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REPORT BY THE CHIEF OF STAFF OF THE TRUCE SUPERVISION  
ORGANIZATION TO THE SECRETARY-GENERAL CONCERNING  
THE SS BAT GALIM

Note by the Secretary-General: The Secretary-General has the honour to circulate for the information of the members of the Security Council the attached report, dated 25 November 1954, from the Chief of Staff of the Truce Supervision Organization concerning the consideration by the Egyptian-Israeli Mixed Armistice Commission of the Egyptian complaint concerning "SS Bat Galim".

25 November 1954

CONSIDERATION BY THE EGYPTIAN-ISRAELI MIXED ARMISTICE COMMISSION  
OF THE EGYPTIAN COMPLAINT CONCERNING "SS BAT GALIM"

Report by the Chief of Staff of the Truce Supervision Organization

I have the honour to report to the Security Council as follows:

1. Following the statement made at the 685th meeting of the Security Council, on 11 November, by the President of the Council, the Egyptian and Israeli Delegations to the MAC agreed, at its meeting held on 16 November to select among the complaints on the agenda some of the more important (seven altogether) which they would consider at once, and to take up on 18 November the Egyptian complaint relating to the Bat Galim.
2. The Egyptian complaint, submitted on 6 October, read as follows:
  - "1. During the early hours of September the 28th, 1954, an Israeli merchant vessel named "BAT GALIM" manned by a crew of 10 Israelis, entered the Egyptian territorial waters in Gulf of Suez in the area few miles south of port light house. The crew attacked two Egyptian fishing boats by automatic fire in the above mentioned area sinking one of them. Thus causing the death of two Egyptian fishermen named

1. ABD EL AZIZ SABRI
2. MOHAMED HAMEED EL TALATINI

The other boat was damaged because of the fire, but its crew succeeded in returning back to the shore with the boat.

2. This hostile act committed by armed Israelis inside Egyptian territorial water constitutes a flagrant violation to the G.A.A.
3. An investigation is requested."

3. Following the Egyptian request for an investigation, arrangements were made with the Egyptian authorities for a team of 3 United Nations observers to carry out an investigation in Egypt. The investigation lasted from 10 to 16 October,

4. The team heard and interrogated the sergeant-major of the frontier regiment in command of Abu El Darag post, who stated that on 28 September one of the fishermen reported the attack on the fishing boats; the officer in charge of the Suez frontier, who stated that he received the message from the Abu El Darag post; the inspector of passports in Suez Port who stated that the officer in charge of the Suez frontier asked him by telephone if the small ship described by the fisherman had entered the harbour; the Chief of Parquet, Attorney General's office, who was one of the committee which inspected the Bat Galim; the coast-guard commander in Suez; the second in charge of the Suez frontier force; the Chief medical-legal expert of the Cairo District, who examined one of the Egyptian fishing boats for bullet marks or holes; the Director of the Palestine Department, Ministry of War, who stated that the Egyptian Government claimed that their territorial waters extended to a distance of 6 miles from the shore and that the whole Gulf of Suez was inside Egyptian territorial waters.

The United Nations observers further heard and interrogated two Egyptian fishermen who stated that they were in one of the two boats allegedly attacked by the "Bat Galim", and a third fisherman who stated that he was in the neighbouring "mother boat" which had not been attacked. The United Nations Observers visited the two boats. They also interrogated a fisherman who stated that he was the step-brother of one of the two fishermen who allegedly were in the third boat sunk by the Bat Galim. The United Nations observers heard and interrogated in Cairo the master and crew of the Bat Galim (ten altogether). They also visited the ship.

They went in a Suez Company launch to the alleged scene of the incident. The spot was pointed out by an Egyptian Navy vessel. According to the captain of the launch, it was situated about 15 sea miles south of Newport lighthouse, approximately in the middle of the Gulf. Both shores could be seen clearly. According to the sea chart, the depth is 28 fathoms. The United Nations observers were also shown the ship's deck log and other documents.

