

(RON)
Colonel Ramon
16.6.1967.

The Chief of Staff.

On June 12, I was appointed by you a one-man Inquiry Commission to investigate the circumstances, under which the American ship "Liberty" was hit by the Israeli Defence Forces. Immediately following my appointment, I commenced collecting the testimonies of officers of the Israeli^{Air} and Naval forces who, in accordance with the information I had gathered, had connection with the said incident - one way or the other; and these are the witnesses:-

1. Lieut. Colonel Barkat Yeshayahu - Chief of Intelligence Air Force;
2. Lieut. Colonel R. - Chief of Operations Section Air Force;
3. Lieut. Colonel Shmuel - Chief of Control Section Air Force;
4. Commodore Erel Shlomo - Commander Israeli Naval Forces;
5. Captain Rahav Itzhak - Chief of Operations Dept. Naval Forces.
6. Commander A. - A/Chief of Operations Section Naval Forces.
7. Commander B. - Naval Forces.
8. Commander Al - Division Commander (Torpedo Boats)
9. Lieut. Commander P. - Chief Instructor - Training Camp Naval Forces.
10. Commander Shur Alexander - Staff Judge Advocate - Naval Forces.
11. Commander S. - Commander, Naval School
12. Lieut. Senior Grade Avraham - Torpedo boat Commander.

This report is based on the testimonies of the above-named officers and the additional exhibits and documents received in evidence.

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Having heard the testimonies aforesaid and after having studied the same and the additional exhibits and documents on which the said officers based their statements, the following facts were proved to my satisfaction:

THE FACTS

On the morning of June 8, 1967, at 0550 a.m. the Operation Section/Naval Forces had a report coming from a NORD aeroplane that a ship bearing the identification marks "R.T.R.-5" was heading in the direction of Gaza. After identifying the ship on Jones' (The Fleet's manual - Exhibit I) and based on detailed investigation by the pilot - the identification of the ship was determined to be the U.S. Navy ship "Liberty" (formerly - supply ship) of an 18 knot speed. (Testimonies of Comm. A. and Lieut. Comm. P.). According to the testimony of the Chief of Operations, Dept./ Naval Forces - this information was not brought to his attention when he, at a later stage, "entered the picture". At 11.24 a.m. a message was received from the Command Post (Exhibits "D" and "K") and by the Air Force (testimonies of Lieut. Col. Shmuel, Comm. S. and Exh. "K") that El-Arish was under bombardment from the sea. This message was transmitted on the basis of a message received from the Southern Command and had been repeated several times - based on repeated similar messages from the Southern Command. Said messages also contained reports on two ships or one ship shelling El-Arish (Ex. "D" and "K" and testimonies of Comm. A, Comm. S, Capt. Rahav and Lieut. Comm. P.).

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These messages when reported to Capt. Rahav by Comm. A. were received by him with reservation and he insisted that they be re-examined. Capt. Rahav also discussed the matter personally with Lieut. Comm. P. who served as a senior representative of the Naval Force to the Air Force and passed on the message to Comm. A. Together with his demand that the information regarding the shelling be verified, Capt. Rahav instructed Comm. A. at 12.05 p.m. to order three torpedo boats then stationed at Ashdod and ready to sail, to head in the direction of El-Arish in order to investigate the information received (Exh. "D" and testimony of Capt. Rahav). Lieut. Comm. P. re-investigated the information regarding the shelling with the Naval Forces Command Post and was informed again that the Southern Command reports that El-Arish is under bombardment from the sea and that two ships can be seen at a distance. This message was passed on by him through Comm. A.. At 13.17 p.m. Comm. S. (representative of the Naval Force at the Command Post) advised Comm. A. that El-Arish had been under bombardment for the last four hours. Following this message, Comm. A. ordered Comm. Alt. - Division Commander/Torpedo Boats - to examine the area at approximately 20 miles north of El-Arish.

