GLASGOW CENTRE FOR INTERNATIONAL LAW & SECURITY

GCILS WORKING PAPER SERIES
Vol. 17 (July 2023)

COLLECTIVE COLONIALISM, INTERNATIONAL LAW & THE NATIONALISATION OF THE SUEZ CANAL COMPANY

CHARLIE PEEVERS

Collective colonialism, international law and the nationalisation of the Suez Canal Company

Charlie Peevers*

Forthcoming in:

Hani Sayed and Thomas Skouteris (eds.) *Oxford Handbook of International Law and the Arab World* (Cambridge University Press).

Introduction

Egypt's nationalisation of the Suez Canal Company in July 1956 came at a time of widespread anti-colonial struggle against enclaves of foreign interests, both explicitly state-owned and nominally private.[1] In this chapter I draw attention back to the struggle that emerged during the ensuing Suez Crisis between nationalisation and internationalisation, and forwards to how that struggle has been recast and is now remembered in the disciplinary memory. I foreground contests over legal classification of the Canal and the Company and highlight the particular forms through which peaceful settlement was expected to be reached. I also recentre the coordinated and cooperative activities of Arab states, recovering distinctive legal critiques of internationalisation. These critiques were significant as Arab states simultaneously faced efforts at internationalisation by imperial powers deployed through distinct means and methods to achieve similar outcomes, namely the continuation of dominance. This was chiefly through struggles over the protection of foreign (company) interests in oil, claims of exclusive extractive rights, and the consequent qualification of Arab sovereignty. Their legal interventions during the Suez Crisis illuminate how Arab states sought to remake international law, and to contribute to the formulation of concepts of economic coercion, development, sovereignty over natural resources and territorial integrity. This was at the same time as facing down almost always violent efforts at conditioning sovereign independence and enrolling Arab states in an international oil-powered global distribution network. The placing of these oil contests alongside the Canal controversy is critical to reorienting our understanding of their enmeshed histories in the trajectories of 20th century global capitalism, and international law's role in the struggle for a new decolonised world.

* Senior Lecturer in International Law, School of Law, University of Glasgow. I am especially grateful to Cait Storr for insightful and perceptive comments on an earlier draft and to Chris Boyd for meticulous research assistance generously funded by the School of Law, Glasgow. All errors, omissions et cetera remain my own.

[1] M Sornarajah, *The International Law on Foreign Investment* (3rd edn, Cambridge University Press 2010) p.36

Disciplined Remembering of the Suez Crisis

Nationalisation was hardly unique to the Suez Crisis. It was becoming a widely adopted action taken by newly independent states in their ongoing confrontations with imperial power - formal and informal - and therefore also a problem with which the discipline of international law was grappling. Nationalisation brought into sharp relief how claims and strategies to assert economic self-determination might reconstitute the nature of international legal relations. For, nationalisation raised the always fraught and ambiguous relationship of property to sovereignty.[2] While it was generally admitted to be lawful, that statement of principle quickly gave way to contested claims about when, what, how and by whom, as well as technical debates centred around the standards of compensation.[3] In displinary scholarship familiar techniques of formalism, technical distinctions, and general principles were arrayed to resolve the apparent international problem constructed out of these nationalisations.[4] As one of a number of strategies of anti-colonial resistance, therefore, nationalisation raised simultaneously conceptual, theoretical and substantive questions of how to understand and (re)make international law in a new decolonising world. The broad challenges posed by this resistance and its (Western, imperial) reaction are rarely, at present, foregrounded in the disciplinary narration and memory of the Suez Crisis. Instead, the Suez Crisis has seemingly been overtaken by its own events. No longer a story about struggles over defining what the international sphere would be or what counted, and should count, as an *international* problem, it has become a moment at which the progressive promise of international law was reaffirmed.

In international law's textbooks, the Crisis manifests a cautionary tale of imperial aggression and a parable of international law's history. As tale, the (new) prohibition on force marked the great taboo that Britain and France broke - and who should have known better as Security Council guardians of the UN Charter - by illegally invading Egypt. They were then humiliated by their erstwhile ally, the United States, and by widespread condemnation across the world. The lesson to be learned is that such 'folly' should be avoided so as to comply with the thereby-demonstrated pacific foundations of a new international legal system, guaranteed

[2] eg see Morris R Cohen, 'Property and Sovereignty' (1927) 13 Cornell Law Quarterly 8; also REF Fitzmaurice, Koskeniemmi, Lauterpacht private law analogies CITE.
[3] Characteristically framed around the Hull/Calvo distinction.
[4] ie formal sources, whose conceptualisation was also under pressure throughout the early decolonisation period. See David Kennedy, 'A New Stream of International Law Scholarship' (1988) 7 Wis. Int'l LJ 1 and for seminal feminist analysis see Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).

and protected by the United Nations and its (reformed) Council guardians.[5] This tale makes great power illegality the exception, the aberration, in the otherwise progressive development of international law. But it also redefines the meaning of illegality and compliance and their relation to the UN.[6] And so in a form of restatement-renewal, "[l]aw's duty was to overcome this bad politics, to implement the good principles that are the true legacy of 1945."[7]

The Suez Crisis is also narrated as a parable of international law's history, one that is familiar to the (mythic) founding of the UN itself. This narration tells of a Phoenix-like (re)birth of peace and order, out of the ashes of war's (necessary) violence.[8] The celebration of a new foundation to law always taking place in "the shadow of some slaughterhouse".[9] And here legal innovations, like peacekeeping or Uniting for Peace, found their authority in this exceptional moment of reactive crisis management. The lesson to be extracted from this narration is that law works to exclude and bracket war (and its violence) as its opposite.[10]

Through both narratives, but particularly the cautionary tale, the discipline distils the meaning of the Suez Crisis into digestible form, a footnote to the irresistible rise of a 'modern' and stabilised international law. Doctrine dehistoricises, not accidentally, but as a fundamental function of generating order out of crises. Most relevantly for this contribution, doctrinal dehistoricisation authorises a collective forgetting: of how the meaning of the Suez Crisis was itself subject to struggle, bringing into the frame the intertwined questions of legal authorship and conceptual development, politics and economics. The epistemic struggles over law's interpretation and meaning were enmeshed within the struggles of substance that fall under the spectacular shadow of the cautionary tale or parable. That is, how a crisis was made out nationalisation in the shadows of military intervention.

Crisis Scene

[5] Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge 2002)p. 27 noting the rare occasion of US and USSR "unity".
[6] eg Martin Dixon, Robert McCorquodale and Sarah Williams, *Cases & Materials on International Law* (Oxford University Press 2016) p.4
[7] Christopher Weeramantry and Nathaniel Berman, 'The Grotius Lecture Series "In the Wake of Empire"' (1998) 14 Am. U. Int'l L. Rev. 1515p.1527
[8] Malcolm N Shaw, *International Law* (Cambridge University Press 2017) p.940
[9] Christopher Weeramantry and Nathaniel Berman, 'The Grotius Lecture Series "In the Wake of Empire"' (1998) 14 Am. U. Int'l L. Rev. 1515 p.1524
[10] See further David Kennedy 'Violence and International Law' *Proceedings of the 80th American Society of International Law* (1986)

In 1956 the Canal was a key part of the communications infrastructure of the British Empire, not simply a channel for oil and commodity trade, and was a vital artery for Europe's colonial interests. Increasingly, the US was its largest beneficiary, accounting for 30% of shipping, mainly of oil from the Persian Gulf. The British Government was the single largest holder of shares, the majority (around 55%) being held by French individuals. The Company was only the most infamous of multiple foreign or foreign-backed entities operating in Egypt at the time of the Suez Crisis. The Company and other foreign entities (including oil interests) were deeply implicated in the presence of British military forces on the ground in Egypt, for instance leasing Canal zone property for military use[11]. The Company and their entities also coordinated with foreign interests across Arab states to stabilise and regularise the flow of oil, so crucial to financial benefits for the Company and for European capitalism.

