NEA/IAI - OK for release 8/6/79

#1 WH - Mr. Rostow 3.6.2

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DEPARTMENT OF STATE

UNDER SECRETARY FOR POLITICAL AFFAIRS

~~CONFIDENTIAL~~

August 15, 1967 3 Return Bks

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MEMORANDUM FOR: S/S - Mr. Walsh

FROM: M - Eugene V. Rostow

I attach a copy of the report of the judge who presided over the preliminary inquiry in the Liberty case. It was handed to me yesterday by Minister Evron.

He requested that this be treated on a restricted and confidential basis. He did, however, indicate that we could, if we wished, show it to interested members of Congress and others.

In response to my inquiry, he reported that Jerusalem had decided not to make any further public statement at this time, but would have no objection if we did so. I explained that my preliminary thought was that if the statement were to be made criticizing members of the Israeli Armed Forces, it would be more appropriate for it to originate with the Israeli Government than with our Government.

I said that we should reach a final decision later, after studying the decision, both on how to handle the distribution of the document, and whether to make a public statement.

Enclosure

~~CONFIDENTIAL~~

Comment On

THE ISRAELI VERSION

The enclosed report of an Israeli Judge was passed to the United States about two months after the Israeli attack on the USS Liberty. This and two earlier and less detailed reports were all withheld from the American public at the request of the Israeli government. The earlier reports have both been declassified under the Freedom of Information Act. This report, by far the most detailed of the three, has never been released. The Department of State claims to be unable to identify such a report. The Joint Chiefs of Staff did identify it, but refuse to release the report on grounds that such release would be damaging to the interest of the United States. The same report, however, was handed to a citizen by a civil servant who found it in an unclassified file. It is not classified and can be withheld on no legitimate grounds.

Careful reading of the Israeli report reveals many admissions different from the official stories told by both countries. Officially and publicly, both countries describe the assault on the USS Liberty as a brief and mistaken affair initiated by forces on the scene and later followed up by torpedo boats which happened upon a flaming hulk which they supposed to be an enemy.

The report of the Israeli Judge, however, reveals (as previously reported by Liberty crewmen) that the air attack was two stage (high speed Mirage jetsfollowed by low speed Mystère jets), that napalm "bombs which caused fires" was used, and that the whole affair was coordinated from the Israeli war room where the ship was identified and its track plotted on a chart.

The report distorts many of the circumstances of the attack in order to reach a conclusion that the attack was an error. It is difficult to accept, for instance, that the Liberty's track was "erased" from the war room chart, or that such an erasure led to the attack. Furthermore, it is impossible to accept the claim that Israeli torpedo boats located the USS Liberty at 1341 Tel Aviv time (19 minutes before the firing started), and plotted Liberty's speed erroneously at 32 knots. The torpedo boats left their base at Ashdod at 1200. At 1341 they were still far beyond radar range and could not possibly have picked up the Liberty on their radar. In fact, the boats have a radar horizon of 16 miles or less and could not possibly have spotted the Liberty on radar until about the moment the attack started at 1400.

There are many other defects in the Israeli report. Most are evident from a careful reading. For a more detailed report of the circumstances of the attack and of the coverup that followed and still exists today, read ASSAULT ON THE LIBERTY (Random House, 1980), by James M. Ennes, Jr., who was an officer on the bridge of the ship during the attack.

Russell David, who was Liberty's signalman on the bridge as the torpedo boats approached, insists that no one signaled "identify yourself first," as the Israelis claim. **See back cover for official Navy message which provides more information and documentation of the signalman's report.**

James Ennes

USS LIBERTY NEWSLETTER
Post Office Box 789
Woodinville, Washington 98072

ISRAEL DEFENSE FORCES

Preliminary Inquiry File 1/67

Preliminary Inquiry

Before: Sgan-Aluf I. Yerushalmi

DECISION

1. On Thursday 8th June, 1967, at approximately 1400 hours, aircraft of the Israel Air Force attacked a vessel situated about 20 miles north-west of El-Arish, and some 14 miles off the shore of Bardawil. About half an hour later torpedo boats of the Israel Navy attacked the same vessel and hit it with a torpedo. Soon, during the attack by the torpedo boats, it became clear that the vessel thought to be an enemy ship, was a vessel named "Liberty", of the United States Navy. The attack was immediately broken-off, but most regrettably, only after, as transpired, loss of life and material damage had been caused.

