Conclusion
CONCLUSION

I

Navigation through waterways is most important means for trade and transportation. The existence of intercontinental canals are now taken as a part of geography of the world. They possess the characteristics of being the most important highways of commerce. It is now difficult to imagine modern interchange of goods without the canals. Even in an age of air navigation their utility for the transportation of heavy commercial goods remains unchallenged. The construction of the intercontinental canals is one of the many factors in contributing to the network of communication. Their functions include, inter alia, shipping and surveillance of strategic and defence position. The canals have great economic significance to their territorial as well as the user nations. Their economic significance can be evaluated from the saving in distance, time, fuel and cost to shipping through the employment of these canals. They are safe, easy and shortest waterways between many ports of the world.

Freedom of navigation through intercontinental canals have been guaranteed by multilateral or bilateral treaties, or by unilateral declaration of the territorial states. Unless they have been subjected to international regulations, they must be treated in the same manner as national waterways. Intercontinental canals, are artificial waterways connecting two seas, must
be permanently dedicated to the use of whole world for benefit of mankind. In fact, internationalisation is a term, which has not yet established meaning but which is used to denote the status of an area of territory or waterway which has to be dedicated by treaty to the public use of all or a large number of states. Therefore, by conclusion of the Convention of Constantinople and the Hay-Pauncefote Treaty, the Suez and Panama Canals respectively assimilated to international waterways.

It may be observed that the laws relating to the inter-oceanic canals are conventional in their origin as they failed to a large extent to deal with the problems of free passage during wartimes. While permitting the defence of the legitimate interests of the territorial states, international customs as precedents may be accepted as laws. But the recent practices of states are of primary importance since the ancient precedents have lost their relevance with the changing time.

During war, the belligerent states may claim right of free passage through the canals provided that the territorial states remain neutral. The territorial states, however, must take necessary measures for the protection of waterways. They should not allow any act of hostilities which violate their neutrality. If the territorial states themselves are at war logically they shall disallow any ship of the enemy to pass through the canals. The defence of the canals will obviously be incompatible with the admission of enemy shipping.
II

Egypt, a gateway between East and West, always held strategic position, hence the construction of the Suez Canal enhanced its significance. The Suez Canal was constructed by Ferdinand de Lesseps under a concession granted by Said Pasha and ratified by the Turkish Sultan. It was constructed by cutting the isthmus of Suez between the Mediterranean and the Red Sea. The Suez Canal was opened for world navigation in April, 1869. Immediately it became an active and bigger trade route by replacing the old Cape route. The Suez Canal became a 'key route to India' commercially and strategically for Britain as related to its imperial interest in India.

The Convention of Constantinople of 1888 established an international regime of navigation through the Suez Canal. Article I of the Convention provided that the Suez Maritime Canal shall always be free and open in times of peace and war to every vessel of commerce and war. Subsequent articles of the Convention contained provisions designed to secure the neutrality of the Canal in times of war. Egypt and Turkey were authorised to take measures which they might find necessary for securing the defence of the country and maintenance of public order. But, the Convention provided, such measures should not interfere with the free use of the Canal. The Convention of 1888 did not come into force before the Anglo-French Agreement of 1904, because Britain, who had occupied Egypt since 1882, reserved its rights to use the Canal for safeguarding its position. In 1923, Turkey transferred to
Britain all its rights and title over Egypt and powers granted in the Convention of 1888, regarding the Suez Canal. Meanwhile, Egypt achieved independence but Britain reserved sole responsibility of the Canal's defence and security of navigation. In 1936, the Suez Canal was recognised as an integral part of Egypt but the British position remained unaffected. For Britain, the Suez Canal was an essential network of communication between different parts of the world because of its colonial interest. Egypt became the sole sovereign of the Suez Canal in 1956, when the British forces evacuated it totally. Both parties expressed determination to uphold the Convention of Constantinople of 1888. Therefore, during 1882 - 1956, Britain assumed de facto responsibility for the maintenance and operation of international arrangement governing the navigation and defence of the Canal.

In 1957, Egypt further reaffirmed the Convention of Constantinople by an unilateral declaration.