The Suez Canal Company had long behaved like a "state within a state"[12]. It was an Egyptian joint-stock company established via a series of controversial concessions of the mid-19th century. This controversy related to the legal authority vested in the Khedive of Egypt's relationship with the Ottoman Sultan. This particular controversy was subject to a notorious arbitration in 1864 and partly resolved by a firman confirming the concession in 1866.[13] In practice, the Company relied upon near-constant imperial protection to defend against Egypt's efforts to exercise jurisdiction over it. The concessionary agreements related not simply to the construction of a Canal from Port Said to Suez, but also to related public works such as the Sweet Water Canal, and vast leases of land, such land not being confined to the banks of either canals. This meant that cities all along the Suez Canal, but in particular Ismailia, were effectively created and governed on the basis of Company requirements, for its own purposes, exerting especial jurisdictional claims within the territory of Egypt.

The Company's activities and legal status were bound up with the ongoing struggles for independence in 20th century Egypt and with the preoccupations of its lawyers. For while efforts continued to be made to renegotiate the 'unequal treaties' of a more traditionally public

[11] C Piquet, 'The Suez Company's Concession in Egypt, 1854-1956: Modern Infrastructure and Local Economic Development' (2004) 5 Enterprise and Society 107 p.118
[12] 26 July Speech delivered at Alexandria by Gamal Abdel Nasser, The National Archives of the UK (TNA) FO 371/119080' (1956)
[13] see further Kerem Nisancioglu, 'The Ottoman Origins of Capitalism: Uneven and Combined Development and Eurocentrism' (2014) 40 Review of International Studies 325 and Alexander Anievas and Kerem Nisancioglu, *How the West Came to Rule: The Geopolitical Origins of Capitalism* (Pluto Press 2015)

international law nature, there remained much domestic and private law work to be done to effect full sovereignty, at least in the domestic sphere.[14]

These struggles over real independence through more traditional public international law modes remained ongoing and were always tied to the Canal and its legal status. In its most basic form these manifested as treaty negotiations over the British military occupation of Egypt. So, for instance, the 1936 Anglo-Egyptian Treaty included the withdrawal of British troops from Egypt's main cities to the 'Suez Canal Zone' (which in fact reached far beyond the shores of the Canal) to defend the Canal at the same time as it sought to regularise the "special status" of a form of continuing protectorate in lieu of its formal termination in 1922.[15] The Treaty acknowledged Egypt's sovereignty over the Canal even as it subject it to military "protection" and recognised Egypt's exclusive jurisdiction over foreigners and their property.[16] Later, the Anglo-Egyptian Treaty of 1954 set a timetable for an end to British military presence and the taking over of the Canal's military installations by Egypt, with a final deadline of 18 June 1956. This was only subject to the condition that Britain could re-enter the base provided an attack was made on Egypt by an "outside Power", any other of the Arab Collective Security Pact, or Turkey.[17] The Treaty recognised Egyptian sovereignty over this "internationally important waterway".[18]

The Company itself had spent much of 1956 up until nationalisation negotiating terms for a new agreement to resolve a series of complaints made by the Egyptian Government relating to Company high handedness and refusal to comply with Egyptian law.[19] The Company tried and failed to term any new agreement a "Convention" and while an agreement was reached on 8 June 1956 the expiration date of the concession remained 17 November 1968. The agreement had resolved the conflict over further Egyptianisation of the Company: it meant that more Egyptian pilots would be employed and greater finance located in Egypt.[20] However, the longer

[14] See eg. Will Hanley, 'International Lawyers without Public International Law: The Case of Late Ottoman Egypt' (2016) 18 Journal of the History of International Law
[15] see further Laila Morsy, 'The Military Clauses of the Anglo-Egyptian Treaty of Friendship and Alliance, 1936' (1984) 16 International Journal of Middle East Studies 67
[16] Art 12
[17] Israel was expressly excluded from the definition of 'outside Power'. See Charles B Selak, 'The Suez Canal Base Agreement of 1954' (1955) 49 The American Journal of International Law 487 p.487 n.3
[18] Art.8
[19] Egyptian resistance to and struggles with the Company had a much longer history, in part recounted in Joel Beinin and Zachary Lockman, *Workers on the Nile: Nationalism, Communism, Islam, and the Egyptian Working Class, 1882-1954* (American Univ in Cairo Press 1998).
[20] Kyle p.121

term fortunes of the Company and interests of shipping companies beyond 1968 were a cause of perpetual Western anxiety due to the perceived "unpredictable" results of a "strong" Egypt.[21]

The Company's tactics of delaying improvement works and employment practices were designed to make it inevitable that come 1968 Egypt would be manifestly unready to take over control. However, it was also strategising to find a state-sponsored way to extend the concession in perpetuity. For instance, in July 1955 Jaques Georges-Picot, the company's French Managing Director, outlined to a British Treasury Official, William Armstrong, "a possible route-map for arriving at the desired goal of internationalisation".[22] The premise would be the widely accepted need for development works on the Canal, necessary to meet the demands of oil industry, including the growing size of tankers, those same works that the Company was at that moment failing to engage with. Georges-Picot reasoned that for such a large-scale project American finance would be critical and that any period of financing would stretch long after 1968. "So an international conference would be summoned in 1960 at which the Egyptians would find themselves swamped, whereupon a new international body could emerge to run the Canal after 1968.[23]" Not only the Company but also shipping interests had apparently called for the internationalisation of the Canal post-1968 with proposals that Britain act as a political Mandatory Power and the company as "economic administrator."[24]

In confronting this colonial logic and ever-present violence, Egypt, like other Third World actors, took on the universal faith in development and the shield of sovereignty.[25] With it came a particular imagination of the role of the state in facilitating capitalist logics of resource exploitation and modernisation even as a singular 'model' of capitalism was not necessarily adopted. This applied to the Canal's potential for channeling capitalism towards the needs of development; it also applied to oil-rich states in the region seeking to establish modern "welfare societies"[26] and create a unified economic zone.[27]

What was needed to deliver on the promise of Arab advancement was access to foreign

[21] Kyle 121
[22] Kyle 119
[23] Ibid.
[24] Ibid. Britain had, during WWII sought a form of international control of the Canal as means of assistance for taking the sole 'burden' of protection but had to walk the careful line of drawing any parallel between the Suez and Panama Canals.
[25] Anghie 2005 and Pahuja 2011
[26] as referred to in Saudi Arabia's SC Letter at FNXX
[27] Eg. Treaty for Joint Defence and Economic Cooperation 1950, League of Arab States

exchange to fund large-scale infrastructural projects.[28] But such economic efforts towards true independence were not somehow distinct from questions of a more 'political' orientation. For in his nationalisation speech of 26 July 1956, Nasser referenced Bandung's Ten Principles[29] and the rights of self-determination of the peoples of Palestine and Algeria together with resistance to military pacts that served imperial interests under the guise of defence.[30] He recounted ongoing initiatives to bring about 'active coexistence' through the creation of a Third World Force, again contrasting this with Western efforts to divide Arab states and break the unity of Arab nationalism through pacts, coups and other clandestine operations.[31] And he documented extensively how egregious the Company's actions had been in impoverishing Egypt and in facilitating its ever-increasing dependency on foreign interests.

