

4. MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA *

PART I

INTRODUCTORY

This Memorial is submitted to the Court in pursuance of an Order of November 26, 1957, in which the Court fixed June 2, 1958, as the time-limit for the filing of the Memorial of the Government of the United States of America in this case, and in further pursuance of two Orders, one of May 19, 1958, extending the time-limit to September 2, 1958, and one of August 12, 1958, extending it to December 2, 1958. As the Court will recall, these orders were issued following the filing in the Court of an Application by the United States of America instituting proceedings against the Government of Bulgaria on account of the destruction by Bulgarian Government military fighter planes, on July 27, 1955, near the town of Petrich, in Bulgaria, of an international El Al Israel Airlines airplane. The airplane was a civil Constellation type aircraft, designated and clearly marked as 4X-AKC and as belonging to the El Al Israel Airlines. The entire crew and all of the passengers were killed and their property destroyed.

These passengers were of varying nationalities. Among them were nine Americans on whose behalf six claims were presented in the Application. The claims involve thirteen American claimants, and their claims against Bulgaria have been duly espoused by the United States of America. The total sum claimed from the Bulgarian Government on behalf of these nationals is \$257,875. In addition the United States Government has other claims which are set forth in the Application and which will be discussed below.

As the Application stated, the subject of the dispute and a succinct statement of the facts and grounds upon which the United States global claim against Bulgaria is based are adequately set forth in an exchange of correspondence between the two Governments effected through the intermediation of the Government of Switzerland, and copies of this correspondence are attached to the Application as annexes. The United States Government does not maintain diplomatic relations with the Government of Bulgaria and in this case has relied on the good offices of the Government of Switzerland to communicate with the Government of Bulgaria.

The Application emphasized, and the correspondence attached to the Application shows, that the Bulgarian Government, upon the occurrence of the incident, decried it publicly, if inadequately; and, in addition, through the Swiss Government it admitted its fault for the damage to American nationals, admitted its liability

* See Part IV, *Correspondence*, Section B, No. 53.

to the United States Government and promised to pay for the damages inflicted. It also promised to prevent the occurrence of such an incident in the future and to seek out and punish those individuals who were responsible for the actions committed.

The present proceedings were instituted because the Bulgarian Government later changed its position, disclaimed all responsibility to the American nationals, failed to punish those individuals who were at fault or, so far as is known, to take any steps to prevent a recurrence of such action. Instead, it merely proposed to make an arbitrary, and pitifully inadequate, *ex gratia* per capita payment in Bulgarian currency to families of the American nationals who were killed as a result of the Bulgarian deeds for which the Bulgarian Government is, and has admitted it is, entirely guilty.

The Application further pointed out that the dispute concerned matters of the character specified in Article 36 (2) of the Statute of the Court. It involves, among other questions of international law, the scope and application of international obligations relating to the overflight of international civil aircraft. It involves the rights and duties of the government, and its military defense authorities, in whose territory the intrusion of the foreign civil aircraft is alleged to have taken place, particularly with respect to the use of force against passengers; together with issues of fact (if the Counter-Memorial should raise them) which, if resolved in favor of the United States Government, would prove breaches of international obligation by the Bulgarian Government. It involves further the nature and extent of the reparations to be made and other actions to be taken by the Bulgarian Government on account of all these breaches.

As to the jurisdiction over the parties, the United States Government noted in filing its Application, and now notes, that it has submitted to the jurisdiction of the Court for the purposes of the case. It pointed out that the Bulgarian Government had accepted the compulsory jurisdiction of this Court by virtue of the signature of its representative to the Protocol of Signature of the Statute of the Permanent Court of International Justice, and this acceptance was completely unconditional; the acceptance became effective as to the jurisdiction of the International Court of Justice by virtue of Article 36 (5) of the Statute of the Court upon the date of admission of Bulgaria into the United Nations.

That admission of Bulgaria into the United Nations took place on December 14, 1955, following the Bulgarian Government's persistent requests for admission. This was between the date of the incident of July 27, 1955, and the date of the change of mind by the Bulgarian Government as to payment of reparation for American nationals killed in the disaster.

PART II

THE FACTS

A. THE CASE

Simply stated, the factual case against the Bulgarian Government is that duly authorized officers and agents of the Bulgarian Government killed nine Americans, causing injury to their American kin, by wilfully shooting them or having them shot in the air, or causing them to burn and crash to the ground near Petrich, Bulgaria, on July 27, 1955, while they were innocent passengers in a scheduled civil airliner of the El Al Israel Airlines Ltd., 4X-AKC, flying from Vienna to Tel Aviv. The manner in which this killing was done and the failure of the Bulgarian Government to observe its promises, solemnly made to the United States Government, to pay, to take measures to prevent a recurrence and to punish the guilty, aggravate and exacerbate the offenses of the Bulgarian Government, show its intention to have been falsely represented from the beginning, and affect the measure of damages due, and other amends which this Court may impose.

The El Al Israel Airlines Ltd. had for several years been established as a scheduled international airline operating in and through various countries. By an agreement with the United States Government (Annex 1), and by due authorization (Annex 2), it operated, and still operates, in the United States with sales offices and large scale advertising of its international flights in New York and other American cities and, presumably, it did the same in London, Paris, Vienna and other cities of the world. It was, therefore, by its nature and by the permission and representations of the governments in and over whose territory it operated, a civil international airline, taking passengers for hire and flying them in accordance with schedules.

According to the timetable in effect in July 1955, one of the scheduled flights of the El Al Israel Airlines was Flight No. LY 402, in a Constellation aircraft manufactured by the Lockheed Company of the United States, as published in the *Official Airline Guide*, standard reference of the Air Traffic Conference of America. The *Guide* shows, in Volume 11, No. 10, July 1955, on pages 234 and 235 (Annex 3), that flight LY 402 was a tourist class flight leaving London on Tuesday at 10:00, in the forenoon, arriving in Paris at 11:30 A.M., leaving Paris at 12:30, arriving in Vienna at 15:25, leaving Vienna at 16:25, arriving in Istanbul at 21:45, leaving Istanbul at 22:45, arriving in Tel Aviv-Yafo Wednesday at 02:40 A.M.

Apparently in view of a delay in starting from Istanbul for London, and a delay in London, and possibly the lack of passengers for Istanbul, 4X-AKC on July 26, 1955, was going from Vienna direct, nonstop, to Tel Aviv.

The plane thus did not leave London at 10:00 local time, but apparently (see the Memorial of the United Kingdom in the parallel case) twelve hours and thirteen minutes later. The initial delay in arriving at London was presumably owing largely to engine difficulties of the incoming aircraft due from Istanbul. The El Al Airlines had sent to Istanbul a substitute Constellation aircraft, 4X-AKC by its markings (4X being the international symbol for El Al and AKC being the symbol for the plane in question). 4X-AKC arrived in London, therefore, eleven to twelve hours late, and approximately two hours and thirteen minutes later took off for Paris with a new crew who had been waiting in London for 4X-AKC to arrive.