5. On 18 November, the MAC convened, as agreed, to consider the Egyptian complaint. At the beginning of the meeting, the Senior Israeli Delegate proposed that the suggestion of the Egyptian Representative in the Security Council be accepted and that the MAC should discuss at the same time the Egyptian complaint and the Israeli claim, as they referred to the same incident. The Israeli claim, dated 8 October, reads as follows:

"I should like to refer to Egyptian complaint E-62-54 dated 6th October 1954, and in accordance with Article XI, para. 7 of the Israel-Egyptian G.A.A. to submit hereby Israel's claim against Egypt's completely unfounded contentions contained in the aforesaid complaint.

The allegations contained in the above Egyptian complaint are grave distortions and are clearly designed as a maneuver to prevent a speedy release of the s/s Bat-Galim and its crew.

In view of the serious accusations in the Egyptian complaint and the grave circumstances of the case, I have the honour to request in accordance with Article IV, para. 3 of the rules of procedure, an immediate investigation and an emergency meeting of the Israel-Egyptian M.A.C. to consider the matter."

6. Following the Israeli request, the Chairman of the MAC sent a United Nations observer to Tel Aviv to hear and interrogate the general agent of the shipping company which had bought the Bat Galim. The Chairman also decided to call an emergency meeting as requested in the Israeli claim. During the meeting held on 21 October, which was continued on 23 October, questions of procedure raised by the Senior Egyptian Delegate were considered. The Israeli claim was not discussed.

7. On 18 November, in reply to the Israeli suggestion that the Egyptian complaint and the Israeli claim should be discussed at the same time (see para. 5 above) the Senior Egyptian Delegate declared that, as he wished to respect the statement of the Egyptian Representative in the Security Council "we are going to discuss the Egyptian complaint and then the Israeli claim in this meeting, but it will not be taken as a principle in future."

8. The Senior Egyptian Delegate then presented the Egyptian case as follows: On the 27th of September 1954, an armed Israeli vessel, named "Bat Galim", entered the Gulf of Suez through Egyptian territorial waters and advanced through the Gulf on its way to Suez. According to the log-book, the ship arrived at a point 6 miles from Newport lighthouse at 1 a.m. (local time) on 28 September 1954. Instead of proceeding in a northern direction, the vessel returned back to the South and to the North, by the Master's orders, until 5.45, when it anchored near Green Island, in the area of Port Suez. As proof and only as proof that the Bat Galim was armed between 1 a.m. and 5.45, and approximately at 3.30 a.m., the crew of that vessel attacked two fishing boats, Nos. 90 and 314, with light automatic weapons, in an area 15 miles south of Newport Lighthouse. As a result of this attack, the two fishermen on boat No. 314 were missing. The other boat, No. 90, was hit by several bullets. Mohammed Barakat Achmud, one of the two fishermen who were in boat No. 90 stated to the United Nations observers:

"....When I started going towards south I saw the ship that passed twice by one coming to the north. When it was near to us shots were fired at the boat, so I was scared and I and my friend jumped into the water to avoid the bullets. And we stayed there in the water and shouted, but the ship proceeded on its way towards the north. After a while Rayes Helmi with his boat came towards us....."

"Rayes Helmi (Helmi Seddeek el Daly) stated to the United Nations observers:

"....the two fishermen were in the water and hanging on the boat itself; I went to them and asked them what happened. They told me that they themselves heard some shooting, so after a while they decided to go and see what was going on, but they were met by that boat, which looks like a small tanker, coming towards them, where it fired automatic fire at their boat, so they jumped into the water to avoid the firing, and hung themselves to the edge of the boat. After hearing this statement from them I took the two fishermen who were in the water on my boat...."

The United Nations observers who visited boat No. 90, reported:

"The boat was of approximately 5 1/2 metres in length and 1.6 metre in width. It was old and seemed to be in bad condition. In the hull there were many holes and scratches, some of which could have been made by bullets, calibre 6-8 millimetres. It was difficult to ascertain the direction of the bullets, and sometimes the kind of marks, due to the fact that someone had apparently been searching the holes with some kind of tool. The United Nations observers searched carefully for a long time for slugs and bullets, but could find nothing. The boat was marked in Arabic: 5 - 90. Captain DeBarr (a United Nations observer) was of the opinion that the marks were caused by automatic weapon fire and that it could not be determined what calibre bullet caused the damage."

