

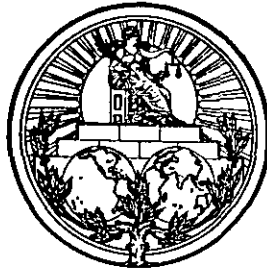
INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

AERIAL INCIDENT OF OCTOBER 7th, 1952

(UNITED STATES OF AMERICA *v.* UNION
OF SOVIET SOCIALIST REPUBLICS)

ORDER OF MARCH 14th, 1956: REMOVAL FROM THE LIST



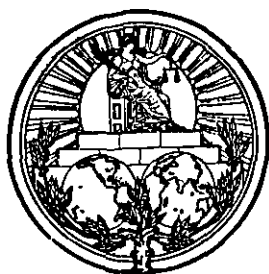
COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

INCIDENT AÉRIEN DU 7 OCTOBRE 1952

(ÉTATS-UNIS D'AMÉRIQUE c. UNION DES
RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES)

ORDONNANCE DU 14 MARS 1956: RADIATION DU RÔLE



PART I

APPLICATION INSTITUTING PROCEEDINGS

PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE

APPLICATION INSTITUTING PROCEEDINGS

I.—THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

American Embassy, THE HAGUE.

June 2, 1955.

Sir,

Upon the instruction of my Government, I have the honor to transmit to you herewith, in accordance with the Statute and Rules of the International Court of Justice, an application to the Court instituting proceedings on behalf of my Government against the Government of the Union of Soviet Socialist Republics. My Government has appointed Mr. Herman Phleger, the Legal Adviser of the Department of State, as its Agent in this case. I certify that the signature on the application transmitted herewith is the signature of Mr. Phleger. The address for service to which all communications relating to the application should be sent is this Embassy.

For the purposes of the provisions of the Statute and the Rules of Court, particularly Article 40 (2) and (3) and Article 63 of the Statute, and Article 33 (1) and Article 34 of the Rules of Court, I have the honor, on behalf of my Government, to transmit with the original of this application one hundred printed copies which I certify to be correct copies of the original.

Please accept, etc.

(Signed) H. FREEMAN MATTHEWS.

Enclosures :

One original application.

One hundred printed copies of the application.

II.—THE AGENT OF THE UNITED STATES OF AMERICA
TO THE REGISTRAR OF THE INTERNATIONAL
COURT OF JUSTICE

DEPARTMENT OF STATE,
WASHINGTON.

May 26, 1955.

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 willful acts committed by fighter aircraft of the Soviet Government against a United States Air Force B-29 aircraft and its crew off Hokkaido, Japan, on October 7, 1952.

The subject of the dispute and a succinct statement of the facts and grounds upon which the claim of the Government of the United States of America is based are adequately set forth in a note delivered to the Soviet Government on September 25, 1954. A copy of the note is attached to this application as an annex.

The Soviet Government has asserted its contentions of fact and law with reference to the United States Government's claim in other diplomatic correspondence on this subject, most recently in a note dated December 30, 1954, a copy of which is also attached to this application as an annex.

2. The United States Government notes that the present dispute concerns matters of the character specified in Article 36 (2) of the Statute of the Court, including subdivisions (a) through (d). As will be seen from the annexes, the legal dispute of the United States Government with the Soviet Government involves serious questions of international law. Among them are the validity of the Soviet Government's claim to sovereignty over the Habomai Islands situated off Hokkaido, Japan, and in that connection the interpretation of the Treaty of Peace with Japan signed at San Francisco on September 8, 1951. In addition there are involved the scope and application of international obligations relating to the overflight of intruding and intercepting military aircraft, together with numerous issues of fact which if resolved in favor of the United States Government would constitute breaches of international obligation by the Soviet Government; and the nature and extent of reparations to be made by the Soviet Government to the United States Government for all 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, although it was invited to do so by the United States Government in the note annexed hereto. 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.

The United States Government thus 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 on October 7, 1952, willfully and unlawfully caused fighter aircraft to overfly the territory of Japan, to hover over and pace a United States Air Force B-29 aircraft lawfully flying over Japan, the Soviet aircraft doing so unbeknown to the crew of the United States Air Force B-29, and without any provocation to attack and destroy the United States Air Force B-29, causing it to crash into the sea at a point between Yuri Island and Akiyuri Island in territory rightfully belonging to Japan; that the crew of eight, all members of the United States Air Force and nationals of the United States, have failed to return; and that the Soviet Government has concealed from the United States Government information as to the fate of the crew and has not made provision for the prompt return of any crew members whom it may still be holding or of whose whereabouts it is informed. The damages suffered by the United States Government and for which the Soviet Government is liable to it are specified in the annexed note. The United States Government claims that in the circumstances described in the annex the actions chargeable to the Soviet Government constituted serious violations of international obligation for which the United States Government has demanded and demands monetary and other reparation.

In diplomatic correspondence with reference to this matter, including the Soviet Government's note a copy of which is attached hereto as an annex, constituting negotiations which must now be determined to have been exhausted, the Soviet Government has

II APPLICATION INSTITUTING PROCEEDINGS (26 v 55)

asserted a version of the facts and of the law contrary to that asserted by the United States Government.

A dispute is therefore presented appropriate for hearing and decision by this Court in accordance with the Statute and Rules.

The United States Government, in further pleadings herein, will more fully set forth the issues of fact and the issues of law in this dispute. It will request that the Court find that the Soviet Government is liable to the United States Government for the damages caused ; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of \$1,620,295.01 with interest and such other reparation and redress as the Court may deem to be fit and proper ; and that the Court make all other 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.

*Annex (I)*TEXT OF UNITED STATES NOTE OF SEPTEMBER 25, 1954,
TO THE UNION OF SOVIET SOCIALIST REPUBLICS

No. 270.

September 25, 1954.

