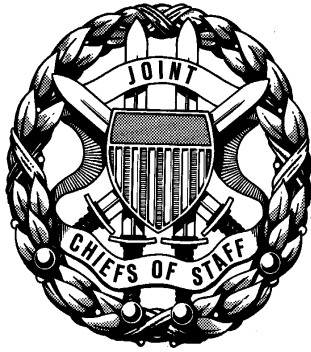


Exhibit 1



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

J-3

DISTRIBUTION: A, B, C, J, S

CJCSI 5810.01B

25 March 2002

Directive current as of **29 March 2004**

IMPLEMENTATION OF THE DOD LAW OF WAR PROGRAM

References:

- a. DOD Directive 5100.77, 9 December 1998, "DoD Law of War Program"
- b. DOD Directive 5100.1, 25 September 1987, "Functions of the Department of Defense and its Major Components"
- c. CJCS Manual 3150.03, 19 June 1998, "Joint Reporting Structure Event and Incident Reports"

1. Purpose. Pursuant to the authorities delegated in references a and b, this instruction establishes joint policy, assigns responsibilities, and provides guidance regarding the law of war obligations of the United States. Reference a provides policy guidance and assigns responsibility within the Department of Defense for a program to ensure compliance with the law of war. Reference b assigns the Chairman of the Joint Chiefs of Staff the responsibility to develop and establish military doctrine and guidance for all aspects of joint employment and activities of the Armed Forces. This instruction implements the requirements of reference a to provide common policy for coordinated actions by the Military Services and combatant commands.

2. Cancellation. CJCSI 5810.01A, 27 August 1999, is canceled.

3. Applicability. This instruction applies to all personnel of the Armed Forces, including civilians, regardless of assignment or attachment.

4. Policy

a. The Armed Forces of the United States will comply with the law of war during all armed conflicts, however such conflicts are characterized, and, unless otherwise directed by competent authorities, the US Armed Forces will comply with the principles and spirit of the law of war during

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all other operations. Specifically, reference a provides that it is the policy of the Department of Defense to ensure that:

(1) The law of war obligations of the US Government are observed and enforced by the US Armed Forces.

(2) An effective program designed to prevent violations of the law of war is implemented by the US Armed Forces.

(3) All reportable incidents committed by or against members of (or persons serving with or accompanying) the US Armed Forces are promptly reported, thoroughly investigated and, where appropriate, remedied by corrective action.

(4) All known reportable incidents committed by or against allied military or civilian personnel, or by or against other persons during a conflict to which the United States is not a party, are reported through appropriate command channels for ultimate transmission to appropriate US agencies, allied governments, or other appropriate authorities. See subparagraph 3f(4) of Enclosure A. A preliminary inquiry will be conducted to confirm that no US personnel are involved in the reportable incident.

b. At all appropriate levels of command and during all stages of operational planning and execution of joint and combined operations, legal advisers will provide advice concerning law of war compliance. Advice on law of war compliance will address not only legal constraints on operations but also legal rights to employ force.

5. Definitions

a. Law of War. International law that regulates the conduct of armed hostilities; often called the law of armed conflict. The law of war encompasses all international law for the conduct of hostilities, which is binding on the United States or its individual citizens. It includes treaties and international agreements to which the United States is a party, as well as applicable customary international law.

b. Reportable Incident. A possible, suspected, or alleged violation of the law of war.

6. Responsibilities. See Enclosure A.

7. Reporting Requirements

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a. Reports of Incidents. Commanders of combatant commands will issue directives to ensure that all military and civilian personnel assigned to or accompanying US Armed Forces will convey all reportable incidents through their chain of command. The directives will indicate that such reports may also be made through other channels, such as the military police, a judge advocate, or an Inspector General. The directives will require that reports made to officials other than those specified in this paragraph will be accepted and immediately forwarded through the recipient's chain of command.

b. Initial Report. Law of war implementing directives issued by combatant commanders will require the commander of any unit that obtains information about a reportable incident to immediately report the incident through command channels to a higher authority. The report will be made through the most expeditious means available.

c. Investigation. Commanders of combatant commands will establish procedures for receiving initial reports of reportable incidents, and will ensure that their subordinate commanders:

(1) Submit a report, by the most expeditious means available, through command channels to the responsible combatant commander. Normally, an OPREP-3 report will be required in accordance with reference c.

(2) Initiate an investigation by an appropriate military investigative authority in accordance with subparagraphs 3f(2) and 3f(4) of Enclosure A.

d. The responsible combatant commander will submit a message report, as expeditiously as possible, for all reportable incidents to the Joint Staff (JOINT STAFF WASHINGTON DC//DJS/J-1/J-2/J-3/J-5/LC/PA//), The Office of the Secretary of Defense (SECDEF WASHINGTON DC//USDP/ISA/GC/IG/PA//), and the Secretary of the Army (DA WASHINGTON DC//SAGC/SAIG/DAMO-ZA/DAJA//), in the Secretary's capacity as Executive Agent under paragraph 5.6 of reference a.

8. Summary of Changes. This instruction revises CJCSI 5810.01A and provides updated guidance in accordance with reference a.

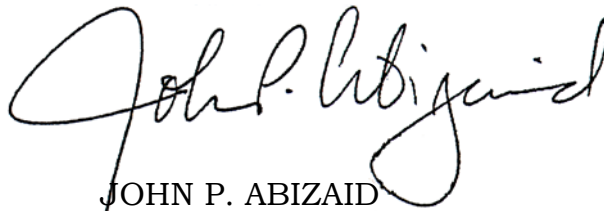
9. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home

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Page -- <http://www.dtic.mil/doctrine>. Copies are also available through the Government Printing Office or the Joint Electronic Library CD-ROM.

10. Effective Date. This instruction is effective immediately. Forward copies of implementing directives or supplements and revisions to the Joint Staff J-5 United Nations and Multilateral Affairs Division, Room 2E1001, Pentagon, Washington, D.C. 20318-5154, within 120 days of receipt of this instruction. The Chief, J-5 United Nations and Multilateral Affairs Division, will forward copies of such documents to the Office of the Secretary of Defense in accordance with reference a.

For the Chairman of the Joint Chiefs of Staff:

A handwritten signature in black ink, reading "John P. Abizaid". The signature is written in a cursive, flowing style.

JOHN P. ABIZAID
Lieutenant General, USA
Director, Joint Staff

Enclosure:

A--Responsibilities

DISTRIBUTION

Distribution A, B, C, J, plus the following:

| | <u>Copies</u> |
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| Naval Post Graduate School..... | 1 |
| Naval War College..... | 1 |

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ENCLOSURE A

RESPONSIBILITIES

1. The Director, Joint Staff (DJS), will:

a. Ensure the Joint Staff acts on policy, politico-military, and other issues involved in the execution of the DOD Law of War Program and provides necessary liaison with the Office of the Secretary of Defense, Department of State, Services, and combatant commands.

b. Ensure Joint Staff directorates provide policy and operational guidance within their respective functional areas as noted below:

(1) The Director for Manpower and Personnel (J-1) will ensure that a copy of all investigations of reportable incidents submitted by the combatant commanders, in accordance with subparagraphs 3f(2) through 3f(4), is forwarded to appropriate Joint Staff principals (DJS/J-2/J-3/J-5/LC/PA).

(2) The Director for Intelligence (J-2) will establish priority intelligence requirements (PIR) for all law of war violations alleged to have been committed against captured or detained US persons, committed by or against US allies, or committed by or against other persons during a conflict to which the United States is not a party. The PIR will be listed as part of Appendix 1 to Annex B (Intelligence) to all operation plans.

(3) The Director for Operations (J-3) will, in coordination with the Legal Counsel to the Chairman:

(a) Ensure the Joint Operations Planning and Execution System includes appropriate guidance to ensure review of plans and rules of engagement for compliance with the law of war.

(b) Review all requests from the combatant commanders for deployment orders and rules of engagement to ensure conformity with this instruction and the DOD Law of War Program, as well as domestic and international law.

(4) The Director for Strategic Plans and Policy (J-5) will:

(a) Serve as the Joint Staff principal point of contact for the DOD Law of War Program and, in coordination with the Legal Counsel to the Chairman, provide necessary liaison for developing policy within the context of the DOD Law of War Program.

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(b) Ensure the Joint Strategic Capabilities Plan includes appropriate guidance to ensure compliance with the law of war.

(5) The Director for Operational Plans and Joint Force Development (J-7) will, in coordination with the Legal Counsel to the Chairman:

(a) Review operation plans and strategic concepts issued by commanders of combatant commands to ensure conformance with domestic and international law, this instruction, and the DOD Law of War Program.

(b) Ensure that operational exercises include law of war scenarios to improve evaluation, response, and reporting procedures.

(6) The Legal Counsel (LC) to the Chairman will:

(a) Provide overall legal guidance to the Chairman of the Joint Chiefs of Staff on the DOD Law of War Program.

(b) Review all plans, policies, directives, deployment orders, execute orders, and rules of engagement issued by the Joint Staff and/or submitted by combatant commanders to ensure their conformance with domestic and international law, this instruction, and the law of war.

(c) Provide a representative to the DOD Law of War working group established by the DOD General Counsel pursuant to reference a.

2. The combat support agencies will establish and periodically review agency-unique policies, directives, and training programs consistent with this instruction and the DOD Law of War Program to ensure the requirements of the law of war are disseminated throughout their respective organizations.

3. The commanders of combatant commands are responsible for the overall execution of the DOD Law of War Program within their respective commands. Specific responsibilities include ensuring:

a. An effective program is instituted within the command to prevent law of war violations.

b. All plans, policies, directives, and training programs are periodically reviewed for compliance with the law of war, particularly in light of any violations reported.

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c. Specific law of war scenarios are included in exercises to improve evaluation, response, and reporting procedures.

d. Command legal advisers attend planning and operations-related conferences for military operations and exercises, as appropriate, to enable them to provide advice concerning law of war compliance during joint and combined operations.

e. All operation plans (including preplanned and adaptively planned strategic targets), concept plans, rules of engagement, execute orders, deployment orders, policies, and directives are reviewed by the command legal adviser to ensure compliance with domestic and international law, this instruction, and the DOD Law of War Program.

f. All appropriate policies, directives, and operation and concept plans incorporate the reporting and investigation requirements established by reference a and this instruction, and by the Secretary of the Army, who is designated by reference a as the DOD Executive Agent for the administration of the DOD Law of War Program with respect to investigating and reporting reportable incidents. Specifically, commanders of combatant commands will:

(1) Designate the command legal adviser to supervise the administration of the command's program for dealing with reportable incidents.

(2) Ensure, via appropriate command directives, that all reportable incidents committed by or against members of (or persons serving with or accompanying) US Armed Forces are reported promptly to appropriate authorities, are thoroughly investigated, and the results of such investigations are promptly forwarded to the applicable Military Department or other appropriate authorities. Applicable directives will include specific guidance on the collection and preservation of evidence of reportable incidents committed by enemy forces against US personnel since such evidence may serve as the basis for a possible future trial of accused war criminals. See subparagraph 3f(4) below for guidance when collecting and preserving evidence of reportable incidents in which it is determined that US personnel are not involved.

(3) Provide the Joint Staff J-1 with copies of all incident reports and reports of investigation of reportable incidents committed by or against members of (or persons accompanying or serving with) US Armed Forces or against their property. J-1 will ensure such reports are provided to appropriate Joint Staff principals (DJS/J-2/J-3/J-5/LC/PA).

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(4) Determine, with respect to known reportable incidents committed by or against allied military or civilian personnel or by or against other persons during a conflict of which the United States is not a party, the extent and manner in which such incidents will be investigated by US forces. Specifically, combatant commanders will develop appropriate plans, policies, and directives for:

(a) Conducting appropriate preliminary inquiry to determine US personnel involvement. Upon determination that US personnel are not involved in a reportable incident, further US investigation will be conducted only at the direction of the appropriate combatant commander.

(b) Cooperating with appropriate allied authorities.

(c) Reporting through appropriate command channels to appropriate US agencies, allied governments, or other appropriate authorities.

(d) Preserving evidence of reportable incidents pending turnover to other US agencies, allied governments, or other appropriate authorities.

g. Mobilization planning includes sufficient numbers of legal advisers and investigative personnel to support each commander's mission.

h. The law of war training and dissemination programs within their commands, as well as the law of war training and dissemination programs of their subordinate commands and components, are consistent with reference a, this instruction, and the law of war obligations of the United States.

Exhibit 10

USS LIBERTY (AGTR-5)

On June 8, 1967, in the Eastern Mediterranean, in International Waters, the Israeli Defense Forces (IDF) attacked the USS Liberty, a plainly marked US Naval Ship, with intent and malice of forethought. The IDF attack consisted of air and naval forces.

0800 – 1200 Hours: I was assigned to my regular duties on board the ship – in spaces below the water line. I overheard crewmembers talking about "over flights" that morning. I went topside to check it out. When I reached the bridge area, I saw a slow moving "flying box car" with the Star of David visible on the plane. I felt secure, as the Israelis were our "allies".

12:00 – 1300 Hours: I was assigned to Bridge Duty as Officer of the Deck (OOD). From the Bridge, I again observed the slow flying Israeli aircraft circle our ship.

1300 – 1350 Hours: The Captain ordered a General Quarter's Drill and my duties took me from the Bridge Area below decks to the Enlisted Mess Decks. I remained there until the drill was over at 1350 Hours.

1350 Hours: I returned to the Bridge and resumed my duties as OOD. Moments after assuming the watch I checked the radarscope and saw three surface (Naval) contacts with a steady bearing decreasing range approaching our ship at a high rate of speed. I notified the Captain. I was on the Bridge when the first wave of Israeli Mystere and Mirage jets attacked our ship.

1400 Hours: The Captain ordered General Quarters (this is not a drill) and I once again left the Bridge Area and returned to my Battle Station on the Mess Decks.

1435 Hours: The ship sustained a direct torpedo hit on the starboard side from one of the three Israeli MTBs (The three naval contacts I had seen on the radar scope earlier).

1450 Hours: I was summoned to the Bridge by one of the Petty Officers of the Watch. When I arrived, I found the Captain severely wounded and in/out of consciousness. In a delirious state, he ordered me to return to my Battle Station. I reluctantly returned below decks to my Battle Station.

1500 Hours: IDF MTBs continue to fire armor piercing projectiles through the skin of the ship in the hopes of killing as many sailors as they could and maybe even hitting our boilers.

1510 Hours: The Captain orders "Prepare to Abandon Ship". I had dozens of wounded sailors in the Mess Deck Area and it was my responsibility to get them all up the ladder and out the hatch to main deck, where we would board our life rafts.

1515 Hours: I climbed the ladder and opened the hatch to the main deck. I wanted to see if it was safe enough to bring the wounded sailors out onto the main deck. What I

saw sent ice running through my veins. The life rafts were either destroyed or had been cut loose and had floated away.

I personally observed an Israeli MTB methodically machine gun one of the Liberty's empty life rafts that had been cut loose and was floating in the water. I knew at that split second that the thrust of the IDF attack was to kill every American sailor on board. There were to be no survivors that day.

I decided to leave all of the wounded sailors below decks for some measure of protection. I did not prepare to abandon ship.

1600 Hours: I was again summoned to the Bridge where I found the Captain on a stretcher, unconscious from loss of blood.

1600 – 0800 hours: I remained on the Bridge until help arrived the next morning. I testified for over two hours at the Court of Inquiry. I testified to the Captain's mental state; the firing of armor piercing projectiles through the skin of the ship; and, to the machine-gunning of our life rafts (I was the only officer to witness the machine gunning of our life rafts). None of this testimony was recorded. The damning information I provided was purposefully omitted by the US Navy's Court of Inquiry.

/signed/

Lloyd C. Painter
US Secret Service (RET)

Exhibit 11

Statement of Survivor Glenn Oliphant

Shortly after the torpedo hit, the order was received to abandon ship. I proceeded to the outside hatch in the radio transmitter room and undogged the door. I tried pushing it open but it was extremely difficult as the ship was listing to starboard and I was trying to open the door on the port side and it was heavy. I enlisted help from someone and we got the hatch open.

When I got on deck I looked forward and discovered that the rack that held my life raft and all the life rafts had been consumed by fire. I then went to the starboard side of the ship and found injured men coming up from the messdecks to the main deck. I assisted several of them and within minutes shells and shrapnel were flying everywhere coming from the torpedo boats. The order was given to return to the mess decks.

I crawled back to the transmitter room and entered it. After some time, I heard no more explosions so I went back onto the main deck and proceeded aft to look at an antenna mount. I discovered that a shell had hit the mount. I then remember looking behind the ship and seeing three liferafts floating in the water, I would say about 150 yards behind the ship. Then I saw spurts of water around the rafts I heard machine gun fire and then I saw the rafts deflating. A torpedo boat came into view and stopped and picked up one of the liferafts. The torpedo boat stayed in that position for some time and then proceeded to come along the port side.

Some time later I was back on the port side of the ship on the main deck and I saw helicopters approaching from a distance, they appeared to be military helicopters. When the helicopters got closer, I heard the order "prepare to repel boarders". I remember ducking down when the helicopters got close and I saw a soldier manning a machine gun in the helicopters door and he was aiming the gun at me. The helicopters hovered for some minutes on the port side, moving along side the ship, I noticed that there were troops in the helicopter and appeared armed. One helicopter paused near the 03 level of the port wing and must have said something to the Captain and then it turned and left the area.

Exhibit 12

A SURVIVOR SPEAKS

Jim Ennes

I find it very strange that some Americans can argue endlessly that the attack on the USS Liberty was a tragic accident and not the deliberate attack on a known American ship that survivors know it to have been.

A point that baffles me (and my shipmates) about that view is that the Israelis did NOT stop firing when they drew close enough to positively identify us as American.

I was lying in a stretcher in a starboard passageway just inboard of the wardroom and almost directly over the torpedo that exploded. I remember very clearly the warning that torpedo boats were approaching followed by the explosion, the ship lifting away from the blast, then settling back to starboard and the very real fear that it would continue to settle until it rolled over and sank. Moments later the torpedo boats approached within fifty feet of the ship. One boat stopped alongside and trained a heavy machinegun on a man who was standing alone on a hatch on the main deck, but did not fire even though the man gave the boatmen the finger. Then a boat moved to within fifty feet of the fantail where the ship displayed her name in large letters in English painted on the hull and her GTR5 numbers in even larger letters. The boatmen clearly examined those markings and can hardly have failed to see other very distinctive American markings and the American flag that flew from the mast. Yet, even though the Israeli government claims it was at that point that they offered help, never firing at us again after the torpedo explosion, this is not so. Almost every man on that ship recalls -- as I personally recall very clearly from my position outside the wardroom -- that the torpedo boats then circled the ship for a long time firing at close range at anything that moved. Men trying to aid their wounded shipmates on deck were fired upon. Men fighting fires were fired upon and recall seeing their fire hoses punctured by machinegun fire. This went on for several minutes. At one point the boatmen concentrated their fire near the waterline amidships, presumably hoping to blow up the boilers to hasten our demise. Finally they pulled a distance back from the ship. We figured they were waiting for us to sink. And then at 3:15, forty minutes after the torpedo explosion and in response to orders from the bridge to prepare to abandon ship, men launched the only three life rafts that seemed still usable. The boats quickly drew closer, machinegunned the liferafts and then took one aboard after the machine gun fire severed a line that had tethered it to the ship. At this point, apparently in response to messages in the air from the Sixth Fleet promising (falsely) that aircraft were en route to our aid, the boats left the area. It was another 75 minutes later, about 4:30, that they finally returned to signal, "Do you need help?"

Now that is not my recollection alone, but is the recollection of nearly every man in the ship. It is one of several reasons that we reject the Israeli claim that it was a "tragic accident" in which they identified us as American even while the torpedos were in the water, never fired again, and immediately offered help.

Our Congress, much to our dismay, has from the beginning accepted "at face value" the Israeli claim that they never fired again after the torpedo explosion. Survivors have never been allowed to testify to the contrary, either to Congress or to the Court of Inquiry.

Of course there are many other reasons for us to disbelieve the Israeli version of events. Among them, for instance, their contrived claim that the aircraft were called in by the torpedomen after we were picked up on radar from over 30 miles away (well beyond their maximum radar range) and mistakenly plotted to be moving 32 knots when in fact we were moving at only 5 knots. Or their claim that the numerous Israeli reconnaissance aircraft that we saw circling us all morning at very low level were actually high in the sky carrying troops to the front and were unaware of our presence below. Or their claim that they mistakenly identified us as the Egyptian cavalry's 40-year-old horse carrier El Quseir, when in fact El Quseir had been out of service for years which must have been well known to the Israeli Navy. All those and other things convince us that the Israeli account is not true. Yet I think most convincing of their deliberate intent is that they continued to fire for forty minutes after examining our markings from as close as fifty feet away, did not offer help until nearly two hours after the torpedo explosion, and then lied about it.

So we are convinced that they are lying about virtually the entire prelude to, conduct of, and aftermath of the attack. Together, these things have convinced every man on that ship including her commanding officer that the attack was deliberate.

Yet despite these things a few Americans seem to accept the preposterous claim that the attack was a mistake and that firing stopped with the torpedo explosion. One can accept and understand this attitude from an Israeli, as he would have a natural tendency to believe his country's version of events and to disbelieve contrary versions -- especially since he has no personal experience to draw upon. But how can an American disbelieve the virtually identical eyewitness reports of scores of surviving fellow Americans and accept instead the undocumented claims of the foreign power that tried to kill them? That is very difficult to understand or to accept.

The typical Israeli reaction is that we are liars or antiSemites, which of course we are not. We are American sailors honestly reporting an act of treachery at sea. At the very least we deserve your courtesy and understanding.

Jim Ennes,
Survivor

Exhibit 13

081235Z

FM NJRS
TO CINCPACFLT
INFO BGO

FOLLOWING RECEIVED FROM ROCKSTAR AM UNDER ATTACK MY POSIT 31-23N 33-25E HAVE
BEEN HIT REQUEST IMMEDIATE ASSISTANCE

Exhibit 14

081250Z JUN 67
FM COMSIXTHFLT
TO USS SARATOGA
USS AMERICA
INFO CTF SIX ZERO
CTG SIX ZERO PT TWO
BT

C O N F I D E N T I A L

1. AMERICA LAUNCH FOUR ARMED A4'S TO PROCEED TO 31-23N 33-25E TO
DEFEND USS LIBERTY WHO IS NOW UNDER ATTACK BY GUN BOATS. PROVIDE
FIGHTER COVER AND TANKERS. RELIEVE ON STATION. SARATOGA LAUNCH
FOUR ARMED A-1'S ASAP SAME MISSION.

GP-4
BT

Exhibit 15

081339Z. USS *Liberty* Incident.

1. IAW CINCUSNAVEUR inst P03611#SB forces attacking *Liberty* are declared hostile.
2. You are authorized to use force including destruction as necessary to control the situation. Do not use more force than required, do not pursue any unit towards land for reprisal purposes. Purpose of counterattack is to protect *Liberty* only.
3. Brief all pilots contents this msg.
4. In addition brief pilots that Egyptian territorial limit only 12 miles and *Liberty* right on edge. Do not fly between *Liberty* and shoreline except as required to carry out provisions para 2 above. Brief fighter cover that any attacks on attack aircraft, *Liberty* or they themselves is hostile act and para two above applies.

Exhibit 16

211. Telegram From the Defense Attaché Office in Israel to the White House¹

Tel Aviv, June 8, 19 67, 1414Z.

0825. ALUSNA called to FLO to receive report.² Israeli aircraft and MTB's erroneously attacked U.S. ship at 081200Z position 3125Z 33-33E. May be navy ship. IDF helicopters in rescue operations. No other info. Israelis send abject apologies and request info of other US ships near war zone coasts.

¹ Source: National Security Agency, Center for Cryptologic History Historical Collection, Series VIII, Box 16d, DIA (USDAO, Tel Aviv) re *Liberty*. Confidential; Flash. Sent also to OSD, CNO, the Department of State, COMSIXTHFLT, CINCSTRIKE, CINCNAVEUR, and JCS. Repeated to DIA, USUN, CINCEUR-USEUCOM, CTG 60, USAFE, and CINCUSAFEUR. The message was received at the National Military Command Center at 10:45 a.m.; see Document 219. An unsigned note on White House stationery, June 8, 11 a.m., states that the Defense Attaché in Tel Aviv "has informed us that the attack on the USS *Liberty* was a mistaken action of Israeli boats." (Johnson Library, National Security File, NSC Histories, Middle East Crisis, Vol. 3)

² Telegram 900 from USDAO Tel Aviv, June 15, which provided a chronology of events surrounding the *Liberty* incident as observed and recorded by U.S. Naval Attaché Commander Ernest C. Castle, USN, states that Castle received the report from Assistant IDF Spokesman Lieutenant Colonel Michael Bloch. (Ibid., NSC Special Committee Files, *Liberty*)

Exhibit 17

081440Z JUN 67

FM COMSIXTHFLT

TO AMERICA/SARATOGA /CTF60/CTG60.2

CONFIDENTIAL

1. RECALL ALL STRIKES REPEAT RECALL ALL STRIKES

Exhibit 18

USS LIBERTY UNDER ATTACK

By Richard Carlson

May 2, 1967 Norfolk, Virginia. My wife Merlene and the 3 children, are standing on the pier, as the USS Liberty, begins to pull away for the 4 month cruise to Africa. The ship is listing heavily to starboard. Supplies and fuel must be redistributed to balance the weight. I watch my family leave, as we pulled away. I have this horrible feeling in the pit of my stomach. I actually feel seasick, and we are still within sight of the pier. Lt. Jim O'Connor has left the railing and disappeared inside. He and I graduated in the same P&R class at Correy Station in Pensacola, just a few months previous. We had been on the 1st four-month cruise and lived to tell about the initiation of becoming a shellback. But now as the ship begins to leave, I feel real panic racing through me as if an omen of something dreadful is about to happen. We cleared the harbor, sailed down the James River, and headed out to sea. As we passed the Chesapeake Bay Bridge Tunnel headed across the big pond to Africa, many of the families had gathered there to wave to us. I felt sick.

The Atlantic crossing this time was much different from our first crossing in November 1966. An Atlantic storm tossed us about like a cork on the ocean back then. Everyone barely managed to get their sea legs on that crossing. But now it seemed quite calm. Two levels below the main deck, I settled in for the trip, and began to look over the assignments in our classified spaces, where I could hear the ocean washing along the sides of the ship. Being claustrophobic, it was difficult to concentrate on the task at hand. Every day of the crossing found me topside as much as possible, trying to shake the feeling of something horrible about to happen. I confided in Red Addington and Chuck Rowley about my feelings. They suggested that the first nightmare crossing just 6 months previous was the cause of my feelings. Their answer didn't cheer me up. I kept thinking about the newspaper article Jeanne Dixon purportedly wrote about the sinking of the Liberty. Was this true? No one could give me a straight answer. Abidjan, Ivory Coast. COMSERVRON EIGHT message 240020Z May 1967 from the Joint Chiefs of Staff is received by the Liberty.

MAKE IMMEDIATE PREPARATIONS TO GET UNDERWAY. WHEN READY FOR SEA ASAP DEPART PORT ABIDJAN AND PROCEED BEST POSSIBLE SPEED TO ROTA SPAIN TO LOAD TECHNICAL SUPPORT MATERIAL AND SUPPLIES. WHEN READY FOR SEA PROCEED TO OPERATING AREA OFF PORT SAID. SPECIFIC AREAS WILL FOLLOW.

That ominous feeling of something horrible happening returns. We quickly depart port. Where are we going? Questions being asked. Answers, most of them wrong, are being given. I find the answer in the Ops spaces. Rota, Spain! We arrive there on June 1st, after 8 days of hard sailing. We tie up at the pier, and take on fuel and stores. Liberty call! I want off badly. Not much to see except the base, and we are restricted because of sailing time constraints. First the exchange and then the club.

The returning crew is rowdy expelling all of the ghosts and feelings of this mission by cleaning up the base and town. The movie Mr. Roberts came to mind as the crew returns bloodied, disheveled, and ready for action. Fortunately, there was no goat accompanying them.

We clear the Strait of Gibraltar in the late afternoon. To my left is the infamous Rock of Gibraltar. To my right, the sands of Arabia. I push my Nikon to the limit, photographing the view and shipmates standing by the rail. What memories we'll have to tell our children and grandchildren about THIS one! Everyone wanted their picture taken with the "Rock" in the background. A Soviet listening trawler attempted to block our transit. We never altered course. The trawler slipped astern of us. Another bad sign?

Traffic on the Med was busy. Freighters and ships from all nations. It was fascinating to be sailing in this arena until we spotted three Soviet destroyers matching our course and speed to the starboard of us. I recalled then, having just picked up my 2 year old Ford at the port near Istanbul, setting on the ferry as we crossed the Bosphorus Straits when the ferry boat suddenly began bouncing around and we were being jostled about. It was trying to stop! Engines reversed! Why? I looked to my left and coming right at us, a Soviet Destroyer barreling its way from the Black Sea through the Straits, out to the Aegean Sea. It missed us...barely!

We are following the northern coast of Africa, heading for our assignment. By the 3rd of June, the Soviet destroyers were gone. On June 5th I learn that war had begun in the Middle East, which would later become known to as the Six Day War.

We arrive on station. Time to go to work. Such a clear and beautiful cloudless blue-sky day. We had been sunbathing during lunchtime. Everyone wanted to go home with a tan you would die for. Some eventually would. Die, that is.

I had finished lunch, and now standing by the starboard railing, began talking with CT1 Bingham. He looked as nervous as I felt. We tried to console each other that we were basically an unarmed ship, in international waters, and that no one was going to bother with us. Neither of us sounded convincing. We couldn't seem to shake the mystery ship following us. Who was it we wondered?

During the day, I see a flying boxcar circling us low and very slow. At one point, it passes us on the port side going aft so low that I can see the pilot in his beige jumpsuit at the controls. There are contrails high up in the sky as I look up at them past the new flag flying from the ship's mast. That sick feeling began sweeping over me again, and I thought about my detailer in boot camp telling me that CTs don't go to sea. They are based on shore stations. Uh-huh! Sure!

We went through our ship's drills. The Captain announced over the 1MC that we were in a war zone and should be alert at all times. Once the drills were finished, and normal work commenced, I left the Ops spaces, made my way to my bunk, grabbed my binoculars, hooked on a telephoto to my Nikon, and made my way to the flag locker

above the bridge. Standing on the port side by the searchlight, I watched aircraft diving down upon a target on shore, miles away, dropping their bombs, and then climb back up. It was like watching a TV war movie on mute. I was still confident that we would be safe at our location in international waters. Others had climbed up to watch. Red, now on the starboard side, called to me to come over to look at the surface ships approaching us. I watched for a few minutes, and then left to return to the port side near the searchlight.

Someone came racing up the ladder from the bridge and yelling, "Get down! Get down! There's a plane coming right at us!" I looked at him and to where he was pointing. I whirled around in time to see a black object in the sky with bursts of yellow lights in front of it, and then explosions all around us. I fell to the deck, and held on to the base of the searchlight, as the aircraft swooped down low in its attack, spraying the bridge with shells, and climbed skyward. Spent shell casings were falling all over the place and I thought, strange as it seems, 'why is someone dropping shell casings on us?' I watched the aircraft climb skyward, and then another one came in from the opposite direction. My god! We're being shot at! I looked to where Red and the others were, and there wasn't much of anything left. Immediately, I got up and raced down the ladder, just as I heard someone yell, "Sound the alarm! The ship is under attack! This is no drill!" I knew I had to get to my General Quarters station in Ops, 2 levels below the main deck where I could hear water swishing along the sides of the ship. Claustrophobia was the furthest thing from my mind. The fear of dying was very real. Down another set of ladders and I'm now on the main deck, port side, running aft to get inside the ship. I never hear the aircraft as it dives down and spews its rain of death on everyone. The deck is being chewed up as I fall to the deck hugging the bulkhead, scared out of my wits. I'm still alive! I quickly look out to sea and up above. I cannot see anything. Sweat is pouring into my eyes. I wipe my eyes with the back of my hand. The sweat is red. I'm bleeding. I'm on my feet again, racing aft. I find the hatch and get inside, run to the starboard side, down the ladder and into the mess deck area. The aircraft are still attacking. It's like being inside of a metal barrel and someone throwing rocks at you. I keep ducking down as I run. I must have stepped into something. My feet are soaked. Everyone is racing to the battle stations. A shell comes through the bulkhead in front of me and out the port side. I stand there transfixed and in shock. Get going I tell myself. Get below the water line. I find the Ops door. Push the combo buttons. The door opens. I'm running down the passageway, past Bingham's station, past the "T" bird area, to the hatch in the deck, down another set of ladders, and I stumble into the P&R spaces and stand there, supported by the hatch by my desk. The binoculars and Nikon hanging loosely from my neck. Blood is running down my face. I'm sloshing around in blood, although I didn't realize it. The guys look at me in horror. Corporal Edward Rehmeier takes my arm, and sets me down on the deck by the bulkhead. I've thrown my expensive camera equipment on my desk as I would my school bag onto my bed after returning home from a long hard day of schoolwork at the age of 12. He sees that my left leg is soaked in blood. I've picked up a lot of shrapnel in that leg, and a surface wound in right above my eye in my forehead. He begins first aid. The planes keep attacking. At each pass, he shields me with his body. He is old enough to be my son. I

feel awkward about all of this. I should be protecting HIM! I hear our guns returning fire. Ack..ack..ack..ack..ack... We are terrified. All of us.

Someone is taking a hammer to the receivers and tape recorders, with a good deal of glee, I might add. There have been mid watches where I've wanted to do just that! I envy them. Emergency destruction commences. Weighted deep six bags are being filled up. How on earth are they going to lug all of that up two levels and throw them overboard with planes shooting at us, I think. There is an explosion! Then, it is quiet. Very very quiet.

Is Jeanne Dixon right? Are we going to sink?

Word is passed. Bring all wounded to the mess decks. I attempt to get up. I can't move. My leg will not support me. A litter is brought in. I'm placed in it and hauled up to the next level into the mess decks, and placed on the table. I can't seem to stop the flow of blood from my leg. I keep working the tourniquet. What am I doing wrong? Someone comes over to watch me. He knows how to do it. "Here. Do it this way!" and he walks off.

A shell comes through the starboard side and out the port sides above me. I want to get off of the table onto the deck. Someone on the other side of the mess hall, wearing a phone set, yells, "Stand by! There are fish in the water! They are shooting torpedoes at us! Stand by!" I look at him and I think, "Is he crazy? Who is firing torpedoes at us and WHY?" He warns again. One of the torpedoes finds its mark. I remember vividly the muffled explosion as it tore into the starboard side hitting the spaces I had just been lifted out of. I held onto the table. All of the overhead pipes were moving and not two of them moving in the same direction at once. The ship is lifted out of the water, and then settles down and begins to list precariously to starboard. A scene of a warship exploding from a torpedo flashes into my mind. "I've got to get out of here!" I'm thinking. The ship begins to continue to list. "We are going to roll over," I'm thinking. Word is passed. Abandon ship! Somehow, adrenalin takes hold, and we are each helping each other, some wounded beyond repair, to the ladders and to the next level, where we are stopped and told to set on the deck along the bulkheads. I'm setting in front of the door leading to a head. I can see the postal clerk's lower part of his body on the deck in the head. I can see out a porthole as well. Someone is working on the postal clerk. He's not breathing. I hear them trying to make him breathe. Death is all around us now. The ship is dead in the water. A jacket is lovingly placed over the postal clerk's face. He is dead. An officer comes in from outside. We can't go out there. They are shooting at anyone on deck and have shot up the life rafts. I hear the whirl of a helicopter. It passes by the porthole. Did I just see armed troops? Word is passed. "Prepare to repel boarders!"

I am saying the Lord's Prayer. I don't know why. It just seemed the natural thing to do. Over and over. I forget the words. I can't get past two lines in the prayer. I'm terrified. I look around to see bloodied faces of stark terror. And then, it is over. Silence except for the heavy breathing of sailors suffering from shock. I've heard that sound before on a Pan Am flight as we lifted off from JFK one night for San Juan, Puerto Rico. The

engines are slowed down as we fly silently as if in a glider past the towering buildings in NYC and head for open water. Something about residents around the airport complaining of the noise aircraft are making as they claw their way into the sky above. And then the engines roar to life again and we soar into the night sky.

The attack is over. The ship's engine comes to life. Mr. Golden and his crew have worked miracles. We are heading further out to open water. Word is passed that we should move back to the mess decks. Walking, crawling, battle-weary and shocked CTs move along the passageway. The mess deck is filled with wounded. Our doctor is busy. Very busy. I see Lt. O'Connor lying on his stomach. He is severely wounded. A young man is wandering among the tables yelling for his brother. "I can't find my brother! Where is he?" He is in shock. Many wait for morphine. The well come to set by the wounded. Tables once filled with food consumed by laughing and happy shipmates now are covered with bodies, leaking vital fluids onto the deck. It is a bizarre scene. Yesterday we sat here and watched a movie on the mess decks. Now..... we watch shipmates die. We are not trained for this. I ask someone to help me into the first class mess. I look over at someone on the table. Someone is there, trying to push what looks like intestines, back into the wounded shipmate. I'm going to be sick. I'm deposited onto the sofa. I hear the GQ alarm go off. "Is there no end to this?" I say. "Did they come back to sink us?" Then silence. Again.... silence. I finally lose it, and attempt to force back tears. Red. Where is my friend? He was in the compartment across the hall when I was evacuated from Ops. Where is the section? Someone comes into the room. "Have you seen Red Addington?" I ask. He shakes his head no. I'm thinking what I'm going to do if he is dead. He and his family and ours are close. I'll need to see his wife and children. I'm not prepared for this.

Meanwhile, bulkheads are being shored up. The smoking lamp is out! There is fuel and oil everywhere. Fires have been extinguished but the threat of explosions is very real. The cook has managed to get sandwiches out. From somewhere, bottles of whiskey, rum, and everything else appear.

I fall asleep. Someone comes into the room. I open my eyes. Red? Is that you? Red? He stumbles over to where I am, and falls into a chair. He is soaked with fuel oil and seawater. He is bleeding. We just look at each other. Not saying a word. The next thing I remember is someone shaking me and asking if I'm all right. I reply "yes." Red tells me about his experience of being in the compartment across the hall from where the torpedo hit and of sea water flooding everything. He is in shock. Morning has arrived. I ask someone to help me on deck because help has arrived. The destroyers USS Massey and USS Davis are pulling along side. I get to the deck and look up to where I was standing at the time of the attack. We have over 800 holes in the ship. There have been fires. We had been attacked with napalm as well as armor piercing rockets. How did I ever get DOWN from there, I am thinking!

The destroyer pulls up to the starboard side, and ties up to us. Help arrives in the form of damage control, medical, and food. I'm setting on the deck watching all of this. Suddenly, the ship's horn sounds. The ropes are cut, and the destroyer hauls butt out of

there. The planes are back! I climb under something close by. Everyone scatters! Then.....silence. Nothing happens. The all clear sounds. The destroyer returns. Help again is coming aboard. I'm looked at by a medic. I tell him I'm not seriously wounded. Someone gives me a sandwich. I'm leaning against a bulkhead covered with something slimy. Brains? Body parts? I throw up. I'm not ready for food.

Later in the day, we are told that all wounded will leave the ship. I need to get something from my bunk. Someone helps me to it. I pull off the pillow cover, and shove in my shaving kit, wallet, underwear, and pictures of my family. Out on the deck, I wait in line to be lifted off the ship. I thought I was going to be carried over to the destroyer, but it is not there any longer. What I see is the USS America aircraft carrier, off in the distance, and above us a helicopter. I'm going to be lifted up INTO it as it hovers above the ship. And me, with a fear of heights! My god, will this nightmare ever end? They help me to the forward part of the ship. The harness is put around me. I'm told not to unfold my arms. I can see why! I'd slide right through the harness and fall to the deck, or the sea. I obey the instructions. As I am lifted off the deck, I look at the helicopter hovering above me. I won't look down. Someone at the door of the copter is guiding me in. Years later we will meet again via e-mail and talk about that moment. He hauls on my shot up leg and I yell out in pain. I'm inside. The harness is off. "Go to the rear!" he yells to me. I crawl to the rear of the helo and there is Red. Someone else is brought into the hovering helo, and then we are off! I look down at the ship, horrified at what I see. The noise from the helo props are loud. And then, we are settling down onto the flight deck of the aircraft carrier. Someone helps us out of the helo and onto one of the carrier elevators. I'm lying on the deck with other wounded, surrounded by able hands. The helo leaves to return to the Liberty for more wounded. The sudden jolt of the descending elevator startles us. It's fairly obvious that we are still in shock. We are level with the hangar bay. Two American crewmen grab my arm and carry me into the melee of sailors waiting to see the wounded. Flashbulbs go off. We cringe from the blinding lights. There are television cameras there. Down the passageways and into sickbay. Someone looks at each of us. Medical and Dental staff have been called into action. They treat us with TLC and begin administering first aid. We are safe.

When things quiet down, we begin to talk amongst ourselves. Who attacked us? Why did they attack us? Who is alive? What is happening? I hear someone say, "It was Israeli aircraft that hit us and Israeli torpedo boats that fired the torpedoes." We are able to send Red Cross telegrams. We quickly write letters. I detail in my letter who I know is alive and for Merlene to call their families to let them know. I'm thinking then. What are our families going through? Do they know what happened? Do they know we are alive? Mr. Lewis is temporarily blinded. He will recover. My friend who stood by Comm spaces on the Liberty and watched as I was being lifted up the ladder to the mess decks gave me a thumbs up sign. I responded. Our last signal together. He was killed in the torpedo explosion. Where was Smithy? Where was Frank? Where was Ronnie? Warren. Did me make it out? The names were flowing from our lips. We had our pictures taken together in front of the Rock of Gibraltar only days ago. Now, some of them will be with us no more.

