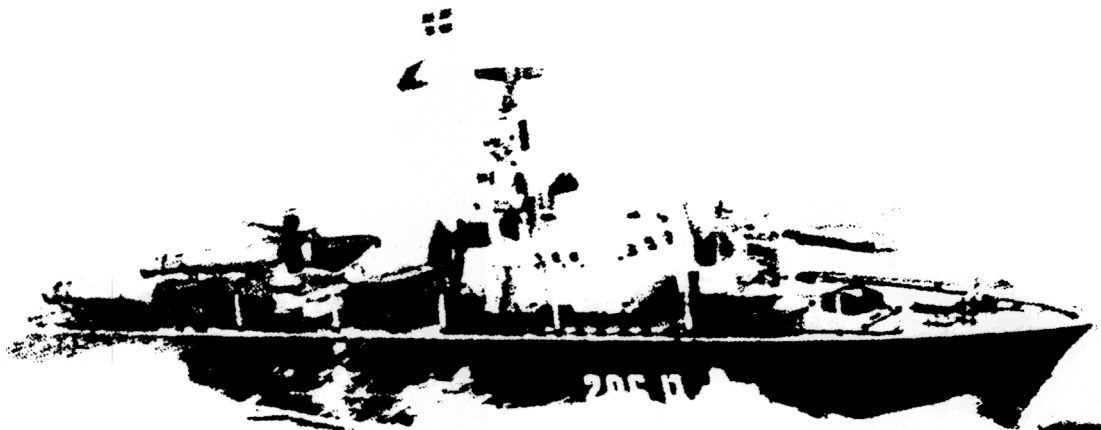


Exhibit 4-3839



(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