During the wars, the Convention of Constantinople provided under Article IV that the Canal shall remain open in time of war as in time of peace, as a free passage, even to the warships of belligerents according to the term of Article I of the Convention. It was also agreed that no act of war or any act obstructing the navigation shall take place in the Canal and ports of access. The expression emphasizes and clarifies that the Suez Canal is to remain open to belligerent warships even if they belong to an enemy state. But the practices and experiences of two world wars lay out the attitude of states towards the Canal. It was closed
for enemy shipping and was opened both for neutrals and allies
states shipping. Therefore, the Convention of 1888 was violated.
Britain, as a de facto sovereign adopted a restricted attitude
towards the defence of the Canal in cooperation with Egypt.
Britain treated it in the same manner as other territorial water-
ways under its jurisdiction. The Canal was heavily fortified.
During the World War I, navigation through the Canal was interrupted
by submarine activities of Germany. During the World War II, the
Axis powers tried to seize the Canal, and mined and bombed the
Canal in defiance of Article IV of the Convention. The belligerent
acts made navigation through the Canal hazardous for allied states.
It should be remembered that Britain, Italy and Germany were
parties to the Convention.

Nasser's act of nationalisation brought an international
crisis. Nationalisation of the Suez Canal Company was a result of
many chronological events, that is, Egyptian-Israeli relations,
quest for arms, Egypt-Czech arms agreement and the Aswan High Dam
proposal. By supplying arms, Russia gained a firm foothold in
the Middle East. In order to dissuade Egypt moving closer to the
Russian bloc, the United States and Britain proposed to finance
the construction of the Aswan High Dam. But the flow of arms from
the Russian bloc to Egypt continued at full speed. Nasser also
continued to attack the Baghdad Pact and his anti-Western campaign
provoked the United States and Britain. Therefore, the United
States cancelled the proposal to finance the Aswan Dam by citing
that Egyptian economy was too unstable to sustain burden. Britain
promptly followed the lead. The sudden cancellation disappointed Nasser, and, as the result, he declared the nationalisation of the Suez Canal Company on July 26, 1956, to build the dam from the revenue of the Company.

International Law justified the nationalisation of the Company like any other act of nationalisation in the world; for example, the Anglo-Iranian Oil Company. Nasser nationalised the ownership of an Egyptian Company operated in its territory and enjoying a concession under its law (Article 16 of the Firmán of 1866). It is also widely recognised that property may be taken if compensation is paid promptly and the amount paid is adequate. Nasser was careful to strengthen his legal position by making promise to pay compensation. The compensation was paid later on in 1958. It should be noted that there have been numerous nationalisations before and since that did not offer adequate compensation; for instance, the Cuban nationalisation of properties owned by the US nationals. Further there was no evidence to justify that the Company gave up its international character. Nasser immediately reaffirmed the Convention of 1888, governing the free navigation rules. Of course, Nasser's act was politically motivated to defy the Western influence, and to demonstrate independence and sovereignty of its country from colonial vestige.

Freedom of navigation through the Suez Canal to Israeli shipping remained a major question during the Palestinian hostilities and the Arab-Israel hostilities (1948-49, 1956, 1967 and 1973). On the ground of the existence of a state of war, Egypt blockaded
the Suez Canal to Israeli shipping. Israel, including Britain, France, the United States and other maritime nations, protested against it and complained before the UN Security Council. The Council adopted resolutions in 1951 and 1954, which condemned the Egyptian blockade. However, Egypt continued to blockade the Israeli shipping by claiming the right of belligerency till the tri-aggression of 1956.

Nationalisation of the Suez Canal Company profoundly agitated the British and the French governments. The Suez Canal belongs to Egypt but it was run by the Company in which Britain and France had controlling interests. For Britain, the situation appeared to be gravest as it threatened the whole British position in the Middle East. After the World War II, the British position was continuously declining. Therefore, security of its interests in the Suez Canal Company, building the Baghdad Pact and protecting its ally - Israel, all these aims coalesced towards a single goal: to destroy Nasser. France heavily committed in Algeria considered Nasser responsible for the trouble there by way of propaganda and by giving arms, funds and guidance to the rebellion. For both powers, Nasser was a source of imbroglio. Military measures were immediately got around. But pressures from abroad particularly from the United States and India urged caution and against tough action. The United States pursued for peaceful negotiation. A series of negotiations were also taken place at London Conferences and in the UN Security Council but of no avail.
They could look forward a peaceful negotiation but the defeat of Nasser was uppermost in their mind. They were successful in keeping the fiction of negotiation before resort to force because they needed time to prepare their armed forces ready to attack and to gain the United States support in case of any crisis—particularly economic. But the United States remained separate and refused its allies to help. By that time a plan against Egypt was taken, inter alia, Anglo-French and Israeli governments in strict privacy. On October 29, 1956, Israeli forces invaded Egyptian territory which was later on joined by the Anglo-French armed forces. Egypt, as the only alternative, blockaded the Suez Canal to world navigation.