Months later, while at my next command in Sabana Seca, Puerto Rico, and upon learning that the USS Belmont was in port, I asked Red to go with me to see the ship. I was suffering from PTSS, and didn't know it. Neither did any of the doctors at the Army Hospital to which I retreated often for help. Red and I got aboard the ship in the early evening. CTs met us, and gave us the tour. It looked so much like the Liberty, and panic was settling in quickly as we walked down inside the ship. I could still hear the shells hitting the deck and boring through the bulkheads. The muffled explosion of the torpedo. The dead covered by sheets on the tables. The Seaman yelling for his brother. I couldn't handle it. I told Red, "I've got to get out of here!" It would be months later when PTSS enveloped me to the point I needed to ask for help.

I was flown to Chelsea Naval Hospital, outside of Boston for treatment. A psychiatrist, Dr. Brigham, recognized the problem right away, and with him, I managed to crawl out of that deep dark hole of despair and into the sunlight of wellness again. Retuning back to my command, and my family, I resumed my duties fully.

Although PTSS hung around for years afterwards, I found speaking about the event at organized events like Rotary, Kiwanis, Civic Clubs and Navy Reserve Centers to be just the thing to cope with the problem. Even though PTSS surfaced now and then, I didn't cringe any longer when planes flew overhead, or loud sounds filled the air.

I'd like to meet the recruiter who told me that CTs don't go aboard ships. I have a tale to tell. A real mid-watch scorcher of a tale. And the Purple Heart to prove it.

Exhibit 19

1 **DECLARATION OF JAMES PATRICK KAVANAGH**

2 I, JAMES PATRICK KAVANAGH, DO DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING STATE-
3 MENT IS TRUE AND COMPLETE, AND BASED ENTIRELY UPON MY PERSONAL KNOWLEDGE GAINED THROUGH
4 DIRECT OBSERVATON, UNLESS SPECIFICALLY STATED OTHERWISE:

- 5 1. My true, full, and correct name is James Patrick Kavanagh.
- 6 2. I am a resident of Yonkers, New York.
- 7 3. On June 8, 1967, I was a member of the crew of USS Liberty.
- 8 4. My rank at that time was CTSNR.
- 9 5. My assigned duty station on June 8, 1967 was cleaning the TreshCom dish (sitting
10 on top of the dish).
- 11 6. Unless specifically stated otherwise, all of the events described in this Declaration
12 occurred on June 8, 1967.
- 13 7. Between 1000 and 1100 hours, I observed what appeared to be a maritime re-
14 connaissance aircraft at approximately 500 feet, move slowly from starboard to
15 port making a half moon circle from bow to stern. It then moved away toward
16 the shore. This aircraft flew directly over our ship and I observed that it was
17 marked with a Military Star of David. The aircraft flew so close to us that we
18 waved to the pilot as he looked down at us while banking the aircraft.
- 19 8. When the attack began, I was taking a shower just aft of the CT sleeping quar-
20 ters just above the screw. While showering I heard what sounded like marbles
21 thrown into an empty oil drum then the lights dimmed a few times. A few sec-
22 onds later, the apparent second run by attacking aircraft, bullets penetrated the
23 ship and a bullet hit just inches away from me tearing a hole in my hip and send-
24 ing me to the floor of the shower in a pool of blood.
- 25 9. After making it to my emergency station, while I was engaged in destroying clas-
26 sified material, I observed the frustration of several of my shipmates who were try-
27 ing to communicate an emergency ZULU message to the Sixth Fleet, or anyone
28 else within earshot. They all complained about excessive noise (jamming) on all

- 1 the frequencies they tried. They were also frustrated by the missing antennas that
2 had been shot up during the attack.
- 3 10. While at my emergency station in the research spaces, the torpedo hit and
4 shrapnel tore into my legs and feet. I observed seeing daylight a few seconds
5 after the hit from inside the ship three decks below.
- 6 11. Seconds after the torpedo hit, it was pitch black with just a small light from the
7 torpedo hole to guide me towards the ladder and up to the next level. Although
8 there were many who died around us, there was no way to see anything at that
9 time. However, as I made my way along the ceiling pipes and towards the lad-
10 der I could here many screams from shipmates who were in pain and seemed as
11 disoriented as I was. Making it to the hatch I was pulled out by a few shipmates
12 stationed there helping others get out of the small escape hatch. A few made it
13 out behind me and then the water started to gush out of the hatch. I remember
14 a marine going back down to try to rescue others. They called for him, and
15 called for him. The hatch had to be secured in order to save the ship. A minute
16 or two later there were noises coming from inside the hatch. After a brief argu-
17 ment, the hatch remained secured. The noises stopped.
- 18 12. I was helped up and led to a passageway just above the mess decks near the
19 weapons locker. CT2 Spicher was there and receiving CPR. I helped a bit but
20 we soon realized he had expired.
- 21 13. A few minutes later we were told to stand by to repel boarders. We received a
22 few guns and waited patiently for the battle. It never happened. After a few
23 hours I was taken to the mess decks and observed many injured shipmates on
24 tables and on the deck. So many were in terrible shape. Although I was hit sev-
25 eral times, I felt fortunate. Mr. Armstrong died shortly thereafter. All through the
26 night there were sailors asking for help and pain killers. With nothing left to offer,
27 they passed out some liquor many officers purchased in foreign ports. We drank!
28 Surprisingly, I didn't get drunk even with a whole bottle of vodka.

- 1 14. I remember seeing most everyone injured in some way. It was a big bloodbath
2 and there were holes all throughout the ship, as rockets and armor piercing bul-
3 lets penetrated the skin of the ship. The entire time after the attack (22 hours)
4 the ship was listing badly and those trying to get around were half walking on the
5 deck and half on the bottom of a bulkhead.
- 6 15. After two weeks in the hospital aboard the USS America, I was flown to Naples,
7 Italy for another needed operation. After this operation, I was informed that two
8 NSA personnel were going to debrief me. They arrived and were left alone with
9 me at my bedside. They asked me what happened and I told them everything I
10 knew. They told me that I was never to speak of the attack to anyone and not
11 to provide details about the attack to anyone. They also told me that if I com-
12 mitted a breach of this agreement that I would spend many years in Leaven-
13 worth. I was 18 years old and was very intimidated by this visit. I spoke to no one
14 after that. I believe this visit took place during the last week of June 1967.
- 15 16. I neither asked to testify before the Court of Inquiry, nor was I asked to testify.
- 16 17. I spent 4 months in various hospitals and was eventually released back to duty
17 for my last year of duty.

18
19 Dated: January 15, 2004 Signed: /S/

20 James P. Kavanagh
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Exhibit 20

Diplomatic Note From Secretary of State Rusk to the Israeli Ambassador

National Archives and Records Administration, RG 59, Central Files 1967-69, POL 27 ARAB-ISR.

"Washington, June 10, 1967.

The Secretary of State presents his compliments to His Excellency the Ambassador of Israel and has the honor to refer to the Ambassador's Note of June 10, 1967 concerning the attack by Israeli aircraft and torpedo boats on the United States naval vessel U.S.S. *Liberty*, which was carried out at 1605 and 1625 hours local time. Respectively, on June 8, 1967 while the U.S.S. *Liberty* was engaged in peaceful activities in international waters.

At the time of the attack, the U.S.S. *Liberty* was flying the American flag and its identification was clearly indicated in large white letters and numerals on its hull. It was broad daylight and the weather conditions were excellent. Experience demonstrates that both the flag and the identification number of the vessel were readily visible from the air. At 1450 hours local time on June 8, 1967, two Israeli aircraft circled the U.S.S. *Liberty* three times, with the evident purpose of identifying the vessel. Accordingly there is every reason to believe that the U.S.S. *Liberty* was identified, or at least her nationality determined, by Israeli aircraft approximately one hour before the attack. In these circumstances, the later military attack by Israeli aircraft on the U.S.S. *Liberty* is quite literally incomprehensible. As a minimum, the attack must be condemned as an act of military recklessness reflecting wanton disregard for human life.

The subsequent attack by Israeli torpedo boats, substantially after the vessel was or should have been identified by Israeli military forces, manifests the same reckless disregard for human life. The silhouette and conduct of the U.S.S. *Liberty* readily distinguished it from any vessel that could have been considered as hostile. The U.S.S. *Liberty* was peacefully engaged, posed no threat whatsoever to the torpedo boats, and obviously carried no armament affording it a combat capability. It could and should have been scrutinized visually at close range before torpedoes were fired.

While the Ambassador of Israel has informed Secretary of State that "the Government of Israel is prepared to make amends for the tragic loss of life and material damage," the Secretary of State wishes to make clear that the United States Government expects the Government of Israel also to take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a State. He wishes also to make clear that the United States Government expects the Government of Israel to issue instructions necessary to ensure that United States personnel and property will not again be endangered by the wrongful actions of Israeli military personnel.

The United States Government expects that the Government of Israel will provide compensation in accordance with international law to the extent that it is possible to compensate for the losses sustained in this tragic event. The Department of State will,

in the near future, present to the Government of Israel a full monetary statement of its claim.”

Exhibit 21

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 occurred 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.

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 accordance 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 proper 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 committal 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 occurred 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 occurred 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 Prosecutor 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 whose 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 committal 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 doubt, 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 with 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 datum 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.

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 occupied 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". If the conduct of the captain of the "Liberty" can still be explained by the existing, as I have heard in maritime tradition, that a vessel belonging to a friendly state does not identify itself first to a smaller vessel, then such conduct cannot be comprehended when the request for identification follows an aircraft attack. In 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 committal 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 committal of anyone for trial. In view of what has been said above, I hold that there is no sufficient amount of prima facie 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

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ISRAELI DEFENSE FORCES

Preliminary Inquiry File 1167

Preliminary Inquiry

Before: Span-Aluf I. Yerushalmi

Etc.

DECISION

Copies limited to
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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 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 occurred 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

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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 about the shelling 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, "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.

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 ... 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.

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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 had meanwhile 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

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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 comparisons 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 14.35 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 Prosecutor, in

accordance 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 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,

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the location of which was correct at 05.00 hours 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 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 Egyptian coast was marked OR - 5, he did not inform the Head of the Naval Department and/or the O.C. Navy, that a vessel with identical or similar markings 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 committal 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 occurred 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 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 before me that the area was declared by the Egyptian authorities as dangerous for 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 occurred 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 submarines 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 eyewitness 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 to 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.

At the present, indeed, had identified the target and 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 Prosecutor 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?

15. 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 the 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 committal 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 L.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 C.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 otherise, 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 contents from another source, i.e. Southern Command through C.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.

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 "CTE - 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 other identification marks;

- (e) the location of the ship -- close to shore in 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 be beyond a shadow of doubt, 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 is 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 with doubts, was verified within minutes and finally confirmed as a speed of 23 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 that there was no reason for surmising, in view of this datum 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

when the request for identification follows an aircraft attack. Such an event should have, in my opinion, made the captain realize, 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-Abal" 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 these circumstances it seems, that the identification, in the third stage of the activity of our forces, as the "El-Kagir", 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 justifies his committal 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 war operations, when the naval arm of the Israel Defence 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 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 Defence 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

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 evidence, 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 U.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, misgivings 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.

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 occupied 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

scope of my inquiry. Yet I have not discovered any deviation from the standard of reasonable conduct which would justify the committal of anyone for trial.

In view of what has been said above, I hold, that there is no sufficient amount of Prima facie evidence, justifying committing anyone for trial.

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

Y. YERUSHALMI, Sgan-Aluf

Examining Judge

*LTC
(per Israeli Embassy)*

Exhibit 2-1

I N T R O D U C T I O N

On 8 June 1967, at the height of the "Six Day War," the American electronic-intelligence ship "Liberty" approached the Sinai coast. In the afternoon hours of the same day, the ship was attacked by air and naval forces of the Israel Defense Forces (IDF). ~~Thirty-four crew members were killed in the attack while~~ 164 were wounded, and the ship suffered damage.

The tragic attack on the "Liberty" was an innocent mistake, caused by incorrect target identification and faulty data analysis, due to the ambiguities and pressures of the situation in which Israel was involved. It is important to note that the actions of the "Liberty" itself were also a contributing factor to the mistaken attack.

Immediately the Israelis appreciated their mistake, they halted their attack and took steps to provide assistance to the damaged ship (their offers were rejected). Israel expressed her regrets over the incident and explained that the attack was unintentional. The IDF undertook the task of determining the facts and to this end a Court of Inquiry was formed and an examining-judge was appointed. The findings of the investigation brought to light the circumstances of the case and revealed a series of mistakes which led to the attack. However, the investigation did not uncover a single finding which could point to either malicious intent or criminal negligence. The Israeli Government made available the findings of the investigation to the American authorities and agreed, out of humanitarian considerations, to make immediate compensation payments to wounded crew members and the families of those who were killed.

Despite Israeli declarations and explanations, accepted by the Johnson administration, the issue occasionally makes newspaper headlines and excites rumours. All those who seek to revive the episode share one thing in common, they all claim that Israel premeditatedly and maliciously attacked the "Liberty" with the intent of sinking her. In order to substantiate this claim a list of explanations is presented, some of which may be classified as "science fiction", some of which result from an erroneous presentation and interpretation of the facts or unfounded assumptions.

Exhibit 2-14

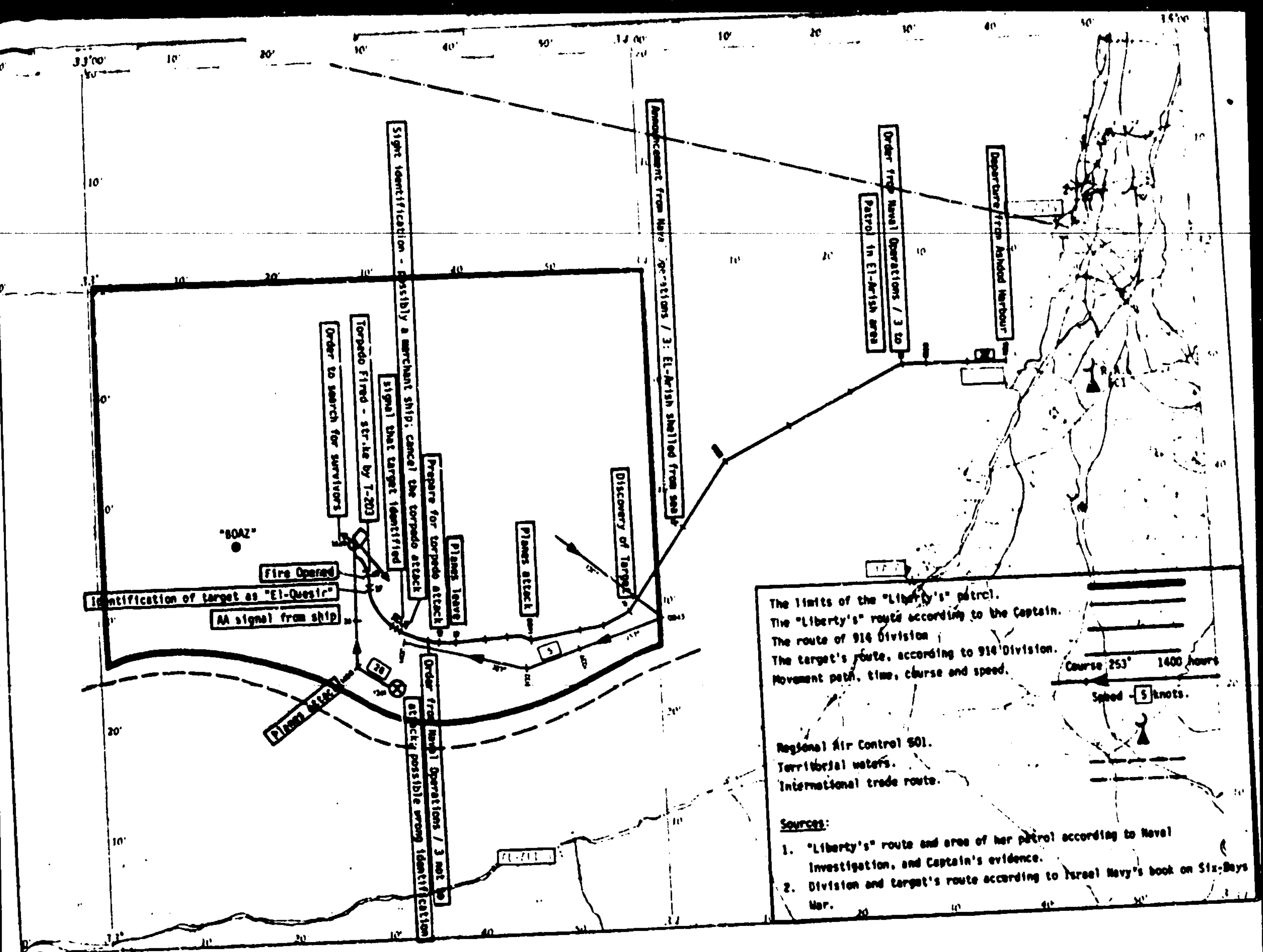


Exhibit 22

Telegram From the Department of State to the Embassy in Israel

(Source: National Archives and Records Administration, RG 59, Central Files 1967-69, POL 27 ARAB-ISR. Secret; Exdis. Drafted by Lambrakis on August 30; cleared by Bahti, Wehmeyer, and Davies; and approved by Katzenbach.)

Washington, August 31, 1967, 2107Z.
30382. Subj: U.S.S. *Liberty*.

1. Under Secretary called in Charge Evron August 30 to comment on Israeli examining judge's report./2/ Explained it has already been given on confidential basis to a few Congressional committees. Also, quite a few people in the USG had handled it, as it was received through more than one channel from GOI. At least its existence, and perhaps some of its substance, can be expected to leak out. It may then become necessary for US to publish the exchange of notes. We shall inform GOI in advance if that eventuality arises and will do any publishing in low-key. We have no desire to exacerbate the issue. If this procedure causes major problems for GOI now is the time to speak out. Some leakage has occurred already in this week's *Newsweek* magazine.
2. Evron said he would refer matter back to his government. He speculated it might be possible for his government to acquiesce in such publication of the notes, in which case it could be done jointly. He wished to express GOI's deep appreciation of restrained manner in which entire affair was handled by USG.
3. On substance of report, Under Secretary said he personally had been very surprised with the ending. Report was obviously candid since any such confusion could not possibly have been invented. Examining judge laid out point after point confirming negligence on part of various Israeli officials in affair, yet ended up finding no deviation from normal conduct. Surely, Under Secretary said, one cannot believe such conduct was consistent with normal Israeli practice and did not involve culpable negligence on part of officials involved.
4. Evron was subdued in manner and said there was little he could add. He had raised matter with GOI when in Israel in July and had spoken personally with COS Rabin. Rabin had stressed that investigation being entrusted to impartial military judge, and COS would have to abide by judge's findings. Affair had obviously been very damaging for GOI, Evron continued, and everything will be done to avoid repetition of such incident if ever similar circumstances arose, which he devoutly hoped they would not.
5. Under Secretary reiterated his surprise at judge's findings though he assured Evron he did not intend publicly to express these personal conclusions. If GOI should ever decide to publish the report, he added, we would appreciate identification of *Liberty* as US communications ship, in keeping with manner in which it identified in our own public utterances.

6. Evron agreed this manner of identification should present no problem but thought GOI would not publish report at all.

Rusk

Exhibit 23

STATEMENT OF REAR ADMIRAL MERLIN STARING

In June of 1967 I was assigned as the senior Navy legal officer in London at the headquarters of Admiral John S. McCain, Jr., who was then the Commander-in-Chief, U. S. Naval Forces, Europe. In that capacity, Admiral McCain was in command of our naval forces in the Mediterranean.

The U. S. Navy Court of Inquiry into the 8 June attack on the USS LIBERTY was convened at our London headquarters at the direction of Admiral McCain. A Navy Court of Inquiry is a formal fact-finding body convened to investigate an incident involving, for example, substantial loss of life, or possible significant international or other legal consequences. It is an administrative, not a judicial, body, and its report is purely advisory.

Rear Admiral Isaac Kidd was appointed by Admiral McCain to be the president of the Court, with Captains Bernard Lantieri and Bert Atkinson as the other members. Captain Ward Boston, a Navy legal officer, was assigned as counsel to the Court.

Admiral Kidd and the two members of his Court, with their legal officer, Ward Boston, immediately traveled to the Mediterranean where they boarded the LIBERTY at sea and commenced collecting evidence for their investigation.

The clerical production of the written transcript of the proceedings and the report of the Court of Inquiry containing its stated conclusion that the attack was accidental was largely accomplished first at Malta, where the heavily damaged LIBERTY was initially docked, and then at our London headquarters, under the direction and supervision of Admiral Kidd and Captain Boston, in the days during and immediately following their on-scene investigation.

As Force Legal Officer for Admiral McCain, it would normally have been my duty to review the record of the investigation by the Court of Inquiry and to prepare a recommended action on that record for Admiral McCain's consideration and decision, leading ultimately to his official endorsement and transmission of the record to the Department of the Navy in Washington. Consistent with that anticipated procedure, Captain Boston appeared in my office in midafternoon of the day that he and Admiral Kidd arrived in London from Malta, handed me the record of some 600 pages, and said that Admiral McCain had asked him to bring it to me for my review.

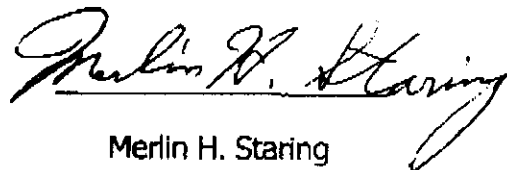
I immediately swept all other work aside and began a comprehensive review of that file, working steadily at it from the afternoon until about 3:00 AM. At that point I took a brief break for sleep, then resumed my review at about 6:00 AM the following morning. I was still so engaged when Captain Boston again appeared in my office at about 10:00 AM and asked how I was doing, and when I thought I would complete my review. I told him that I was at that point only about 1/3 of

the way through the record, and that I was having serious problems, so far, in finding evidence in the record to support some of the Court's conclusions or findings of fact. One of the items for which I had so far been unable to find supporting evidence in the record was the Court's very first conclusion that "available evidence combines to indicate the attack on LIBERTY on 8 June was, in fact, a case of mistaken identity." I also told Captain Boston that I could not yet estimate a time for the completion of my review, but that I was working full time on it and would continue to do so.

Captain Boston thereupon left my office, then reappeared about 20 minutes later and said that Admiral McCain had sent him up to get the Court's record from me and bring it to him in his office. I accordingly turned the record back over to Captain Boston, and he left my office with it. I was never, either at that point or later, asked for any of my comments or conclusions based upon the work that I had done to that point. Later that same day I learned that Admiral Kidd had departed London en route back to the United States, presumably carrying the Court's record with him for delivery to Navy Department authorities. At that point I had no knowledge whether Admiral McCain had placed his official endorsement on the record, or what it might have said, or who if anyone might have participated in its preparation.

In the course of my career as a Navy lawyer, I have been called upon to review and to take or to recommend action on hundreds of investigations of various degrees of magnitude and importance. This was the only instance, during my entire career, in which a record of such an investigation was withdrawn from me before I had been given an opportunity to complete my review and to communicate my advice and recommendations to the convening authority.

My personal connection with or participation in the Navy's investigative proceedings that followed the attack on the USS LIBERTY was thus both brief and incomplete. In recent times I have seen in the media comments purporting to support or to justify the validity of the conclusions stated by the Navy Court of Inquiry on the ground that those conclusions by the Court were later approved by Admiral McCain, the convening authority who had ordered the Court. Although my contact with the matter was thus extremely brief, I do know and can firmly testify to one thing - that the proceedings and the conclusions of the Navy Court of Inquiry were never subjected to a competent, a considered, and a complete legal review before the Convening Authority endorsed the record forward for consideration by officials at the highest levels of the Navy and of the United States Government. Implicit in that conclusion is the fact that no other reviewing authority, in London or elsewhere, could possibly have reviewed and considered that record of over 600 pages, and have rendered sound opinions or recommendations to Admiral McCain, in the brief period between the withdrawal of the record from me and its dispatch to the United States with Admiral Kidd that same day.



Merlin H. Staring

Rear Admiral, Judge Advocate General's Corps

United States Navy, (Retired)

Date: 31 May 2005

Exhibit 24

LIBERTY INCIDENT

8 June 1967

DECLASSIFIED

Classification (cancelled) (~~changed to~~)
) by authority of OPNAV MEMO Ser 089D 32/T31

on 8 21 Jun 76

(Date) (Signature: (Rank)
OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

COURT OF INQUIRY 7816-67

00-035
TS Control
715-76

RADM Isaac C. KIDD Jr., USN

JAG TOP SECRET
NO. CNA

President

DECLASSIFIED
TOP SECRET
NO. TS-85-6

GROUP 3
Downgraded at 12 yrs.
Not automatically exempt

COPY 3 OF 6 COPIES

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Exhibit 25

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DECLARATION OF WARD BOSTON, JR., CAPTAIN, JAGC, USN (RET.)

I, WARD BOSTON, JR. DO DECLARE THAT THE FOLLOWING STATEMENT IS TRUE AND COMPLETE:

1. FOR MORE THAN 30 YEARS, I HAVE REMAINED SILENT ON THE TOPIC OF USS *LIBERTY*. I AM A MILITARY MAN AND WHEN ORDERS COME IN FROM THE SECRETARY OF DEFENSE AND PRESIDENT OF THE UNITED STATES, I FOLLOW THEM.

2. HOWEVER, RECENT ATTEMPTS TO REWRITE HISTORY COMPEL ME TO SHARE THE TRUTH.

3. IN JUNE OF 1967, WHILE SERVING AS A CAPTAIN IN THE Judge Advocate General Corps, Department of the Navy, I WAS ASSIGNED AS SENIOR LEGAL COUNSEL FOR THE NAVY'S COURT OF INQUIRY INTO THE BRUTAL ATTACK ON USS *LIBERTY*, WHICH HAD OCCURRED ON JUNE 8TH.

4. THE LATE ADMIRAL ISAAC C. KIDD, PRESIDENT OF THE COURT, AND I WERE GIVEN ONLY ONE WEEK TO GATHER EVIDENCE FOR THE NAVY'S OFFICIAL INVESTIGATION INTO THE ATTACK, DESPITE THE FACT THAT WE BOTH HAD ESTIMATED THAT A PROPER COURT OF INQUIRY INTO AN ATTACK OF THIS MAGNITUDE WOULD TAKE AT LEAST SIX MONTHS TO CONDUCT.

5. ADMIRAL JOHN S. MCCAIN, JR., THEN COMMANDER-IN-CHIEF, NAVAL FORCES EUROPE (CIN-CUSNAVEUR), AT HIS HEADQUARTERS IN LONDON, HAD CHARGED ADMIRAL KIDD (IN A LETTER DATED JUNE 10, 1967) TO

"INQUIRE INTO ALL THE PERTINENT FACTS AND CIRCUMSTANCES LEADING TO AND CONNECTED WITH THE ARMED ATTACK; DAMAGE RESULTING THEREFROM; AND DEATHS OF AND INJURIES TO NAVAL PERSONNEL."

6. DESPITE THE SHORT AMOUNT OF TIME WE WERE GIVEN, WE GATHERED A VAST AMOUNT OF EVIDENCE, INCLUDING HOURS OF HEARTBREAKING TESTIMONY FROM THE YOUNG SURVIVORS.

7. THE EVIDENCE WAS CLEAR. BOTH ADMIRAL KIDD AND I BELIEVED WITH CERTAINTY THAT THIS ATTACK, WHICH KILLED 34 AMERICAN SAILORS AND INJURED 172 OTHERS, WAS A DELIBERATE EFFORT TO SINK AN AMERICAN SHIP AND MURDER ITS ENTIRE CREW. EACH EVENING, AFTER HEARING TESTIMONY ALL DAY, WE OFTEN SPOKE OUR PRIVATE THOUGHTS CONCERNING WHAT WE HAD SEEN AND HEARD. I RECALL ADMIRAL KIDD REPEATEDLY REFERRING TO THE ISRAELI FORCES RESPONSIBLE FOR THE ATTACK AS "MURDEROUS BASTARDS." IT WAS OUR SHARED BELIEF, BASED ON THE DOCUMENTARY EVIDENCE AND TESTIMONY WE RE-

1 CEIVED FIRST HAND, THAT THE ISRAELI ATTACK WAS PLANNED AND DELIBERATE, AND COULD NOT POSSIBLY
2 HAVE BEEN AN ACCIDENT.

3 8. I AM CERTAIN THAT THE ISRAELI PILOTS THAT UNDERTOOK THE ATTACK, AS WELL AS THEIR SUPERIORS,
4 WHO HAD ORDERED THE ATTACK, WERE WELL AWARE THAT THE SHIP WAS AMERICAN.

5 9. I SAW THE FLAG, WHICH HAD VISIBLY IDENTIFIED THE SHIP AS AMERICAN, RIDDLED WITH BULLET
6 HOLES, AND HEARD TESTIMONY THAT MADE IT CLEAR THAT THE ISRAELIS INTENDED THERE BE NO SURVIVORS.

7 10. NOT ONLY DID THE ISRAELIS ATTACK THE SHIP WITH NAPALM, GUNFIRE, AND MISSILES, ISRAELI TOR-
8 PEDO BOATS MACHINE-GUNNED THREE LIFEBOATS THAT HAD BEEN LAUNCHED IN AN ATTEMPT BY THE CREW
9 TO SAVE THE MOST SERIOUSLY WOUNDED – A WAR CRIME.

10 11. ADMIRAL KIDD AND I BOTH FELT IT NECESSARY TO TRAVEL TO ISRAEL TO INTERVIEW THE ISRAELIS
11 WHO TOOK PART IN THE ATTACK. ADMIRAL KIDD TELEPHONED ADMIRAL MCCAIN TO DISCUSS MAKING AR-
12 RANGEMENTS. ADMIRAL KIDD LATER TOLD ME THAT ADMIRAL MCCAIN WAS ADAMANT THAT WE WERE NOT
13 TO TRAVEL TO ISRAEL OR CONTACT THE ISRAELIS CONCERNING THIS MATTER.

14 12. REGRETTABLY, WE DID NOT RECEIVE INTO EVIDENCE AND THE COURT DID NOT CONSIDER ANY OF
15 THE MORE THAN SIXTY WITNESS DECLARATIONS FROM MEN WHO HAD BEEN HOSPITALIZED AND WERE UNABLE
16 TO TESTIFY IN PERSON.

17 13. I AM OUTRAGED AT THE EFFORTS OF THE APOLOGISTS FOR ISRAEL IN THIS COUNTRY TO CLAIM THAT
18 THIS ATTACK WAS A CASE OF "MISTAKEN IDENTITY."

19 14. IN PARTICULAR, THE RECENT PUBLICATION OF JAY CRISTOL'S BOOK, *THE LIBERTY INCIDENT*, TWISTS
20 THE FACTS AND MISREPRESENTS THE VIEWS OF THOSE OF US WHO INVESTIGATED THE ATTACK.

21 15. IT IS CRISTOL'S INSIDIOUS ATTEMPT TO WHITEWASH THE FACTS THAT HAS PUSHED ME TO SPEAK OUT.

22 16. I KNOW FROM PERSONAL CONVERSATIONS I HAD WITH ADMIRAL KIDD THAT PRESIDENT LYNDON
23 JOHNSON AND SECRETARY OF DEFENSE ROBERT MCNAMARA ORDERED HIM TO CONCLUDE THAT THE AT-
24 TACK WAS A CASE OF "MISTAKEN IDENTITY" DESPITE OVERWHELMING EVIDENCE TO THE CONTRARY.

25 17. ADMIRAL KIDD TOLD ME, AFTER RETURNING FROM WASHINGTON, D.C. THAT HE HAD BEEN OR-
26 DERED TO SIT DOWN WITH TWO CIVILIANS FROM EITHER THE WHITE HOUSE OR THE DEFENSE DEPARTMENT,
27 AND REWRITE PORTIONS OF THE COURT'S FINDINGS.

28

1 18. ADMIRAL KIDD ALSO TOLD ME THAT HE HAD BEEN ORDERED TO "PUT THE LID" ON EVERYTHING HAV-
2 ING TO DO WITH THE ATTACK ON USS LIBERTY. WE WERE NEVER TO SPEAK OF IT AND WE WERE TO CAUTION
3 EVERYONE ELSE INVOLVED THAT THEY COULD NEVER SPEAK OF IT AGAIN.

4 19. I HAVE NO REASON TO DOUBT THE ACCURACY OF THAT STATEMENT AS I KNOW THAT THE COURT OF
5 INQUIRY TRANSCRIPT THAT HAS BEEN RELEASED TO THE PUBLIC IS NOT THE SAME ONE THAT I CERTIFIED AND
6 SENT OFF TO WASHINGTON.

7 20. I KNOW THIS BECAUSE IT WAS NECESSARY, DUE TO THE EXIGENCIES OF TIME, TO HAND CORRECT
8 AND INITIAL A SUBSTANTIAL NUMBER OF PAGES. I HAVE EXAMINED THE RELEASED VERSION OF THE TRAN-
9 SCRIPT AND I DID NOT SEE ANY PAGES THAT BORE MY HAND CORRECTIONS AND INITIALS. ALSO, THE ORIGI-
10 NAL DID NOT HAVE ANY DELIBERATELY BLANK PAGES, AS THE RELEASED VERSION DOES. FINALLY, THE TESTI-
11 MONY OF LT. PAINTER CONCERNING THE DELIBERATE MACHINE GUNNING OF THE LIFE RAFTS BY THE ISRAELI
12 TORPEDO BOAT CREWS, WHICH I DISTINCTLY RECALL BEING GIVEN AT THE COURT OF INQUIRY AND IN-
13 CLUDED IN THE ORIGINAL TRANSCRIPT, IS NOW MISSING AND HAS BEEN EXCISED.

14 21. FOLLOWING THE CONCLUSION OF THE COURT OF INQUIRY, ADMIRAL KIDD AND I REMAINED IN
15 CONTACT. THOUGH WE NEVER SPOKE OF THE ATTACK IN PUBLIC, WE DID DISCUSS IT BETWEEN OURSELVES,
16 ON OCCASION. EVERY TIME WE DISCUSSED THE ATTACK, ADMIRAL KIDD WAS ADAMANT THAT IT WAS A DE-
17 LIBERATE, PLANNED ATTACK ON AN AMERICAN SHIP.

18 22. IN 1990, I RECEIVED A TELEPHONE CALL FROM JAY CRISTOL, WHO WANTED TO INTERVIEW ME
19 CONCERNING THE FUNCTIONING OF THE COURT OF INQUIRY. I TOLD HIM THAT I WOULD NOT SPEAK TO HIM
20 ON THAT SUBJECT AND PREPARED TO HANG UP THE TELEPHONE. CRISTOL THEN BEGAN ASKING ME ABOUT
21 MY PERSONAL BACKGROUND AND OTHER, NON-COURT OF INQUIRY RELATED MATTERS. I ENDEAVORED TO
22 ANSWER THESE QUESTIONS AND POLITELY EXTRICATE MYSELF FROM THE CONVERSATION. CRISTOL CONTIN-
23 UED TO RETURN TO THE SUBJECT OF THE COURT OF INQUIRY, WHICH I REFUSED TO DISCUSS WITH HIM. FI-
24 NALLY, I SUGGESTED THAT HE CONTACT ADMIRAL KIDD AND ASK HIM ABOUT THE COURT OF INQUIRY.

25 23. SHORTLY AFTER MY CONVERSATION WITH CRISTOL, I RECEIVED A TELEPHONE CALL FROM ADMIRAL
26 KIDD, INQUIRING ABOUT CRISTOL AND WHAT HE WAS UP TO. THE ADMIRAL SPOKE OF CRISTOL IN DISPAR-
27 AGING TERMS AND EVEN OPINED THAT "CRISTOL MUST BE AN ISRAELI AGENT." I DON'T KNOW IF HE MEANT
28

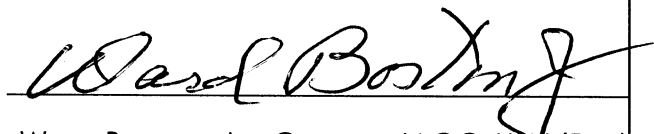
1 THAT LITERALLY OR IT WAS HIS WAY OF EXPRESSING HIS DISGUST FOR CRISTOL'S HIGHLY PARTISAN, PRO-
2 ISRAELI APPROACH TO QUESTIONS INVOLVING *USS LIBERTY*.

3 24. AT NO TIME DID I EVER HEAR ADMIRAL KIDD SPEAK OF CRISTOL OTHER THAN IN HIGHLY DISPARAG-
4 ING TERMS. I FIND CRISTOL'S CLAIMS OF A "CLOSE FRIENDSHIP" WITH ADMIRAL KIDD TO BE UTTERLY IN-
5 CREDIBLE. I ALSO FIND IT IMPOSSIBLE TO BELIEVE THE STATEMENTS HE ATTRIBUTES TO ADMIRAL KIDD, CON-
6 CERNING THE ATTACK ON *USS LIBERTY*.

7 25. SEVERAL YEARS LATER, I RECEIVED A LETTER FROM CRISTOL THAT CONTAINED WHAT HE PURPORTED
8 TO BE HIS NOTES OF OUR PRIOR CONVERSATION. THESE "NOTES" WERE GROSSLY INCORRECT AND BORE NO
9 RESEMBLANCE IN REALITY TO THAT DISCUSSION. I FIND IT HARD TO BELIEVE THAT THESE "NOTES" WERE THE
10 PRODUCT OF A MISTAKE, RATHER THAN AN ATTEMPT TO DECEIVE. I INFORMED CRISTOL THAT I DISAGREED
11 WITH HIS RECOLLECTION OF OUR CONVERSATION AND THAT HE WAS WRONG. CRISTOL MADE SEVERAL AT-
12 TEMPTS TO ARRANGE FOR THE TWO OF US TO MEET IN PERSON AND TALK BUT I ALWAYS FOUND WAYS TO
13 AVOID DOING THIS. I DID NOT WISH TO MEET WITH CRISTOL AS WE HAD NOTHING IN COMMON AND I DID
14 NOT TRUST HIM.

15 26. CONTRARY TO THE MISINFORMATION PRESENTED BY CRISTOL AND OTHERS, IT IS IMPORTANT FOR THE
16 AMERICAN PEOPLE TO KNOW THAT IT IS CLEAR THAT ISRAEL IS RESPONSIBLE FOR DELIBERATELY ATTACKING
17 AN AMERICAN SHIP AND MURDERING AMERICAN SAILORS, WHOSE BEREAVED SHIPMATES HAVE LIVED WITH
18 THIS EGREGIOUS CONCLUSION FOR MANY YEARS.

19 DATED: JANUARY 8, 2004
20 AT CORONADO, CALIFORNIA.

21 

22 WARD BOSTON, JR., CAPTAIN, JAGC, USN (RET.)
23 SENIOR COUNSEL TO THE USS LIBERTY COURT OF INQUIRY
24
25
26
27
28

Exhibit 26



DIRECTORATE OF
INTELLIGENCE

Intelligence Memorandum

The Israeli Attack on the USS Liberty

27

Content UNCLASSIFIED

per #058375

date 31 Aug. 1977

13 June 1967
SC No. 01415/67

SANITIZED COPY

CENTRAL INTELLIGENCE AGENCY
Directorate of Intelligence

13 June 1967

INTELLIGENCE MEMORANDUM

The Israeli Attack on the USS Liberty

The US Naval technical research ship Liberty was attacked by Israeli aircraft and torpedo boats off the Sinai Peninsula on 8 June. The following account of the circumstances of the attack has been compiled from all available sources.

1. The Liberty reported at 9:50 a.m. (2:50 a.m. Washington time) on 8 June that it had been orbited by two delta-wing jet fighters, presumably Israeli Mirages. At 3:05 p.m. (8:05 a.m.) the Liberty was strafed by unidentified jet aircraft. The Liberty apparently was not able to establish communications with other units of the US Sixth Fleet during the air attack, and the first information available to the US commanders was after the subsequent attack by unidentified torpedo boats, which occurred at 3:25 p.m.

2. At 4:11 p.m. (9:11 a.m.) the US Commander in Chief, Europe, notified the National Military Command Center in Washington that the Liberty was under attack and was listing to starboard after being struck by a torpedo. The Commander of the US Sixth Fleet declared the attacking units hostile and sent attack aircraft from the carriers America and Saratoga to protect the Liberty. A good part of the ship's communications equipment was destroyed by the crew during the attack but emergency communications were soon established with the Saratoga and with the naval communications station in Greece. Because of the tenseness of the situation and the communications delays, the initial reports from the Liberty were sketchy and somewhat confusing.

Specifics of the Attack

3. According to these reports, however, the sequence of events took place as follows. The ship was attacked at 3:05 p.m. (8:05 a.m.) by unidentified jet fighters, believed to be Israeli, at position 31-35N, 33-29E. Six strafing runs were made by the jets. Twenty minutes later three torpedo boats closed at high speed and two of them launched torpedoes after first circling the Liberty. One torpedo passed astern, and the other struck

Redacted

the starboard side of the ship |

[**Redacted** One of the boats was later identified as Israeli and the hull number of one unit was noted as 206-T. Some 50 minutes later two Israeli helicopters arrived on the scene.

Israeli Identification of the Ship

4. None of the communications of the attacking aircraft and torpedo boats is available, |

Redacted

5. |

Redacted

Although the

Liberty is some 200 feet longer than the Egyptian transport El Quesir, it could easily be mistaken for the latter vessel by an overzealous pilot. Both ships have similar hulls and arrangements of masts and stack.

6. The weather was clear in the area of attack, the Liberty's hull number (GTR 5) was prominently displayed, and an American flag was flying. /

Redacted

7. Thus it was not until 4:12 p.m. (9:12 a.m.) that the Israelis became convinced that the Liberty

was American. This was about 44 minutes after the last attack on the ship and the attack had apparently been called off, not because the ship had been identified, but because it seemed to be sinking. (The US Defense Attaché in Tel Aviv reports that Israeli helicopters and the three torpedo boats searched the area until 6:04 p.m. (11:04 a.m.). The Israeli offer of assistance was declined because of the sensitive mission of the ship. According to US Navy reports, the ship was saved only through the efforts of her crew.