Excellency :

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

The Government of the United States of America makes reference to the destruction on October 7, 1952, by fighter aircraft of the Union of Soviet Socialist Republics, of a United States Air Force B-29 airplane near the Japanese Island of Hokkaido. It will be recalled that by notes dated October 17, 1952, and December 16, 1952, the United States Government, protesting the actions of the Soviet aircraft, requested the Soviet Government to make payment for the destroyed airplane and for the lives of any of the crew who might have perished, and further requested the Soviet Government to provide information on the whereabouts and welfare of any of the crew members who might have survived, with a view to their return to the United States.

The Soviet Government has not, in the period which has elapsed since December 16, 1952, when the last United States note was delivered to it, given any indication of the fate of the crew members of the B-29 shot down by the Soviet aircraft. As the United States Government reminded the Soviet Government in the note of October 17, 1952, witnesses actually observed a Soviet Government patrol boat leave Suisho Island, a point close to the spot where the B-29 was seen to go down, immediately after the shooting and proceed to the spot where the B-29 had hit the water, and some time later saw the boat return. The spot, the Soviet Government is further reminded, was in an area then and since freely accessible to Soviet Government personnel and in the vicinity of the area of Yuri Island which the Soviet Government in its own account of the episode, in its notes of October 12, 1952, and November 24, 1952, fixes as the area in which the episode took place. Therefore the United States Government could not, and cannot, accept either the Soviet Government's statement, in its note of November 24, 1952, that it possessed no information regarding the whereabouts of the members of the crew of the B-29 airplane or the Soviet Government's continued silence in regard to whether the Soviet Government has any

information concerning the fate of any of the crew members, whether any are alive, and whether the Soviet Government proposes to make arrangements for their return. Nor can the United States Government acquiesce in the continued failure of the Soviet Government to give any indication of willingness to make amends for the damage it caused and for which it is responsible, in spite of the requests therefor in the United States Government's notes above described.

The purpose of the present communication is, in view of the foregoing, to place solemnly upon the record all the facts which the United States Government has been able to gather on the subject and based thereon to prefer against the Soviet Government a formal international diplomatic claim as set forth below.

I

The United States Government charges, and is prepared to prove by evidence in an appropriate forum, the following:

1. In the Treaty of Peace between the Allied Powers and Japan signed in the City of San Francisco September 8, 1951, provision was duly made, in Article 6 thereof, for the stationing and retention, under or in consequence of bilateral or multilateral agreements between Japan and any of the Allied Powers, of armed forces in Japanese territory following the termination of the occupation of Japan by occupation forces of the Allied Powers. On the same date the United States of America, as one of the Allied Powers to whom reference is made in the Treaty of Peace, entered into a Security Treaty with Japan by which Japan granted, and the United States of America accepted, the right to dispose land, air and sea forces of the United States in and about Japan upon the coming into force of the Treaty of Peace.

The Treaty of Peace with the Allied Powers and the Security Treaty between the United States of America and Japan came into force April 28, 1952, and thereupon the state of war between Japan and each of the Allied Powers terminated and the full sovereignty of the Japanese over Japan and its territorial waters was duly reestablished.

In pursuance of the Security Treaty and with the consent of the Government of Japan, the United States Government after April 28, 1952, maintained air forces and aircraft in and about Japan which engaged and continued to engage in such activities as were proper and necessary to provide for the defense of Japan and of the United States' forces maintained therein against aggres-

sion, and for the purpose of deterring armed attack upon them.

Before and on October 7, 1952, pursuant to the Security Treaty and agreements thereunder between the Government of Japan and the Government of the United States, regulations were in effect for Japan governing civil and military air traffic control and communications systems. To enforce these regulations and to maintain orderly traffic control over overflying aircraft, civil and military, appropriate United States authorities within Japan were, by the United States Government and with the consent of the Government of Japan, duly charged with the major responsibilities for the operation of the air traffic control system respecting civil and military aircraft and with the enforcement thereof. As was at all times well known to the Soviet Government, the applicable regulations required that all aircraft proposing to fly into the air space of Japan should make prior notification to appropriate air traffic authorities within Japan and particularly that any military aircraft proposing to fly into the air space of Japan should make prior application to appropriate authorities within Japan and receive prior authorization for such flight.

2. In the morning of October 7, 1952, an unarmed United States Air Force B-29 airplane, No. 44-61815, bearing the identification call sign "Sunbonnet King", was duly dispatched from its base in the Island of Honshu in Japan, to perform a duly authorized flight mission over the Island of Hokkaido, Japan, and upon completion to return to its base. The dispatching of the B-29, its mission, and its activities thereafter were all in the pursuance of the duties and functions of the United States Government and the United States Air Force under the Treaty of Peace and the Security Treaty described above. Neither the dispatching nor the mission was intended or calculated to be, nor were the activities thereafter performed by the aircraft, in any way hostile to the Soviet Government or any other government, or directed against Soviet installations or personnel of the Soviet Government or any other government in any place.

The aircraft was manned by a crew of eight, all of them members of the United States Air Force and citizens and nationals of the United States of America. The aircraft commander was Captain Eugene Minot English, Serial No. AO 768042. The co-pilot was Second Lieutenant Paul Eugene Brock, Serial No. AO 2221927. The navigator was First Lieutenant John Robertson Dunham, Serial No. 20173 A. The other crew members were Staff Sergeant Samuel Albion Colgan, Serial No. AF 31379760; Staff Sergeant

John Arthur Hirsch, Serial No. AF 19329704 ; Airman First Class Thomas Gerald Shipp, Serial No. AF 18365941 ; Airman Second Class Fred Grady Kendrick, Serial No. AF 14347294 ; and Airman Second Class Frank Eugene Neail, Serial No. 13394257.