The person who had been "searching the holes with some kind of tool" was Dr. Zaki Mohamed El Banhawi, Chief Medical-Legal expert of the Cairo District. A United Nations observer asked him whether he used a sharp instrument in his examination of the boat, and he replied:

"Yes, I used a knife and when I found a hole or a mark I searched with my knife to see if I could find any slugs."

"Did you find any?"

"Yes, I found this slug and this piece of metal which is from a slug."

The investigation report continues as follows:

"The witness then handed the Observer two pieces of metal, one of which was a slug and the other piece could have been from a slug. Both pieces had particles of wood and it can be said that from all appearances the two pieces of metal could have been removed from the boat."

9. After the Senior Egyptian Delegate had presented the Egyptian case, the Senior Israel Delegate stated that it was difficult to consider the Egyptian complaint as a serious charge. The fabrications were transparent. Should any doubt exist, it would long ago have been dispelled by the Egyptian "delaying tactics" on their own complaint. The Egyptian complaint was not lodged until 6 October; no emergency meeting of the M.A.C. was requested; in the meetings held on 21 and 23 October, the Senior Egyptian Delegate discussed points of procedure; on 30 October, the Senior Egyptian Delegate addressed a letter to the Chairman stating that he was anxious to discuss the Egyptian complaint as early as possible; however, it was Israel and not Egypt who was ready to give precedence to the Egyptian complaint.

10. The Senior Israel Delegate referred to the statement made at a press conference by a member of the Egyptian Government after the seizure of the Bat Galim. He said that, according to that statement, the Bat Galim had "attacked a number of inhabitants and fishermen in the area of a guard post on the Red Sea coast with fire from small arms. Some people were injured..." The version of the attack in the subsequent complaint submitted to the MAC was different. There were no wounded inhabitants or fishermen, but a fishing boat and two fishermen were missing. These two fishermen were strangers to every one concerned. A step-brother of one of the missing fishermen had been found; he did not know where his relatives lived. The fishing boats had allegedly been attacked by the

Bat Galim while fishing at night, and without lights, in the middle of the Gulf of Suez. The Senior Israel Delegate doubted that the Egyptian authorities would countenance such fishing on one of the busiest international waterways in the world. The Egyptian authorities seemed moreover to have instituted no enquiry whatsoever amongst the vessels which used the waterway on the night of 27-28 September. The only ship whose crew was questioned was the Bat Galim. No ship reported the incident. The Senior Israel Delegate then referred to statements by witnesses about the Egyptian fishing boat No. 90, at which the Bat Galim had allegedly fired. Dr. Zaki Mohamed el Binhawi, the chief medical-legal expert of the Cairo district had found the boat in good condition; the United Nations observers found that it was old and seemed to be in bad condition. Dr. Zaki Mohamed el Banhawi had found only bullet holes and marks caused by bullets; the United Nations observers found many holes and scratches, some of which could have been made by bullets. With regard to the fishermen from the other boat, which was missing, no divers could be found to look for them.

11. The Senior Israeli Delegate after concluding from the above that the "alleged incident never occurred", argued that, even if such an incident had occurred, there would be no evidence to connect it with the Bat Galim. He pointed out that the head fisherman on the "mother boat" and the two fishermen on boat No. 90 had "in the darkness of a moonless night" discerned the "yellow funnel" of the ship which passed to and fro several times. The Bat Galim, however, had no funnel; it was a motor ship. They also alleged that they perceived on that moonless night the tanker-like shape of the Bat Galim. The Senior Israeli Delegate then referred to the official note from the Egyptian Ministry for Foreign Affairs quoted by the Representative of Egypt on 14 October at the 682nd meeting of the Security Council (page 54 of the Verbatim Record). The note stated that "the pilot" (the head fisherman) remained at the extreme northern point and the two small boats were posted respectively at the centre and the extreme southern point. There was a distance of 2 kilometres between each of the boats." Yet, to the question "How do you usually keep contact between your boats", one of the fishermen who were in boat No. 90, posted at the centre, replied: "I cannot keep in touch in the dark with the other boats, but when the shooting started I heard the people in the other small boat shouting." The Senior Israeli Delegate submitted that the "other small boat", supposedly sunk by small arms fire, had never existed. As to boat No. 90, according to the statement of the Egyptian