Damage and Personnel Losses

8. The ship suffered heavy material and personnel casualties. A hole estimated to be 39 feet wide at the bottom and 24 feet wide at the top near the waterline was opened by a torpedo. The ship is flooded below the second deck between frames 52 and 78 (36-inch frame spacing). The crew carried out emergency destruction of classified communications and radar equipment, but the ship's engineering plant is intact. Several flash fires and cannon holes throughout the superstructure caused some minor damage, and the ship's motor whale boat and

Redacted

virtually all of its life rafts were lost. Personnel casualties include 10 killed, 90 wounded, and 12 missing, most of whom were probably trapped in the flooded compartments. The wounded and the dead have been removed from the ship and some additional crew members put aboard. The ship is expected to arrive in Malta on 14 June for dry docking and hull repairs. Security precautions are being taken to protect the classified intercept equipment in the flooded spaces. The US Navy has convened a board of inquiry to look into the incident.

The Ship and Its Orders

9. The USS Liberty is/

Redacted

an electronics research ship which had been diverted to the crisis area to act as a radio relay station for US embassies.

Redacted

10. The Liberty sailed from Rota, Spain, on 2 June under orders to patrol no closer than 12.5 miles of the UAR coast and 6.5 miles of the Israeli coast. A modification of orders issued by the Commander of the US Sixth Fleet at 12:17 p.m. (5:17 a.m.) on 8 June had not been received aboard the Liberty, according to the ship's commanding officer, before the Israeli attack. This change, together with messages from other commands which ordered the Liberty to approach no closer than 100 miles of the coasts of the UAR and Israel and 25 miles of the coast of Cyprus, was delayed in transmission in part because of a misunderstanding of responsibilities for delivery.

11. At annex is a listing of events in chronological order.

Redacted

CHRONOLOGY OF EVENTS

(Stated times are local; Washington times in parentheses)

- 2 June 1967 Liberty departed Rota, Spain en route to position 32-00N, 33-00E, to remain 12.5 miles from Egyptian coast and 6.5 miles from Israeli coast.
- 8 June 2:50 a.m.
(7 June 7:50 p.m.) CINCUSNAVEUR Duty Officer received phone instructions from Joint Reconnaissance Center directing Liberty to comply with COMSIXTHFLEET 100-mile operating area restriction.
- 8 June 9:50 a.m.
(2:50 a.m.) Liberty was orbited by two unidentified delta wing single engine jet fighters, presumably Israeli Mirages.
- 8 June 12:17 p.m.
(5:17 a.m.) COMSIXTHFLEET orders Liberty at least 100 miles away from coast of UAR and Israel and 25 miles from Cyprus. This message apparently not received by Liberty prior to Israeli attack.
- 8 June 3:05 p.m.
(8:05 a.m.) Liberty attacked by unidentified jet fighters which made six strafing runs. Ship at position 31-35.5N 33-29.0E (25 miles northeast of nearest land).
- 8 June 3:25 p.m.
(8:25 a.m.) Three torpedo boats, one identified as Israeli, approach ship. One boat bore number 206-T.
- 8 June 3:27 p.m.
(8:27 a.m.) Liberty fires at torpedo boat at range of 2,000 yards.
- 8 June 3:28 p.m.
(8:28 a.m.) Ship hit by torpedo. Torpedo boats cleared to east about five miles.
- 8 June 3:30 p.m.
(8:30 a.m.) COMSIXTHFLEET reports Liberty hit by torpedo at position 31-23N, 33-25E. Three unidentified gunboats approaching.

Redacted

8 June 3:50 p.m.
(8:50 a.m.) COMSIXTHFLEET orders carriers to provide
air cover for Liberty.

8 June 3:52 p.m.
(8:52 a.m.) Liberty reported under attack to
COMSIXTHFLEET

8 June 3:55 p.m.
(8:55 a.m.) Liberty reported hit by torpedo star-
board side/

8 June 3:55 p.m.
(8:55 a.m.) Two Israeli helicopters orbited ship at
range of 500 yards. Israeli torpedo
boats offered assistance which was re-
fused.

8 June 3:59 p.m.
(8:59 a.m.) Liberty still under air attack |

Redacted

Redacted

8 June 5:14 p.m.
(10:14 a.m.)

Tel Aviv reports Israeli aircraft and patrol boats attacked ship at 3:00 p.m. (8:00 a.m.) at position 31-25N, 33-33E. Suspecting a US ship, Israel rendering assistance and expresses deep regret.

8 June 6:04 p.m.
(11:04 a.m.)

The US Defense Attache in Tel Aviv reports that Israeli helicopters and the three torpedo boats searched the area until 6:04 p.m. (11:04 a.m.). The Israeli offer of assistance was declined because of the sensitive mission of the ship.

COMSIXTHFLEET then recalled the aircraft launched from the carriers America and Saratoga and sent two destroyers to assist Liberty. Liberty proceeding northwest at eight knots.

There was no further contact between Liberty and Israeli forces. Two Soviet ships have trailed the Liberty, which proceeds under escort to Malta.

USS LIBERTY

MEDITERRANEAN SEA

SEA

Deporting Track

Patrol Area

9:50 AM (2:50 AM EDT) Tel Aviv-Yafo

3:05 PM (8:05 AM EDT) Air and torpedo attack

ISRAEL

Orbited by 2 jets

Migdal Shimon

Gaza

GAZA STRIP

LEBANON

BEIRUT

Sidon

DAMASCUS

SYRIA

AMMAN

JORDAN

SAUDI ARABIA

UNITED ARAB REPUBLIC (EGYPT)

SINAI

Israel before hostilities

Areas occupied by Israel

0 25 50 100 MILES

Exhibit 2-67

CHAPTER TWO

ATTACK ON THE "LIBERTY"

THEATRE OF BATTLE AT THE TIME OF THE "LIBERTY'S" APPEARANCE.

The "Liberty" made its appearance at the theatre of operations on 8 June at the height of the war. Although it was clear that the scales were shifting in favor of Israel's rapidly advancing forces, on the Egyptian and Jordanian fronts, the end of the war was still not in sight and the Arab states had not yet agreed to a cease-fire.

The Syrians continued to shell civilian settlements all along Israel's northern front. Israeli artillery returned the fire, and artillery duels continued the entire day. Israel Air Force planes also attacked Syrian fortifications and artillery positions.

On the Jordanian front, Israel had succeeded in gaining complete control of the Jordan Valley up to the Jordan River, and Jordan declared its acceptance of a cease-fire at 1025 hours.

The naval theatre was also active. Three Egyptian submarines were cruising in the theatre of operations but their exact position was as yet undetermined.⁴ At approximately 0900 hours, submarine "tracks" west of Atlit were discovered and the enemy submarine was attacked by vessels of the Navy.⁵ After three hours, a report was received about the appearance of a submarine periscope off Rosh Hanikra. (The border checkpoint between Israel and the Lebanon, on the coast). Thus, the "Liberty" had entered an arena in which hostilities were being conducted between two belligerent parties. Moreover, Egypt herself on 23 May 1967 declared as prohibited to maritime traffic, the area off the coast, up to a distance of 14 miles from the shore.⁶

DETECTION AND IDENTIFICATION OF THE "LIBERTY".

On 8 June, at 0410 hours, an IAF "Nord" aircraft took off with a naval officer aboard serving as an aerial observer. This air reconnaissance patrol was part of the routine coastal security measures. The patrol set out at first light, parallel to Israel's shores and over the open sea. (An additional patrol of the same type proceeded from 1530 hours until nightfall?). The patrol's mission was to detect ship movements before vessels could enter coastal radar detection

range. The airborne observer would make a brief report of each detection at the moment visual contact was made; additional information would be transmitted in the debriefing, after the plane's landing. At approximately 0545, an unclear message was received from the plane at Central Coastal Command (CLC-Combat Information Center-Central Coast). After clarification with the Navy representative at Air Command, the observation plane was reported to have sighted a ship, apparently a destroyer, sailing 70 miles west of Gaza. The ship was designated as "Skunk-C" on the Control Table, and marked red - i.e. an unidentified target.

Later, at 0603 hours, an additional report arrived from the plane, which described the vessel as a supply ship of the US Navy. The report was not unusual. Aerial observers had often reported on the presence of this type of craft, but such vessels would always change direction and disappear far from the coast.⁷ Although the ship had been identified by the aerial observer, the target remained colored in red since the team at Central Coastal Command (hereafter referred to as CCC) were not positively sure of the ship's identity.⁸

At approximately 0900 hours, following the discovery of the enemy submarine off Atlit, GOC Israel Navy arrived at the (CCC) bridge. During a break in the activity surrounding the submarine, GOC Navy inquired about "Skunk-C", and after receiving an explanation concerning the vessel, instructed that the ship be marked green - i.e. a neutral craft.

At about the same time, a report arrived at Regional Control 501; the report stated that an IAF pilot, returning from a mission in Sinai, had spotted a ship 20 miles north of El-Arish and that when he had tried to identify the vessel it had opened fire upon him.⁹ Reacting to this report, Head of Naval Operations Section/3 (a section in the Naval Operations Department) instructed Israel Navy destroyers "Jaffa" and "Eilat" (who were patrolling along the coast) to turn south and verify the identity of the vessel. However, the destroyers were ordered to return to their patrol sectors at 0940 hours, after an additional report arrived from Regional Control 501, that in the light of the pilot's debriefing, there was no certainty that he had indeed been fired upon by the ship.¹⁰ The report likewise stated that, "the ship is colored grey-blue, very wide and the bridge is in the middle."

Meanwhile, the "Nord" plane which had been patrolling the sea had landed and the observer was debriefed by Lt. Commander Pinchasi, a navy representative at Air Command. The observer reported spotting the marking GTR-5,

Exhibit 2-678

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Meanwhile, the "Nord" plane which had been patrolling the sea had landed and the observer was debriefed by Lt. Commander Pinchasi, a navy representative at Air Command. The observer reported spotting the marking GTR-5,

on the ship's side. Lt. Commander Pinchasi checked the marking in a "Janes" manual and learned that the reference was to the intelligence-ship named "Liberty". He reported the information to Naval Operations Section/3 and since the reference was to an intelligence ship he likewise reported to Naval Operations Section/4 (Intelligence)¹¹.

Commander Lunz had relieved the Head of Naval Operations section/3 (who retired to rest) and was the officer who received the report. However, he did not see anything new in the debriefing but rather a complementary report to the one received at 0500 hours. Since he did not have information as to the present location of the "Liberty" he gave the order (at 1100 hours) to erase the vessel from the CCC control table. This order was given in accordance with the accepted updating procedure for maintaining an up-to-the minute picture at the CCC control table.¹²

By this action, the "Liberty" was, for all practical purposes, removed from the agenda. The detection of the "Liberty" at that location (far from the theatre of battle) was not unusual and did not require special attention or tracking. Certainly no danger was discerned that might have necessitated a response and it was reasonable to assume that the ship would turn round and sail away. In addition, it was common practice to erase targets which had disappeared from range.¹³ These were almost certainly the considerations which guided commander Lunz when he ordered the erasure of "Liberty" from the CCC control-table.¹⁴

A short time after the erasure of "Liberty" from the CCC control table, a series of events transpired which led to the detection of the ship a second time now under circumstances which led to a tragic mistake.

REPORT ON THE SHELLING OF EL-ARISH AND DISPATCHING OF THE TORPEDO BOATS.

At 1124 hours, the naval representative at Air Command reported to Naval Operation Section/3, on the shelling of El-Arish from the sea. Commander Lunz passed on the report to Chief of Naval Operations, Captain (Navy) Rahav, and he in turn instructed Lt. Commander Pinchasi, in no uncertain terms, to check the source of the report.¹⁵

The inquiry into the source of the report was ordered because of the many reports which had been received concerning shelling from the sea and which were later proven to be false. The feeling was that this report was probably no different. Lt. Commander Pinchasi was told by Air Operations Section/3

Exhibit 27

**Findings of the Independent Commission of Inquiry
into the Israeli Attack on USS *Liberty*,
the Recall of Military Rescue Support Aircraft
while the Ship was Under Attack, and the
Subsequent Cover-up by the United States Government**

CAPITOL HILL, WASHINGTON, D.C.
OCTOBER 22, 2003

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FORMER CHAIRMAN, JOINT CHIEFS OF STAFF

GENERAL RAYMOND G. DAVIS, UNITED STATES MARINE CORPS, (MOH)*
FORMER ASSISTANT COMMANDANT OF THE MARINE CORPS

REAR ADMIRAL MERLIN STARING, UNITED STATES NAVY, (RET.)
FORMER JUDGE ADVOCATE GENERAL OF THE NAVY HH

AMBASSADOR JAMES AKINS, (RET.)
FORMER UNITED STATES AMBASSADOR TO SAUDI ARABIA

We, the undersigned, having undertaken an independent investigation of Israel's attack on USS *Liberty*, including eyewitness testimony from surviving crewmembers, a review of naval and other official records, an examination of official statements by the Israeli and American governments, a study of the conclusions of all previous official inquiries, and a consideration of important new evidence and recent statements from individuals having direct knowledge of the attack or the cover up, hereby find the following: **

1. That on June 8, 1967, after eight hours of aerial surveillance, Israel launched a two-hour air and naval attack against USS *Liberty*, the world's most sophisticated intelligence ship, inflicting 34 dead and 172 wounded American servicemen (a casualty rate of seventy percent, in a crew of 294);
2. That the Israeli air attack lasted approximately 25 minutes, during which time unmarked Israeli aircraft dropped napalm canisters on USS *Liberty*'s bridge, and fired 30mm cannons and rockets into our ship, causing 821 holes, more than 100 of which were rocket-size; survivors estimate 30 or more sorties were flown over the ship by a minimum of 12 attacking Israeli planes which were jamming all five American emergency radio channels;
3. That the torpedo boat attack involved not only the firing of torpedoes, but the machine-gunning of *Liberty*'s firefighters and stretcher-bearers as they struggled to save their ship and crew; the Israeli torpedo boats later returned to machine-

gun at close range three of the *Liberty's* life rafts that had been lowered into the water by survivors to rescue the most seriously wounded;

4. That there is compelling evidence that Israel's attack was a deliberate attempt to destroy an American ship and kill her entire crew; evidence of such intent is supported by statements from Secretary of State Dean Rusk, Undersecretary of State George Ball, former CIA director Richard Helms, former NSA directors Lieutenant General William Odom, USA (Ret.), Admiral Bobby Ray Inman, USN (Ret.), and Marshal Carter; former NSA deputy directors Oliver Kirby and Major General John Morrison, USAF (Ret.); and former Ambassador Dwight Porter, U.S. Ambassador to Lebanon in 1967;

5. That in attacking USS *Liberty*, Israel committed acts of murder against American servicemen and an act of war against the United States;

6. That fearing conflict with Israel, the White House deliberately prevented the U.S. Navy from coming to the defense of USS *Liberty* by recalling Sixth Fleet military rescue support while the ship was under attack; evidence of the recall of rescue aircraft is supported by statements of Captain Joe Tully, Commanding Officer of the aircraft carrier USS *Saratoga*, and Rear Admiral Lawrence Geis, the Sixth Fleet carrier division commander, at the time of the attack; never before in American naval history has a rescue mission been cancelled when an American ship was under attack;

7. That although *Liberty* was saved from almost certain destruction through the heroic efforts of the ship's Captain, William L. McGonagle (MOH), and his brave crew, surviving crewmembers were later threatened with "court-martial, imprisonment or worse" if they exposed the truth; and were abandoned by their own government;

8. That due to the influence of Israel's powerful supporters in the United States, the White House deliberately covered up the facts of this attack from the American people;

9. That due to continuing pressure by the pro-Israel lobby in the United States, this attack remains the only serious naval incident that has never been thoroughly investigated by Congress; to this day, no surviving crewmember has been permitted to officially and publicly testify about the attack;

10. That there has been an official cover-up without precedent in American naval history; the existence of such a cover-up is now supported by statements of Rear Admiral Merlin Staring, USN (Ret.), former Judge Advocate General of the Navy; and Captain Ward Boston, USN, (Ret.), the chief counsel to the Navy's 1967 Court of Inquiry of *Liberty* attack;

11. That the truth about Israel's attack and subsequent White House cover-up continues to be officially concealed from the American people to the present day and is a national disgrace;

12. That a danger to our national security exists whenever our elected officials are willing to subordinate American interests to those of any foreign nation, and specifically are unwilling to challenge Israel's interests when they conflict with American interests; this policy, evidenced by the failure to defend USS *Liberty* and the subsequent official cover-up of the Israeli attack, endangers the safety of Americans and the security of the United States.

WHEREUPON, we, the undersigned, in order to fulfill our duty to the brave crew of USS *Liberty* and to all Americans who are asked to serve in our Armed Forces, hereby call upon the Department of the Navy, the Congress of the United States and the American people to immediately take the following actions:

FIRST: That a new Court of Inquiry be convened by the Department of the Navy, operating with Congressional oversight, to take public testimony from surviving crewmembers; and to thoroughly investigate the circumstances of the attack on the USS *Liberty*, with full cooperation from the National Security Agency, the Central Intelligence Agency and the military intelligence services, and to determine Israel's possible motive in launching said attack on a U.S. naval vessel;

SECOND: That every appropriate committee of the Congress of the United States investigate the actions of the White House and Defense Department that prevented the rescue of the USS *Liberty*, thereafter threatened her surviving officers and men if they exposed the truth, and covered up the true circumstances of the attack from the American people; and

THIRD: That the eighth day of June of every year be proclaimed to be hereafter known as USS *LIBERTY* REMEMBRANCE DAY, in order to commemorate USS *Liberty's* heroic crew; and to educate the American people of the danger to our national security inherent in any passionate attachment of our elected officials for any foreign nation.

We, the undersigned, hereby affix our hands and seals, this 22nd day of October, 2003.

**Thomas H. Moorer
Former Chairman, Joint Chiefs of Staff**

**General of Marines Raymond G. Davis, USMC, MOH*
Merlin Staring
Rear Admiral Merlin Staring, USN, Ret.,
Former Judge Advocate General of the Navy,**

James Akins

Ambassador James Akins, Ret.,

Former United States Ambassador to Saudi Arabia,

***IN MEMORIAM: General of Marines Raymond G. Davis, one of America's most decorated military heroes (including the Congressional Medal of Honor), Vice Chairman of this panel and one of the principal members of this Independent Commission of Inquiry, passed away in Conyers, Georgia, on September 3, 2003.**

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WASHINGTON REPORT ON MIDDLE EAST AFFAIRS

December 2003, pages 14-15

Special Report

Cristol Claim of 13 Investigations Into Israel's Attack on USS *Liberty* a Travesty

By Terence O'Keefe

When A. Jay Cristol's *The Liberty Incident* was released a year ago, it was uncritically hailed as the last word in the 36-year controversy surrounding Israel's 1967 attack on the USS *Liberty* that took 34 American lives and wounded 172. The book was packed with tedious minutiae arguing the case. Indeed, if its author is to be believed, *Liberty* survivors have engaged in a 36-year slander against the state of Israel—which was guilty, at worst, of a grievous mistake in the heat of war.

"Thirteen investigations have all exonerated Israel," is Cristol's mantra.

Like many others, I found the author's case initially persuasive. Here, after all, is a federal judge, a Navy captain, author, scholar, former Navy lawyer and apparently a combat fighter pilot who claims to have studied this matter for 15 years, with an open mind, and who finally was forced to conclude that it was a tragic accident. Those who say otherwise, I agreed, must be either mistaken or malicious.

But the survivors are persuasive, too—and Cristol dismisses their eyewitness accounts out-of-hand. Eyewitnesses, he claims, are not reliable, as they are too close to the event to be believed. Better to rely upon dispassionate historians such as himself who examine the evidence later, with a cooler and more objective vision.

It was with that view that I decided to examine both the Cristol and the *Liberty* positions in an effort to find where the truth lies. For more than a year I queried survivors and Mr. Cristol himself, seeking facts, evidence and the truth.

To most questions, Cristol points to his account of 13 exonerating investigations, so I focused closely on those. Here is the result:

Cristol's 13 Investigations

1. The U.S. Navy Court of Inquiry: The senior legal adviser to the Court of Inquiry reflected that, in his entire career, he has never seen court of inquiry appointing letters with such limited authority, or an investigation made in such haste. The court's hearings began before the *Liberty* even arrived in Malta, and the report was completed just 10 days after the attack. The court commented on this haste in the official record: "The Court of Inquiry experienced no unusual difficulties incident to conducting the subject proceedings except for the necessity of investigating such a major naval disaster of international significance in an extremely abbreviated time frame."

Due in part to the required haste and the limitations imposed on the scope of the court's inquiries ("It was not the responsibility of the court to rule on the culpability of the attackers, and no evidence was heard from the attacking nation"), the court concluded that "available evidence combines to indicate...[that the attack was] a case of mistaken identity."

How, one might ask, could one inquire into all of the circumstances without hearing from the attacking nation? In fact, the court did neither. According to Captain Ward Boston, chief legal counsel to the Court of Inquiry, the court found that the attack was deliberate, but reported falsely that it was not because they

were directed by the president of the United States and the secretary of defense to report falsely. So the findings are fraudulent. Yet these fraudulent findings were the basis for several other reports that followed.

2. Israeli government investigations: The Ram Ron and Yerushalmi reports of 1967 were not investigations. Both were elements of an Israeli process to determine whether anyone in Israel should be tried for a crime. That the attack itself was an accident was a given. Both hearings officers determined that no one in Israel did anything wrong, and that the USS *Liberty* was partly responsible, for a number of contrived reasons, such as "failure to fly a flag" and "trying to hide"—which the Navy Court of Inquiry found to be untrue.

3. The Joint Chiefs of Staff Report of June 1967: This was an inquiry into the mishandling of several messages intended for the ship. It was not an investigation into the attack. It did not exonerate Israel, because it did not in any way consider the question of culpability.

4. CIA report of June 13, 1967: This interim report, completed five days after the attack, reported "our best judgment [is] that the attack...was a mistake." No investigation was conducted, and no first-hand evidence was collected. Then-CIA Director Richard Helms concluded and later reported in his autobiography that the attack was planned and deliberate—a fact ignored by Mr. Cristol.

5. Clark Clifford report of July 18, 1967: Clark Clifford was directed by Lyndon Johnson to review the Court of Inquiry report and the interim CIA report and "not to make an independent inquiry." His was merely a summary of other fallacious reports, not an "investigation" as alleged by Mr. Cristol. The report reached no conclusions and did not exonerate Israel, as Mr. Cristol also claimed. On the contrary, Clifford wrote later that he regarded the attack as deliberate—a fact ignored by Mr. Cristol.

6. and 7. Two Senate Investigations: The Committee on Foreign Relations meeting of 1967 and Senate Armed Services Committee meeting of 1968 were hearings on unrelated matters which clearly skeptical members used to castigate representatives of the administration under oath before them. Typical questions were, "Why can't we get the truth about this?" They were not "investigations" at all, but budget hearings, and reported no conclusions concerning the attack. They did not exonerate Israel, as claimed by Mr. Cristol.

8. House Appropriations Committee meeting of April and May 1968: This was a budget committee meeting which explored the issue of lost messages intended for the ship. It was not an investigation and reported no conclusions concerning the attack, as alleged by Mr. Cristol.

9. House Armed Services Committee Review of Communications, May 1971: *Liberty* communications were discussed along with other communications failures. The committee reported no conclusions concerning the attack, as alleged by Mr. Cristol.

10. Senate Select Committee on Intelligence, 1979/1981: Mr. Cristol claims that the committee investigated the attack and exonerated Israel, yet he has been unable to provide minutes, a report or other evidence of such an investigation. Rules of the select committee require that any committee investigation be followed by a report. There is no report of such an investigation; ergo, there was no such investigation.

11. National Security Agency Report, 1981: Upon the publication in 1980 of *Assault on the Liberty* by James Ennes, the National Security Agency completed a detailed account of the attack. The report drew no conclusions, although its authors did note that the deputy director dismissed the Israeli excuse (the Yerushalmi report) as "a nice whitewash." The report did not exonerate Israel, as claimed by Mr. Cristol.

12. State of Israel—Israel Defense Force History Department report of June 1982: This Israeli government report was a reaction to a published report by Sen. Adlai Stevenson III that he believed the attack to be deliberate and hoped to provide a forum for survivors to tell their story. It was primarily a summary of the Ram Ron and Yerushalmi reports. The Stevenson forum, which was the impetus for the report, was never held. The report supports the official Israeli position that the attack was a tragic accident.

13. House Armed Services Committee investigation of 1991/1992: Though cited by Mr. Cristol as an investigation which exonerates Israel, the U.S. government reports no record of such an investigation. Cristol claims that the investigation resulted from a letter to Rep. Nicholas Mavroules from Joe Meadors, then-president of the USS *Liberty* Veterans Association, seeking Mavroules' support. Instead of responding

to *Liberty* veterans, however, Congressman Mavroules referred the matter to Mr. Cristol for advice. Survivors heard nothing further. Meadors' letter was never answered. The U.S. government reports that there has been no such investigation.

Time for a Real Investigation

Liberty survivors have said for 36 years that theirs is the only major maritime incident not investigated by Congress. Apologist Cristol's response is to claim that no investigation is needed because the attack has been investigated repeatedly, and that each such investigation has exonerated Israel. That claim is pure fantasy. A recent request to the Congressional Research Service for evidence of any congressional inquiry into the attack on the USS *Liberty* brought a report that Congress has never investigated the attack. Israeli culpability for the attack on the USS *Liberty* has never been investigated by any agency of the United States government. It should be.

Terence O'Keefe is a CPA working on a master's degree in strategic intelligence at the American Military University. He plans to write his thesis on the Liberty attack.

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on the ship's side. Lt. Commander Pinchasi checked the marking in a "Janes" manual and learned that the reference was to the intelligence-ship named "Liberty". He reported the information to Naval Operations Section/3 and since the reference was to an intelligence ship he likewise reported to Naval Operations Section/4 (Intelligence)¹¹.

Commander Lunz had relieved the Head of Naval Operations section/3 (who retired to rest) and was the officer who received the report. However, he did not see anything new in the debriefing but rather a complementary report to the one received at 0500 hours. Since he did not have information as to the present location of the "Liberty" he gave the order (at 1100 hours) to erase the vessel from the CCC control table. This order was given in accordance with the accepted updating procedure for maintaining an up-to-the minute picture at the CCC control table.¹²

By this action, the "Liberty" was, for all practical purposes, removed from the agenda. The detection of the "Liberty" at that location (far from the theatre of battle) was not unusual and did not require special attention or tracking. Certainly no danger was discerned that might have necessitated a response and it was reasonable to assume that the ship would turn round and sail away. In addition, it was common practice to erase targets which had disappeared from range.¹³ These were almost certainly the considerations which guided commander Lunz when he ordered the erasure of "Liberty" from the CCC control-table.¹⁴

A short time after the erasure of "Liberty" from the CCC control table, a series of events transpired which led to the detection of the ship a second time now under circumstances which led to a tragic mistake.

REPORT ON THE SHELLING OF EL-ARISH AND DISPATCHING OF THE TORPEDO BOATS.

At 1124 hours, the naval representative at Air Command reported to Naval Operation Section/3, on the shelling of El-Arish from the sea. Commander Lunz passed on the report to Chief of Naval Operations, Captain (Navy) Rahav, and he in turn instructed Lt. Commander Pinchasi, in no uncertain terms, to check the source of the report.¹⁵

The inquiry into the source of the report was ordered because of the many reports which had been received concerning shelling from the sea and which were later proven to be false. The feeling was that this report was probably no different. Lt. Commander Pinchasi was told by Air Operations Section/3

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CHAPTER 5

Principles and Sources of the Law of Armed Conflict

5.1 WAR AND THE LAW

Article 2 of the United Nations Charter requires all nations to settle their international disputes by peaceful means and to refrain from the threat or use of force against the territorial integrity or political independence of other nations. The United Nations Charter prohibits the use of force by member nations except as an enforcement action taken by or on behalf of the United Nations (as in the Gulf War) or as a measure of individual or collective self-defense.¹ It is important to distinguish between resort to armed conflict, and the law governing the conduct of armed conflict. Regardless of whether the use of armed force in a particular circumstance is prohibited by the United Nations Charter (and therefore unlawful),² the manner in which the resulting armed conflict is conducted continues to be

¹ United Nations Charter, arts. 2(3), 2(4), 42 & 51-53. These provisions concerning the use of force form the basis of the modern rules governing the resort to armed conflict, or *jus ad bellum*. See paragraph 4.1.1 and notes 7-9 thereunder (pp. 4-2 - 4-6). See also Kellogg-Briand Pact, or the Treaty for the Renunciation of War as an Instrument of National Policy, Paris, 27 August 1928, 46 Stat. 2343, T.S. No. 796, 2 Bevans 732, 94 L.N.T.S. 57.

The relationship concerning resort to war (*jus ad bellum*), relations between combatant nations during war (*jus in bello*), and the law of neutrality in the late 20th Century, is considered in Greenwood, *The Concept of War in Modern International Law*, 36 Int'l & Comp. L.Q. 283 (1987). See also Dinstein, *War, Aggression and Self-Defense* (2d ed. 1994) at 155-61; Green, *The Contemporary Law of Armed Conflict* (1993) at 59-60. *Jus in bello* is discussed further in note 4 (p. 5-2).

² Wars violating these principles are often called "aggressive" or "illegal" wars. Military personnel may not be lawfully punished simply for fighting in an armed conflict, even if their side is clearly the aggressor and has been condemned as such by the United Nations. This rule finds firm support in the Allied war crimes trials that followed World War II. For the crime of planning and waging aggressive war (defined as a crime against peace, see paragraph 6.2.5, note 55 (p. 6-22)), the two post-World War II International Military Tribunals punished only those high ranking civilian and military officials engaged in the formulation of war-making policy. The twelve subsequent Proceedings at Nuremberg rejected all efforts to punish lesser officials for this crime merely because they participated in World War II. See DA Pam 27-161-2, at 221-51.

Because nations have traditionally claimed that their wars are wars of self-defense, the courts of the Western Allies were unwilling to punish officials of the Axis powers for waging aggressive war if the officials were not at the policy-making level of government. One of the American tribunals at Nuremberg stated, "we cannot say that a private citizen shall be placed in the position of being compelled to determine in the heat of war whether his government is right or wrong, or, if it starts right, when it turns wrong." *The I.G. Farben Case*, 8 TWC 1126, 10 LRTWC 39 (1949).

Since armed force can lawfully be used today only in individual or collective self-defense (or as an enforcement action authorized by the United Nations Security Council in accordance with Chapter VII of the U.N. Charter), the unlawful use of armed force constitutes a crime against peace under international law. Crimes against peace are defined in art. 6 of the Charter of the International Military Tribunal at Nuremberg and are discussed in paragraph 6.2.5, note 55 (p. 6-22).

The Charter of the International Military Tribunal convened at Nuremberg in 1945 empowered the Tribunal to try individuals for international crimes, including initiation or waging of a war of aggression as a crime against peace. This was
(continued...)

regulated by the law of armed conflict.³ (For purposes of this publication, the term "law of armed conflict" is synonymous with "law of war.")⁴

²(...continued)

confirmed as a principle of international law by the U.N. General Assembly in 1946 (Resolution 95(I)) and by the International Law Commission in 1950. In 1974, the U.N. General Assembly adopted by consensus a definition of aggression for use by the Security Council in determining if an act of aggression had been committed:

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Resolution 3314 (XXIX), 29 U.N. GAOR, Supp. 31, v.1, U.N. Doc. A/9631, at 142 (1974); Dep't St. Bull., 3 Feb. 1975, at 158-60; AFP 110-20, at 5-78 & 5-79.

This statement is amplified by a series of examples of uses of armed force which, unless otherwise justified in international law or determined by the Security Council not to be of sufficient gravity, would permit the Security Council reasonably to consider to qualify as potential acts of aggression. Among these examples are invasion, the use of any weapons by a nation against the territory of another nation, the imposition of a blockade, an attack by the armed forces of one nation upon the armed forces of another nation, or the sending of armed bands, irregulars or mercenaries against another State. (See paragraph 7.7 (p. 7-26) regarding blockade.) Although neither the International Military Tribunal judgment nor U.N. General Assembly Resolutions are primary sources of international law (see Preface, note 4 (p. 3)), they are generally consistent with the current U.S. view of aggression. Dep't St. Bull., 3 Feb. 1975, at 155-58.

³ See paragraph 6.2.5 (war crimes under international law) (p. 6-21).

⁴ Joint Pub. 1-02, at 206. The rules governing the actual conduct of armed conflict are variously known as the *ius in bello*, the law of armed conflict (law of war), or international humanitarian law. See paragraph 6.2.2, note 34 (p. 6-13).

As a matter of international law, application of the law of armed conflict between belligerents does not depend on a declaration or other formal recognition of the existence of a state of "war," but on whether an "armed conflict" exists, and if so, whether the armed conflict is of an "international" or a "noninternational" character. As a matter of national policy, the Armed Forces of the United States are required to comply with the law of armed conflict in the conduct of military operations and related activities in armed conflict "however such conflicts are characterized." DOD Directive 5100.77, Subj: DOD Law of War Program (in draft as of 1 November 1997). See paragraph 5.4.1, note 15 (p. 5-9) regarding the Lieber Code and also paragraph 6.1.2 (p. 6-2).

Although it is frequently difficult to determine when a situation involving violent activity becomes an "armed conflict," there is general agreement that *internal disturbances* and *tensions* are not armed conflicts. Examples of internal disturbances and tensions include:

- riots (i.e., all disturbances which from the start are not directed by a leader and have no concerted intent)
- isolated and sporadic acts of violence (as distinct from military operations carried out by armed forces or organized armed groups)
- other acts of a similar nature (such as mass arrests of persons because of their behavior or political opinion).

GP II, art. 1(2); ICRC, Commentary on the Draft Additional Protocols to the Geneva Conventions of August 12, 1949, at 133 (1973), *quoted in* Bothe, Partsch & Solf 628 n.9. The ICRC Commentary (GP II) (para. 4477, at 1355) distinguishes internal disturbances from internal tensions. "Internal disturbances" occur when the State uses armed force to maintain order. "Internal tensions" refers to those circumstances when force is used as a preventive measure to maintain respect for law and order.

(continued...)

5.2 GENERAL PRINCIPLES OF THE LAW OF ARMED CONFLICT

The law of armed conflict seeks to prevent unnecessary suffering and destruction by controlling and mitigating the harmful effects of hostilities through minimum standards of protection to be accorded to "combatants" and to "noncombatants" and their property.⁵ (See paragraphs 5.3 and 11.1.) To that end, the law of armed conflict provides that:

⁴(...continued)

"International" armed conflicts include cases of declared war or any other armed conflict between two or more nations even if the state of war is not recognized by one of them. Common article 2. All other armed conflicts are "noninternational armed conflicts," governed at least by common article 3 of the 1949 Geneva Conventions, and by GP II for nations bound by it if the situation meets the criteria set forth in art. 1(1) thereof (*i.e.*, there must be an armed conflict occurring in the territory of the nation bound by GP II between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement GP II). The United States interprets GP II as applying to all conflicts covered by common article 3, and encourages all other nations to do likewise. Letter of Transmittal, Jan. 29, 1987, Senate Treaty Doc. 100-2, at 7. *See* Annex A5-1 (p. 5-17). *See also* International Humanitarian Law and Non-International Armed Conflicts, 1990 Int'l Rev. Red Cross 383-408; Levie, *The Law of Non-International Armed Conflict* (1987). "Armed forces" are discussed in paragraph 5.3, note 11 (p. 5-7). *See* paragraph 5.4.2, note 34 (p. 5-13) regarding the U.S. decision not to seek ratification of GP I.

The spectrum of conflict, reflecting the threshold criteria, is illustrated in Figure A5-1 (p. 5-23). Among recent international armed conflicts are the Iran-Iraq War (1980-1988), the Libya-Chad War (1987-1988), the China-Vietnam Conflict (1979), and the Soviet-Afghanistan War (1979-88). Although some have categorized the latter as an internal conflict in which foreign troops participated, others list it as an international conflict. Reisman & Silk, *Which Law Applies to the Afghan Conflict?*, 82 Am. J. Int'l L. 459, 485-86 (1988) (Soviet invasion resisted by loyal Afghan government troops met the criteria of common article 2(1), and was followed by occupation meeting the criteria of common article 2(2)); Roberts, *What is Military Occupation?*, 55 Brit. Y.B. Int'l L. 249, 278 (1984) (Soviet occupation may well have met the criteria of common article 2(2)). Certainly the Falkland (Malvinas) Islands War between the United Kingdom and Argentina (1982) and the Persian Gulf Conflict of 1990-1991 (Iraqi invasion of Kuwait and the U.N.-authorized coalition response—*e.g.* OPERATION DESERT STORM) constituted international armed conflicts. The U.S. has steadfastly held that the Vietnam War (1961-1975) was an international armed conflict. U.S. Department of State, *The Legality of United States Participation in the Defense of Viet-Nam*, 54 Dep't. of State Bull. 474 (March 28, 1966). For a wide ranging discussion of this issue as it pertains to Vietnam *see* *The Vietnam War and International Law*, Am. Soc. Int'l L., 4 vols. (Falk ed. 1968-76). Among recent non-international armed conflicts are the Nicaraguan Civil War (1979-90), the ongoing Sri Lanka Civil War (1983-present), the Chechnya Separatist Conflict (1991-1997), and the Zaire (now Congo) Civil War (1997).

⁵ As long as war occurs, the law of armed conflict remains an essential body of international law. During such strife, the law of armed conflict provides common ground of rationality between enemies. This body of law corresponds to the mutual interests of belligerents during conflict and constitutes a bridge for a new understanding after the end of the conflict. The law of armed conflict is intended to preclude purposeless, unnecessary destruction of life and property and to ensure that violence is used only to defeat the enemy's military forces. The law of armed conflict inhibits warfare from needlessly affecting persons or things of little military value. By preventing needless cruelty, the bitterness and hatred arising from armed conflict is lessened, and thus it is easier to restore an enduring peace. The legal and military experts who attempted to codify the laws of war more than a hundred years ago reflected this when they declared that the final object of an armed conflict is the "re-establishment of good relations and a more solid and lasting peace between the belligerent States." Final Protocol of the Brussels Conference of 27 August 1874, Schindler & Toman 26. *See also* Green, *Why is There—The Law of War?*, 5 Finn. Y.B. Int'l L. 1994 at 99-148.

1. Only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required for the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources may be applied.⁶

⁶ This concept, often referred to as the principle of "necessity" or "military necessity," is designed to limit the application of military force in armed conflict to that which is in fact required to carry out a lawful military purpose. See Bothe, Partsch & Solf at 194-95. Too often, "military necessity" is misunderstood and misapplied to support an application of military force that is unlawful under the misapprehension that the "military necessity" of mission accomplishment justifies that result. *The Hostages Case (United States v. List et al.)*, 11 TWC 1253-54 (1950); McDougal & Feliciano 523-25; AFP 110-31, at 1-5 & 1-6; FM 27-10, at 3 & 4. See also the definition of "military necessity" in de Muliner, Handbook on the Law of War for Armed Forces (1987) at Rule 352. In *The Hostages Case*, the Court explained this principle in the following terms:

Military necessity has been invoked by the defendants as justifying the killing of innocent members of the population and the destruction of villages and towns in the occupied territory. Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money. In general, it sanctions measures by an occupant necessary to protect the safety of his forces and to facilitate the success of his operations. It permits the destruction of life of armed enemies and other persons whose destruction is incidentally unavoidable by the armed conflicts of the war; it allows the capturing of armed enemies and others of peculiar danger, but it does not permit the killing of innocent inhabitants for purposes of revenge or the satisfaction of a lust to kill. The destruction of property to be lawful must be imperatively demanded by the necessities of war. Destruction as an end in itself is a violation of international law. There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces. It is lawful to destroy railways, lines of communication, or any other property that might be utilized by the enemy. Private homes and churches even may be destroyed if necessary for military operations. It does not admit the wanton devastation of a district or the willful infliction of suffering upon its inhabitants for the sake of suffering alone.

11 TWC 1253-54, *quoted in* 10 Whiteman 386-87. See also paragraph 6.2.5.5.2 (military necessity) (p. 6-36).

General Eisenhower recognized this distinction in a message on 29 December 1943 from him as Allied Commander in the Mediterranean to "all commanders":

Nothing can stand against the argument of military necessity. That is an accepted principle. But the phrase "military necessity" is sometimes used where it would be more truthful to speak of military convenience or even of personal convenience. I do not want it to cloak slackness or indifference. . . .

Historical Research Center, Maxwell Air Force Base, AL, File 622.610-2, Folder 2, 1944-45, *quoted in* Schaffer, Wings of Judgment: American Bombing in World War II, at 50 (1985) and Hapgood & Richardson, Monte Cassino 158 (1984). See also paragraph 8.5.1.6, note 122 (p. 8-26).

The principle of military necessity may be, and in many instances is, restricted in its application to the conduct of warfare by other customary or conventional rules, *i.e.*, military necessity is not a justification which supersedes all other laws of armed conflict. The minority view that all rules of warfare are subject to, and restricted by, the principle of military necessity has not been accepted by the majority of American and English authorities. Furthermore, this opinion has not been accepted by military tribunals. Indeed, it has been held by military tribunals that the plea of military necessity cannot be considered as a defense for the violation of rules which lay down absolute prohibitions (*e.g.*, the rule prohibiting the killing of prisoners of war) and which provide no exception for those circumstances constituting military necessity. Thus, one United States Military Tribunal, in rejecting the argument that the rules of warfare are always subject to the operation of military necessity, stated:

(continued...)

2. The employment of any kind or degree of force not required for the purpose of the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources, is prohibited.⁷

⁶(...continued)

It is an essence of war that one or the other side must lose and the experienced generals and statesmen knew this when they drafted the rules and customs of land warfare. In short, these rules and customs of warfare are designed specifically for all phases of war. They comprise the law for such emergency. To claim that they can be wantonly -- and at the sole discretion of any one belligerent -- disregarded when he considers his own situation to be critical, means nothing more or less than to abrogate the laws and customs of war entirely.

The Krupp Trial (Trial of Alfred Felix Alwyn Krupp von Bohlen und Halbach and Eleven Others), 10 LRTWC 139 (1949).

