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"The Israeli Right of Free Passage through the Canal", a Letter from Elyas Kusa to the Jerusalem Post Editor, 1956

Printed in English, this document features a letter from Elyas Kusa to the editor of the Jerusalem Post Newspaper-previously known as "the Palestine Post", regarding the free passage of the Israeli ships through the Suez Canal, and in case they were prevented, they shall inform the International Court of Justice.

ELIAS N. KOUSSA,
ADVOCATE,
P.O.B.14,
HAIFA,

16th December, 1956.

The Editor of Jerusalem Post,
P.O.B.81,
Jerusalem.

Dear Sir,

The statement appearing in your issue of the 14th instant, attributed by your Reporter to "informed sources", concerning the reference by Israel of the dispute about its right of free passage through the Canal to the International Court of Justice, would appear to contain two errors of fact.

In the first place, the contention that the Security Council is a higher legal instance than the International Court of Justice, is inconsistent with the provisions of the U.N. Charter. It is amply clear from Article 36 of the Charter and Article 1 of the Statute of the Court that this tribunal is the principal judicial organ of the United Nations. And article 36 of the Statute vests the Court with jurisdiction over all legal disputes relating to the interpretation of any treaty and to the determination whether the existence of any fact, if established, would constitute a breach of an international obligation. Surely, the stoppage of Israeli ships from freely passing through the Canal would constitute a breach of the Constantinople Convention of 1888, and of Armistice Agreement between the two States, if Egypt's argument that it is entitled to deny such passage on account of the existing state of war, were misconceived. It is only the international Court of Justice that can judiciously determine this issue.

Secondly, the allegation that the Security Council has already ruled on the point, is incorrect. All that this Council had said was that interference with the passage through the Suez Canal of goods destined for Israel was "contrary to the spirit of the Armistice Agreement" and "abuse of exercise of right of visit, search and seizure". There is nothing in the resolution of the Security Council that could be reasonably considered as a judicial pronouncement on the rights of Egypt to deny passage through the Canal to ships belonging to States which are in a "state of war" or, in

"armed conflict" with Egypt itself. To say that Egypt is bound to open the Canal to all ships irrespective of whether they belong to belligerent states or not, is tantamount to saying that Egypt had committed a breach of the Convention of 1888, by not permitting the British and French ships to pass through the Canal during the recent hostilities. This is, surely, absurd. It would be contrary to all principles of reason, logic and human tolerance that Egypt should now agree to these ships passing through the Canal before a peace treaty is concluded, and adequate compensation paid for the enormous loss of souls and properties resulting from their cruel aggression.

Apart from all these considerations, it is incredible that Israel should hesitate to take the dispute to the International Court now that there is an indication that Egypt would abide by its decision. The inference from such hesitation is obvious and need no clarification.

Yours faithfully,


E. E. KOUSSA.

