

NAVY COURT OF INQUIRY

APPENDIX VI (textual reproduction)

Comments on the seven points provided by IDF FLO, LCOL MICHAEL BLOCH; as “Futher [*sic*] Information on Yesterday’s Incident with the American Ship”.

Point 1 - Ship was sighted and recognized as a naval ship 13 miles from coast.

Comment - From 0849 on 8 June LIBERTY was steaming in international waters on a track generally parallel to the coast of the UAR. At one point the ship was, in fact, 13.6 miles from the coast.

Point 2 - The presence (of a neutral-nation naval ship) in a fighting area is against international custom.

Comment - The duties of a neutral under international law do not include a duty to ensure that its ships or personnel leave or refrain from entering an area of hostilities or an area adjacent to an area of hostilities. Nationals of a neutral country who may happen to be in belligerent territory nevertheless retain their right to protection by their neutral home state; and a belligerent must grant to neutral diplomatic envoys - - including those accredited to the enemy - - the right to quit the territory unmolested. A neutral nation, in this respect alone, thus has a legitimate reason and a legal right to dispatch a ship into international waters adjacent to an area of hostilities, in fulfillment of its obligation to protect its nationals and to evacuate those who desire evacuation. It was in fulfillment of such a mission that USS LIBERTY was engaged. Far from being contrary to international custom, the presence of neutral ships on just such missions as LIBERTY’s is a common, if not a universal, incident of situations involving the outbreak of hostilities. So long as such a neutral ship maintains the impartial attitude of neutrality, each belligerent has a duty to refrain from attacking her. Action by such a neutral ship to repulse an unlawful belligerent attack by force, where the neutral has not first attacked the belligerent, does not constitute “hostilities” against the belligerent and does not constitute an abandonment or a violation of neutrality.

Point 3 - The Area (Where LIBERTY was steaming when attacked) is not a common passage for ships.

Comment - Given the conceded proposition that a ship of a neutral is steaming in international waters, the question of whether or not such waters are a “common passage” is totally irrelevant to its right to be there.

Point 4 - Egypt (An opposing Belligerent) had declared the area (where LIBERTY was steaming when attacked) closed to neutrals.

Comment - Closing certain adjacent waters including those otherwise considered to be high seas, has some precedent in history as a belligerent practice, notably in World

Wars I and II when most of the belligerents, including the United States, declared “war zones”, Military areas”, amid “defensive sea areas” and either attempted to close such areas completely and to severely circumscribe passage through them as a neutral the consistent position of the United States has been to reserve generally all of its rights in the premises, including the right not only to question the validity of such “war zones” but to present demands and claims in relation to any American interests which may be unlawfully affected, directly or indirectly, by virtue of their enforcement. As a general proposition except for a previously announced blockade or other legitimate maritime control measure, closing or attempting to restrict any portion of the high seas has not been recognized in international law as a belligerent right.

Point . LIBERTY resembles the Egyptain [*sic*] supply ship EL QUSEIR.

Comment - While EL QUSEIR bears a highly superficial resemblance to LIBERTY, she more closely resembles the majority of older tramp steamers operating in ocean shipping. EL QUSEIR is less than half the size and lacks the elaborate antenna array and distinctive hull markings of LIBERTY. The location of the superstructure island, a primary recognition feature of merchant type ships, is widely different. By this criteria as a justification, for attack, any ship resembling EL QUSEIR was in jeopardy.

Point 6 - Ship was not flying flag when sighted. She moved at high speed westward toward enemy coast.

Comment - LIBERTY flew a size 9 (approx 5 feet by 8 feet) U.S. ensign from her foremast throughout the morning of 8 June and until it was shot down by the Israeli air attack. At least 5 minutes prior to the torpedo attack a size 7 ensign (approx 7 feet by 13 feet) was hoisted at the main yardarm. At 0849 LIBERTY changed course from 13Q°T to 253°T. At 0905 LIBERTY reduced speed to 5 Knots and continued to steam at that speed until after the initial air attack. At 1132 LIBERTY altered course to 283°T and continued on this course until after the ship was attacked.

Point 7 - The Navy had earlier reports of bombardment of El Arish from sea.

Comment - It is inconceivable that either the IDF Navy or Air Force would associate LIBERTY with her 4 - 50 caliber machine guns, or EL QUSEIR, armed with two 3 pounders, with a shore bombardment.