Among the passengers and crew of Flight LY 402 of July 26-27, 1955, as shown by the Israel Ministry of Communications' *Report of Commission of Inquiry*, pages 20 and 21 (Annex 18 to the Israel Government's Memorial in the pending parallel case), there were fifty-one passengers of numerous nationalities.

After the plane left Vienna it somehow got into Bulgarian territory and was intercepted by Bulgarian fighter planes. The Bulgarian pilots shot the plane down so that it took fire, burst into flames over the town of Petrich, fairly close to the Greek frontier, exploded in the air, and crashed in pieces near the village of Sherbanovo, Bulgaria, and everybody in the plane was killed.

Among the persons on board there were, as has been indicated, nine individuals who not only possessed American nationality, but whose next of kin, making claims on account of the killing of the passengers, are of American nationality. The United States has espoused those claims and espouses them in this proceeding¹. There is no question that those for whom the United States has espoused a claim were Americans on board when the 4X-AKC left Vienna.

1. *Identity and American Nationality of Decedents and Claimants*

(1) Rachel Avram (also known as Rella Avram) was forty-seven years old. She was a national and citizen of the United States and the wife of Mendel Avram, a national and citizen of the United States, and was the mother of two children, nationals and citizens of the United States, who are listed in Annex 1 to the App cation instituting these proceedings. She was employed as forelady in a manufacturing plant engaged in the manufacture of women's

¹ It is noted that the Israel Memorial, Annex 3, lists the nationality of three persons as "U.S.A." whose claims do not appear in the United States Memorial, namely, Pincus Ingberman, Toby (Tuba) Shaefer and Zahava Szeinbaum. In these cases either the individual involved was not a United States citizen and not an American national on July 27, 1955, or no claimant of American nationality or citizenship as of July 27, 1955, has complied with the United States Government's requirements for nationality of the claimant and the decedent. Presumably the Israel Government obtained the information as to its annex from other sources. In this connection attention is called to the Israel Memorial's statement of claims, pages 161, 166 and 168 [Not reproduced. — Note by the Registry.]

dresses. She purchased her ticket to Tel Aviv from the El Al office in Paris, to which she had apparently gone in the course of a trip to Europe to see her son, who was a student in Switzerland. This is confirmed by her application for an American passport, which was issued (Annex 4). As shown by the manifest of the aircraft involved (supplied to the United States by the Government of Israel and contained in Annex 2 to the Israel Memorial in a parallel case against Bulgaria now pending in this Court), she is shown as having embarked at Paris, under the name of Rella Avram, ticket No. 201225². There is attached herewith (Annex 5) a copy of the ticket of Mrs. Avram supplied to the United States Government by the Israel Government, which presumably obtained it from the El Al Israel Airlines. There is no question whatever that she was killed in the aircraft (see Annex 6). The Bulgarian Government has had conveyed to the United States Government a death certificate (Annex 7) issued by the Minister of Foreign Affairs in Sofia on November 9, 1955, in which the cause of her death is described as having been the consequence of "an aerial accident", and she is there named Rella Rachel Avram.

(2) Ora Cohen was an American citizen and national who was the wife of a student of engineering at the University of Kansas, in the United States of America. Her husband is a citizen and national of the United States by birth. The decedent, Ora Cohen, though born in Nancy, France, on March 30, 1927, became a fully naturalized citizen of the United States on June 24, 1952. She was regularly employed, prior to the incident of July 27, 1955, as a librarian at the New York Public Library and, in view of her husband's decision to study at the University of Kansas, she had applied for a position as a librarian at the University of Kansas. Her father lived in Tel Aviv, Israel, and in his desire to see his daughter he had purchased a round-trip ticket on her behalf at Tel Aviv. She boarded an El Al Israel airliner at Idlewild Airport in New York City and debarked at London Airport sometime before July 26, 1955. She apparently arrived in Paris in time for Flight LY 402, for the passenger manifest of the El Al Israel Airlines Ltd. (Israel Memorial Annex 2) showing the passengers to Tel Aviv who boarded 4X-AKC in Paris on July 26, 1955, shows as No. 15 "COHEN, O." * Her ticket was No. 231619, as conveyed by the Israel Government to the United States Government (Annex 8). These facts are confirmed by her American passport application (Annex 9). The Bulgarian

² It is noted that the Israel Government has reproduced (in Annex 2 to the Israel Memorial) copies of two manifests purporting to be the United States Government's Immigration Form I-466. It is to be noted, however, that the United States Government has in no respect authorized the use of this form outside the United States and takes no responsibility for the statements contained therein in this case other than that they show the persons of American nationality listed as in the Application instituting this proceeding as on board and killed.

* See footnote 2, *supra*.

Government has certified that Mrs. Cohen died, in the air crash in Petrich, victim of "an aerial accident", in a certificate of the Minister of Foreign Affairs prepared November 9, 1955 (Annex 10).

(3) Anna Hahn (also known as Aenne Hahn and Anne Hahn) was a housewife and the wife of Dr. Hugo Hahn, an American citizen residing in New York City. On July 27, 1955, she was fifty-two years old. Her husband was a Rabbi. She had become an American, as had he, by naturalization, in New York City. Apparently she had purchased a round-trip ticket for Tel Aviv in New York City (see Annex 11). She boarded 4X-AKC in Paris. It appears that she may have departed from New York on Air France and exchanged her ticket in Paris for an El Al flight (see Annex 12, her American passport application). The passenger manifest of the El Al Airlines (in Israel Memorial Annex 2) shows that a person named "HAHN, A." boarded the plane at Paris. Her ticket was No. 215446, as the Israel Government has informed the United States Government (Annex 13). She was undoubtedly on board when the plane left Vienna, and the Bulgarian Government has issued a death certificate (Annex 14) for her dated November 9, 1955, describing, as usual, that her death was the result of "an aerial accident" near Petrich.

(4) Mary Katz (also known as Mania Katz) and Anna Katz (also known as Anne Katz) were the wife and daughter, respectively, of Mr. Paul Katz. He became a citizen, by naturalization, on November 11, 1954, as did his wife, Mary, and his daughter, Anna. Mrs. Katz worked as a saleslady in an antique shop owned by her husband, in New York City, and helped conduct the antique business. She and her daughter were making a round trip to Tel Aviv (see Annex 15, her American passport application). They boarded the 4X-AKC aircraft at London and held tickets Nos. 225869 and 225875; copies of these have been conveyed to the United States Government by the Israel Government (Annexes 16 & 17). In this regard, the name "KATZ, C." on the manifest should obviously be "A" for Anna Katz. The manifest was prepared by BOAC and is contained in the manifests shown in Annex 1 to the Israel Memorial. The Bulgarian Government has acknowledged that these two persons were on board the plane and were killed in the disaster. Bulgaria's Minister of Foreign Affairs has issued a death certificate for each of them dated November 9, 1955 (Annexes 18 & 19). As usual, the deaths are described as caused by "an aerial accident". Anna Katz, at the time of her death, was ten years old. Her mother, Mary Katz, was fifty years old.

