

**Middle East - Suez story No
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4-9 Dec. 57

- D.H.'s memorandum conc. Col. Flint's ruling
- Memorandum conc. the seizure of the ship "Davakis" by Israel

Jerusalem, 4 December 1957

The Secretary-General of the United Nations has received from the Egyptian Delegation a memorandum containing the following information concerning the alleged seizure of the ship "Davakis" by Israel.

Reference is made to a news agency dispatch from a UP correspondent who is said to have been in Israel at the beginning of October and who reported from Athens on October 4th : "Well informed sources in Tel Aviv declared yesterday that the Israeli authorities had retained an Egyptian cargo vessel of 1,000 tons when it reached the Israeli waters in the afternoon of last Tuesday (3.10.1957). There were eleven Egyptian seamen on board the ship. It is expected that Israel will retain the Egyptian seamen until the Israeli fishing boat which was retained last month as it entered the Egyptian waters in the area of Port Said is released."

The Egyptian Delegation further states that on October 10, Egypt filed a protest against what it describes as an "act of piracy" and asked the Chairman of EIMAC to investigate and convene a meeting.

The Egyptian Delegation has submitted with/^{the} memorandum documents which included a copy of a letter dated 8 October from the owners of the vessel to the Director of the Ports and Lighthouses Administration in Alexandria stating that the owners of the vessel are the Eastern Navigation and Trading Company of Alexandria ; that the vessel left Alexandria on Monday, 30 September for the port of Latakia ; and was expected to reach the port of Latakia on 3 October ; that the vessel

carried an Egyptian flag and was registered in 1956 under number 147/1, Alexandria ; that it carried a cargo of 127, 760 kilos gross and had a crew of nine persons together with three passengers. Also enclosed was a copy of exit permit No. 1698 dated 30 September issued to the shipping agents of the vessel from the aforesaid administration in Alexandria indicating that the vessel left Alexandria on 30 September for the port of Latakia. The enclosures include a letter from the shipping agents dated 12 November certifying that the DAVAKIS, with the owners named "has accomplished all formalities towards the departure for Latakia" with the above-mentioned load which consisted of military equipment. The letter also certifies that the shipping agents had attended to all formalities for the supply of fuel oil to the vessel which sailed from Alexandria on 30 September 1957 for Latakia.

The Memorandum from the Egyptian Government states its belief that the vessel was detained at Haifa port and was later transferred to another Israeli port.

MEMORANDUM

9 December 1957

1. Colonel Flint's ruling on the inclusion of benzine in the convoy is, legally, an interpretation by the UN representative for Mount Scopus of the phrase "fuel....to sustain" in the Convoy Plan of 1950, established in implementation of the 1948 Mount Scopus Agreement (below called simply the Agreement). Thus, his estimate of the needs was neither a "dictate" as to how things should be run, nor the expression of a simple assumption as to how things had been run, but an estimate based on an assumption regarding what the words "to sustain" reasonably should mean to any impartial interpreter.
2. It follows that he is not obliged to change his views because of the fact that the needs on Mount Scopus, with the standards so far maintained, have been higher than he assumed in his interpretation. If the supply he considered justified by the text of the agreement is smaller than the one previously sent up, this does not signify that he, under some kind of outward pressure, cut down on what is your right, but that, due to lack of information you, in his view, previously had got more than the Agreement justified. His stand, thus, is not a concession to the Jordanians; in fact, it is unrelated to the Jordanian complaint and represents an independent interpretation, rendered necessary the very moment his attention had been drawn to the controversial question.
3. However, as I repeatedly stated, you are perfectly in your right to raise the issue with Colonel Flint and ask him to reconsider his view of the quantity. If you convince him that another interpretation than the one given is reasonable, he should amend his ruling accordingly and inform the Jordanians. If he were to find it impossible to revise his conclusion as to what should be meant by "to sustain", an additional quantity of benzine (or a changed system of power supply, without any reduction of the quantity of benzine) can, of course, be admitted, if that is agreeable to the other party as a reasonable departure from the Agreement. I believe that, if this whole matter is not brought up too early, and if, by that time, we have got somewhere concerning the general implementation of the Mount Scopus Agreement (including specifically inspection) Flint

would not have too great difficulties with the Jordanians along this latter line. However, were the matter to be brought up prematurely, or had we run into a deadlock over the implementation of the Agreement as a whole, I fear that we might have trouble again.

4. To sum up, the complaint which you already have informally put on record, and about which I informed the Jordanians, should be pursued with Flint, in the first instance in order to find out whether he considers himself justified in revising his interpretation of the words "to sustain" in the light of the additional information provided. If he does not find this possible, there still remains the possibility of agreeing on an additional quantity (or an alternative arrangement) which probably would require that we can register progress regarding the general implementation of the Agreement. Were such a settlement on an additional quantity to be found impossible, the matter may, of course, be brought before the Security Council (which, I hope, if the situation were to arise, would be done before we run again into a situation of such dangerous potentialities as the one we were facing last week).

5. From what I have said, I conclude that it would be wise not to rush discussions of the complaints which you have made. On afterthought, my own opinion would be that they should not be brought up formally until the beginning of January. The situation being what it is, I further feel that it would be inadvisable for you to maintain until further a standard for which the fuel supply is considered to be insufficient, with a view to create, at the time of the talks, a kind of force majeure situation for Flint and the UN (as indicated as a possibility by Mrs. Meier). This would not stand up well in view of the character of the ruling made.

6. These notes are intended to record, as precisely as possible, my interpretation of the situation we studied in our final talk. Were you to consider that the views expressed are inconsistent with what was the sense of the discussion, I hope you would let me know so that we can see to it that our views remain properly harmonised.