

**REPORTS OF INTERNATIONAL
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Investigation of certain incidents affecting the British trawler *Red Crusader*

Report of 23 March 1962 of the Commission of Enquiry established by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark on 15 November 1961

Enquête portant sur certains incidents ayant affecté le chalutier britannique *Red Crusader*

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23 March 1962

VOLUME XXIX, pp.521-539



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PART XXIV

**Investigation of certain incidents affecting the British
trawler *Red Crusader***

**Enquête portant sur certains incidents ayant affecté le
chalutier britannique *Red Crusader***

INVESTIGATION OF CERTAIN INCIDENTS AFFECTING THE BRITISH
TRAWLER *RED CRUSADER*

ENQUÊTE PORTANT SUR CERTAINS INCIDENTS AYANT AFFECTÉ LE
CHALUTIER BRITANNIQUE *RED CRUSADER*

**Report of 23 March 1962 of the Commission of Enquiry established
by the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the Kingdom of Denmark
on 15 November 1961**

**Rapport du 23 mars 1962 de la Commission d'enquête créée le
15 novembre 1961 par le Gouvernement du Royaume-Uni de
Grande Bretagne et d'Irlande du Nord et le
Gouvernement du Danemark**

Competence of the Commission—determination of facts concerning the position of boats and respective movements—evaluation of techniques and means to determine the positions of the boats—reliance on the evidence and information received from experts.

Illegal fishing—fishing vessel in the area governed by the Exchange of Notes dated 27 April 1959—arrest of vessel—firing without warning and creating danger to human life on board without proved necessity exceeded legitimate use of force.

Compétence de la Commission—détermination des faits relatifs à la position des bateaux et à leurs mouvements respectifs—évaluation des techniques et des moyens pour déterminer les positions des bateaux—crédit accordé aux preuves et informations obtenues des experts.

Pêche illégale—navire de pêche dans la zone réglementée par l'Exchange de notes daté du 27 avril 1959—arrestation du navire—ouverture de feu sans mise en garde et mise en danger de vies humaines à bord en l'absence de nécessité établie excédant l'usage légitime de la force.

REPORT OF THE COMMISSION OF ENQUIRY

The Commission of Enquiry has been established by Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark (Exchange of Notes, London, 15th November, 1961) to investigate certain incidents affecting the British trawler "Red Crusader" which occurred in the period of the 29th to the 31st of May, 1961. The Commission was accordingly constituted on the 21st of November in The Hague, with Professor Charles De Visscher, President, Professor André Gros and Captain C. Moolenburgh, Members.

At this first meeting of the Commission it was agreed, in presence of the Agents, Mr. B. Jacobsen for the Danish Government, Mr. F. A. Vallat, C.M.G., Q.C. for the United Kingdom Government, that Memorials would be exchanged in London and deposited in The Hague on December 5th with one copy to each Member of the Commission and to the Court of Arbitration Registry and that Counter-Memorials would be exchanged and deposited in the same manner on January 16th, 1962. It was then decided that oral proceedings would begin on March 5th in the following order: Danish evidence—British evidence—Danish oral statements—British oral statements followed by Danish and British replies, if required. Each witness would be examined, cross-examined and, if necessary, re-examined. The statements should be made upon an "engagement of honour", oaths not being administered. The written procedure would be in English; additional documents would be admitted upon reasonable notice. The Danish witnesses and experts would have the possibility of expressing themselves in Danish; simultaneous translation would be provided for and, if necessary, consecutive translation. The President of the Commission would consult with the Secretary-General of the Permanent Court of Arbitration about the appointment of a Registrar for the Commission and the general administration of the sessions of the Commission. Mr. Malcolm Eliot Long was appointed Registrar to the Commission and acted as such during the oral proceedings and deliberations of the Commission.

The Exchange of Notes of the 15th November, 1961 requests the Commission to investigate and report to the two Governments:

- (1) the facts leading up to the arrest of the British trawler, "Red Crusader", on the night of the 29th of May, 1961, including the question whether the "Red Crusader" was fishing, or with her fishing gear not stowed, inside the blue line on the map annexed to the Agreement between the two Governments concerning the Regulation of Fishing around the Faroe Islands constituted by the Exchange of Notes of the 27th of April, 1959;
- (2) The circumstances of the arrest; and
- (3) the facts and incidents that occurred thereafter before the "Red Crusader" reached Aberdeen.

On March 3rd, 1962, the questions of internal procedure of the Commission and material arrangements were discussed privately by the Commission with the Agents of the Parties and settled.

The Commission held its first official meeting for the oral proceedings on March 5th at 10.00 hours at the Peace Palace in the rooms of the Permanent Court of Arbitration.

Thereafter the Commission held two meetings every day, at 10.00 hours and 16.00 hours, and one meeting on Saturday mornings at 10.00 hours. The oral proceedings ended on March 16th.