The tri-aggression was strongly condemned by the United States and the Soviet Russia and by majority of nations of the world. The United States and Russia took an active role in ending the crisis. They appealed the UN Security Council for the cessation of hostilities but all efforts of the Council were frustrated by the veto of Britain and France. The matter was then taken before the General Assembly under 'the Uniting For Peace Resolution' (1950). The General Assembly was successful in stopping war compelling all foreign forces to withdraw from the Egyptian territory and establishing the UNEF to supervise and secure cessation of hostilities. During the crisis, international law and the UN authority failed in its primary purpose to maintain order by deterring violations of agreed norms. However, international law was vindicated and the UN authority was affirmed in stopping the aggression and the
violations were largely undone.

From strict legal point of view, the action of the three powers was in violation of international law and the UN Charter (Article II (2-3)). Their actions violated territorial integrity and political independence of Egypt. Though they put forward several justifications trying to make them be fitted into the context of right of self-defence (Article 51 of the UN Charter). Israel claimed the right of self-defence against Fedayeen raids, continued blockade of the Suez Canal to its shipping and threat implied by the Egyptian assertion of existence of war with object of eliminating its country. Britain and France claimed right of collective self-defence of their vital interests, to stop hostilities, to safeguard the Canal, to keep the Canal open for traffic and to establish a regime of the Canal for future freedom of navigation. But their claims could not be justified under international law and nor by the UN Charter. Their actions were not in pursuance of the Security Council's decision nor on its recommendation. International law justifies the right of self-defence only in case of an armed attack occurs, distinguished from anticipated attack or from various forms of unfriendly acts falling short of armed attack.

The Tri-aggression was politically motivated. The aggression against Egypt has not been committed for the sake of free navigation along the Suez Canal, which was safeguarded. The practical war was launched with the aim of restoring colonial
order and their historic interests in the Middle East. It was calculated that if their plan succeeded, Britain and France would have again occupied their earlier position, Israel would have annexed the Sinai Peninsula and opened the Suez Canal to its shipping. But they failed in their motives. Egypt gained unfettered control of the Suez Canal and the Company. However, Israel was able to open the Suez Canal for its shipping and occupied the Sinai Peninsula. But it was further became a major question during the 1967 and 1973 wars. Egypt blockaded the Suez Canal in 1967 for Israeli shipping and later on completely to world navigation. After a period of eight years, the Suez Canal was opened in 1975.

A significant role was played by the United States which brought the collapse of the British prestige. The United States played an extremely active and decisive part in bringing suitable pressure upon the British Government and advised to withdraw from the Suez Canal base. Later on, American intervention in the tri-aggression of 1956 to stop war removed virtually the last important vestige of Anglo-French influence in the area without in any way substituting a new power relationship. By opposing the tri-aggression, the United States weakened the position of its allies and created a power "vacuum" in the Middle East. The United States support in the United Nations and opposition to its allies was reinforced by major political interests and practical terms. The United States support to Egypt was its preoccupation with the
Soviet Communism. The United States sought that to support its allies would not only alienate Arabs and other new nations but would also facilitate the Soviet penetration. The United States was also deterred from claiming the international control of the Suez Canal only because of its interest in the Panama Canal. Its intention was also to fill the power "vacuum". And it was the result of the United States attitude that during the crisis, in spite of many strains during 1967 and 1973 wars, Egypt moved closer to it and made ultimately the Camp David Agreement possible. A long continued question of Egypt and Israeli controversy ended.