However, there are rules of customary and conventional law which normally prohibit certain acts, but which exceptionally allow a belligerent to commit these normally prohibited acts in circumstances of military necessity. In conventional rules, the precise formulation given to this exception varies. Some rules contain the clause that they shall be observed "as far as military necessity (military interests) permits." Examples include GWS, art. 8(3) & GWS-Sea, art. 8(3) (restricting activities of representatives or delegates of Protecting Powers); GWS, art. 33(2), GWS-Sea, art. 28 (use of captured medical supplies); GWS, art. 32(2) (return of neutral persons); GWS, art. 30(1) (return of captured medical and religious personnel); GC, arts. 16(2) (facilitating search for wounded and sick), 55(3) (limiting verification of state of food and medical supplies in occupied territories), 108(2) (limitations on relief shipments); GWS, art. 42(4), GPW, art. 23(4) and GC, art. 18(4) (visibility of distinctive emblems). Other rules permit acts normally forbidden, if "required" or "demanded" by the necessities of war. Examples include HR, art. 23(g), GWS, art. 34(2) & GC, art. 53 (permitting destruction or seizure of property); GPW, art. 126(2) & GC, art. 143(3) (limiting visits of representatives and delegates of Protecting Powers); GC, arts. 49(2) (evacuation of protected persons from occupied territory), 49(5) (detention of protected persons in areas exposed to dangers of war). Rules providing for the exceptional operation of military necessity require a careful consideration of the relevant circumstances to determine whether or not the application of otherwise excessive force is rendered necessary in order to protect the safety of a belligerent's forces or to facilitate the success of its military operations. 10 Whiteman 302 (*citing* NWIP 10-2, sec. 220(b)). *See also* paragraph 6.2.3 (p. 6-16) regarding reprisals.

⁷ *See* FM 27-10, at 3; AFP 110-31, at 1-6. This principle, directed against infliction of unnecessary suffering or superfluous injury, is referred to as the "principle of proportionality" or the "principle of humanity." The opinion is occasionally expressed that the principles of necessity and proportionality contradict each other in the sense that they serve opposing ends. This is not the case. The principle of necessity allows the use of sufficient force to accomplish a lawful purpose during armed conflict. It complements the principle of proportionality which disallows any kind or degree of force not essential for the realization of that lawful purpose. Together, the principles of necessity and proportionality make unlawful any use of force which needlessly or unnecessarily causes or aggravates human suffering or physical destruction. The real difficulty arises not from the actual meaning of the principles, but from their application in practice. 10 Whiteman 302 (*citing* NWIP 10-2, sec. 220 n.9). The rule of proportionality has been articulated in GP I, arts. 51(5)(b) and 57(2)(a)(iii). as prohibiting attacks

[W]hich may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

See Fenrick, *The Rule of Proportionality and Protocol I in Conventional Warfare*, 98 *Mil. Law Rev.* 1982 at 91. The term "concrete and direct", as used in arts. 51 and 57, refers to "the advantage anticipated from the specific military operation of which the attack is a part taken as a whole and not from isolated or particular parts of the operation." Bothe, *Partsch & Solf* 311. *See also* Solf, *Protection of Civilians* 128-35; paragraph 8.1.2.1 and notes 16-20 thereunder (incidental injury and collateral damage) (p. 8-4).

3. Dishonorable (treacherous) means, dishonorable expedients, and dishonorable conduct during armed conflict are forbidden.⁸

The law of armed conflict is not intended to impede the waging of hostilities. Its purpose is to ensure that the violence of hostilities is directed toward the enemy's forces and is not used to cause purposeless, unnecessary human misery and physical destruction. In that sense, the law of armed conflict complements and supports the principles of warfare embodied in the military concepts of objective, mass, economy of force, surprise, and security. Together, the law of armed conflict and the principles of warfare underscore the importance of concentrating forces against critical military targets while avoiding the expenditure of personnel and resources against persons, places, and things that are militarily unimportant.⁹ However, these principles do not prohibit the application of overwhelming force against enemy combatants, units and material.

⁸ See Chapter 12 and Bothe, Partsch & Solf at 201-207 regarding prohibited deceptions or perfidy.

⁹ Although the U.S. Navy has not adopted as doctrine the Principles of War, useful discussions of their application in naval tactics may be found in Hughes, Fleet Tactics 140-45 & 290-97 (1986); Eccles, Military Concepts and Philosophy 108-13 (1965); and Brown, The Principles of War, U.S. Naval Inst. Proc., June 1949, at 621. The Marine Corps, Army and Air Force have adopted variations of the principles of war as service doctrine: U.S. Marine Corps, Marine Rifle Company/Platoon, FMFM 6-4, para. 1403 (1978); U.S. Air Force, Basic Aerospace Doctrine, AFM 1-1, March 1992, vol. II at 9-15; Department of the Army, Operations, FM 100-5, at 2-4 to 2-5 (1993); Armed Forces Staff College, Joint Staff Officer's Guide, Pub 1, para. 101, at p. 1-3 (1993); Joint Pub 3-0, Doctrine for Joint Operations, 1 February 1995 at II-1. The principles of war in any case are not a set of inflexible rules; rather they are "good tools to sharpen the mind," and are essential elements in successful military operations. Eccles 113.

The principle of *the objective* provides that every military undertaking must have an objective, that is, it must be directed toward a clearly defined goal and all activity must contribute to the attainment of that goal. Military objectives necessarily support national objectives--in peace as well as in war--and, more directly, support the national war aims during conflict. The law of armed conflict supports this principle by assisting in defining what is politically and legally obtainable.

The principle of *concentration* or *mass* states that to achieve success in war it is essential to concentrate superior forces at the decisive place and time in the proper direction, and to sustain this superiority at the point of contact as long as it may be required. With the law of armed conflict, this principle serves, in part, to employ the proper economy of force at or in the decisive points and to enable maximum total effective force to be exerted in achieving the objective.

Economy of force means that no more--or less--effort should be devoted to a task than is necessary to achieve the objective. This implies the correct selection and use of weapons and weapon systems, maximum productivity from available weapons platforms, and careful balance in the allocation of tasks. This principle is consistent with the fundamental legal principle of proportionality.

Surprise results from creating unexpected situations or from taking courses of least probable expectation--both considered from the enemy point of view and both designed to exploit the enemy's consequent lack of preparedness. It permits the attaining of maximum effect from a minimum expenditure of effort. The lawfulness of such techniques as deception supports surprise.

Security embraces all measures which must be taken to guard against any form of counter-stroke which the enemy may employ to prevent the attainment of the objective or to obtain its own objective. Security implies the gaining of enemy intelligence. Surveillance and spying are not prohibited by international law including the law of armed conflict.

Other principles of war are: *unity of command* which ensures that all efforts are focused on a common goal or objective; *maneuver* which seeks to place the enemy in a position of disadvantage through the flexible application of combat power; and *offensive* which, contemplates seizing, retaining and exploiting the initiative.

5.3 COMBATANTS AND NONCOMBATANTS

The law of armed conflict is based largely on the distinction to be made between combatants and noncombatants. In accordance with this distinction, the population of a nation engaged in armed conflict is divided into two general classes: armed forces (combatants) and the civilian populace (noncombatants). Each class has specific rights and obligations in time of armed conflict, and no single individual can be simultaneously a combatant and a noncombatant.¹⁰

The term "combatant" embraces those persons who have the right under international law to participate directly in armed conflict during hostilities. Combatants, therefore, include all members of the regularly organized armed forces of a party to the conflict (except medical personnel, chaplains, civil defense personnel, and members of the armed forces who have acquired civil defense status), as well as irregular forces who are under responsible command and subject to internal military discipline, carry their arms openly, and otherwise distinguish themselves clearly from the civilian population.¹¹

Conversely, the term "noncombatant" is primarily applied to those individuals who do not form a part of the armed forces and who otherwise refrain from the commission or direct support of hostile acts. In this context, noncombatants and, generally, the civilian population, are synonymous. The term noncombatants may, however, also embrace certain categories of persons who, although members of or accompanying the armed forces, enjoy special protected status, such as medical officers, corpsmen, chaplains, technical (i.e., contractor) representatives, and civilian war correspondents. (See Chapter 11.) The term is also applied

¹⁰ 10 Whiteman 135 (citing NWIP 10-2, para. 221a). Chapter 11 discusses noncombatants in detail. See HR, art. 3(2); GP I, art. 43(2).

¹¹ The "armed forces" of a Party to an armed conflict include all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict. GP I, art. 43(1). Other requirements for combatant status are discussed in paragraph 11.7 (p. 11-9), especially notes 52 & 53 and accompanying text. See also de Preux, Synopsis VII: Combatant and prisoner-of-war status, 1989 Int'l Rev. Red Cross 43.

Persons acting on their own in fighting a private war, including gangs of terrorists acting on their own behalf and not linked to an entity subject to international law, are not lawful combatants. See paragraph 12.7.1 (p. 12-8), and Baxter, So-Called Unprivileged Belligerency: Spies, Guerrillas and Saboteurs, 28 Brit. Y.B. Int'l L. 323 (1951), regarding illegal combatants.

On identification of combatants and noncombatants, see de Preux, Synopsis IV: Identification--Fundamental Principle, 1985 Int'l Rev. Red Cross 364. For a discussion of the obligation of members of an irregular force to carry their arms openly and otherwise distinguish themselves from the civilian population, see paragraph 11.7 and note 53 thereunder (p. 11-12). On respect for persons protected by the Geneva Conventions, see Green, Contemporary Law of Armed Conflict, 1993, chaps. 10 & 11; de Preux, Synopsis IX: Respect for the Human Being in the Geneva Conventions, 1989 Int'l Rev. Red Cross 217.

to armed forces personnel who are unable to engage in combat because of wounds, sickness, shipwreck, or capture.¹²

Under the law of armed conflict, noncombatants must be safeguarded against injury not incidental to military operations directed against combatant forces and other military objectives. In particular, it is forbidden to make noncombatants the object of attack.¹³

Because only combatants may lawfully participate directly in armed combat, noncombatants that do so are acting unlawfully and are considered illegal combatants. See paragraphs 11.5 (Medical Personnel and Chaplains) and 12.7.1 (Illegal Combatants).

5.4 SOURCES OF THE LAW OF ARMED CONFLICT

As is the case with international law generally, the principal sources of the law of armed conflict are custom, as reflected in the practice of nations, and international agreements.¹⁴

5.4.1 Customary Law. The customary international law of armed conflict derives from the practice of military and naval forces in the field, at sea, and in the air during hostilities. When such a practice attains a degree of regularity and is accompanied by the general conviction among nations that behavior in conformity with that practice is obligatory, it can be said to have become a rule of customary law binding upon all nations. It is frequently difficult to determine the precise point in time at which a usage or practice of warfare evolves into a customary rule of law. In a period marked by rapid developments in technology, coupled with the broadening of the spectrum of conflict to encompass insurgencies and state-sponsored terrorism, it is not surprising that nations often disagree as to the precise content of an accepted practice of armed conflict and to its status as a rule of law. This lack of precision in the definition and interpretation of rules of customary law has been a principal motivation behind efforts to codify the law of armed conflict through written

¹² 10 Whiteman 135, *citing* NWIP 10-2, para. 221a n.12; Kalshoven, *Noncombatant Persons*, in Robertson, at 304-24; Green, note 11, at chap. 12. *See* paragraph 11.1 (p. 11-1).

¹³ 10 Whiteman 135, *citing* NWIP 10-2, para. 221b; Kalshoven, *Noncombatant Persons*, in Robertson, at 306-07. *See* paragraph 11.2 (protected status) (p. 11-1). For a discussion of GP I arts. 48 & 51, *see* Bothe, Partsch & Solf at 280-86 & 296-318.

¹⁴ *See* Preface (p. 3). Evidence of the law of armed conflict may also be found in national military manuals, judicial decisions, the writings of publicists, and the work of various international bodies. Documents on the Laws of War 6-9 (Roberts & Guelff eds., 2d ed. 1989). With regard to the importance of national military manuals as evidence of the law of armed conflict, *see* Reisman & Lietzau, *Moving International Law from Theory to Practice: the Role of Military Manuals in Effectuating the Law of Armed Conflict*, in Robertson, at 7-9; Green, paragraph 5.3, note 11 (p. 5-7), at chap. 2. For a listing of military manuals *see* Fleck at app. 3.

agreements (treaties and conventions.)¹⁵ However, the inherent flexibility of law built on

¹⁵ The roots of the present law of armed conflict may be traced back to practices of belligerents which arose, and grew gradually, during the latter part of the Middle Ages, primarily as a result of the influences of Christianity and chivalry. See Draper, *The Interaction of Christianity and Chivalry in the Historical Development of the Law of War*, 1965, 5 Int'l Rev. Red Cross 3; Meron, *Henry's Wars and Shakespeare's Laws* (1993); Meron, *Shakespeare's Henry the Fifth and the Law of War*, 86 Am. J. Int'l L. 1 (1992); *The Laws of War: Constraints on Warfare in the Western World* (Howard, Andreopoulos & Shulman eds. 1994) at 27-39. Unlike the savage cruelty of former times, belligerents gradually adopted the view that the realization of the objectives of war was in no way limited by consideration shown to the wounded, to prisoners, and to private individuals who did not take part in the fighting. Progress continued during the seventeenth and eighteenth centuries. Hugo Grotius codified the first rules of warfare in his *De Jure Belli ac Pacis* in 1642. These rules were widely adopted by nations, partly for ethical reasons, and partly because the remnants of chivalry were still influential among aristocratic officers.

The most important developments in the laws of armed conflict took place in the period after 1850. The French Revolution and Napoleonic Wars first introduced the concept of the citizen army. While during the 17th and 18th centuries the means of destruction were limited by the absence of industrial might and combatants were limited to a small group of professional soldiers, the distinction between combatants and noncombatants becoming blurred as armed forces began to rely upon the direct support of those who remained at home. Limitations on the means of destruction were also in transition, as by the middle of the 19th century the effect of the industrial revolution was beginning to be felt on the battlefield. A combination of the increased killing power of artillery, the inadequacy of field medical treatment and the outmoded infantry tactics resulted in unprecedented battlefield losses. The public reaction to the particularly harsh experiences of the Crimean War (1854-56) and the United States' Civil War, renewed the impetus for the imposition of limits on war and demonstrated the need for more precise written rules of the law of armed conflict to replace the vague customary rules. The horrors of the Battle of Solferino in northern Italy in 1859 resulted in the formation of the Red Cross movement in 1863. Dunant, *The Battle of Solferino* (1861). (See paragraph 6.2.2 (p. 6-12) for a description of the ICRC and its activities.) It was in this light that the first conventions to aid the sick and wounded were concluded at Geneva in 1864. (See Pictet, *The First Geneva Convention*, 1989 Int'l Rev. Red Cross 277.) In the United States, President Lincoln commissioned Dr. Francis Lieber, then a professor at Columbia College, New York City, to draft a code for the use of the Union Army during the Civil War. His code was revised by a board of Army officers, and promulgated by President Lincoln as General Orders No. 100, on 24 April 1863, as the Instructions for the Government of Armies of the United States in the Field. (See Baxter, *The First Modern Codification of the Law of War*, 3 Int'l Rev. Red Cross 1963 at 171; Solf, *Protection of Civilians* 121; Hoffman, *The Customary Law of Non-International Armed Conflict: Evidence from the United States Civil War*, 1990 Int'l Rev. Red Cross 322.) The Lieber Code strongly influenced the further codification of the law of armed conflict and the adoption of similar regulations by many nations, including the Oxford Manual of 1880; Declaration of Brussels of 1874; and the United States Naval War Code of 1900, and had a great influence on the drafters of Hague Convention No. II (1899), replaced by Hague Convention IV (1907) regarding the Laws and Customs of War on Land. The 1907 Hague Regulations annexed to Hague IV have been supplemented by the 1949 Geneva Convention Relative to Protection of Civilians in Time of War, the 1949 Convention Relative to the Treatment of Prisoners of War, the 1977 Protocols Additional to the 1949 Geneva Conventions, and the 1980 Conventional Weapons Convention, as amended. The principles of customary international law codified in such treaties are identified in the relevant notes to the text.

In the past half century there has been a marked tendency to include among the sources of the rules of warfare certain principles of law adopted by many nations in their domestic legislation. The Statute of the International Court of Justice includes within the sources of international law which it shall apply, "the general principles of law recognized by civilized nations." Statute of the I.C.J., art. 38, para. 1.c. In the judgment rendered in *The Hostages Case*, the United States Military Tribunal stated:

The tendency has been to apply the term "customs and practices accepted by civilized nations generally," as it is used in international law, to the laws of war only. But the principle has no such restricted meaning. It applies as well to fundamental principles of justice which have been accepted and adopted by civilized nations generally. In determining whether such a fundamental rule of justice is entitled to be declared a principle of international law, an examination of the municipal laws of states in the family of nations will reveal the answer. If it is found to have been accepted generally as a fundamental rule of justice by most

(continued...)

custom and the fact that it reflects the actual--albeit constantly evolving--practice of nations, underscore the continuing importance of customary international law in the development of the law of armed conflict.¹⁶

5.4.2 International Agreements. International agreements, whether denominated as treaties, conventions, or protocols, have played a major role in the development of the law of armed conflict. Whether codifying existing rules of customary law or creating new rules to govern future practice, international agreements are a source of the law of armed conflict. Rules of law established through international agreements are ordinarily binding only upon those nations that have ratified or adhered to them. Moreover, rules established through the treaty process are binding only to the extent required by the terms of the treaty itself as limited by the reservations, if any, that have accompanied its ratification or adherence by individual nations.¹⁷ Conversely, to the extent that such rules codify existing customary law or otherwise come, over time, to represent a general consensus among nations of their obligatory nature, they are binding upon party and non-party nations alike.¹⁸

¹⁵(...continued)

nations in their municipal law, its declaration as a rule of international law would seem to be fully justified.

United States v. List et al., 11 TWC 1235 (1950).

¹⁶ The role of customary international law in developing the law of armed conflict is cogently discussed in the introduction to Documents on the Law of War, note 14 (p. 5-8), at 4-6. See Meron, Human Rights and Humanitarian Norms as Customary Law (1989) and Meron, The Geneva Conventions As Customary Law, 81 Am. J. Int'l L. 348 (1987). See also Bruderlein, Custom in International Humanitarian Law, 1991 Int'l Rev. Red Cross 579.

¹⁷ Vienna Convention on the Law of Treaties, art. 21, reprinted in 8 Int'l Leg. Mat'ls 679 (1969). Numerous multilateral agreements contain a provision similar to that contained in article 28 of Hague Convention No. XIII (1907) that "The provisions of the present Convention do not apply except between the Contracting Powers, and only if all the belligerents are parties to the Convention." The effects of this so called "general participation" clause have not been as far-reaching as might be supposed. In World Wars I and II and the Korean War, belligerents frequently affirmed their intention to be bound by agreements containing the general participation clause regardless of whether or not the strict requirements of the clause were actually met. In practice, prize courts during and after WW I disregarded the non-participation of non-naval belligerents. *The Blood* [1922] 1 A.C. 313.

¹⁸ Certain conventions have been generally regarded either as a codification of pre-existing customary law or as having come to represent, through widespread observance, rules of law binding upon all States. Both the International Military Tribunals at Nuremberg and for the Far East treated the general participation clause in Hague Convention No. IV (1907), Respecting the Laws and Customs of War on Land, as irrelevant. They also declared that the general principles laid down in the 1929 Geneva Convention relative to the Treatment of Prisoners of War, which does not contain a general participation clause, were binding on signatories and nonsignatories alike. *Nazi Conspiracy and Aggression: Opinion and Judgment* 83, U.S. Naval War College, International Law Documents 1946-1947, at 281-82 (1948); *IMTFE*, Judgment 28, U.S. Naval War College, International Law Documents 1948-49, at 81 (1950). Art. 2, para. 3, of all four 1949 Geneva Conventions states:

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Similar provisions are contained in art. 96 of GP I and art. 7 of the 1980 Conventional Weapons Convention, as amended.

(continued...)

Principal among the international agreements reflecting the development and codification of the law of armed conflict are the Hague Regulations of 1907, the Gas Protocol of 1925, the Geneva Conventions of 1949 for the Protection of War Victims, the 1954 Hague Cultural Property Convention, the Biological Weapons Convention of 1972, and the Conventional Weapons Convention of 1980. Whereas the 1949 Geneva Conventions and the 1977 Protocols Additional thereto address, for the most part, the protection of victims of war, the Hague Regulations, the Geneva Gas Protocol, 1993 Chemical Weapons Convention, Hague Cultural Property Convention, Biological Weapons Convention, and the Conventional Weapons Convention are concerned, primarily, with controlling the means and methods of warfare.¹⁹ The most significant of these agreements (for purposes of this publication) are listed chronologically as follows:

¹⁸(...continued)

This subject is explored in detail in Meron, *The Geneva Conventions as Customary Law*, 81 *Am. J. Int'l L.* 348 (1987); Meron, *Human Rights and Humanitarian Norms as Customary Law* (1989). *Cf.* Solf, *Protection of Civilians* 124, text accompanying nn. 39-41.

For efforts to identify those provisions of GP I which codify existing international law, *see* Penna, *Customary International Law and Protocol I: An Analysis of Some Provisions*, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* 201 (Swinarski ed. 1984); Cassese, *The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law*, 3 *UCLA Pac. Bas. L.J.* 55-118 (1984) (GP I and II); *The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 *Am. U.J. Int'l L. & Policy* 422-28 (1987) (remarks of U.S. Department of State Deputy Legal Adviser Matheson); Hogue, *Identifying Customary International Law of War in Protocol I: A Proposed Restatement*, 13 *Loy. L.A. Int'l & Comp. L.J.* 279 (1990).

¹⁹ The major treaties on naval warfare presently in force date back to 1907, before the large scale use of submarines and aircraft in naval operations. The 1936 London Protocol on submarine warfare resulted from attempts by traditionalists to require submarines, which at that time generally attacked while on the surface, to adhere to rules governing methods of attack applicable to surface combatants. *See* Levie, *Submarine Warfare: With Emphasis on the 1936 London Protocol*, in Grunawalt at 41-48. The GWS-Sea, as supplemented by portions of GP I, develops only the rules on the protection of the wounded, sick and shipwrecked at sea. In large measure, the law of naval warfare continues to develop in its traditional manner through the practice of nations ripening into customary (as opposed to treaty) law. A series of meetings of experts, sponsored by the International Institute of Humanitarian Law, San Remo, Italy commencing in 1987, led to the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, June 1994. The Manual and accompanying explanation of its provisions may be found in *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Prepared by International Lawyers and Naval Experts Convened by the International Institute of Humanitarian Law (Doswald-Beck ed. 1995). *See* Robertson, *An International Manual for the Law of Armed Conflict at Sea*, *Duke L. Mag.*, Winter 1995, at 14-18.

The military manuals on naval warfare were, until recently, antiquated. *See* U.S. Navy, *Law of Naval Warfare*, NWIP 10-2 (1955) (set out in its entirety in the appendix to Tucker), which was replaced by the Commander's Handbook on the Law of Naval Operations, NWP 9 (1987), NWP 9 Revision A/FMFM 1-10 (1989) (set out in its entirety in the Appendix to Robertson) and this present manual. *See also* chaps. 8-11 of the Royal Australian Navy, *Manual of the Law of the Sea*, ABR 5179 (1983). New manuals on the law of naval warfare have been recently promulgated or are in preparation by a number of other nations, including the United Kingdom, Canada, Germany, Japan, Italy, and Russia.

1. 1907 Hague Convention Respecting the Laws and Customs of War on Land (Hague IV)²⁰
2. 1907 Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague V)²¹
3. 1907 Hague Convention Relative to the Laying of Automatic Submarine Contact Mines (Hague VIII)²²
4. 1907 Hague Convention Concerning Bombardment by Naval Forces in Time of War (Hague IX)²³
5. 1907 Hague Convention Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War (Hague XI)²⁴
6. 1907 Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War (Hague XIII)²⁵
7. 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare²⁶
8. 1936 London Protocol in Regard to the Operations of Submarines or Other War Vessels with Respect to Merchant Vessels (Part IV of the 1930 London Naval Treaty)²⁷

²⁰ The general principles of Hague IV reflect customary international law. *See* cases cited in note 18 (p. 5-10), and Self, Protection of Civilians 123 text at n.41. Hague IV is discussed in Chapters 8, 9, 11 & 12 *passim*. *But see* Lowe, The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea, *in* Robertson, at 130.

²¹ Hague V is discussed in Chapter 7 (The Law of Neutrality).

²² Hague VIII is discussed in paragraphs 9.2 (naval mines) (p. 9-5) and 9.4 (torpedoes) (p. 9-14).

²³ Hague IX is discussed in paragraphs 8.5 (bombardment) (p. 8-23) and 11.9.3 (Hague symbol) (p. 11-18).

²⁴ Hague XI is mentioned in paragraph 8.2.3, notes 72, 74, & 78 (pp. 8-17 & 18).

²⁵ Hague XIII is discussed in Chapter 7.

²⁶ The 1925 Geneva Gas Protocol is discussed in paragraph 10.3 (chemical weapons) (p. 10-8).

²⁷ The 1936 London Protocol is discussed in paragraphs 8.2.2.2 (destruction of enemy merchant vessels) (p. 8-10) and 8.3.1 (submarine warfare) (p. 8-20).

9. 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*²⁸
10. 1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea*²⁹
11. 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War*³⁰
12. 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*³¹
13. 1954 Hague Convention for the Protection of Cultural Property in the event of armed conflict³²
14. 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction³³
15. 1977 Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of International Armed Conflict (Additional Protocol I)*³⁴

²⁸ The 1949 Geneva Wounded and Sick Convention is discussed in paragraph 11.4 (wounded, sick and shipwrecked) (p. 11-4). See Table A5-1 (p. 5-24) for a listing of the nations that are party to the 1949 Geneva Conventions, I, II, III and IV.

²⁹ The 1949 Geneva Wounded, Sick and Shipwrecked Convention is discussed in paragraph 11.4 (wounded, sick and shipwrecked) (p. 11-4).

³⁰ The general principles (but not the details) of the 1929 Geneva Prisoners of War Convention, which are repeated in the 1949 Geneva Prisoners of War Convention, have been held to be declaratory of customary international law. See note 18 (p. 5-10); FM 27-10, para. 6. The 1949 Geneva Prisoners of War Convention is discussed in paragraph 11.7 (prisoners of war) (p. 11-9).

³¹ The 1949 Geneva Civilians Convention is discussed in paragraph 11.8 (interned persons) (p. 11-15).

³² The 1954 Hague Cultural Property Convention and the 1935 Roerich Pact are discussed in paragraph 11.9.2 (other protective symbols) (p. 11-17).

³³ The 1972 Biological Weapons Convention is discussed in paragraph 10.4 (biological weapons) (p. 10-19).

³⁴ The President decided not to submit GP I to the Senate for its advice and consent to ratification. 23 Weekly Comp. Pres. Doc. 91 (29 Jan. 1987), 81 Am. J. Int'l L. 910. France (Schindler & Toman 709) and Israel have also indicated their intention not to ratify GP I. The U.S. position on GP I is set forth in Senate Treaty Doc. No. 100-2, reprinted in 26 Int'l Leg. Mat'ls 561 (1987) and Annex A5-1 (p. 5-17). Other sources opposing U.S. ratification include Roberts, The New Rules for Waging War: The Case Against Ratification of Additional Protocol I, 26 Va. J. Int'l L. 109 (1985); Feith, Law in the Service of Terror--The Strange Case of the Additional Protocol, 1 The National Interest, Fall 1985, at 36; Sofaer, Terrorism and the Law, 64 Foreign Affairs, Summer 1986, at 901; Feith, Moving Humanitarian Law Backwards, 19 Akron L. Rev. 531 (1986); The Sixth Annual American Red Cross-Washington College of Law Conference on International (continued...)

16. 1977 Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)*³⁵

³⁴(...continued)

Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U.J. Int'l L. & Policy 460 (1987) (remarks of U.S. Department of State Legal Adviser Sofaer); Sofaer, The Rationale for the United States Decision, 82 Am. J. Int'l L. 784 (1988); Parks, Air War and the Law of War, 32 A.F.L. Rev. 1, 89-225 (1990). *Contra*, Aldrich, Progressive Development of the Law of War: A Reply to Criticisms of the 1977 Geneva Protocol I, 26 Va. J. Int'l L. 693 (1986); Solf, Protection of Civilians Against the Effects of Hostilities Under Customary International Law and Under Protocol I, 1 Am. Univ. J. Int'l L. & Policy 117 (1986); Solf, A Response to Douglas J. Feith's Law in the Service of Terror--The Strange Case of the Additional Protocol, 20 Akron L. Rev. 261 (1986); Gasser, Prohibition of Terrorist Acts in International Humanitarian Law, 26 Int'l Rev. Red Cross 200, 210-212 (Jul.-Aug. 1986); Gasser, An Appeal for Ratification by the United States, 81 Am. J. Int'l L. 912 (1987); Gasser, Letter to the Editor in Chief, 83 Am. J. Int'l L. 345 (1989); Bagley, 11 Loy. L.A. Int'l & Comp. L.J. 439 (1989); Aldrich, Prospects for United States Ratification of Additional Protocol I to the 1949 Geneva Conventions, 85 Am. J. Int'l L. 1 (1991). *See also* Levie, The 1977 Protocol I and the United States, 38 St. Louis U. Law J. 469 (1994), *reprinted in* Schmitt & Green at chap. XVII.

As of 15 October 1997, 147 nations were party to GP I, including NATO members Belgium, Canada, Denmark, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway and Spain; the Republic of Korea; Australia; New Zealand; Russia and the former Warsaw Pact nations; Austria, Finland, Sweden and Switzerland (each of which has proclaimed itself as neutral under the doctrine of permanent neutrality); as well as China, Cuba, DPRK and Libya. GP I is in force as between those nations party to it. *See* the complete listing at Table A5-1 (p. 5-24).

The *travaux préparatoires* of GP I are organized by article and published *in* Levie, Protection of War Victims: Protocol I to the 1949 Geneva Conventions (4 vols. 1979-81 and Supp.). *See also* Bothe, Partsch & Solf at 1-603, and ICRC, Commentary (GP I) 19-1304.

It is important that U.S. military operational lawyers are aware that U.S. coalition partners in a future conflict will likely be party to GP I and bound by its terms. *See also* Matheson, note 18 (p. 5-11) and Annex A5-1 (final paragraph of p. 5-21).

³⁵ The President submitted GP II to the Senate for its advice and consent to ratification on 29 January 1987. Sen. Treaty Doc. 100-2, 23 Weekly Comp. Pres. Doc. 91; 26 Int'l Leg. Mat'ls 561 (1987), Annex A5-1 (p. 5-17). The proposed statements of understanding and reservations to GP II are analyzed *in* Smith, New Protections for Victims of International [*sic*] Armed Conflicts: The Proposed Ratification of Protocol II by the United States, 120 Mil. L. Rev. 59 (1988).

As of 15 October 1997, the 140 parties to GP II included NATO allies Belgium, Canada, Denmark, France, Germany, Iceland, Italy, Netherlands, Norway and Spain; El Salvador, the Philippines and New Zealand; the neutral countries (Austria, Finland, Sweden and Switzerland); and Russia and the former Warsaw Pact nations. GP II is in force as between those nations party to it. *See* the complete listing at Table A5-1 (p. 5-24). Haiti has announced its intention to ratify GP II upon passage of implementing legislation. Israel and South Africa have indicated they do not intend to ratify GP II.

The *travaux préparatoires* of GP II are organized by article and published *in* The Law of Non-International Armed Conflict: Protocol II to the 1949 Geneva Conventions (Levie ed. 1987). *See also* Bothe, Partsch & Solf 604-705, and ICRC, Commentary (GP II) 1305-1509.

The Statute of the *Ad Hoc* Tribunal for the Former Yugoslavia, U.N. Doc. S/25704 (1993); 32 Int'l Leg. Mat'ls 1192 (1993) made no specific reference to either GP I or GP II, but provided jurisdiction over breaches of the Geneva Conventions, which together with the Protocols, had been ratified by Yugoslavia and succeeded to by Bosnia, Croatia and Serbia. The Statute of the Tribunal for Rwanda, U.N.S.C. Res. 955 (1994); 33 Int'l Leg. Mat'ls 1598 (1994), expressly conferred jurisdiction to the Tribunal over violations of common article 3 and of GP II.

17. 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects*³⁶

18. 1993 Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.³⁷

An asterisk (*) indicates that signature or ratification of the United States was subject to one or more reservations or understandings. The United States is a party to, and bound by, all of the foregoing conventions and protocols, except numbers 13, 15, 16 and 18. The United States has decided not to ratify number 15 (Additional Protocol I).³⁸ The United States has ratified number 17, Protocols I and II, but has not ratified Protocol III.

³⁶ The 1980 Conventional Weapons Convention, *reprinted in* 19 Int'l Leg. Mat'ls 1524 (1980); AFP 110-20 at 3-177, is discussed in paragraphs 9.1.1 (undetectable fragments) (p. 9-2), 9.3 (land mines) (p. 9-11), 9.6 (booby traps and other delayed action devices) (p. 9-15), 9.7 (incendiary weapons) (p. 9-15) and 9.8 (directed energy devices) (p. 9-16). The Convention originally included three separate protocols, *e.g.*, Protocol on Non-Detectable Fragments (Protocol I); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II); and Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). The United States became party to the Convention and Protocols I and II on 24 September 1995, but declined to ratify Protocol III at that time. At the First Review Conference (September 1995-May 1996), Protocol II was substantially amended and a new Protocol on Blinding Laser Weapons (Protocol IV) was adopted. On 5 January 1997, President Clinton submitted the amended Protocol II, the original Protocol III (with a reservation), and new Protocol IV to the Senate for its advice and consent to their ratification. *See* notes 36, 44 & 45 accompanying paragraphs 9.3 (land mines) (p. 9-12), 9.7 (incendiary weapons) (p. 9-15) and 9.8 (directed energy devices) (p. 9-17). *See also* Nash, *Contemporary Practice of the United States Relating to International Law*, 91 Am. J. Int'l L. 325 (1997). As of 15 October 1997, 71 nations, including the U.S., U.K., Germany, Italy, Denmark, France, Netherlands, Norway, Australia, Japan, China, Russia and other ex-Warsaw Pact nations, and the neutral nations, have ratified the Conventional Weapons Convention (and two or more of its four protocols), and it is in force as between those nations with respect to commonly ratified protocols. (For a current listing of parties to the Convention and its Protocols *see* www.icrc.ch/icrcnews).

The *travaux préparatoires* of the "umbrella" treaty and Protocol I (non-detectable fragments) are set forth in Roach, *Certain Conventional Weapons Convention: Arms Control or Humanitarian Law?*, 105 Mil. L. Rev. 1; of Protocol II (land mines) in Carnahan, *The Law of Land Mine Warfare: Protocol II to the United Nations Convention on Certain Conventional Weapons*, *id.* at 73; and of Protocol III (incendiary weapons) in Parks, *The Protocol on Incendiary Weapons*, 30 Int'l Rev. Red Cross 535 (Nov.-Dec. 1990). *See also* Fenrick, *The Law of Armed Conflict: The CUSHIE Weapons Treaty*, 11 Can. Def. Q., Summer 1981, at 25; Fenrick, *New Developments in the Law Concerning the Use of Conventional Weapons in Armed Conflict*, 19 Can. Y.B. Int'l L. 229 (1981); Schmidt, *The Conventional Weapons Convention: Implication for the American Soldier*, 24 A.F.L. Rev. 279 (1984); Rogers, *A Commentary on the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices*, 26 Mil. L. & L. of War Rev. 185 (1987); and Symposium, *Tenth Anniversary of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons*, 30 Int'l Rev. Red Cross 469-577 (Nov.-Dec. 1990).

³⁷ The 1993 Chemical Weapons Convention has since been ratified by the U.S. (24 April 1997). The Convention is discussed in paragraph 10.3.1.2 (p. 10-13).

³⁸ Six of the 1907 Hague Conventions entered into force for the U.S. in 1909, while the four Geneva Conventions of August 12, 1949 entered into force for the United States in 1956. The Administration is reconsidering whether to submit the 1954 Hague Cultural Property Convention to the Senate for its advice and consent to ratification.

5.5 RULES OF ENGAGEMENT³⁹

During wartime or other periods of armed conflict, U.S. rules of engagement reaffirm the right and responsibility of the operational commander generally to seek out, engage, and destroy enemy forces consistent with national objectives, strategy, and the law of armed conflict.⁴⁰

³⁹ See Preface (p. 2) and paragraph 4.3.2.2 (p. 4-14).

⁴⁰ Accordingly, wartime rules of engagement may include restrictions on weapons and targets, and provide guidelines to ensure the greatest possible protection for noncombatants consistent with military necessity. Roach, Rules of Engagement, Nav. War Coll. Rev., Jan.-Feb. 1983, at 49; Phillips, ROE: A Primer, Army Lawyer, July 1993 at 21-23; Grunawalt, The JCS Standing Rules of Engagement: A Judge Advocate's Primer, 42 Air Force Law Rev. 245 (1997).

ANNEX A5-1

LETTER OF TRANSMITTAL AND LETTER OF SUBMITTAL RELATING TO PROTOCOL II ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949.

LETTER OF TRANSMITTAL

The White House, *January 29, 1987.*

To the Senate of the United States

I transmit herewith, for the advice and consent of the Senate to ratification, Protocol II Additional to the Geneva Conventions of 12 August 1949, concluded at Geneva on June 10, 1977. I also enclose for the information of the Senate the report of the Department of State on the Protocol.

The United States has traditionally been in the forefront of efforts to codify and improve the international rules of humanitarian law in armed conflict, with the objective of giving the greatest possible protection to victims of such conflicts, consistent with legitimate military requirements. The agreement that I am transmitting today is, with certain exceptions, a positive step toward this goal. Its ratification by the United States will assist us in continuing to exercise leadership in the international community in these matters.

The Protocol is described in detail in the attached report of the Department of State. Protocol II to the 1949 Geneva Conventions is essentially an expansion of the fundamental humanitarian provisions contained in the 1949 Geneva Conventions with respect to non-international armed conflicts, including humane treatment and basic due process for detained persons, protection of the wounded, sick and medical units, and protection of noncombatants from attack and deliberate starvation. If these fundamental rules were observed, many of the worst human tragedies of current internal armed conflicts could be avoided. In particular, among other things, the mass murder of civilians is made illegal, even if such killings would not amount to genocide because they lacked racial or religious motives. Several Senators asked me to keep this objective in mind when adopting the Genocide Convention. I remember my commitment to them. This Protocol makes clear that any deliberate killing of a noncombatant in the course of a non-international armed conflict is a violation of the laws of war and a crime against humanity, and is therefore also punishable as murder.

While I recommend that the Senate grant advice and consent to this agreement, I have at the same time concluded that the United States cannot ratify a second agreement on the law of armed conflict negotiated during the same period. I am referring to Protocol I additional to the 1949 Geneva Conventions, which would revise the rules applicable to international armed conflicts. Like all other efforts associated with the International Committee of the Red Cross, this agreement has certain meritorious elements. But Protocol I is fundamentally and irreconcilably flawed. It contains provisions that would undermine humanitarian law and endanger civilians in war. One of its provisions, for example, would

automatically treat as an international conflict any so-called "war of national liberation." Whether such wars are international or non-international should turn exclusively on objective reality, not on one's view of the moral qualities of each conflict. To rest on such subjective distinctions based on a war's alleged purposes would politicize humanitarian law and eliminate the distinction between international and non-international conflicts. It would give special status to "wars of national liberation," an ill-defined concept expressed in vague, subjective, politicized terminology. Another provision would grant combatant status to irregular forces even if they do not satisfy the traditional requirements to distinguish themselves from the civilian population and otherwise comply with the laws of war. This would endanger civilians among whom terrorists and other irregulars attempt to conceal themselves. These problems are so fundamental in character that they cannot be remedied through reservations, and I therefore have decided not to submit the Protocol to the Senate in any form, and I would invite an expression of the sense of the Senate that it shares this view. Finally, the Joint Chiefs of Staff have also concluded that a number of the provisions of the Protocol are militarily unacceptable.

It is unfortunate that Protocol I must be rejected. We would have preferred to ratify such a convention, which as I said contains certain sound elements. But we cannot allow other nations of the world, however numerous, to impose upon us and our allies and friends an unacceptable and thoroughly distasteful price for joining a convention drawn to advance the laws of war. In fact, we must not, and need not, give recognition and protection to terrorist groups as a price for progress in humanitarian law.

The time has come for us to devise a solution for this problem, with which the United States is from time to time confronted. In this case, for example, we can reject Protocol I as a reference for humanitarian law, and at the same time devise an alternative reference for the positive provisions of Protocol I that could be of real humanitarian benefit if generally observed by parties to international armed conflicts. We are therefore in the process of consulting with our allies to develop appropriate methods for incorporating these positive provisions into the rules that govern our military operations, and as customary international law. I will advise the Senate of the results of this initiative as soon as it is possible to do so.

I believe that these actions are a significant step in defense of traditional humanitarian law and in opposition to the intense efforts of terrorist organizations and their supporters to promote the legitimacy of their aims and practices. The repudiation of Protocol I is one additional step, at the ideological level so important to terrorist organizations, to deny these groups legitimacy as international actors.

Therefore, I request that the Senate act promptly to give advice and consent to the ratification of the agreement I am transmitting today, subject to the understandings and reservations that are described more fully in the attached report. I would also invite an expression of the sense of the Senate that it shares the view that the United States should not ratify Protocol I, thereby reaffirming its support for traditional humanitarian law, and its opposition to the politicization of the law by groups that employ terrorist practices.

RONALD REAGAN

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 13, 1986.

THE PRESIDENT
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmission to the Senate for its advice and consent to ratification, Protocol II Additional to the Geneva Conventions of 12 August 1949, concluded at Geneva on June 10, 1977.

