

2. APPLICATION INSTITUTING PROCEEDINGS AGAINST THE UNION OF SOVIET SOCIALIST REPUBLICS

THE AGENT OF THE UNITED STATES OF AMERICA TO THE
REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

DEPARTMENT OF STATE,
WASHINGTON.

February 16, 1954.

Sir :

1. This is a written application, in accordance with the Statute and Rules of the Court, submitted by the Government of the United States of America instituting proceedings against the Government of the Union of Soviet Socialist Republics on account of certain actions of the latter Government, in concert with the Government of the Hungarian People's Republic. A separate written application is being submitted by the Government of the United States of America simultaneously herewith instituting proceedings against the Government of the Hungarian People's Republic on account of the same matter. The Government of the United States of America requests that so far as it may be convenient and proper to do so the two applications and the proceedings thereon be considered and dealt with together.

The subject of the dispute and a succinct statement of the facts and grounds on which the claim of the Government of the United States of America is based are set forth in two notes, one delivered to the Soviet Government on March 17, 1953, and one delivered to the Hungarian Government on the same day ; the note to the Hungarian Government was incorporated by reference in the note to the Soviet Government, the note to the Soviet Government was incorporated by reference in the note to the Hungarian Government, and each of the two Governments received from the United States Government a copy of the note addressed by the United States Government to the other Government. Copies of both notes are attached to this application as an annex¹.

2. The United States Government notes that the present dispute concerns matters of the character specified in Article 36 (2) of

¹ See pp. 11-39 and 45-60.

2. REQUÊTE INTRODUCTIVE D'INSTANCE CONTRE L'UNION DES RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES

L'AGENT DU GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE
AU GREFFIER DE LA COUR INTERNATIONALE DE JUSTICE
[Traduction]

DÉPARTEMENT D'ÉTAT,
WASHINGTON.

16 février 1954.

Monsieur le Greffier,

1. Conformément aux dispositions du Statut et du Règlement de la Cour, j'ai l'honneur de vous remettre la présente requête introduisant, au nom du Gouvernement des États-Unis d'Amérique, une instance contre le Gouvernement de l'Union des Républiques socialistes soviétiques en raison de certains actes accomplis par ce dernier Gouvernement de concert avec le Gouvernement de la République populaire de Hongrie. En même temps que la présente requête, le Gouvernement des États-Unis d'Amérique en présente une autre introduisant une instance contre le Gouvernement de la République populaire de Hongrie, pour la même question. Le Gouvernement des États-Unis d'Amérique demande que ces deux requêtes et la procédure qui s'ensuivra soient examinées en même temps, dans la mesure où cela sera commode et approprié.

L'objet du différend et l'exposé succinct des faits et des motifs par lesquels la demande du Gouvernement des États-Unis d'Amérique est prétendue justifiée sont énoncés dans deux notes remises l'une au Gouvernement soviétique, le 17 mars 1953, et l'autre au Gouvernement hongrois le même jour ; la note au Gouvernement hongrois est incorporée par référence dans la note au Gouvernement soviétique, la note au Gouvernement soviétique est incorporée par référence dans la note au Gouvernement hongrois, et chacun des deux Gouvernements a reçu du Gouvernement des États-Unis une copie de la note adressée à l'autre par ce Gouvernement. Copies des deux notes sont jointes à la présente requête¹.

2. Le Gouvernement des États-Unis constate que le différend actuel a trait à des questions relevant des catégories spécifiées à

¹ Voir pp. 11-39 et 45-60.

the Statute of the Court, including subdivisions (a) through (d). As will be seen from the annex, the legal dispute of the United States Government with the Soviet Government involves the interpretation of the Treaty of Peace, signed at Paris February 10, 1947, to which the United States Government, the Soviet Government and the Hungarian Government are parties; the Treaty of Friendship, Commerce and Consular Rights, signed at Washington June 24, 1925, which was in effect during the period relevant to this dispute and to which the United States Government and the Hungarian Government are parties; numerous questions of international law, as set forth in Part II of each of the annexed notes; numerous issues of fact which if established would constitute breaches of international obligations by the Soviet Government; and questions of the nature and extent of reparation to be made to the United States Government by the Soviet Government for these breaches.

The United States Government, in filing this application with the Court, submits to the Court's jurisdiction for the purposes of this case. The Soviet Government appears not to have filed any declaration with the Court thus far, and although it was invited to do so by the United States Government in the Note annexed hereto¹ it has not made any responsive reply to the invitation. The Soviet Government is, however, qualified to submit to the jurisdiction of the Court in this matter and may upon notification of this application by the Registrar, in accordance with the Rules of the Court, take the necessary steps to enable the Court's jurisdiction over both parties to the dispute to be confirmed.

Thus the United States Government founds the jurisdiction of this Court on the foregoing considerations and on Article 36 (1) of the Statute.

3. The claim of the Government of the United States of America is briefly that the Government of the Union of Soviet Socialist Republics in concert with and aided and abetted by the Government of the Hungarian People's Republic on November 19, 1951, wilfully and unlawfully caused to be seized a United States Air Force C-47 type aircraft together with its crew of four American nationals and its contents, driven over Hungary by winds unknown to the crew; that thereafter both Governments engaged in unlawful actions against the crew and against the United States with respect to the incident, constituting both serious violations of existing treaties as well as manifest denials of justice and other international wrongs. For these breaches of international obligation the United States has demanded and demands monetary and other reparation from the Soviet Government. The Soviet Government has sought to justify some of its conduct by Article 22

¹ Annex 1, see pp. 45-60.

l'article 36, paragraphe 2, du Statut de la Cour, y compris les subdivisions a) à d). Comme on le verra par l'annexe, le différend d'ordre juridique entre le Gouvernement des États-Unis et le Gouvernement soviétique met en jeu l'interprétation du traité de paix, signé à Paris le 10 février 1947, auquel le Gouvernement des États-Unis, le Gouvernement soviétique et le Gouvernement hongrois sont parties; le traité d'amitié, de commerce et consulaire, signé à Washington le 24 juin 1925, qui était en vigueur à l'époque du différend et auquel le Gouvernement des États-Unis et le Gouvernement hongrois sont parties; de nombreuses questions de droit international, indiquées dans la deuxième partie de chacune des notes en annexe; de nombreux points de fait qui, s'ils étaient établis, constitueraient la violation d'un engagement international par le Gouvernement soviétique; et des points relatifs à la nature et à l'étendue de la réparation due par le Gouvernement soviétique au Gouvernement des États-Unis en raison de ces violations.