2. In order to understand the chain of circumstances which lead to this unfortunate incident, a number of the events which preceded it, must be reviewed.

3. The incident occured on the fourth day of the war. On that day the towns of Gaza and El-Arish, as well as the area extending to the Suez Canal were already in the hands of our forces. Although our command of the air was absolute, our forces were still conducting battles in Sinai and Naval operations were being carried out on the day of the incident. In the hours before noon, naval engagements were taking place along the coast of Israel and an enemy submarine was believed to be sunk by the Naval Forces (note: there is no confirmation for this from intelligence sources).

4. Before noon, between 1100 and 1200 hours, Navy H.Q. received reports from two separate sources, according to which El-Arish was being shelled from the sea. The Naval representative at Air Force H.Q. was ordered to check the credibility of the report. This officer got in touch with Air Force Operations Branch, and was told that the source of the report was the Air-Ground-Support Officer. Immediately thereafter he was informed by the Naval representative at G.H.Q. that the information about the shelling received by them originated from Southern Command.

It is to be noted that the reports from Southern Command were also accompanied by information, that two vessels had been observed approaching the coast.

5. At 1205 hours an order was given to three torpedo boats of the division at Ashdod to proceed in the direction of El-Arish. Reports about the shelling continued to reach G.H.Q./Operations, and pressure was exerted on the Naval representative, on the lines that "the coast has been shelled for hours, and you -- the Navy -- are not reacting." The Naval representative contacted Navy H.Q. and proposed an immediate action. He was informed that torpedo boats had been sent to the spot to locate the target, and it had also been agreed with the Naval representative at Air Force H.Q., that as soon as the torpedo boats locate the target, aircraft would be dispatched. In the meantime, the commander of the torpedo boat division, who had already been proceeding in the direction ordered, was informed about the shelling of the El-Arish coast and he was ordered to establish radio contact with the aircraft as soon as they appeared over the target.

[Note: See Navy message on back cover for long-secret answer to Israeli claim in paragraph 8 that the Liberty refused to identify itself.]

6. According to the division log-book, a target was located at 13.41 hours situated at a distance of about 20 miles north of El-Arish. The division was ordered "to close in and identify the target", and reported that the unidentified target was moving at a speed of 30 knots westwards -- that is, in the direction of Port Said.

A few minutes later, the Division Commander reported that the target, now 17 miles from him, was moving at a speed of 28 knots, and since he could not overtake it, he requested the dispatch of aircraft towards it. The Division Commander also reported that the target had changed its navigational direction.

7. As a result of the request of the Navy H.Q. through its representative with the Air Force, aircraft was dispatched to the target. The aircraft carried out a run over the ship in an attempt to identify it. According to their statements, they were looking for a flag, but found none; likewise no other identification mark was observed. As against this, it was established that the painting of the ship was grey (the color of a warship), and two guns were situated in the bow. This was reported to H.Q.

On the assumption that they were facing an enemy target an order was given to the aircraft to attack. During the first stage of the attack the aircraft strafed the ship with cannon and machine guns, and during the second stage dropped bombs on it, which caused fires, and smoke was seen to rise from the ship.

The aircraft was ordered to leave the target, to allow the torpedo boats, which meanwhile had drawn near, to engage in attack, but during the last run a lowflying aircraft observed the marking "CPR-5" on the hull of the ship.

8. Upon receipt of the information about the marking, so observed by the pilot, an order was transmitted to the torpedo boat division not to attack the ship, since its identification might not be correct.

The Division Commander was ordered to approach the ship in order to establish visual contact and to identify it. The order was carried out, and the Commander reported that the ship appeared to be a merchant or supply vessel. The Division Commander also signalled the ship and requested its identification, but the latter replied with a signal meaning "identify yourself first". Meanwhile the Division Commander was consulting and perusing a book on the identification of Arab Navies and making comparison with the target seen by him, he came to the conclusion that he was confronting an Egyptian Supply ship by the name of "El-Kasir". At the same time the commander of another torpedo boat of the division informed him, that he also had identified the ship as the Egyptian "El-Kasir", and then at 14.36 hours the Division Commander authorized the division to attack with torpedoes. And in fact a torpedo was fired at the ship and hit it. Only at a later stage, when one of the torpedo boats approached the ship from the other side were the markings "CTR-5" noticed on the hull, and then the final order was given to break off the attack.