fishermen, it had been subjected to automatic fire and had filled with water, so that the mother boat which had taken it in tow had to proceed to the nearest point on the shore. The Senior Israeli Delegate recalled in this connexion that boat No. 90 had been examined by Dr. Zaki Mohamed el Banhawi (see paragraph 8 above) and the evidence found by the Egyptian Chief medical-legal expert was one slug and a piece of metal which according to the United Nations observer who saw it "could have been from a slug." The Egyptian expert saw nothing except "some bullet holes and marks made by bullets." The sketch of fishing boat No. 90 in the United Nations Observers' report shows three "holes, larger than bullet holes, and the origin of which is uncertain." The Senior Israeli Delegate asked if it "would be unkind" to suggest that the origin was an axe. On the floor of the boat there are three "scratches which could have been made by bullets." The sketch indicated the probable direction which the bullets followed. The Senior Israeli Delegate argued that the only two penetrations indicated in the right side of the deck were too high to leave markings on the floor boards. Since there were no penetrations on the left side of the boat, he argued "the only solution would be that the boat made a complete circle, with 2 fishermen hanging from its side." There were also a number of alleged bullet holes on the deck. In the opinion of the Senior Israeli Delegate "the height of the freighter and the distance of the small boat from the freighter at the time of firing would, by the angle of fire so produced, strike the side of the boat and not its deck." The Senior Israeli Delegate further wondered why the Bat Galim, instead of choosing the obvious target of the lit-up mother-boat, preferred to commit its act of aggression on the other two "small unlit invisible boats." A fisherman stated he had heard from 30 to 40 shots. Yet, according to the Egyptian authorities and the United Nations observers, no weapon was found on the ship except "one small unserviceable pistol", .33 calibre. The Senior Israeli Delegate said that was "the apparent source of the weapon which was used in marking" boat No. 90 - in which United Nations observers found holes and scratches, some of which could have been made by bullets, calibre 6 - 8 millimetres - no calibre for any known automatic weapon.

12. The Senior Egyptian Delegate recalled that he had mentioned that shooting at the fishermen as a proof and only as a proof that the Bat Galim was armed. He quoted Article II, para. 2 of the General Armistice Agreement which reads:

"No element of the land, sea or air military or para-military forces of either Party, including non-regular forces, shall commit any warlike or hostile act against the military or para-military forces of the other Party, or against civilians in territory under the control of that Party;..."

13. The Senior Egyptian Delegate said that the fishermen had been fired at, "not in the area under Egyptian control, but in Egypt. So the MAC has no competence at all to discuss whether these fishermen were fired at or not, it is according to the sovereignty of Egypt and to Egyptian law. I have only mentioned this incident in my statement in order to prove that this was an armed ship, and according to Article II, para. 2 of the Armistice Agreement, it has no right to enter the Egyptian territorial waters." The Senior Egyptian Delegate referred further to the Shipping Agreement concluded on 23 July 1953, which is reproduced in Annex I to this report. The Senior Egyptian Delegate said the Shipping Agreement was "considered complementary to the General Armistice Agreement, because it is witnessed by the Chairman" of the MAC. The Shipping Agreement prevented "any ship of any Party from entering the territorial waters of the other Party, unless by force majeure."

14. The Senior Israeli Delegate said that the Agreement did not state that a vessel of either Party shall not enter the territorial waters of the other.

15. The Senior Egyptian Delegate then presented a draft resolution (the Egyptian draft resolution which was voted upon (see para. 17 below) was an amended version of this first draft).