At 13.41 p.m. the Torpedo boat's radar picked up a target at a distance of approximately 20 miles north/west of El-Arish and approximately 14 miles north of Darbyville (Exh. "D" and testimony of Comm. Alt). Immediate message to that effect was passed on to Comm. A. and by him to Capt. Rahav, together with a message that

aeroplanes were ready for take-off. At this point Capt. Rahav entered the Central Control of the Naval Forces and saw a picture on which the three torpedo boats were marked as well as a red target which is the sign for an unidentified target. At 13.47 it was reported from the Torpedo Boats that the speed of the unidentified targets was 30 knots and their course 260 (Exh. "D") and testimonies of Capt. Rahav, Comm. A. and Lieut. Senior Grade Avraham). This report was of decisive importance, since a speed exceeding 20 knots is a speed identifying a ship as a warship. The Torpedo boats had simultaneously reported that due to the speed of the target they were unable to catch up with it and therefore requested the despatch of aeroplanes (Exh. "D"). Due to the importance attached to the determination of the speed, orders were given that the speed be re-examined and at 13.50 p.m. the Torpedo boats reported that the target speed was 28 knots, which speed is identical with the Torpedo boats speed, and repeated their request for the despatch of aeroplanes. In accordance with the Air Force testimonies (Lieut. Col. Shmuel, Lieut. Col. R. and Lieut. Col. Barkat) the first order given to the aeroplanes was only to locate the ship and try to identify it or await its identification by the Naval Force. In accordance with the report of Lieut. Comm. P. the Air Force was permitted to attack the ship should it be identified as a warship (see testimonies of Lieut. Col. R. and Lieut. Comm. P.).

Lieut. Col. Shmuel testifies that the Air Force was ordered to attack the ship after it had been identified as a warship by the Naval Force. From the evidence

submitted by the Naval Force, this point lacks clarity and it seems that the order given was to attack the ship after its identification as a warship and it is not clear whether the intention was that the absolute identification as a warship was to be made by an additional identification by the pilots, or that the identification as warship by the Naval Force based on the ship's speed was to suffice. At any rate, it appears from the recorded tape of the conversation of the pilots who attacked the ship (Exh. "D"), who were in radio contact with the Torpedo boats, that the ship was identified by the aeroplanes as a military ship with a single mast (gun?) and a single funnel. In the report of the pilots after the operation (Ex. "H") it is expressly stated that, "The size of the target appeared to them to be a destroyer or something smaller and that they received confirmation to attack the ships from the Torpedo boats and the Air Control". It appears from Exhibit "L" that the confirmation by the Torpedo boats to the attack by the aeroplanes was given after the pilots had been asked once more to identify the target and had been told that the target was escaping, probably in the direction of Port Said, and that it was a military ship, without the pilots having been able to spot any identification marks or flag. At any rate, it is not certain whether this conversation took place before or during the actual attack.

With reference to the actual attack of the ship by the aeroplanes, it appears from the testimony of Lieut. Col. Samuel, who served as Senior Controller in the Air Force, that at the request of the Naval Forces, he ordered a couple of Mirages then in the air patrolling the Sinai peninsula, to locate the ship and if necessary, attack it.

Having received the confirmation, the Mirages attacked the target with bombs and strafing runs. Having run out of ammunition, the Air Controller directed to the target 4 SNBD aeroplanes, which attacked it with Napalm. During the attack or immediately thereafter, the pilots reported having seen on the ship's side the marks "P-30" and thereafter C.P.R.-5" (Exh. "D" and testimony of Lieut. Com. Shmuel). This report, which had been received by the Naval and Air Forces, aroused suspicion as to the identification of the ship, but Capt. Rahav says that he supposed the marks on the ship as reported by the pilots were camouflage marks in order to enable the ship to enter the area. At any rate, whether it was the suspicion with regard to the identification of the ship as claimed by the Air Force personnel, or, the wish of the Naval Force to start its attack immediately after the strafing runs, as appears from Exhibits "B" and "D" and the testimonies of Comm. A. and Capt. Rahav - at 14.06 p.m. the orders were issued to the pilots to leave the scene and to the Torpedo boats to run after the target and be ready to attack.

After being hit by the Air Force, the ship continued sailing, covered with black smoke, in a westerly direction.

At 14.17 p.m. Operation Section/Naval Forces advised the Torpedo Boats not to attack the target, due to the message received from the Air Force that the C.P.R.-5" marking had been discovered on the ship's sides and that there might have been a wrong identification (Exh. "D"). Comm. A.R. claims in his testimony that said message was not delivered to him - for unknown /7..

reasons, at the Command Bridge. At this stage the Torpedo Boats proceeded in the direction of the ship and reported that a naked eye identification of marks was impossible due to the distances and heavy smoke which enveloped the ship as a result of the aerial attack.