It is to be noted that throughout the contact no American or any other flag appeared on the ship, and it was only a helicopter, sent after the attack in order to render assistance -- if necessary -- which noticed a small American Flag flying over the target. At that stage the vessel was finally identified as an audio-surveillance ship of the U.S. Navy.

9. Although at no stage of the inquiry was any evidence brought on the results of the attack, it is reasonable to assume, in view of the testimony as to the nature of the hits, that loss of life, as well as material damage to the ship, was caused. Nevertheless, according to the evidence presented to me, the ship succeeded in leaving the area of the incident under its own power, without requiring the assistance offered.

10. I have briefly described the incident, in consequence of which a plaint has been submitted to me by the Chief Military Prospector, in accordiance with the instructions of the Military Advocate General, to hold a preliminary inquiry, since in his view offences had been committed which a military court is competent to try. But before I deal with the seven counts of the plaint, I must briefly describe a number of facts which help to explain the background of the plaint, and without which it cannot be understood.

11. On the day of the incident, at 04.10 hours, an aircraft with a naval observer on board, set out on an air reconnaissance mission, and reported, at approximately 06.00 hours, the location of a ship 70 miles westward of Tel Aviv. The ship was later identified as a supply vessel of the American Navy. At about 09.00 hours an Israel aircraft flying over the sea, reported that some 20 miles north of El-Arish it had observed a warship which had opened fire on him when he tried to identify it. During the debriefing of the pilot at 09.40 hours, it appeared that the report about the firing was unfounded, and that the ship was "coloured grey, very bulky and the bridge amidships".

At 10.55 hours the Naval Liaison Officer at Air Force H.Q. reported to the Navy H.Q. that the ship about which he had reported earlier in the morning was an electromagnetic audio-surveillance ship of the U.S. Navy, named Liberty, whose marking was G.T.R. - 5. At the same time the Acting Chief of Naval Operations was present at Navy H.Q.

12. Upon receiving the information from the reconnaissance aircraft about the location of the ship, as mentioned above, it was marked on the Combat Information Centre Table at Navy H.Q. At first the object was marked in red, meaning an unidentified target; afterwards, when the ship was identified as a supply vessel of the American Navy, it was marked in green, i.e. a neutral ship. At about 11.00 hours, after the Acting Chief of Naval Operations had received the report, as above stated, from the Liaison Officer at Air Force H.Q., and had understood, as he testified, that it referred to the target, the location of which was correct at 06.00 in the morning, he ordered its erasure from the table, since he had no information as to its location at the time of the report.

Accordingly, it is clear that from the moment when reports about the shelling of the coast of El-Arish were received, and of the commencement of activity at Navy H.Q. in order to confront a presumed enemy, and until the said incident with the ship "Liberty", the latter was not to be found on the Combat Information Centre Table at Navy H.Q.

13. Upon receipt of the reports about the shelling of the El-Arish coast the Acting Chief of Naval Operations called the Head of the Naval Department to the Command Bridge, and the latter took over the command on the bridge, ordered the dispatch of the torpedo boats and aircraft and their attack on the target.

At 14.20 hours O.C. Navy arrived at the Command Bridge and it was he who authorized the commander of the torpedo boat division to attack. At the first stage of activity, with the appearance of the Head of the Naval Department, there was present on the bridge the Acting Chief of Naval Operations (a duty which he took over at approximately 10.30 hours). At a later stage the Chief of Naval Operations returned to the Command Bridge.

14. The subject matter of the first two counts of the plaint is the failure to report the fact that the American ship "Liberty" was seen in the morning hours of the day of the incident, sailing in the vicinity of the Israel coast, under the first count - to the Head of the Naval Department, and under the second count - to the Air Force H.Q.

According to the third count of the plaint "the extent of the veracity and credibility of the reports on the shelling of El-Arish from the sea, which reached the Air Force, the Senior Naval representative at the Air Force and the Naval mission at G.H.Q., was not properly investigated."

The fourth and fifth counts are alternative, and allege negligence, in that an order to attack a target thought to be an enemy target, was given without checking its national identity and without taking into account that the ship "Liberty" was observed in the morning hours of that day sailing in the vicinity of the Israel coast.

In the sixth count, the Chief Military Prosecutor charges that the order of the Naval Department not to attack the ship, suspected by the division of being an enemy ship, "for fear of error and out of uncertainty with regard to the true identity of that ship", was not delivered to the division.