Internationalisation confronting Nationalisation

The immediate Western reaction to nationalisation manifested on 3 August 1956 with a 'Three Power communiqué' and announced Conference of Users in London. Behind the scenes it also manifested in unilateral yet coordinated economic 'sanctions' together with military manoeuvres. Both the substance of their legal claims and their form matter. Such choreography of a crisis authorised particular forums to make law and legitimise participants' claimed legal authority. And, while the Western arguments were performed in these 'inter-state forums' they had been formulated in close concert with the Company, fusing already interwoven private and state interests.[32]

The Three Powers asserted the existence of a legal dispute between particular interested parties that demanded international resolution.[33] They claimed legal status to determine this existence based on their self-designation as 'users' of the Canal with a long-standing interest in passage and operation, both as signatories to the 1888 Convention establishing what they

[28] the High Aswan Dam an obvious example.
[29] The Bandung Conference and Final Communiqué had taken place in 1955. See further Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law : Critical Pasts and Pending Futures* (Cambridge University Press 2017)
[30] 26 July speech
[31] Al-Ahram reporting documented in *Time Magazine,* 30 July 1956
[32] For eg see Kyle p.186 documenting the British Foreign Secretary, Selwyn Lloyd's, meetings with Company directors on 10 August that subsequently informed Cabinet meetings and decision-making.
[33] The 24 states invited were Australia, Ceylon, Denmark, Ethiopia, France, India, Indonesia, Iran, Italy, Japan, Netherlands, New Zealand, Norway, Pakistan, Portugal, Russia, Spain, Sweden, Turkey, Britain, United States (USA), and West Germany. Egypt and Greece declined invitations.

argued was an international regime over the Canal, and as third party beneficiaries of the 1888 Convention.[34] Importantly for their argument the regime transformed the Canal into an "*international* waterway" *(emphasis added)* and the Company into an entity "possessed of an international character" that operated the Canal akin to an "international organisation".[35] This dispute entailed, thereby, an important qualification on Egypt's exercise of sovereignty so transforming a purportedly lawful act of nationalisation into a breach of an international obligation incurring state responsibility.[36] These international conditions were, in their view, perpetual, outliving the 1968 termination of the concession.[37]

This international transformation did not divorce itself, however, from the controversies over compensation. It relied upon what was claimed as the factual reality of Egypt's weak economic position to argue that Egypt was unable and/or unwilling to make appropriate payment.[38] And so Egypt's apparently indisputable inability to pay necessarily entailed a breach both of an international obligation to do so, and the principle of good faith. Egypt, in other words, could not be trusted to comply with international law nor entrusted to meet the requirements of modern international society.[39]

The unable/unwilling assertion repeated throughout the Crisis and was tied to the distinction to be drawn between the Western proposal for a neutralised executive International Authority that would insulate the Canal from "politics" and a Canal otherwise subject to the 'whims' of Egypt's interests.[40] This proposal for an International Authority (the 'Dulles Plan' later termed SCUA) was the fudged outcome of the farcical London Conference held in August 1956 at which Arab states had been excluded, without any public acknowledgement of such exclusion by the Conference organisers.[41] India, Ceylon, the Soviet Union and Yugoslavia had participated but opposed the proposal. They argued that it was absurd that Egypt would be

[34] Communique of 2 August 1956 in Muhammad Khalil, *The Arab states And The Arab League A. Documentary Record Vol. I Constitutional Developments* (Khayats 1962) pp.773-4.
[35] eg Selwyn Lloyd, British Foreign Secretary address to Security Council, 5 October 1956 S/PV.735 pp.3-6.
[36] See for instance, Dulles's speech at the First London Conference documented in *The Suez Canal Conference [Selected Documents]* Egypt No.1 (1956) Cmd 9853
[37] Kyle p.195
[38] Anthony Eden, 12 September 1956, HC Deb (1955–56), vol 558, cols 9-10
[39] See Fawzi, *Suez 1956: An Egyptian Perspective* (Shorouk International 1987) for the racist assumptions of this argument p.58
[40] See eg 'Proceedings of SCUA Conference' TNA CAB 21/3093 and Lloyd and Pineau speeches in SC on 5 October S/PV.735
[41] The British Govt distributed documents prepared by the Company to delegates and liaised with the Company throughout. See TNA FO371/119107/14211/797

allowed to be "one of the parties administering her own property", "kindly allowed a place in her own home".[42] And because no agreement could be reached the Conference reformed itself into an '18 Power Proposal' to be delivered to Egypt as an ultimatum even as it purported to peacefully resolve the dispute.[43]

Egypt's response drew upon its rich legal history of negotiating competing claims over jurisdiction to counter internationalisation on multiple bases. First, and most importantly, it drew distinction between the private nature of the concession agreement with the Company and the inter-state interference being pursued in breach of Egypt's exercise of legitimate sovereignty. It also drew distinction between possession and ownership, that possession rights had been rescinded lawfully on the basis of Egypt's recognised ownership through principles of territorial integrity and sovereignty. Further, it emphasised specific terms of both the concession and the 1888 Convention that had acknowledged the Egyptian character of the Company and Canal, both subject to Egyptian law.[44] Despite its exclusion from formalised 'dispute resolution' at the London Conference, Syria argued that Britain had previously refused suggestions made to internationalise the Suez Canal at the 1919 Paris Peace Conferences because such a move, so the British had argued, would threaten the sovereignty of Egypt.[45]

Egypt rejected the proposal for an internationalised Canal because of its manifestly imperial and racist premise. Not only was this evidenced in Eden's own statements to Parliament, in which Eden claimed that Nasser had "rejected the [Menzies Mission] proposals without weighing their merits or listening to reason."[46] Egypt countered that the proposal itself was based on threats and coercion rather than genuine peaceful settlement among equal sovereigns.[47] Egypt also drew attention to the 'economic diplomacy' that created an atmosphere of coercion and threats to peace.[48] This pulled the economic measures being deployed by the Western powers out of the shadows. These activities - engaged in not only by

[42] Shepilov, Soviet Representative, Kyle p.195
[43] They now claimed to represent 90% of "user interests" in the Canal. For this framing see for eg S/3645 Letter 12 September 1956
[44] Khalil CHECK REF 12 August Egypt statement and rejection of 18 Power proposal circa 9/10 September
[45] Syria, Letter to President of the Security Council 13 October 1956 S/3674 p.3
[46] The Prime Minister, 12 September 1956, HC Deb (1955–56), vol 558, col.9
[47] Egypt accepted only that it had accepted the international principle of free passage, this did not convert the Canal, however, into an international(ised) waterway.
[48] "cannons by capital" see Karl Marx, 'Capital Punishment. — Mr. Cobden's Pamphlet. — Regulations of the Bank of England' [1853] *New York Daily Tribune* <https://www.marxists.org/archive/marx/works/1853/02/18.htm> accessed 20 November 2020

Britain and France but also by the US - included the freezing of Egyptian assets, Sterling accounts in London, blocking of Company property held overseas, and the refusal to pay dues or tolls, even while using the Canal.[49] This economic oppression was what Egypt argued amounted to a "planned conspiracy" to force Egypt into giving up its territory. It amounted to a breach of the UN Charter and demonstrated the hypocrisy of imperial powers dressing up their actions in the cloak of legal guardianship and patronising 'international authority'.[50] Egypt termed this multi-pronged strategy of internationalisation "collective colonialism".[51]