(5) Avraam M. Mann (also known as Goffman)—see his American passport application and amendment (Annex 20)—was sixty-one years of age and an American by naturalization, as are his two sisters who are his next of kin³. In his lifetime, he was a radio

³ Since the filing of the Application in this Proceeding, the United States Government has received a claim from one Minnie Schiffrin Goffman (also known as Minnie

commentator and an advertising solicitor for New York Radio Station WEVD. He was apparently known as a doctor and wrote on medical subjects. He left the United States by boat (the French passenger liner "Liberté"). He boarded the El Al Israel aircraft 4X-AKC in Paris, apparently paying cash, since the passenger manifest for Paris (in Israel Memorial Annex 1) * has the entry "MANN, A., COD." A copy of his ticket, shown as No. 227442 (Annex 21), has been conveyed to the United States Government by the Israel Government. That he was among those killed is evidenced by the Bulgarian Government's death certificate (Annex 22) issued by the Minister of Foreign Affairs on November 9, 1955, for "Dr. Avram M. Mann", giving the cause, as usual, as "an aerial accident."

(6) The deceased Anna B. Sacks (also known as Annie Sacks, Hannah Sacks, Annette Sacks and Annette M. Sacks), was born in 1902 and she became an American citizen in 1913. The deceased Rene Sacks (also known as Rivga Sacks and Renee Sacks), was a daughter of the deceased, Anna Sacks. Rene was an American by virtue of the naturalization of her parents, but she was born in Tel Aviv, November 24, 1936. The deceased Deborah Sacks (also known as Debora Sacks), was another daughter of Anna Sacks. She was also born in Tel Aviv, March 26, 1939, and became an American citizen by the naturalization of her parents. The claimants are Max Sacks, widower, and father of Rene and Deborah, and Naomi Sacks, daughter, and sister of Rene and Deborah. Both claimants are American nationals and citizens. At the time of her death Anna was fifty-three years old and was a housewife in New York City. Rene was a college student at Mills College in New York City and Deborah was a senior year student in a New York City high school. The passenger manifest issued in Paris (a copy of which is contained in Annex 1 of the Israel Memorial filed in the parallel case *) shows that the 4X-AKC was boarded in Paris by "R. SACKS, D. SACKS and A. SACKS", bearing tickets Nos. 215447, 215448, and 215449; copies of these tickets have been supplied to the United States Government by the Israel Government (Annexes 23, 24 and 25). This is confirmed by their applications for American passports (see Annex 26). The annexed affidavit (Annex 27) shows that the original flight tickets were purchased in New York City on July 1, 1955, from Air France; on July 26, 1955, the coupons for Paris-Tel Aviv were exchanged for El Al tickets, in accordance with international airline practice. There is no question that they were on board when the Bulgarian Government's fighter planes shot and destroyed the 4X-AKC, and killed all the human beings

Grace Schiffrin Goffman), an American citizen and national, as the lawful wife of the decedent. The United States Government reserves the right at a future stage to increase the amount of the claim for damages to include a sum for the account of Mrs. Goffman.

* See footnote 2, *supra*.

aboard, over Bulgaria. The Bulgarian Government has issued death certificates in these cases dated November 9, 1955 (Annexes 28, 29 and 30), referring to Anna Sacks, Rene Sacks and Deborah Sacks, giving the same cause of death, "an aerial accident."

It appears from the Israel Memorial (page 58, paragraph 25), that a series of Protocols was delivered by the Bulgarian Government to the Israel representative between July 28, 1955, and August 3, 1955. Among them, the United States Government has been informed by the Israel Government, was a "Protocol No. 3" labeled "On Personal Passports Which were Found." Twenty-four items are listed. No. 5 reads: "Rivga Sacks, Passport No. 703720, issued in the USA." There is also a reference to item 24 which appears to be "Pincus Ingberman, Passport No. 40144, issued in the USA." There is also a reference, Item 23, reading "page of passport of husband and wife, names missing, husband born in Russia on April 2, 1894, profession — radio commentator." Conceivably this may relate to the American national, Avraam Mann.

2. The American Passengers and the Sum of the Evidence.

Obviously, therefore, none of the Americans killed were any but innocent persons engaged in innocent international civil air travel on an internationally recognized airline licensed to conduct scheduled flight operations internationally. Even if it were relevant, and it is not, these American passengers were not aviators, nor could they have controlled the equipment or the crew in the maneuvers or flight of the aircraft into or over Bulgaria or any other portion of the flight. They were killed, without provocation or justification, by Bulgarian fighter pilots, acting under the authority and direction, and with the condonation, of the Bulgarian Government.

There may be some question as to whether each was killed by bullets fired from the Bulgarian Government fighter planes, by explosion in the air, or by other causes, such as burning. It was not necessary for the United States Government, nor was it made possible by the Bulgarian Government, to examine the remains of the victims, much less to identify them. In any case, the death of each was directly caused by the unlawful attack by the Bulgarian fighters.

What occurred on July 27, 1955, in the air space of Bulgaria, ending in the catastrophe near the town of Petrich, within eyesight of the Greek border to the south, and a few kilometers from the Yugoslav border to the west, to the nine American passengers aboard the El Al civil Constellation aircraft 4X-AKC, and the relevant facts preceding and following the disaster, are contained, generally speaking, in three categories of evidence.

The first is the admissions made by the Bulgarian Government, publicly and in diplomatic correspondence, in connection with the United States Government's claim. These show an unquestionable

admission of guilt and liability, leaving only the problem of the computation of damages.

The second is the special investigation which the United States has conducted of the circumstances of the flight of the aircraft, the attack by Bulgarian fighters, the killing of the American passengers and the destruction of their property, together with the failure of the Bulgarian Government to keep its promises relating to the punishment of the responsible persons and the prevention of a recurrence of such an incident. This evidence will be indicated below.

The third is the admissions made by the Bulgarian Government to other Governments which are concerned in the disaster. Some of these are apparently described in the Memorial filed by the Government of Israel, nationals of which constituted the major single national group aboard the aircraft. The Government of Israel apparently has engaged in long and protracted negotiations with the Government of Bulgaria. The United States Government, of course, was not a party to these negotiations and is in no way bound by them, but it feels free to advert to such statements of fact as are reported in the Memorial of the Government of Israel and bear upon the liability of Bulgaria to the Government of the United States. The same is of course true as to any negotiations between the Government of the United Kingdom and the Bulgarian Government.

B. THE EVIDENCE IN THE UNITED STATES DIPLOMATIC EXCHANGE

So far as the Government of the United States is concerned, all its diplomatic correspondence and the contents of its negotiations with Bulgaria are annexed to the Application filed in this Court on October 28, 1957, in the form of five annexes. The United States Government believes that the correspondence from the Bulgarian side is accurately represented, not only because the Swiss Government is universally known for its impartiality and high standard of diplomatic conduct, but because the admissions made to the United States Government were also made in the Bulgarian Government's controlled radio and press. They also reiterate information which was conveyed by the Bulgarian Government to other Governments which had nationals aboard 4X-AKC when it was destroyed in the air near Petrich, Bulgaria, by Bulgarian fighters, on July 27, 1955.