Le Gouvernement des États-Unis, en présentant à la Cour la présente requête, déclare accepter la juridiction de la Cour dans la présente affaire. Il ne semble pas qu'à ce jour, le Gouvernement soviétique ait remis une déclaration à la Cour, et bien qu'il ait été invité à le faire par le Gouvernement des États-Unis dans la note jointe en annexe¹, il n'a fait aucune réponse utile à cette invitation. Le Gouvernement soviétique est cependant qualifié pour reconnaître la juridiction de la Cour en la matière et il lui est loisible, lorsque cette requête lui sera notifiée par le Greffier, conformément au Règlement de la Cour, de prendre les mesures nécessaires pour que soit confirmée la juridiction de la Cour à l'égard des deux parties au différend.

Ainsi, le Gouvernement des États-Unis fonde la juridiction de la Cour sur les considérations qui précèdent et sur l'article 36, paragraphe 1, du Statut.

3. La thèse du Gouvernement des États-Unis d'Amérique peut se résumer comme suit: le Gouvernement de l'Union des Républiques socialistes soviétiques, de concert avec le Gouvernement de la République populaire de Hongrie et avec la complicité de ce dernier, a volontairement et illégalement fait saisir, le 19 novembre 1951, un avion du type C-47 de la « United States Air Force » avec son équipage de quatre citoyens américains et son contenu, l'avion ayant été poussé au-dessus du territoire de la Hongrie par des vents inconnus de l'équipage; par la suite, les deux Gouvernements ont pris des mesures illicites à l'occasion de l'incident, tant contre l'équipage que contre les États-Unis, mesures qui constituent à la fois des violations graves de traités en vigueur, des dénis de justice manifestes et autres délits internationaux. En raison de ces violations d'obligations internationales, les États-Unis ont réclamé et réclament au Gouvernement soviétique des réparations

¹ Annexe 1, voir pp. 45-60.

of the Treaty of Peace to which reference has been made, a contention which the United States Government denies.

As the United States Government, in further pleadings herein, will more fully set forth, the United States Government proposes that the issues of law and fact in this dispute be heard and decided by the Court in accordance with its Statute and Rules; that the Court decide that the accused Governments are jointly and severally liable to the United States for the damage caused; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of \$637,894.11, with interest, as demanded in the annexed notes; that the Court determine the nature and extent of other reparation and redress, which the Court may deem fit and proper; and that the Court make the necessary orders and awards, including an award of costs, to effectuate its determinations.

4. The undersigned has been appointed by the Government of the United States of America as its Agent for the purpose of this application and all proceedings thereon.

Very truly yours,

(Signed) Herman PHLEGER,
The Legal Adviser of the
Department of State.

monétaires et autres. Le Gouvernement soviétique a tenté de justifier en partie sa conduite en invoquant l'article 22 du traité de paix auquel on s'est déjà référé, thèse que le Gouvernement des États-Unis conteste.

Comme le Gouvernement des États-Unis l'exposera plus en détail dans la suite des écritures, il propose de soumettre les points de droit et de fait du présent différend à la Cour pour être examinés et tranchés par elle, conformément à son Statut et à son Règlement. Il demande à la Cour de dire que les Gouvernements accusés sont conjointement et solidairement responsables envers les États-Unis des dommages causés. Il demande à la Cour de condamner le Gouvernement soviétique à payer au Gouvernement des États-Unis une indemnité de \$ 637.894,11 avec intérêts, comme il est dit dans les notes jointes. Il demande à la Cour de déterminer la nature et l'étendue des autres réparations et satisfactions que la Cour jugera convenables et de rendre les ordonnances et sentences nécessaires, y compris en matière de dépens, pour donner effet à ses décisions.

4. Le soussigné a été nommé par le Gouvernement des États-Unis d'Amérique comme son agent aux fins de la présente requête et de la procédure qui s'ensuivra.

Veillez agréer, etc.

(Signé) Herman PHLEGER,
Conseiller juridique du
Département d'État.

ANNEXES

*Annex I*NOTE TO THE SOVIET GOVERNMENT
OF MARCH 17, 1953

No. 682.

Excellency:

I have the honor to present to you, upon the instruction of my Government, the following communication:

The Government of the United States of America transmitted to the Government of the Union of Soviet Socialist Republics on December 10, 1952, a diplomatic note concerning the case of the four American Air Force personnel, Captain Dave H. Henderson, Captain John J. Swift, Sergeant Jess A. Duff and Sergeant James A. Elam, all nationals of the United States of America, who were brought down in Hungary by Soviet authorities on November 19, 1951. On December 11, 1952, the Acting Minister for Foreign Affairs of the Soviet Government returned the United States note to the American Chargé d'Affaires ad interim in Moscow, asserting that the note was "incorrectly addressed". The text of the United States note clearly called for a response from the Soviet Government and therefore could not possibly be considered "incorrectly addressed". To avoid any possibility that the Soviet Government by inadvertence had not considered the full contents of the note, the United States on December 17, 1952, again transmitted the December 10 note to the Soviet Government, pointing out by specific reference that the note clearly referred "to the instrumentalities of the Soviet Government which were involved in the detention of the United States plane and crew and concerns actions, material and information which only the Soviet Government can explain or provide". It asked that "due consideration be given to the note and an appropriate reply be transmitted as requested". The Soviet Government however on December 20, 1952, again returned the December 10 note "for reasons set forth in the letter of December 11, 1952".

The United States Government forbears at this time to comment upon or characterize the behavior of the Soviet Government in regard to the note of December 10. If the Soviet Government entertains any notion that by this conduct it can successfully relieve itself of liability for its actions in this matter or induce the United States Government to place upon the Hungarian Government alone a liability to the United States which in law and morals is borne by both the Soviet and Hungarian Governments, the Soviet Government is laboring under error.