At 1426, the Torpedo boats identified the ship to be a warship (painted in a grey colour) of the supply ship type or similar thereto and not a destroyer (see testimonies of Comm. A.R. and Lieut. Sen. Gr. Avraham). As a result thereof, Comm. A.R. ordered his division to cancel the attack (see same testimonies) whereupon immediate attempts were made to identify the ship through flash signalling to it of the words "What ship?" In reply the Liberty signalled "A.A." meaning a demand that the Torpedo boats identify themselves first. Due to the heavy smoke surrounding the ship, there is no absolute certainty that the Liberty received the flash signalling of the Torpedo boats.

At 14.35 the Torpedo boat reported seeing gun flashes from the ship's direction (Exh. "B"). Comm. A.R. testifies that the ship was entirely enveloped in black smoke and that only the nose of it could be seen clearly and at the edge of the nose something which seemed to him to be a gun position. At that time Comm. A. and Lieut. Comm. P. already feared that the ship might be none other than the "Liberty" which had been spotted earlier in the morning. At the same time, however, the Torpedo boats made an attempt to determine the identification of the ship in accordance with the silhouette thereof, referring to the Identification of the Enemy Ships handbook (Ex. "I"). While Comm. A.R. identified the ship as the Egyptian supply

ship "El Kasir", he received an identical message from Lt. Sen. Gr. Avraham to the effect that he also independently identified the ship as the "El Kasir". Being convinced that the identification was correct, he reported of same to Operation Section/Naval Forces and at the same time reported that he was going to start a torpedo attack. Capt. Rahav who had received the report, examined himself the identification in the "Identification of Enemy Ships" handbook and the identification seemed to him reasonable.

At 14.40 the Torpedo boats launched a gun and torpedo attack at 1000/2000 range. The Torpedo boats fired four torpedoes, one of which appeared to have hit the target. When the Torpedo boats were ready for further firing, one of the men noticed a small flag at the top of the ship's mast, which did not seem to be an Egyptian flag. Comm. AR immediately ordered firing to be stopped and reported to the Operation Section/Naval Forces, that the ship may not be an Egyptian ship (Ex. "B" and "D"). Thereafter Operation Section/Naval Forces ordered the Torpedo Boat to patrol the surrounding area and try to find survivors. At the same time warning was given to Ashdod Port to prepare two tugs and thereafter two helicopters were sent to the area of the ship. The helicopters as well as the Torpedo boats identified the ship as the "Liberty". No survivors could be found in the water in the area surrounding the ship.

As of its discovery at 13.45 and during the entire chase and firing, the Liberty in its efforts to get away in a westerly direction, made no attempt to give special signs of being an American ship.

At 16.40 Comm. AR. approached with a Torpedo boat near to the Liberty, and asked in a loud speaker if it required any help. The answer was negative.

A few hours after the incident, Commander Castle, U.S. Naval Attache, requested to go on board the Liberty. An Air Force helicopter flew him and Major Zvi Dagan of the Commercial Attache Section to the ship and when they reached the vicinity of the ship they signalled their intention to land on deck. The Liberty in turn signalled them to leave the area. Commander Castle dropped a letter written in his handwriting and signed by him on to the Liberty's deck, and immediately thereafter the helicopter left the area.

CONCLUSIONS

The only clear conclusion arising from the facts determined as aforesaid (after having compared the various testimonies and unit journals of the relevant units) is that the attack on the ship by the Israeli Defence Forces was made neither maliciously nor in gross negligence, but as the result of a bona fide mistake. To be more specific, it can be said that the attack took place as the result of a chain of three mistakes, each of which, as such, seems to me, under the circumstances, to be a bona fide and reasonable mistake, namely:-

1) The first and most decisive mistake was in the erroneous message received from the Southern Command that El-Arish was being bombarded from the sea. This repeated message (the reason for which was not clarified) was passed on by the Command Post to the Naval and Air Forces and was no doubt both the background and the main factor in the chain of events which ended in the attack on the "Liberty". As of the moment that Capt. Rahav and Comm. A. were convinced that El-Arish was being bombarded from the sea (and they verified that fact time and again with Lieut. Comm. P., who served as representative of the Naval Forces to the Air Force and with Comm. S. who served as representative of the Naval Force at the Command Post) there was no way out from the assumption that said bombardment was connected with the unidentified ship or ships discovered at that time near the El-Arish coast. This assumption, reasonable in itself under the circumstances, caused even those officers who had knowledge of the presence of the "Liberty" in the early hours of the morning, to disregard any possibility of connection between the "Liberty" and the unidentified ship(s) purported to be shelling El-Arish.