The Government of Denmark was represented by:

Mr. Bent Jacobsen, Agent, assisted by

Professor Max Sørensen, LL.D., Mr. Otto Borch, Mr. P. Michaelsen, Captain E. J. Saabye, Lt. Cdr. Harald Rossing, and Mr. Hans Sørensen.

The Government of the United Kingdom of Great Britain and Northern Ireland was represented by:

Mr. F. A. Vallat, C.M.G., Q.C., Agent, assisted by

The Rt. Hon. Sir Reginald Manningham-Buller, Bart., Q.C., M.P., Attorney-General, as Counsel, Mr. Eustace Roskill, Q.C., Mr. B. Sheen, Mr. N. H. Marshall, Mr. C. Sim, and Lt. Cdr. J. C. E. White, R.N.

The Commission first heard the Danish witnesses and experts, at the meetings of March 5th, 6th, 7th, 8th and 9th, The witnesses were:

Lieutenant Max Andersson, Royal Danish Navy, Navigating Officer on the "Niels Ebbesen"; Mr. Arne Tausen, Skipper of the Danish fishing vessel "Johanne Ott"; Lieutenant P. C. Skule, Royal Danish Navy, Officer on the "Niels Ebbesen"; Lieutenant O. Bertelsen, Royal Danish Navy, Officer on the "Niels Ebbesen"; Lieutenant H. S. T. Bech, Royal Danish Navy, Fisheries Officer on the "Niels Ebbesen"; Rating M. Hansen, Royal Danish Navy, Range-Taker on the "Niels Ebbesen"; Captain E. T. Sølling, Royal Danish Navy, Commanding Officer of the "Niels Ebbesen"; Chief Petty Officer S. A. Hansen, Royal Danish Navy, on board the "Niels Ebbesen"; Corporal O. A. J. Kropp, Royal Danish Navy, Signal Trainee on board the "Niels Ebbesen".

The experts were:

Mr. T. A. Nielsen, Service Department, Telecommunications Division of the Royal Danish Navy; Mr. K. Møller Gregersen, Chief Engineer, Electronics Department, Royal Danish Navy.

After examination by the Danish Agent the witnesses were cross-examined by British Counsel and, in some cases, re-examined.

From March 10th, the British witnesses were heard by the Commission:

Mr. A. E. Wood, Skipper of the "Red Crusader"; Commander T. A. Q. Griffiths, R.N., Commanding Officer of H.M.S. "Troubridge"; Lt.Cdr. R. G. Perchard, R.N., Officer on H.M.S. "Troubridge".

One expert was called by the British Delegation:

Mr. George John MacDonald, Technical Manager, Marconi International Marine Communications Company Limited.

After examination by the British Counsel and by Mr. Eustace Roskill, Q.C. the witnesses and the expert were cross-examined by the Danish Agent and, in some cases, re-examined.

The oral statements and replies took place from March 14th to March 16th, 1962.

The Commission decided to divide the presentation of evidence into three Chapters, to facilitate its work:

- (a) facts leading up to the arrest of the "Red Crusader",
- (b) events between the arrest of the "Red Crusader" and the meeting with the British naval vessels;
- (c) facts and incidents from that moment up to the arrival of the "Red Crusader" in Aberdeen.

The same division is followed in the present Report.

CHAPTER ONE

Facts leading up to the arrest of the "Red Crusader" and circumstances of the arrest

It will be noted that this first phase of the presentation of evidence corresponds to both sub-paragraphs 1 and 2 and paragraph (b) of the Exchange of Notes (quoted hereinbefore). The Commission considers that the following events took place on May 29th before the stopping and the arrest of the trawler.

On that day, May 29th, at 17.37 hours, the Faroe Island Naval District sent a signal to the "Niels Ebbesen" in code, communicating to that vessel, one of the vessels in charge of Fisheries Inspection, that Myggenaes Coast Guard Station had reported four trawlers which could be inside the limit described in the Exchange of Notes of April 27th, 1959, between the Danish and United Kingdom Governments relating to the temporary regulations of fishing around the Faroe Islands, as "the blue line" shown on a map annexed to the Agreement (Cmnd. 776). It has never been contested between the Parties that this Exchange of Notes governs the fishing in the area where the incident of May 29th took place, nor that any vessel registered in the United Kingdom is, under this Agreement, excluded from fishing in the area between the coast of the Faroe Islands and the blue line (paragraph I of the Exchange of Notes of April 27th, 1959). According to the Exchange of Notes of November 15th, 1961,

the Commission has to decide whether the “Red Crusader” was fishing or with her fishing gear not stowed inside the blue line on the night of the 29th of May, 1961 and to elucidate the circumstances of the arrest.

In this first Chapter two matters will be successively examined:

1. Positions of the ships.
2. Movements of the ships.

1. Positions

Having studied the sketches and what is written about the Faeroes in the “North Sea Pilot, Part 1”, 1960 Edition, and “Den Faerøske Lods”, 1957 Edition, and having seen a number of photographs of the rocks, cliffs and headlands on which double-angle measurements and radar distances-and-bearings were taken, the Commission did not think it necessary to visit the scene where the arrest of the trawler “Red Crusader” took place.