3. Acting in compliance with their flight mission instructions, Captain English and his crew in the B-29 aircraft, "Sunbonnet King", after leaving the Island of Honshu, duly commenced flying over the Island of Hokkaido, beginning approximately 11 o'clock in the morning local time. At approximately 2 o'clock in the afternoon local time, while the B-29 was over the mainland of Hokkaido, flying at approximately 15,500 feet altitude, Soviet Government authorities having become aware of these facts deliberately dispatched two fighter aircraft to intercept the B-29 over Japanese territory, and continuing under the control of Soviet Government authorities, the two Soviet fighter aircraft thereupon deliberately flew in a course calculated to converge with the course of the B-29 and to intercept it. The two Soviet fighter aircraft were not notified in advance by Soviet authorities to the traffic control authorities in Japan, and they were without any license or authority whatsoever to overfly the territory of Japan. Nevertheless, the Soviet authorities then controlling the actions of the aircraft, and the Soviet pilots flying the aircraft, deliberately and willfully, unbeknown to the crew of the B-29 and with a calculated disregard of the sovereignty of Japan, of the position of the United States in Japan, and of the United States defense of Japan, and in violation of the air traffic control regulations lawfully in effect in and over Japan respecting overflight of the territory of Japan, directed the Soviet aircraft westward as described. At 2:15 p.m. local time the two Soviet fighter aircraft, so directed, reached a position in the air space of Hokkaido approximately thirty-two miles west from Yuri Island and six miles north of Nemuro Peninsula over the territorial waters of the Island of Hokkaido, substantially directly above the B-29's position, flying and continuing to fly at a height at which the crew of the B-29 could not then or thereafter observe the presence of the Soviet aircraft but at which the B-29 could be and was continuously observed by the pilots of the Soviet fighter aircraft and undoubtedly by the Soviet authorities controlling the pilots. Then the Soviet fighter aircraft, continuing to act under the direction and control of the Soviet authorities, proceeded to pace the flight of the B-29 from 2:15 p.m. local time to 2:31 p.m. local time, continuously hovering over the B-29, while the B-29 was engaged in innocent flight over the Island and adjacent waters of Hokkaido within Japan.

At approximately 2:29 p.m. local time the B-29, passing at the end of Nemuro Peninsula of the Island of Hokkaido, was in the process of effecting a normal turn for B-29 type aircraft, in order to enable the B-29 to fly westward and farther into the mainland of Hokkaido; in so doing it came over the water area adjacent to the tip of the Nemuro Peninsula close to the Nosappu Lighthouse there when, undoubtedly upon instructions from the Soviet controlling authorities, the pacing Soviet fighter aircraft dived from their high altitude, behind and unbeknown to the B-29 and its crew, and without any warning whatsoever opened fire on the B-29, with several deliberate and successive bursts. Simultaneously, likewise upon the orders of the competent Soviet authorities, in concert with the pilots in the fighter aircraft, Soviet personnel then stationed on the Island of Yuri, east of the Nemuro Peninsula, opened fire upon the B-29 from the ground.

The B-29 was struck by the fire from the fighter aircraft, and by ground fire, was disabled and plunged into the sea, hitting the water at a point between Yuri Island and Akiyuri Island, southwest of Harukarimoshiri Island, all in territory rightfully belonging to Japan. The aircraft, broken up in several parts, exploded as the water was hit and floated as wreckage upon the surface of the water.

Shocked and unable to control the aircraft, the crew of the B-29 called out on voice radio on an international emergency channel that they were in extreme distress, and attempted to abandon the plane in the air. The United States Government has concluded, and charges, that some or all of the crew of the B-29 successfully parachuted to the sea at approximately the position where the aircraft hit the water.

Within a few minutes thereafter, and while the wrecked aircraft and its crew were still on the surface of the sea, a patrol boat belonging to the Soviet Government, upon orders of competent Soviet authorities, left the Island of Suisho, east of the Nosappu Lighthouse and northwest of the position where the B-29 was shot and came down, and proceeded to the scene of the wreckage. The United States Government concludes, and therefore charges, that this was for the purpose of picking up survivors and objects in the debris of the aircraft of possible interest to the Soviet Government. Undoubtedly having accomplished its mission the patrol boat then returned to Suisho Island. The United States Government concludes, and charges, that the Soviet Government's patrol boat did pick up items of interest to the Soviet Government as well as survivors still alive and bodies of other crew members, if dead. Undoubtedly the competent Soviet authorities in the area had and prepared a complete report which was thereafter undoubtedly duly submitted to the appropriate responsible authorities of the Soviet Government.

The pilots of the Soviet aircraft involved in the pacing and shooting of the B-29 were, after effecting the destruction of the B-29 as above noted, the United States Government concludes, and charges, undoubtedly recalled immediately by Soviet ground authorities to base, and thereupon undoubtedly submitted in due course to their superiors in the Soviet Government their reports of their conduct, and such reports, together with all additional reports from informed Soviet authorities in the area, were undoubtedly duly submitted to the appropriate authorities of the Soviet Government.

II

The Soviet Government in its note of October 12, 1952, and in its note of November 24, 1952, replying to the United States Government's note of October 17, 1952, willfully and knowingly made material misstatements of fact with the purpose of creating an untrue record and of misleading the United States Government. Among these misstatements are the following:

A. With respect to the note of October 12, 1952. The United States Government has already pointed out in its reply of October 17, 1952, respects in which the Soviet Government note of October 12 was false and misleading. The United States Government is prepared to prove by evidence in an appropriate forum in particular the following:

1. The note states that the "B-29 bomber violated the state frontier of the USSR in the area of Yuri Island". As the United States Government has frequently and consistently declared, the Soviet Government does not lawfully have a state frontier in the area of Yuri Island. The United States declares again that the territorial rights and sovereignty of Japan before, on and after October 7, 1952, extended and now extend north and east of the mainland of Hokkaido to include the island and area of Yuri and all of the Habomai Islands, up to and including the Island of Shikotan, and their territorial waters.