1. In a communiqué issued by the Bulgarian Telegraphic Agency on July 28, 1955, announcing the appointment of a governmental commission to investigate the incident the Bulgarian Government stated, after reporting the intrusion into Bulgaria of the aircraft on July 27 at 0735:

"The Anti-Air Defense was unable to identify the aircraft and, after repeated warnings, opened fire, as a result of which the aircraft fell and crashed in the area north of the town of Petrich.

All the persons aboard the aircraft perished." (See Annexes 31 and 33.)

The radio monitors who heard the broadcast of the Bulgarian statement (Annex 31) stated that the radio announcer said that the plane was shot down after "a few warning shots". In the facts of the present case the difference in translation is not material.

The Israel Government, in a note verbale dated July 28, 1955, properly stated:

"Since there can have been no genuine difficulty in identifying an unarmed civil airliner of the familiar Constellation type, the action of the Bulgarian security forces can be understood only as deriving from a wanton disregard of human life and of the elementary obligations of humanity which should have governed their conduct." (Annex 15, Israel Memorial.)

The Court will see from the facts stated below that there is no question that while the observers in the radar stations naturally did not see the lettering or type of the aircraft, the fighters who were dispatched to intercept the aircraft saw it in clear, sunny daylight, flew around it, identified it, undoubtedly communicated to the ground control by radio telephone (VHF) its civil character and the words and markings painted on it, and were nevertheless ordered, or re-ordered, to shoot the civil airliner down. The United States Government appends hereto (Annex 32) photographs of El Al planes from which it will be seen what the Bulgarian fighter pilots saw and reported to the ground control. A photograph of 4X-AKC appears further in Annex 4 to the United Kingdom Memorial.

The Bulgarian statement is subject to another interpretation. That is that since the radar station had no notice of any aircraft expected to cross the border at Trn at that time, the 4X-AKC was by definition and *ipso facto* an unidentified and hostile aircraft and the fighter planes were dispatched with prior instructions to shoot it down and kill the occupants. This interpretation is in fact most consistent with the facts as developed by investigation, which will be seen in the sequel.

2. As its very first communication to the Bulgarian Government when the shooting down of 4X-AKC was reported, including the killing by Bulgarian fighters of American nationals, the United States Government delivered an aide-mémoire, through the Swiss Legation in Sofia, to the Bulgarian Government. The date was August 2, 1955 (Annex 1 to the Application). As will be seen, the United States Government in that aide-mémoire emphasized first that the Bulgarian Government had acknowledged responsibility for a grave violation of accepted principles of international law.

The United States Government demanded that the Bulgarian Government take the following actions:

“(1) take all appropriate measures to prevent a recurrence of incidents of this nature and to inform the United States Government concerning these measures; (2) punish all persons responsible for this incident; and (3) provide prompt and adequate compensation to the United States Government for the families of the United States citizens killed in this attack”.

The acceptance of the responsibility for these killings by the Bulgarian Government was contained not only in communications to other governments, such as the Government of Israel (see the Israel Memorial) and the Government of the United Kingdom (see the United Kingdom Memorial), as well as various governments whose nationals were passengers or crew members on the aircraft, but in the Bulgarian press and radio.

3. The United States notes that in its broadcast in the Bulgarian Home Service, July 28, 1955, 1000 GMT, the Bulgarian Government said:

“On July 27, at 7:35 a.m. Bulgarian time, as it was subsequently learned, an Israeli passenger aircraft deviated from its flight route and in the area of the town of Trn entered, without warning, the air space of Bulgaria; it flew over the towns of Stanke Dimitrov and Blagoevgrad in a southerly direction toward the town of Petrich.

The Anti-Air Defense was unable to identify the aircraft and, after repeated warnings, opened fire, as a result of which the aircraft fell and crashed in the area north of the town of Petrich.

All the persons aboard the aircraft perished.

In this connection the Bulgarian Telegraph Agency is authorized to state that the Bulgarian Government and the entire Bulgarian public express their profound regret for this unhappy event.

The Council of Ministers of the People's Republic of Bulgaria appointed a governmental commission composed of the following persons:

Minister of Foreign Affairs, Dr. Mincho Neychev,
Minister of Internal Affairs, Dr. Georgi Tsankov,
Minister of National Defense, Army General Petur Panchevski,
Minister of Public Health, Dr. Petur Kolarov, and,
Chief Prosecutor of the Republic, Yordan Chobanov,
to establish the detailed circumstances under which the unhappy event occurred.”

This information was repeated in the official newspaper, *Rabotnichesko Delo*, No. 210, July 29, 1955 (Annex 33).

The United States Government, of course, does not assume that these high cabinet ministers themselves physically engaged in on-the-spot investigation. They undoubtedly interviewed, or had interviewed, the Bulgarian participants—the pilots, ground controllers, radar observers—and they had others who wrote them

reports on these subjects. The United States Government is entitled to see those reports and the minutes of those conferences (see page 249 below).

It may be noted from the evidence analyzed below that if the 4X-AKC was shot down by the firing of "a few warning shots", they were not really calculated to warn but to kill.

If, however, the Bulgarian text was the same as printed in Annex 33, there were admittedly no warning shots at all; and the nature of any warning is not given, nor has it ever been given. The statement about signals in the Bulgarian radio broadcast of August 3, discussed below, adds nothing. Besides, in fact, if the Bulgarian Government already knew the facts it recited there was nothing left to investigate.

4. The Bulgarian Home Service further stated on August 3, 1955, 0430 GMT:

"On the basis of the information presented in the final protocol of the special governmental Commission, charged with the investigation of the circumstances surrounding the catastrophe of an Israeli aircraft in the air space of Bulgaria, the BTA has been authorized by the Government of the People's Republic of Bulgaria to make the following announcement:

1. On July 27 of this year, at 7:10 a.m. Bulgarian time, a four-engine passenger aircraft of the Constellation type belonging to the Israeli air line 'El Al' deviated from its flight route by approximately 130 kilometers and entered, without warning, the airspace of Bulgaria in the area of the town of Trn. After having penetrated 40 kilometers into the interior of the country, in the eastern direction from the town of Trn, the aircraft turned south, flew over the towns of Breznik, Radomir, Stanke Dimitrov, and Blagoevgrad and continued to fly south toward the Bulgarian-Greek border. The aircraft flew over Bulgarian territory a total distance of 200 kilometers.

2. The appropriate command post of the Anti-Air Defense, after having received information to the effect that a foreign aircraft of unknown origin had penetrated Bulgarian airspace, issued an order to two fighters of the Anti-Air Defense to pursue the foreign aircraft and force it to land at one of our airfields.