The Naval Forces can bear no responsibility for the basic error in the message on the bombardment and this fact is of major importance, since the responsibility for attacking targets at sea, whether carried out by the Naval Forces or by the Air Force at the request of the Naval Forces - lies solely with the Naval Forces.

- 2) The second mistake, which followed in the wake of the first, determined the fate of the ship and led to the order given to the Air Force to despatch the aeroplanes, and possibly also to the order to attack the ship - was the error in determining the speed of the target at 30 knots.

This error had a double implication:-

- a) The speed of the "Liberty" was determined in the morning of the same day, based on its identification in the Fleet Manual (Ex. I), at 18 knots. Therefore had there been any doubt in anybody's mind that the unidentified ship may be the "Liberty" - such doubt would have been entirely rebutted by the determination of the speed of the target at 28-30 knots.
- b) Exhibit "F", which is the telegram of the Naval Force containing urgent instructions prior to the outbreak of war, provides in clause 13 that the force should at all cost avoid attacks on any neutral merchant ships or warships. The question therefore arises - how was the ship identified as an enemy warship that can be attacked? Sub-clause 7(b) of the Standing Orders/Naval Forces (Exh. "A") provides:
- "An enemy vessel should be attacked in any waters provided such vessel attacks an Israeli vessel or shells a coast of Israel".
- Clause 10 of Order No. 50.003 of Flotilla 1 (Exh. "E") provides:

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"When there is knowledge of an enemy in the area and the radar picks up a ship or ships travelling at a speed exceeding 20 knots, such ship(s) shall be deemed an enemy and no further identification shall be carried out".

This order has no double meaning and the determination of the ship's speed is a final and absolute factor thereunder if there is knowledge of an enemy in the area. Accordingly - once the speed of the target was determined to be 28/30 knots - the Naval Forces were entitled, in view of the repeated messages on shelling from the sea, to attack the target without any further identification.

The only question remaining at this point is: Was there no gross negligence in determining the ship's speed at 28/30 knots when in fact it could not travel at a speed exceeding 18 knots?

In as much as this question applies to the Chief of Operations Department/Naval Forces and to the Operations Section/Naval Forces, there could not have been any negligence in accepting the speed determination (after the same had been determined by the Torpedo boats Division) since they did not hurry to accept it, but were fairly cautious and demanded from the ~~Torpedo~~ boat division that the speed be re-examined and determined again.

Only after the speed had been re-examined did they accept the determination of the speed as reliable and the notice to the aeroplanes was given.

In the circumstances therefore, when there was a fear that the ship was escaping to Port Said and the Torpedo Boats were, as reported, unable to reach it, it seems to me that there was no room for additional delays and investigations and that the re-examination made at the demand of Chief of Operations Department, shows caution and discretion.

c) With reference to the question if the Torpedo Boats Division itself was negligent in determining the speed of the target - the answer to this question requires technical expert evidence. The only expert evidence before me on that point is of Comm. Erel Shlomo, Commander of the Israeli Naval Forces, who testifies that in a Torpedo Boat there can be great inaccuracies in determination of the speed of a vessel travelling in front of the Torpedo Boat, especially so if the measurements are made at short intervals, and that there definitely can be an error in verifying the distance even if the speed of the vessel in front of the Torpedo Boat is being measured twice or more. It therefore appears that even if there is room to investigate ^{whether} ~~the~~ ^{system of} identification of the ship as an enemy ship through a determination of its speed is a proper and efficient system, in as much as it applies to the question before us, and so long as the provision in Exhibit "E" is in force, no responsibility for any negligence should be attributed to the Torpedo Boat division in respect of the determination of the said speed in the aforesaid circumstances.