2. The statement that two Soviet fighters "demanded that the American bomber follow them for a landing to the nearest air-drome" is false and misleading and was known by the Soviet Government to be false and misleading when made. As above set forth, two Soviet fighters were directed to fly and had flown over the Hokkaido territorial waters to a point within the air space of Hokkaido more than twenty-five miles west of the tip of Nemuro Peninsula and deep within Japanese territory; had intercepted the flight path of the B-29, unbeknown to the B-29 crew, and hovering

over it followed it around within Japanese territory for at least sixteen minutes, as above noted, knowingly traversing the land mass and adjacent territorial waters of the Nemuro Peninsula of Hokkaido. It is completely false that any communication was sent from the Soviet fighters or other Soviet source to the B-29 on any subject, and it is particularly false that the fighters or any other Soviet source made any requests or demand that the B-29 follow the fighters or that it land at any place, and no airdrome or landing place was ever pointed out to the B-29 by anybody. In fact, as described above, the Soviet fighters deliberately and unlawfully paced the B-29 within the Japanese air space of Hokkaido and then shot at it without any warning whatever and without even first making their presence known to the crew of the B-29.

3. The statement that the B-29 opened fire on the Soviet fighters is completely false and was known by the Soviet Government to be false when made. The only aerial firing which was done in the course of the incident was done by the Soviet fighters, which came out of their concealed position and attacked and hit the B-29, still innocent of their presence or purposes; and in so emerging from the rear, the Soviet pilots contrived and calculated that the B-29 would have no opportunity for self-defense, even if its crew, contrary to the fact, were able to open defensive fire. Furthermore, the B-29 airplane had, prior to its departure from its base that morning, and in accordance with standard operating procedures, been rendered powerless to engage in effective combat by United States Air Force armorers at the base, and the aircraft remained thereafter continuously so powerless, for the mission of the aircraft was to be performed entirely within the territory of Japan with no reasonable ground for anticipation of meeting hostile or aggressive conditions.

4. The statement that the Soviet fighters engaged in "return fire" is false, and was known by the Soviet Government to be false when made. The only firing which was done was that of the Soviet fighters themselves, aided by a Soviet ground battery, and was all directed against the B-29.

5. The statement that the B-29 after being fired upon "went off into the direction of the sea" is, except in the respect that the B-29 upon being shot down by Soviet fire fell into the sea at the position above noted, particularly false and was known by the Soviet Government to be false when made. The implication that the Soviet Government was unable to state what happened to the B-29 after it was hit by attacking fire is the more culpable in view

of the fact that the destruction of the B-29 took place within the personal view of observing Soviet officials, and the wreckage was immediately visited and examined by the Soviet officials who were on board the patrol boat dispatched from Suisho Island to the scene of the crash, as above described.

B. With respect to the note of November 24, 1952. The United States Government has already in its reply of December 16, 1952, pointed out respects in which the allegations of this note were false. The United States Government is, in particular, prepared to prove by evidence in an appropriate forum the following :

1. The statement that the United States Government acknowledged in the note of October 17 that the B-29 was armed is false. The B-29 was at all relevant times unarmed, its guns having been rendered inoperative by its armorers, as stated above.

2. All the other statements which reiterate the false and misleading averments contained in the Soviet Government's note of October 12, are equally false and misleading, as noted above.

3. The statement that the Soviet Government is not in possession of any information regarding the whereabouts of the crew of the B-29 is false and known by the Soviet Government to be false. Apart from the observations of personnel whom the Soviet Government maintained, unlawfully, on Yuri Island and in that area, the observations of the Soviet Government personnel on the patrol boat dispatched from Suisho Island, which the United States Government is prepared to prove by evidence as above noted, clearly gave the Soviet Government complete information on these subjects.

III

The United States Government finds, and charges, that the Soviet Government in the foregoing facts was guilty of deliberate and willful violations of international law on account of which it has become liable to the United States Government for damages and other amends.

1. It was unlawful for the Soviet authorities to have dispatched aircraft with intention and instruction to overfly the territory of Japan at any point without first notifying the competent authorities of the United States and receiving permission therefor, as required by regulations and international law.

2. It was unlawful for the Soviet military aircraft to overfly the territory of Hokkaido and to have tarried there, and in the circumstances particularly reprehensible and immoral for the Soviet authorities to conceal from the B-29 aircraft the presence of the two Soviet fighter aircraft over the territory of Japan and to intercept and to pace its flight over the territory of Japan, these being hostile and belligerent acts under international law.

3. It was specifically unlawful for Soviet authorities to have intercepted the B-29 aircraft in the course of the flight at any point, to have attempted to bring it down at any such point, even at the point claimed by Soviet authorities as "the region of Yuri Island".

4. Assuming, contrary to the fact, that the Soviet authorities had any legal justification for seeking to bring the B-29 down to land, these authorities willfully violated all applicable rules of international law, first, in that they failed to give to the B-29 and its crew any prior warning or any prior direction or request to land; secondly, in that they did not lead the B-29 or its crew to an appropriate landing field or point out such a landing field to them; thirdly, in that they did not in the circumstances described give the B-29 or its crew prior warning of intention to fire.

5. It was unlawful, regardless of prior warning or direction to land, for the Soviet authorities either in the air or on the ground to fire on the B-29 under the circumstances mentioned and in the area above mentioned.

6. It was unlawful for the Soviet authorities to have failed to respond truthfully to the United States Government's request of October 17, 1952, with respect to survivors; in particular it was the duty of the Soviet Government to inform the United States Government of the findings of fact reported or made by the patrol boat officers and by other local Soviet authorities. To the extent that it was determined by Soviet authorities that members of the crew were alive, it was the duty of the Soviet Government so to inform the United States Government and make arrangements for their return. On the other hand if any crew members were found to be dead it was the duty of the Soviet Government so to inform the United States Government and to make arrangements to make return of the bodies. It is still, and has continuously been, the duty of the Soviet Government to keep the United States Government currently informed of all facts in Soviet possession concerning the crew members, to facilitate access to them by appropriate representatives of the United States Government, to arrange for their return and

to provide them with the maximum degree of care and comfort in the interim.