16. The Senior Israeli Delegate said he would submit a counter-resolution.

17. After the Commission had re-convened on the following day, 19 November, the Senior Egyptian Delegate presented the following draft resolution:

"The MAC, having discussed the Egyptian complaint E-62-54 and its report of investigation carried out by UN Military Observers Major Rosenius, Captain Rietbergen and Captain DeBarr;

1. Finds that during the night 27/28 of September 1954 the Israeli vessel Bat Galim entered the Egyptian territorial waters;
2. Decides that this action is a violation of Article II para. 2 of the G.A.A.
3. Decides further that this action is also a violation of the shipping agreement signed by both Parties and witnessed by the Chairman of the MAC, which is considered as complementary to the G.A.A.
4. Calls upon the Israeli Authorities to prevent such actions in the future.

18. The Senior Israeli Delegate said that, after weeks of delay, the MAC reached on the preceding day the point of considering the substance of the

complaint. Now, the Egyptian draft resolution made no reference to the facts alleged in the complaint and the accusations brought before the MAC seemed suddenly of no further importance. The Egyptian Delegation had made it clear that it was best to ignore the allegations made in their complaint. Instead, they had inserted in their draft resolution general questions which did not belong to an examination of such allegations.

19. The Egyptian draft resolution suggested that "the entry of the Bat Galim into Egyptian territorial waters was a violation of the General Armistice Agreement" and that the Bat Galim's crew constituted "a military force within the meaning of Article II, para. 2." The Senior Israeli Delegate contended that the Bat Galim was on its passage through what, by international law, has always been recognized as an international water-way. This fact alone must determine the question of the legality of the Bat Galim's entry into the Gulf of Suez and it is clear that the MAC is not the body to deal with the matter. The Security Council, in its resolution of 1 September 1951, determined that the General Armistice Agreement "precludes Egypt from interfering with the free passage of all ships through the Suez Canal. The Security Council resolution makes the Bat Galim's passage legal on the basis of the General Armistice Agreement which the Security Council examined with the greatest care before reaching its decision."

20. The Senior Israeli Delegate considered the Egyptian contention that the Bat Galim on its voyage was contravening the 1953 Shipping Agreement. He said that the Agreement was concluded outside the framework of the MAC between the representatives of Egypt and Israel, that it had at no stage been made into a MAC agreement, that it was made to deal with a very limited field of specifically mentioned cases and could have no relevance with regard to the passage of ships through the Suez Canal. That bi-lateral agreement - which had not been signed by the Chairman of the MAC - could not be invoked in the MAC and the MAC had no right to consider or interpret it.

21. The Senior Egyptian Delegate stated that the object of the Egyptian complaint was the passage through Egyptian territorial waters of an Israeli vessel and that the killing of the two fishermen had been mentioned in the complaint to prove that there were arms on the Bat Galim. Though the United Nations observers had no right to investigate the killing of two Egyptian

fishermen in Egypt, they had been asked to do so in order to prove that the ship was carrying arms. The killing of two Egyptians in a part of Egypt was not within the competence of the MAC. Nor had the MAC any competence to discuss Egyptian territorial waters. The words "territorial waters" were not mentioned in the General Armistice Agreement. Article II, para. 2, simply provided that "no element of the land, sea or air military or para-military forces of either Party ....shall not....pass...through the waters within 3 miles of the coastline of the other Party."

22. The Senior Egyptian Delegate said that the Security Council resolution of 1 September 1951 to which the Senior Israeli Delegate had referred concerned the free passage through the Suez Canal of goods and not of the Israeli flag. The Suez Canal was not mentioned in the Armistice Agreement; it was not mentioned in the Egyptian complaint. As to the 1953 Shipping Agreement, it was made through the Mixed Armistice Commission, as proved by its heading and by the signature of the Chairman of the Commission at the bottom. It could be considered as complementary to the G.A.A.

23. The Egyptian draft resolution (para. 17) was put to the vote. It was not adopted, the Israel Delegation having voted against and the Chairman having abstained from voting.