Throughout the Arab-Israeli hostilities, the Soviet Russia supported Egypt. The main object was to use the crisis to enhance its opposition and influence in the Middle East and to divert attention of the world nations from its own intervention in Hungary. The United States with cynical support from the Soviet Russia in sponsoring the measures in the United Nations had no effect whatever on the situation in Hungary. The reason for Russian interest in the Middle East was solely due to power politics. India, during the whole Arab-Israeli crisis, was very sympathetic towards the Arabs.

III

Panama Canal is another important Canal between the continents of South and North Americas. The United States Government acquired, built and operated the Canal due to its largest
interest required possession of the Canal passing through the Central America. American interest in the Canal grew out of their quest for continental and commercial supremacy. Simultaneously the discovery of gold-fields in California, acquisition of Mexico and Spanish War emphasized the need of a short water-route replacing the longer Cape Horn or the Strait of Magellan routes. When its interest appeared threatened by the expansion of European political influence in gaining exclusive control over the inter-oceanic Canal, the United States sought to implement Monroe's containment policy. The United States made two moves – first, concluded a treaty with New Granada, and, secondly, negotiated the Clayton-Bulwer Treaty with Britain which provided that both nations should not gain exclusive control over an inter-oceanic Canal routes in the Central America. After 1880s, it became a policy of the United States to build a canal under its jurisdiction solely. Therefore, in 1901, after a year's of desultory negotiations, Britain approved the building of a canal exclusively under control of the United States.

With the neutralisation of Britain, the United States proceeded to negotiate with Colombia to build the Canal through the isthmus of its province – Panama, but failed. Then the US President Roosevelt supported a revolution in 1903, which created an independent Panama. The new Panamanian Government immediately concluded the famous Treaty of 1903, which not only granted all rights to build and defend the Canal but for all practical purposes made Panama a protectorate of the United States. The construction
of the Canal proceeded readily and in 1914, the Panama Canal was unofficially opened for world navigation. It was officially declared open in 1920.

The Hay-Pauncefote Treaty of 1901 adopted rules for free navigation as a basis of the neutralisation of the Panama Canal substantially as embodied in the Suez Canal Convention of 1888. Article III of the Treaty provided that the Panama Canal should be open and free for vessels of commerce and war belonging to all nations on the terms of equality without discrimination, and on observation of certain rules provided in it. Other rules of Article III deal with the regulation of the Canal during war. The Treaty of 1901, remains silent with respect to the measures which may be taken by the United States for defence of the Canal. However, the treaty authorised the United States to maintain military force along the Canal as may be necessary to protect it against lawlessness and disorder. The United States was free to exercise control over the Canal as it considered fit. The rules provided in the Hay-Pauncefote Treaty regarding the free navigation were re-affirmed and recognised by the Treaty of 1903 and the Treaty concerning Permanent Neutrality and Operation of the Panama Canal of 1977 (Articles I and II).

During war, the status of the Panama Canal is governed by the Hay-Pauncefote Treaty. No act of hostility nor any right of war shall be committed within the three sea miles limit. The Canal shall never be blockaded. Only ships of nations observing
certain rules are entitled to pass through the Canal. Those rules may be changed to include or exclude warships. The phrase "in time of war as in time of peace" was not included in the Hay-Pauncefote Treaty. The United States had retained full freedom of decision. Although the Panama Canal in literal language of the Treaty/open to all vessels of commerce and war; neutralised and immune from attack by belligerent states. It has proved impossible to give effect to these provisions in so far as they may confer right upon an enemy of the United States. During the World War, proclamation of the US president expressly denied access to the vessels of the enemy states. The Canal, however, survived its wartime test without having its status challenged by belligerent or neutrals and without objections being raised to the laws and regulations governing its use. The Canal was neither blockaded nor it was attacked, injured or impaired by any belligerent. The United States, in cooperation with Panama, through the maintenance of ceaseless vigil and exercise of constant precaution by the civil authorities and armed forces protect the Canal. During the period of its neutrality, interest was primarily centered on the preservation of neutrality and safety of the waterway. Neutral and belligerents' warships were allowed to pass but subjected to a number of restraints. When the United States became belligerent, it interpreted the neutralisation rules to its advantage. During the periods of its belligerency, neutrals and allies were allowed to pass through the Canal. Enemy vessels were totally excluded from using the Canal.
An important factor in the relationship of the two states, Panama and the United States, is the Panama Canal. The United States is proud of its record in constructing, maintaining and operating the Canal efficiently. A trans-Isthmian Canal under American exclusive control has always been a cardinal feature in its foreign policy. It is related to the security of American nation and of the hemisphere. Manifest destiny impelled the United States to acquire and retain "in perpetuity" the control of the Canal. Not alone, the Canal is necessary to the commerce and naval forces of the United States, but the Canal Zone, which surrounds it, is also necessary because it unites and protects the land of the American hemisphere. Therefore, in its treatment of physical, psychological and geographical factors the Canal states a basic problem.