7. It was unlawful for the Soviet Government to have retained any portion of the aircraft or the equipment thereon without the consent and agreement of the United States Government ; and since no such consent or agreement has been granted by the United States Government it is the duty of the Soviet Government to return to the United States Government any portions of the aircraft or equipment thereon which were salvaged by the Soviet authorities. The United States Government demands that this return be made forthwith.

For all these violations of international law the Soviet Government is liable to the United States as set forth herein.

IV

The Soviet Government in its notes of October 12 and November 24, 1952, has made certain assertions with regard to an alleged state frontier of the Soviet Union in the area where the B-29 was shot down. The United States Government denies that these assertions are valid, and the United States Government is prepared to demonstrate the validity of its position by evidence and by considerations of international law in any appropriate forum.

In its note of November 24, 1952, the Soviet Government particularly states that the United States position that Yuri Island, at or east of which the Soviet Government apparently claims a state frontier of the Soviet Union, is not lawfully Soviet territory is "in crude contradiction with the provisions of the Yalta agreement concerning the Kurile Islands which was signed by the Government of the United States of America". The United States Government, reiterating its denial of validity to the Soviet Government statement, takes this opportunity to declare the following :

The United States Government is aware that military forces of the Soviet Government were physically present, together with their military equipment, on or near Yuri Island and in adjacent positions among the Habomai Islands on October 7, 1952, and prior thereto following the surrender of the Japanese Government to the Allied Powers. But this presence, in its origination and its continuance, and particularly after the effective date of the Treaty of Peace between the Allied Powers and Japan, April 28, 1952, was without any justification in international law or in morals, was in deliberate violation of the terms of the Japanese Surrender and of the agreement regarding surrender and occupation of Japan between the Soviet Government and the Allied Powers, gave the Soviet Government no legal right,

title or interest in this area and provided the Soviet Government with no privilege or justification for the actions taken by it on October 7, 1952, against the B-29 and its crew, as described above.

More particularly, the United States Government states, in reply to the Soviet Government's assertions:

1. No disposition having the legal force and effect of alienating from Japan the Habomai Islands, including the area in which occurred the wrongful actions of the Soviet Government on October 7, 1952, as above detailed, has ever taken place. Such disposition could be made only by or with the consent of the Japanese Government, and no such consent has ever been given. The only renunciation by the Japanese Government of territory north of Hokkaido was by the Treaty of Peace between Japan and the Allied Powers of September 8, 1951, and in this document the Government of Japan did not relinquish Japanese sovereignty over the area involved in the acts of the Soviet Government complained of herein, nor does it confer or recognize any right in the Soviet Government with respect thereto.

The United States Government both on the occasion of the signing of the Peace Treaty and the Security Treaty and on the occasion of the consent by the United States Senate to their ratification by the President of the United States, as required by the Constitution of the United States of America, and the President by his ratification, made clear that the Habomai Islands were to be considered as continuing to belong to Japanese sovereignty. The United States Senate declared:

"As part of such advice and consent the Senate states that nothing the treaty contains is deemed to diminish or prejudice, in favor of the Soviet Union, the right, title, and interest of Japan, or the Allied Powers as defined in said treaty, in and to South Sakhalin and its adjacent islands, the Kurile Islands, the Habomai Islands, the Island of Shikotan, or any other territory, rights, or interests possessed by Japan on December 7, 1941, or to confer any right, title or benefit therein or thereto on the Soviet Union."

The Government of Japan has likewise officially characterized the Habomai Islands and Shikotan as remaining under Japanese sovereignty and as not included in the phrase "Kurile Islands" as used in the Treaty of Peace.

No other action or conduct by the Government of Japan, or by the United States Government or by the Allied Powers signatory to the Peace Treaty, has been taken which has the legal effect of transferring or consenting to the transfer of sovereignty

over the area of Yuri Island and other Habomai Islands, or of Shikotan, to the Soviet Government.

2. The statement of the Soviet Government that the United States position that Yuri Island is not lawfully part of Soviet state territory is in "contradiction" with the "Yalta agreement concerning the Kurile Islands, which was signed by the Government of the United States of America" is untrue.

(a) The geographical name "Kurile Islands", in the context of the Treaty of Peace and in the context of the Yalta Agreement to which the Soviet Government refers, does not include, and it was not intended by the parties thereto to include, the Island of Yuri, which is a part of the Habomai Islands, all of which were and are separate and apart from the Kurile Islands.

(b) The Yalta Agreement regarding Japan of February 11, 1945, was not intended to and did not contain any provision by which the Soviet Government became entitled unilaterally to seize, occupy, or exercise sovereignty over, or to become entitled to possess, any Japanese territory whatever, neither the Kurile Islands, nor the Habomai Islands nor any other area, and in particular not that area of the sea, land and air space of Japan in which the United States B-29 aircraft was intercepted, tracked and shot down by Soviet fighter aircraft, as recited above.

The Yalta Agreement was, as the Soviet Government has at all times well known, a memorandum expressing the views of the President of the United States, the Prime Minister of Great Britain, and the Premier of the Union of Soviet Socialist Republics, each acting within his Government's constitutional powers and limitations, respecting a proposal by the Premier of the Union of Soviet Socialist Republics that in the event of the Soviet Government's entrance to the war against Japan, jointly with the other Allied Powers, the Soviet Government should, in the final peace settlement terminating the war, be supported in a claim for the return to the Soviet Government of certain Japanese territory formerly owned by the Czarist Government of Russia. Provisions of the memorandum were subsequently reflected in the terms of surrender proclaimed by the Allied Powers, with the knowledge and consent of the Soviet Government and its subsequent adherence, to the Government and people of Japan, accepted by the Government of Japan in the document of surrender. The Treaty of Peace with Japan duly and solemnly signed and ratified by the parties thereto was intended to constitute the final peace settlement envisaged by the parties to the Yalta Agreement on Japan of February 11, 1945; and so far as concerns any relevant undertakings which the United States Government may have made under that Agreement the Treaty of Peace with Japan constitutes the full performance of such undertakings.