Finally, in the seventh count, the Chief Military Prosecutor charges that "aircraft of the Air Force and torpedo boats attacked the American ship "Liberty" on an unfounded assumption -- resulting from failure to take reasonable steps properly to establish her identity -- that she was an Egyptian warship".

To establish the plaint, the Chief Military Prosecutor called 34 witnesses and also produced to me 14 various exhibits. In his final submission the Chief Military Prosecutor argued that on the evidence, the commission of each of the offences, that appear in the plaint, can be attributed to various military personnel, whom he indicated by name, although the plaint itself does not mention the accused (see section 294(a) (2) of the Military Justice Law, 1955).

15. In an interim decision dated 5th July, 1967, I held that "it appears to me, prima facie, that offences of negligence may have been committed by the Acting Chief of Naval Operations, because he did not report to the Head of the Naval Department, that on the day of the incident the American ship "Liberty" was observed proceeding in the vicinity of and along the Israel coast"; and "that he may have been negligent in that after being informed that the target, which was reported to be allegedly shelling the El-Arish coast was marked CTR - 5, he did not inform the Head of the Naval Department and/or the O.C. Navy, that a vessel with identical or similar marking had earlier been identified."

As a result of this decision of mine, the Acting Chief of Naval Operations appeared as accused and was represented by the Chief Military Defence Counsel. He called 3 witnesses, made a statement under oath and produced 5 exhibits.

16. Before dealing with each count of the plaint, I must observe that it is clear to me that it is not my function to determine, in any manner whatsoever, whether the ship "Liberty" acted properly at any stage prior to the incident or during the incident itself. My task is to decide whether any offence has been committed by any military personnel involved in this incident, i.e. as is stated in section 297 of the Military Justice Law, 1955, "to decide whether or not there is sufficient amount of prima facie evidence to justify the commital of the accused for trial". At the same time, since the subject matter of the plaint before me are offences of negligence, I will be unable to determine the reasonableness of the conduct of all those concerned in the matter without examining the conduct of the ship, against the background of the general situation, as was described to me.

As stated the incident occured in the midst of war, very close to the coast where battles were still raging, and on the day of the incident -- in the hours of the morning -- an enemy submarine was even sunk by the Israel Navy. It was proved to me, beyond any shadow of a doubt, that the ship was hit in an area described as "the naval battles arena" in the event of a clash between the navies of Israel and Egypt. Although, when hit, the ship was outside territorial waters, it was testified to me that the area was declared by the Egyptian authorities as one dangerous

to shipping, a declaration which presumably reached all vessels to be found in the vicinity. Moreover, the place of the incident does not serve as a recognized shipping lane. It was explained to me, likewise, that it is customary for warships to announce their approach to the shores of a foreign state, particularly in sensitive zones, which was not done in this case.

17. I shall now deal with the counts of the plaint.

The first complaint by the Chief Military Prosecutor is against the Acting Chief of Naval Operations, for not having drawn the attention of the Head of the Naval Department to the fact that in the hours of the morning, the ship "Liberty" was sailing in the vicinity of the Israel coast. This omission occured in two stages: the first -- prior to the attack of the aircraft, the second -- after the aircraft reported the identification of the marking on the hull of the ship.

In view of the evidence of the Head of the Naval Department before me, that he did not know on the same day of the presence of the "Liberty" in the area, I thought at first that the Acting Chief of Naval Operations had not acted as a responsible officer should have acted. But during the evidence for the defence, the Officer of the Watch at Navy H.Q. testified that in the course of the fight with the submarine the Head of the Naval Department was present on the Command Bridge. At the same time an American supply ship was marked in red on the Combat Information Centre Table, and during a momentary lull in the fight, the O.C. Navy, who was directing the fight, inquired into the import of the marking, and ordered it to be changed to green.

The Acting Chief of Naval Operations testified that he was an eye-witness of the said event, and concluded therefrom that the head of the Naval Department knew about the presence of an American supply ship in the area, as had already been reported in the hours of the morning. This assumption seems to me to be reasonable under circumstances, and therefore I take the view that no negligence on his part has been proved, even prima facie. As regards the second stage -- that is, the failure to draw the attention of the Head of the Naval Department to the fact that the marking, which the pilot had reported as being on the hull of the ship, was similar to the markings of the "Liberty" -- it is my considered opinion, there was no reason for him to repeat this information to the Head of the Naval Department.