PROTOCOL II

Protocol II to the 1949 Geneva Conventions was negotiated by diplomatic conference convened by the Swiss Government in Geneva, which met in four annual sessions from 1974-77. This Protocol was designed to expand and refine the basic humanitarian provisions contained in Article 3 common to the four 1949 Geneva Conventions with respect to non-international conflicts. While the Protocol does not (and should not) attempt to apply to such conflicts all the protections prescribed by the Conventions for international armed conflicts, such as prisoner-of-war treatment for captured combatants, it does attempt to guarantee that certain fundamental protections be observed, including: (1) humane treatment for detained persons, such as protection from violence, torture, and collective punishment; (2) protection from intentional attack, hostage-taking and acts of terrorism of persons who take no part in hostilities, (3) special protection for children to provide for their safety and education and to preclude their participation in hostilities, (4) fundamental due process for persons against whom sentences are to be passed or penalties executed; (5) protection and appropriate care for the sick and wounded, and medical units which assist them; and (6) protection of the civilian population from military attack, acts of terror, deliberate starvation, and attacks against installations containing dangerous forces. In each case, Protocol II expands and makes more specific the basic guarantees of common Article 3 of the 1949 Conventions. Its specific provisions are described in greater detail in the attached section-by-section analysis.

The final text of Protocol II did not meet all the desires of the United States and other western delegations. In particular, the Protocol only applies to internal conflicts in which dissident armed groups are under responsible command and exercise control over such a part of the national territory as to carry out sustained and concerted military operations. This is a narrower scope than we would have desired, and has the effect of excluding many internal conflicts in which dissident armed groups occupy no significant territory but conduct sporadic guerrilla operations over a wide area. We are therefore recommending that U.S. ratification be subject to an understanding declaring that the United States will apply the Protocol to all

conflicts covered by Article 3 common to the 1949 Conventions (and only such conflicts), which will include all non-international armed conflicts as traditionally defined (but not internal disturbances, riots and sporadic acts of violence). This understanding will also have the effect of treating as non-international these so-called "wars of national liberation" described in Article 1(4) of Protocol I which fail to meet the traditional test of an international conflict.

Certain other reservations or understandings are also necessary to protect U.S. military requirements. Specifically, as described in greater detail in the attached annex, a reservation to Article 10 is required to preclude the possibility that it might affect the administration of discipline of U.S. military personnel under The Uniform Code of Military Justice, under the guise of protecting persons purporting to act in accordance with "medical ethics." However, this is obviously not intended in any way to suggest that the United States would deliberately deny medical treatment to any person in need of it for political reasons or require U.S. medical personnel to perform procedures that are unethical or not medically indicated.

Also, we recommend an understanding with respect to Article 16 to confirm that the special protection granted by that article is required only for a limited class of objects that, because of their recognized importance, constitute a part of the cultural or spiritual heritage of peoples, and that such objects will lose their protection if they are used in support of the military effort. This understanding is generally shared by our allies, and we expect it to appear in the ratification documents of many of them.

Finally, we recommend an understanding to deal with any situation in which the United States may be providing assistance to a country which has not ratified Protocol II and would therefore feel under no obligation to comply with its terms in the conduct of its own operations. Our recommended understanding would make clear that our obligations under the Protocol would not exceed those of the State being assisted. The United States would of course comply with the applicable provisions of the Protocol with respect to all operations conducted by its own armed forces.

With the above caveats, the obligations contained in Protocol II are no more than a restatement of the rules of conduct with which U.S. military forces would almost certainly comply as a matter of national policy, constitutional and legal protections, and common decency. These obligations are not uniformly observed by other States, however, and their universal observance would mitigate many of the worst human tragedies of the type that have occurred in internal conflicts of the present and recent past. I therefore strongly recommend that the United States ratify Protocol II and urge all other States to do likewise. With our support, I expect that in due course the Protocol will be ratified by the great majority of our friends, as well as a substantial preponderance of other States.

The Departments of State, Defense, and Justice have also conducted a thorough review of a second law-of-war agreement negotiated during the same period—Protocol I Additional to the Geneva Conventions of 12 August 1949. This Protocol was the main object of the work of the 1973-77 Geneva diplomatic conference, and represented an attempt to revise and update in a comprehensive manner the 1949 Geneva Conventions on the protection of war

victims, the 1907 Hague Conventions on means and methods of warfare, and customary international law on the same subjects.

Our extensive interagency review of the Protocol has, however, led us to conclude that Protocol I suffers from fundamental shortcomings that cannot be remedied through reservations or understandings. We therefore must recommend that Protocol I not be forwarded to the Senate. The following is a brief summary of the reasons for our conclusion.

In key respects Protocol I would undermine humanitarian law and endanger civilians in war. Certain provisions such as Article 1(4), which gives special status to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination," would inject subjective and politically controversial standards into the issue of the applicability of humanitarian law. Protocol I also elevates the international legal status of self-described "national liberation" groups that make a practice of terrorism. This would undermine the principle that the rights and duties of international law attach principally to entities that have those elements of sovereignty that allow them to be held accountable for their actions, and the resources to fulfill their obligations.

Equally troubling is the easily inferred political and philosophical intent of Protocol I, which aims to encourage and give legal sanction not only to "national liberation" movements in general, but in particular to the inhumane tactics of many of them. Article 44(3), in a single subordinate clause, sweeps away years of law by "recognizing" that an armed irregular "cannot" always distinguish himself from non-combatants; it would grant combatant status to such an irregular anyway. As the essence of terrorist criminality is the obliteration of the distinction between combatants and non-combatants, it would be hard to square ratification of this Protocol with the United States' announced policy of combatting terrorism.

The Joint Chiefs of Staff have conducted a detailed review of the Protocol, and have concluded that it is militarily unacceptable for many reasons. Among these are that the Protocol grants guerrillas a legal status that often is superior to that accorded to regular forces. It also unreasonably restricts attacks against certain objects that traditionally have been considered legitimate military targets. It fails to improve substantially the compliance and verification mechanisms of the 1949 Geneva Conventions and eliminates an important sanction against violations of those Conventions. Weighing all aspects of the Protocol, the Joint Chiefs of Staff found it to be too ambiguous and complicated to use as a practical guide for military operations, and recommended against ratification by the United States.

We recognize that certain provision of Protocol I reflect customary international law, and others appear to be positive new developments. We therefore intend to consult with our allies to develop appropriate methods for incorporating these provisions into rules that govern our military operations, with the intention that they shall in time win recognition as customary international law separate from their presence in Protocol I. This measure would constitute an appropriate remedy for attempts by nations to impose unacceptable conditions on the acceptance of improvements in international humanitarian law. I will report the results of this effort to you as soon as possible, so that the Senate may be advised of our progress in this respect.

CONCLUSION

I believe that U.S. ratification of the agreement which I am submitting to you for transmission to the Senate, Protocol II to the 1949 Geneva Conventions, will advance the development of reasonable standards of international humanitarian law that are consistent with essential military requirements. The same is not true with respect to Protocol I to the 1949 Geneva Conventions, and this agreement should not be transmitted to the Senate for advice and consent to ratification. We will attempt in our consultations with allies and through other means, however, to press forward with the improvement of the rules of international humanitarian law in international armed conflict, without accepting as the price for such improvements a debasement of our values and of humanitarian law itself.

The effort to politicize humanitarian law in support of terrorist organizations have been a sorry development. Our action in rejecting Protocol I should be recognized as a reaffirmation of individual rights in international law and a repudiation of the collectivist apology for attacks on non-combatants.

Taken as a whole, these actions will demonstrate that the United States strongly supports humanitarian principles, is eager to improve on existing international law consistent with those principles, and will reject revisions of international law that undermine those principles. The Departments of State and Justice support these recommendations.

Respectfully submitted.

GEORGE P. SHULTZ

Attachments:

- 1—Detailed Analysis of Provisions
- 2—Recommended Understanding and Reservations

SPECTRUM OF CONFLICT

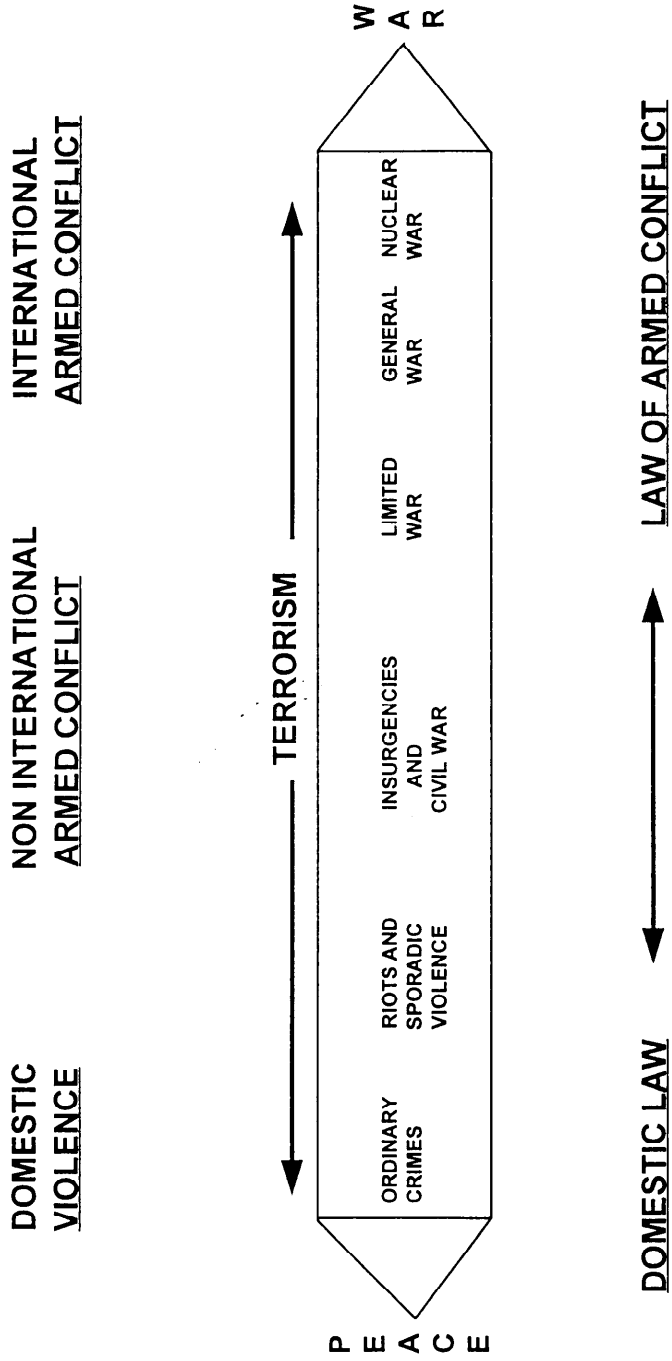


FIGURE A5-1

TABLE A5-1

STATES PARTY TO THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

The following tables show which States were party to the Geneva Conventions of 1949 and to the two Additional Protocols of 1977, as of 15 October 1997. They also indicate which States had made the optional declaration under Article 90 of 1977 Protocol I, recognizing the competence of the International Fact-Finding Commission. The names of the countries given in the tables may differ from their official names.

The dates indicated are those on which the Swiss Federal Department of Foreign Affairs received the official instrument from the State that was ratifying, acceding to or succeeding to the Conventions and Protocols or accepting the competence of the International Fact-Finding Commission. Apart from the exceptions mentioned in the footnotes at the end of the tables, for all States the entry into force of the Conventions and of the Protocols occurs six months after the date given in the present document; for States which have made a declaration of succession, entry into force takes place retroactively, on the day of their accession to independence.

Abbreviations

Ratification (R): a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede or, where appropriate, succeed to them.

Accession (A): instead of signing and then ratifying a treaty, a State may become party to it by the single act called accession.

Declaration of Succession (S): a newly independent State may declare that it will abide by a treaty which was applicable to it prior to its independence. A State may also declare that it will provisionally abide by such treaties during the time it deems necessary to examine their texts carefully and to decide on accession or succession to some or all of them (declaration of provisional application). At present no State is bound by such a declaration.

Reservation/Declaration (R/D): a unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (provided that such reservations are not incompatible with the object and purpose of the treaty).

Declaration provided for under Article 90 of Protocol I (D 90): prior acceptance of the competence of the International Fact-Finding Commission.

AS OF 15 OCTOBER 1997

- States party to the 1949 Geneva Conventions: 188
- States party to the 1977 Additional Protocol I: 147
- States having made the declaration under Article 90 of Protocol I: 50
- States party to the 1977 Additional Protocol II: 140

TABLE A5-1

| COUNTRY | GENEVA CONVENTIONS | | PROTOCOL I | | | PROTOCOL II | |
|--------------------------|-------------------------|-----|------------|------------|-----|-------------|---------------------------|
| | R/A/S | R/D | R/A/S | R/D | D90 | R/A/S | R/D |
| Afghanistan | 26.09.1956 | R | | | | | |
| Albania | 27.05.1957 | R | X | 16.07.1993 | A | | 16.07.1993 A |
| Algeria | 20.06.1960 | A | | 16.08.1989 | A | X | 16.08.1989 A |
| Andorra | 17.09.1993 | A | | | | | |
| Angola | 20.09.1984 | A | X | 20.09.1984 | A | X | |
| Antigua and Barbuda | 06.10.1986 | S | | 06.10.1986 | A | | 06.10.1986 A |
| Argentina | 18.09.1956 | R | | 26.11.1986 | A | X | 11.10.1996 26.11.1986 A X |
| Armenia | 07.06.1993 | A | | 07.06.1993 | A | | 07.06.1993 A |
| Australia | 14.10.1958 | R | X | 21.06.1991 | R | X | 23.09.1992 21.06.1991 R |
| Austria | 27.08.1953 | R | | 13.08.1982 | R | X | 13.08.1982 13.08.1982 R X |
| Azerbaijan | 01.06.1993 | A | | | | | |
| Bahamas | 11.07.1975 | S | | 10.04.1980 | A | | 10.04.1980 A |
| Bahrain | 30.11.1971 | A | | 30.10.1986 | A | | 30.10.1986 A |
| Bangladesh | 04.04.1972 | S | | 08.09.1980 | A | | 08.09.1980 A |
| Barbados | 10.09.1968 | S | X | 19.02.1990 | A | | 19.02.1990 A |
| Belarus | 03.08.1954 | R | X | 23.10.1989 | R | | 23.10.1989 R |
| Belgium | 03.09.1952 | R | | 20.05.1986 | R | X | 27.03.1987 20.05.1986 R |
| Belize | 29.06.1984 | A | | 29.06.1984 | A | | 29.06.1984 A |
| Benin | 14.12.1961 | S | | 28.05.1986 | A | | 28.05.1986 A |
| Bhutan | 10.01.1991 | A | | | | | |
| Bolivia | 10.12.1976 | R | | 08.12.1983 | A | | 10.08.1992 08.12.1983 A |
| Bosnia-Herzegovina | 31.12.1976 | S | | 31.12.1992 | S | | 31.12.1992 S |
| Botswana | 29.03.1968 | A | | 23.05.1979 | A | | 23.05.1979 A |
| Brazil | 29.06.1957 | R | | 05.05.1992 | A | | 23.11.1993 05.05.1992 A |
| Brunei Darussalam | 14.10.1991 | A | | 14.10.1991 | A | | 14.10.1991 A |
| Bulgaria | 22.07.1954 | R | | 26.09.1989 | R | | 09.05.1994 26.09.1989 R |
| Burkina Faso | 07.11.1961 | S | | 20.10.1987 | R | | 20.10.1987 R |
| Burundi | 27.12.1971 | S | | 10.06.1993 | A | | 10.06.1993 A |
| Cambodia | 08.12.1958 | A | | | | | |
| Cameroon | 16.09.1963 | S | | 16.03.1984 | A | | 16.03.1984 A |
| Canada | 14.05.1965 | R | | 20.11.1990 | R | X | 20.11.1990 R X |
| Cape Verde | 11.05.1984 | A | | 16.03.1995 | A | | 16.03.1995 A |
| Central African Republic | 01.08.1966 | S | | 17.07.1984 | A | | 17.07.1984 A |
| Chad | 05.08.1970 | A | | 17.01.1997 | A | | 17.01.1997 A |
| Chile | 12.10.1950 | R | | 24.04.1991 | R | | 24.04.1991 R |
| China | 28.12.1956 | R | X | 14.09.1983 | A | X | 14.09.1983 A |
| Colombia | 08.11.1961 | R | | 01.09.1993 | A | | 17.04.1996 14.08.1995 A |
| Comoros | 21.11.1985 | A | | 21.11.1985 | A | | 21.11.1985 A |
| Congo | 04.02.1967 | S | | 10.11.1983 | A | | 10.11.1983 A |
| Costa Rica | 15.10.1969 | A | | 15.12.1983 | A | | 15.12.1983 A |
| Côte d'Ivoire | 28.12.1961 | S | | 20.09.1989 | R | | 20.09.1989 R |
| Croatia | 11.05.1992 | S | | 11.05.1992 | S | | 11.05.1992 S |
| Cuba | 15.04.1954 | R | | 25.11.1982 | A | | |
| Cyprus | 23.05.1962 | A | | 01.06.1979 | R | | 18.03.1996 A |
| Czech Republic | 05.02.1993 | S | X | 05.02.1993 | S | | 02.05.1995 05.02.1993 S |
| Denmark | 27.06.1951 | R | | 17.06.1982 | R | X | 17.06.1982 R |
| Djibouti | 06.03.1978 ¹ | S | | 08.04.1991 | A | | 08.04.1991 A |
| Dominica | 28.09.1981 | S | | 25.04.1996 | A | | 25.04.1996 A |
| Dominican Republic | 22.01.1958 | A | | 26.05.1994 | A | | 26.05.1994 A |
| Ecuador | 11.08.1954 | R | | 10.04.1979 | R | | 10.04.1979 R |
| Egypt | 10.11.1952 | R | | 09.10.1992 | R | X | 09.10.1992 R X |
| El Salvador | 17.06.1953 | R | | 23.11.1978 | R | | 23.11.1978 R |
| Equatorial Guinea | 24.07.1986 | A | | 24.07.1986 | A | | 24.07.1986 A |

TABLE A5-1

| COUNTRY | GENEVA CONVENTIONS | | PROTOCOL I | | | PROTOCOL II | | |
|-------------------------------|-------------------------|-----|------------|-------------------------|-----|-------------------------|-------------------------|------------|
| | R/A/S | R/D | R/A/S | R/D | D90 | R/A/S | R/D | |
| Estonia | 18.01.1993 | A | 18.01.1993 | A | | 18.01.1993 | A | |
| Ethiopia | 02.10.1969 | R | 08.04.1994 | A | | 08.04.1994 | A | |
| Fiji | 09.08.1971 | S | | | | | | |
| Finland | 22.02.1955 | R | 07.08.1980 | R | X | 07.08.1980 | R | |
| France | 28.06.1951 | R | | | | 24.02.1984 ² | A | |
| Gabon | 26.02.1965 | S | 08.04.1980 | A | | 08.04.1980 | A | |
| Gambia | 20.10.1966 | S | 12.01.1989 | A | | 12.01.1989 | A | |
| Georgia | 14.09.1993 | A | 14.09.1993 | A | | 14.09.1993 | A | |
| Germany | 03.09.1954 | A | X | 14.02.1991 | R | X | 14.02.1991 | R |
| Ghana | 02.08.1958 | A | | 28.02.1978 ³ | R | | 28.02.1978 ⁴ | R |
| Greece | 05.06.1956 | R | | 31.03.1989 | R | | 15.02.1993 | A |
| Grenada | 13.04.1981 | S | | | | | | |
| Guatemala | 14.05.1952 | R | | 19.10.1987 | R | | 19.10.1987 | R |
| Guinea | 11.07.1984 | A | | 11.07.1984 | A | 20.12.1993 | 11.07.1984 | A |
| Guinea-Bissau | 21.02.1974 | A | X | 21.10.1986 | A | | 21.10.1986 | A |
| Guyana | 22.07.1968 | S | | 18.01.1988 | A | | 18.01.1988 | A |
| Haiti | 11.04.1957 | A | | | | | | |
| Holy See | 22.02.1951 | R | | 21.11.1985 | R | X | 21.11.1985 | R |
| Honduras | 31.12.1965 | A | | 16.02.1995 | R | | 16.02.1995 | R |
| Hungary | 03.08.1954 | R | X | 12.04.1989 | R | | 23.09.1991 | 12.04.1989 |
| Iceland | 10.08.1965 | A | | 10.04.1987 | R | X | 10.04.1987 | R |
| India | 09.11.1950 | R | | | | | | |
| Indonesia | 30.09.1958 | A | | | | | | |
| Iran (Islamic Rep. of) | 20.02.1957 | R | X | | | | | |
| Iraq | 14.02.1956 | A | | | | | | |
| Ireland | 27.09.1962 | R | | | | | | |
| Israel | 06.07.1951 | R | X | | | | | |
| Italy | 17.12.1951 | R | | 27.02.1986 | R | X | 27.02.1986 | R |
| Jamaica | 20.07.1964 | S | | 29.07.1986 | A | | 29.07.1986 | A |
| Japan | 21.04.1953 | A | | | | | | |
| Jordan | 29.05.1951 | A | | 01.05.1979 | R | | 01.05.1979 | R |
| Kazakhstan | 05.05.1992 | S | | 05.05.1992 | S | | 05.05.1992 | S |
| Kenya | 20.09.1996 | A | | | | | | |
| Kiribati | 05.01.1989 | S | | | | | | |
| Korea (Dem. People's Rep. of) | 27.08.1957 | A | X | 09.03.1988 | A | | | |
| Korea (Reublic of) | 16.08.1966 ⁵ | A | X | 15.01.1982 | R | X | 15.01.1982 | R |
| Kuwait | 02.09.1967 | A | X | 17.01.1985 | A | | 17.01.1985 | A |
| Kyrgyzstan | 18.09.1992 | S | | 18.09.1992 | S | | 18.09.1992 | S |
| Lao People's Dem. Rep. | 29.10.1956 | A | | 18.11.1980 | R | | 18.11.1980 | R |
| Latvia | 24.12.1991 | A | | 24.12.1991 | A | | 24.12.1991 | A |
| Lebanon | 10.04.1951 | R | | 23.07.1997 | A | | 23.07.1997 | A |
| Lesotho | 20.05.1968 | S | | 20.05.1994 | A | | 20.05.1994 | A |
| Liberia | 29.03.1954 | A | | 30.06.1988 | A | | 30.06.1988 | A |
| Libyan Arab Jamahiriya | 22.05.1956 | A | | 07.06.1978 | A | | 07.06.1978 | A |
| Liechtenstein | 21.09.1950 | R | | 10.08.1989 | R | X | 10.08.1989 | R |
| Lithuania | 03.10.1996 | A | | | | | | |
| Luxembourg | 01.07.1953 | R | | 29.08.1989 | R | | 12.05.1993 | 29.08.1989 |
| Macedonia | 01.09.1993 | S | X | 01.09.1993 | S | X | 01.09.1993 | S |
| Madagascar | 18.07.1963 | S | | 08.05.1992 | R | | 27.07.1993 | 08.05.1992 |
| Malawi | 05.01.1968 | A | | 07.10.1991 | A | | 07.10.1991 | A |
| Malaysia | 24.08.1962 | A | | | | | | |
| Maldives | 18.06.1991 | A | | 03.09.1991 | A | | 03.09.1991 | A |
| Mali | 24.05.1965 | A | | 08.02.1989 | A | | 08.02.1989 | A |
| Malta | 22.08.1968 | S | | 17.04.1989 | A | X | 17.04.1989 | A |

TABLE A5-1

| COUNTRY | GENEVA CONVENTIONS | | PROTOCOL I | | | PROTOCOL II | | | | |
|----------------------------|-------------------------|-----|------------|------------|-----|-------------|------------|------------|---|---|
| | R/A/S | R/D | R/A/S | R/D | D90 | R/A/S | R/A | | | |
| Mauritania | 30.10.1962 | S | 14.03.1980 | A | | 14.03.1980 | A | | | |
| Mauritius | 18.08.1970 | S | 22.03.1982 | A | | 22.03.1982 | A | | | |
| Mexico | 29.10.1952 | R | 10.03.1983 | A | | | | | | |
| Micronesia | 19.09.1995 | A | 19.09.1995 | A | | 19.09.1995 | A | | | |
| Moldova (Republic of) | 24.05.1993 | A | 24.05.1993 | A | | 24.05.1993 | A | | | |
| Monaco | 05.07.1950 | R | | | | | | | | |
| Mongolia | 20.12.1958 | A | 06.12.1995 | A | X | 06.12.1995 | A | | | |
| Morocco | 26.07.1956 | A | | | | | | | | |
| Mozambique | 14.03.1983 | A | 14.03.1983 | A | | | | | | |
| Myanmar | 25.08.1992 | A | | | | | | | | |
| Namibia | 22.08.1991 ⁶ | S | 17.06.1994 | A | | 21.07.1994 | 17.06.1994 | A | | |
| Nepal | 07.02.1964 | A | | | | | | | | |
| Netherlands | 03.08.1954 | R | 26.06.1987 | R | X | 26.06.1987 | 26.06.1987 | R | | |
| New Zealand | 02.05.1959 | R | X | 08.02.1988 | R | X | 08.02.1988 | 08.02.1988 | R | |
| Nicaragua | 17.12.1953 | R | | | | | | | | |
| Niger | 21.04.1964 | S | 08.06.1979 | R | | | 08.06.1979 | R | | |
| Nigeria | 20.06.1961 | S | 10.10.1988 | A | | | 10.10.1988 | A | | |
| Norway | 03.08.1951 | R | 14.12.1981 | R | | 14.12.1981 | 14.12.1981 | R | | |
| Oman | 31.01.1974 | A | 29.03.1984 | A | X | | 29.03.1984 | A | X | |
| Pakistan | 12.06.1951 | R | X | | | | | | | |
| Palau | 25.06.1996 | A | 25.06.1996 | A | | | 25.06.1996 | A | | |
| Panama | 10.02.1956 | A | 18.09.1995 | A | | | 18.09.1995 | A | | |
| Papua New Guinea | 26.05.1976 | S | | | | | | | | |
| Paraguay | 23.10.1961 | R | 30.11.1990 | A | | | 30.11.1990 | A | | |
| Peru | 15.02.1956 | R | 14.07.1989 | R | | | 14.07.1989 | R | | |
| Philippines | 06.10.1952 ⁷ | R | | | | | 11.12.1986 | A | | |
| Poland | 26.11.1954 | R | X | 23.10.1991 | R | 02.10.1992 | 23.10.1991 | R | | |
| Portugal | 14.03.1961 | R | X | 27.05.1992 | R | 01.07.1994 | 27.05.1992 | R | | |
| Qatar | 15.10.1975 | A | | 05.04.1988 | A | X | 24.09.1991 | | | |
| Romania | 01.06.1954 | R | X | 21.06.1990 | R | | 13.05.1995 | 21.06.1990 | R | |
| Russian Federation | 10.05.1954 | R | X | 29.09.1989 | R | X | 29.09.1989 | 29.09.1989 | R | X |
| Rwanda | 05.05.1964 | S | | 19.11.1984 | A | | 08.07.1993 | 19.11.1984 | A | |
| Saint Kitts and Nevis | 14.02.1986 | S | | 14.02.1986 | A | | | 14.02.1986 | A | |
| Saint Lucia | 18.09.1981 | S | | 07.10.1982 | A | | | 07.10.1982 | A | |
| Saint Vincent & Grenadines | 01.04.1981 | A | | 08.04.1983 | A | | | 08.04.1983 | A | |
| Samoa | 23.08.1984 | S | | 23.08.1984 | A | | | 23.08.1984 | A | |
| San Marino | 29.08.1953 | A | | 05.04.1994 | R | | | 05.04.1994 | R | |
| Sao Tome and Principe | 21.05.1976 | A | | 05.07.1996 | A | | | 05.07.1996 | A | |
| Saudi Arabia | 18.05.1963 | A | | 21.08.1987 | A | X | | | | |
| Senegal | 18.05.1963 | S | | 07.05.1985 | R | | | 07.05.1985 | R | |
| Seychelles | 08.11.1984 | A | | 08.11.1984 | A | | 22.05.1992 | 08.11.1984 | A | |
| Sierra Leone | 10.06.1965 | S | | 21.10.1986 | A | | | 21.10.1986 | A | |
| Singapore | 27.04.1973 | A | | | | | | | | |
| Slovakia | 02.04.1993 | S | X | 02.04.1993 | S | | 13.03.1995 | 02.04.1993 | S | |
| Slovenia | 26.03.1992 | S | | 26.03.1992 | S | | 26.03.1992 | 26.03.1992 | S | |
| Solomon Islands | 06.07.1981 | S | | 19.09.1988 | A | | | 19.09.1988 | A | |
| Somalia | 12.07.1962 | A | | | | | | | | |
| South Africa | 31.03.1952 | A | | 21.11.1995 | A | | | 21.11.1995 | A | |
| Spain | 04.08.1952 | R | | 21.04.1989 | R | X | 21.04.1989 | 21.04.1989 | R | |
| Sri Lanka | 28.02.1959 ⁸ | R | | | | | | | | |
| Sudan | 23.09.1957 | A | | | | | | | | |
| Suriname | 13.10.1976 | S | X | 16.12.1985 | A | | | 16.12.1985 | A | |
| Swaziland | 28.06.1973 | A | | 02.11.1995 | A | | | 02.11.1995 | A | |
| Sweden | 28.12.1953 | R | | 31.08.1979 | R | X | 31.08.1979 | 31.08.1979 | R | |
| Switzerland | 31.03.1950 ⁹ | R | | 17.02.1982 | R | X | 17.02.1982 | 17.02.1982 | R | |

TABLE A5-1

| COUNTRY | GENEVA CONVENTIONS | | PROTOCOL I | | | PROTOCOL II | |
|---------------------------|--------------------------|-----|------------|-----|------------|-------------|-----|
| | R/A/S | R/D | R/A/S | R/D | D90 | R/A/S | R/D |
| Syrian Arab Republic | 02.11.1953 | R | 14.11.1983 | A X | | | |
| Tajikistan | 13.01.1993 | S | 13.01.1993 | S | 10.09.1997 | 13.01.1993 | S |
| Tanzania (United Rep.of) | 12.12.1962 | S | 15.02.1983 | A | | 15.02.1983 | A |
| Thailand | 29.12.1954 | A | | | | | |
| The Former Y.R. Macedonia | 01.09.1993 | S | 01.09.1993 | S | 01.09.1993 | 01.09.1993 | S |
| Togo | 06.01.1962 | S | 21.06.1984 | R | 21.11.1991 | 21.06.1984 | R |
| Tonga | 13.04.1978 | S | | | | | |
| Trinidad and Tobago | 24.09.1963 ¹⁰ | A | | | | | |
| Tunisia | 04.05.1957 | A | 09.08.1979 | R | | 09.08.1979 | R |
| Turkey | 10.02.1954 | R | | | | | |
| Turkmenistan | 10.04.1992 | S | 10.04.1992 | S | | 10.04.1992 | S |
| Tuvalu | 19.02.1981 | S | | | | | |
| Uganda | 18.05.1964 | A | 13.03.1991 | A | | 13.03.1991 | A |
| Ukraine | 03.08.1954 | R X | 25.01.1990 | R | 25.01.1990 | 25.01.1990 | R |
| United Arab Emirates | 10.05.1972 | A | 09.03.1983 | A X | 06.03.1992 | 09.03.1983 | A X |
| United Kingdom | 23.09.1957 | R X | | | | | |
| United States of America | 02.08.1955 | R X | | | | | |
| Uruguay | 05.03.1969 | R X | 13.12.1985 | A | 17.07.1990 | 13.12.1985 | A |
| Uzbekistan | 08.10.1993 | A | 08.10.1993 | A | | 08.10.1993 | A |
| Vanuatu | 27.10.1982 | A | 28.02.1985 | A | | 28.02.1985 | A |
| Venezuela | 13.02.1956 | R | | | | | |
| Viet Nam | 28.06.1957 | A X | 19.10.1981 | R | | | |
| Yemen | 16.07.1970 | A X | 17.04.1990 | R | | 17.04.1990 | R |
| Yugoslavia | 21.04.1950 | R X | 11.06.1979 | R X | | 11.06.1979 | R |
| Zambia | 19.10.1966 | A | 04.05.1995 | A | | 04.05.1995 | A |
| Zimbabwe | 07.03.1983 | A | 19.10.1992 | A | | 19.10.1992 | A |

Palestine

On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto".

On 13 September 1989, the Swiss Federal Council informed the States that it was not in a position to decide whether the letter constituted an instrument of accession, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine".

¹ Djibouti's declaration of succession in respect of the First Convention was dated 26 January 1978.

² On accession to Protocol II, France made a communication concerning Protocol I.

³ Entry into force on 7 December 1978.

⁴ Entry into force on 7 December 1978.

⁵ Entry into force on 23 September 1977, the Republic of Korea having invoked Art. 62/61/141/157 common to the First, Second, Third and Fourth Conventions respectively (immediate effect).

⁶ An instrument of accession to the Geneva Conventions and their additional Protocols was deposited by the United Nations Council for Namibia on 18 October 1983. In an instrument deposited on 22 August 1991, Namibia declared its succession to the Geneva Conventions, which were previously applicable pursuant to South Africa's accession on 31 March 1952.

⁷ The First Geneva Convention was ratified on 7 March 1951.

⁸ Accession to the Fourth Geneva Convention on 23 February 1959 (Ceylon had signed only the First, Second, and Third Conventions).

⁹ Entry into force on 21 October 1950.

¹⁰ Accession to the First Geneva Convention on 17 May 1963.

Source: International Committee of the Red Cross, 15 October 1997. (A current listing of parties to the Geneva Conventions and to Additional Protocol I and II may be found at www.icrc.ch/icrcnews).

Exhibit 3

SC No. 07445/67

THE WHITE HOUSE

- WASHINGTON -
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

July 18, 1967

The Israeli Attack on the USS Liberty

The Attack

On the afternoon of June 8 (2:05 p.m., Israeli time), the USS Liberty while in international waters in the Eastern Mediterranean suffered an attack by Israeli aircraft and motor torpedo boats. When attacked the Liberty was approximately 15.5 nautical miles north of Sinai and was traveling in a westerly direction at a speed of five knots.

The initial attack consisted of five or six strafing runs by jet aircraft and was followed twenty-four minutes later with an attack by three motor torpedo boats.

The attack was executed with complete surprise, remarkable efficiency, devastating accuracy and deeply tragic results.

Israel's explanation the Attack

Israel's explanation of the attack is summarized as follows:

- a. The attack was an "innocent mistake--no criminal negligence was involved."
- b. Israel's Navy and Air Force had received a number of reports that El Arish was being shelled from the sea. These reports were later determined to be erroneous but, at the time they were received, they were accepted at face value by Israeli Naval and Air Force headquarters.
- c. Israeli officers who knew the Liberty had been identified earlier the same day did not connect her with the unidentified ships said to be shelling El Arish (and apparently the fact that a U. S. flag vessel was in the area was not communicated to subordinate elements of the Israeli Defense Forces (IDF)).
- d. A second "mistaken report" -- that the Liberty was steaming at thirty knots--was received by the IDF. When the Liberty was identified

on the morning of June 8, the IDF determined from Janes Fighting Ships that the Liberty's maximum speed was eighteen knots. The second "mistaken report" led to the conclusion that the earlier identification of the Liberty was erroneous and that the vessel allegedly traveling at thirty knots was an enemy ship.

e. IDF standing orders provided that any ships in the area cruising at speeds above twenty knots may be brought under attack without further identification. Thus the air attack was launched.

f. A third mistake" resulted in the execution of the second (motor torpedo boat) stage of the attack. This third error of the IDF was its mistaken identification of the Liberty as the Egyptian supply ship El Quseir.

g. Immediately following the air attack, serious doubts began to arise concerning the true identity of the ship, but these doubts were not communicated to the commanding officer of the motor torpedo boats before he launched the second stage of the attack.

h. Prior to launching the torpedo attack one of the Israeli boats sent an "A-A" signal (meaning "what is your identity?") to the Liberty. The Liberty, instead of identifying herself, responded with an "A-A" signal. Officers on the Israeli boats interpreted the return signal as an evasion and concluded that the vessel in question was Egyptian, whereupon the torpedos were launched.

i. The Liberty acted with lack of care by approaching excessively close to shore in an area which was a scene of war, without advising the Israeli authorities of its presence and without identifying itself elaborately. The Liberty tried to hide its presence and its identity both before it was discovered and after having been attacked.

Our Findings of Fact

Based upon a thorough review of all information on the incident which has become available thus far, I wish to submit the following findings of fact:

a. At all times prior to, during, and following the attack, the Liberty was in international waters where she had every right to be. As a noncombatant neutral vessel she maintained the impartial attitude of neutrality at all times prior to the attack.

b. Prior to the attack no inquiry was made by the Israeli Government as to whether there were U.S. flag vessels in the general

area of the Eastern Mediterranean adjoining Israel and the United Arab Republic.

c. The weather was clear and calm in the area at the time of attack and throughout the preceding hours of June . Visibility was excellent.

d. At all times prior to the attack the Liberty was flying her normal size American flag (five feet by eight feet) at the masthead. The flag was shot down during the air attack and was replaced by a second American flag (seven feet by thirteen feet) five minutes prior to the attack by motor torpedo boats. The Liberty did not endeavor to hide her identity or her presence in international waters at any time prior to or during the attack.

e. The Liberty's U.S. Navy distinguishing letters and number were printed clearly on her bow. The Liberty's number was painted clearly in English on her stern. (Egyptian naval ships such as the El Quseir, with which the Liberty was allegedly confused, carry their names in Arabic script.)

f. The ship's configuration and her standard markings were clearly sufficient for reconnaissance aircraft and waterborne vessels to identify her correctly as the noncombatant ship Liberty.

g. At the time she was attacked, the Liberty was making only five knots. Her maximum capability is eighteen knots, a fact which had been ascertained by IDF personnel when she was identified on the morning of June 8.

h. Prior to the torpedo attack the Liberty neither received nor dispatched an "A-A" signal. The Israeli claim that the Liberty transmitted an "A-A'1 signal prior to the torpedo attack is demonstrably false. The Liberty's signal light capability was totally destroyed in the air attack which occurred some twenty minutes before the torpedo boats appeared on the scene. Intermittently prior to the attack Liberty personnel observed a flashing light coming from the center boat. The first intelligible signal received by the Liberty was an offer of help following the torpedo attack.

i. The Liberty was reconnoitered by aircraft of unidentified nationality on three separate occasions prior to the attack--5 hours and 13 minutes before the attack, 3 hours and 7 minutes before the attack, and 2 hours and 37 minutes before the attack. Personnel on the Liberty, who observed and in some instances photographed the reconnaissance aircraft, were unable to identify them fully. Positive evidence concerning their nationality is still lacking, however, there

are several grounds for assuming they were Israeli: (1) when the aircraft orbited the Liberty on three separate occasions the Arab-Israeli war was in its fourth day, the Egyptian Air Force had been substantially destroyed, and the Israeli Air Force was in effective control of the air space in the area; (2) [---- excised ----] received information from a reliable and sensitive Israeli source reporting that he had listened to IDF air-to-ground transmissions on the morning of June 8 indicating Israeli aircraft sighting of a vessel flying the U.S. flag; (3) in the course of advancing its explanation for the attack, the Israeli Government acknowledged that the Liberty had been identified by IDF officers early on the morning of June 8.

3. [--- excised ---] shortly after the torpedo attack, the Israelis began to have doubts as to the identity of the vessel and efforts were intensified to verify its identification. Ten minutes after the torpedo attack an Israeli ground controller still believed it to be Egyptian. Identification attempts continued, and forty-five minutes after the torpedo attack, helicopters were checking the masts, flag and bow number of the Liberty. By this time, there appears to have been no question in Israeli minds as to what had happened. The weight of the evidence is that the Israeli attacking force originally believed their target was Egyptian.

Conclusions

Based upon a thorough review of all information on the incident which has become available thus far, I wish to submit the following conclusions:

- a. The information thus far available does not reflect that the Israeli high command made a premeditated attack on a ship known to be American.
- b. The evidence at hand does not support the theory that the highest echelons of the Israeli Government were aware of the Liberty's true identity or of the fact that an attack on her was taking place. To disprove such a theory would necessitate a degree of access to Israeli personnel and information which in all likelihood can never be achieved.
- c. That the Liberty could have been mistaken for the Egyptian supply ship El Quseir is unbelievable. El Quseir has one-fourth the displacement of the Liberty, roughly half the beam, is 180 feet shorter, and is very differently configured. The Liberty's unusual antenna array and hull markings should have been visible to low-flying aircraft and torpedo boats. In the heat of battle the Liberty was able to identify one of the attacking torpedo boats as Israeli and to ascertain its hull

number. In the same circumstances, trained Israeli naval personnel should have been able easily to see and identify the larger hull markings on the Liberty.

d. The best interpretation from available facts is that there were gross and inexcusable failures in the command and control of subordinate Israeli naval and air elements. One element of the Israeli air force knew the location and identification of the Liberty around 9:00 a.m. and did not launch an attack. Yet, hours later, apparently a different IDF element made the decision to attack the same vessel that earlier flights had identified and refrained from attacking.

e. There is no justification for the failure of the IDF--With the otherwise outstanding efficiency which it demonstrated in the course of the war--to ensure prompt alerting of all appropriate elements of the IDF of the fact that a U.S. ship was in the area. There was ample time to accomplish such alerting because the Liberty had been identified as a U.S. flag vessel five hours before the attack took place.

f. The unprovoked attack on the Liberty constitutes a flagrant act of gross negligence for which the Israeli Government should be held completely responsible, and the Israeli military personnel involved should be punished.

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Exhibit 30

The Trial of German Major War Criminals

Sitting at Nuremberg, Germany

7th January to 19th January, 1946

Thirty-Fourth Day: Tuesday, January 15th, 1946

(Part 6 of 10)

[Page 267]

Now, in view of the maliciousness of this "Volkischer Beobachter" announcement, and in fairness to the men of the British Merchant Navy, I think it is proper that I should say, that contrary to the allegation in this Nazi sheet, the Athenia of course made repeated wireless distress signals which were in fact intercepted and answered by His Majesty's ship Electra, in escort, as well as by the Norwegian steamer Knut Nelson and the yacht Southern Cross.

I shall submit evidence to the Tribunal to establish that, in fact, the Athenia was sunk by the German U-boat U-30. So unjustifiable was the torpedoing of the Athenia, however, that the German Navy embarked upon a course of falsification of their records and on other dishonest measures, in the hope of hiding their guilty secret. And for their part, as the Tribunal has seen, the Nazi propagandists indulged in their favourite falsehood of seeking to shift the responsibility to the British.