3. The fighters discovered the aircraft south of the town of Stanke Dimitrov and it was warned, by means of the established international signals, that it should follow the pursuing fighters, to land at the airfield to be indicated by them. The aircraft failed to obey this instruction and continued its flight south toward the town of Petrich. The fighters, seeing that the violating aircraft was attempting to escape across the border, opened fire at it, as a result of which the aircraft caught fire and crashed in the area of the town of Petrich. As a result of the explosion which occurred in the air the aircraft was totally destroyed and the 51 passengers and 7 members of the crew perished.

4. The above circumstances indicate that the reasons for the unfortunate event involving the Israeli aircraft are the following:

- (a) The aircraft deviated from its route, violated the state border of Bulgaria, and, without warning, penetrated deeply into the airspace of Bulgaria. Being equipped with excellent navigation instruments, the aircraft could not fail to realize that it had violated the state border. Even after having been warned, it failed to obey but rather continued its flight to the south, in the direction of the Bulgarian-Greek border.
- (b) The organs of the Anti-Air Defense displayed haste. They did not take all the necessary steps to force the aircraft to land.

It must also be noted that for many years, disregarding the sovereignty of our country, certain circles have been taking the liberty of violating our state borders regularly. In the course of the last several years repeated illegal flights over our borders by aircraft of 'unknown nationality' were registered in our country. During those illegal overflights saboteurs equipped with weapons, radio transmitters, and other material were dropped on our territory. The Government of the People's Republic of Bulgaria protested on several occasions to the Secretariat of the United Nations, which, unfortunately, produced no result. All this created an atmosphere of tension which made it necessary that measures to protect the security of our country be taken. It was under such tension that the unfortunate incident involving the Israeli aircraft became possible.

The Bulgarian Government and the Bulgarian people once again express their deep regret about this unfortunate event, which occurred to the completely innocent victims in the catastrophe. They express their warmest desire that such unfortunate events never occur again, and, on their part, will find and punish those guilty of the catastrophe and will take every step so that such unfortunate events shall not occur again on our soil. However, the Government considers that this can be accomplished only if the sovereignty and national dignity of all small and big nations are fully respected.

The Bulgarian Government expresses its profound sympathy to the relatives of the innocent victims lost in the catastrophe and has stated in its note to the Government of Israel that it is prepared to assume the obligation to compensate duly the families of the victims and to contribute its share of compensation for the material losses."

This report was also repeated in *Rabotnichesko Delo*, No. 215, August 3, 1955 (Annex 34).

5. It is significant that broadcasting in English to North America, on August 12, 1955, 0100 GMT, the Bulgarian Government complained of the fact that there was a "dirty anti-Bulgarian campaign" to call the Bulgarian people "'an uncivilized people, a nation of barbarians and murderers', and so forth" (Annex 35). The United States Government, in this connection, believes it appropriate to call attention to one of the statements made in this broadcast intended for American ears.

"The Bulgarian Government and people expressed their profoundest regret with regard to the incident of the Israeli aircraft, as a result of which innocent people had lost their lives, and expressed their sincere condolences to the relatives of the victims.

Our Government stated categorically that it would punish the culprits. It informed the Israeli and other interested governments that it is ready to pay compensation to the families of the victims and will bear the relevant part of the compensation for material damages. The Bulgarian Government took all measures to prevent the recurrence of such accidents on our territory. Consequently, it has done everything that could and should have been done in this case."

A Bulgarian version of this statement was published in *Rabotnichesko Delo*, No. 223, August 11, 1955 (Annex 36).

This is a curious statement. Part of it is demonstrably false; for no evidence appears that the Bulgarian Government took any measures to prevent the recurrence of such incidents in Bulgaria; on the contrary, as the sequel will show, there is evidence to the contrary. But, to say, as the Bulgarian Government does in the last sentence of the paragraph just quoted, that its *promise* to pay compensation and its *promise* to punish the culprits means that the Bulgarian Government "*has done everything* that could and should have been done in this case" is preposterous, although completely untruthful as regards the Bulgarian Government's conduct. It obviously intended to promise but not to perform its promise. The present proceeding is the consequence of the breaches of the Bulgarian Government of its promises and its tortious actions, first in causing the disaster and secondly not keeping its solemn word, aggravated and exacerbated by the misrepresentation of its intentions and state of mind.

6. On August 4, 1955, the Bulgarian Government sent a note to the United States Government through the intermediation of the Swiss Legation, No. 42803 (Annex 2 to the Application), in which the Bulgarian Government stated that it had conducted an investigation of the incident of July 27, 1955, by a "special governmental commission". It said further that this commission had "irrefutably determined" that an El Al Israel aircraft, without warning, entered the Bulgarian air space penetrating a distance of 40 kilometers (which would be approximately twenty-four miles) and that it had overflowed Bulgarian territory, in a southerly direction, for a distance of approximately 200 kilometers (approximately 120 miles). It stated that south of the town of Stanke Dimitrov (which the United States takes to be the town generally known as Dupnitsa and which could be as little as sixteen kilometers, in the mountainous area, from the Yugoslav border) the aircraft was "intercepted" by two Bulgarian fighter planes "which received orders to force it to land at a Bulgarian airport".

It is of interest to note that the Bulgarian Government does not say how the orders were transmitted to the fighter planes nor by whom. Presumably these orders, if they existed at all, were transmitted either before the pilots set out from their base, from persons in authority over them at the base, or were transmitted by radio telephone in the course of flight before or after the civil aircraft had been identified by the two fighters and described by radio telephone to the ground control authorities.

The note then continues that the "fighter planes warned the aircraft, in accordance with international regulations, to land". The note does not say what the warning consisted of nor what the regulations are to which it refers. This Government knows of none. It is a demonstrable fact that all pilots in the air are capable of conveying understandable signals to other pilots, by voice radio or by hand signals or by motions of the signaling aircraft. Under circumstances comparable to those of this case, the United States Government knows of no instance where interceptor aircraft have been unable to make themselves understood, by word of mouth or by their motions, or by maneuvering of the swifter fighters around slower propeller-driven transport aircraft.

The Bulgarian Government, it is submitted, should be required to state to this Court precisely what "warning" signals were given and by whom, and with a specific recital of the surrounding circumstances. This will be covered below (see page 251).

It must be considered, however, that after the alleged interception, the plane continued to fly in a southerly direction. This would bring it closer both to the Yugoslav border and to the Greek border. During this activity conversations between the Bulgarian fighter pilots in the air and the Bulgarian ground control authorities were surely taking place. The civil aircraft flew in an area at a cruising altitude (which, as is well known, would be around 17,500 feet), at a speed far less than the fighters', over terrain which on the map appears to make Bulgaria indistinguishable from Yugoslavia, for there is no change in the color of the terrain that marks Yugoslavia from Bulgaria, nor clear check points to differentiate between the two countries (see Annex 37).