The Soviet Government is informed that the United States Government has determined to proceed henceforth in this matter upon the factual and legal bases which were indicated in the notes

of December 10 and December 17. The United States Government believes that the Soviet Government has been and is fully aware of the contents of both notes ; that the Soviet Government has no intention of responding to the questions which it alone could answer, or of complying with the requests which it alone could satisfy, set out in the note of December 10 and reiterated in the note of December 17. The United States Government believes that the Soviet Government knows that to reply truthfully to the questions raised and to provide the material requested would seriously incriminate the Soviet Government. The inference is compelled that the Soviet Government is acutely aware of the legal and moral impropriety of its conduct with reference to the case above mentioned and the conclusion is reinforced that the Soviet Government is in possession of evidence to which the United States Government is entitled, including that to which reference is made in the communication of December 10, 1952, and that that evidence fully supports the findings which the United States Government had made on the basis of other available evidence gathered in its investigation of the case, as described in the December 10 communication.

The purpose of the present communication is to place these facts, in summary form, formally upon the record and to prefer against the Soviet Government an international diplomatic claim for the purposes and in the amounts set out below. Simultaneously, the Government of the United States is also preferring a similar claim against the Hungarian Government, with which the Soviet Government was associated and participated in the infliction of the wrongs against the United States and its nationals which are recounted herein. A copy of the diplomatic note embodying that claim is transmitted herewith as a part hereof ; and a copy of the present note is being transmitted to the Hungarian Government as a part of the claim against that Government.

I

The United States Government has found as a result of its investigation into the facts of the matter, and therefore asserts as true and is prepared to prove in an appropriate forum by evidence, the following :

1. At approximately 11 o'clock in the morning of November 19, 1951, an American C-47 type aircraft, known as No. 6026, and bearing the identification symbol 43-16026, set off from Erding, Germany, for Belgrade, Yugoslavia. The crew of the plane, all of them then and at all times thereafter nationals of the United States of America, consisted of personnel attached to the Erding Air Depot, known as the 85th Air Depot Wing of the United States Air Forces in Europe. They were the pilot, Captain Dave H. Henderson (U.S. Air Force Serial No. AO-1-169-565), the co-pilot, Captain

John J. Swift (U.S. Air Force Serial No. AO-7-42-797), the airborne radio operator, Sergeant James A. Elam (U.S. Air Force Serial No. AF-18-349-150), and the crew chief or engineer, Sergeant Jess A. Duff (U.S. Air Force Serial No. AF-39-450-853). The sole purpose and mission of the flight was to carry to the American Air Attaché attached to the American Embassy at Belgrade, Yugoslavia, various items of freight which that Air Attaché had from time to time ordered through normal channels to be supplied to him for the needs of his establishment in Belgrade. The United States Air Depot at Erding, Germany, was then and is now a supply and aircraft maintenance depot attending to the needs of American Air Attachés stationed at various American Embassies in Europe, Asia, and Africa, including the Embassy at Belgrade, Yugoslavia. The plane at no time had on board, nor was it at any time intended that there should be on board, any other persons than those above named. The aircraft and the crew were at all times, from their departure above noted until their landing, under circumstances to be described, at an air base situated near Papa in Hungary and controlled by the Soviet Government, unarmed, and the plane carried only its normal equipment, and the cargo to which reference has been made; when the sole mission, the delivery of the cargo, as stated above, was completed, the plane and crew were required to return to Erding as promptly as possible, expected to be the next day, November 20, 1951.

These facts were fully described in the usual air flight documents and official orders on board the plane from its departure and after its arrival at the Soviet-controlled base mentioned above. These documents and official orders came into the possession of the Soviet Government on November 19, 1951; their production was requested in the United States note of December 10, 1952, and was twice refused by the Soviet Government's replies of December 11 and December 20, 1952. They included the manifests of the cargo, the flight plan, the pilot's navigation log, the crew's official travel orders and other routine documents which the United States Government has described in the note of December 10, 1952.

As those documents show, the crew were instructed, and attempted, to follow a course from Erding to Munich, to Innsbruck, to Bolzano, to Venice, to Udine, to Ljubljana, to Zagreb, to Sela, to Sisak, thence to Belgrade. The course was a normal route for flight to Belgrade; it was determined by routine flying factors and, insofar as the Yugoslav portion was concerned, by the regulations of the Yugoslav Government with respect to international flights to Belgrade from the West.

2. The airplane and crew attempted at all times to follow the course so given for Belgrade, but while the crew, and in particular the pilots, believed that the plane was flying that course, it was actually blown by winds the existence and direction of which

the pilots did not then know or have any warning of, and the velocity of these winds accelerated the speed of the plane considerably beyond the speed which the pilots believed the plane was flying. The plane, therefore, flew somewhat north of the expected course and covered a distance considerably greater than the pilots then thought or had reason to believe they were covering. In consequence of the effect of these unknown winds, the plane flew beyond Belgrade to the north and the east and the crew were unable to find or descend at Belgrade ; and at approximately 4 p.m. local time the pilots reversed the plane's course and flew westward with the intention on the part of the pilots-of returning to Udine or Venice.

Practically the entire return trip was made in darkness. The crew realized that they were lost, and finding that the plane's fuel supply was running dangerously low, they made every reasonable effort to find a landing place on the ground, to alert all persons on the ground who might be seeing the plane in flight, or listening to its radio communications, to the fact that the plane was lost, that it was in distress, and that it was seeking a safe landing place. The pilots for this purpose put on all the plane's lights and sent distress signals with its landing lights, called for assistance on the international emergency frequencies by voice and in international Morse Code communication by liaison radio ; and the pilots caused the plane to descend to lower altitudes at various points in order to ascertain whether air fields were on the ground below at which they could land. All this was without success. Shortly before 6 p.m. local time, after the crew had prepared themselves to abandon the plane, the plane was intercepted by an aircraft and shown to a landing place at an airfield considerably to the north of the course which 6026 was then flying. It transpired later that the interception aircraft was a Soviet aircraft, that the airfield was Soviet-controlled and Soviet-operated and that it was situated near the town of Papa in Hungary.

3. The crew selected for the flight were competent for the purpose. Captain Henderson and Captain Swift were competent and experienced pilots. Sergeant Elam was a competent and experienced airborne radio operator, and Sergeant Duff was a competent and experienced flight engineer. The aircraft and its equipment, so far as investigation has disclosed, were in sound flying condition.