What Egypt was experiencing were merely new means of achieving the same old ends of oppression and servitude.[52] The so-called crisis and 'grave situation' were artificially created. There had been no incidents affecting Canal traffic and no breach by Egypt of its international obligations. Rather, Egypt had been subject to threats of force, troop mobilisations, state-sponsored disruption of employee activities at the Canal, and hostile economic measures by Western states. Yet, with all this going on, Egypt had been "made to listen to references to a 'peaceful solution' and to 'free negotiations'…[n]eed one emphasise the contradiction between the overwhelming reality and professed aim?"[53]

Egypt sent its rejection of the Menzies Mission to the United Nations making clear its commitment to international law and to the creation of a representative negotiating committee as a first step to reviewing the 1888 Convention.[54] In its participation in the Security Council meetings Egypt again emphasised the punitive forms through which peaceful settlement had been 'staged': a trial not a conference, a dock in a criminal court. It also challenged the framing

[49] Around 60% of the users of the Canal - in the main Britain and France but also others - refused to make payment of tolls to the Canal Authority, and instead transferred funds to the overseas accounts of the Company. Yet, they were unfettered in their passage through the Canal. The US took a midway strategy, paying dues to the Authority but under legal protest but also arranging for a form of boycott of the Canal. See Malakh and McGuire (1960) p.130

[50] 12 August Statement Khalil p.789

[51] Ibid. Khalil p.789

[52] Espionage efforts were also exposed, which Heikal later wrote had included British agents attempting to inflame religious students to riot so providing an excuse for military intervention to protect European lives. Heikal p.154n and Kyle pp.218-19. The parallels here with how the West sought to 'deal with' Iran and Egypt, and in particular the bogeyman imagining of the threat from Mossadeqeh and Nasser requires its own extended treatment, though I return to the relevance of the parallels later when considering the legal implications of these struggles over sovereignty.

[53] September 15 1956 speech http://www.fordham.edu/halsall/mod/1956nasser-suez1.html from *The Suez Canal Problem, 26 July-22 September 1956, U.S.* Department of State Publication No. 6392 (Washington: G.P.O., 1956), pp. 345-351

[54] This document does not appear in the UN archives but is referenced in Khalil p.793 quoting from *The Suez Canal Problem: July 26 - September 22 1956 - A Documentary Publication (US Department of State, 1956)* pp.327-330.

of the Suez Question within the Council: there was a simple choice to be made between "domination and freedom" with no less than two thirds of the world's population expressing approval at nationalisation[55] and a genuine conference now likely given that 21 states had accepted Egypt's invitation to negotiate a new Convention.[56]

The Arab League responded in support of Egypt's contentions issuing two resolutions that affirmed the indisputable right of Egypt to nationalise the Company, an "Egyptian joint-stock company", and restating the Canal as "an integral part of Egyptian territory".[57] Its members held meetings simultaneous with the London Conference to formulate a coordinated response to internationalisation, making plain that they considered themselves prime users of the Canal as oil states.[58] And when events turned to the Security Council they sought formal contribution to an international resolution[59], issuing a joint request to attend deriving from their "special and vital interest" in the outcome.[60] The request was deemed impractical by the US, and Dulles instead suggested they make written submissions to be circulated among Council members.[61]

The Arab states' efforts to coordinate participation in the Council debates are so striking because, as is more widely documented, outside this forum, and form, there was much to divide and generate tensions.[62] The form their engagement took is significant. First, the majority submitted their written notes as if spoken and in their covering letters noting with disappointment their exclusion, yet again, from an international forum.[63] Each of the letters addressed their juridical standing, establishing their jurisdictional interest in detailed submissions ranging from geography, to collective arrangements, to historic ties, to threats

[55] Fawzi, 8 October 1956, S/PV.736 para 3 also Fawzi S/PV. 742 Meeting of 13 October para 49, see also 44-50
[56] Letter to the President of the Security Council S/3650 17 September 1956
[57] Muhammad Khalil, The Arab States And The Arab League A. Documentary Record Vol. I Constitutional Developments (Khayats 1962) p. 151
[58] WM Roger Louis and Ronald Robinson, 'The Imperialism of Decolonization' (1994) 22 The Journal of Imperial and Commonwealth History 462 p.479. on the quantity of Arab oil using the Canal and Khalil item 348 p.774.
[59] S/PV.734 and Letters dated 23 September (Britain and France) and 24 September (Egypt) respectively S/3654 and S/3656. Syria and Lebanon had also sent a Letter to the SC concerned with the military build up in the Eastern Mediterranean and associated Anglo-French threats to use force. See Joint Letter 17 October S/3648, not insignificantly categorised by the UN library as relating to the 'Cyprus Question', the links with the Suez Crisis again worthy of further reappraisal, as much as the apparently benign force of archival categorising practices.
[60] S/3664 Letter dated 4 October 1956 from the representatives of Iraq, Jordan, Lebanon, Libya, Saudi Arabia, Syria and Yemen to the President of the Security Council.
[61] Dulles, 13 October 1956, S/PV.742 13 October 1956 at para 3
[62] eg Iraq did not produce written submissions.
[63] See eg Letter from Saudi Arabia 13 October S/3676

faced.[64] This standing emphasised the legal force of Arab League status and membership of "the family of nations which participated at the Bandung Conference", clear reference to the (re)construction of the concept of international community.[65] And the vital interest in the outcome of the 'Suez Question' emanated not only from the particular, as in the specific question of Egypt and the Canal, but from "the real issue", namely "the future of the states in th[e] region, and the future of the United Nations itself."[66] This real issue threatened "the restoration of domination…even in a new form".[67]

In substance, each of the submissions reaffirmed support for nationalisation, opposition to internationalisation, and directly confronted the problem of "collective colonialism". For instance, they reaffirmed that the Canal and the Company were Egyptian, that there had been no internationally wrongful act - nationalisation being a perfectly legal act in international law[68] - and, third, that economic and military manouvres were the real threat to peace. This entailed drawing into the frame the imperialism of Zionism and related arguments over free passage.[69] Intriguingly, the Arab states denounced economic warfare but aimed this exclusively at Britain and France, not the US, in part perhaps because the letters were often doubly addressed: at once to the Council and to those imperial powers that still had significant footholds in these states in formal and informal terms.[70]

The October Council meetings resulted in a resolution premised upon 'Six Principles'[71] for

[64] See eg Letter from Jordan S/3680; Yemen S/3681 15 October; Saudia Arabia S/3676 13 October; Syria S/3674 13 October; Lebanon S/3683 15 October; Libya S/3684 17 October
[65] See eg S/3674 pp.2-3 in particular
[66] S/3674 p.3
[67] Yemen S/3681
[68] They also brought the Panama Canal into the frame, citing leading scholars of international law in support of the premise that third party 'users' of the Canal had no actionable claims against Egypt. S/3674
[69] Again, there is not scope to delve further into this, but the great powers, with Israel, in a Letter to the SC of 4 October S/3663 complained of a continuing breach of SC Res 95 of 1 September 1951 given Egypt's refusal of access to the Suez Canal. Lebanon's and Syria's letters addressed this in extensive legal detail interpreting the Armistice Agreements as being distinct from peace treaties and therefore Egypt exercising its authorised rights against a belligerent, thereby in accordance with the 1888 Convention.
[70] See eg Libya S/3684 17 October which references its Arab League relationships but also its long standing relationship with Britain and France. Likewise the Letter from Jordan S/3680
[71] SCRes 118(1956) S/3675 There is a longer story about how this resolution was reached, including Yugoslav efforts to 'enact' non-alignment. The Principles were: (1) There should be free and open transit through the Canal without discrimination, overt or covert --this covers both political and technical aspects; (2) The sovereignty of Egypt should be respected; (3) The operation of the Canal should be insulated from the politics of any country; (4) The manner of fixing tolls and charges should be decided by agreement between Egypt and the users; (5) A fair proportion of the dues should be allotted to development; (6) In case of disputes, unresolved affairs between the Suez Canal Company and the Egyptian Government should be settled by arbitration with suitable terms of reference and suitable provisions for the payment of sums found to be due." There remained significant compromise to be made and, perhaps ironically given how things turned out, it seems likely that

continued negotiation through the Secretary General's good offices in Geneva.[72] These were scheduled for 29 October but on that day Israel invaded Egypt and Anglo-French forces followed two days later. These actions precipitated what is the more familiar story remembered of the Suez Crisis and which, remembered in this "snapshot"[73] form remakes the crisis into one about the prohibition on the use of force and peacekeeping alone, rather than about the complex and multifaceted story of internationalisation as a strategy, the forms of resistance to that strategy and, in consequence, the effects of these struggles on the history and discipline of international law.