The Captain of the U-boat 30, Oberleutnant Lemp, was later killed in action, but some of the original crew of the U-30 have survived to tell the tale, and they are now prisoners of war. And so that the truth of this episode may be placed beyond peradventure, I submit to the Tribunal an affidavit by a member of the crew of the U-30; as to the sinking of the Athenia and as to one aspect of the attempt to conceal the true facts. I refer to document C-654, Exhibit GB 219, at Page 106 of the document book. The affidavit reads:

"I, Adolf Schmidt, Official Number N 1043-33T, do solemnly declare that:
I am now confined to Camp No. 133, Lethbridge, Alberta.

On the first day of war, 3rd September, 1939, a ship of approximately 10,000 tons was torpedoed in the late hours of the evening by the U-30.

After the ship was torpedoed and we surfaced again, approximately half an hour after the explosion, the Commandant called me to the tower in order to show me the torpedoed ship.

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I saw the ship with my very eyes, but I do not think that the ship could see our U-boat at that time on account of the position of the moon.

Only a few members of the crew had an opportunity to go to the tower in order to see the torpedoed ship.

Apart from myself, Oberleutnant Hinsch was in the tower when I saw the steamer after the attack.

I observed that the ship was listing.

No warning shot was fired before the torpedo was launched.

I myself observed much commotion on board the torpedoed ship.

I believe that the ship had only one smoke stack.

In the attack on this steamer one or two torpedoes were fired which did not explode, but I myself heard the explosion of the torpedo which hit the steamer.

Oberleutnant Lemp waited until darkness before surfacing.

I was severely wounded by aircraft 14th September, 1939.

Oberleutnant Lemp shortly before my disembarkation in Reykjavik, 19th September, 1939, visited me in the forenoon in the petty officers' quarters where I was lying severely wounded.

Oberleutnant Lemp then had the petty officers' quarters cleared in order to be alone with me.

Oberleutnant Lemp then showed me a declaration under oath according to which I had to bind myself to mention nothing concerning the incidents of 3rd September, 1939, on board the U-30.

This declaration under oath had approximately the following wording: I, the undersigned, swear hereby that I shall keep secret all happenings of 3rd September, 1939, on board the U-30, from either foe or friend, and that I shall erase from my memory all happenings of this day.'

I signed this declaration under oath, which was drawn up by the Commandant in his own handwriting, very illegibly with my left hand.

Later on in Iceland when I heard about the sinking of the Athenia, the idea came into my mind that the U-30 on the 3rd September, 1939, might have sunk the Athenia, especially since the Captain caused me to sign the above- mentioned declaration.

Up to to-day I have never spoken to anyone concerning these events.

Due to the termination of the war I consider myself freed from my oath."

Donitz's part in the Athenia episode is described in an affidavit which he has sworn, which is D-638, Exhibit GB 220, at Page 102 of the document book. The affidavit was sworn in English, and I invite the Tribunal to look at it and observe the addition, in Donitz's handwriting, of four words at the end of the affidavit, the significance of which will be seen in a moment.

The defendant Donitz states:

"U-30 returned to harbour about mid-September. I met the captain, Oberleutnant Lemp, on the lockside at Wilhelmshaven, as the boat was entering harbour, and he asked permission to speak to me in private. I noticed immediately that he was looking very unhappy, and he told me at once that he thought he was responsible for the sinking of the Athenia in the North Channel area. In accordance with my previous instructions he had been keeping a sharp lookout for possible armed merchant cruisers in the approaches to the British Isles, and had torpedoed a ship which he afterwards identified as the Athenia from wireless broadcasts, under the impression that she was an armed merchant cruiser on patrol. I had never specified in my instructions any particular type of ship as armed merchant cruiser, nor mentioned any names of ships. I despatched Lemp at once by air to report to the S.K.L. at Berlin; in the meantime, I ordered complete secrecy as a provisional measure. Later on the same day or

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early on the following day, I received a verbal order from Kapitan zur See Fricke" - who was head of the Operations Division of the Naval War Staff - "that:

- (1) The affair was to be kept a total secret.
- (2) The O.K.M. considered that a court-martial was not necessary as they were satisfied that the captain had acted in good faith.
- (3) Political explanations would be handled- by the O.K.M.

I had had no part whatsoever in the political events in which the Fuehrer claimed that no U-boat had sunk the Athenia.

After Lemp returned to Wilhelmshaven from Berlin, I interrogated him thoroughly on the sinking and formed the impression that, although he had taken reasonable care, he had still not taken sufficient precautions to establish fully the identity of the ship before attacking. Prior to the occurrence of this incident I had given very strict orders that all merchant vessels and neutrals were to be treated according to prize law. I accordingly placed him under cabin arrest, as I felt certain that he would be acquitted by a court-martial which would, however, entail unnecessary publicity" - and then Donitz has added the words "and too much time."

It is right, I think, that I should add that Donitz's suggestion that the captain of the U-30 sank the Athenia in mistake for a merchant cruiser must be considered in the light of a document which Colonel Phillimore submitted - Document C-191, Exhibit GB 193, dated; 22nd September, 1939 - which contained Donitz's order that "the sinking of a merchant ship must be justified in the War Diary as due to possible confusion with a warship or an auxiliary cruiser."

Now, the U-30 returned to Wilhelmshaven on 27th September, 1939. I submit another fraudulent naval document, Document D- 659, Page 110 of the document book, which will be Exhibit GB 221, which is an extract from the War Diary of the Chief of U-boats, and it is an extract for 27th September, 1939. The Tribunal will see that it reads:

"U-30 comes in.
She had sunk:
S.S. Blairlogies,
S.S. Fanad Head."

There is no reference at all, of course, to the sinking of the Athenia.

But perhaps the most elaborate forgery in connection with this episode was the forgery of the log book of the U-30, which was responsible for sinking the Athenia. I now submit that original log book to the Tribunal as Document D-662, which will be Exhibit GB 222, and an extract from the first and relevant page of it is found at Page 111 of the document book. I would like the Tribunal to examine the original, if you will be good enough to do so, because the prosecution's submission is that the first page of that log book is a forgery, but a forgery which shows a curiously un-German carelessness about detail. The Tribunal will see that the first page of the text is a clear substitute for pages that have been removed. The dates in the first column of that page are in Arabic numerals. On the second and more authentic looking page, and throughout the other pages of the log book, they are in Roman numerals.

The Tribunal will also see that all reference to the action of the sinking of the Athenia on 3rd September is omitted. The entries are translated in Page 111 of the document book for the Court's assistance.

The log book shows that the position at 14.00 hours, of the U-30 on 3rd September, is given as A.L. 0278, which the Tribunal will notice is one of the very few positions quoted at all upon that page, and which was, in fact, some 200 miles west of the position where the Athenia was sunk. The course due

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South, which is recorded in the log book, and the speed of 10 knots -those entries are obviously designed to suggest that the U-30 was well clear of the Athenia's position on the 3rd September.

Finally, and most curiously, the Tribunal will observe that Lemp's own signature upon the page dealing with the 3rd September differs from the other signatures in the text. Page 1 shows Lemp's signature with a Roman "p" as the final letter of his name. On the other signatures, there is a script "p", and the inference I submit is that either the signature is a forgery or it was made up by Lemp at some other, and probably considerably later date.

Now, in my submission, the whole of this Athenia story establishes that the German Navy under Raeder embarked upon deliberate fraud. Even before receiving Lemp's reports, the German Admiralty had repeatedly denied the possibility that a German U-boat could be in the area concerned. The charts which showed the disposition of U-boats and the position of sinking of the Athenia, which Colonel Phillimore introduced, have shown the utter dishonesty of these announcements, and my submission upon this matter is this: Raeder, as head of the German Navy, knew all the facts. Censorship and information control in Nazi Germany were so complete that Raeder, as head of the Navy, must have been party to the falsification published in the "Volkischer Beobachter," which was a wholly dishonourable attempt by the Nazi conspirators to save their faces with their own people, and to uphold the myth of an infallible Fuehrer backed by an impeccable war machine.

The Tribunal has seen that truth mattered little in Nazi propaganda, and it would appear that Raeder's camouflage was not confined to painting his ships or sailing them under the British flag, as he did in attacking Norway and Denmark. With regard to that last matter, the invasion of Norway and Denmark, I think it is hardly necessary that I should remind the Tribunal of Raeder's leading part in that perfidious Nazi assault, the evidence as to which has already been presented. I think I need only add Raeder's proud comment upon those brutal invasions, which is contained in his letter in Document C-155 at Page 25 of the document book, which is already before the Tribunal as Exhibit GB 214. That document, which is a letter of Raeder's to the Navy, part of which I have already read, states:

"The operations of the Navy in the occupation of Norway will for all time remain the great contribution of the Navy to this war."

Now, with the occupation of Norway and much of Western Europe safely completed, the Tribunal has seen that Hitler turned his eyes towards Russia. Now, in fairness to Raeder, it is right that I should say that Raeder himself was against the attack on Russia and tried his best to dissuade Hitler from embarking upon it. The documents show, however, that Raeder approached the problem with complete cynicism. He did not object to the aggressive war on Russia because of its illegality, its immorality, its inhumanity. His only objection to it was its untimeliness. He wanted to finish England first before going further afield.

Exhibit 31

War Crimes

Raeder is charged with war crimes on the high seas. The "Athenia," an unarmed British passenger liner, was sunk on 3rd September, 1939, while outward bound to America. The Germans two months later charged that Mr. Churchill deliberately sank the "Athenia" to encourage American hostility to Germany. In fact, it was sunk by the German U-boat 30. Raeder claims that an inexperienced U-boat commander sank it in mistake for an armed merchant cruiser, that this was not known until the U-30 returned several weeks after the German denial and that Hitler then directed the Navy and Foreign Office to continue denying it. Raeder denied knowledge of the propaganda campaign attacking Mr. Churchill.

The most serious charge against Raeder is that he carried out unrestricted submarine warfare, including sinking of unarmed merchant ships, of neutrals, non-rescue and machine-gunning of survivors, contrary to the London Protocol of 1936. The Tribunal makes the same finding on Raeder on this charge as it did as to Doenitz, which has already been announced, up until 30th January, 1943, when Raeder retired.

The Commando Order of the 18th October, 1942, which expressly did not apply to naval warfare, was transmitted by the Naval War Staff to the lower naval commanders with the direction it should be distributed orally by flotilla leaders and section commanders to their subordinates. Two commandos were put to death by the Navy, and not by the SD, at Bordeaux on the 10th December, 1942, the comment of the Naval War Staff was that this was "in accordance with the Fuehrer's special order, but is nevertheless something new in international law, since the soldiers were in uniform." Raeder admits he passed the order down through the chain of command, and he did not object to Hitler.

Conclusion

The Tribunal finds that Raeder is guilty on **Counts One, Two, and Three.**

Exhibit 32

319. Telegram From the Director of the National Security Agency (Carter) to the White House¹

Washington, June 22, 1967, 1454Z.

SIGINT Readiness Bravo "Crayon" Report Nr. 2149.

Aftermath of Israeli Attack on USS *Liberty*, 8 June 1967.

1. General

The following activity is based on Israeli plain language VHF/UHF voice communications intercepted on 8 June 1967 between 1229Z and 1328Z. This activity deals solely with the aftermath of the attack by Israeli jet aircraft and torpedo boats on the USS *Liberty* (GTR5). There are no COMINT reflections of the actual attack itself.

2. Summary

At 1230Z, two Israeli helicopters 810 and 815, were dispatched by Hatsor to the area of the incident to check for survivors of an unidentified "warship." Approximately at 1234Z, the air controller at Hatsor clarified the identity of the ship to the two Israeli helicopters by informing them that it had been identified as Egyptian. At 1239Z, Hatsor told the helicopters that it was an Egyptian cargo ship.

At 1307Z, Hatsor told helicopter 815 to take any survivors that spoke Egyptian to El Arish ((31-08N 34-54E)), but if they spoke English to take them to Lod ((31-58N 34-54E)).

At 1312Z, the Israeli helicopter 815 apparently informed Hatsor on a different frequency that it had sighted an American flag on the ship. Hatsor then asked the helicopter to make another pass to check "if this is really an American flag."

The helicopters and the MTBs were communicating on a UHF frequency whereas the helicopters and the air controller at Hatsor were using VHF throughout. At 1310Z, helicopter 815 informed the MTB using callword "Pagoda" that the ship was not in danger. The same helicopter then reported that G.T.R.-5 was written on the ship and inquired if this meant anything. The MTB replied in the negative.

Throughout this intercept, the USS *Liberty* is referred to as the "big one" while the three Israeli motor torpedo boats are referred to as the "small ones." The helicopters used call signs 810 and 815. The air controller at Hatsor Air Base used call word "Tribune." The MTBs used callwords "Thorn," "Pagoda," and "Crisis." The callword "Jewel" is not identified, but may be Haifa.

3. Details

| <i>Time</i> | <i>To</i> | <i>From</i> | <i>Text</i> |
|-------------|-----------|-------------|---|
| -- | -- | -- | I understand the course from Ashdod ((31-55N 34-39E)) is 215. |
| -- | -- | -- | Negative ((the course is)) 250. |
| -- | -- | -- | Roger |
| 815 | (Tribune) | (Tribune) | To what altitude are you climbing? |
| | (Tribune) | (815) | I'm now at 500 feet. |

¹ Source: National Security Agency, NSA Archives, Accession No. 45981, U.S.S. *Liberty* Correspondence and Messages, 1965-1968. Secret; Savin.

1230Z (815) (Tribune) -- -- Five by.

(815) (Tribune) Pay attention: there was a warship there which we attacked ((1 WD G)), the men jumped from it ((the ship)) into the water, you will try to rescue them.

(Tribune) (815) Roger, I understand it was hit and unable to fire.

(815) (Tribune) No fire was seen from her and those ([less than 1 line of source text not declassified] onboard) did not fire; heavy smoke is rising from her.

(Tribune) (815) Roger.

(Tribune) (815) ([less than 1 line of source text not declassified] crossing the) coast now at a course of 250.

(815) (Tribune) Roger, over. What location ((are you))?

(Tribune) (815) Over Ashdod.

(815) (Tribune) Roger, what's your altitude?

(Tribune) (815) 500 feet.

(815) (Tribune) Are you able to climb to an altitude of ((1,000 feet))?

(Tribune) (815) Roger, I'm climbing.

1232Z (Tribune) (815) Altitude 1 ((1,000)), course 250.

815 (Tribune) Roger.

(815) (Tribune) Are you at sea now?

(Tribune) (815) About 3 or 4 miles.

(815) (Tribune) Roger.

(815) (Tribune) Visual ((radar)) contact with you.

(Tribune) (815) Roger.

(Tribune) (815) ((Calling)) ((repeats)).

(815) (Tribune) At the moment she ((Liberty)) is straight ahead at a distance of about 50 miles.

(Tribune) (815) Roger.

Tribune 810 ((Calling)).

815 (815) Five by, 810 is calling you.

815 Tribune ((Calling)).

(Tribune) (815) Five by.

(815) (Tribune) Pay attention: the ship is now identified as Egyptian, you can return home now.

(Tribune) (815) Roger.

1235Z

810 (815) Establish communications with you also.

815 (Tribune) Did you receive?

(Tribune) (815) Affirmative, receive, I'm returning.

(815) (Tribune) Roger.

(Tribune) (810) ((Calling)).

(Tribune) 815 ((Calling)).

(Tribune) 810 Am I to return also?

(810) (Tribune) I'll let you know shortly.

(Tribune) (810) Roger.

1236Z

Tribune 810 ((Calling)).

(810) (Tribune) Roger, I'll let you know shortly.

(Tribune) (810) OK.

(Tribune) (8)10 ((Calling)) ((rpts)).

810 (Tribune) You remain meanwhile in communications with me.

(Tribune) (810) Roger, what am I to look for?

(Tribune) 815 ((Calling)).

810 (Tribune) Where are you?

(Tribune) (810) I'm close to Ashdod.

(810) (815) Roger, I'm also close to Ashdod, on the seaward side.

1238Z

Tribune (810) Did you receive?

(810) (Tribune) What did 815 request?

810 (815) What's your altitude?

(815) (810) Altitude 500 feet, near Ashdod.

810 (815) Roger, we're at altitude 1200 feet over Ashdod.

(815) (810) Roger.

810 Tribune ((Calling)).
(Tribune) (810) Five by.
(810) (Tribune) Pay attention: you will continue meanwhile on a course of 250 from Ashdod. The both of you ((1-2 WD G)) will head toward the ship.
815 (Tribune) ((Calling)).
(Tribune) (815) Five by.
(815) (Tribune) Roger, you will continue ((at a course)) of 250 from Ashdod. The both of you will head for the ship, for the time being the both of you will be at altitude 1 ((1000 feet)).
810 (Tribune) Do you see us?
(Tribune) (810) Affirmative, affirmative.
(810) (Tribune) Where are you?
(810) (Tribune) Where are you now?
(Tribune) (810) Ashdod, altitude 1 ((1000)).
(Tribune) (810) Did you receive?
810 Tribune ((Calling)).
(Tribune) (810) Five by.
(Tribune) (810) Altitude is 1 ((1000)), at Ashdod.
(810) (Tribune) Roger.
(Tribune) (810) Going to course 250 together with 815.
(810) (Tribune) Are the two of you together?
(Tribune) (810) Affirmative, we're together.
(810) (Tribune) Roger.
(810) (Tribune) Pay attention: you (*[less than 1 line of source text not declassified]* nonetheless) are heading for the ship.
(810) (Tribune) You will try to take the men from the water.
(Tribune) (810) Roger, okay.
(810) (Tribune) For your information: the ship is apparently (*[less than 1 line of source text not declassified]* burning).
(810) (Tribune) ((1 WD G)) it is an Egyptian cargo ship.
(Tribune) (810) Roger.
(810) (Tribune) Visual ((radar)) contact with both of you.
(Tribune) (810) Roger.

1240Z

(810) (Tribune) I understand that you ((1-2 WD G)) both of you?
(Tribune) (810) Affirmative.
(810) (Tribune) Roger.

1241Z

810 Tribune ((Calling)).
(Tribune) (810) Five by.
(810) (Tribune) Take the men to El Arish.
(Tribune) (810) Roger, okay.
(815) (810) Did you receive?
(810) (815) I received, affirmative.

1242Z

(810) (815) How much fuel do you have?
(815) (810) Two and a half tanks.
(810) (815) I have 1,700 ((liters)).
(815) (810) This isn't good.
(810) (815) ((1 WD G)) to El Arish.
(815) (810) Roger.
(810) (Tribune) The ship is located now straight ahead at a range of 50 miles.
(Tribune) (810) Roger.
-- -- Are you first in line?
-- -- Affirmative.
-- -- Roger.
Tribune 815 ((2 WD G)) from the coast of El Arish.

1248Z

Tribune 810 ((Calling)) ((repeats)).

1250Z

(Tribune) 810 About how many men are there?
815 Tribune ((Calling)).
Tribune 810 How many men are there?

815 Tribune Turn right to ((course)) 260.

(Tribune) (815) Repeat.

(815) (Tribune) Turn right to course 260.

(Tribune) (815) ((Course)), they want to know how many men are there?

(815) (Tribune) At the present time, it still isn't known, the distance to you is now 33 miles.

(Tribune) (815) Roger.

(Tribune) (815) What is the distance from it ((the *Liberty*)) to El Arish?

(815) (Tribune) The distance is approximately 30 miles.

(Tribune) (815) Roger.

Tribune 810 ((Calling)).

(810) (Tribune) Five by.

(Tribune) (810) It's noteworthy that it ((1 WD G)).

(810) (Tribune) Roger.

Tribune 815 ((Calling)).

(815) (Tribune) Five by.

(Tribune) (815) What is the distance?

(815) (Tribune) The distance is now 23 miles.

(Tribune) (815) Roger.

815 (Tribune) Pay attention: call on 86 or on 186 Pagoda.

((Tr Note: 186 and 86 refer to a UHF frequency.))

(Tribune) (815) Roger.

(Tribune) (815) I'm going over to 186.

(815) (Tribune) Roger.

(Tribune) 810 I'm also ((going over to 186)).

(815) Tribune Is someone calling ((me)) Tribune?

(Tribune) (815) Affirmative, I don't have contact with Pagoda.

(815) (Tribune) Roger, clear, the ship is now at a distance of 19 miles.

(Tribune) (815) Roger, is Pagoda located near ((the *Liberty*))?

(815) (Tribune) Apparently it's located near it ((the ship)).

(Tribune) (815) Roger.

1257Z

815 (Tribune) If you are able, try to call her ((Pagoda)) on 86.
(Tribune) (815) I tried.
(Tribune) (815) I didn't (C val get anything) ((make contact)).
(815) (Tribune) Roger.
Tribune 815 ((Calling)).
815 Tribune Do you have visual contact? Straight ahead, a distance of 18 miles.
Tribune 815 I have visual contact with ((1 WD G)) smoke or it could be ((1-2 WD G)).
815 Tribune Roger, is there much smoke rising from it?
Tribune 815 Roger.
Tribune 815 I don't have contact with Pagoda.
815 Tribune Roger.
810 815 ((Calling)).
815 810 Five by.
810 815 Do you have contact with Pagoda?
815 810 Negative.
810 815 Roger, I don't either.
815 Tribune ((Calling)).
Tribune 815 Five by.
815 Tribune When you begin bringing up the men, clarify by the first man that you bring up, what nationality he is.

1259Z

815 Tribune And report to me immediately, it's important to know.
Tribune 815 Roger.
815 Tribune What is your altitude now?
Tribune 815 Altitude is 1 ((1000 feet)).
815 Tribune Roger.
Tribune 815 I have ((visual)) contact with a vessel straight ahead ((at a distance of)) 12 ((miles)) a little from the right, smoke isn't rising; QT the north it isn't smoking.
815 Tribune The distance is now 13 miles.

| | | | |
|-------|---------|-----------|--|
| | Tribune | 815 | Roger. |
| | 815 | Tribune | Do you see the ship? |
| | Tribune | 815 | I see the ship, a little to the right of the smoke. The smoke the smoke isn't rising. |
| | 815 | Tribune | Roger, it's possible that ((the smoke)) is from one of ours. |
| | Tribune | 815 | Roger. |
| | Tribune | 815 | It's worth clarifying. |
| | 815 | Tribune | Roger. |
| | Tribune | 815 | Roger, what I see (<i>[less than 1 line of source text not declassified]</i> now) is ours, this is clear. |
| | 815 | Tribune | Roger. |
| | 815 | Tribune | 10 miles is the distance now. |
| | Tribune | 815 | Roger, I understand at 12 o'clock ((1 WD G)). |
| | 815 | Tribune | Affirmative, a little on the right side. |
| | Tribune | 815 | Roger. |
| 1301Z | | | |
| | 815 | Tribune | The distance is now 9 miles. |
| 1302Z | | | |
| | Tribune | 815 | I'm going over to 86. |
| | 815 | Tribune | Roger, I request to receive a report, tell me the nationality. |
| | Tribune | 815 | ((Calling)). |
| | 815 | Tribune | Go ahead. |
| | Tribune | 815 | Roger, there is a large ship, smoke isn't rising. At the present time smoke is a little to the right on its left side ((XG)) I see a small vessel. |
| | Tribune | 815 | Three small vessels. |
| 1303Z | | | |
| | 815 | (Tribune) | Are you calling me? |
| | Tribune | 815 | Five by. |
| | 815 | Tribune | Did you call me? |
| | Tribune | 815 | Affirmative. |
| | 815 | Tribune | Roger, what's the matter? |
| | Tribune | 815 | There is a large vessel, near it are 3 small vessels, could |

this be it, at a distance of a mile from me?

815 Tribune Roger, clear.

815 Tribune Roger, apparently the small vessels are ours.

Tribune 815 Roger.

815 810 ((Calling)).

810 815 Five by.

815 810 What's the matter?

810 815 Don't you see it yet?

815 810 I'm behind you, I still don't see the ship ((1 WD G)) on the right side of us.

810 815 Roger, exactly in front of me, there are the small vessels.

815 810 What's with them, what's going on?

810 815 It appears that they are ours.

815 810 On our right side?

810 815 Yes.

815 Tribune All 3 of them are ours.

(Tribune) (815) Roger, the small ones, right?

815 Tribune Affirmative.

Tribune 815 Roger. I'm heading for the big one ((Liberty)).

815 Tribune Are you going for the big one?

(Tribune) (815) Affirmative.

1304Z

815 Thorn Roger, wait.

-- -- Five by.

-- -- Roger, transmit.

-- -- Yes.

-- -- With you.

((Tr Note: Last 4 transmissions are one way communication--all 4 are from same source--other terminal is on different frequency.))

185 (sic) Thorn We search around and didn't find anyone.

((Tr Note: It is believed that Thorn made an error and wanted to call 815. The call sign 185 however has been used by an Israeli jet aircraft (either a Mirage or a Mystere). It is of course possible that Thorn had previously been in contact with 185, but if this was the

case there are no COMINT reflections of this activity.)

(Thorn) (815) Roger.

(815) (Thorn) The big one ((*Liberty*)) is not ours.

185 (sic) Thorn How do you read me?

((Tr Note: Again Thorn says 185 vice 815.))

(Thorn) 815 ((Calls)).

815 Thorn We searched around and didn't find anyone.

Thorn (815) Roger.

-- Tribune We hear you excellently.

Pagoda 810 ((Calls)).

810 Pagoda Transmit.

(Pagoda) (810) What are you saying?

(810) (Pagoda) Send your report.

(Pagoda) 810 What has to be done here?

Pagoda 810 ((Calls)).

(810) (Pagoda) Search to see if there are men in the water.

1306Z

(Pagoda) (810) Roger.

-- (Tribune) I understand and for the big one ((*Liberty*)).

(Tribune) (Pagoda) Don't speak on the channel now ((rpts)).

-- (Pagoda) Five by, it appears to me that I found the men.

-- Pagoda Affirmative?

-- (Pagoda) Roger, that's clear.

-- (Pagoda) Roger.

-- (Pagoda) Negative, it's not men, it's boats, it's not men.

Tribune 810 ((Calling)).

810 Tribune Go ahead.

815 810 ((Calling)).

810 815 Five by.

815 810 What's going on?

810 815 I don't know anything ((1 WD G)) ((about them)) I'll try to

contact them on 186.

((Tr Note: 815 is trying to get in touch with the 3 small ships on 186 frequency.))

815 810 Are the small ones ours?

815 Tribune ((Calling)).

Tribune 815 Five by.

815 Tribune Pay attention: if any of them are speaking, and if they are speaking Arabic ((Egyptian)), you take them to el Arish ((31-08N 33-45E)). If they are speaking English, not Egyptian, you take them to Lod (31-58N 34-54E). Is this clear?

Tribune 815 Roger.

815 Tribune Do you see the men?

815 Tribune To whom does the big one ((ship)) belong?

1307Z

815 810 ((Calling)) ((repeats)).

810 815 Five by.

815 810 Don't leave the vicinity. If you do leave, report ((to me)).

810 815 I'm not monitoring this channel. I'm speaking on 186 with Thorn. This is the small ones ((sic)).

815 810 Roger, what should be done?

810 815 Search for survivors (*[less than 1 line of source text not declassified]* whether you find them or not).

Pagoda 815 ((Calls)).

815 Pagoda Transmit.

1308Z

(815) (810) Roger.

810 Tribune Are you able to go up a little higher in order to see the situation better?

(Tribune) (810) Roger.

810 Tribune ((Calling)). ((Repeats)).

815 Tribune ((Calling)).

815 Tribune Are you over whatever you located?

((Tr Note: It should be noted here that helicopters 810 and 815 are now answering control on another frequency.))

815 Tribune Roger, the first matter to clarify is to find out what their nationality is.

1310Z

(815) (Tribune) Report to me immediately.

(815) (Tribune) Roger this is clear.

815 Tribune Roger, you watch out for the masts there.

815 Tribune ((Calling)).

(Pagoda) (815) I understand that the ship is not in danger.

(815) Pagoda I am not sure that it ((the *Liberty*)) is not in danger. Are you suggesting the seriousness of it ((the situation)), by ((saying)) this? ((Tr Note: As heard.))

(Pagoda) (815) Negative, G.T.R.-5 is written (on it).
((Tr Note: Letters G.T.R. sent in English.))

(815) (Pagoda) Roger ((stops)).

(Pagoda) (815) Does this mean something?

(815) (Pagoda) Negative, it doesn't mean anything.

(Pagoda) (815) From behind it ((*Liberty*)) several uninflated boats were seen.

(815) (Pagoda) Roger.

815 Tribune You take 810 with you and return home, ([*less than 1 line of source text not declassified*] bearing) 070, distance of 6 miles.

(815) (Tribune) Five by.

1312Z

815 Tribune Roger, this is clear, did you clearly identify an American flag?

815 Tribune Thanks, remain meanwhile over the area.

810 815 ((Calling)).

815 Tribune We request that you make another pass and check once more if this is really an American flag.

(Tribune) (815) Roger.

((Tr Note: Do not hear from 815 until 1327Z.))

-- (Tribune) Five by.

(815) (Tribune) Roger, this is clear, what kind of flag is it?

(815) (Tribune) Roger, this is clear.

(815) (Tribune) Five by, remain meanwhile in waiting, and we'll report to you immediately.

(815) (Tribune) Is this clear?

(815) (Tribune) Take 810, and return home.

(815) (Tribune) ((Course)) 065, distance of 65 miles.

(815) (Tribune) Roger, this is clear.

(815) (Tribune) Roger, I received, I will notify you immediately as to what to do.

(815) (Tribune) Roger.

1316Z

-- (Tribune) Pay attention.

815 Tribune Roger, this is clear. According to the instruction, whoever has the most fuel.

1317Z

(815) (Tribune) Roger, I'm checking on it.

815 Tribune Pay attention: whoever has the most fuel between you will return home, the one with the least will go to El Arish.

815 Tribune Not at the present time. Apparently the one who is going to El Arish will return later.

(815) (Tribune) Which one of you is going home?

(815) (Tribune) Who is going home?

(815) (Tribune) OK.

[time illegible]

815 Tribune Roger, this is known. I received the notice and it's known that these orders came from above.

1321Z

-- -- Go over to 170 on the way home.

810 Tribune He says over to 170 on the way home.

(Tribune) (810) Roger.

1327Z

Jewel 815 ((Calls)) ((Rpts)).

((Tr Note: 815 calls Jewel until 1328Z.))

((End of radio telephone conversation.))

Comment: This activity had been reported in a condensed version by USA-556 in its 2/J15.[less than 1 line of source text not declassified]/R23-67, 082015Z, and follow-ups.

Exhibit 33

424. Draft Memorandum From the Assistant Secretary of State for Near Eastern and South Asian Affairs (Battle) to the Under Secretary of State (Katzenbach)¹

Washington, August 18, 1967.

SUBJECT

The "*Liberty*"--Handling of Israeli Inquiry
Report and Release of Diplomatic Correspondence

On August 15, 1967, Israeli Minister Evron handed Under Secretary Rostow a copy of the report of the Judge who presided over the Israeli military inquiry into the attack on the *Liberty*. (Tab A.)² Minister Evron in delivering the report requested that it be treated on a restricted and confidential basis. He did indicate that "we could, if we wished, show it to interested members of Congress and others".

We have considered the practical aspects of dealing with the Israeli report. Several factors are involved, including the fact that the Israelis made the report available through several channels. (DOD received it via the Defense Attaché in Tel Aviv.) It seems unrealistic to assume that the report or elements thereof will not begin to leak at some stage.

Further, the deep interest of the families of U.S. personnel killed or injured in the incident has been reflected in the keen Congressional questioning we have been exposed to on the hill as well as in Congressional letters received requesting information. We must anticipate that once there is an intimation that the Israeli report had been received in the Executive Branch it will be exceedingly difficult to withhold it from members of Congress.

A related problem has existed with reference to the diplomatic notes exchanged with the Government of Israel concerning the *Liberty* (Tab B). As you know, we have been under considerable pressure to make available the text of the U.S. note to confirm our oral assurances that the Department was diligent in pursuing the matter with the Israeli Government. On July 28, Bill Macomber sent Chairman Fulbright a classified report on

¹ Source: Washington National Records Center, OSD Files: FRC 330 72 A 2468, Middle East, 385.3. Confidential. Drafted by Wehmeyer; cleared by Macomber, Deputy Legal Adviser Murray J. Belman, Assistant Secretary for Public Affairs Dixon Donnelley, and Eugene Rostow. The draft, which is a copy sent to the Department of Defense for clearance, is filed with an August 22 letter from Nitze to Representative George H. Mahon of Texas, sending him on a confidential basis a copy of the report of the judge who presided over the preliminary Israeli inquiry into the attack on the *Liberty*. Also attached are a note to Nitze stating that Defense clearance on Battle's memorandum was requested, an August 21 memorandum from Nitze's military assistant, Commander C.A.H. Trost, USN, to Warnke saying that Nitze had no objection to the proposal but wanted Warnke to look at it, and an August 21 memorandum from Warnke to Nitze questioning recommendation (6) but otherwise approving the proposal. A handwritten comment by Hoopes on Warnke's memorandum suggested deleting recommendation (7) but otherwise concurred.

² The tabs are *ibid*. A copy of the decision of the examining judge in the Israeli Defense Forces preliminary inquiry, issued July 21, is attached to an August 15 memorandum from Rostow to Walsh that states Evon had given it to him the previous day.

the incident (Tab C), which included a brief narrative description of the notes exchanged between the two Governments.

It seems likely that the decision will be considered a "whitewash" by the press, public, and Congressional officials.³

While there are numerous details which invite comment, the following appear to be those most likely to receive critical attention:

(1) The *Liberty* was seen and reported at approximately 0600 hours by an Israeli patrol aircraft with a naval observer aboard, reportedly 70 miles westward of Tel Aviv. At 10:55 "the Naval Liaison Officer at Air Force HQ reported to Navy HQ 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 GTR-5." (Report, para. 11.)

(2) The *Liberty* was displayed on the "Combat Information Centre Table" at Navy HQ for a time, first as an unidentified target (red), later as "a neutral ship" (green). At about 1100 hours (i.e. shortly after it had been identified and presumably marked in green), the Acting Chief of Naval Operations "ordered its erasure from the table, since he had no information as to its location at the time of the report." (Report, para. 12.)

(3) The report emphasizes that the attack on the *Liberty* was pressed in response to reports from the Southern Command in the Sinai that between 1100 and 1200 hours El-Arish "was being shelled from the sea." "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.'" (Report, para. 5.)

No explanation is offered as to why neither the Navy nor the Air Force were able to assure the Southern Command on the basis of the air reconnaissance which had been going on in the area since 0410 hours, that no military vessels capable of carrying out a significant "shelling from the sea" had entered the area. In short, both the Air Force and Navy reacted to the reports of shelling as if they had no information regarding potential enemy targets just off the coast in the El Arish area.

(4) Efforts to "identify" the *Liberty* immediately prior to attack by Israeli aircraft and torpedo boats were apparently cursory at best.

³ Assistant Secretary Hughes sent a copy of the decision to NSA Director Carter on August 22. In a handwritten note of August 26, NSA Deputy Director Louis W. Tordella commented, "A nice whitewash for a group of ignorant, stupid and inept xxx." (National Security Agency, Center for Cryptologic History Historical Collection, Series VII, Crisis Files, Box 16)

(a) Aircraft. "According to their statements [the crew's],⁴ they were looking for a flag, but found none; likewise no other identification mark was observed." "On the assumption that they were facing an enemy target, an order was given to the aircraft to attack." (Report, para. 7.)

The report elsewhere indicates that the torpedo boat commander apparently reported that "the target . . . was moving at a speed of 28 knots" (Report, para. 6), "towards Port Said" (Report, para. 23).

(b) It is clear therefore that even in the eyes of the Israeli military forces the vessel was not considered in a menacing posture immediately prior to the attack. "During the last run, a low-flying aircraft observed the marking 'GTR-5' on the hull of the ship." This was apparently about 1400 hours. No explanation is offered as to why this observation was possible after the attack when the *Liberty* was afire and smoking but not visible at the time of the pre-attack identification runs over the ship.

(c) Torpedo boats. Upon receipt of the information about the markings, 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." (Report, para. 8) The Division Commander was ordered to approach the ship in order to establish visual contact and to identify it but the effort was apparently confined to exchanges of signals which the Israeli commander considered unsatisfactory. "Meanwhile the Division Commander . . . came to the conclusion that he was confronting an Egyptian supply ship by the name of El-Kasir." At 1436, the Division Commander authorized the Division to attack with torpedoes "only at a later stage, when one of the torpedo boats approached the ship from the other side were the markings GTR-5 noticed on the hull" (Report, para. 8.)

The Israeli Judge construed his task as a narrow, technical function, specifically "to decide whether any offense has been committed by any military personnel involved in this incident." (Report, para. 16.) He concluded that "there is no sufficient amount of prima facie evidence, justifying committing anyone for trial." (Report, para. 26.)

At such time as the report becomes public, Congress, the press and the public will want to know what we have said to the Israeli Government after receiving the report. We believe that the report warrants a strong reiteration of the position originally set forth in our note of June 10 and an indication that whatever limitations the Judge may have considered he was under from the standpoint of Israeli military regulations, the report clearly reflects a failure on the part of the Israeli military establishment to exercise normal precautions before launching an attack. We cannot, therefore, accept the report as exonerating the Israeli Government from our expectation that Israel will take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a state. Neither had the U.S. received any assurance that Israel has issued instructions to ensure that U.S. personnel will not again be endangered by the wrongful actions of Israeli military personnel.

⁴ Brackets in the source text

Recommendation:

That you call in Minister Evron and inform him

- 1) We have reviewed the report and consider that it confirms that the negligence on the part of the Israeli military establishment was even greater than we were aware at the time of our June 10 note;
- 2) The United States accordingly reiterates the position expressed in the June 10 note that the attack must be condemned as an act of military irresponsibility reflecting reckless disregard for human life;
- 3) The United States cannot accept the report as exonerating the Israeli Government from taking the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a state. The entire incident cannot be construed in any light other than as one involving such wrongful conduct;
- 4) The United States further expects to receive some specific assurance that the Government of Israel has issued instructions necessary to ensure that United States personnel will not again be endangered by the wrongful actions of Israeli military personnel;
- 5) The USG is now actively engaged in the process of obtaining information necessary to determine the amount of compensation which it will claim for the personal injury and death [and] damage to property suffered in this regrettable incident, and it intends to inform the GOI of the amount of compensation claimed as soon as the amount has been determined;⁵
- 6) We believe there is a real possibility that the report or portions thereof will leak out either here or in Israel and that in any event it will be exceedingly difficult to withhold the report in the event of Congressional requests which are likely;
- 7) We believe the Government of Israel should give urgent consideration to whether it would not be beneficial from its standpoint to take the initiative in releasing the document at an early date;

⁵ On May 27, 1968, the Israeli Government paid \$3,323,500, the amount of compensation claimed by the U.S. Government on behalf of the families of the 34 men killed in the attack on the *Liberty*. (Department of State *Bulletin*, June 17, 1968, p. 799) On April 28, 1969, the Israeli Government paid \$3,566,457, representing payment in full of 164 claims totaling \$3,452,275 on behalf of members of the crew of the *Liberty* who were injured in the attack, and claims for expenses incurred by the U.S. Government in providing medical treatment for the injured and in reimbursing crew members for personal property lost or damaged in the attack. (Ibid., June 2, 1969, p. 473) Documentation on the negotiations concerning these claims is in the National Archives and Records Administration, RG 59, Central Files 1967-69, PS 8-4 US-ISR. On December 17, 1980, the Department of State announced that the U.S. Government had accepted an Israeli proposal to pay \$6 million as final settlement of the U.S. claim for compensation for damage to the *Liberty*. (Department of State *Bulletin*, February 1981, p. 55)

8) We feel obliged to release the exchange of correspondence between the two Governments concerning the incident, which we plan to accomplish in a routine, low-key manner.⁶

⁶ The draft memorandum does not indicate whether the document was approved or disapproved, but see Document 433.

Exhibit 34

Letter to editor by survivor Harold "Gene" Six

Riverside, California, *Press-Enterprise*
March 1, 1996

AN EARLIER ATTACK

President Clifton and other elected officials have come out and condemned Castro and Cuba for shooting down two aircraft flown by Cuban revolutionaries that may or may not have violated Cuban airspace. Yet on June 8, 1967, When the Israeli defense forces attacked an American naval vessel --USS Liberty AGTR-5 --that was and always had been in international waters, nothing was said or don by the US government.

This attack resulted in the deaths of 34 American sailors and the wounding of 171 others. Yet even today the survivors of the attack cannot get their elected officials to investigate the attack. An attack that was deliberate. An attack that violated international law. An attack that violated provisions of the Geneva Convention, in other words war crimes. An attack where provisions of the Uniform Code of Military Justice were violated when American naval aircraft sent to the aid of the USS Liberty were called back not once but twice by someone at the White House.

Do American lives mean so little to our elected officials that they will use the dead bodies of 18-year old American sailors as stepping stones on their way to office?

Harold "Gene" Six, USS Liberty Survivor

Exhibit 35

Survivor Ken Ecker Speaks Out

Immediately following the attack I was threatened with court-martial if I discussed the incident with the press or anyone else. One of the warnings was also not to discuss the attack even with my immediate family or friends. In my case these warnings were repeated upon my transfer from each duty station I left along with the standard security clearance de-briefing. I was also periodically taken aside and reminded of the original threat even when not being transferred. Though never told the reason for these one on one "advisory" sessions, I personally believe they were the result of some action that raised the possibility of further publicity that our government wanted to suppress. I want no personal recognition, but I will not rest until the 34 brave men that sacrificed their lives are finally given the long overdue honor they so justly deserve. Hopefully with the help of all concerned this long denied justice will be forthcoming in the not so distant future.

Ken Ecker
USS Liberty

Exhibit 36

----- Original Message -----

From: Joe Meadors <<mailto:joe@ussliberty.com>>
To: dover@mod.gov.il <<mailto:dover@mod.gov.il>>
Sent: Saturday, May 21, 2005 6:29 PM
Subject: [Fwd: USS Liberty Photos]

Dear Mrs. Naidek-Ashkenazi:

In previous contacts with the IDF I was kept somewhat in limbo regarding a request for information until the information I requested arrived in the mail.