4. At all times beginning at the crossing of the Yugoslav frontier between Udine and Ljubljana until after the landing of the plane at the Soviet airfield near Papa in Hungary, as mentioned above, the crew thought and believed that the plane was flying solely within the territorial limits of Yugoslavia. Neither the crew nor any of the persons concerned in any respect with

the origination, planning or expediting of the flight had any intention that the plane should at any time fly, or any knowledge that it was at any point during the trip flying, within the territory of any country adjacent to Yugoslavia other than Italy, through which the plane had necessarily to fly after leaving Erding, Germany, and before returning to Erding, Germany.

At no time during the flight did any person aboard the plane entertain any intention or make any attempt, and at no time did he have any instruction, to engage in any act of sabotage, espionage or other illegal activity, to deviate in any way from the flight plan, as shown in the documents aboard the plane, or to attempt in any way to cross any frontier into any country, after leaving Italy, other than Yugoslavia as above noted ; specifically, no member of the crew nor of the United States personnel concerned with the flight had any knowledge that the plane was over or would cross into Hungary or Rumania. In view of the assertions made subsequently by the Soviet and Hungarian Governments, the United States Government declares categorically that the aircraft carried no equipment intended for any illegal purpose whether with respect to Hungary, the Soviet Union or any other country.

5. During the flight and thereafter both the Soviet Government and the Hungarian Government were fully aware, and neither the United States Government nor the crew in the airplane nor any other person associated with the United States Government then knew, that the airplane flew north of its fixed course in Yugoslavia on its trip eastward, had overflown Yugoslavia and entered Rumania, and had while attempting to return westward crossed the Hungarian frontier. The airplane was observed and monitored in its entire westward flight by Soviet and other Soviet-allied ground authorities from approximately 4 p.m. to 6 p.m. local time, first in Rumania and then in Hungary ; and when the plane was brought down at 6 p.m. by the Soviet aircraft it had almost reached the British occupied zone of Austria. Moreover the Hungarian authorities near the eastern border of Hungary had notified Soviet authorities in Hungary of the westward course of the plane and the Soviet and Hungarian Governments thereupon agreed that the plane should be permitted to overfly Hungary, be observed in its flight and then be brought down by the Soviet aircraft stationed near the western border of Hungary.

6. Thus the Soviet authorities, stationed in Rumania and in Hungary, watched the plane's flight, knew that it was lost and in distress and was seeking a landing place, but refused to come to the aid of the plane or the crew, either to aid them in finding their true course, or to show them a landing field at any place by lights or signals from the ground or in the air, or to respond to their radioed calls for assistance. The Soviet authorities and

their allies deliberately permitted the plane to cross the Hungarian frontier and to overfly Hungarian territory, and then brought it down, lest, continuing in its flight, it would in a few minutes arrive safely in the British zone of Austria, or in other territory not controlled by the Soviet Government or its allies. The Soviet Government, and the Hungarian Government, were at all times aware, therefore, that neither the airplane nor the crew had any intention to cross into or to overfly Hungarian territory, or Soviet territory, or to engage in any improper activity during such flight.

7. From November 19, 1951, at approximately 6 p.m., until December 3, the four American airmen above named were held under arrest and *incommunicado* by the Soviet authorities and continuously interrogated with respect to their flight. In this interrogation attempts were made by the Soviet authorities both to induce the airmen to desert the United States Government and to indoctrinate them with anti-American propaganda, and the Soviet authorities asked the airmen questions for the purpose of obtaining from them military intelligence with respect to the United States which the men were unauthorized to divulge, all outside the scope of any lawful interrogation in the circumstances.

8. All proper questions by Soviet authorities concerning the flight and the matters relevant to the arrival of the plane in Hungarian territory, and into the custody of the Soviet authorities, were fully, truthfully and adequately answered by the airmen. It therefore was definitely then, as it had theretofore been, the duty of the Soviet Government to permit the plane and crew to depart for their base in Germany or to notify the appropriate American authorities of all the facts. The Soviet Government, however, wilfully and knowingly failed to do so. It also denied the repeated requests of each of the crew members for permission or opportunity to communicate with American consular officials in Hungary, or with their superiors elsewhere, or to have access to such persons.

9. The Soviet Government, and the Hungarian Government, were at all times aware that the United States Government, following the disappearance of the plane on November 19, had made public inquiries and announcements with respect to the loss of the plane and had engaged in an elaborate and notorious search for the missing plane and the crew; but during this time the Soviet Government gave no indication that it was holding either the plane or the crew or possessed any information on the subject. Late in the evening of December 2, 1951, for publication in the Soviet press of December 3, 1951, the Soviet Government for the first time publicly revealed that it had had custody of the men and the plane and that it was turning the men over to Hungarian authorities.

10. The Soviet authorities interrogating the men announced to them on or about December 2, 1951, that the investigation had been satisfactorily concluded and that the men would be returned to their base ; but instead, deceiving the men, and without any notification to American authorities, the Soviet Government turned the men over on December 3, 1951, to the Hungarian authorities, with the purpose and intention of further depriving them of their liberty and the exercise of other legal rights, and otherwise denying justice to them and the United States.

11. The United States Government asserts that the Soviet Government had no legal right, title, or interest with respect to the plane or any color of legal authority to turn the plane, or the airmen, over to the Hungarian Government, for the Soviet conduct in this respect was without authorization, approval or condonation of the United States Government which was the only government from which the Soviet authorities could obtain lawful authority for their action. As above described, the United States Government in its note of December 10, 1952, formally requested the Soviet Government to return to the United States Government the airplane, its equipment, cargo and other contents or, in the event that for some valid reason the return was not possible, to pay the United States Government the value thereof. The United States Government asserts that the conduct of the Soviet Government in failing to respond to the note of December 10, 1952, constitutes a further and definitive refusal giving rise to a clear liability for damages to the United States Government and other remedial action as herein set forth. Furthermore, as has been stated above, the Soviet Government cannot discharge that liability by referring the United States Government to the Hungarian Government which was an accomplice of the Soviet Government in the conversion of the airplane, its equipment, cargo and other contents.

12. The investigation conducted by the United States Government compels the conclusion, which the United States Government herewith asserts, that the Soviet and Hungarian Governments aided and abetted each other in the interception and seizure of the plane, its contents and the crew, in the detention and interrogation of the crew while in Soviet custody, and in the actions which took place thereafter with respect to the matter and until the release of the airmen to American authorities on December 28, 1951.