Accurate position fixes can be made by the double-angle measurement method on these landmarks and therefore the double-angle measurements taken by two Officers on the bridge of “Niels Ebbesen” are to be accepted as giving the true positions of the said frigate at the times indicated.

With great accuracy the positions based on the measured angles, as reported in Exhibit 3, were put on the Danish Chart No. 82, and later, when the plotting on Chart No. 82 was finished, also on a photostatic copy of the Danish Chart No. 81 on an enlarged scale. (The Commission is aware of the fact that on an enlargement the errors of the original chart are also enlarged, but for construction purposes it preferred a larger scale than that of Chart No. 81.) For this purpose the station pointer No. 163 made by Andersson and Sørensen in Copenhagen was used. Furthermore, all these positions were checked by construction on the chart. The Commission wishes to add that the blue line was not drawn on its Chart No. 82 until all plottings of the positions of “Niels Ebbesen” and “Red Crusader” had been made. The positions of “Niels Ebbesen” on both Charts, prepared by the Commission in this way, are exactly the same as those on the Chart plotted on behalf of the Commission by one of its Members on Monday afternoon, March 5th, in the presence of the nautical experts of both Delegations and also the same as those on the reconstruction made on board “Niels Ebbesen” (Exhibit 7) on the evening of May 29th, 1961, after the arrest of the trawler.

In connection with the observations made during the oral hearings on the cutting of the two circles of the double-angle position at 22.29 hours, the Commission wishes to state that construction of the double-angle position at 22.07 hours on Myggænaes, Baret and Slettenaes shows a nearly rectangular cutting of the two circles. As the ships were stationary at 22.07 hours and were still stationary at 22.29 hours and 22.36 hours, the Commission is of the opinion that the accuracy of the 22.29 and 22.36 double-angle measurements on Myggænaes, Gaasholm and Slettenaes is certainly sufficient for the use made

of the 22.29 fix, especially as the two cutting circles are almost parallel to the North side of Baret on which at that time the distance was measured by radar to check the error of the radar sets used.

Having obtained a number of accurate positions of "Niels Ebbesen" on the chart, the Commission interpolated the positions on which radar distances to land— marks were taken at other times. These calculated positions were checked with the radar distances and bearings mentioned in Exhibit 4 at the same times.

The reason for which the radar positions given in Exhibit 4 were not accepted as being equally accurate as the positions deduced from the double-angle measurement fixes is the following:

Up to now, ship-borne navigational radar sets cannot be considered as completely accurate. They are certainly much more accurate for measuring distances than optical range finders, but nevertheless ship-borne navigational radar sets are not yet precision instruments. The Commission is informed that modern port radar equipment, on which an accuracy of about 10 metres would be desirable, has a range accuracy as follows:

The recently designed and constructed large shorebased radar sets for safe navigation in fog, et cetera, on the river Weser and the mouth of the Elbe, have a range accuracy of plus or minus 20 metres plus 1/4 % of the maximum range on the scale in use. The shore-based radar sets designed six years earlier for safe navigation in fog, et cetera, on the New Rotterdam Waterway have a range accuracy of plus or minus 25 metres plus 1/2 % of the maximum range on the scale in use. These figures show what progress in range accuracy has been made in six years on the large shore-based radar installations.

The accuracy of ship-borne radar sets cannot yet be compared with the accuracy of the above-mentioned shore-based radar sets. For normal navigation purposes, such a great accuracy is not needed, but this implies that to all observations made on ship-borne sets a rather wide margin must be given.

In order to determine the width of this margin, the specifications to which the radar sets have been made must be taken into consideration. It must be assumed that every set of a type-approved marine radar complies with the specifications under which it has been manufactured. It should never be less accurate; it can be much more accurate. However, this cannot be said before experience has been obtained.

The radar sets Decca 12 and Marconi Marine Radio Locator IV, both manufactured in Great Britain, have been made and tested under the Marine Radar Performance Standards 1948. It is a fact that the Decca Radar 12 is about six years older than the Marconi Radio Locator IV on board the "Red Crusader", but the latter, which was constructed in October 1957, was still tested under the Marine Radar Performance Standards 1948 (the Marine Radar Performance Standards 1957 were not applied before 31st December, 1958.) In the Performance Specification 1948 it is written of range accuracy that—"The

set shall provide means of estimating directly the range of any object with an error not greater than $\pm 5\%$ of the maximum range obtainable on the scale in use.”

The Commission noted that the manufacturers of the Decca 12 radar sets claim a maximum range accuracy of plus or minus 2% of the maximum range in use. The Marconi International Marine Communications Company Ltd. claim a range accuracy better than plus or minus 2% of the maximum range in use. Having heard the evidence of the radar experts during the oral hearings and having also been informed by other independent sources, the Commission has accepted a range accuracy of plus or minus 2% of the range scale in use of both navigational radar sets just mentioned.