Witnesses related that the Naval Liaison Officer at the Air Force passed on to the Naval Command Bridge the report on the marking and its similarity to that of the "Liberty", and the officer with whom he spoke, repeated his words in a loud voice, so as they were heard by all present on the bridge, including the Head of the Naval Department and the Chief of Naval Operations. What reason, therefore, was there to draw the attention of the Head of the Naval Department to a fact which had been audibly announced by the said officer? Moreover, as I have already pointed out, the Acting Chief of Naval Operations had reasonably assumed that the facts of the presence of the "Liberty" in the area, was known to all concerned.

No one present, indeed, had connected this report with the target attacked, but I shall consider this question, when I deal with the reasonableness of the attack on the target, under the given circumstances.

18. As to the second count the Chief Military Prosecturo argued that it was the duty of the Naval Liaison Officer at the Air Force to report to the Air Force, where he represented his service, the information about the presence of the "Liberty" in the area, and not having done so, was negligent in the discharge of his duty.

This argument is unfounded. The responsibility for the Defence of Israel against enemy Naval actions rests solely with the Navy. It was made clear to me in this instance that the Air Force fulfilled merely an auxiliary function, while the responsibility for identification and attack lay upon the Navy. Even though Air Force H.Q. issued the order to the pilot to attack, it was really an order issued

by the Navy, passed on through Air Force H.Q., and the responsibility for its issue falls upon whoever issued it at Naval H.Q.

The Naval Liaison Officer at the Air Force well knew, that the report on the "Liberty" was transmitted by him to Navy H.Q.; and he was entitled to assume, that whoever decided upon the attack, had done so after taking the above fact into consideration. What reason was there in feeding the Air Force with information and considerations which did not concern it?

19. It appears to me that it would be proper at this stage to deal with the sixth count, in which the Chief Military Prosecutor alleges that the Torpedo Boat Division Commander was not provided with the order of the Naval Department not to attack a ship, suspected by the former to be an enemy vessel, for fear of error and uncertainty as to its true identity.

In the operations log-book of the flag boat, carrying the Division Commander on board, it was recorded that at approximately 14.20 hours an order in the following terms was received from Naval Operations Branch: "Do not attack. It is possible that the aircraft have not identified correctly". A similar entry, made at the same time, is to be found in the war-diary of Naval Operations Branch, as an instruction transmitted to the Division.

When the entry was produced to the Division Commander, he claimed that no such message ever reached him, the deputy commander of the boat, through whom contact between Division Commander and Naval Operations Branch was maintained, testified, that he received the message and passed it on to the Division Commander.

Although considerations of the credibility of witnesses should not be part of my functions, it appears to me that in the normal course of events as described, the message was passed on in the normal course of reporting to the bridge of the Division Commander. It is possible that the message escaped the awareness of the Division Commander in the heat of battle.

In any event, be the matter as it may, there is insufficient evidence before me, justifying the commital for trial of any accused person on these grounds, and accordingly I so decide.

20. The third count concerns, as has been said, the insufficient investigation of the veracity of the report on the shelling of El-Arish by the Naval Liaison Officer at the Air Force, who was ordered to do so by the Head of the Naval Department.

It is not disputed that the Liaison Officer clarified with Air Force H.Q. the source of the report concerning the shelling, and was told that the source of the information was the Air-Ground-Support Officer. Immediately thereafter he was informed by G.H.Q., that reports of the shelling were being received from Southern Command. The Chief Military Prosecutor argued that as soon as the Head of the Naval Department had cast doubts upon the correctness of the report, it was the duty of the Naval Liaison Officer at Air Force H.Q. to establish its correctness by contacting the original source of the report.

This argument does not recommend itself to me at all. We are concerned with reports in time of war coming through the usual report-channel, and it appears to me that a commander may assume that every such report received by him is correct, and treat it with utmost seriousness as long as the information is within the limits of reasonableness. Since otherwise, if one wishes to say that he is duty-bound to inquire into the correctness at the original source, one cannot rely upon reports at all, and it would be impossible in such circumstances to conduct any military operations whatsoever. The information itself was credible, and if the Head of the Naval Department cast doubt upon it, that was only because of previous reports which had been found incorrect, but not by reason of the improbability of the information.

