

# 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)<sup>1</sup>

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.)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>

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.

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<sup>3</sup> 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],<sup>4</sup> 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.

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<sup>4</sup> 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;<sup>5</sup>
- 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;

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<sup>5</sup> 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.<sup>6</sup>

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