On the tape-recording of “Niels Ebbesen” (Exhibit 16) there is an entry at 21.23 hours of three radar distances at the time of a double-angle fix. Comparison of these measured distances on Decca radar and the distances on the chart from the double-angle position to the cliffs to which the radar distances were measured, shows an error within the 2% of the range scale in use (10 miles), which corresponds with the opinion of all the experts concerned.

Concerning the radar set 293, the situation is somewhat more complicated. This type was developed during the last War, for use in British and Allied warships, at a time when no Performance Standards had yet been published. The Commission therefore had to rely on the evidence of the radar experts who appeared as witnesses and on the information it received from other experts on this type of radar.

The Commission regrets that the information received from the latter source is not exactly the same as that stated by the Danish witnesses who gave their opinion on this type of radar.

Having considered all available information on the radar 293, the Commission is of the opinion that it is necessary to take into account a range accuracy of plus or minus 5% of the maximum range being used, in addition to a fixed correction dependant on the way in which the installation has been installed.

As a general remark, the Commission wishes to add that the accuracy of all radar sets involved greatly depends on the quality of the components and the way in which the instruments are maintained.

It has been informed that the standard of the maintenance in the Danish Naval Workshop is very high indeed. Though it is of course not possible to check any more the accuracy with which the radar sets were working on the evening of May 29th, 1961, the Commission is convinced that, within the margins in distance mentioned above, it is in a position to answer positively on the question put to it on the actual position of “Red Crusader” that evening.

Considering all the information received, the Commission thought it proper to conclude that the radar plottings, as far as the distances on the 10

mile range are concerned, are accurate on the Decca 12 and Marconi Radio Locator IV sets within a belt 0.4 mile wide.

For the radar 293 on board "Niels Ebbesen" the Commission accepts a fixed correction of plus 0.35 mile and a plus or minus correction of 5 % of the maximum range on the scale in use.

The bearing accuracy of the navigation radar sets on a moving ship should not be considered greater than 2 degrees, although the Performance Specifications 1948, and also the manufacturers, claim that the bearings on objects at the maximum range in use should be accurate to 1 degree.

These considerations cause the Commission to state that on the basis of the radar distances and bearings of "Red Crusader" from "Niels Ebbesen", one can be certain that the position of the trawler was inside a zone 0.4 mile wide (Decca 12) with a maximum top-angle of 4° from the position of "Niels Ebbesen" or, as the case may be, with much less accuracy, within a zone 2 miles wide (radar 293) also with a maximum top-angle of 4° from the position of "Niels Ebbesen".

In order to avoid all complications which might arise from using the data on Exhibit 5, although the Commission is of the opinion that this document is a correct copy of the lost original as far as distances and bearings are concerned, the Commission began by using only the distances and bearings of "Red Crusader" from "Niels Ebbesen" which are reported in Exhibit 16—the tape-recording.

On the tape-recording there are two entries, at 21.14 hours and 21.27 hours, which are also entered on Exhibit 5.

The plotting of these two positions, obtained by Decca radar, from the position of "Niels Ebbesen" at the times mentioned shows that at 21.27 hours the "Red Crusader"-zone was completely outside the blue line, and that at 21.14 hours the zone in which the "Red Crusader" must have been was inside the blue line, except for a very small area at the NNW corner.

The original documents, Exhibits 6 and 8, and also the reconstruction of the plottings, with the aid of the original Exhibits 3 and 4 and with the original or a copy of Exhibit 5 on board "Niels Ebbesen", on Chart No. 82 (Exhibit 7) show clearly that the earlier positions of "Red Crusader" were further inside the blue line than her position at 21.14 hours.

Skipper Wood stated that at about 21.15 hours he shot his trawl and then steamed to the North-North-West. This statement gives very little proof of the exact time. It is a known fact, and this was confirmed by Skipper Wood, that a trawler must be stationary in order to be able to lower her trawl and boards into the water, before shooting the gear. From Exhibit 8 it can easily be deduced that the shooting started at the end of the stationary period, which ended at the latest at 21.03 hours.

The Commission has been informed that the wind on the evening of May 29th, 1961 was from an Easterly direction. As a trawler always puts her gear

overboard on the luff side, it is logical that the range-taker on board "Niels Ebbesen" saw the starboard side of the trawler at which he had trained his powerful instrument with its 32 times magnification. She then had to change course to starboard to allow her to proceed in the shortest time in a North-North-Westerly direction, the trawl over starboard helping her to make a rather short and quick turn. This manoeuvre may have given the impression of "zig-zagging" on the plotting table in "Niels Ebbesen".

The Commission is aware of the advice printed on "Close's Fishermen's Chart", 1958 edition, in the area in question—"Tow E by N and W by S". In accordance with this advice, "Red Crusader" and also "Millwood" and "Admiral Hawk" stated that they had been trawling in Easterly and Westerly directions until the moment when "Niels Ebbesen" appeared on the scene.