I would deeply appreciate knowing if my request is being acted upon and if I can expect to receive copies of the photographs I have requested.

Warmest regards,

Joe Meadors

USS Liberty Survivor

----- Original Message -----

Subject: USS Liberty Photos

Date: Mon, 09 May 2005 19:12:22 -0500

From: Joe Meadors <joe@ussliberty.com <<mailto:joe@ussliberty.com>>>

To: dover@mod.gov.il <<mailto:dover@mod.gov.il>>

Dear Mrs. Naidek-Ashkenazi:

By way of brief introduction I was aboard the USS Liberty when the ship was attacked on June 8, 1967. I am also the co-web master of the USS Liberty Memorial Web Site at <http://www.ussliberty.com>

<<http://www.ja5gyrufkshfik.ReadNotify.com/tg/ja5gyrufkshfilhttp/www.ussliberty.com>>

I am contacting you in hopes that you will be able to assist me in an area of research about the attack.

I'll be deliberately brief.

Jay Cristol's book, The Liberty Incident, contains a number of photographs that have been altered.

Judge Cristol claims that those photographs are published as they have been received from the IDF during his many trips to Israel.

Given the obvious and amateurish way in which the photographs were altered we find it hard to believe that that is the result of IDF actions.

I would appreciate it if you could arrange to have us provided with copies of the original photographs that were given to Judge Cristol.

I appreciate any assistance you can be in this regard and look forward to your prompt response.

Warmest regards,

Joe Meadors

joe@ussliberty.com <<mailto:joe@ussliberty.com>>



STATE OF ISRAEL

SPOKESPERSON OF THE MINISTRY OF DEFENSE

May 26th, 2005
929-260505-ט'ט משהב'ט דובר
Tel: 972-3-6975546
Fax: 972-3-6977285
Email: dover@mod.gov.il

Mr. Joe Meadors

Re: Liberty

Dear Mr. Meadors,

Jay Cristol's book was checked by our archive experts and they say that apart from one photo, taken by the late David Rabinger (a photo of Moshe Dayan in Gush Etzion), all other photos were taken by a photographer of the American Navy.

Yours Sincerely

**Rachel Naidek Ashkenazi
Spokesperson of the Ministry of Defense**

----- Original Message -----

Kjhalliwell@aol.com**From:**

doover@mod.gov.il**To:**

Sent: Saturday, May 28, 2005 7:55 PM

Subject: Re: USS Liberty Attack Gun Camera Photographs

Dear Mrs. Naidek-Ashkenazi,

In my original message below, I forgot to state that a reply via electronic correspondence is acceptable. But if you prefer to send correspondence via the postal system, that's acceptable too. You will find my mailing address below my name.

Again, thank you for your time and attention to this matter.

Sincerely,

Kenneth J. Halliwell
222 S. Virginialee Road
Columbus, OH 43209
USA

In a message dated 5/28/05 10:19:43 AM Eastern Daylight Time, Kjhalliwell writes:

Dear Mrs. Naidek-Ashkenazi,

I am an American citizen involved in research of the technical and historical aspects of the USS Liberty incident that occurred on June 8, 1967, during the Six Day War.

During my research, I discovered that another American researcher, A. J. Cristol, published "gun camera" photographs supposedly taken during the attack, in a book he authored: "The Liberty Incident -- The 1967 Attack on the U.S. Navy Spy Ship." ISBN 157488414X. There is strong photographic analysis evidence that these "gun camera" photographs were fabricated from a docking photograph of the USS Liberty, taken after the attack. Thus, these "gun camera" photographs do not appear real.

Mr. Cristol claims he obtained the "gun camera" photographs from an Israeli Air Force source, and that they are true gun camera photographs.

Perhaps you can help resolve this important matter by either validating or invalidating, in written correspondence, on official State of Israel, Ministry of Defense letterhead, Mr. Cristol's claim that the "gun camera" photographs, shown in his book, are from an Israeli military or government source.

Thank you for your time and consideration of this matter.

Sincerely,

Kenneth J. Halliwell



STATE OF ISRAEL

SPOKESPERSON OF THE MINISTRY OF DEFENSE

May 29th, 2005
- -? ??' ? ???
Tel: 972-3-6975546
Fax: 972-3-6977285
Email: dover@mod.gov.il

Mr. Kenneth J. Halliwell

Re: Liberty

Dear Mr. Halliwell,

Jay Cristol's book was checked by our archive experts and they say that apart from one photo, taken by the late David Rabinger (a photo of Moshe Dayan in Gush Etzion), all other photos were taken by a photographer of the American Navy.

Yours Sincerely

**Rachel Naidek Ashkenazi
Spokesperson of the Ministry of Defense**

Exhibit 37

Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war, of persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

Exhibit 38

Address by President Roosevelt over the radio concerning the attack upon the destroyer GREER,

September 11, 1941

My fellow Americans:

The Navy Department of the United States has reported to me that on the morning of September 4 the U. S. Destroyer GREER, proceeding in full daylight toward Iceland, had reached a point southeast of Greenland. She was carrying American mail to Iceland. She was flying the American flag. Her identity as an American ship was unmistakable.

She was then and there attacked by a submarine. Germany admits that it was a German submarine. The submarine deliberately fired a torpedo at the GREER, followed later by another torpedo attack. In spite of what Hitler's propaganda bureau has invented, and in spite of what any American obstructionist organization may prefer to believe, I tell you the blunt fact that the German submarine fired first upon this American destroyer without warning, and with deliberate design to sink her.

Our destroyer, at the time, was in waters which the Government of the United States had declared to be waters of self-defense-surrounding outposts of American protection in the Atlantic.

In the north, outposts have been established by us in Iceland, Greenland, Labrador, and Newfoundland. Through these waters there pass many ships of many flags. They bear food and other supplies to civilians and they bear materiel of war, for which the people of the United States are spending billions of dollars, and which, by congressional action, they have declared to be essential for the defense of their own land.

The United States destroyer, when attacked, was proceeding on a legitimate mission.

If the destroyer was visible to the submarine when the torpedo was fired, then the attack was a deliberate attempt by the Nazis to sink a clearly identified American warship. On the other hand, if the submarine was beneath the surface and, with the aid of its listening devices, fired in the direction of the sound of the American destroyer without even taking the trouble to learn its identity-as the official German communiqué would indicate-then the attack was even more outrageous. For it indicates a policy of indiscriminate violence against any vessel sailing the seas, belligerent or non-belligerent.

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This was piracy-legally and morally. It was not the first nor the last act of piracy which the Nazi government has committed against the American flag in this war. Attack has followed attack.

A few months ago an American-flag merchant ship, the ROBIN MOOR, was sunk by a Nazi submarine in the middle of the South Atlantic under circumstances violating long-established international law and every principle of humanity. The passengers and the crew were forced into open boats hundreds of miles from land, in direct violation of international agreements signed by the Government of Germany. No apology, no allegation of mistake, no offer of reparations has come from the Nazi government.

In July 1941 an American battleship in North American waters was followed by a submarine, which for a long time sought to maneuver itself into a position of attack. The periscope of the submarine was clearly seen. No British or American submarines were within hundreds of miles of this spot at the time, so the nationality of the submarine is clear.

Five days ago a United States Navy ship on patrol picked up three survivors of an American-owned ship operating under the flag of our sister Republic of Panama—the steamship SESSA. On August 17 she had been first torpedoed without warning, and then shelled, near Greenland, while carrying civilian supplies to Iceland. It is feared that the other members of her crew have been drowned. In view of the established presence of German submarines in this vicinity, there can be no reasonable doubt as to the identity of the attacker.

Five days ago another United States merchant ship, the STEEL SEAFARER, was sunk by a German aircraft in the Red Sea 220 miles south of Suez. She was bound for an Egyptian port.

Four of the vessels sunk or attacked flew the American flag and were clearly identifiable. Two of these ships were warships of the American Navy. In the fifth case, the vessel sunk clearly carried the flag of Panama.

In the face of all this, we Americans are keeping our feet on the ground. Our type of democratic civilization has outgrown the thought of feeling compelled to fight some other nation by reason of any single piratical attack on one of our ships. We are not becoming hysterical or losing our sense of proportion. Therefore, what I am thinking and saying does not relate to any isolated episode.

Instead, we Americans are taking a long-range point of view in regard to certain fundamentals and to a series of events on land and on sea which must be considered as a whole—as a part of a world pattern.

It would be unworthy of a great nation to exaggerate an isolated incident, or to become inflamed by some one act of violence. But it would be inexcusable folly to minimize such incidents in the face of evidence which makes it clear that the incident is not isolated, but part of a general plan.

The important truth is that these acts of international lawlessness are a manifestation of a design which has been made clear to the American people for a long time. It is the Nazi design to abolish the freedom of the seas, and to acquire absolute control and domination of the seas for themselves.

For with control of the seas in their own hands, the way can become clear for their next step-domination of the United States and the Western Hemisphere by force. Under Nazi control of the seas, no

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merchant ship of the United States or of any other American republic would be free to carry on any peaceful commerce, except by the condescending grace of this foreign and tyrannical power. The Atlantic Ocean which has been, and which should always be, a free and friendly highway for us would then become a deadly menace to the commerce of the United States, to the coasts of the United States, and to the inland cities of the United States.

The Hitler government, in defiance of the laws of the sea and of the recognized rights of all other nations, has presumed to declare, on paper, that great areas of the seas-even including a vast expanse lying in the Western Hemisphere-are to be closed, and that no ships may enter them for any purpose, except at peril of being sunk. Actually they are sinking ships at will and without warning in widely separated areas both within and far outside of these far-flung pretended zones.

This Nazi attempt to seize control of the oceans is but a counterpart of the Nazi plots now being carried on throughout the Western Hemisphere, all designed toward the same end. For Hitler's advance guards-not only his avowed agents but also his dupes among us-have sought to make ready for him footholds and bridgeheads in the New World, to be used as soon as he has gained control of the oceans.

His intrigues, his plots, his machinations, his sabotage in this New World are all known to the Government of the United States. Conspiracy has followed conspiracy.

Last year a plot to seize the Government of Uruguay was smashed by the prompt action of that country, which was supported in full by her American neighbors. A like plot was then hatching in Argentina, and that Government has carefully and wisely blocked it at every point. More recently an endeavor was made to subvert the Government of Bolivia. Within the past few weeks the discovery was made of secret air landing fields in Colombia within easy range of the Panama Canal. I could multiply instances.

To be ultimately successful in world mastery Hitler knows that he must get control of the seas. He must first destroy the bridge of ships which we are building across the Atlantic, over which we shall continue to roll the implements of war to help destroy him and all his works in the end. He must wipe out our patrol on sea and in the air. He must silence the British Navy.

It must be explained again and again to people who like to think of the United States Navy as an invincible protection that this can be true only if the British Navy survives. That is simple arithmetic.

For if the world outside the Americas falls under Axis domination, the shipbuilding facilities which the Axis Powers would then possess in all of Europe, in the British Isles, and in the Far East would be much greater than all the shipbuilding facilities and potentialities of all the Americas-not only greater but two or three times greater. Even if the United States threw all its resources into such a situation, seeking to double and even redouble the size of our Navy, the Axis Powers, in control of the rest of the world, would have the manpower and the physical resources to out-build us several times over.

It is time for all Americans of all the Americas to stop being deluded by the romantic notion that the Americas can go on living happily and peacefully in a Nazi-dominated world.

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Generation after generation America has battled for the general policy of the freedom of the seas. That policy is a very simple one, but a basic, fundamental one. It means that no nation has the right to make the broad oceans of the world at great distances from the actual theater of land war unsafe for the commerce of others.

That has been our policy, proved time and time again, in all our history.

Our policy has applied from time immemorial-and still applies-not merely to the Atlantic but to the Pacific and to all other oceans as well.

Unrestricted submarine warfare in 1941 constitutes a defiance-an act of aggression-against that historic American policy.

It is now clear that Hitler has begun his campaign to control the seas by ruthless force and by wiping out every vestige of international law and humanity.

His intention has been made clear. The American people can have no further illusions about it.

No tender whisperings of appeasers that Hitler is not interested in the Western Hemisphere, no soporific lullabies that a wide ocean protects us from him can long have any effect on the hard-headed, farsighted, and realistic American people.

Because of these episodes, because of the movements and operations of German warships; and because of the clear repeated proof that the present Government of Germany has no respect for treaties or for international law, that it has no decent attitude

toward neutral nations or human life, we Americans are now face to face, not with abstract theories, but with cruel, relentless facts.

This attack on the GREER was no localized military operation in the North Atlantic. This was no mere episode in a struggle between two nations. This was one determined step toward creating a permanent world system based on force, terror, and murder.

And I am sure that even now the Nazis are waiting to see whether the United States will by silence give them the green light to go ahead on this path of destruction.

The Nazi danger to our western world has long ceased to be a mere possibility. The danger is here now-not only from a military enemy but from an enemy of all law, all liberty, all morality, all religion.

There has now come a time when you and I must see the cold, inexorable necessity of saving to these inhuman, unrestrained seekers of world conquest and permanent world domination by the sword, "You seek to throw our children and our children's children into your form of terrorism and slavery. You have now attacked our own safety. You shall go no further."

Normal practices of diplomacy-note writing-are of no possible use in dealing with international outlaws who sink our ships and kill our citizens.

One peaceful nation after another has met disaster because each refused to look the Nazi danger squarely in the eye until it actually had them by the throat.

The United States will not make that fatal mistake.

No act of violence or intimidation will keep us from maintaining intact two bulwarks of defense-first, our line of supply of materiel to the enemies of Hitler; and, second, the freedom of our shipping on the high seas.

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No matter what it takes, no matter what it costs. We will keep open the line of legitimate commerce in these defensive waters.

We have sought no shooting war with Hitler. We do not seek it now. But, neither do we want peace so much that we are willing to pay for it by permitting him to attack our naval and merchant ships while they are on legitimate business.

I assume that the German leaders are not deeply concerned by what we Americans say or publish about them. We cannot bring about the downfall of nazi-ism by the use of long-range invectives.

But when you see a rattlesnake poised to strike you do not wait until he has struck before you crush him.

These Nazi submarines and raiders are the rattlesnakes of the Atlantic. They are a menace to the free pathways of the high seas. They are a challenge to our sovereignty. They hammer at our most precious rights when they attack ships of the American flag-symbols of our independence, our freedom, our very life.

It is clear to all Americans that the time has come when the Americas themselves must now be defended. A continuation of attacks in our own waters, or in waters which could be used for further and greater attacks on us, will inevitably weaken American ability to repel Hitlerism.

Do not let us split hairs. Let us not ask ourselves whether the Americas should begin to defend themselves after the fifth attack, or the tenth attack, or the twentieth attack.

The time for active defense is now.

Do not let us split hairs. Let us not say, "We will only defend ourselves if the torpedo succeeds in getting home, or if the crew and the passengers are drowned."

This is the time for prevention of attack.

If submarines or raiders attack in distant waters. They can attack equally well within sight of our own shores. Their very presence in any waters which America deems vital to its defense constitutes an attack.

In the waters which we deem necessary for our defense American naval vessels and American planes will no longer wait until Axis submarines lurking under the water, or Axis raiders on the surface of the sea, strike their deadly blow-first.

Upon our naval and air patrol-now operating in large numbers over a vast expanse of the Atlantic Ocean-falls the duty of maintaining the American policy of freedom of the seas-now. That means very simply and clearly, that our patrolling vessels and planes will protect all merchant ships-not only American ships but ships of any flag-engaged in commerce in our defensive waters. They will protect them from submarines; they will protect them from surface raiders.

This situation is not new. The second President of the United States, John Adams, ordered the United States Navy to clean out European privateers and European ships of war which were infesting the Caribbean and South American waters, destroying American commerce.

The third President of the United States, Thomas Jefferson, ordered the United States Navy to end the attacks being made upon American ships by the corsairs of the nations of North Africa.

My obligation as President is historic; it is clear. It is inescapable.

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It is no act of war on our part when we decide to protect the seas which are vital to American defense. The aggression is not ours. Ours is solely defense.

But let this warning be clear. From now on, if German or Italian vessels of war enter the waters, the protection of which is necessary for American defense, they do so at their own peril.

The orders which I have given as Commander in Chief to the United States Army and Navy are to carry out that policy-at once.

The sole responsibility rests upon Germany. There will be no shooting unless Germany continues to seek it.

That is my obvious duty in this crisis. That is the clear right of this sovereign Nation. That is the only step possible, if we would keep tight the wall of defense which we are pledged to maintain around this Western Hemisphere.

I have no illusions about the gravity of this step. I have not taken it hurriedly or lightly. It is the result of months and months of constant thought and anxiety and prayer. In the protection of your Nation and mine it cannot be avoided.

The American people have faced other grave crises in their history- with American courage and American resolution. They will do no less today.

They know the actualities of the attacks upon us. They know the necessities of a bold defense against these attacks. They know that the times call for clear heads and fearless hearts.

And with that inner strength that comes to a free people conscious of their duty and of the righteousness of what they do, they will-with Divine help and guidance-stand their ground against this latest assault upon their democracy, their sovereignty, and their freedom.

Exhibit 4-17

Abidjan to Rota, 24-31 May 1967 (U)

~~(S-000)~~ The TRS was at Abidjan, Ivory Coast, at the end of May on its fifth African cruise when, in response to NSA's message on 23 May, the JCS/JRC, with approval of the Deputy Secretary of Defense, directed movement of the ship to the eastern Mediterranean via Rota, Spain, and requested the Commander-in-Chief, Atlantic to change operational control of the ship to the Commander-in-Chief, Europe upon its arrival at Rota.³ At the time, the *Liberty* was under the operational control of the Commander, Service Squadron 8, a component of the Commander-in-Chief, Atlantic, and on 24 May the Commander, Service Squadron 8 issued sailing orders to the *Liberty*, with information copies to Commander, Sixth Fleet and others, directing the ship to move at once to Rota.⁴ The *Liberty* departed Abidjan at 0530Z, 24 May, with estimated time of arrival in Rota, 31 May.⁵

***Liberty* at Rota,
31 May to 2 June 1967 (U)**

(U) When the *Liberty* arrived at Rota on 31 May, it came under the operational control of the U.S. Commander-in-Chief, Europe (Gen. L.L. Lemnitzer) who turned over control to the Commander-in-Chief, U.S. Navy Europe.⁶ While delegating his control, General Lemnitzer still wanted operational information on the ship's progress and asked on 1 June that situation reports (Sitreps) and planned intended movement (Pim) reports from the *Liberty* arrive at his headquarters daily and that any incidents be reported as soon as possible in accordance with the existing reconnaissance reporting instructions.⁷

~~(S-000)~~ After taking control, Admiral John S. McCain, Jr., Commander-in-Chief, U.S. Navy Europe, directed the *Liberty* to send to his headquarters daily Sitreps and position reports and in those reports to include the Pim for the next 24 hours and any comments on status of the ship. He directed the *Liberty* to depart for the eastern Mediterranean when ready, provided guidelines for its staying within international waters, and asked for adherence to established communications procedures for the region. NSA also received the situation reports being required by Commander-in-Chief, Europe and Commander-in-Chief, U.S. Navy Europe and used these, along with ship positions given in *Liberty's* daily informal technical summaries, to plot on a routine basis the course of the *Liberty*.⁸

(U) At Rota, the *Liberty* prepared for its deployment to the eastern Mediterranean, taking on

provisions and fuel, acquiring the military documentation necessary for its assignment to Commander-in-Chief, U.S. Navy Europe and later to the U.S. Sixth Fleet, and repairing its TRSSCOMM which had a faulty hydraulic system.

~~(S-0)~~ Six Arabic [redacted] linguists joined USN-855 for the expected work on U.A.R. and [redacted] communications. Three of the Arab linguists, NSA civilians Allen M. Blue, Donald L. Blacklock, and Robert L. Wilson, were among the specialists who came on board [redacted] the remaining linguists being Naval Security Group specialists. The NSA linguists brought with them selected technical material. [redacted] Assignment of civilian linguists to work on board a U.S. Navy ship was not unusual. On TRS deployments along the African [redacted] civilian linguists had worked alongside the military linguists, who at times were not available in sufficient number for the missions at hand.

~~(S-000)~~ NSA action officers established a tel-econ with USN-855 [redacted]

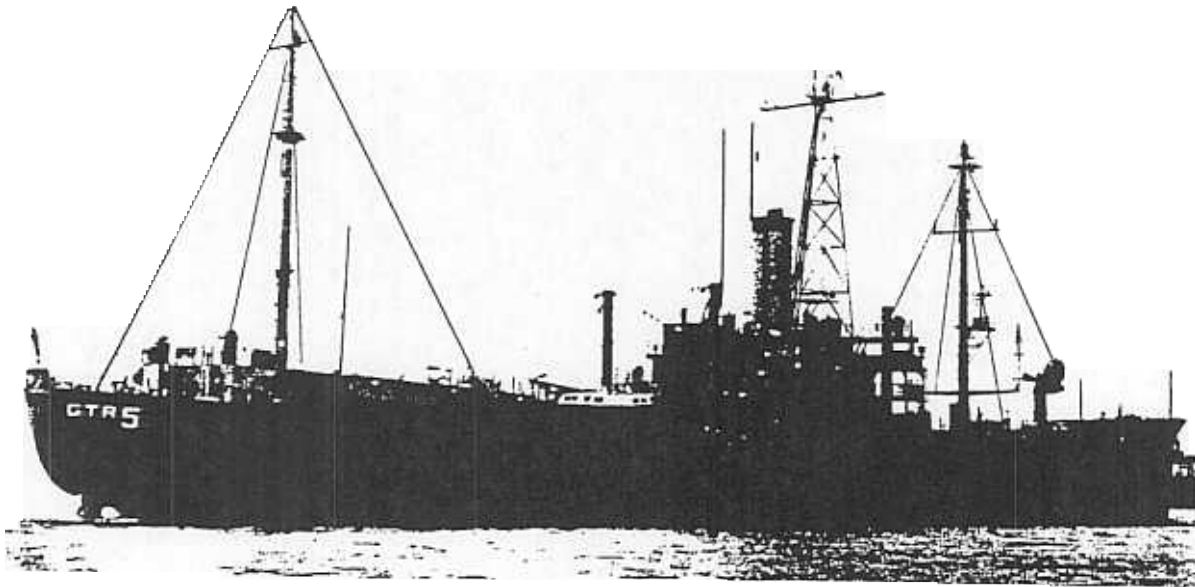
[redacted] 1 June in order to confirm the arrival of the personnel, special equipment, and technical materials needed in the eastern Mediterranean.⁹ In order to assist USN-855's reporting and transcribing functions, NSA had previously arranged with [redacted]

[redacted]

~~(S-000)~~ To facilitate the planning for USN-855's collection mission, Sigint managers had designated five operational areas numbered west to east in the eastern Mediterranean near the coastline of the U.A.R., Israel, Lebanon, and Syria, each measuring about 50-by-50 miles. In proposing the five operational areas to the JCS, the Director, NSA had indicated his preference, based on wave propagation analysis of U.A.R. communications, for operational area three (32:00-33:00N to 34:00E) if operational and safety factors did not dictate otherwise.¹⁰ With the territorial limits established by Middle East countries in mind, JCS subsequently directed the Commander-in-Chief, Europe to deploy the *Liberty* to operational area three with closest point of approach (CPA) to Algeria, Libya, and the U.A.R. of 13 nautical miles during transit. On arrival in operational area three, CPA was to be 12.5 nm to the U.A.R. and 6.5 nm to Israel.¹¹ Acting upon the JCS message for Commander-in-Chief, Europe and after hearing from the *Liberty* that it had

- (b) (1)
- (b) (3) -50 USC 403
- (b) (3) -18 USC 798
- (b) (3) -P.L. 86-36

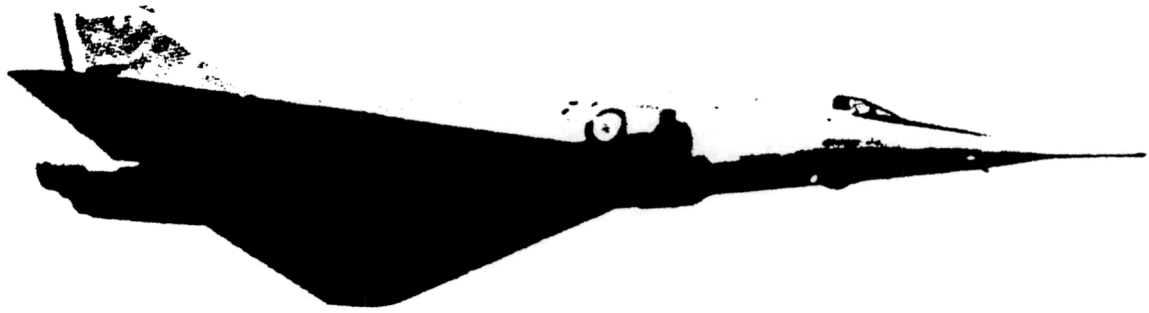
Exhibit 4-2



(U) The U.S.S. *Liberty* was commissioned in May 1945 as a victory ship and later converted into a technical research ship (December 1964). She had an overall length of 455 feet, a maximum speed of 18 knots with an allowable personnel complement of 9 officers and 151 enlisted men along with an additional 6 officers and 128 enlisted men from the Naval Security Group.

(Photograph courtesy of the Department of the Navy.)
(Figure is UNCLASSIFIED)

Exhibit 4-26



(b) (1)
(b) (3)-50 USC 403
(b) (3)-18 USC 798
(b) (3)-P.L. 86-36

(U) The Dassault Mirage jet bomber of the type which attacked the *Liberty* on 8 June.

(Photograph courtesy of *Jane's All the World's Aircraft.*)

(Figure is UNCLASSIFIED)

training program established by the Commander, Service Force, Atlantic Fleet, and was not related to her mission in the eastern Mediterranean. The drill was performed satisfactorily and the ship returned to her "modified condition three" at 1345.¹⁰

(U) Following the general quarters drill, the *Liberty's* Commanding Officer, Commander William L. McGonagle, fixed her position by radar as being 25.5 nautical miles from the minaret at Al 'Arish, which was to the southeast (bearing 142° true.)

Air Attack Begins (U)

~~(S CCG)~~ Amidships below deck, the *Liberty's* Research Department (the Sigint collection, processing, and reporting area) resumed normal operations. Robert L. Wilson was in the analysis/reporting area together with the other civilians, Allen M. Blue and Donald L. Blalock, plus the Marine linguists. Things had been slow and Wilson considered going up on deck to do some sunbathing but changed his mind. Communications Technician (CT) Terry L. McFarland, seated at his manual-morse position, was [redacted]

[redacted] That far below deck it was difficult for anyone to hear much of what was happening topside.

(U) During the general quarters (GQ) drill, Lieutenant James G. O'Connor (Assistant Technical Operations Officer of the Research Department) had been officer of the deck on the bridge. At the conclusion of the drill, he went up to the 04 level (above the bridge) to see if he could locate the

approaching airplanes that had been picked up on radar by the lookouts. It was 1400 hours. From the starboard wing of the bridge, Commander McGonagle observed a single jet aircraft that appeared similar, if not identical, to those that had been sighted earlier in the day and about which a sighting report had been submitted. The relative bearing of this plane was about 135°, its position angle was about 45°-50°, its elevation approximately 7,000 feet, and it was approximately five to six miles from the ship. It appeared to McGonagle that the plane was traveling parallel to, and in the same direction as the *Liberty*. With his binoculars trained on the aircraft, the Commander was unaware of a second plane swooping in from the port side to launch a rocket directed toward the bridge. When the rocket exploded two levels below the bridge, McGonagle ordered the general alarm to be sounded.

(U) CT3 Paddy E. (Dusty) Rhodes was headed below decks from his GQ station, damage control detail. At the end of the GQ drill, the Commander had ordered the whaleboat engine tested and, when Dusty heard a muffled explosion, he thought, "Those damned deck apes blew that boat up and I've got to go back up and fight the fire." Simultaneously, Dusty heard the general quarters alarm. Scampering back up the ladder, he could smell burning powder and started "dogging down" doors when a rocket tore through a bulkhead to his right ripping steel all about.

Exhibit 4-28

UNCLASSIFIED

both reached the top of the ladder to proceed down, a bomb hit near the whaleboat on the starboard side, immediately aft of the bridge. Armstrong and O'Connor were thrown back onto the bridge and other personnel in the pilot-house were blown from their feet. McGonagle grabbed the engine order annunciator and rang up all head flank speed — an order for maximum speed. At the same time, he ordered Lieutenant Maurice H. Bennett to report to the Chief of Naval Operations (CNO) via the high-command radio circuit (hicom) that the *Liberty* was under attack by unidentified jet aircraft and required immediate assistance. This Flash message, giving the *Liberty's* position as 33-25E, 31-23N, was received by the aircraft carrier U.S.S. *Saratoga* (CVA-60) and relayed to Commander, U.S. Naval Forces Europe; Commander, Sixth Fleet; and Commander, Task Force 60 (CTF 60).¹¹ *Liberty's* transmission was not made without difficulty. During the attack and intermittently thereafter, the hicom voice circuit was subjected to loud jamming regardless of frequency. This electronic interference was described as a steady carrier without modulation.¹²

(U) After being blown back onto the bridge floor, Lieutenant O'Connor realized he had no feeling in his body from the waist down. To get out of the way, he dragged himself into the combat information center (CIC) behind the bridge, where several others had also sought safety. Lying face down, O'Connor soon noticed that there was a lot of blood on the floor and then realized it was his. About this time, Ensign O'Malley stepped into the CIC and helped stop O'Connor's bleeding by stuffing a T-shirt into the holes in his back.

(U) A few moments after the bomb blast on the starboard side, Commander McGonagle was hit by flying shrapnel and knocked off his feet, but, though shaken up, he remained on the bridge, totally in command.

(U) For the next five or six minutes, aircraft made criss-cross attacks on the *Liberty* at about one-minute intervals, hitting her with rockets and machine-gun fire. A final count entered into the Court of Inquiry's record, showed 821 separate hits on the ship's hull and superstructure. The attacking aircraft were later identified as French-built Dassault Mirage jet fighters whose armament consisted of two 30mm cannon, two 1,000-pound bombs, and four rocket pods (18 rockets each).

(U) During the first or second strafing run, the ship's public-address system, the electrically powered intercom system, and most sound-powered phone circuits were severed or destroyed.

(U) In the first minutes of the air attack the *Liberty* suffered a complete loss of external communications because of badly damaged radio transmitting equipments and antenna systems. In spite of this, emergency restoration of hicom voice capability was completed within minutes. All U.S.S. *Liberty* communications immediately thereafter were via the hicom voice network.¹³

(U) The coordinated strafing, rocket, and incendiary air attacks created three major fires topside that covered large areas of the *Liberty* with flames and heavy smoke. Eight men were killed or died of injuries received during the air attack: two killed or mortally wounded on the bridge, two killed at machine gun 51, one killed at machine gun 52, one died from wounds received on the main deck starboard side, and two died of wounds received on the O1 level portside. Throughout the topside area, 75 men had been wounded by shrapnel and shock of exploding rockets.

(U) During this period, the *Liberty* gradually built up speed from five knots; her exact speed was not known but it is doubtful that she exceeded 11 or 12 knots while under attack.

Torpedo-Boat Attack (U)

(U) At about 1424 hours, look-outs sighted three high-speed boats approaching the *Liberty* from the northeast on a relative bearing of approximately 135° at a distance of about 15 miles. The boats appeared to be in a wedge-type formation, spaced about 150 to 200 yards apart, and closing in a torpedo-launch attitude at an estimated speed of 27 to 30 knots. Commander McGonagle ordered a sailor from the bridge to man the starboard gun and take the boats under fire. Using the hicom circuit, the *Liberty's* radioman reported the approach of the torpedo boats. This was received and relayed by the U.S.S. *Saratoga* to Commander-in-Chief, U.S. Navy Europe and to the Commander, Sixth Fleet.¹⁴

(U) It was then that the Commander noticed that the *Liberty's* American flag had been shot down. He immediately ordered a signalman to hoist the "holiday ensign" — the largest flag aboard (approximately 7 x 13 feet) — from the yardarm, the normal flag halyard having been destroyed. There was smoke from the burning whaleboat and other topside fires in the vicinity of the bridge.

(U) Commander McGonagle passed the word, "Stand by for torpedo attack." He held his course, since turning away from the boats would bring the ship closer to land, and turning toward them would

Exhibit 4-29

swing the ship broadside toward the attackers, giving them a larger target.

(U) When Robert L. Wilson heard the torpedo attack warning, he remembered one of the seamen telling him to sit on the floor and brace his feet against the wall.

(U) In the processing and reporting area, CT Terry McFarland was told to "tuck pant legs into your socks, button top collar, get rid of loose material, and lie flat on floor and hold your head in your hands to protect your face."

(U) When the motor torpedo boats were approximately a mile away, the center boat was seen flashing a signal light. Because of smoke and flames in the direction from which the boats were approaching, Commander McGonagle could not read the signals, but he saw what he believed to be an Israeli flag. As the air attack had knocked out the *Liberty's* starboard signal light, he attempted to signal with a hand-held Aldis lamp. This may not have been powerful enough to penetrate the smoke pouring from the fires started by the attackers. Believing that the air attack might have been in error, Commander McGonagle quickly shouted to the starboard forward gun to withhold fire. The gunner fired a short burst at the motor torpedo boats before he understood the CO's order. At the same time, though unattended, the after gun on the starboard side opened fire: flames from the burning whaleboat had ignited bullets in the gun and in the

ammunition box, causing the gun to fire in the direction of the attacking boats.

(U) At this time, the motor torpedo boats opened fire with their gun mounts, killing the *Liberty's* helmsman. In a matter of seconds one torpedo crossed astern of the ship at about 25 yards. The time was then 1434 hours. A minute later, a second torpedo struck the ship on the starboard side, just forward of the bridge and a few feet below the water line. Again, using the hicom net, the *Liberty* broadcast that the ship had been torpedoed and was listing badly. The *Saratoga* picked up the transmission and relayed it to the Commander-in-Chief, U.S. Navy Europe and to the Commander, Sixth Fleet.¹⁵

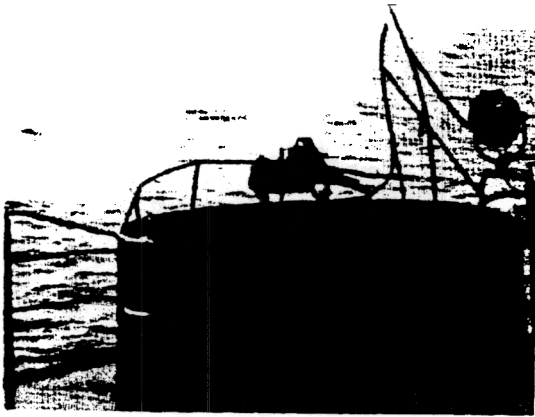
(U) To Lieutenant O'Connor, lying on the floor of the combat information center, the torpedo's deafening explosion seemed to lift the ship right out of the water, and when it settled back he thought it was going to roll over.

(U) In the Research Department where the torpedo struck, everything went black; oil and debris were everywhere. Water rushed in and equipment fell over Terry McFarland, but he managed to keep clear and make his way in the darkness to the ladder to go topside. When he got out there was about a foot and a half of air space left.

(U) CT Clyde W. Way was in T-Branch spaces above the processing and reporting area. With the explosion below, all equipment fell to the floor and smoke poured from the P&R hatch. Way started pulling men out as they came up the ladder. There was no panic. A Marine went down the ladder to help locate men possibly trapped in the water. As the water rose in the Research Department, Lieutenant Maurice Bennett realized that he had to close the hatch to contain the flooding. Attempts to contact the Marine who had gone back failed, and Lieutenant Bennett reluctantly and sorrowfully ordered the hatch closed. McFarland and Way then went topside to help fight fires and attend the wounded.

(U) The torpedo explosion had torn a hole in the side of the ship that extended from a few feet above the water line to below the turn of the bilge. It was shaped like a tear-drop, and was 39 feet across at its widest point. Its immediate effect was to flood all compartments on two decks below the water line, from frame 53 to frame 66. These frames supported water-tight bulkheads, and marked the location of the *Liberty's* Research Department and store rooms. Twenty-five men died in these spaces some from the blast, others drowned.

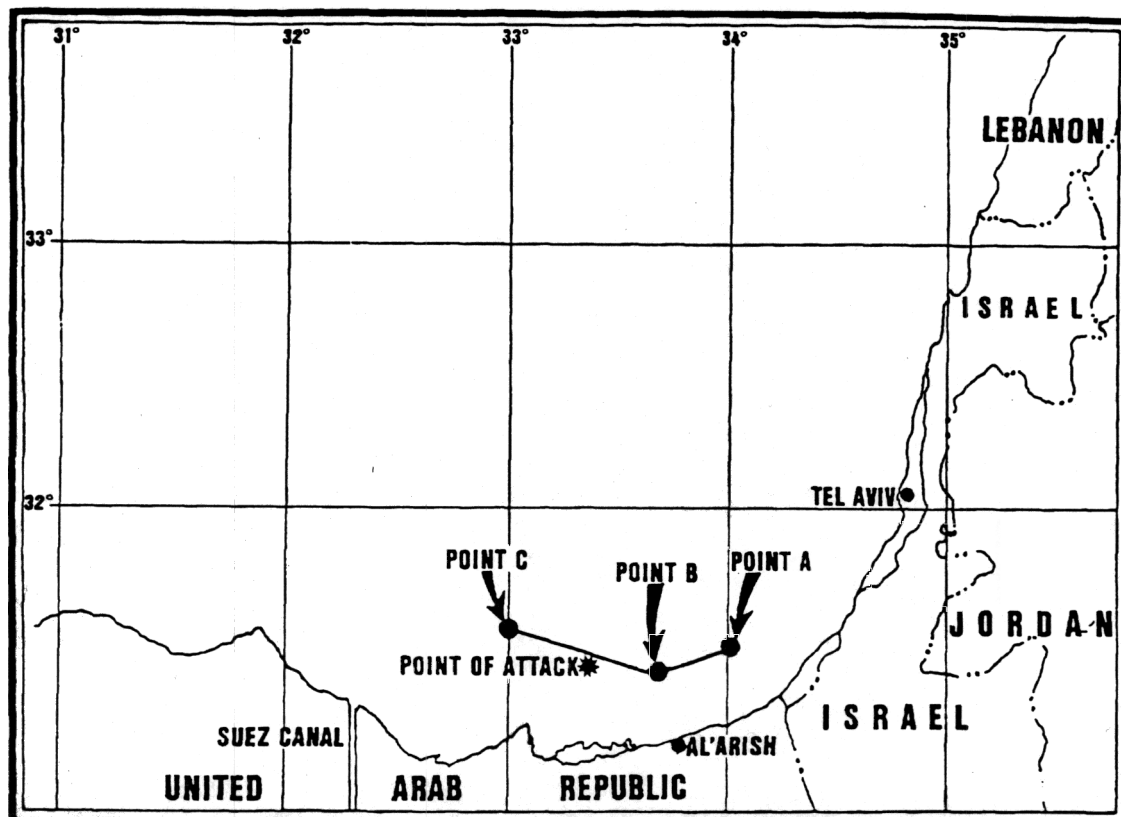
(U) The torpedo hit did not start a major fire, probably because of the immediate flooding of the



(U) During the attack, severe damage was done to one of the two forward area 50-caliber gun mounts.

~~(C-GG)~~ Photograph courtesy of Robert L. Wilson, NSA.)
(Figure is UNCLASSIFIED)

Exhibit 4-30



(U) The projected track of the *Liberty* on the day of attack.

(Figure is UNCLASSIFIED)

affected area, but the *Liberty* immediately listed nine degrees to starboard. Power and steering control were lost temporarily and the ship came dead in the water. The time was 1440 hours.

(U) The three torpedo boats also stopped and then milled around astern of the *Liberty* at a range of approximately 500 to 800 yards. One of the boats signaled by flashing light, in English, "Do you require assistance?" Not being able to signal by light, Commander McGonagle ordered a signalman to hoist the international flag signal for "not under command," meaning that the ship was maneuvering with difficulty and that they should keep clear. One of the torpedo boats was identified by a hull number of 204-17. All boats retired toward shore at 1505 hours. The attacking torpedo boats were later identified as French-built motor torpedo boats of the Israeli Ayah class. These

were 62-ton craft, capable of 42 knots, with a crew of 15 and armament consisting of one 40mm cannon, four 20mm cannon, and two torpedos.

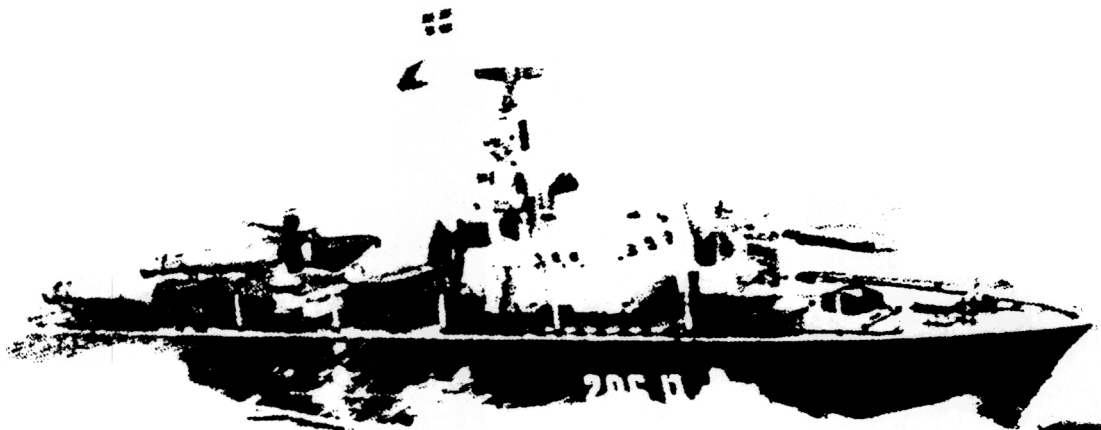
Post-Attack Reconnaissance (U)

(U) At about 1515 hours, two helicopters approached the *Liberty* and circled around the ship at a distance of about 100 yards. The Star of David insignia was clearly visible. One of the helicopters was numbered 04 or D4, the other 08 or D8. The helicopters departed, returned, and departed again.