As soon as the Naval Liaison Officer at Air Force H.Q. had established the source of the report reaching the Air Force, and had immediately confirmed its content from another source, i.e. Southern Command through G.H.Q., the correctness of the information was, in my opinion ascertained sufficiently, and in a reasonable manner.

21. Three counts remain to be dealt with -- the fourth, the fifth and the seventh, of the plaint -- which, so it seems to me, form one whole.

The Chief Military Prosecutor argued that it was negligence to give the order to attack a warship without previously establishing, beyond doubt, its national identity and without taking into account the presence of the American ship "Liberty" in the hours of the morning in the vicinity of the coast of Israel.

In summing-up the seventh count of the plaint, the Chief Military Prosecutor saw negligence in the giving of the order to the aircraft and torpedo boats to attack the ship upon an unfounded presumption that it was an Egyptian warship, and this as a consequence of not having taken reasonable steps to ascertain properly its identity. As parties to the negligence, the Chief Military Prosecutor joined the Head of the Naval Department, the Chief of Naval Operations and the Acting Chief of Naval Operations (who fulfilled his functions during a certain period on that day), the Torpedo Boat Division Commander, and finally, although indirectly, the Naval Liaison Officer at Air Force H.Q.

22. It appears to me that the activity of our forces in the said incident, may be divided into three stages:

(a) the first stage, in which the order was given to Air Force planes to attack the target, and their attack;

(b) an intermediate stage, after the report of the aircraft about the marking of the attacked ship with the symbol "GTR - 5";

(c) the identification of the target as the ship "El-Kasir" and the attack of it with torpedoes.

23. In my opinion, on the evidence I have heard, there are five factors, as a result of which the assumption arose, that the target was an enemy ship and should be attacked:

(a) the report on the shelling of the El-Arish coast for hours on end;

(b) the speed of the target, assessed by the torpedo boats as 28 to 30 knots;

(c) the course of the target towards Port Said;

(d) the report from the aircraft that the target was a warship and carried no naval or other identification marks;

(e) the location of the ship -- close to a battle zone.

There is no doubt that the dominant factors were the speed and the course of the target. Most remarkably, it were two torpedo boats of the Division, which determined the speed, although it was proved to me beyond a shadow of a douht, that no ship of the class of the "Liberty" is capable of developing a speed above 15 knots, this being the theoretical maximum speed limit.

24. The Chief Military Prosecutor in summing up his argument with respect to this stage of the incident, reiterated with emphasis that the root of the negligence of all parties lay in their disregard of the presence of the ship "Liberty" in the vicinity, and not connecting the target discovered by the torpedo boats with this ship.

It seems to me that those concerned were entitled to assume, that they had before them a correct report as to the speed of the target, within the usual limits of reasonable error of 10% to 15%, relying upon the existing means of determining the speed of the target.

The initial speed of the target, determined by the torpedo boats at 30 knots, and received within doubts, was verified within minutes and finally confirmed as a speed of 28 knots, as is customary at sea.

It was therefore the speed of the target, which led to the final and definite conclusion, that this was a military vessel, and thus there was no reason for surmising, in view of this datumn that the target could possibly be the ship "Liberty". If we add to this the other factors mentioned above, their cumulative effect was to negate any presumption whatsoever as to a connection between the American supply ship, reported on that morning in another location, and the target discovered by the torpedo boats.

The Acting Chief of Naval Operations testified, that upon assuming his duties, he was not informed of the reports received at 09.40 hours at Navy H.Q. about the presence of a ship at a distance of 20 miles north of El-Arish, while the report of 10.55 hours related to the presence of the "Liberty" 70 miles west of Tel-Aviv in the early hours of the morning. I shall go further and say, that after hearing all the witnesses, it appears to me that even on the assumption, that the presence of the "Liberty" as such, 20 miles north of El-Arish, was known to the concerned, that would not have altered the conclusion as to the nature of the target discovered by the torpedo boats, that it was an enemy warship, according to all the said data.

Since I am of the opinion that the assumption as to an enemy ship was reasonable, I have come to the conclusion, that the order given to the aircraft to attack was in the said circumstances, justified.

25. At the second stage of the activity of our forces, upon the receipt of the report of the pilot with regard to the marking discovered on the hull of the attacked ship, the order was given to cease the attack, and at a later stage the Division was ordered to draw near to the target and make a visual identification. During this stage the suspicion of the Acting Chief of Naval Operations was indeed aroused, that possibly the target attacked was not an enemy target, but at that moment it was the Head of the Naval Department who was directing the activity, at whose side was the Chief of Naval Operations, who had meanwhile returned to the Command Bridge. In the course of deliberations and attempts at identification at Navy H.Q., the O.C. Navy arrived at the Command Bridge, and he took over the command from the Head of the Naval Department.