It is also known to the Commission that fishermen of the different countries fishing in the North and Irish Seas, et cetera, have their own code for warning their countrymen, when a fishery protection cruiser appears on the scene. The general practice of the trawler skippers who are warned by such a code word, and who generally plot their positions not very accurately during their tows, which may make them feel somewhat doubtful about their actual positions, is to take no risks and to steam as quickly as they can in a course nearly perpendicular to the fishery limit, away from the exclusive fishery zone.

In many cases they pay out some 100 fathoms extra from their back fishing-line, which makes their trawl collapse and gives them the opportunity to reach a higher speed.

The Commission is aware of Skipper Wood's evidence, that he would never make such a manoeuvre, as it would break his gear into two parts.

The Commission is unable, however, to accept this evidence, knowing the general practice of trawl-skippers, who prefer to risk damage to their gear to the chance of having their gear and catch confiscated. This also explains why the speed of "Red Crusader" on her North-North-Westerly course was about 2 knots higher than her normal trawling speed, which would be round about 2.5 knots, according to the Skipper.

In this Chapter the Commission has so far dealt with the double-angle fixes and the radar readings.

At several places in the tape-recording (Exhibit 16) distances from "Niels Ebbesen" to "Red Crusader" taken by range finder are also mentioned.

The Commission was informed that those distances were not used in the Danish evidence prepared for the Court in Thorshavn, nor in the Memorial with Exhibits for the Commission, as it was known that the range finder on board "Niels Ebbesen" was not properly adjusted and had a play in the transversal transmission of the movable range mark.

Therefore the Commanding Officer of "Niels Ebbesen", Captain E. T. Sølling, eliminated the observations of the range-taker on board his ship in

judging the positions of “Red Crusader”. The Commission thinks this a proper decision; it bases this opinion on the following:

The range finder, which is a stereoscopic instrument with a 4 m. base, was for the last time before the incident occurred on May 29th, 1961, readjusted and checked by the Danish Naval Dockyard in February 1959. When it was examined again by the Danish Gunnery Department in June 1961, it was found that:

- (1) a great difference existed between the adjustment set on the range finder and the correct setting which should be used for taking measurements;
- (2) a certain play in the transversal transmission of the central sight would have made it necessary to use the movable range mark as well as the fixed range marks.

The latter cause most probably would increase the measuring errors by about 1—3 theoretical errors, for a trained range-taker. These theoretical errors depend on the base of the instrument, the magnification and the range. In accordance with the letter of the Danish Gunnery Department of July 19th, 1961, No. J.11-1/1282, annexed to the letter of the Danish Agent of March 8th, 1962, to the President of the Commission, the Commission is of the opinion that 4—5 additional theoretical errors may be expected, while the ship is under way.

This means that a maximum of 8 theoretical errors could be expected in this case, provided that the adjustment knob had been properly set.

The wrong setting of the adjustment may cause any completely unpredictable error.

As stated in the evidence of the range-taker and the Gunnery Officer, the range-taker on board “Niels Ebbesen”, who was trained on a 4 m. base instrument only for a period of two months, had not adjusted the instrument before he had to use it on the evening of May 29th, 1961. Therefore the errors which could be expected from the readings on his instruments were unpredictable and the range-taker’s observations—as far as the distances were concerned—could not be relied upon.

The Commission is therefore of the opinion that all deductions made on the basis of the range-taker’s observations should be left out of its considerations.

2. *Movements*

About one hour after the Commanding Officer of “Niels Ebbesen” received a signal from Faroe Island Naval District, that four British fishing vessels had been reported by Myggenaes Lighthouse-keeper at 4—7 miles distance on the fishing grounds at 17.25 hours on May 29th, 1961, his ship left Thorshavn to investigate the report.

Steaming through Vestmannaund, “Niels Ebbesen” passed Sydregjov at 20.34 hours and came into the open between Mullen and Slettenaes at about 20.55 hours flying her ensign and fishery pennant.

The first echoes she saw on the radar 293 screen at bearings 292—298 were at 9 miles distance. Without correction this would mean that the vessels which caused the echoes were certainly inside the blue line.

Taking into account the necessity of the fixed correction of plus 0.35 miles and a plus or minus 5 % correction of the maximum range on the scale in use, the Commission is, on the basis of this information only, unable to say with certainty that these vessels were inside at that time.

A few moments later, the nearest echo was reported at 8.6 miles distance, bearing 294. The same that has been said above applies to this observation on the radar 293 screen.

In the meantime, “Niels Ebbesen” was heading for the ships on the horizon in bearing $\pm 294^\circ$, steering a course of 292° , which after some time was changed into 299° and later into 308° , when the bearing to the nearest ship became more Northerly.

The positions of “Niels Ebbesen” were fixed by the double-angle method and by taking radar distances and bearings on the Decca 12 radar to conspicuous corners and headlands on the coast.