(c) The provisions of the Yalta Agreement and the intentions of the parties thereto were made clear not only in the Treaty of Peace but in the intermediate proclamations of policy by the Allied Powers.

These documents provided that in the event of Japanese surrender "Japan would not lose access to raw material areas", Japan would be stripped only of the islands "which she has seized or occupied since the beginning of the First World War in 1914", and "be expelled from all other territories which she has taken by violence and greed", and the Allies proclaimed that they "covet no gain for themselves and have no thought of territorial expansion".

The Island of Yuri and its territorial waters, as well as all the Habomai Islands and the Island of Shikotan and their territorial waters, including all the area in which the wrongful actions of the Soviet Government on October 7, 1952, as above detailed, took place, did not and were not intended to fall within territory to be detached from Japanese sovereignty by the Treaty of Peace, by the Yalta Agreement or any other policy formulation of the Allied Powers for the reasons that :

(i) The Habomai and Shikotan Islands were at no time within the sovereignty of the Czarist Government of Russia or of the Soviet Government, or ever claimed by them at any time prior to the unlawful unilateral seizure of them by the Soviet Government. On the contrary, they were from ancient times territory of Japan, never taken by violence or greed, always occupied by Japanese people, an integral portion of the Japanese patrimony, and were so recognized by the Soviet Government and its predecessor governments at all relevant times prior to the unlawful unilateral seizure above described ;

(ii) The islands and waters in the area described constituted, and of necessity still constitute, an integral portion of the economic resources of the Japanese people, containing traditional domestic fisheries from which the Japanese people have derived their economic subsistence and they constitute, and have from ancient times constituted, normal sea routes for the internal commerce of Japan.

3. The United States Government declares that the unilateral seizure and continued occupation of the Habomai Islands and Shikotan, and the area adjacent thereto, by forces of the Soviet Government, and the government thereof as if they were within the sovereignty of the Soviet Union and removed from the sovereignty of Japan, constitute flagrant violations by the Soviet Government of the terms of the Yalta Agreement regarding Japan of February 11,

1945, mentioned above; of the terms of the Cairo Declaration of the Allied Powers of December 1, 1943, and of the Potsdam Declaration of July 26, 1945, setting forth the terms of surrender offered to the Government of Japan to all three of which the Soviet Government adhered by its declaration of August 9, 1945; and of the Soviet Government's Declaration of War against Japan of August 9, 1945, and of the terms of acceptance of the Allied Surrender Terms by the Japanese Government of August 14, 1945. The United States Government declares that the Soviet Government, by its foregoing commitments, solemnly pledged that no territory would be taken from Japan except in the diplomatic process of a treaty of peace with all the Allied Powers, that the Soviet Government did not covet any gain for itself and had no thought of territorial expansion and would not claim or take from Japan any territory which Japan had not taken by violence and greed.

The United States Government further declares that regardless of the rights, if any, which the Soviet Government might claim with respect to the Kurile Islands, it had and has no valid claim whatever by virtue of the Yalta Agreement of February 11, 1945, or otherwise, to the Habomai Islands, including Yuri Island and Shikotan and their territorial waters, and the area in which the unlawful actions which took place on October 7, 1952, as above described, were committed by the Soviet Government; but it was the affirmative duty, for the violation of which it is legally liable to the United States, as well as to Japan, not to attack, obstruct or interfere with the performance by the United States Government of its functions under the Treaty of Peace with Japan and the Security Treaty and the Administrative Agreement thereto.

The United States Government does not deem it necessary to dwell at this time upon the various aspects in which the Soviet Government has further callously violated the various obligations assumed by it in the course of the discussions by the heads of state at the Yalta Conference reflected in the Yalta Agreement, and particularly the terms expressed and implied as to the Soviet Government's association with the Allied Powers in the war against Japan, its adherence to the Allied Surrender Terms, the character of its participation in the occupation of Japan following the surrender, and its adherence to the final Treaty of Peace, and the fact that by virtue of its reprehensible conduct in these regards the Soviet Government would in any event disentitle itself to any territorial aggrandizement at the expense of Japan and the Japanese people.

4. The United States further declares that the unilateral seizure and continued occupation and exercise of sovereignty over the Habomai Islands and the area adjacent thereto by the Soviet forces, and the actions of October 7, 1952, described above, were and have been carried out by the Soviet Government with the purpose and effect of harrying the Japanese people ; of hampering their opportunities to make a living from their traditional fisheries in the sea as has been their ancient and inalienable right ; of preventing normal commerce with and within Japan ; of hampering domestic police activities necessary for the exercise of full responsibility and sovereignty over the islands of Japan by the Japanese Government as well as the defense thereof with the assistance of the United States Government ; and of intimidating the Government and people of Japan. Neither the United States Government nor any authorized representative thereto, in the Yalta Agreement or otherwise, has even consented directly or indirectly to this immoral and unlawful deprivation of the Japanese people by a foreign power.

5. The United States Government further declares that nothing in the Treaty of Peace, the Yalta Agreement of February 11, 1945, or any other valid international act, document or disposition, provided any justification for the actions taken by the Soviet Government with respect to the B-29 aircraft described above, including the refusal of the Soviet Government to provide the United States with true information concerning the incident and the fate of the crew, as described above.

V

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

1. The United States Air Force airplane B-29, No. 44-61815, and its contents at the time of destruction on October 7, 1952, valued in total at \$919,984.01.