Such a narrowed view not only erases the legal struggles - at once ontological and epistemological - it also fails to record that Egypt reached a negotiated settlement with the Company and with Britain and France and other purported 'users' of the Canal. These other nations, though not party to the formal agreements terminating claims, were to be assured of the continuing status of the 1888 Convention, now enlivened by Egypt's Declaration of April 1957, and by its literal demonstration of free passage.[74] The agreements reached were, significantly, not subject to arbitration but rather involved the novel involvement of the World Bank's good offices at the insistence of Egypt, distrustful of the Company's officers and major shareholders (particularly the British and French governments).[75]

Internationalisation confronting 'Arab internationalism'

The Western reaction to nationalisation is instructive, though not extractive of a universalised truth. Rather, the moves to 'internationalise' the perceived problem of nationalisation point to some abiding concerns of international law in theory and practice. As

Egypt would have accepted some form of international control had not military intervention taken place.
[72] See S/3679 15 October 1956 Letter from the Foreign Minister of Egypt to the President of the Security Council and S/PV.742 and .743 referring to continuing military threats threatening peaceful negotiation.
[73] Sundhya Pahuja and Cait Storr, 'Rethinking Iran and International Law: The Anglo-Iranian Oil Company Case Revisited', *The International Legal Order: Current Needs and Possible Responses* (Brill Nijhoff 2017)
[74] This according to the Constantinople Convention of 1888 and despite a conspiracy of covert operations between Britain, France and the Company to inundate the Canal with ships and then use this as pretext for taking physical control of the Canal's operations in situ. For details of 'Operation Pile Up' and 'Operation Convoy' see Kyle (2003) 449. Further, use was doubly exploited in that many of the ships refused to pay tolls instead demanding unfettered passage without payment to the newly instituted Suez Canal Authority.
[75] There are also significant parts of this story left out including how the sequestration of foreign property by Egypt as a consequence of the Suez War facilitated a rapid acceleration of Egyptianisation of the economy, partly discussed below. If space permitted the details of those agreements would be examined further not least because they constituted significant acknowledgement of Egypt's financial isolation in an ongoing context of enforced economic dependencies and Western interference in the main product channeling through the Canal, oil.

already alluded to above, the wider context of nationalisations from Bolivian tin mines to Anglo-Iranian Oil agitated imperial powers whose interests were bound up with these ventures.[76] But the seeming destabilising force of nationalisations went beyond the express boundaries of such acts, or debates about compensation. It was this wider context, of multiple acts of decolonisation that entailed a rewriting of economic as well as political and legal relations (seen by Arab states and the Third World more generally as utterly enmeshed). So both nationalisation in particular and decolonisation acts more generally agitated the discipline of international law.

The 'reactionary' mode was thereby structurally oriented to a particular understanding of threats to the erstwhile stability of legal order, namely as emanating from 'the other'. Take, for instance, a contemporaneous article in the *American Journal of International Law* which argued that there "should be adopted a rule *sui generis* applicable to concessions based upon 'general principles of law recognised by civilised nations' which would not subject them to any particular system of private law, but to public international law, the law of nations."[77] This argument served to recreate empire, ensuring that the power of private interests would be (re)protected in a favourable international law yet retaining the fiction of a lack of legal personality and thereby lack of responsibility for such private interests. As Sornajarah argues, "the purpose of ensuring dominance, which was the purpose that existed during colonial rule, continues unabated."[78]

The civilizational discourse repeated in academic analyses of the Crisis and echoed the language of Western statements. For instance, a British Information Services publication asserted the need to protect the "justice of international law" from the "threat to the rule of law" posed by Egypt's nationalisation thereby justifying international control of the Canal in perpetuity.[79] Alongside this, a complementary series of articles and opinions appeared, mirroring and restating this civilizational discourse.[80] We see the familiar trope of the

[76] For incisive analysis of the force of the 'corporate veil' as strategy in facing foreign interest claims see Doreen Lustig, *Veiled Power: International Law and the Private Corporation 1886-1981* (Oxford University Press) esp Ch.6 Back to Informal Empire? The Anglo- Iranian Struggle over Oil, 1932– 1954
[77] Thomas TF Huang, 'Some International and Legal Aspects of the Suez Canal Question' (1957) 51 The American Journal of International Law 277 at 290)
[78] Muthucumaraswamy Sornarajah, 'The Battle Continues: Rebuilding Empire through Internationalization of State Contracts' in Jochen von Bernstorff and Philipp Dann (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (Oxford University Press 2019) at 178.
[79] Pamphlet *The Suez Canal* (British Information Services 1956).
[80] See eg 'Nationalization of the Suez Canal Company' (1957) 70 Harvard Law Review 480; Cecil Olmstead,

exceptional premise authorising the novel creation of international authority.[81] And we see the distinctive force of a public/private boundary being translated into a civilized/uncivilized classificatory practice.

Such an underlying premise, animated by the dynamic of difference of international law's encounters with its 'others', was not however reserved to the particular question of nationalisation of the Suez Canal Company, nor to the issue of nationalisation in general. It manifest also in the ways in which concessions 'beyond Suez' were to be understood in this apparently new, modern world of international legal order. Which returns us to the concurrent and contemporaneous efforts deployed to 'internationalise' the problem of private foreign interests in Arab states. While a detailed analysis of these wider efforts is beyond the scope of this contribution, there is nevertheless opportunity to gesture at least to the foundational premise that drove internationalisation efforts in these particular legal encounters. For, in the contests between purportedly private companies and Arab states a set of techniques and underlying rationales manifested logics of dispossession now notorious in international law's history.

Most pointedly, and on display in Schwebel's triumphant account of the Saudi Arabian Aramco/Onassis arbitration is a reconceptualisation of *terra nullius,* rationalised to the 'new space' opened up by capitalist exploration, namely oil extraction. In a genealogical account of the rise of *terra nullius* as doctrinal adjunct to title to territory, Andrew Fitzmaurice recalls the relatively late arrival of the doctrine on the scene in a context of polar exploration and emerging contests over the extractive potential of this "new frontier".[82] This tied the conceptual origins of *terra nullius*, therefore, not only to sparse habitation (as no one's land) but to the "low level of exploitation of natural resources" that thereby privileged the "first taker's" proprietary

'Nationalization of Property: The Suez Canal Company Case' (1957) 6 The University of Chicago Law School Record 9; Martin Domke, 'Foreign Nationalizations: Some Aspects of Contemporary International Law' (1961) 55 The American Journal of International Law 585; Robert Delson, 'Nationalization of the Suez Canal Company: Issues of Public and Private International Law' (1957) 57 Columbia Law Review 755. Compare with two later articles addressing the issue: M Cherif Bassiouni, 'The Nationalization of the Suez Canal and the Illicit Act in International Law' (1964) 14 DePaul Law Review 258 and M Cherif Bassiouni, 'Suez 1956: International Crisis and the Role of Law' (1975) 24 DePaul L. Rev. 1070 that 'call out' this 'civilizational' premise (citing Bowie *Suez: 1956, International Crises and the Role of Law* (ASIL/OUP)(1974) as another example