The visual identification by the Division Commander on the spot was awaited at Navy H.Q., following, apparently, misgiving and the awareness of a possible camouflage of markings by an Egyptian ship. This identification was not delayed, and the Division Commander reported the certain identification of the vessel as an Egyptian transport ship named "El-Kasir". It is noteworthy that the identification of the target as the "El-Kasir" was made both by the Division Commander and the Commander of another torpedo boat, and on examining photographs of the two ships I am satisfied that a likeness exists between them, and that an error of identification is possible especially having regard to the fact, that identification was made while the ship was clouded in smoke.

[Note: See Navy message on back cover for long-secret answer to Israeli claim in paragrah 26 that the Liberty refused to identify itself.]

The Chief Military Prosecutor attacked this identification as unreasonable in view of the fact that it was clear to all those involved in the incident, that it was inconceivable for this auxiliary ship to shell the El-Arish coast, or for her ever to move at a speed of 30 or 28 knots. He also argued that its presence at the scene of the incident was without logic. The answer to this submission, as explained to me, was that those concerned were entitled, on the assumption that the coast was indeed shelled, to surmise that she formed, perhaps, part of the vessels engaged in the shelling of the shores which succeeded to get away from the area, which she lagged behind them. Or, as one of the witnesses contended, she had come to assist in the evacuation of Egyptian soldiers, straggling in the areas occuped by our forces.

26. There is no doubt to the fact, that the refusal of the "Liberty" to identify herself to the torpedo boats, largely contributed to the error of identification. The Division Commander testified that he signalled the "Liberty" after the aircraft attack and requested its identification, and was answered "identify yourself first". If the conduct of the captain of the "Liberty" can still be explained by the custom existing, as I have heard in maritime tradition, that a vessel belonging to a power does not identify itself first to a smaller vessel, then such conduct cannot be comprehended when the request for identification follows an aircraft attack. Such an event should have, in my opinion, made the captain realise, that he had been attacked because he was regarded as an enemy target.

In addition, I must add that the Division Commander gave evidence from the experience of the Navy in the Sinai War, that when the destroyer "Ibrahim El-Awal" was requested to identify itself by our vessels, she gave the same reply "identify yourself first". Likewise, the Division Commander and one of the torpedo boat commanders testified, that the target was reported to have opened fire upon one of the torpedo boats. Under those circumstances it seems, that the identification, in the third stage of the activity of our forces, as the "El-Kasir", was well within reason.

To sum up these last counts, my conclusion is that in all the circumstances of the case, the conduct of anyone of the naval officers concerned in this incident cannot be considered unreasonable, to an extent which justified commital for trial.

For all my regret that our forces were involved in an incident with a vessel of a friendly state, and its sad outcome, I ought to put the behavior of each of the officers, who had any connection with the incident, to the test of the conduct of reasonable officers during wartime operations, when the naval arm of the Israel Defense Forces was confronted with maritime forces superior in numbers, and when all involved were conscious of the task before them -- to protect the safety of Israel, to identify every enemy threatening from the sea, to attack it speedily and to destroy it. The criterion for reasonable conduct under these conditions may possibly differ from that in times of relative quiet. Indeed, whoever peruses the ample evidence presented to me, may conceivably draw some lesson regarding the relations between the two arms of the Israel Defense Forces, which were involved in the incident, and the operational procedures in times of war, particularly between the different branches of the Navy -- but all this is certainly not within the scope of my inquiry. Yet I have not discovered any deviation from the standard of reasonable conduct which would justify the commital of anyone for trial. In view of what has been said above, I hold, that there is no sufficient amount of prima facei evidence, justifying committing anyone for trial.

Given the 13th day of Tamuz, 5727 (21.7.67) and read in the presence of the Chief Military Prosecutor -- Rav-Saren Kedmi, the Chief Military Defence Counsel -- Sgan-Aluf Tein, and the Acting Chief of Naval Operations.

Y. YERUSHALMI, Sgan-Aluf
Examining Judge

[Note: This message documents the Liberty signalman's report that the Liberty did not refuse to identify itself as claimed by the Israeli government, and refutes the claims in paragraphs 8 & 26 of the official Israeli "Preliminary Inquiry File 1/67].