2. Damages to the United States by the willful and unlawful conduct of the Soviet Government, \$300,311.

3. Damages to the next of kin, nationals of the United States, for the deaths of the crew members resulting from the willful and unlawful conduct of the Soviet Government or for the willful and unlawful withholding by the Soviet Government of such members of the crew as survived, \$400,000.

TOTAL \$1,620,295.01.

The United States Government declares that its demand for compensation on account of the members of the crew who survived does not imply the acquiescence of the United States Government in the withholding of those crew members from return to the United States Government, or the suppression by the Soviet Government of information regarding their whereabouts or welfare or the making of false statements by the Soviet Government with respect thereto; and the United States takes this opportunity again to demand that the Soviet Government forthwith provide the information in this regard which has been requested by the United States Government, and make provision for the prompt return of any crew members whom it may still be holding or of whose whereabouts it is informed, and in the interim to provide them with the maximum degree of care and comfort and facilitate access to them by appropriate representatives of the United States Government. The United States Government further reserves the right to make additional demand upon the Soviet Government for amends and other actions on account of its conduct on or since October 7, 1952, with respect to such survivors.

Furthermore, the United States has not included in its demand for damages, specified above, any sum on account of the items of intangible injury deliberately and intentionally caused to the United States Government and the American people, and to the Government of Japan and the Japanese people, by the wrongful actions of the Soviet Government. The United States Government in this regard has determined to defer to a future date the formulation of the kind and measure of redress or other action which the Soviet Government should take which would be appropriate in international law and practice to confirm the illegality of the actions directed by the Soviet Government against the United States Government and the American people, and to defer to the Government of Japan the matter of the liability of the Soviet Government for actions directed by the Soviet Government against the Government of Japan and the Japanese people.

The Government of the United States calls upon the Union of Soviet Socialist 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 and to comply with the demands as above set forth, the United States Government is prepared, if requested, to present detailed evidence in support of its calculations of damages suffered and alleged. If, however, the Soviet Government contests liability, it is requested so to state in its answer. In the latter event, the Soviet Government is hereby notified that the United States Government deems an international dispute to exist falling within the competence of

the International Court of Justice and that the United States Government proposes that that 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 its reply to the present note of its intentions with respect to such a declaration or Special Agreement.

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

His Excellency
Vyacheslav M. Molotov,
Minister for Foreign Affairs,
Moscow.

Annex (2)

[Translation from Russian]

TEXT OF SOVIET NOTE OF DECEMBER 30, 1954,
TO THE UNITED STATES

MINISTRY OF FOREIGN AFFAIRS
USSR

No. 114/OSA.

In connection with the note of the Government of the United States of America No. 270 of September 25 of this year the Government of the Union of Soviet Socialist Republics considers it necessary to state the following:

Having examined the aforementioned note of the Government of the United States of America concerning the incident, which took place in connection with the violation of the State boundary of the USSR by an American B-29 bomber in the region of the island of Yuri on October 7, 1952, the Soviet Government notes that this note contains essentially nothing new relating to the above-mentioned incident in comparison with that which the Government of the USA earlier reported on this question. In the note of the Government of the USA a version of the mentioned incident which is contrary to fact is again repeated, unsubstantiated suppositions relative to the fate of members of the crew of the aforementioned American airplane are stated, and also certain questions unrelated to the given affair are raised.

The Soviet Government in its notes of October 12 and November 24, 1952, has already set forth on the basis of factual data the circumstances relating to the violation of the Soviet State boundary by an American military airplane. Information, supplementary hereto, in relation to the above-mentioned incident, is also contained in an extract appended to this note from a report of the circumstances of the violation of the State boundary of the USSR in the region of the island of Yuri on October 7, 1952, by an American B-29 airplane.

The circumstances of this incident set forth in the mentioned notes of the Soviet Government and also in the above-mentioned Report show that the American airplane on October 7, 1952, violated the State boundary of the USSR in the region of the island of Yuri and opened unprovoked fire on Soviet fighters guarding the State boundary of the USSR.

The Soviet Government in a note of November 24, 1952, has already reported that it does not dispose of information of the further fate of the American B-29 bomber and its crew.

On the question touched upon in the note of the Government of the USA of State sovereignty over the South Kurile islands the position of the Soviet Union has been set forth in the notes of the Soviet Government to the Government of the USA of November 24, 1952, and December 11, 1954.

Since it has been precisely established that the American military airplane violated the boundary of the USSR and without any reasons opened fire on the Soviet fighters the responsibility for the incident which took place and its consequences lies entirely on the American side. Under these conditions the Soviet Government cannot take into consideration the pretension contained in the note of the Government of the USA of September 25 of this year and considers without any foundation the proposal of the Government of the USA for submitting this matter for consideration by the International Court.

With regard to the attempts of the Government of the USA to use the incident of October 7, 1952, in order to present in a false light the position of the Soviet Union with respect to Japan and the Japanese people, the Soviet Government considers it necessary to note that the attitude of the Soviet Union toward Japan and the Japanese people is well known.

The position of the Soviet Union, in particular, found its reflection in the Joint Declaration of the Government of the USSR and the Government of the CPR concerning relations with Japan of October 12, 1954. In this Declaration it was noted that although nine years have passed since the end of the war, Japan has not received independence and continues to remain in the position of a semi-occupied country. The territory of Japan is covered with numerous American military bases, the industry and finances of Japan are dependent upon American military orders, its foreign trade is under the control of the United States of America. All this causes the difficult economic position in which Japan continues to find itself.

In the aforementioned Declaration the Soviet Union expressed sympathy for Japan and the Japanese people, which has found itself in a difficult position as a consequence of the San Francisco treaty imposed upon it by the United States and of other agreements, and stated its readiness to undertake steps for the purpose of normalizing its relations with Japan. The Soviet Union noted in addition that Japan will meet with full support in its effort to establish political and economic relations with it, just as all steps

on her side directed toward insuring the conditions for its peaceful and independent development will meet with full support.

Moscow, December 30, 1954.

[Seal of the Ministry of
Foreign Affairs USSR.]