The note continues that in spite of the warning by the fighters, the plane "continued to fly in a southerly direction in an attempt to escape across the Bulgarian-Greek frontier". This must be the conclusion made by the Bulgarian Government since witnesses to the state of mind of the pilot of the civil aircraft cannot be produced, and as to the pilot, the Bulgarians have killed him. It may also be assumed that the pilot may have believed that he was over Yugoslavia, or even over Greece (if the CW radio log in the Israel Inquiry Commission Report contained in the Israel Memorial is relevant), and thought that it was the duty of the Bulgarian fighters to desist from pursuit. In any case, as will be emphasized below, he may also have assumed, security and other

legitimate contrary special considerations being absent, that the sole function of fighter planes in such a case, and in the circumstances described, was to identify the overflying civil aircraft and report its name and number to ground control so that the Bulgarian Government, in accordance with general international practice, could then take up with the government of the nationality of the aircraft the circumstances of the alleged overflight. This is the well-established practice in all civilized countries and among all civilized governments. This subject is discussed further below (see page 235).

The United States Government furthermore wishes to point out that if, as the Bulgarian Government charges, 4X-AKC was intercepted just south of Stanke Dimitrov (generally known as Dupnitsa), it is not accurate to justify the shooting by a statement that the 4X-AKC flew to the Greek border, a distance of approximately 200 kilometers. It has already been seen that 24 miles, the area of penetration charged against 4X-AKC, is a trifling amount of space for an airplane flying at 240 miles an hour, or at an altitude of 17,500 feet or more, with no visible changes in terrain to show where Yugoslavia ended and Bulgaria began. But it further appears from the Bulgarian statements that most of the distance from the north to the south over which 4X-AKC is alleged to have flown it was escorted by two Bulgarian fighter planes and acting under their control, namely the distance from Dupnitsa to the Yugoslav and to the Greek borders, and from the north border of Greece to Petrich, where 4X-AKC was finally destroyed.

The Bulgarian note does not say where the civil aircraft could lawfully have landed, or at which airport it was told to land. Nor does the note state where in the mountains of western Bulgaria, near the Yugoslav and Greek borders, the Constellation aircraft could have landed with safety to the passengers. The United States Government has found no such place. If the Bulgarian Government had intended it (4X-AKC) to land at any airport, it could have communicated that fact by radio or by signal from the fighters. The Bulgarian Government should, it is submitted, give the whole truth as to this subject (see below, pages 249 ff.)

The note then continues:

"In these circumstances, the two fighter planes of the Bulgarian Anti-Air Defense of this area, astonished by the behavior of the aircraft, opened fire, as a result of which it [the civil aircraft] caught fire shortly thereafter and crashed in the area of the town of Petrich⁴."

The foregoing paragraph contains the essence of the admission of the Bulgarian Government's essential liability. The American passengers aboard the plane were not in the cockpit; they were presumably sitting in their seats as required, and they were not to

⁴ This translation varies slightly from that contained in Annex 2 to the Application to comport more clearly with the Bulgarian meaning.

meddle with the pilots. The "astonishment" of the fighter pilots must surely have been accompanied by instructions from the ground by higher Bulgarian Governmental authorities. Indeed, it may be assumed from the character of the preceding language of the note that the instructions to fire were given to the pilots before they left the ground. The fact, if it be true, that the pilots were "astonished" by the behavior of the aircraft and therefore "opened fire" causing the death of all aboard, is difficult to credit. Moreover, "astonishment" would seem hardly a reason for firing at the fuselage of the aircraft unless there was an intention to kill and destroy.

It is noted that there is no statement what the pilots did to rely on "international regulations". There is not even any allegation or proof that they limited the firing to innocuous bursts or, in fact, to such portions of the aircraft which would, with least injury to the passengers, cause the crew to land at an appropriate landing place. The United States Government has reason to believe that there was no true warning firing, and in fact, no other signals of similar significance, and this will appear from testimony which the United States Government will give.

7. The United States especially draws the Court's attention to paragraph 2 of the conclusions of the Bulgarian investigation commission: "The Bulgarian Anti-Air Defense manifested a certain haste and did not take all the steps required to force the aircraft to obey and to land." (See Annex 2 to the Application.)

The United States Government calls attention to the fact that in other statements (see for example Annex 34 and the Bulgarian Home Service of August 3, 1955, reported at pages 178-179 *supra*) the Bulgarian Government did not modify the word "haste". With or without the adjective, the statement can only be interpreted, in spite of its vagueness and understatement, as a complete confession of the wrongfulness of the actions of the Bulgarian fighters and of the ground controllers. "A certain haste" can only mean that circumstances had not arisen in which any firing at the aircraft was justified. The word "certain" must be taken to mean "sure", and "haste" is a curious way of describing a wrongful attack. The words "did not take all the steps required" further constitute a confession of wrong. There are no circumstances recited in the Bulgarian note which would call for the El Al airplane to land under any conditions, much less to be destroyed in the air.

8. The United States Government takes this opportunity to point out further that the Bulgarian Government has not made known the full text of the report, if any existed, of the special Government commission which allegedly made the investigation. It has not made known, therefore, the names of the fighter pilots, the terms of their orders, the contents of their communications with the ground, the names of the ground controllers, including the radar observers, the commandant of the air field to which they belonged

and to which they reported, and the names of the senior supervisors, however denominated, who controlled the actions of the ground controllers. The Bulgarian Government should make these fully known to this Court and to the United States Government as a party. The United States Government has observed, in the Memorial submitted by the Government of Israel in a companion case, that the Government of Bulgaria has withheld from the Government of Israel certain other relevant documents which were requested (see Israel Memorial, pages 55 and 56). The Bulgarian Government should account to the United States Government for the copies of the manifests, flight plans, working charts and radio log of 4X-AKC found at the crash site near Petrich (see page 249).

9. The recital by the Bulgarian Government of alleged prior failures by foreign aircraft to observe the sovereignty of the air space of Bulgaria is irrelevant to this case. The incidents referred to, of protests by the Bulgarian Government to the Secretariat of the United Nations, relate entirely to the alleged incursions from the Greek border of aircraft during a period when the Government of Bulgaria was notoriously interfering with the sovereignty of the Government of Greece and aiding Greek communist rebels and *guerillas with bases in Bulgaria*. This subject is discussed in more detail in an annex (see Annex 38).

Furthermore, the United States Government believes it relevant, since the Bulgarian Government has raised the subject, to refer to the United Nations' characterization of Bulgaria's conduct in the Greek Civil War, which Bulgaria fostered.

The General Assembly of the United Nations has had a number of occasions to deprecate and condemn Bulgarian military interference in Greece. The subject, for the record, is discussed in Annex 39.

10. In any event, an overflight taking place at Trn on the west border, in a commercial passenger aircraft, of the type involved herein, would be visible to mountain and other observers all along the Bulgarian side of the Yugoslav frontier, north and west. The airplane could be visibly only that of a relatively slow propeller-driven commercial airliner. Radar observers at the various radar sites, including the one from which the fighter pilots who shot the civil airliner down originated, which apparently was Kumaritsa, and to which they were continuously reporting, would know that this was a civil airliner off course making its way from Yugoslavia to Greece. Indeed, as has been noted, the intercepting fighters could not but have read clearly painted on the body of the Constellation that it was 4X-AKC and that it belonged to the El Al Israel Airlines. This will be the subject of further comment below.