24. After the vote, the Chairman made the following statement:

"I abstain on this draft resolution for two reasons:

First, I wish to recall the terms of Article II, para. 2, which states:

"No element of the land, sea or air military or para-military forces of either Party, including non-regular forces, shall commit any warlike or hostile act against the military or para-military forces of the other Party, or against civilians in territory under the control of that party; or shall advance beyond or pass over for any purpose whatsoever the Armistice Demarcation Line set forth in Article VI of this Agreement except as provided in Article III of this Agreement; and elsewhere shall not violate the international frontier; or enter into or pass through the air space of the other Party or through the waters within three miles of the coastline of the other Party."

I do not think that this Article should apply to this case.

Second, certainly it has been the practice of both Parties to present complaints to the MAC relating to merchant or fishing ships of one Party entering the territorial waters of the other Party. Some of these complaints contain a mention to the effect that such act constitutes violation of

the G.A.A. However, the MAC had never decided on these complaints. They had been dealt with in informal meetings or sub-committee meetings and have been settled directly by the Parties. Although the Parties have concluded a Shipping Agreement on 23 July 1953 relating to the release of any non-military vessel of one Party carrying non-military cargo and which, as a result of a case of "force majeure" seeks shelter in the territorial waters of the other Party, it is not for the MAC to decide in a resolution whether such Agreement has been respected or not.

However, in the present instance the ship Bat Galim was bound for the Suez Canal. But the Security Council is seized of a complaint by Israel concerning this general question which is outside the competence of this MAC."

25. The Israel Delegation submitted the following draft resolution:

"The MAC, having considered Egyptian complaint No. E-62-54, the investigation report and the statements of both Parties,

"Finds the Egyptian complaint regarding the BAT GALIM to be unfounded."

26. The Senior Egyptian Delegate asked under which provision of the Armistice Agreement the draft resolution had been submitted.

27. The Senior Israeli Delegate replied that it under paras. 1 and 4 of Article X of the Armistice Agreement (S/1264/Rev.1) and paras. 1 and 2 of Article III of the rules of procedure of the MAC.<sup>1/</sup> Since the Israeli draft resolution did not condemn Egypt for a breach of the G.A.A., there was no reason to quote an Article of the Agreement. The Israeli draft resolution was a counter-resolution on the Egyptian complaint.

28. The Senior Egyptian Delegate said that Article X, para. 1, of the Armistice Agreement which the Senior Israeli Delegate had mentioned referred to the supervision by the MAC of the "execution of the provisions" of the Agreement. The decisions of the MAC must relate to the execution of the provisions of the Agreement. The Israeli draft resolution did not relate to the execution of the provisions of the Agreement and the MAC was not competent to vote upon it.

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<sup>1/</sup> Article III of the Rules of Procedure reads: 1. Decisions of the Mixed Armistice Commission to the extent possible shall be based on the principle of unanimity. The Mixed Armistice Commission will in each case make every effort towards reaching agreement between the two parties. Only when it is clear beyond any doubt that no equitable and mutually satisfactory settlement can be reached, at this time the issue will be put to the vote.  
2. In the absence of agreement between the two parties, decisions shall be taken by a majority vote of the members present and voting.

29. The Senior Israeli Delegate said there were many precedents. He also mentioned Article X, para. 8, which gave the Commission the right of interpreting the Armistice Agreement and Article X, para. 7, which referred to "claims or complaints". The word "claims" added to the word "complaints" could not be considered as superfluous. It had been included for the purpose of permitting a draft resolution such as the present Israeli draft resolution to receive the Commission's attention.

30. The Senior Egyptian Delegate said that the discussion was about decisions of the MAC, and not about claims or complaints. Besides, Article X, para. 7, referred to "claims or complaints" . . . . relating to the application of this Agreement". In both cases, it was necessary to refer to the Armistice Agreement.

31. The Senior Israeli Delegate said the Israeli draft resolution referred to the Egyptian complaint and in so far as the complaint referred to the Armistice Agreement, the Israeli draft resolution referred to the same Agreement.