The signing of the Treaty of Hay-Bunau-Varilla in 1903 marked a beginning of the struggle which placed Panama under the protection of the United States. By this treaty, Panama conceded its sovereign rights, powers and authorities in the Canal Zone to the United States as it was sovereign of the territory. Panama also gave up its rights over the waterway to the United States "in perpetuity" (Articles II and III of the Hay-Bunau-Varilla Treaty of 1903). In addition, Panama was saddled with a provision allowing for unilateral intervention by the United States in internal affairs of Panama. Vexing, too, was the right of the
United States to take any Panamanian territory outside of the Canal that it considered necessary for the maintenance, operation and defence of the Canal. These provisions made Panama a potential colony of the United States. Panamanians immediately began protesting the American control over their country. Rupert Emerson, an authority on colonialism, described the situation as "the establishment and maintenance of rule over an alien people that is separate from and subordinate to the ruling powers". The United States and Panamanian tie is, in fact, a colonial tie. Although Panama is an independent and sovereign country but, in reality, the United States control and powers exercised over Panama fits with the criteria of colonialism. However, their ties were not systematically designed as in a colonial system to be operated by a colonial office, but it developed less formally and less systematically and handled by the United States State Department. The relation of the United States with Panama is in many respects similar to those of Britain with Egypt.

The legal status regarding sovereignty over the Canal and Canal Zone also marks vital issue of controversy. The United States did not buy the Canal. Therefore, it does not own it. After 1903, it paid annual annuities to Panama for the use, occupation and control of the territory. Panama did not grant the territory "in perpetuity" but granted the use and occupation of the territory for a specific purpose of construction, maintenance and operation of the Canal. It implicitly recognised less than full ownership of the Canal and Canal Zone. Many United States officials claimed
full sovereignty over the Canal and Canal Zone. Senator Thurmond declared that "the Canal Zone is both the territory and property of the United States. We paid for it and it is ours — in perpetuity." After the conclusion of 1977 Treaty, President Ronald Reagan emphasised that "North American claims to the Canal and Texas are equally valid".

The best way to determine the legal status in a consideration of relations established during 1903-1977. Theodore Roosevelt, John Hay, William Howard Taft — the three most important figures in establishing the United States position in Panama — agreed that Panama retained, to use Taft's phrase, "the titular sovereignty" only. More significant was the testimony from Philip Bunsau-Varilla that "the United States, without becoming sovereign received the exclusive use of the rights of sovereignty while respecting the sovereignty itself of the Panama Republic".

The turning points occurred in 1936, when the Canal Zone was accepted by the United States as a territory of Panama under the jurisdiction of the United States (Treaty of 1936, Articles I and II). In 1959, the US President allowed the Panamanian flag to fly in the Canal Zone. In 1967, Johnson administration officially searched the record and concluded that the United States could not claim full sovereignty in the Zone. Contrary to Senator Thurmond's view, mentioned above, Ellsworth Bunker said in 1976, that the United States did not purchase the zone in 1903 but paid for certain rights. "We bought Louisiana, we bought Alaska", but
"in Panama, we bought not territory but rights."

Panama did not want its dominion in the zone affected by any rights, powers and authority granted to the United States with respect to operate the Canal. Panama wanted clearly to establish its sovereignty over the Canal and the Zone Zone. There were two main reasons; first, a highly nationalistic sensitivity and resentment towards the United States for the division of their country. The Panamanians increasingly opposed the United States control of the Canal Zone because of the anti-Panamanian discrimination in employment, salaries and other public facilities; secondly, Panama needs the Canal for economic reasons. The Canal’s revenue is a greatest source in solving the fundamental economic problems of its country.