The distances and bearings from “Niels Ebbesen” to the nearest vessel were measured on the radar sets and plotted on the Danish Chart No. 81 and the plotting table.

As has been mentioned in this Chapter, with regard to the positions, the Commission is certain that at 21.14 hours the nearest echo on the Decca radar screen indicates the position of a vessel most probably inside the blue line, possibly just on or just outside that line.

Combining this finding with the data on the original Exhibits Nos. 6 and 8, the Commission fully understands and shares the view of the Commanding Officer of “Niels Ebbesen”, that the nearest fishing vessel had been inside.

The Commission has noticed in the tape-recording (Exhibit 16) that on board “Red Crusader” between about 21.55 hours and 22.09 hours the gear came up and the trawl-net was taken in. As shown on the radar plot (Exhibit 8) the speed of the trawler from, at the latest 21.09 hours to 21.48 hours was constantly too great to stream the net and the boards, i.e. to lower the net and the boards into the water, but not too great to proceed with the trawl in the water. This means that at least during the period from 21.09 hours until 21.14 hours “Red Crusader” was with her gear in the water inside the blue line.

With regard to the signals, “Niels Ebbesen” gave from 21.39 hours onwards several stop-signals, by siren and searchlight, to which the trawler paid no attention until a blank 40 mm. shot was fired across her bows.

Though Skipper Wood agreed that naval signalmen are properly trained, he stated that he had been unable to understand the signals given by the Danish frigate. Skipper Wood’s evidence with regard to signals, showed that he

was not at all certain of the signals that must be given in circumstances which often occur at sea.

Therefore the Commission is unable to accept the Skipper's statements with regard to the siren signals given by "Niels Ebbesen".

His statement that he was unable to read the flash signal given to him by searchlight, as the searchlight was not properly trained, is not in agreement with other evidence. On the tape-recording it can be seen that "Niels Ebbesen" changed course to starboard before the signal by searchlight was sent. This brought the trawler on 2 points on the port bow. It is therefore logical that the searchlight on the port side was used, and the evidence given by Skipper Wood, that he would have seen the searchlight signals from starboard much better than those from port is not justified.

Skipper Wood's suggestion that these signals were meant for "Millwood" is unfounded. The searchlight was trained by an experienced Chief Petty Officer, who had to aim the apparatus on "the blue trawler", which proved to be "Red Crusader". The Commission is unable to accept that this experienced naval man trained the searchlight at the black hull of the "Millwood", when the dark blue "Red Crusader" was nearer to his ship.

During the proceedings it was submitted that if the "Red Crusader" had been inside the blue line for a certain period, this was unintentional and caused by drifting in a South-Easterly direction during a necessary repair of the trawl.

In view of the evidence submitted, the Commission cannot accept that an accident to the trawl has been established as a fact.

As a result of its investigation on Chapter One, the Commission finds:

- (1) that no proof of fishing inside the blue line has been established, in spite of the fact that the trawl was in the water inside the blue line from about 21.00 hours until 21.14 hours on May 29th, 1961;
- (2) that the "Red Crusader" was with her gear not stowed inside the blue line from about 21.00 hours until 21.14 hours on May 29th, 1961;
- (3) that the first signal to stop was given by "Niels Ebbesen" at 21.39 hours and that this signal and the later stop-signals were all given outside the blue line.

CHAPTER TWO

Events between the arrest of the "Red Crusader" and the meeting with the British naval vessels

It will not be necessary to deal at great length with some parts of this period, the facts of which have been agreed upon by both Parties.

The Captain of "Niels Ebbesen" sent Lieutenant Bech, Fishery Officer, and Corporal Kropp, Signalmann, on board the "Red Crusader" by a boat launched at about 22.19 hours. Lieutenant Bech stayed aboard the "Red Crusader" for

approximately twenty minutes (arriving back on “Niels Ebbesen” at about 22.40 hours), during which time the distance of the “Red Crusader” to Baret Head was checked on the radar of the trawler. Lieutenant Bech measured 8.95 miles and the Skipper 8.9 miles. At the same time, 22.28 hours, Lieutenant Andersson checked both radars on board “Niels Ebbesen” and observed 8.4 miles on the display unit of Decca 12 and 8.0 miles on that of radar 293. By a double-angle fix taken at 22.29 hours the distance was found to be 8.6 miles on Chart No. 81 (Exhibit 6); confirmation of the distance was requested from “Red Crusader” and the reply was the same, 8.9 miles to Baret Head. At the time, on Skipper Wood’s chart no positions or indications relevant to the incident of May 29th were plotted.

Immediately after the arrival of Skipper Wood and Lieutenant Bech on board “Niels Ebbesen” a conference was held in Captain Sølling’s cabin, which lasted until just before 23.20 hours, when the Skipper was taken back to “Red Crusader”.