11. The "atmosphere of tension" to which the Bulgarian Government refers in its paragraph on this subject constitutes no justification for the killing of the nine American passengers, or of anyone

else. Nor does the United States Government believe, in the light of its experience in other cases, some of which have been brought to this Court, that an "atmosphere of tension" had anything to do with the incident. The United States, in pursuing the present proceeding, is more concerned with the possibility that certain governments, of which Bulgaria is one, are so dominated by the orders of another military air power that any overflight, however innocent, is met by instantaneous shooting, without warning and without inquiry. This too will be the subject of further comments below.

12. The United States Government calls attention to the expression of sympathy in the last two paragraphs of the Bulgarian Government's note of August 4, 1955. Particularly it calls attention to the statement that the Bulgarian Government "will cause to be identified and punished those guilty of causing the catastrophe to the Israeli plane and will take all necessary steps to insure that such catastrophes are not repeated on Bulgarian territory".

On this subject there is no evidence that the Bulgarian Government has taken any steps but approval and commendation of the action of the responsible persons. The Bulgarian Government, of course, knew by August 4, 1955, who the pilots were who had been sent up to intercept and shoot the civilian airplane down; it knew who had given the pilots their orders to shoot; and it knew who else was responsible for the actions of the fighter aircraft and of the ground controllers. The Bulgarian promises in this context must be taken as cynical and cruel, and as empty formalities uttered without any intention of performance. In fact, as the sequel shows, there never was any performance—there were, indeed, on the contrary, resounding official approval and, it seems, awards to participants for a praiseworthy action.

As for the sympathy for the victims and the assumption of responsibility for compensation, the present case is based upon the fact that this promise too has never been performed, and it was made deceitfully since it was never intended to be performed. The expression of sympathy was not only not equivalent to compensation; in the context it was cruel.

The United States Government submits that, in evaluating these international events and diplomatic exchanges, it is important to bear in mind what the Bulgarian Government actually did.

The Bulgarian Telegraphic Agency, the Bulgarian Government's official news agency, announced on July 28, 1955, that a Governmental commission would investigate the "circumstances under which the incident took place". The commission consisted of the Minister of Foreign Affairs, Dr. Mincho Neychev, the Minister of Internal Affairs, Georgi Tsankov, the Minister of National Defense, Army General Petur Panchevski, the Minister of Public Health, Dr. Petur Kolarov, and the Chief Prosecutor of the Republic, Yordan Chobanov. As has been noted, the commission's report

was never published, but a paraphrase of what purported to be its contents was published by the BTA on August 3, 1955 (Annex 34).

It is however most interesting to note, as evidencing the true character of the Bulgarian Government's position, that on "People's Army Day", September 23, 1955, the Bulgarian press and radio published an account of a large meeting organized by the Ministry of National Defense, the Sofia City Committee of the Bulgarian Communist Party, and other organizations, in the "Home of Culture" at the Ministry of Interior at which, it was said (*Rabotnichesko Delo*, September 24, 1955), there were thousands of commanders and soldiers from the Bulgarian People's Army, as well as others. Among the speakers was the Minister of National Defense, Petur Panchevski, as well as his deputies, and other army officers, including Major General Slavcho Turnski, and the military attaché of the Soviet Union. It is significant to note the following statements from the speech of the Minister of National Defense, a member of the commission which allegedly investigated the incident of July 27, 1955 (see Annex 33).

The radio account (Sofia, Bulgarian Home Service, September 23, 1955, 1600 GMT, referring to Order No. 94 by the Minister of National Defense of the Bulgarian People's Republic) reports General Panchevski's statements, in part, in these terms:

"Our People's Army is being built up, trained, and educated on the example and model of the glorious Soviet Army, which has been crowned with historic victories. The Bulgarian soldiers, NCO's, officers, and generals are learning night and day from the rich military and educational experiences of the Soviet Army and are persistently mastering the Soviet military art which has been proved in battle.

The Bulgarian People's Army is an inseparable part of the armed forces of the powerful camp of peace and socialism, which is a loyal protector of the peaceful building of socialism, a force which does not threaten anybody and which does not have aggressive designs toward anybody, although it is always prepared to defend every inch of the soil of the Motherland. The Bulgarian people, who are devotedly struggling for the great cause of socialism, can be convinced that the soldiers and officers will not spare any efforts to increase and improve the preparedness for battle and training of our Army so that it can crush with its mailed fist any enemy who dares to threaten their peaceful labor, their freedom, or national independence."

The editorial in *Rabotnichesko Delo*, September 23, 1955 (as reported by the Bulgarian Home Service of that day (Annex 40)), states that the Bulgarian people love their Motherland and know well how to defend its frontier. One may draw two inferences. The first inference is that the master of the Bulgarian Army at the time was the Soviet Army and secondly, that there is a significance in the emphasis of the protection of the frontier of the Bulgarian Motherland. The only occasion of any recent character in which

the Bulgarian frontier had to be "protected" was the alleged invasion of the El Al aircraft of July 27, 1955.

13. Annex 3 to the Application gives the detailed diplomatic claim note of the United States Government of August 22, 1956, delivered in Sofia through the Legation of Switzerland to the Bulgarian Government. It properly shows, since the Bulgarian Government has never challenged them, that six American claims are outstanding on behalf of decedents, totaling nine in number, for amounts specified as to each claim. The total amount is \$257,875. The United States Government does not propose, in the present document, to do more than refer to Annex 3 since there has been no contest by Bulgaria as to the nationalities of the decedents or of the claimants, the death of the decedents, the cause of the deaths, or the amount of injury suffered.

14. On August 8, 1957 (see Annex 4 to the Application, Bulgarian statement to the United States), the United States Government was first informed by the Swiss Government that the Bulgarian Government had now stated that it was "not responsible for this catastrophe". This was an astonishing statement, exactly the opposite of the statements made to the press and the public and particularly in the reply to the note to the United States Government of August 4, 1955. In that reply, among other things, the Bulgarian Government said that it was "prepared to assume responsibility for compensation due".

The United States does not believe it proper to indulge in any hair-splitting as to the meaning of words. There had been a firm, solemn admission of international liability to the United States Government. The same announced assumption of responsibility was made to all Governments concerned, and to the press and public (see Memorial of the United Kingdom, Memorial of Israel, and Annexes 31 and 33 of this Memorial).

15. The "statement" continued: "The responsibility lies with the Israeli Company". No explanation was made by Bulgaria of this statement. As will be seen below, even if the El Al Israel Airlines should in the context be deemed guilty of some wrong in permitting the Constellation airplane 4X-AKC to drift or fly over Bulgarian territory, that would not constitute any legal justification whatever for Bulgarian fighters to kill innocent American passengers on board the plane. This subject will be discussed more fully below, but certainly nothing is recited by the Bulgarian Government in the way of facts or law to transfer liability from the Bulgarian Government to the El Al Airlines, at least in so far as innocent passengers are concerned. It was Bulgarian fighters, under Bulgarian official control and orders, which attacked and killed the American passengers.