NAVAL MESSAGE

DECLASSIFIED

DECLASSIFIED

IMMEDIATE
D 0612222 JULY 67
FM NAVCOMMUNIT NAPLES

TO CNO

INFO CINCUSNAVEUR
USS LIBERTY

~~S E C R E T U.S. EYES ONLY~~

FOR CAPT KING, OP002; INFO ADM MCCAIN, CDR MCGONAGLE FROM RADM KIDD
LIBERTY

1. REQ ADD FOLLOWING AMPLIFICATION AS APPROPRIATE ADDENDUM TO LIBERTY INQUIRY PURSUANT YOUR REQ FOR AMPLIFYING FACTS.

2. FOLLOWING ATTESTED TO BY CO LIBERTY CDR MCGONAGLE; CTC THOMPSON; AND SIGNALMAN DAVID THROUGH CDR MCGONAGLE.

3. VISUAL SIGNALLING NOTED BY C.O. AND SIGNALMAN DAVIS (SUBSEQUENTLY WOUNDED AND HOSPITALIZED) DURING PT RUN-IN WAS NOT REPEAT NOT DISTINGUISABLE THROUGH SMOKE/FLAME.

4. ALLEGED AA FROM PT'S WAS NOT REPEAT NOT READ BY LIBERTY PRIOR TORPEDO HIT.

5. CTC THOMPSON RECALLS REACHING POSITION ON LIBERTY BRIDGE SOMETIME AFTER TORPEDO HIT. THOMPSON NOW ESTIMATES TIME ARRIVAL ON BRIDGE SOME NINE TO TEN MINUTES AFTER TORPEDO HIT.

6. C.O. DID NOT REPEAT NOT ORDER AA SENT TO PT'S SINCE HE KNEW WHO THEY WERE, HAVING SIGHTED STAR OF DAVID INSIGNIA.

7. THOMPSON SAYS FIRST IDENTIFIABLE VISUAL TRANSMISSION FROM PT'S READ BY ANYONE ON LIBERTY WAS "DO YOU NEED HELP" FOLLOWED BY "DO YOU WANT US TO STAND BY" WHEN BOATS HAD PULLED CLEAR OF SMOKE OBSTRUCTED BEARING AFTER REPEAT AFTER TORPEDO HIT.

8. THOMPSON STATES AFTER ALDIS LAMP UNLIMBERED, WHICH WAS AFTER HE GOT TO BRIDGE WHICH WAS AFTER TORPEDO ATTACKS, THE ONLY THING SENT BY LIGHT TO PT'S WAS "NO THANK YOU" IN REPLY TO OFFER OF HELP.

9. SUMMARY:
(A) FIRST DISTINGUISHABLE PT VISUAL TRANSMISSION WAS OFFER OF HELP AFTER TORPEDO HIT; ALTHOUGH FLASHING LIGHT FROM CENTER PT WAS OBSERVED INTERMITTENTLY PRIOR THERETO.
(B) NO AA ORDERED OR ACTUALLY SENT FROM LIBERTY TO BEST OF ANYONE'S RECOLLECTION AT THIS TIME.
(C) WITH STBD SIGNAL LITE CAPABILITY WIPED OUT IN AIR ATTACK, ALDIS LAMP NOT BROUGHT INTO USE UNTIL AFTER TORPEDO HIT.

10. PRECISE TIME SEQUENCING CONTINUES MOST DIFFICULT AS APPARENT FROM ABOVE; HOWEVER, C.O. AND THOMPSON ARE UNSHAKEABLE IN CONVICTION IMPOSSIBLE READ PT'S LIGHT PRIOR ATTACK AND ON FACT THAT LIBERTY ALDIS LAMP NOT UNLIMBERED UNTIL AFTER TORPEDO HIT. I AM CONVINCED THESE MEN KNOW WHAT THEY ARE

JAMES M. ENNES, JR.
[illegible] 194th Avenue NE
Woodinville, Washington 98072

SEATTLE, WA 981
PM
SEP 19
1984

USA 20c

GH
GHB
GHH
GHD

Tell Ennes answer to Goodman / Schiff — interesting!!

GEORGE G. HENRIKSEN
DIR FOR SECURITY
NSG COMMAND HQ
3801 NEBRASKA AVE NW
WASHDC

20390