The Soviet Government is fully and equally guilty with the Hungarian Government of the latter government's violations of international law and responsible for the damages suffered by the United States and by each of the airmen above named on account of all actions after these persons came into Hungarian custody beginning with December 3, 1951, as on account of those beginning with November 19, 1951. The unlawful actions since December 3, 1951, of which the Soviet Government is guilty, include the deten-

tion of the men, their interrogation and denial of access to American consular or other authorities, the denial by the Hungarian Government to the American diplomatic authorities in Hungary of the right of access to the men, the trial and conviction of the men, the imposition of sentence and the exaction from the United States Government of the sum of \$123,605.15 and all actions and damages to the men and to the United States related thereto. These actions are more fully described in the note of the United States Government to the Hungarian Government of even date which is made part of the present note, with the same force and effect as if fully repeated herein.

13. The Soviet Government knowingly and wilfully made untrue public statements with respect to the matter before and since December 28, 1951, intending to cause, and causing, injury to the four airmen, American nationals, and to the United States. These statements include those above mentioned made by the Soviet Government on December 2 and December 3, 1951, and those contained in the various speeches delivered by the Soviet Foreign Minister, Andrei Y. Vishinsky, in the course of the meeting of the General Assembly in Paris in December 1951 and January 1952. The untrue statements by the Hungarian authorities in the same regard were made in pursuance of an agreement with the Soviet Government and with the same intention and effect.

In particular, the United States Government specifies the following to have been such untrue statements :

(a) The statements made in the name of TASS, the official news agency of the Soviet Government, through the Soviet radio and press on December 2 and 3, 1951, that Soviet patrol fighters had forced the plane to land in an airport near Papa, Hungary, and that the plane had come into a zone "where, in accordance with Article 22 of the Peace Treaty, Soviet aviation in Hungary is located". This was false and was known by the Soviet Government to be false when it was made. On the contrary, the place at which the airplane was intercepted by Soviet aircraft was not within any known zone in which the Soviet Government maintained aviation under Article 22 of the Peace Treaty ; nor did that Article grant to the Soviet Government any authority to engage in the actions which it took against the airplane and its crew. Insofar as the pilots were concerned, they were led by Soviet authorities to believe when intercepted that they were being shown a landing place, as they had requested, and no indication was given to them by these Soviet authorities that they were being forced down.

(b) Allegations in the same statement that an examination of the flight plan of the plane showed that the crossing of the Hungarian border was premeditated by the crew. These allegations were false and were known by the Soviet Government to be false when made, since the flight plan in fact showed no purpose of

entering or overflying Hungary ; the flight plan and the navigation log, of which the Soviet Government had the original copies, on the contrary showed clearly that the plane was to fly to Belgrade and return home, never touching Hungary.

(c) Allegations in the same statement that the situation of the cargo and the equipment found on board the plane proved "pre-meditated violation of the Hungarian border". These allegations were false and were known by the Soviet Government to be false when made.

(i) As to the charts on board the plane, taken and examined by the Soviet authorities : Contrary to the Soviet Government's assertion, and as could be seen from their face, those which covered portions of the USSR were not "operational military charts", and they could not be used for navigation, while those which showed portions of Rumania, Hungary and Czechoslovakia were on the same charts as those covering the route from Germany to Belgrade ; all these charts were standard aeronautical charts such as any airman, military or civilian, would have for the purpose of the trip to and from Belgrade in any innocent flight.

(ii) Contrary to the statement of the Soviet Government, the plane did not carry "a portable radio station" but only an emergency SOS signal radio transmitter, a part of the standard equipment of every C-47.

(iii) Contrary to the statement of the Soviet Government, the parachutes were not kept in a peculiar place ; they were for personnel and not for baggage ; the two parachutes in excess of the number of crew were carried in accordance with the safety regulations of the United States Government against the contingency of a parachute being rendered useless by an inadvertent opening in the plane. This explanation had been fully made by the airmen to the Soviet interrogators and the Soviet authorities had themselves found out by actual tests that by inadvertently touching the handle of the parachute it may open in the plane and become unusable.

(iv) Contrary to the statement of the Soviet Government, the "twenty-one warm blankets" found on board were not part of the equipment of the plane or of the crew but solely one item in approximately 4,000 pounds of securely packed cargo, plainly appearing in the manifests as part of the cargo ordered by and directed to the Air Attaché in Belgrade ; it was false and there was no evidence to support a conclusion that such blankets were intended to be dropped from the airplane to the ground or that they were so packed as to be prepared for dropping to the ground.

(v) Finally, as the Soviet Government well knew, there was no evidence whatever to support the conclusion stated by it that the visit of the airplane to Yugoslavia had as its aim to take aboard "Yugoslav spies and diversionists in order later to drop them for

subversive work on the territory of the Soviet Union and the countries of the People's Democracies". As the Soviet Government well knew, the plane had never landed in Yugoslavia, the plane was openly seeking assistance on a westward trip toward Udine and Venice or Germany when intercepted. Furthermore, the charge that the plane intended to overfly Hungary was inconsistent with the charge of intention to land in Yugoslavia. All of this the Soviet authorities well knew, since they had conducted detailed and thorough investigation of the plane, the cargo and the crew during the entire period from November 19 to December 2, 1951.

(d) The statements of M. Andrei Y. Vishinsky in the General Assembly of the United Nations on December 14, 1951, December 19, 1951, December 21, 1951, and January 12, 1952, were false in many respects and were known by the Soviet Government to be false when made. The following are examples of such statements :

(i) That the plane was carrying out "its intelligence spy mission" when it went over Hungary. On the contrary, the plane was being monitored at the time by the Soviet and Hungarian authorities, and no such activity was going on.

(ii) That the plane was made to land on "the ground of the Soviet regime of the Soviet State".

(iii) That "there was no question of an accidental landing or an accidental deviation in the normal course of flight". On the contrary by that time both the Soviet and Hungarian authorities had a full account from each of the airmen showing that the plane was blown off course by unknown winds.

(iv) That the plane had radio facilities and the statement that there was on board "radio direction finding equipment", except insofar as the plane had the normal radio communication facilities.

(v) The reference to maps, blankets and radio equipment on board, and other references repeated above.