Therefore, Panama’s efforts since 1903, centered around to win total sovereignty - a goal requiring the revision of the 1903 Treaty; and return of the Canal Zone. But the United States had frequently demonstrated its reluctance to approve any agreement that would abrogate the 1903 Treaty or relinquish its rights. The negotiation, however, had taken place several times. In 1936 and 1955, negotiations for gradual retrocession to Panama control over the Canal and Canal Zone were made but with the economic stakes there were no further progress. After 1955, the negotiation for the total revision of the Treaty was continued till 1977. No agreement was reached because the United States, though adopted a general conciliatory attitude but was firm in its insistence
that it would defend the security of the Canal. Meanwhile, the United States was going to pursue the possibility of constructing another inter-oceanic canal either in Panama or nearby the territory. The construction of a competitive new Canal undoubtedly strengthened the bargaining position of the United States in the ensuing negotiation with Panama. In 1974, an agreement was reached on principles for a new treaty by which the United States would surrender its jurisdiction over the Canal Zone. But the US officials opposed to surrender any control over the Canal.

Intensified negotiation resulted in signing of two new Canal treaties in 1977. These treaties finally came into effect since October, 1979. The Canal has been placed under the Joint US-Panamanian Canal Commission and after December 31, 1999, it is agreed, the waterway will be restored to Panama. Panama has assumed the control of the Canal Zone. Taking into consideration the Panamanian demands and the exposition of the United States position, Panama has sought its authority over the Canal and the Canal Zone but under a long transition process, and under conditions which revealed the dependence of Panama on American powers. It is important to note that the United States has right to intervene militarily to guarantee the free access to the Canal and its neutrality. It has the responsibility to protect the Canal not only until December, 1999, but even after the termination of the Panama Canal Treaty of 1977.
IV

Intercontinental canals are significant waterways dedicated solely to public use and world's benefit. Legal regime have been established by bilateral and multilateral treaties and freedom of navigation has been guaranteed to ships of all nations every time through these waterways by the signatories, but the right of free navigation is not controlled by any international body even in case of international conflagration. They have become an instrument in the hands of littoral states used in order to foster the aims of their foreign policy. For instance, Egypt used the Suez Canal during Arab-Israeli conflicts.

In case of the Panama Canal, although the US-Panamanian conflict to some extent has been settled by the 1977 Treaty, a conflict can emerge, if the United States refuses to accept the 1977 treaty or later on decides not to carry out its provisions. The conflict cannot be resolved on a national basis. Neither American nor Panamanian control of the Canal will be able to withstand the pressure of modern nationalism.

Therefore, the alternative to deal with the problems concerning international Canals is their internationalisation to be governed under an 'Authority' established by the United Nations. An International Canal Commission responsible for the observance of the international regime should be established under the United Nations. The formation of Commission is to be on "Authority-cum-Responsibility" basis. It should be made up of the representatives of the littoral States and the Canal's principal users.
without any hemispheric limitations. In principle, this proposal is in line with the recommendations made originally at Potsdam Conference in 1945, by President Truman. The principle should be applicable to all waterways vested with public interests.

The Internationalisation of intercontinental Canals on following basis would leave unimpaired the real interests of the territorial states and also those of the user states:

1. The preservation and maintenance of the Canals by the 'Authority' established by the UN;
2. Maintenance charges to be paid by the user states in accordance to a formula evolved by the 'Authority';
3. free access to ship of all nations through these waterways while respecting the sovereignty of the littoral states;
4. good services at low and reasonable tolls fixed by the 'Authority';
5. collection of the revenues by the littoral states; and settlement of dispute should be through arbitration.

The Internationalisation under the aegis of the United Nations would enhanced the defence and security of the Canal. In an international crisis, they would offer a less attractive target than one controlled by the territorial state. Perhaps, the internationalisation would not be welcome by the littoral states Egypt and Panama, particularly by the United States the oligarchs or the populace of Panama in the case of the Panama Canal. But they must see that the Canal once came under the
United Nations aegis, Panama would get a more important role in its operation. Panamanian sovereignty would go undisputed and all vestige of segregation and discrimination would disappear and national sentiments of the populace would be soothed. The United States would also play a significant role as a principal user of the Panama Canal.