(U) Commander McGonagle designated the mess decks as a casualty collection station, and the wounded were taken there by repair party personnel and other crew members able to assist.

(U) Reports received from damage control central indicated that the flooding was under control.

Exhibit 4-3839



(U) Israeli motor torpedo boat of the class which attacked the *Liberty*.
(Photograph courtesy of *Jane's Fighting Ships*.)
(Figure is UNCLASSIFIED)

the torpedo boats drew near, the aircraft were ordered to leave the target. During the last run, a low-flying aircraft reported to headquarters that it saw the marking "CPR-5" on the ship's hull.

~~(C)~~ Upon receipt of this information about the ship's marking, the Naval Operations Branch, at approximately 1420 hours, ordered the torpedo boat division commander not to attack inasmuch as the aircraft may have possibly identified the target incorrectly. The division commander was ordered to approach the ship in order to establish visual contact and to identify it. He reported that the ship appeared to be a merchant or supply vessel and that when he signalled the ship and requested its identification the ship replied with a signal meaning "identify yourself first." At the same time, the division commander was consulting a book on the identification of Arab Navies and making comparisons with the target before him. He concluded that the target was an Egyptian supply ship named *El-Kasir*. Simultaneously, the commander of another of the torpedo boats informed the division commander that he, too, thought the ship was the *El-Kasir*. Therefore, at 1436 hours, the division commander authorized the torpedo attack to begin. Only after a torpedo struck the ship and one of the torpedo boats approached it from the other side were the markings "CTR-5" noticed on the hull. Then the order was given to cease the attack.

~~(C)~~ Throughout the contact, no Israeli plane or torpedo boat saw an American or any other flag on the ship. It was only an Israeli helicopter, sent after the attack to render assistance — if necessary — that noticed a small American flag flying over the ship. At this time, the vessel was finally identified "as an audio-surveillance ship of the U.S. Navy."

Israeli Prosecutor's Charges of Negligence (U)

~~(C)~~ Based on the foregoing account, the Israeli Chief Military Prosecutor submitted a number of charges of negligence to the examining judge of the Preliminary Inquiry. The examining judge was then to decide whether or not there was sufficient prima facie evidence to justify bringing the accused to trial for negligence.

~~(C)~~ Given below are the charges brought by the Chief Military Prosecutor together with the judge's findings.

~~(C)~~ 1. *Charge*: The first charge related to the failure of the Acting Chief of Naval Operations to report to the Head of the Naval Department that the American ship, *Liberty*, was seen in the morning hours of the day of the incident sailing in the vicinity of the Israeli coast.

Finding: Though the Head of the Naval Department testified that he did not know of the *Liberty's* presence in the area on the day of the incident, the Officer of the Watch at Navy Headquarters testified that the Head of the Naval Department was on the Navy Command Bridge when the Commanding Officer of the Navy ordered the marking (on the combat information center plot table) of the American supply ship changed to green (indicating a neutral vessel). Since the Acting Chief of Naval Operations was an eyewitness to the event, he concluded that the Head of the Naval Department *did* know about the presence of an American supply ship in the area. In view of this, the examining judge found no negligence on the part of the accused.

~~(C)~~ 2. *Charge:* That the Acting Chief of Naval Operations failed to report to the Head of the Naval Department that the hull markings on the ship observed by one of the attacking aircraft were similar to those on the *Liberty*.

Finding: Witnesses testified that when the Naval Liaison Officer at the Air Force Headquarters telephoned the Naval Command Bridge about the hull markings and their similarity to those of the *Liberty*, the officer to whom he spoke repeated the message in a loud voice so that it was heard by all present on the Command Bridge including the Head of the Naval Department. The examining judge stated, therefore, that there was thus no reason to repeat to the Head of the Naval Department a fact that had been audibly announced to those present. The charge was dismissed.

~~(C)~~ 3. *Charge:* That the Naval Liaison Officer at the Air Force Headquarters was negligent by not reporting to the Air Force the information about the presence of the *Liberty* in the area.

Finding: The examining judge considered this charge unfounded. The responsibility for the defense of Israel against enemy naval actions rests solely with the Navy. Even though Air Force Headquarters ordered the aircraft to attack, it was really an order issued by the Navy, passed on through Air Force Headquarters. The Naval Liaison Officer at the Air Force Headquarters was entitled to assume that the decision to attack was made after considering this report about the *Liberty*. There was no reason to feed the Air Force with information and considerations that did not concern it.

~~(C)~~ 4. *Charge:* That the Naval Department's order not to attack the ship (the *Liberty*), "for fear of error and out of uncertainty with regard to the true identity of the ship," was not delivered to the torpedo boat division.

Finding: Though the torpedo boat division commander claimed he never received the message not to attack, the deputy commander of the boat testified that he had received the message and passed it on to the division commander. The examining judge believed that, in the heat of battle, it was possible that the message escaped the awareness of the division commander and, in any event, there was insufficient evidence to commit any accused person to trial.

~~(C)~~ 5. *Charge:* 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 vicinity of the coast of Israel.

Finding: To the examining judge, there was no doubt that the dominant factors in the initial attack decision were the speed and course of the target. Those in command were entitled to assume that the reported speed (28 knots) of the ship was correct, within the usual limits of reasonable error of 10-15 percent, relying upon the existing means of determining the speed of the target. It was, therefore, concluded that this was a military vessel, and since the *Liberty* was classed as a cargo ship, there was no reason for surmising, in view of the speed, that the target could possibly be the ship, *Liberty*. If one adds to this other factors such as the report of the shelling of the Al 'Arish coast for hours on end, the ship's course toward Port Said, the aircraft report that the target was a warship and carried no naval or other identification marks, and the ship's location close to shore in a battle zone, the cumulative effect negates any presumption whatsoever of a connection between the American supply ship and the target discovered by the torpedo boats. Thus, the examining judge concluded that the assumption it was an enemy ship was reasonable and that the order given to the aircraft to attack was justified.

~~(C)~~ 6. *Charge:* That it was negligent to order the torpedo boat to attack the ship upon an unfounded presumption that it was an Egyptian warship, and this as a consequence of not taking reasonable steps to make proper identification.

Finding: The examining judge considered it noteworthy that the identification of the target as the *El-Kasir* was made both by the division commander and the commander of a second torpedo boat. Upon examining photos of the two ships, he was satisfied that a likeness existed between them, and that an error of identification was possible, especially when the identification was made while the ship was

Exhibit 4-39

Finding: Though the Head of the Naval Department testified that he did not know of the *Liberty's* presence in the area on the day of the incident, the Officer of the Watch at Navy Headquarters testified that the Head of the Naval Department was on the Navy Command Bridge when the Commanding Officer of the Navy ordered the marking (on the combat information center plot table) of the American supply ship changed to green (indicating a neutral vessel). Since the Acting Chief of Naval Operations was an eyewitness to the event, he concluded that the Head of the Naval Department *did* know about the presence of an American supply ship in the area. In view of this, the examining judge found no negligence on the part of the accused.

~~(C)~~ 2. *Charge:* That the Acting Chief of Naval Operations failed to report to the Head of the Naval Department that the hull markings on the ship observed by one of the attacking aircraft were similar to those on the *Liberty*.

Finding: Witnesses testified that when the Naval Liaison Officer at the Air Force Headquarters telephoned the Naval Command Bridge about the hull markings and their similarity to those of the *Liberty*, the officer to whom he spoke repeated the message in a loud voice so that it was heard by all present on the Command Bridge including the Head of the Naval Department. The examining judge stated, therefore, that there was thus no reason to repeat to the Head of the Naval Department a fact that had been audibly announced to those present. The charge was dismissed.

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Finding: The examining judge considered this charge unfounded. The responsibility for the defense of Israel against enemy naval actions rests solely with the Navy. Even though Air Force Headquarters ordered the aircraft to attack, it was really an order issued by the Navy, passed on through Air Force Headquarters. The Naval Liaison Officer at the Air Force Headquarters was entitled to assume that the decision to attack was made after considering this report about the *Liberty*. There was no reason to feed the Air Force with information and considerations that did not concern it.

~~(C)~~ 4. *Charge:* That the Naval Department's order not to attack the ship (the *Liberty*), "for fear of error and out of uncertainty with regard to the true identity of the ship," was not delivered to the torpedo boat division.

Finding: Though the torpedo boat division commander claimed he never received the message not to attack, the deputy commander of the boat testified that he had received the message and passed it on to the division commander. The examining judge believed that, in the heat of battle, it was possible that the message escaped the awareness of the division commander and, in any event, there was insufficient evidence to commit any accused person to trial.

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Finding: To the examining judge, there was no doubt that the dominant factors in the initial attack decision were the speed and course of the target. Those in command were entitled to assume that the reported speed (28 knots) of the ship was correct, within the usual limits of reasonable error of 10-15 percent, relying upon the existing means of determining the speed of the target. It was, therefore, concluded that this was a military vessel, and since the *Liberty* was classed as a cargo ship, there was no reason for surmising, in view of the speed, that the target could possibly be the ship, *Liberty*. If one adds to this other factors such as the report of the shelling of the Al 'Arish coast for hours on end, the ship's course toward Port Said, the aircraft report that the target was a warship and carried no naval or other identification marks, and the ship's location close to shore in a battle zone, the cumulative effect negates any presumption whatsoever of a connection between the American supply ship and the target discovered by the torpedo boats. Thus, the examining judge concluded that the assumption it was an enemy ship was reasonable and that the order given to the aircraft to attack was justified.

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Finding: The examining judge considered it noteworthy that the identification of the target as the *El-Kasir* was made both by the division commander and the commander of a second torpedo boat. Upon examining photos of the two ships, he was satisfied that a likeness existed between them, and that an error of identification was possible, especially when the identification was made while the ship was

Exhibit 4-5152

been installed across all drydock drains. During the pump down, navy swimmers and men in a rubber raft picked up oil-covered paper as it floated out of the ship. When the drydock was completely drained, a thorough search of the entire drydock and each drain screen was conducted by indoctrinated Naval Security Group personnel. NSA Europe personnel, sent to Malta, witnessed all drainage operations.²⁸

Evacuation of Wilson (U)

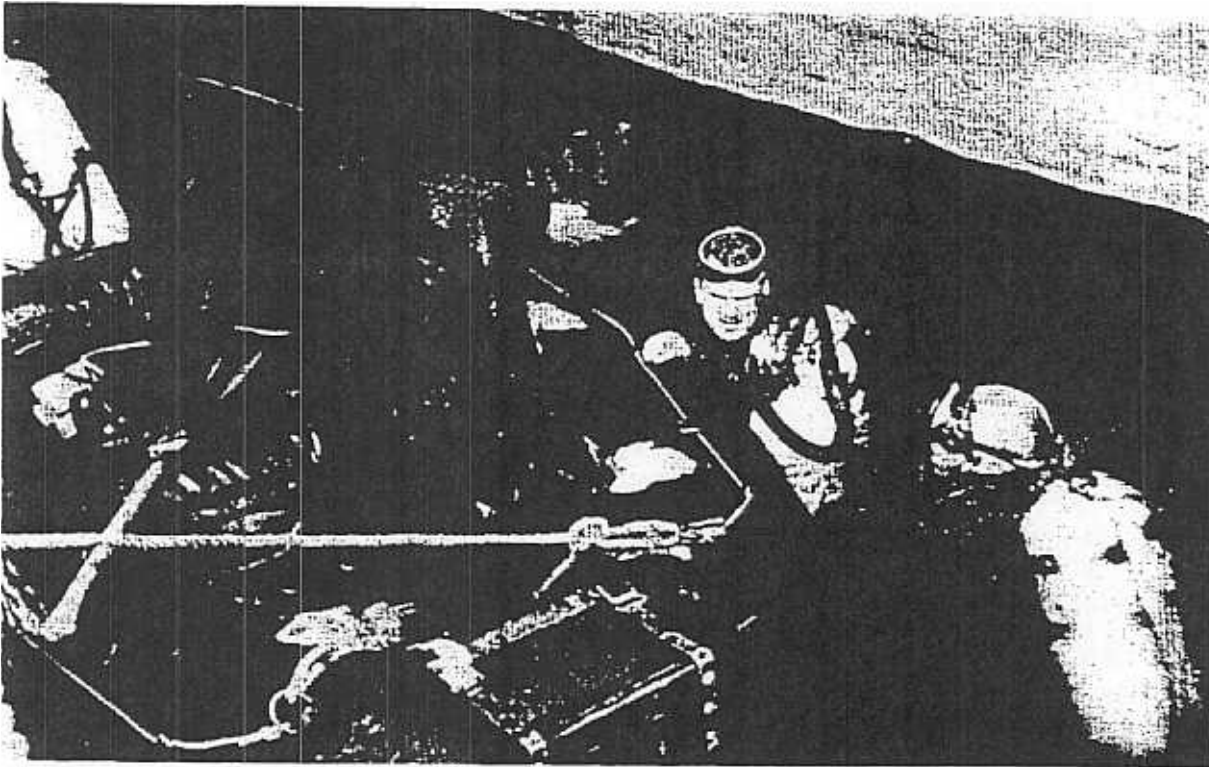
~~(C-CCC)~~ Earlier, as soon as the *Liberty* entered Malta, NSA Europe personnel boarded the ship to see NSA civilian Robert L. Wilson. When Wilson said he did not wish to stay aboard any longer, he was quickly ushered to the U.S. Consulate in Valletta for a short debriefing. Immediately thereafter, accompanied by

Lieutenant Colonel Green (from the NSA Europe staff), he returned home. Later Wilson learned that his wife had been continually informed by NSA personnel of what was going on from the time the whole incident began; they had even offered to have someone stay with her.²⁹

Clearing Damaged Areas (U)

(U) In Malta the search for and removal of bodies began at 1830 hours on the 14th and continued until approximately midnight, by which time the remains of 20 men, including Allen Blue, had been recovered. Bodies of the remaining five missing men were presumed lost at sea enroute to Malta. *Liberty's* death toll stood at 34.

~~(C-CCC)~~ Clearance of the damaged area continued. Prior to opening the hatch leading down to the



(U) Navy divers Gilbert Damelio, John P. Highfill, and Daniel McDuffie recover classified debris adrift as the pump-down operations continue on the *Liberty* in Malta.

(Photograph courtesy of the Department of the Navy.)

(Figure is UNCLASSIFIED)

Research Department space, a guard was posted and all personnel were required to log in when authorized access. Crews of indoctrinated personnel began removing all classified equipment and documents to a secure space one deck above the damaged area. This recovery process proved to be very slow because the classified equipment and material was mixed with the mass of twisted wreckage. Of course, no repair to the ship's side could begin until the damaged area was freed of all classified papers and equipment. By 19 June, all classified matter (including 168 large canvas bags) had been stowed under guard in a secure space aboard the *Liberty*.³⁰

(U) On the afternoon of Thursday, 15 June, newsmen and photographers were given a rigidly controlled tour of *Liberty's* topside area plus several compartments on the lower decks, near the point of impact, from which all classified equipment had been removed. Later that afternoon, Task Force 100 was officially dissolved. Some task force personnel remained with the *Liberty*, however, to help wind up administrative, public affairs, and supply matters. The Sixth Fleet Maintenance Officer also remained to supervise *Liberty's* repairs.³¹

Damage Survey at Malta (U)

~~(C-CCO)~~ In Washington, the Naval Ships Engineering Center was coordinating a visit to the *Liberty* to survey damage in order to expedite repairs to the ship's electronic system; it was recommended that the inspection team include contractor personnel plus NSA and NSG people.³² Thus, Eugene Sheck, Comint Collection (Mobile) Management, K12, and Lieutenant Allan Deprey, USN, Sigint Engineering (Mobile) K32, in company with representatives of the Naval Security Group, Naval Ships Engineering Center, and contractor representatives of Ling-Temco-Vought (LTV) and the FTM Systems Company visited the *Liberty* on 19-21 June. Their findings confirmed the massive damage to the Sigint electronic configuration.

~~(C-CCO)~~ With the exception of the TRSSCOM system antenna, all antennas were either destroyed, damaged, or burned to some degree; almost complete replacement of the antenna system would be required. In Research Room no. 1, equipment not completely destroyed by the torpedo explosion had been totally submerged in heavy oil and salt water for six days, rendering it beyond salvage. The processing and reporting spaces, transcribing positions, maintenance shop and cryptographic room were severely damaged; all equipment was either destroyed by the explosion or

removed from the spaces at Malta because of extensive damage. In the Research Department and non-morse search and development areas on the second deck, very little outward damage was noticeable. However, the shifting of the racks and breaks in the air conditioning ducts indicated considerable shock damage; each and every piece of gear would require complete checks. Additionally, internal wiring and patching facilities between all research spaces would have to be checked. From the initial inspection, it was obvious that considerable replacement of internal wiring would be required. Preliminary, informal estimates made by the engineers inspecting the *Liberty* indicated that the cost to reconfigure the platform would range between four and six million dollars.³³

JCS Fact Finding Team's Interviews (U)

(U) While the *Liberty* was being cleansed and surveyed in the Malta shipyard, the Navy and JCS investigative bodies were busily interviewing appropriate personnel aboard the *Liberty* and at various European command headquarters.

~~(C-CCO)~~ Headed by Major General Joseph R. Russ, USA, the JCS Fact Finding Team arrived in London on Tuesday morning, 13 June and spent most of the day at Commander-in-Chief, U.S. Navy Europe Headquarters interviewing Admiral John S. McCain, Jr., and members of his staff. Late that afternoon, the team flew to Stuttgart to talk with U.S. European Command personnel involved in the *Liberty* incident. The following day's interviews also included one with Brigadier General William Keller, Chief, NSA Europe. Points covered in the talk with Keller were:

1. Explanation of the mechanics involved for tasking in satisfaction of both national and theater consumer intelligence requirements;
2. Technical reports issued by the *Liberty* (the JCS Team was provided a copy of *Liberty's* reports from 2 through 8 June); and

3.

Both the JCS team and J-3 EUCOM appeared satisfied with General Keller's explanations.³⁴

(U) On 15 June, the team spent two hours visiting Vice Admiral William I. Martin, Commander-in-Chief, Sixth Fleet, and staff aboard his flagship, the U.S.S. *Little Rock*. The team arrived in Malta at 1815 hours on the 15th and departed for London at

Exhibit 4-64

attack, the visibility of the flag, and the intensity of the attack itself.

~~(C-CCO)~~ Speculation as to Israeli motivation varied. Some believed that Israel expected that the complete destruction of the ship and killing of the personnel would lead the U.S. to blame the U.A.R. for the incident and bring the U.S. into the war on the side of Israel. Ironically, even though the *Liberty* had no specific mission against Israeli communications, others felt Israeli forces wanted the ship and men out of the way in order to deny the U.S. any Sigint on Israel's preparations to attack Syria — an attack the U.S. might try to prevent.

~~(S-CCO)~~ Authors of the several books now in print about the *Liberty*, whether members of the *Liberty's* complement or not, have not had access to [redacted] Sigint reports on the Israeli helicopter pilot voice communications, nor have they had access to the confidential Israeli Government's explanation given to the U.S. Department of State.

~~(C-CCO)~~ In part because of the press speculation at the time, President Johnson directed the Director of Central Intelligence, Richard Helms, to prepare a report by 13 June, five days after the attack, assessing the Israeli intentions. The CIA assessment drew heavily upon the Sigint reports referred to above. While these reports revealed some confusion on the part of the pilots concerning the nationality of the ship, they tended to rule out any thesis that the Israeli Navy and Air Force deliberately attacked a ship they knew to be American.

Denouement (U)

(U) On 11 June 1968, exactly one year and three days after the attack on the *Liberty*, her commanding officer, Captain William Loren McGonagle (promoted after the attack), was presented the Congressional Medal of Honor by the Secretary of the Navy for gallantry and courage displayed during *Liberty's* hours of trial. Following that award, the Presidential Unit Citation was conferred upon the *Liberty* and crew on 14 June 1968 at Portsmouth, Virginia.

~~(C-CCO)~~ Scores of individual decorations (Bronze Star, Silver Star, etc.) were given to crew members, and 170 Purple Hearts were earned by *Liberty's* complement, including two NSA civilians, Donald L. Blalock and Allen M. Blue (the latter, posthumously).

(U) Claims against the government of Israel for compensation concerning deaths and injuries of U.S. personnel and damage to the *Liberty* were

initiated by the Department of State. In May 1968, Israel paid the U.S. Government \$3,323,500 as full payment on behalf of the families of the 34 men killed in the attack.¹³ Eleven months later, Israel paid \$3,566,457 in compensation to the men who had been wounded.¹⁴ The U.S. claim of \$7,644,146 for material damage to the *Liberty* itself was not settled until 18 December 1980 when Israel agreed to pay \$6 million.

(U) After returning to Norfolk in July 1967, the *Liberty* languished there while NSA tried unsuccessfully to obtain DoD budgetary approval to restore her to Sigint operational status; the proposed budget figure was \$10,200,000. When this effort failed, the *Liberty* was decommissioned on 28 June 1968. In 1970 the ship was turned over to the Maritime Administration and sold for scrap for \$101,666.66. In 1973 the ship came to an ignominious end as she was cut up in Baltimore's Curtis Bay shipyard.

(U) There was one aspect of the *Liberty* tragedy which should not go unnoted. This was its adverse and lingering affect on the *Liberty's* survivors. Oral interviews with USN-855 personnel some 13 years after the event, show that time has not healed all the scars.¹⁵ Apart from bitterness toward the Israeli Government, there still remains dismay that the U.S. Government or Sixth Fleet did not come to *Liberty's* aid in timely fashion.

(U) The contributions of technical research ships to this nation's Sigint production also should not go unnoted. These were unique in their time, often irreplaceable, often unheralded. That the TRS program came to an end in 1969 was not for lack of competence and dedication of the men who served or for lack of NSA's appreciation for their contributions, but rather for budgetary considerations by the Department of Defense.

Notes

Source documents are in the "Crisis Collection" of the NSA History Collection.

¹(U) The Russ Report, pp 9-10; Richard Harvey interview, 16 Jul 1980.

²(U) Walter Deeley, Memorandum for the D/DIR - "U.S.S. *Liberty*," 14 Jun 1967.

³(U) DIRNSA msg to JCS/JRC, 081503Z Jun 1967.

⁴(U) CINCLANT msg to JCS, 121414Z Jun 1967.

⁵(U) Interview with Gene Sheck, 11 Aug 1980.

~~(C-CCO)~~ NSA Staff, "Critique-Sigint Readiness Bravo Crayon," pp. 24, 29.

⁷(U) NSA Staff, Memorandum for the Record, "Telephone Conversation with Mr. Morton A. Brill, OCCE, 5 Jul 1967; NSA, [redacted] 14 Jul 1967.

Exhibit 5

THE FOLLOWING IS A LIST OF THE DEAD PERSONNEL.
THE BODIES' OF THESE PERSONS HAVE BEEN RECOVERED

| | |
|---------------------------|-------------|
| LCDR ARMSTRONG, PHILIP M. | 569825/1100 |
| SN BLANCHARD, GARY R. | 771 77 22 |
| QM3 BROWN, FRANCIS (n) | 778 76 70 |
| CT3 HIGGINS, ALAN (n) | 788 62 97 |
| SN HOAR, CARL | 774 46 48 |
| CT2 MENDLE, ANTHONY | 777 62 87 |
| ICFN SKOLAK, DAVID | B50 17 83 |
| PC2 SPICHER, JOHN C. | 473 41 77 |
| GMG3 THOMPSON, ALEXANDER | 770 47 21 |
| CT3 THORNTON, THOMAS R. | 997 97 91 |
| LT TOTH, STEPHEN S. | 669613/1100 |
| CT1 WALTON, FREDERICK J. | 236 31 86 |
| | 236 31 86 |

Ex. 20

EXHIBIT 20 TO LIBERTY COURT OF INQUIRY

1104

Exhibit 6

PERSONNEL MISSING

CT3 WILLIAM B. ALLENBAUGH 684-49-96 USN
CT2 RONNIE J. CAMPBELL 5861323 USN
CT2 JERRY L. CONVERSE
CT2 ROBERT B. EISENBERG 7760935 USN
CT1 CURTIS A. GRAVES 5195824 USN
CTSN LAWRENCE P. HAYDEN 7705370 USN
CT1 WARREN E. HERSEY 9036711 USN
CT2 RICHARD W. KEENE 7788275 USN
CTSN JAMES L. LENAU 9975658 USN
CTSA DAVID W. MARLBOROUGH 3160480 USN
CTC RAYMOND E. LINN 5711374 USN
CT3 DUANE R. MARGRAF 7779650 USN
LT JAMES C. PIERCE 64980516462 USN
CT1 JOHN CALEB SMITH 2377794 USN
CTC MELVIN D. SMITH 4979596 USN
CT3 PHILLIPPE C. TIEDTKE 9143284 USN
CT3 CARL C. NYGREN 7887716 USN
CPL EDWARD E. REHMEYER 2128919 USMC
SGT J.L. RAPER
CT3 JERRY L. GOSS
CT1 JAMES M. LUPTON 5113128 USN

CIVILIAN ALLEN M. BLUE 531423327 66-7

Ex 21

EXHIBIT 21 TO LIBERTY COURT OF INQUIRY

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Exhibit 7

22

RESEARCH WOUNDED

The following is a list of the wounded Research Department personnel. Personnel are listed in alphabetical order according to name, and contains the rate and service number of each.

OFFICERS

| | |
|------------------------|-------------|
| LT. ENNES, James M. | 653840/1615 |
| LCDR. LEWIS, David E. | 584572/1610 |
| LT. O'CONNOR, James G. | 671765/1615 |

ENLISTED

| | |
|----------------------------|-----------|
| CT1 ADDINGTON, Reginald N. | 349 53 80 |
| CT3 ANDERSON, Joe D. | 771 76 77 |
| CT1 BAKER, Richard K. | 486 80 12 |
| CTSN BENEDICT, Nathan D. | 139 55 74 |
| CTSN BENNETT, Lee R. | 998 13 79 |
| CT3 BRONG, James V. | 913 41 23 |
| CT1 CARLSON, Richard C. | 444 13 05 |
| CT1 CARPENTER, Jefferie R. | 535 14 05 |
| CT2 DAVIDSON, James R. | 699 64 72 |
| CTSN EAKINS, Kenneth B. | 794 04 69 |
| CTSN ECKER, Kenneth P. | 851 36 48 |
| CT3 HAWKINS, David W. | 118 73 49 |
| CT2 HENDRICKS, Charles R. | 685 56 42 |
| CT2 JOHNS, Fredrick K | 794 91 14 |
| CT3 JOHNSON, Melvin P. | 997 32 29 |
| CTSN KAVANAUGH, James P. | 918 51 32 |
| CTSN KIRK, Eugene H. | 918 81 30 |
| CT3 KREUN, Loren W. | 538 49 74 |
| CT1 LENTINI, Joseph C. | 594 81 55 |
| #SSGT LOCKWOOD, Bryce F. | 185 98 56 |
| CT2 McFAGGEN, David L. | 774 71 98 |
| CT2 MEYER, Stephen E. | 771 42 03 |
| CT1 ROWLEY, Charles L. | 458 48 03 |
| CT3 SHAFER, Maurice B. | 695 94 36 |
| CTSN SHAW, David A. | 904 39 56 |
| CT3 SIX, Harold E. | 777 58 53 |
| *CTC THOMPSON, Harold J. | 471 37 37 |
| ET3 TIMMERMAN, Barry R. | 770 11 63 |

CIVILIAN

BALLOCK, Donald L.

- # Denotes United States Marine Corps
* Denotes Personnel retained on board

EX 22(a) 196

EXHIBIT 22(a) TO LIBERTY COURT OF INQUIRY

22

GENERAL SERVICE
WOUNDED LIST

ENGINEERING DEPT

| | | |
|-----|-------------------|-----------|
| EM2 | LEMAY, William M. | 773 35 21 |
| IC1 | RANDALL, John R. | 517 81 45 |

DECK DEPT

| | | |
|------|-----------------------|-----------|
| SN | CASPER, Willaim E. | 796 40 74 |
| SN | CONCEPCION, Rodney C. | 674 38 09 |
| SN | COOK, Eddie L. | 997 59 71 |
| SN | FOLLIN, Donald F. Jr. | 917 66 74 |
| GMG3 | HAZEN, David C. | 696 84 98 |
| SN | JACKSON, Thomas F. | 689 15 99 |
| SN | PAYAN, Salvado (n) | 796 66 15 |
| SN | PIERSON, Gerald A. | 794 07 20 |
| SA | RIELLY, Thomas J. Jr. | 913 50 66 |
| SN | SLAVENS, Larry T. | 916 92 00 |
| SN | SOPER, Larry L. | 698 89 98 |
| BMSM | WARD, Jerry W. | 775 76 67 |
| SN | WEAVER, Richard L. | 999 88 63 |
| SN | WILSON, George W. | 529 34 49 |

OPS DEPT

| | | |
|------|-----------------------|-----------|
| YN3 | BROWNFIELD, Virgil L. | 794 23 49 |
| SM2 | DAVID, RUSSEL O. | 683 33 65 |
| SN | LAMAR, John D. | 779 56 36 |
| SMSN | MEADORS, Joseph L. | B71 04 56 |
| QM3 | POLLARD, Floyd H. | 353 55 47 |

SUPPLY DEPT

| | | |
|-----|---------------------|-----------|
| SH2 | HEROLD, Donald (n) | 609 22 48 |
| SN | LEMOND, Thomas W. | 917 49 31 |
| TN | MARFIL, Sofronio P. | 776 90 09 |
| SN | MATHEWS, Jimmy L. | 998 21 92 |

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EX 22 (B)

EXHIBIT 22 (B) to LIBERTY COURT OF INQUIRY

U.S.S. LIBERTY (AGTR-3)
FPO, NEW YORK 09501

Wounded Transferred

Name

Rate Ser #

Diagnosis

Compound Fracture Skull
Compound Fracture Skull
Wound Left Eye, Left Forearm
Mult. Puncture wounds, Pneumonitis
HEMOPNEUMOTHORAX
Pneumothorax
Perforated Bowel, Hemothorax
Cpd.Fx. L. Tibia and Fibula Pneumothorax
Penetrating wounds, back & Kidney
Hemopneumothorax, Post Laparotomy
Penetrating wound back- to colon
Multiple Puncture Wounds
Fracture L. Tibia Remained aboard
Flash burns face
Cpd Fracture L Femur
Flash burns, face & eyes
Compound Fx. Radius & Ulna
Multiple Punctures, Cervical Sprain
Multiple Puncture wounds
Fracture- Forearm
(Deck dpt) Multiple bullet & Shrapnel wounds
" Multiple Shrapnel wounds
" Multiple Shrapnel Wounds
" Multiple Shrapnel Wounds
" Shrapnel-chest, amputated toe
" Shrapnel Neck, Fractured Mandible
" Shrapnel hand, leg
Shrapnel wounds, leg & Back
SHrapnel, Gluteal area
Shrapnel, L. Ankle
Shrapnel, R. Flank
Multiple Shrapnel Wounds
Shrapnel, Knee
Shrapnel, Gluteal & R. Thigh
Fracture, L. Ankle

Multiple Shrapnel Wounds

Multiple Shrapnel Wounds
Multiple Shrapnel Wounds
Multiple Shrapnel Wounds
Sharpnel Wounds Skull
Multiple Wounds Sharpnel
Multiple Shrapnel Wounds

SHRAPNEL,abedonen

EX 22 (c)

EXHIBIT 22 (C) TO LIBERTY COURT OF INQUIRY

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WOUNDED PERSONS STILL ON BOARD

Ble

Foreign Bodies R Temple, Hand, L Arm
 Puncture Wounds-Multiple- with F.B.
 Mult Puncture wounds- Flash Burns face
 PUNCTURE Wound Hand- Lacerations mult contusions
 Foreign Body Left Wrist
 Lacerations R Hand
 Contusions and Abrasions- back
 Foreign Body, 2nd Digit R
 Lac, R. Hand, Hematoma R Hand
 Lac, R. Hand, Contusion back
 Abrasions L Calf
 Puncture Wound R. Shoulder
 Mult. Contusions, Arms, L. Knee
 Mult. Contusions, F.B. R Hand
 Contusions L. Shoulder
 Contusions, L. Hand
 Back Strain, Contusions Shoulders
 Mult. Lacerations hand & Arms
 Lac, L Hand
 Lacerations and Contusions L Hand, Burns L Arm
 Abrasion & Confusion R. Lag & Calf
 Fracture Tibia
 Contusion L Lower Leg
 Cerebral Concussion
 Abrasion R Calf
 Lac R. Arm
 Contusions Chest, Arms, Legs
 FEB, L 5 Digit(hand)
 Mult. Contusions ext's
 Mult. Lac Hands
 Lac, Arms(Mult)
 Lac, Cont Hands, Knees, Chipped R Low. Can
 Contusions Legs (bil)
 Burns R. Foot, Soft tissue inj. R. Knee
 Contusions, Knee, bil
 Abrasions and Strain- Lower Back
 Burns- Arms
 Contusions, R. Calf & Thigh
 Abrasions, lac., contusions R. Forearm
 Abrasions, Cont, R. Lat Thorax
 Abrasions Legs, Bil & Gluteal
 Abrasions L. Thigh
 Low Back Strain, Lac Fingers
 Mult. Contusions lgs, bil
 Punct. Wd. R. Knee, Burns R. Leg
 Traumatic Hemarthrosis R. Knee
 Lac, Finger, Puncture L. Calf, Thigh, Arm
 F. B. . Thigh, Contusions R. Arm
 Puncture R. Thigh, Contusion Buttocks
 Lac R. Hand
 Lac, L. Leg
 Lac, R. Shoulder, L Calf
 Lac. R. Parietal, L Calf



499

112

Exhibit 8-3

- 3 -

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. Al. - 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 Barbville (Exh. "D" and testimony of Comm. Al). Immediate message to that effect was passed on to Comm. A. and by him to Capt. Rahav, together with a message that

Exhibit 8-5

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. Shmuel, 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.

Exhibit 9

7

DEPARTMENT OF STATE

The Legal Adviser

September 21, 1967

TO : U - The Under Secretary
THROUGH: S/S
FROM : L - Carl F. Salans

SUBJECT: "The Liberty" - Discrepancies Between Israeli
Inquiry and U.S. Navy Inquiry -
INFORMATION MEMORANDUM

As you requested, we have compared the decision of the Israeli Judge, dated July 21, 1967, with the findings of the U.S. Navy Court of Inquiry, and the Clifford Report, concerning the Liberty incident.

The following discrepancies are noteworthy:

I. Speed and Direction of the "Liberty"

- The Israeli report indicates that the torpedo boat Division Commander reported and reconfirmed the target's (Liberty's) speed at 28 to 30 knots and that it had changed its navigational direction shortly after 1341 hours.

- The U.S. Navy inquiry established that the Liberty had been on a steady course at 5 knots from 1132 hours until the attack.

II. Aircraft Surveillance

- The Israeli report indicates that a ship was reported in the area by reconnaissance aircraft at 0600 and that another report was received of a contact between an Israeli aircraft and a surface vessel about 0900.

- The Navy Court finding of facts, plus testimony of various members of the crew indicates reconnaissance over-flights of the Liberty at 0515, 0850, 1030, 1056, 1126, 1145, 1220, and 1245.

III. Identification by Israeli Aircraft

- The Israeli report indicates that the fighter aircraft carried out a run over the ship in an effort to identify it.

- The Navy Inquiry reports no such identification run. Commander McGonagle testified that he observed one air-reconnaissance flight approximately five to six miles from the ship at an altitude of 7,000 feet. He did not see it approach the ship. Within a couple of minutes, a loud explosion was heard from the port side of the ship, apparently resulting from a rocket, launched by a second aircraft.

IV. Identification by Torpedo Boats

- The Israeli report indicates that the torpedo boats approached the Liberty in order to establish visual contact and to identify it, and that in addition, the Commander of the torpedo boats signalled the Liberty requesting its identification. The Liberty reportedly answered, "Identify yourself first," and opened fire on the torpedo boats.

- Commander McGonagle's testimony indicated that the only signals from the torpedo boats were those made during the high-speed approach from a distance of approximately 2,000 yards and that it was not possible for the Liberty to read the signals because of the intermittent blocking of view by smoke and flames. No reply signal was sent. Immediately after the Liberty was struck by a torpedo, the torpedo boats stopped at a range of approximately 500 to 800 yards and one signalled by flashing light in English "Do you require assistance?" Commander McGonagle testified that he had no means to communicate with the boat by light but hoisted "CODE LIMA INDIA". ("I am not under command", i.e., not able to control movements of ship.)

V. Flag and Identification Markings

- The Israeli report indicates that the fighter aircraft which reportedly made an initial pass over the Liberty was looking for a flag but found none; likewise no other identification mark was observed. "... Throughout the contact no American or any other flag appeared on the ship...." (Elsewhere the report had indicated that at 1055 the ship had been identified as the Liberty "whose marking was GTR-5.")

- The Navy inquiry confirms by testimony of five members of the crew that they had personally observed the Ensign flying during the entire morning and up until the air attack. The Ensign was subsequently shot away during the air attack. Before the torpedo attack, a second Ensign was hoisted. The Navy report also found that "hull markings were clear and freshly painted."

- The Clifford report noted that "the Liberty's U.S. Navy's distinguishing letters and number were painted clearly on her bow. ~~The Liberty's name was clearly painted in~~ English on her stern. The ship's configuration and her standard markings were clearly sufficient for reconnaissance aircraft and waterborne vessels to identify her correctly...." The report noted that at all times prior to the air attack the Liberty was flying her normal size American flag (5 ft. by 8 ft.) at the masthead. Five minutes prior to the attack by the torpedo boats, the Liberty put up a flag measuring 7 ft. by 13 ft. to replace the flag which had been shot down in the air attack.

VI. Identification of Ship as "El-Kasir"

- The Israeli report indicates that shortly before the torpedo boat attack the torpedo boat Division Commander reported the certain identification of the vessel as an Egyptian transport ship named "El Kasir". Identification of the target was made both by the Division Commander and the commander of another torpedo boat. The Israeli Judge indicated in his decision that "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."

- The Clifford report noted "That the Liberty could have been mistaken for the Egyptian supply ship El Quseir is unbelievable. El Quseir has one-fourth the displacement of the Liberty, roughly one-half the beam, is 180 feet shorter, and is very differently configured. The Liberty's unusual antenna array and hull markings should have been visible to low-flying aircraft and torpedo boats. ... Trained Israeli naval personnel should have been able easily to see and identify the larger hull markings on the Liberty."

Additional Observations Regarding Israeli Report

I. Speed of "Liberty" and "El Kasir" as identification factors

- The Israeli report states that the initial speed of the target reported by the torpedo boat commander at 1341 hours as 30 knots was verified within minutes and confirmed as a speed of 28 knots. The report notes that it was the speed of the target which led to the final conclusion that there was no reason for surmising that the target could possibly be the Liberty.

~~- The reported speed would have ruled out the "El Kasir" as the target, as well as the Liberty since the top speed of the "Kasir", published in Janes Fighting Ships, is in the range of 14 knots. The Liberty's top speed is 18 knots.~~

II. Failure to Relate "Liberty" to Bombardment capability

- The Israeli report emphasizes that the attack originated with reports that the El Arish area was being shelled from the sea. The implication of such reports was obviously that a ship capable of such shelling was present in the immediate offshore area, i.e., within gun range of the shore.

- It would be clear to any trained observer that the armament aboard the Liberty was incapable of shore bombardment. It appears nevertheless that neither the aircraft, torpedo boats, nor the command headquarters to which they presumably reported evaluated the ship's capability for shore bombardment.

III. Time Sequence of Attacks

- The Israeli report indicates that it had been agreed that as soon as the torpedo boats located the target, aircraft would be dispatched. At 1341 hours the torpedo boat located the target. "A few minutes later", the dispatch of aircraft was requested. The first air attack occurred at approximately 1400 hours.

- Assuming "a few minutes later" would mean four or five minutes, the request for aircraft must have occurred about 1345. One may infer from the fact that within a period of approximately 15 minutes, the request was transmitted, received, a command decision made, aircraft dispatched, and the attack launched, that no significant time was expended in an effort to identify the ship from the air before the attack was launched.

IV. Attack by Torpedo Boat After "Do Not Attack" order

- The Israeli report confirms that during the final attack by aircraft the marking "CPR-5" was noted on the hull and an order was transmitted to the torpedo boat division not to attack. The order was recorded in the log book of the flag boat at approximately 1420 hours. The torpedo boats nevertheless began their attack run at approximately 1428. The Division Commander later "claimed that no such message ever reached him." The Deputy Commander testified that "he received the message and passed it on to the Division Commander."

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* This is an exact duplicate of a document
* prepared on September 21, 1967, by the
* Legal Adviser of the Department of State
* for Secretary of State Dean Rusk and Under
* Secretary for Political Affairs Eugene V.
* Rostow.
*
* The document was classified TOP SECRET until
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DEPARTMENT OF STATE
THE LEGAL ADVISER

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16424

September 21, 1967

TO : U - The Under Secretary

THROUGH: S/S *feh*

FROM : L - Carl F. Salans *CFS*

SUBJECT: "The Liberty" - Discrepancies
Inquiry and U.S. Navy Inquiry
INFORMATION MEMORANDUM

DEPARTMENT OF STATE

REVIEWED BY *[Signature]* DATE *1/24/83*

POSTED FOR XDS/EXT. DATE _____
REASON(S) _____

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III. Identification by Israeli Aircraft

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Additional Observations Regarding Israeli Report

I. Speed of Liberty

The Israeli report states that the initial speed of the target reported by the torpedo boat commander at 1341 hours as 30 knots was verified within minutes and confirmed as a speed of 25 knots. The report states that it was the speed of the target, which led to the final conclusion that there was no reason for believing that the target could possibly be the Liberty.

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The Farrell report indicates that the fighter aircraft which reportedly made an initial pass over the Liberty was looking for a flag but found none; likewise, no other identification marks were observed. Throughout the contact, no identification markings appeared on the ship. (Reference was made to a report that at 1015 the ship had been identified as the Liberty, whose marking was...)

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