(e) Mr. Vishinsky on December 21, 1951, said in the General Assembly : "I venture to assure you that the reason why these flyers were arrested, why the proper attention was given them by our military border authorities—and I hope that due attention will be given by our military judicial organs—was because these flyers flew there with reconnaissance aims in the interest of your Atlantic Bloc, in the execution of its plan." The American representative in Moscow called on the Soviet Foreign Office for an explanation. The Soviet Foreign Office, through its representative, Mr. Zorin, then falsely stated that the allegations of the United States Government that the aircraft was lost were "not in accordance with the evidence revealed in interrogations by Hungarian and Soviet authorities". The fact is that these statements corresponded entirely with the evidence revealed in these interrogations, as the Soviet and Hungarian authorities well knew, and while the United

States Government had been denied access to the airmen during and after such interrogations.

The Soviet Government is reminded that upon that occasion the American representative stated to the Soviet Government through its representative, Mr. Zorin, referring to the detention and treatment of the airplane and the crew, "The Soviet Government cannot escape responsibility therefor."

14. The actions of the Soviet and Hungarian Governments with reference to this matter coincided in time with the meeting of the General Assembly of the United Nations in Paris. The Soviet Government, in prearranged concert with its allies (including the Hungarian Government), in and out of the United Nations, was engaged in a campaign of propaganda and vilification against the United States, seeking to make it appear that the United States Government had embarked on a program of subversion of the Soviet and allied governments under the authority of the Mutual Security Act enacted by the United States Congress. The United States Government believes, and asserts, that this campaign was intended by the Soviet Government to divert the minds of the international public and the member governments of the United Nations, then meeting in Paris, from the systematic operations of international subversion of established governments and social institutions throughout the world, and other misconduct, carried on by the Soviet Government and its allies, overtly and secretly.

Largely unsuccessful in this campaign, the Soviet and Hungarian Governments in concert seized upon the fortuitous and wholly innocent presence, within their physical power, of four American airmen whom they had caused to come down in Hungary and be detained there, in order to provide so-called evidence to prove the Soviet and Soviet-allied propaganda charges against the United States. Knowing at all times that the charges against the airmen, as against the United States, were false and unfounded and that a free and open hearing or investigation according to the practice of civilized and honorable governments would demonstrate the falsity of these charges, the Soviet and Hungarian Governments in concert deliberately denied the airmen access to American consular or diplomatic authorities, denied the airmen representation by independent legal counsel, subjected the airmen to a trial by a military court whose judgment was predetermined, held the trial *in camera* where no member of the public was present, kept the airmen continuously incommunicado, denied them and the United States Government access to judicial records and dossiers in the case, and in other ways attempted to conceal from the airmen, the United States Government, and the international public the manifest injustices deliberately perpetrated by the Soviet and Hungarian Governments upon these American nationals as upon the United States Government.

The statements issued by the Soviet and Hungarian authorities in concert with respect to this matter were deliberately and willfully broadcast to the world by these governments, or were uttered so as to be so broadcast in the usual dissemination of news of international interest, with the purpose and intention of causing damage to the United States and to the airmen themselves.

15. As has been indicated, the four airmen with whom this claim is concerned have at all times been and now are citizens and nationals of the United States of America. Dave H. Henderson was born September 20, 1919, at Dale, Oklahoma, in the United States of America ; John J. Swift was born July 31, 1917, at Syracuse, New York, in the United States of America ; Jess A. Duff was born October 12, 1919, at Scotia, Nebraska, in the United States of America ; and James A. Elam was born November 3, 1931, at Kingsland, Arkansas, in the United States of America. All four airmen were members of the United States Air Force on the dates relevant to this claim, Dave H. Henderson and John J. Swift being captains and Jess A. Duff and James A. Elam being sergeants.

16. The United States Government is compelled to conclude, and it charges, that the foregoing actions, whether committed separately by the Soviet Government or in conjunction or in concert with the Hungarian Government, were deliberately and unlawfully committed with ulterior intent to serve a propaganda purpose of the Soviet Government, to cause unlawful damage to the four American airmen above named, and to the United States, to convert unlawfully to the use and profit of the Soviet Government and the Hungarian Government the United States Air Force plane 6026, its equipment, cargo, and other contents, and to obtain unlawfully from the United States the sum of \$123,605.15.

II

The United States Government, as a result of its investigation above mentioned, believes and asserts that the Soviet Government, aided and abetted by and in concert with the Hungarian Government, has by committing the foregoing acts in the circumstances set forth violated international law and unlawfully caused the violation by the Hungarian Government of the Treaty of Peace, signed February 10, 1947, between Hungary and the United States, to which the Soviet Government is also a party, particularly the provisions in Article 2 thereof relating to human rights ; and unlawfully caused the violation by the Hungarian Government of the Treaty of Friendship, Commerce and Consular Rights between Hungary and the United States, proclaimed October 24, 1926, and then in effect, particularly Articles 1, 14, 18 and 19 thereof.

Specifically, and without limiting itself by the enumeration, the United States Government asserts that in the circumstances set forth above the Soviet Government is guilty of the wilful and intentional violation of its international legal obligations, and of the wilful and intentional commission of internationally unlawful acts, as follows :

(1) It was the legal duty of the Soviet Government, in the respect that it had the opportunity and authority to do so within the territory of Rumania and Hungary, to have shown the airplane 6026 to a safe landing place as soon as possible.

(2) Having belatedly intercepted the plane and shown it to a landing place, it was unlawful for the Soviet Government to arrest or detain the men or seize the plane. The Soviet Government was not justified by any provision of law in intercepting the plane for the purposes of arrest and detention of the crew or the plane, or in thereafter maintaining the men under arrest and detention, and specifically no provision of the Treaty of Peace with Hungary or any other valid treaty gave the Soviet Government such power or authority.

(3) Having brought the plane down, it was the legal duty of the Soviet Government to notify the United States Government representatives in Hungary, or the superior officers of the crew in Germany, or other appropriate American authorities, that the airplane and the crew were being held by the Soviet Government.

(4) It was the legal duty of the Soviet Government to have permitted the airmen access to American consular representatives when requested.

(5) Knowing that the United States Government was engaged in an expensive search for the plane, it was the legal duty of the Soviet Government, as of the Hungarian Government, by truthful and affirmative statements to inform the United States Government that the plane and the men were safe and that search was unnecessary.

(6) The Soviet interrogation of the men was excessive in length and in scope, and in those respects unlawful. Upon discovering the innocence of the flight, and at the latest upon termination of the interrogation, it was the legal duty of the Soviet Government to assist the plane and the crew to return promptly to their base in Germany. Specifically, it was unlawful to have delivered the crew into the custody of the Hungarian Government in the circumstances of the case.