Appendix to the Soviet Note of 30 XII 54

EXTRACT FROM REPORT OF MAJOR GENERAL OF AVIATION MAKHUN TO THE COMMAND OF AIR FORCES OF OCTOBER 26, 1952, ON THE QUESTION OF THE VIOLATION OF THE STATE BOUNDARY OF THE USSR IN THE REGION OF THE SOUTHERN PART OF THE KURILE ISLANDS ON OCTOBER 7, 1952, BY AN AMERICAN TYPE B-29 MILITARY AIRPLANE

The investigation was conducted by means of a thorough study of official documents, journal entries of radar stations and duty personnel at the airfield, the obtaining of written explanations of members of the border troops and fliers and also personal interrogation of eye witnesses and radar personnel and fliers who took part in observing the flight of the violator-airplane over our territory and in warning it of this.

The investigation established :

On October 7, 1952, at 14 hours 31 minutes Khabarovsk time an airplane of unidentified nationality which on a course of 40-45 degrees was flying in the direction of the southern part of the island of Tanfilev was detected in the immediate vicinity of our State boundary by radar installations. Continuing its flight on this course, the foreign airplane at 14 hours 33 minutes having violated the State boundary, entered the air space over the territorial waters of the USSR and, approaching the southern coast of the island of Tanfilev, turned and flew on a course to the northwest over the island of Tanfilev. Reaching the northwest end of the island of Tanfilev the violator-airplane, evidently, after having reconnoitered it, at 14 hours 35 minutes turned and went on a course of 285 degrees, and after two minutes departed from the air space of the USSR. Thus the violator-airplane in this case was over Soviet territory for four to five minutes.

To all appearances, not having carefully enough examined the island of Tanfilev, this same violator-airplane at 15 hours 20 minutes violated a second time the Soviet State boundary on a course of 40-45 degrees and, reaching the point latitude $43^{\circ} 24'$ longitude $145^{\circ} 56'$, turned to the northwest, passed over the southwestern part of the island of Tanfilev and at 15 hours 23 minutes left the air space of the Soviet Union.

On its second violation of the State boundary of the Soviet Union the violator-airplane was over Soviet territory for another three-four minutes.

Having remained several minutes outside the air space of the Soviet Union, the violator-airplane at 15 hours 27 minutes Khaba-

rovsk time at the point latitude $43^{\circ} 18'$ longitude $145^{\circ} 59'$ on a course 90-100 degrees for a third time violated the Soviet boundary and after crossing the State boundary the violator-airplane went in the direction of the islands of Yuri, Zeleny, Shikotan, apparently with the same reconnaissance purpose with respect to these Soviet islands.

After the first violation of the State boundary the aviation command, guided by the Instruction for the defense of the State air boundaries of the USSR, sent up a pair of fighters. The airborne fighters, having gained altitude over the airfield, headed toward the region of the island of Yuri.

Taking a direct course toward the region of the island of Yuri, the pair of Soviet fighters at 15 hours 29 minutes detected south of the island of Demin at an altitude of 5,000 meters a four-engine bomber of the B-29 type of a dark green color with American identification marks.

After detecting the violator-airplane, which turned out to be an American bomber of the B-29 type, the Soviet fighters began to approach it for the purpose of warning it that it was over Soviet territory.

During the approach the American B-29 bomber from a distance of approximately 1,000 meters opened fire on the Soviet fighters, one of the bursts passed near the left wing of the lead fighter-airplane. Despite the fact that the American aircraft had opened fire, the Soviet fliers, without opening fire, continued the approach in order to warn the violator-airplane that it was over our territory. While the Soviet fighters were continuing the approach without opening fire, the American bomber for a second time opened fire on them.

The Soviet fighters, in view of the unsuccessful attempt to approach and warn the violator-airplane by maneuvers that it was over Soviet territory, were forced in answer to the manifestly hostile act by the American bomber to open answering fire, after which the violator-airplane turned and with loss of altitude went off into the direction of the sea at great speed.

In view of the small amount of fuel which our fighters had left they took a course to their airfield after the encounter with the mentioned American airplane. During the entire time of flight, including the encounter with the American bomber, our fighters did not leave the limits of the air space of the Soviet Union.

The weather in the region of the violation of the Soviet boundary during the period from 14 to 16 hours Khabarovsk time on October 7, 1952, was slightly cloudy with haze and visibility of 8-10 kilometers.

CONCLUSIONS

On October 7, 1952, an American four-engine bomber of the B-29 type from 14 hours 31 minutes until 15 hours 30 minutes Khabarovsk time conducted flights obviously for reconnaissance purposes and during the first violation of the State boundary of the USSR in the period from 14 hours 33 minutes to 14 hours 37 minutes a reconnaissance of the island of Tanfilev was conducted by it, during the second violation in the period from 15 hours 20 minutes to 15 hours 23 minutes the results of the first reconnaissance flight over the southwestern part of the island of Tanfilev were verified by it.

Having fulfilled, apparently, the first part of its task for the reconnaissance of the island of Tanfilev the American B-29 airplane for a third time violated the State boundary at 15 hours 27 minutes and maintained a course toward the Soviet islands of Yuri, Zeleny, and Shikotan evidently for the fulfillment of the second part of its task, that is for the reconnaissance of these islands.

Thus all three violations of the State boundary of the Soviet Union by the American military airplane were premeditated and were conducted with obviously hostile purposes.

The Soviet fighters, sent to the region of the island of Yuri with the aim of warning the violator-airplane of its presence over Soviet territory, acted in precise conformity with the instruction for the defense of the State boundary of the Soviet Union, took all necessary measures, risking life, in order to warn the violator by maneuvers without opening fire. However, in view of the manifestation by the violator-airplane of obviously hostile acts, after it opened fire for a second time the Soviet fighters were compelled to give answering fire with the aim of forcing it to quit the air space of the USSR.
