnel.

Apart from the possibility that the participants would be determined by the type of authority to be established, consideration could be given to their nomination or election by the United Nations.

(vi) General comment.

This section does not attempt to deal with specific matters, e.g., finance or tolls and such like which are dealt with in a later section and can be applied to all three basic types of participation.

A category of international operation and control was put forward by the 18 Power proposals at the London Conference.

E. International Participation with Respect to Specific Matters.

(i) Introduction.

All of the following matters relate to each of the three basic types of international participation. Each of those types can be scaled up or down by inclusion or omission of any of these matters, although arrangements regarding rights of passage will be required in all three types.

Some repetition of earlier material is unavoidable although details of each of the three types have been omitted in the previous sections and are included below, if those details did not touch on some serious point of particular relevance to the type in question.

(ii) Rights of Passage.

Reaffirmation or restatement of the principles of the 1888 Convention will probably be required in all cases.

Consideration should be given to the inclusion in the relevant international instrument of the action to be taken or contemplated in the event of breach. Even if such provision did not appear, the United Nations could always be seized of the matter owing to the existence of an international agreement or obligation.

(iii) Defense Requirements - Territorial Power.

In all three types, a clear definition of the measures which the territorial Power may take would be desirable in the instrument affirming the right of passage through the Canal.

(iv) Finance.

In all three cases, the question of financing the operation, maintenance and development of the Canal could arise.

A form of international participation could result from the provision of outside financial aid in respect of development, development and maintenance or of all aspects of the Canal. Various inspection, consultation and reporting rights could be attached to such aid, including participation in the fixing of tolls and charges, and the planning and execution of maintenance and development.

The proposed Users Association would have financial functions in fixing the amounts to be paid to Egypt out of the tolls collected.

(v) Duration.

Whichever type of participation is considered some definition of its duration, or provision for review, perhaps periodic, would be desirable.

(vi) Tolls and charges.

(a) Provision of a defined method of computation in the instrument establishing the over-all arrangements. (The Indian proposals could be so interpreted).

(b) Provision of a body to receive all relevant details and advise the Egyptian Government what tolls would be economic and equitable.

(c) Provision of a separate body to fix tolls and charges. (The Indian proposals would cover this possibility also). Such a body could be set up in relation to or as part of the arrangements made under the three basic types of participation. (In the 18 Power proposals, the International Authority would fix tolls).

(d) Establishment of a Commission or other body to arbitrate on defined principles the tolls and charges fixed under (a), (b) or (c) above. (The 18 Power proposals by providing for an arbitral commission envisage this possibility).

(vii) Maintenance and development of the Canal.

(a) Provision of a plan, with details for its review and completion, in the instrument establishing the over-all arrangements. (The Indian proposals are in this sense).

(b) Creation of an advisory body, with indication of the status of its advice.

(c) Creation of a separate organ, private or otherwise, to undertake responsibility for maintenance and development.

(d) Provision of a private organization to carry out the practical tasks.

(e) Use of an arbitral or disputes body to consider disputes arising out of these matters.

In the 18 Power proposals, the International Authority would be responsible for (c), (d) and (e) above.

(viii) Canal operation and navigation.

(a) Provision of suitable clauses relating to efficient operation in the relevant international instrument.

(b) Creation of an advisory body (see Indian proposals).

(c) Creation of an operating organization.

(d) Creation of a users association in respect of navigation.

(e) Creation of a pilots' organization with definition of the control of this organization and its duties towards the operating body.

(f) Use of an arbitral or disputes body.

The 18 Power proposals cover (c) (d) (e) and (f). The Indian proposals do not cover (f), except insofar as Mr. Krishna Menon mentioned the International Court in his speech to the London Conference.

(ix) Settlement of Disputes.

Whichever type of participation is employed, a system for the settlement of disputes would be desirable.

This could be achieved by the establishment of a single body to deal with all possible matters, including e.g. tolls and development plans, or by separating legal disputes arising out of the institutional arrangements or violations of international commitments from the settlement of practical details relating to Canal operation, maintenance and development. Such body or bodies, as the case may be, could be utilized to settle financial questions also, such as the return to be made to Egypt for use of the Canal.