(7) The Soviet Government's detention of the airmen for the secret purpose, undisclosed to them or to the United States Government, of a trial by Hungarian authorities, while pretending and representing to the men that they were being detained for another purpose, was improper and unlawful.

(8) The Soviet Government was under a legal duty to return the airplane, its equipment, its cargo and its other contents, including the documents therein, to the American authorities at the earliest opportunity and in any event was under a legal duty to turn that property over to the United States Government in response to the United States Government's request contained in the note of December 10, 1952, above described, or, upon a showing of a valid inability to do so, it should have made payment to the United States of the monetary value of the property as requested.

(9) The Soviet Government was under a legal duty to furnish to the United States Government the documents and other evidence belonging to the United States taken from the airmen and the airplane by the Soviet Government, and to provide access to the various dossiers, reports and other documents of the Soviet Government described in the United States Government's note of December 10, 1952.

(10) The actions and statements of the Soviet authorities and of the Hungarian authorities in the premises constituted legal and actionable wrongs to the United States for which the Soviet Government and the Hungarian Government are jointly and separately responsible. These, as has been stated above, include all the violations of law and the denials of justice set forth in the note of the United States Government which is simultaneously being delivered to the Hungarian Government, a copy of which is attached hereto and which is made a part hereof with the same force and effect as if fully repeated herein.

The United States Government believes that it has on account of the violations by the Soviet Government of the foregoing legal duties, and it hereby asserts and prefers against the Soviet Government, a valid international claim for damages as specified below.

III

In consequence of the foregoing illegal acts and violations of duty, for all of which the Soviet Government is responsible, the United States has suffered the following items of damage, and the United States Government demands that the Soviet Government pay to it on account thereof, the following sums :

1. The United States Air Force airplane C-47 type known as 6026 and its equipment, and the cargo thereof as shown in the manifests on board the plane when seized, valued in total at \$98,779.29, with interest at 6 per cent from November 19, 1951.

2. The amount paid by the United States Government to the Hungarian Government, under protest, to obtain the release of the four airmen, \$123,605.15, with interest at 6 per cent from December 28, 1951.

3. Damages to the four airmen, American nationals, in consequence of their unlawful detention and mistreatment and manifest denials of justice to them, \$200,000.00.

4. Damages to the United States by the wilful and unlawful conduct of the Soviet Government in concert with the Hungarian Government, \$215,509.67.

Total \$637,894.11, with interest at 6 per cent as indicated.

The United States Government declares that the figure of \$215,509.67, contained in paragraph 4 above, does not include any sum on account of the items of intangible injury deliberately and intentionally caused the United States Government and the American people by the wrongful actions of the Soviet and Hungarian Governments. Such injury is not easily calculable in money and money could not compensate for it. The United States Government has determined therefore, for the present, to defer the formulation of the kind and measure of redress or other action the Soviet Government and the Hungarian Government should take which would be appropriate in international law and practice to confirm the illegality of the actions directed by them against the United States Government and the American people.

IV

The Government of the United States calls upon the Government of the Union of Socialist Soviet Republics promptly to make its detailed answer to the allegations and demands made in this communication. Should the Soviet Government in its answer acknowledge its indebtedness to the United States on account of the foregoing and agree to pay the damages suffered, the United States Government is prepared, if requested, to present detailed evidence in support of its calculations of damages suffered and alleged.

In the event that the Soviet Government contests liability, it is requested so to state in its answer. In the latter event, the Soviet Government is hereby notified, the United States Government proposes that the dispute be presented for hearing and decision in the International Court of Justice. Since it appears that the Soviet Government has thus far not filed with that Court any declaration of acceptance of the compulsory jurisdiction of the Court, the United States Government invites the Soviet Government to file an appropriate declaration with the Court, or to enter into a Special Agreement, by which the Court may be empowered in accordance with its Statute and Rules to determine the issues of fact and law which have been set forth herein; and the Soviet Government is requested to inform the United States Government

in the reply to the present note of its intentions with respect to such a declaration or Special Agreement.

Accept, Excellency, the renewed assurances of my high consideration.

(Signed) Jacob D. BEAM,
Chargé d'Affaires *ad interim*.

American Embassy
Moscow, March 17, 1953.

His Excellency
V. M. Molotov,
Minister for Foreign Affairs
of the Union of Soviet Republics,
Moscow.

Enclosure to the note to the Soviet Government of March 17, 1953

NOTE TO THE HUNGARIAN GOVERNMENT
OF MARCH 17, 1953

[See pp. 11-39]

Annex 2

NOTE FROM THE SOVIET GOVERNMENT
OF JUNE 19, 1953
(Translation)

MINISTRY OF FOREIGN AFFAIRS.
No. 16/SH.

The Ministry of Foreign Affairs of the Union of Soviet Socialist Republics, referring to the Embassy's Note of March 17, 1953, concerning the American military transport plane C-47 No. 316026, which violated the Hungarian state frontier on November 19, 1951, has the honor to state :

1. The Government of the USA in its note alleged that the violation of the State frontier of the Hungarian People's Republic by the American military transport plane on November 19, 1951, was accidental. The Government of the USA explains this allegedly accidental violation of the Hungarian frontier by the American military plane by the fact that the plane in question, in trying to follow a course from Erding to Belgrade, via Innsbruck, Udine, Ljubljana and Zagreb, was "blown by winds the existence and directions of which the pilots did not then know or have any warning of", and also that "in consequence of the effect of these unknown winds, the plane flew beyond Belgrade to the north and east and the crew was unable to find or descend at Belgrade".

The Government of the USA also finds it possible to assert that the plane crew had no illegal motives and that on board the plane allegedly "there was no equipment of any sort, intended for any kind of illegal use against Hungary, the Soviet Union or any other country".

However, this kind of attempt to justify the actions of the American military transport plane which violated the frontier of Hungary is artificial and groundless since it is in contradiction with the facts.

These are the facts disproving the version presented in the American note on the violation of the Hungarian frontier by the American military plane :

(a) The assertion that the plane violated the Hungarian frontier "accidentally", "was blown off its course" and "lost its way",

being carried by winds behind the Hungarian frontier, are clearly groundless. This is evident from the fact that the American military plane was forced to land not close to the border but at a point about 200-212 kilometers from the Udine-Belgrade route mentioned in the U.S. note.