32. The Chairman said that it had been common practice in the MAC to vote on a second resolution on a complaint.

33. The Senior Egyptian Delegate said that the law in the MAC was the provisions of the Armistice Agreement and the Rules of Procedure, and not common practice. If there was a wrong common practice, it had to be corrected.

34. The Senior Israeli Delegate amended his draft resolution to read as follows:

"The MAC having considered Egyptian complaint No. E-62-54, the investigation report and the statement of both Parties

Finds the Egyptian complaint regarding the Bat Galim case to be unfounded and that no provision of the G.A.A. has been violated by Israel."

35. The Senior Egyptian Delegate asked the Chairman whether he accepted the Israeli draft resolution because of common practice or because it was based on the provisions of the Armistice Agreement.

36. The Chairman replied that, so long as he had been in this MAC, it had been common practice to have more than one resolution on the same complaint. Nothing in the rules of procedure prevented it.

37. The Senior Egyptian Delegate said that both Parties gave their statements on the Egyptian complaint and that the Egyptian Delegate submitted a draft resolution which was voted upon, which meant that the Egyptian complaint was

settled. Did the submission of another draft resolution mean that the Egyptian complaint was to be discussed again from the beginning? How was it possible to accept the Israeli draft resolution which read: "The MAC, having considered Egyptian complaint No. E-62-54, the investigation report and the statements of both Parties, Finds....."?

38. The Senior Israel Delegate said that at the preceding meeting the Israel Delegation had reserved their right - which was not questioned - to submit a draft resolution.

39. The Senior Egyptian Delegate said that he had made no objection when the Israeli Delegation announced their intention to submit a "counter-resolution", because he could not prevent them from submitting any resolution, if it was based on the provisions of the General Armistice Agreement. Having found that the Israeli draft resolution submitted today was based on no article of the Agreement, he had to state that he could not accept it. The Israeli draft resolution "finds the Egyptian complaint regarding the Bat Galim case to be unfounded....." The Egyptian complaint was composed of two parts: the entry of the Bat Galim into Egyptian territorial waters and the killing of two Egyptian fishermen. The killing of the Egyptian fishermen had nothing to do with the General Armistice Agreement. It had only been mentioned to prove that there were arms on the Bat Galim. The accusation was now out of the Egyptian complaint, as was confirmed by the Egyptian draft resolution. With regard to the first part of the complaint, it was not unfounded: the Bat Galim had entered the Gulf of Suez; 3 United Nations observers had seen the vessel in Suez.

40. The Israeli draft resolution (see para. 34 above) was put to the vote. It was adopted, the Israeli Delegation and the Chairman voting in favour. The Egyptian Delegation did not vote because it could not "co-operate with a MAC that follows common practice and not the provisions of the General Armistice Agreement and the Rules of Procedure."

41. After the vote the Chairman made the following statement:

"I shall now read the Egyptian complaint No. E-62-54:

- "1. During the early hours of September the 28th, 1954, an Israeli merchant vessel named "Bat Galim" manned by a crew of 10 Israelis entered the Egyptian territorial waters in the Gulf of Suez in the

area a few miles south of port lighthouse. The crew attacked two Egyptian fishing boats by automatic fire in the above mentioned area sinking one of them. Thus causing the death of two Egyptian fishermen named:

1. ABD EL AZIZ SABRI
2. MOHAMED HAMEED EL TALATINI

The other boat was damaged because of the fire, but its crew succeeded in returning back to the shore with the boat.

2. This hostile act committed by armed Israelis inside Egyptian territorial waters constitutes a flagrant violation to the G.A.A."

I have voted for this resolution because conclusive evidence has not been produced that the Bat Galim attacked the Egyptian fishermen in the Gulf of Suez.

I shall call on both Parties to come quickly to an agreement for the release of the Bat Galim and its crew."