(x) Sanctions for Violations.

Provision in respect of these matters could be made in all three basic types of participation. They amount to a minimum form of participation in themselves.

Provisions could include:

(a) A statement of the attitude of interested governments in the instrument establishing the over-all arrangements, or elsewhere.

(b) A treaty provision for the convening of a conference of all interested parties, say on the request of a specified member or on the happening of certain events.

(c) Reference to the United Nations, either to the General Assembly in regular or special session or to the Security Council, as may be appropriate, or to a subsidiary organ of the Assembly if one is established with any specific functions relating to the Canal.

(xi) Relationship with the United Nations.

This is dealt with in the next section.

(xii) Observers. A system of observers of Canal operation, maintenance and development could be established.

F. Possible Forms of Association with the United Nations

(i) Basic Forms.

In line with the types of international participation mentioned, there are three basic forms of association with the United Nations.

These are:

(a) An agreement specifying the terms of relationship between the United Nations and the Treaty Organ responsible for the Canal (See 18 Power proposals).

(b) Creation of a subsidiary organ of the General Assembly (on the assumption that the Assembly would be the relevant relationship organ in this connection). No governmental proposal to place the Canal entirely under the U.N. has been made.

(c) An agreement between the United Nations and the Egyptian Government establishing a form of relationship with respect to the Egyptian authority operating and controlling the Canal. (See Indian proposals).

Dependent upon the type of international participation finally established, association with the United Nations could be a combination of the three forms mentioned above. For example, even though a Treaty Organ to run the Canal were established, specific functions could be given to the United Nations for which a subsidiary organ would be appropriate. Relationship could still be established with the Treaty Organ - similarly if the Egyptian authority continues to control the Canal.

(ii) Contents of a Relationship Agreement.

The contents of the Specialized Agency relationship agreement could be used as a guide whether or not such a form of relationship would be appropriate in the present case.

Such an agreement could consist, in general, of the following:

- (a) Recognition of status and competence of the body.
- (b) Recognition of the agreed principles affecting the Canal.
- (c) Some form of representation of the United Nations at the seat of the body in question or some form of reciprocal representation.
- (d) Proposal of agenda items.
- (e) Status of United Nations recommendations.
- (f) Transmission of information and documents, particularly periodic reports both generally and in respect of recommendations.

- (g) Assistance to the Security Council.
- (h) Relationship with the International Court of Justice.
- (i) Any common personnel arrangements.
- (j) Financial arrangements.
- (iii) The Establishment of Separate Bodies for Particular Tasks.

In all of the three basic types of international participation, association with the United Nations could arise with respect to bodies established for particular tasks. For example, a group of observers to watch over the operation and management of the Canal could be provided by the United Nations.

Furthermore, the United Nations could be associated with all other separate bodies by power of nomination or appointment or by actual creation. Examples are:

- (i) The Advisory body itself.
- (ii) Any body to fix tolls and charges and other financial details.
- (iii) An arbitral commission.
- (iv) Any body dealing with maintenance and development.
- (v) A users association.
- (vi) A pilots' association.
- (vii) Any appellate body other than the arbitral commission.

One subsidiary organ could carry out a number of such functions, e.g. arbitration and appeals in one division, fixing of tolls and maintenance plans in another.

(iv) Security Council.

All matters falling within the competence of the Council could be referred to it in the usual way. Portions of any reports to the United Nations could be referred to the Council where appropriate.

(v) International Court of Justice.

If provision is not made for an arbitral commission which could deal with legal as well as technical matters, arrangements could be made for reference of legal disputes to the International Court. As many of the legal issues will arise out of the settlement of technical matters, however, it might be thought suitable if one body dealt with both legal and technical matters.

(vi) Technical Assistance.

Consideration could be given to the association of the United Nations with the maintenance and development of the Canal through Technical Assistance programs.