(b) The groundlessness of the above version is also confirmed by the fact that, as is evident from the U.S. note, special U.S. personnel followed the plane's flight, who, keeping in communication with the plane all along its route, certainly could have helped the plane crew and assisted it in selecting the proper direction, if this was actually necessary.

(c) The reference in the U.S. note to the effect that the plane's fuel reserve was "running dangerously low" and the plane "was in distress" is also devoid of any foundation. Actually, the plane had enough fuel and the plane was not "in distress". In the document of transfer of plane and crew by the Soviet authorities to the Hungarian authorities, drawn up on December 3, 1951, it is set forth that the plane had 1000 liters of gasoline, and 100 kilograms of oil, which could have taken care of the plane's normal flight needs for several hours.

(d) It is also necessary to draw attention to the fact that the plane crew—the pilot, Captain Henderson, the second pilot, Captain John Swift, the radio operator, Sergeant James A. Elam, the plane mechanic, James (*sic*) A. Duff—as stated in the U.S. note of March 17, were all experienced and competent airmen; that this was also completely confirmed by an examination in this regard of the plane's crew after its landing; and that this excludes any kind of assumption that the violation of the frontier by the above-mentioned airplane could have been the result of the inexperience of its crew.

(e) As to the plane and its equipment, as noted in the U.S. note, the plane and its equipment were in suitable condition for the flight. In this circumstance, when the plane's means of communication and apparatus permitted the plane to fly under difficult weather conditions, although according to verified meteorological data, on November 19, 1951, the weather was completely satisfactory with a visibility of 15 to 20 kilometers and a wind speed of 20-25 kilometers per hour, and there could not have been any difficulties for a competent and experienced plane crew.

(f) From the above-mentioned document of transfer of the plane it is also evident that the plane carried military operations maps, a portable radio transmitter, six parachutes and two bales of warm blankets. From the inspection, it was established that these were military operations maps of the most important areas of the USSR including the Ukrainian SSR and the Volga Area, and also maps of Czechoslovakia and Hungary; but the portable radio transmitter

was not part of the airplane's equipment and it was adapted for dropping by parachute and for use in field conditions. The number of parachutes and blankets that were discovered are evidence of the fact that they were intended not for the plane crew's use, but for other purposes.

All of these circumstances testify to the fact that the version put forth in the U.S. note is inconsistent with, and contradicted by the above-mentioned facts which confirm that the American military transport plane C-47 No. 316026 intentionally violated the Hungarian frontier for illegal purposes.

2. In trying to shield those who bear the responsibility for the actions which took the form of a premeditated violation of the Hungarian State frontier by an American military transport plane, the Government of the U.S. also resorts to other equally groundless arguments.

The U.S. note asserts that the American plane allegedly was incorrectly stopped by the Soviet planes and that the place where the plane was stopped is not in the zone in which Soviet aircraft should be based according to Article 22 of the peace treaty with Hungary.

Such an assertion is groundless because the Soviet fighters in this case acted in strict accordance with the duty of protecting the regular supporting communication lines with the Soviet occupation Zone in Austria on the strength of Article 22 of the peace treaty with Hungary.

The Soviet flyers, in this case, acted in full accord with the standards of international law.

As to the statement in the U.S. note that allegedly the "Soviet authorities and their allies intentionally allowed the plane to cross the Hungarian frontier and fly over Hungarian territory", this, at the very least, is a strange argument, clearly without foundation and needing no rebuttal.

The observations in the U.S. note which allege that it was the "judicial obligation" of the Soviet Government to direct the violating aircraft to a safe place for landing are also without foundation.

3. In the U.S. note it is alleged that there were no legal bases for turning over of the plane and its crew to the Hungarian Government by the Soviet authorities and that this transfer was a violation of international law.

However, this argument is also without foundation, since the Soviet military authorities, in this case, only carried out their duty, acting in accordance with the principle of respect for the sovereignty of the Hungarian People's Republic. The transfer of the above-mentioned plane and its crew to the American military authorities would have been a clear violation of the sovereign rights of Hungary in the protection of its borders and thus a

violation of generally recognized principles and standards of international law.

As to the statement in the U.S. note concerning the duration and illegality of the interrogation of the American plane's crew, this statement does not correspond with the actual facts and is tendentious.

4. All the facts brought forth above prove the complete baselessness of the attempt to present the matter in such a way as to allege the U.S.A. is the injured party in the given case. If the Government of the U.S. had taken into consideration the established facts and had actually been guided by generally recognized precepts of international law, it could not have failed to recognize that the actions taken by the Soviet planes vis-à-vis the American plane and its crew which violated the state boundary of Hungary were legal and could not have failed on its part to take a position *on this question corresponding to the elementary requirements of correctness and normal relations between states.*

5. In view of the foregoing, the Soviet Government considers the proposal of the U.S. Government concerning the submission of this question to the consideration of the International Court to be without foundation since there exists no subject for such consideration and equally since there exists no basis for bringing any claims whatsoever against the Soviet Union.

Moscow, June 19, 1953.

[The two cases brought by the United States of America against the Hungarian People's Republic and the Union of Soviet Socialist Republics respectively, with regard to the Treatment in Hungary of an Aircraft and Crew of the United States of America, were removed from the list by Orders of July 12th, 1954 (*I.C.J. Reports 1954*, pp. 99 and 103) before the stage had been reached for the written and oral procedure.

The present volume accordingly does not include the following headings: *Part I, Section B, Pleadings; Part II, Oral Proceedings; Part III, Documents submitted to the Court after the closure of the written proceedings.*]

[Les deux affaires introduites par les États-Unis d'Amérique contre la République populaire de Hongrie et l'Union des Républiques socialistes soviétiques au sujet du traitement en Hongrie d'un avion des États-Unis d'Amérique et de son équipage ont été rayées du rôle par ordonnances du 12 juillet 1954 (*C. I. J. Recueil 1954*, pp. 99 et 103), sans qu'il y ait eu de procédure écrite ni orale.

En conséquence, le présent volume ne comporte pas les rubriques suivantes: *Première partie, Section B, Mémoires; Deuxième partie, Procédure orale; et Troisième partie, Documents présentés à la Cour après la fin de la procédure écrite.*]