42. The Senior Egyptian Delegate recalled that the Chairman had explained his abstention on the Egyptian draft resolution by stating "I do not think that this Article (Article II, para. 2 of the Armistice Agreement) should apply in this case." Now, the Chairman voted for the Israeli draft resolution because he considered that the Israelis did not kill the two Egyptians, though the killing of Egyptians in Egypt or in Egyptian territorial waters had nothing to do with the Armistice Agreement. The Senior Egyptian Delegate further objected to the fact that the Chairman had called on "both Parties to come quickly to an agreement for the release of the Bat Galim and its crew." The 1953 Shipping Agreement entitled Egypt to seize the Bat Galim and its crew. The Chairman had no right to ask that the Parties come to an agreement for their release.

43. The Senior Israeli Delegate said that killing of civilians in Egypt by an element of the land, sea or air military or para-military forces of the other Party did come under the General Armistice Agreement (Article II, para.2) and that it was the basis of the Egyptian complaint. As for the Chairman calling on both Parties to come quickly to an agreement for the release of the vessel and its crew, it was his human duty in this case to do so and the MAC's dealing with the case would not be complete and would not reach its logical conclusion without it.

44. The Senior Egyptian Delegate said that the Chairman could not interfere with the policy of Egypt in a matter which, according to the Chairman's own statement, had nothing to do with the General Armistice Agreement.

45. After the MAC had concluded its consideration of the case, I received an Egyptian appeal based on Article X, para. 4, of the Armistice Agreement, which provides that "on questions of principle, appeal shall lie to a Special Committee, composed of the United Nations Chief of Staff of the Truce Supervision Organization and one member each of the Egyptian and Israeli Delegations....".

46. The Egyptian appeal, dated 20 November, reads as follows:

"An appeal is hereby submitted against the decision by a majority vote on the Israeli resolution on Egyptian complaint No. E-62-54 which was taken at a meeting of the Egyptian-Israeli Mixed Armistice Commission held on 19 November 1954 at Kilo 95.

The questions of principle in this case are:

- 1) The decision does not relate to the application of the provisions of the G.A.A.
- 2) The decision has been produced on a complaint that had been considered as settled after the first decision.
- 3) The Israeli decision considered the whole Egyptian complaint unfounded although the MAC did not hear the Egyptian point of view in the killing of the two Egyptian fishermen because it has been considered not in the competence of the MAC.

It is requested that the case be brought before the Special Committee, in accordance with Article X, para. 4 of the Egyptian-Israeli General Armistice Agreement."

47. The Egyptian appeal was placed on the agenda of the Special Committee, after a number of Egyptian or Israeli appeals which are pending before it.

48. At the beginning of the meeting of the Special Committee held on 25 November, it was agreed to discuss immediately the Egyptian appeal against the resolution adopted by the Mixed Armistice Commission on 19 November (see paras. 34 and 40 above). After discussion, the Special Committee took the following decision:

"The Special Committee finds that the words in the resolution "the Egyptian complaint regarding the Bat Galim case to be unfounded and" should be omitted for the following reasons:

"The MAC should not adopt resolutions defining a complaint as "unfounded" as this may appear as restricting the right of either side to submit any complaint it may deem necessary; furthermore, it is unnecessary to describe a complaint in such terms after the non-adoption of the complaining Party's resolution.

"This decision is not intended as a judgment on the facts of this particular case, as to which the Special Committee has no competence, nor is it intended as a reversal of the MAC's findings in the resolutions as to the facts."

E.L.M. Burns  
Major-General  
Chief of Staff

EGYPTIAN-ISRAELI  
MIXED ARMISTICE COMMISSION

July 23, 1953

The following is herewith agreed by both parties:

In the event a non-military vessel of either party, carrying non-military cargo, is forced by engine trouble, storm or any other reason beyond the control of the vessel and its crew, to seek refuge in the territorial waters of the other party, it shall be granted shelter therein and shall be allowed thereafter to proceed on its way freely and at the earliest possible time, together with its cargo, crew and passengers.

For Egypt

(s) Gohar

Lt. Col. Gohar

For Israel

(s) Gaon

Lt. Col. Gaon

Witnessed by Chairman EIMAC

(s) T.M. Hinkle, Col. USMC

T.M. Hinkle

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