[81] For a genealogical account centred upon the UN's uptake of such an executive authority that centres upon the legacies of peacekeeping innovation see Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011)

[82] Andrew Fitzmaurice, 'The Genealogy of *Terra Nullius*' (2007) 38 Australian Historical Studies 1

claims.[83] In the arbitral award that Schwebel lauds as victory for international legal justice, we see "internationalisation" work to bridge the (made anew) objectively attested to fact of gap between advanced industrial capitalism based on resource extraction, and a 'backward nation' such as Saudi Arabia.[84]

Given the 'facticity' of this gap, according to this arbitral logic, the contract - the concession - now articulated the *constitution* of Saudi Arabia, taking on a public international law character, lifting the dispute onto the imagined international plane. Through the time immemorial practice and universally recognised (ie civilized) principle that one cannot revoke what has been granted, Saudi Arabia's sovereignty *by its own law* (but in fact because of its absence of law with international law stepping into the breach) was *perpetually* conditioned.[85] It had exercised a free contractual will to be bound. So, acquired rights of property were stabilised into the law of this otherwise empty legal space. The arbitration decision excised the fact of US government involvement in pushing Aramco's legal interests and the nexus between US economic considerations and its military reliance on oil as extraneous to this purely contractual dispute.[86]

Here, then, internationalisation entailed making the concession and contractual relations between private companies and Arab states sacred (again triumphantly proclaimed by Schwebel) and sought stability for foreign interests through the fixing in time of these relations. It also re-entrenched an emerging scholarly distinction drawn between "public utilities" and (privatised) resource extraction. This disciplinary argument was taken up by the tribunal. It excised oil from the realm of the 'public' because it served no public purpose in Saudi Arabia: its value only applied to industrial capitalist states with the Saudi Arabian population too backward to benefit from its use, only from the contractual payments derived therefrom.

Suez Crisis internationalisation was premised upon the same racist logic that Egypt would prefer to receive profits than operate the Canal itself, incapable as it was of so complex a modern operation of industrial capitalism.[87] Another similarity between internationalisation

[83] Fitzmaurice (2007) p.4
[84] For searingly succinct critique see Khalili *Sinews* Ch3 esp pp.87-105
[85] Stephen M Schwebel, *Justice in International Law* (Cambridge University Press 2011) Ch.23 'The Kingdom of Saudi Arabia and Aramco arbitrate the Onassis Agreement' esp. p.262
[86] Again, well documented in Khalili *Sinews* esp. p.90
[87] Fawzi FNXX above

efforts in these two instances was the way in which capital enterprise was framed. In Aramco-Onassis, oil extraction benefited the objectively progressive forces of international commerce and industry. Likewise in the Suez Crisis, the Company and 'its' Canal project symbolised the (European) promise of progress.[88] The Company also represented a "neutral" international effort to de-risk capitalist extractive enterprise for the benefit of all mankind.[89] For, the argument went, while a state such as Egypt could nationalise public utilities subject to concession, such an act destabilised the legal order by subjecting neutral international commerce to the whims of domestic (inferior) laws.[90]

It was, according to this view, the "purely economic and impersonal character of the modern business corporation" that insulated the Canal's operation from politics.[91] And, astonishingly, this "neutral" character as applied to corporations and their commercial activities was said to be embedded in the very Six Principles resolving the crisis, so that even if Egypt didn't realise it, it had (unknowingly) acceded to this characterisation! This argument sought not only to ignore Egypt and Arab states' legal position; it sought to transcend and erase from the record the sustained Arab opposition to and calling out of collusion and imbrication of imperial power and Company interests.[92]

Additionally, the form of dispute resolution, international arbitration, worked to deny any subjection to 'local laws', not unlike previous encounters mediated through the system of Capitulations. As Schwebel himself notes, though in patronising tones, "[t]o its great credit" Saudi Arabia complied with the arbitral award but it "abstained from international arbitration for decades thereafter."[93] Egypt had resisted international arbitration by relying upon the terms of the concession admitting Egyptian jurisdiction and the applicability of the ICJ's characterisation of concessions *vis* inter-state disputes,[94] so constructing an alternative mode

[88] See further Darcy Grimaldo Grigsby, *Colossal: Engineering the Suez Canal, Statue of Liberty, Eiffel Tower, and Panama Canal ; Transcontinental Ambition in France and the United States during the Long Nineteenth Century* (Periscope 2012).
[89] Significantly there remained contests within the UN on the definition of concessions more generally, including adopting an approach that recognised the 'large scale' involving in extractive processes entailing a "quasi-public character" enterprise. See eg The International Flow of Private Capital, 1946-1952, 44-45, U.N. Doc. No.E/2531 ST/ECA/22 (1954). There are important arguments to be drawn from the relationship between finance, currency and development beyond the scope of this contribution.
[90] See eg Kenneth S Carlston, 'International Role of Concession Agreements' [1957] Northwestern University Law Review 618
[91] Carlston (1957) p.641
[92] It also belied the history recounted in 'crisis scene' in this chapter.
[93] Schwebel p.268
[94] ie in *Anglo-Iranian Oil (UK v Iran)* ICJ Reps 1952

through which a negotiated settlement could be reached. This form of Egyptian innovation, the good offices of World Bank mediation, would eventually morph into an institutionalised form of dispute resolution, ICSID, and so again the genealogy of this development could trace some significant lineage to the resolution of the Suez Crisis. And while differentiated, these examples demonstrate the force of objects on conceptualising a world of international law, for they both engaged the familiar idea of freedom of the seas and the roots/routes of capitalism channeled through resource extraction.

Alongside these distinct legal contests involving foreign interests in Arab states ran a series of cooperative efforts, based upon establishing new legal frameworks to regulate these contests. Again these have been largely forgotten in the textbook renderings of the Suez Crisis. Of direct relevance to the renarration of the Suez Crisis are the series of meetings among Arab states centred upon economic self-determination, development and resource sharing. For instance in contemporaneous resolutions and subsequent meetings of the Arab League, agreements were reached on establishing a framework for economic integration. These focused on economic and social development of the Arab nations and the promotion of freedom of movement for labour, capital and services.[95] In 1964 agreement was reached on an Arab Common Market to reduce tariffs and promote Arab integration. And because they were conceptualised as woven together, economic cooperation ran alongside joint defence and included collective articulations of the permanent sovereignty over natural resources.[96]

The prospect of Arab economic unity instilled horror in the legal imaginations of Western states, foreign interests and the discipline of international law. Such horror that it expressed itself in unapologetically racist terms. This manifest in the open use of coercive force to subjugate and condition Arab sovereignty, as has already been discussed.[97] And, as further evidence of the continuities with the rationales underpinning early international legal thought and practice, this horrific possibility engendered a familiar reactionary set of possible strategies of confrontation that belied the separation between private entities and Western state interests.