During that conference Captain Sølling informed Skipper Wood that his trawler was under arrest and gave the reasons which, in his view, justified such arrest. Skipper Wood denied that he had ever been fishing inside the blue line.

There cannot have been any doubt left in Skipper Wood’s mind at the end of this conference: he was ordered to follow the “Niels Ebbesen” and to go to Thorshavn to be examined and tried by a Faroese Court immediately on arrival there. The Skipper did not refuse to accept the order but, on the contrary, obeyed it by receiving on board the “Red Crusader” an officer and rating of the “Niels Ebbesen”, in accordance with the normal procedure which he knew to be used by Danish Fishery Protection vessels in similar cases; there could not be any misunderstanding concerning the significance of the presence on board the trawler of the Danish officer and rating.

Skipper Wood, having returned to his trawler at 23.22 hours with Lieutenant Bech and Corporal Kropp, followed the “Niels Ebbesen” towards Thorshavn at full speed, about one mile astern. Radio-telephone communication was established between “Niels Ebbesen” and Lieutenant Bech on “Red Crusader” and it was agreed to call every half-hour.

There can be no other explanation of Skipper Wood’s change of mind than his own. He thought that he had not been fishing illegally and that a trial at Thorshavn would not give him a fair chance.

At 02.58 hours Skipper Wood asked Lieutenant Bech to send a message to “Niels Ebbesen” reporting that he was not going to enter Thorshavn, and at 03.05 hours Lieutenant Bech sent another message to the “Niels Ebbesen” saying that he was locked up. Both these messages indicate the time when Skipper Wood decided to put his plan into operation.

The Commission will examine successively two matters:

(a) the situation of the Danish officer and rating on board the “Red Crusader”;

and

(b) the firing.

(a) *The Commission finds that the situation of Lieutenant Bech and Corporal Kropp on the "Red Crusader" was as follows:*

On his own admission, Skipper Wood wanted to keep Lieutenant Bech off the bridge to avoid not only any interference in the direction of the trawler but also any altercation with him, at the very moment when he attempted to escape from the "Niels Ebbesen". This could only be achieved by an effective seclusion and not by an illusory or apparent one.

Skipper Wood has admitted his intention to break away and to proceed back to Aberdeen, discussing it with his crew out of the hearing of Lieutenant Bech and Corporal Kropp and making plans accordingly.

There is, therefore, neither any reason whatsoever to think that, having locked the door leading from the passage outside the Skipper's cabin into the wheelhouse, to achieve the two purposes mentioned above, Skipper Wood left open the other exit from his quarters, nor to believe that Lieutenant Bech, if he had found that exit open, would not have taken the opportunity of regaining his freedom.

The Commission finds that Lieutenant Bech was thus kept effectively locked up inside the Skipper's quarters in "Red Crusader" for about an hour before 04.08 hours, when the Skipper reopened the door from the wheelhouse to his quarters and let him out.

The measures taken against Corporal Kropp were different. It was not necessary for Skipper Wood, in order to realize his double purpose, to lock him up. Neither his rank, nor his age, made the same degree of coercion necessary. But it is quite clear that the "invitation" to go down aft, where he was escorted by members of the crew, was equivalent to an order. He was kept there for a period of about one hour under the courteous but efficient guard of some members of the crew.

(b) *The facts concerning the firing are as follows:*

At 03.22 hours one round of 127 mm. gun-shot was fired astern and to the right of the trawler, at a distance estimated at 2.100 metres with the elevation 24/r25.

At 03.23 hours the first stop-signals were given by steamwhistle—signal K.

At 03.25 hours one round of 127 mm. gun-shot was fired ahead and to the left, at the same estimated distance with the elevation 24/1 20.

At 03.26 hours the signal K was repeated by steamwhistle.

It is established that no signal by radio, steamwhistle, blank shot or otherwise was attempted earlier than 03.23 hours and it is also clear that these two shots, as well as the first two machine-gun shots astern, fired at 03.40 hours,

were intended to be warning shots to stop and were not aimed to hit the “Red Crusader”.

The distance between the two ships had decreased to 0.9 miles at 03.30 hours and to 0.45 miles at 03.38 hours, when the Captain of “Niels Ebbesen” gave the order to fire at the “Red Crusader”.

At 03.40 hours a warning was given by portable loud-hailer to the “Red Crusader”, as well as the order to stop, which appear in full in the tape-recording (Exhibit 16) with the indication of the firing of two shots in the middle of the recording (the two machine-gun shots referred to above).

It was from this time only that firing was directed at the “Red Crusader” in the following manner:

03.40 hours	8 machine-gun shots at the “Red Crusader” ‘s scanner, by single shot (Exhibit 16 to the Danish Memorial, page 20); Two hits verified later.
03.41 hours	New hailing to “Red Crusader” and order to stop.
03.42 hours	21 machine-gun shots at “Red Crusader” ‘s mast, also by single shot—no hits found later.
03.44 hours	1 round of 40 mm. gun at masthead light—no hit.
03.47 hours	1 round of 40 mm. gun at mast—no hit.
03.47 hours	New hailing to “Red Crusader”: “Stop, or I have to shoot you in your hull”.
03.51 hours	2 rounds of 40 mm. gun at stem—one hit a little abaft of nameplate.
03.53 hours	1 round of 40 mm. gun at stem—no hit.