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3) The third mistake which led to the second stage of the attack on the "Liberty" - this time with torpedoes of the Torpedo Boats Division - was a mistake in its identification as the Egyptian supply ship "El Kasir". Here I am unable to avoid doubt whether the identification in accordance with the "Identification of Enemy Ships" booklet was not made with some undue haste, since it

was made after grave doubts had already arisen in respect of the identification of the ship as an Egyptian ship. Comm. AR. testifies that the message conveyed that the aeroplanes might have been mistaken in their identification did not reach the Command Bridge where he was stationed at that time - yet the fact revealed by himself that the ship was not a destroyer but a supply or a merchant ship, was sufficient in itself to merit additional caution in its identification. This "discovery" should have put under question mark all the previous assumptions and evaluations, including the previous identification of the ship, as per its speed, as well as the assumption that this ship was the one which purportedly shelled El Arish.

Against these doubts, I feel obliged to mention the mitigating circumstances and the difficulties in identifying under the following conditions:-

The entire ship was enveloped in thick smoke, and when asked to identify itself, it failed to do so and behaved suspiciously. Furthermore, Comm. AR. believed that he clearly saw a gun position on the ship's nose and that the ship was firing in his direction (these facts were recorded on the Torpedo Boat's Diary Exh. "3").

Adding to the aforesaid the decisive factor that under the special circumstances when the ship was totally covered in smoke it seemed to have strangely resembled the Egyptian supply ship "El Kasir" (Exhibits "I" and "J") and that two persons (Comm. Al and Lieut. Sen. Gr. Avraham) have independently and at two different places simultaneously identified it as the "El Kasir" and that a third person (Capt. Rahav) who has himself examined the identification after receiving a report of same and considering it to be a reasonable identification - forces me to reach at least the negative conclusion that gross or serious negligence certainly did not exist in this case.

Finally - I wish to add that another grave error - no less decisive than the three mistakes referred to above - was made by the ship "Liberty" itself. In this respect I have before me the testimony of Comm. Erel and the opinion and testimony of Comm. Shur Alexander, Staff Judge Advocate of the Naval Forces, which supplement each other and from which it clearly appears that the American ship acted carelessly and placed herself in far reaching peril by approaching so near to the coast of an area known to her to be a war area - without giving notice of her presence to the Israeli authorities and without taking care to identify herself with conspicuous markings, while at the same time the said area was not a navigation area crossed by maritime routes and in which ships ^{do not} usually sail.

On the contrary, it seems that the ship made every effort to conceal her identity, both by flying a small flag which was unidentifiable from a distance.

from a distance and by retreating when she realised that she was spotted by our forces as well as by failing forthwith and of her own accord to identify herself through flash signalling and by continuing in such default after having been asked by the Torpedo Boats Division to identify herself.

- - In view of the foregoing, I have no doubt that the Liberty did try to conceal her identity and presence in the area both before she was spotted by the Torpedo boats and even after she was attacked by the Air Force and the Naval Force and thus greatly and decisively contributed to her identification as an enemy ship and determined her own fate.

RECOMMENDATIONS:

A. Declaration of Dangerous Zones:

1. Upon the outbreak of war, areas near to a coast in which hostilities take place should be declared "Dangerous Zones" in which sailing of neutral vessels should be prohibited. In such zones passage ways for neutral vessels should be pre-determined.
2. Every neutral ship approaching passageways as aforesaid should be under obligation to give notice of its presence within a distance limit of at least 50 miles of the dangerous area.
3. Every ship approaching the passageways aforesaid

should be under obligation to bear conspicuous markings on both sides and on her deck.

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B. Instructions to the Israeli Defence Forces. It is hereby recommended that:-

- 1) Additional time be allocated to train the pilot how to identify enemy ships.
- 2) Standing procedures be promulgated whereby when any Israeli force discovers neutral ships near the coasts in which hostilities are taking place - notice of same be forthwith given to all the relevant factors within the Israel Defence Forces.
- 3) More reliable ways and systems for determining the speed of an unidentified vessel be worked out in association with the Naval Forces.
- 4) Reliable systems be worked out for examining messages of bombardments of the Israeli coast line or of any other coast in which Israeli Forces are stationed.

RAH RON - Colonel.