[95] See 'Agreement for Economic Unity Among Arab League States' (1964) 3 International Legal Materials 1096. Note the documentary tracing of these translations of the Resolution of 3 June 1957: that they were reprints of translations originally held by the US Department of Commerce.
[96] see eg 1950 Treaty for Joint Defence and Economic Cooperation and Reports to Council of Arab League 13 March and 18 June 1950 available through the Avalon Project: Documents in Law, History and Diplomacy, Yale Law School https://avalon.law.yale.edu/20th_century/arabjoin.asp
[97] see also BS Chimni 'Outline of a Marxist court on public international law' pp.53-91, p87

For instance, in 'Operation Suez Sea Lift' US government planners had proposed a strategy to circumvent the Canal's importance to the oil trade by leveraging domestic (Texan) and Venezuelan supplies that could rely on the security of US dominated Panama Canal; alongside support for shipbuilding technologies to lower the costs of transport from Basra around the Cape of Good Hope.[98] Longer term plans were drawn up to 'stabilise' Western interests in the region, including increasing the number of desert pipelines, support for supertanker construction (to ease the financing of alternative, longer routes). The fantasy of cutting "a new Middle East canal" was even discussed.[99]

The horror of 'free' Arab states was also expressed, and without any sense of irony, via frenzied anxieties about the potential cutting off of pipeline supplies, which would be "a virtual act of war".[100] This reactionary posture would resurface again later, as Western scholars responded to the Arab 'embargo' and consequent 'oil price shocks' of the 1970s. We see the reappearance of the racialised logic that abhors the prospect of an *Arab* "freedom to decide", that cannot be trusted or entrusted to free Arab states.[101] Yet even those who could identify this as a "knee-jerk response of Western international lawyers to the Arab oil embargo", absolved such reaction of its racist motivation by referring to the longer history of opposition to economic coercion "actively advocated" by "African, Asian and other Third World spokesmen…throughout the 1960s."[102] So suggesting the inherently contradictory positioning of Arab states within Third World legal activism, and therby ignoring the over-arching effect of a stabilised 'law-as-it-was' position of Western states and scholars, namely seeking to retain colonial and imperial domination as the structural baseline for the operation of international law and trade.

---

[98] see eg *Time Magazine* 24 September 1956

[99] Malakh and McGuide p.130. In fact, precisely the de-risking and cost minimisation tactics to be achieved through shipping developments were achieved through the deregulation and offshoring of national flags. See further Anthony van Fossen, 'Flags of Convenience and Global Capitalism' (2016) 6 *International Critical Thought* 359

[100] Ibid. Several economically acts of sabotage were in fact carried out following the invasion of Egypt including the disruption of the Tapline and oil workers strikes across Arab states but these were not necessarily state sanctioned. Saudi Arabia did issue a $10 million credit to Egypt to help weather the economic storm of Western sanctions.

[101] The language of freedom to decide comes from General Assembly Resolution 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations A/RES/25/2625 and quoted at [191] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* ICJ Judgment, Merits, 27 June 1986

[102] This rationale put forward by Richard B Lillich, 'Economic Coercion and the International Legal Order' (1975) 51 International Affairs 358

Further, note the excision of legal authority here: such Third World advocacy isn't being conducted by lawyers but merely "spokesmen" with presumably both questionable legal credentials and the obvious doctrinal deficits in law-making capacity. We see in this scholarship a turn to "rationality" as the means by which we are to adjudicate on "permissible and impermissible coercion".[103] There is much more that could be said about the nuances of Arab internationalism in this later manifestation, not least in articulating a clearly lawful authority based upon coherence with a Thirld World conception of the prohibition of economic coercion.[104] For now, it is raised to demonstrate how the discipline enlivened international law's dynamic of difference in its reactionary accounting of the events of decolonisation.

Finally, while an obvious 'fallout' from the Suez Crisis was the federation between Egypt and Syria constituted through the United Arab Republic, this is only one part of a more nuanced story of the existential crisis faced by Arab states in the imperial wars (simultaneously economic, political, military, and legal) waged in and through international law and the various strategies of internationalisation. Defensive pacts led by the Western powers were used to drive wedges between the Arab states,[105] regimes were forcibly changed mostly covertly, sometimes on an expressly legal and public basis,[106] and economic threats became normalised.

On the other hand, resistance continued to draw together economic coercion, the prohibition on the use of force and non-intervention; and collaborative (UN) strategies for economic self-determination were internationalised such that the very understanding of what it would mean to internationalise was brought into the frame. The Arab experience, of ongoing struggles against *perpetually* conditioned sovereignty, was crucial therefore to the conceptual

[103] Jordan J Paust and Albert P Blaustein, 'The Arab Oil Weapon--A Threat to International Peace' (1974) 68 The American Journal of International Law 410

[104] As Ibraham Shihata argued, economic coercion was defined as being aimed against the permanent sovereignty over natural resources. It was not an absolute injunction but directed to the erosion of sovereignty and eviseration of consent. Economic coercion was not only about effecting a change in behaviour but about reconceiving independence through the subordination (here the racialised frame again) of sovereign rights. This, he argued, meant that there was no contradiction between Arab states support for and upholding of the Charter principles of non-intervention, nor breach of the Friendly Relations Declaration, nor indeed a lack of conceptual clarity. Ibrahim FI Shihata, 'Destination Embargo of Arab Oil: Its Legality Under International Law' (1974) 68 The American Journal of International Law 591. For accounts of the lineage of economic coercion that don't figure the Suez Crisis see eg VS Mani, 'The Concept of Economic Coercion' (1977) 33 India Quarterly: A Journal of International Affairs 334; and Maziar Jamnejad and Michael Wood, 'The Principle of Non-Intervention' (2009) 22 Leiden Journal of International Law 345

[105] Operation Straggle in Syria or efforts to topple King Saudi simply a couple of examples in the revolutionary period climaxing around 1958.

[106] eg. The justification of US military intervention in Lebanon in 1958 premised upon the Eisenhower Doctrine issued, not incidentally, in January 1957.

development of PSNR.[107] But it also resisted the conceptual premise of the ongoing efforts of "collective colonialism" to characterise Arab states as empty spaces, vacuums to be filled with apparently benign protection. Take for instance the January 1957 (counter)announcement of the Arab solidarity pact which rejected the vacuum theory of the Eisenhower Doctrine and "decided that Arab nationalism was the sole basis on which Arab policy could be formulated.[108]

Arab states' encounters with Western internationalisation also contributed to Third World debates beyond the specificities of resources, and entailing a particular contribution to the conceptualisation of "unequal treaties".[109] For, Arab states' record of participation in the Suez Crisis (expunged from the orthodox accounts of international law) demonstrated that economic coercion and exclusionary conferencing could effect the same outcome as that from gunboat diplomacy. This was to be contrasted and resisted by alternative forms, Bandung establishing a kind of constitutional momentum, actualising the prospect of a "family of nations" re-constituting a new "international community" whose interests would be served, rather than pressed into servitude, by international law.

Resolving and Disciplining the Suez Crisis

Returning to the Suez Crisis is an effort to build upon the work, in particular of Anghie and Pahuja, to draw into disciplinary sight the 'materials and initiatives' deployed by the Third World to confront the colonial past with a new universal sovereignty. And to highlight the ever-present violence of imperial powers' efforts to thwart these claims. This makes the story of the Suez Crisis relevant to that of the emergence of PSNR in instructive ways not least in recapitulating the necessary shield-like qualities of a reconceived decolonised sovereignty.[110] The extractive premise of resource exploitation as a right of peoples could be facilitated by the Canal's operation, both through the financing now to be received directly by the Egyptian Government and through the literal transportation of such resource. But this channeling relied

[107] On which see further Anghie (2005) and Pahuja (2010)
[108] 'Arab League' (1957) 11 International Organization 543. It should be noted however, that Egypt's 'victory' did not have a simplistic unifying effect, eg Kind Saud faced popular protests against his ongoing concessionary arrangements in relation to oil, and leasing of the Dahran air base.
[109] For an interpretation in solidarity with Egyptian nationalisation see Editorial in the [People's Republic of China] People's Daily July 30, 1956 UK (TNA) FO 371/ 119080 which termed it a legal response to the "unequal treaties of the past".
[110] Georges M Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline Symposium: International Law Standards in an Era of Rapid Historical Change: Leading Article' (1962) 8 Howard Law Journal 95

upon forms of economic ordering that entailed conscription into trade relationships and financial dependencies even as Egypt sought economic independence through modernisation, development and Arab integration.