The firing, which took place in Danish territorial waters, then ceased by order of Captain Sølling. It is agreed that the gun-shots fired were solid shots but not explosive shells.

No slowing down of the “Red Crusader” is indicated in any evidence and the trawler did not stop before the meeting with the British naval vessels.

As a result of its investigation on Chapter Two, the Commission finds:

(1) that the “Red Crusader” was arrested. This conclusion is established by Captain Sølling’s declarations as well as by the evidence given by Skipper Wood. Even if the Skipper formally denied his guilt, his answers clearly implied that he considered at the time that he had been duly arrested for illegal fishing. Notes made in the Skipper’s red pocket-book (Annex 12 to the British Counter-Memorial) and the “Red Crusader” ‘s log-book also leave no doubt on that point.

(2) that Skipper Wood, after having obeyed for a certain time the order given him by Captain Sølling, changed his mind during the trip to Thorshavn and put into effect a plan concerted with his crew, whereby he attempted to

escape and to evade the jurisdiction of an authority which he had at first, rightly, accepted.

(3) that, during this attempt to escape, the Skipper of the “Red Crusader” took steps to seclude Lieutenant Bech and Corporal Kropp during a certain period and had the intention to take them to Aberdeen.

(4) that, in opening fire at 03.22 hours up to 03.53 hours, the Commanding Officer of the “Niels Ebbesen” exceeded legitimate use of armed force on two counts:

- (a) firing without warning of solid gun-shot;
- (b) creating danger to human life on board the “Red Crusader” without proved necessity, by the effective firing at the “Red Crusader” after 03.40 hours.

The escape of the “Red Crusader” in flagrant violation of the order received and obeyed, the seclusion on board the trawler of an officer and rating of the crew of “Niels Ebbesen”, and Skipper Wood’s refusal to stop may explain some resentment on the part of Captain Sølling. Those circumstances, however, cannot justify such a violent action.

The Commission is of the opinion that other means should have been attempted, which, if duly persisted in, might have finally persuaded Skipper Wood to stop and revert to the normal procedure which he himself had previously followed.

(5) that the cost of the repair of the damage caused by the firing at and hitting of the “Red Crusader” submitted by the British Government has been considered reasonable by the Danish Agent.

CHAPTER THREE

Events after the meeting with the British naval vessels

In an Aide-Memoire of the Danish Government dated June 2nd, 1961, as well as in the Danish Counter-Memorial, certain naval officers of Her Majesty’s Navy were criticized for interfering with the lawful authority exercised by the “Niels Ebbesen” over a trawler legally arrested by that vessel. The imputations related first to the circumstances of the return to the “Niels Ebbesen” of the boarding party put on the “Red Crusader” and secondly to the question of interference by H.M.S. “Troubridge” with an attempt by the “Niels Ebbesen” to return the boarding party to the “Red Crusader”. On both points the Commission notes that the Danish Counter-Memorial had reserved final conclusions until presentation of evidence during the oral proceedings.

The Commission has taken note of the withdrawal by the Danish Delegation of any charges concerning the question of the return of Lieutenant Bech and Corporal Kropp to the “Niels Ebbesen” and of any implication which could, at a certain moment in the proceedings, have resulted from these charges. It will simply be recorded that some misunderstanding arose on board the

“Red Crusader” at the moment of embarking in H.M.S. “Troubridge”’s boat. The reasons of this misunderstanding are somewhat difficult and in any case useless to define, taking into consideration the declarations made by the Danish Delegation at the meetings of March 13th, 15th and 16th, 1962.

Moreover, the Commission feels that the return of the boarding party to “Niels Ebbesen”, whatever its cause, was in fact the best solution; nothing would have been gained by the taking to Aberdeen of a Danish naval officer and a Danish rating on board a British trawler which had escaped from the jurisdiction of Danish and Faroese authorities.

The second imputation was the existence or non-existence of interference by H.M.S. “Troubridge” with a possible attempt by the “Niels Ebbesen” to put back the boarding party on “Red Crusader”. The Commission on this second point also has only to take note of the withdrawal of any allegation by the Danish Government relating to that question.

As a result of the proceedings in connection with Chapter Three, the Commission finds:

that Commander Griffiths and the other Officers of the British Royal Navy made every effort to avoid any recourse to violence between “Niels Ebbesen” and “Red Crusader”. Such an attitude and conduct were impeccable.

The Hague, the twenty-third day of March, one thousand nine hundred and sixty-two.

[Signed] CH. DE VISSCHER
President of the Commission
[Signed] ANDRÉ GROS
[Signed] C. MOOLENBURGH
Members of the Commission