As Hansen and Johnsson point out, the horrifying prospect of oil flowing 'freely' through a cooperative Arab channeling of resources, was such a motivating factor in European integration that West German Chancellor Konrad Adenauer was said to have suggested that Europe ought to commission a statue to Nasser.[111] For, as was reported at the time, European unity would have thwarted the Algerian independence movement and Nasser would "not have dared nationalise the Suez Canal".[112] Far from being a 'peace project', European integration did not just seek to counteract decolonisation, it sought to incorporate Europe's African colonies as a means of economic 'rebirth'.[113] Arab states' aims for their own conomic integration arguably fuelled the colonial drive for European integration.

The wave of nationalisations that took place between 1945 and 1970 and the jurisprudence of these cases has been described by Andreas Lowenfeld as "incoherent and thus hardly a basis for a specific rule in customary international law." The different agreements between firms and states "were driven by political and economic considerations, generally without even an attempt to fit them into international legal doctrine."[114] However, the reexamination of the Suez Crisis in this contribution resists this ad hoc-ist framing which is based on assumptions about proliferating exigency and pragmatist resolution. This is not least because, as Anand notes, international adjudication was purposely avoided by nationalising states, aware that the ICJ and international arbitrations insisted on enforcing "established legal rights". So, whether going as far as nationalising or merely renegotiating terms (as in numerous oil agreements in the Arab states) they often insisted on negotiations and agreements, thereby seeking to contribute to the modification of law according to changing circumstances.[115]

---

[111] P Hansen and S Jonsson, 'A Statue to Nasser? Eurafrica, the Colonial Roots of European Integration, and the 2012 Nobel Peace Prize' (2013) 24 Mediterranean Quarterly 5

[112] "World Liberals See a United Europe as the Best Answer to Nasser's Moves," New York Times, 14 September 1956. Note again the elision, assuming the canal not the company had been nationalised.

[113] For detailed examination of the relationship between European integration and the retention of colonial possessions see Peo Hansen and Stefan Jonsson, Eurafrica: The Untold History of European Integration and Colonialism (London: Bloomsbury Academic, 2014); and Hansen and Jonsson, "The Imperial Origins of European Integration and the Case of Eurafrica: A Reply to Gary Marks," Journal of Common Market Studies 50, no. 6 (2012): 1028 – 41

[114] Lustig p.158, quoting Lowenfeld *International Economic Law* (2008) pp.484-85

[115] Ram Prakash Anand, *New States and International Law* (Hope India Publications 2008) p.58

These struggles obviously transcended the time and place of the Canal, beyond Arab states. For instance, Egypt's actions influenced protests and upheavals that threatened the US dominance of the Panama Canal and which required brutal repression allied with legal justification. Yet again, scholarship translated these multi-faceted globally-supported anti-colonial actions into seemingly mundane categorisations and neutral historical representations and often excised the significance of the *object* of contest - oil, routes of trade, metals, etc. For instance, several books and articles appeared following the Suez Crisis and Panama Canal protests to positively elaborate on the law as it applied to "*international* waterways"[116] even as Western attempts at enforcing such characterisations had failed. And many accounts both at the time and in our present continue to repeat the proclaimed 'settled objectivity' of the record that establishes a flowing channel as "international";[117] and that it was the Suez *Canal* that was "seized"[118] rather than that a Company was nationalised.

It seems that the discipline simply cannot understand, cannot imagine,[119] conceptualisations of international law by "its others"[120] and instead re-performs the apparently benign distinction to be drawn between 'the use of force' and 'nationalisation'[121], between 'peaceful settlement' and 'illegal invasion'. And so I argue that underlying the multi-pronged Western strategies of internationalisation waged against Arab states we see some consistencies in the forms that internationalisation took during the Crisis. This coherence demonstrates the racialised foundation of the practice and scholarship claiming a qualified Arab sovereignty, resting upon a particular construction of the 'Middle East' and of civilizational backwardness.[122]

The hierarchy that was established through this racialisation sought an exclusive authority to determine the existing content of international legal obligations[123] but also to reaffirm a

[116] Oscar Schachter, 'Review of The Law of International Waterways' (1966) 79 Harvard Law Review 1731 that references the 1964 protests. See also José A Obieta Chalbaud, *The International Status of the Suez Canal.* (The Hague, Nijhoff 1960); RR Baxter, *The Law of International Waterways* (Harvard Univ Press 1964); Jr J. F. McC., 'The Law of International Waterways: An Approach to a Suez Canal Solution' (1957) 105 University of Pennsylvania Law Review 714
[117] eg Shaw (2017) p.402
[118] Lowenfeld 2008 p.537 n.2
[119] On this impossibility in 'othered' histories Michel-Rolph Trouillot, *Silencing the Past* (Beacon Press 2015).
[120] Anne Orford (ed), *International Law and Its Others* (Cambridge University Press 2006)
[121] Oscar Schachter, 'Compensation for Expropriation' (1984) 78 The American Journal of International Law 121
[122] On orientalism and international law see Jean Allain, 'Orientalism and International Law: The Middle East as the Underclass of the International Legal Order' (2004) 17 Leiden Journal of International Law 391
[123] This directly engaged the contemporaneous question of 'voluntarism' on which see see Georges M Abi-Saab,

related underlying premise: that international law worked to contain political contest within neutral(ised) institutions and bureaucratised authority. This left undisturbed the central claims of Western conceptions of international law's role both in history and the present. The Three Powers were asserting their unassailable and exclusive inheritance of such a protective role, and that this would continue *in perpetuity*.[124] This translated the concept of trust beyond the formal Mandate system, not least in seeking to authorise the revival of an expressly perpetual Mandatory relationship. The discipline and professional practices of international law took this up not only in echoing the these legal arguments, and extending them beyond the Crisis 'moment', but also in the present distillation of a singular meaning and narrative seeking to resolve the Crisis once and for all time.

And so, renarrating even just the early phases of the Suez Crisis allows us to revise the account of conceptual arguments in international law. We are able to recount the ways in which Egypt and Arab states sought to overcome the racialised premise of a hierarchical international law, but not as an heroic tragic memorialisation. For such a genre repeats the delusion of justice emanating from a world dominated by states, states of men, and of modern industry, states of capitalist militarism. Rather, in the confrontation over lawful authority - over jurisdiction - to speak in the name of international law we see the limits rather than potential of so narrowed a scene of action and script of performed legality. This chapter suggests that there remains value in subjecting crises of international law to slow, sustained and situated attention. It is the assertions of a resolved narrative - an agreed upon history - that need to be interrogated. Such assertions not only perpetuate hierarchies of knowledge- and law-making in the present, they also refuse to acknowledge and account for the politics of history, which is an ongoing and ever present struggle we are all involved in and in which we all have a stake.

'The Newly Independent States and the Rules of International Law: An Outline Symposium: International Law Standards in an Era of Rapid Historical Change: Leading Article' (1962) 8 Howard Law Journal 95 for discussion

[124] temporalities of unequal encounters can also be traced in the stabilisation clauses that emerge out of this period and standardised in BITs.