The "statement" proceeded to recite that as a "gesture" the Bulgarian Government was willing to make an *ex gratia* grant to

the families of the victims, on a per capita basis, of 56,000 leva, the Bulgarian local currency. This serves to make the Bulgarian Government's position more untenable. Even if the compensation were in any sense, in any case, adequate, the *ex gratia* aspect alone would make the offer unacceptable to the United States Government. The acceptance of the Bulgarian offer would serve as a precedent justifying the killing of American passengers hereafter, in any innocent aircraft, in any part of the world, which might unintentionally or for any valid reason overfly, without danger to the security of any country, the air space claimed by any other country. Millions of Americans, in American and foreign civil aircraft, travel by air. Moreover, it would justify and provide a precedent for the killing of air crews throughout the world (many of them consisting of Americans) and the destruction of American civil aircraft engaged in international air travel. The United States Government conceives that it owes a duty to its citizens and to all the civilized world to resist and to oppose this action of the Bulgarian Government. It believes, respectfully, that the proper forum for this highly important international action is the International Court of Justice.

16. The United States Government calls attention to the following statistical facts:

The publications of the International Civil Aviation Organization, covering the air miles flown by airlines of the states which are contracting members, show the following as to the proportion and absolute kilometerage of international flight by American airlines (Annex 41):

	Total Scheduled Services International & Domestic		International Scheduled Operations	
	Kilometres Flown	Passenger Kilometres Performed	Kilometres Flown	Passenger Kilometres Performed
<i>1951</i>				
United States	836,192	21,185,531	160,454	4,296,658
Total for 57 States	1,570,809	34,308,918	494,642	11,672,798
<i>1952</i>				
United States	933,350	25,025,063	170,659	4,867,000
Total for 58 States	1,708,276	39,413,155	538,235	13,240,980
<i>1953</i>				
United States	1,040,509	29,211,933	182,788	5,458,168
Total for 61 States	1,889,762	46,180,698	584,723	15,114,680
<i>1954</i>				
United States	1,110,044	33,168,656	200,209	6,128,513
Total for 65 States	2,064,887	53,936,730	615,930	16,457,147
<i>1955</i>				
United States	1,255,127	39,188,013	226,438	7,248,352
Total for 66 States	2,293,776	61,717,886	665,103	18,856,342
<i>1956</i>				
United States	1,399,061	44,454,062	258,909	8,410,537
Total for 70 States	2,536,447	71,148,216	775,260	22,870,565

17. The reports of the Secretary of the Treasury of the United States on the State of the Finances for the fiscal years ended June 30, 1954, 1955, 1956 and 1957 show the following (Annex 42) with regard to incoming passengers by air. These facts are cited, although they naturally involve only transoceanic and overland flight into the United States. It is submitted that they have a bearing on the total number of American citizens and aircraft engaged in international air travel.

Aircraft and Aircraft Passengers
Entering the United States

Year	Aircraft	Aircraft Passengers
1954	99,906	1,693,070
1955	117,598	2,004,741
1956	129,931	2,488,528
1957	145,074	2,785,083

18. The United States Immigration authorities report a further breakdown of these figures—they show the following (Annex 43):

PASSENGERS DEPARTED FROM THE UNITED STATES
TO FOREIGN COUNTRIES
BY AIR

	Aliens	Citizens	Total
1955	305,771	722,493	1,028,264
Flag of carrier:			
United States	170,143	528,380	698,523
Foreign	135,628	194,113	329,741
1956	348,984	886,862	1,235,846
Flag of carrier:			
United States	183,620	637,503	821,123
Foreign	165,364	249,359	414,723
1957	366,825	1,029,873	1,396,698
Flag of carrier:			
United States	169,028	700,393	869,421
Foreign	197,797	329,480	527,277

PASSENGERS ARRIVED IN THE UNITED STATES
FROM FOREIGN COUNTRIES
BY AIR

	Aliens	Citizens	Total
1955	396,953	780,593	1,177,546
Flag of carrier:			
United States	220,446	588,553	808,999
Foreign	176,507	192,040	368,547
1956	481,565	925,528	1,407,093
Flag of carrier:			
United States	255,515	686,816	942,331
Foreign	226,050	238,712	464,762
1957	650,360	1,005,738	1,656,098
Flag of carrier:			
United States	324,897	716,647	1,041,544
Foreign	325,463	289,091	614,554

19. The Civil Aeronautics Board of the United States Government also maintains statistics on points of origin and destination. They report the following facts of relevance to the present immediate case:

PASSENGER-MILES OF U.S. REGISTERED AIRLINES
BEYOND THE CONTINENTAL LIMITS OF THE UNITED STATES
WITHIN EUROPE, AND WITHIN EUROPEAN AIR CORRIDOR "AMBER 10"
CALENDAR YEARS 1955, 1956, AND 1957

Area	Passenger-miles (ooo)		
	Calendar year 1955	Calendar year 1956	Calendar year 1957
Beyond continental limits of U.S. ¹	5,322,109	6,430,932	7,658,929
Within Europe ² :			
Pan American	271,232	343,656	390,028
TWA	180,667	206,312	200,095
Total	451,899	549,968	590,123
Via Air Corridor "Amber 10":			
Between Frankfurt and Salonika ³	13,899	13,968	15,947
Within Yugoslavia ⁴	9,434	9,220	10,332

¹ Includes scheduled and non-scheduled passenger-miles of U.S. certificated and noncertificated carriers. Contains some inter and intra-territorial travel as well as travel between the continental U.S. and U.S. territories or possessions. Also includes that travel over the U.S. mainland occurring, on outbound traffic, between the last point of U.S. takeoff and the continental U.S. boundary and travel between this boundary and the first point of U.S. landing on inbound flights. Excludes operations between the United States and Canada for some carriers.

² Annual estimates obtained by multiplying the monthly volume for March and September by six. Includes only scheduled operations of Pan American and TWA and excludes nonrevenue passenger-miles for PAA. Passenger-miles in non-scheduled operations of U.S. carriers are not available. Includes travel occurring within the continental limits of Europe. For this tabulation, Ireland and the British Isles were considered part of the European mainland but Iceland was excluded. For those flights departing or entering Europe the distance flown over European soil was computed to or from the point where the normal flight path would cross the European continental boundary.

³ Includes operations of only Pan American and excludes U.S. carrier non-scheduled traffic, if any. Data were compiled by Pan American World Airways, Inc. by multiplying the manifest passengers between Europe and Istanbul by 1,002 miles—the "Amber 10" air distance from Frankfurt to Salonika.

⁴ Includes operations of only Pan American and excludes U.S. carrier non-scheduled traffic, if any. Data were developed by determining the number of passengers passing through Yugoslavia (assuming no deviation from normal flight routes) from traffic flow reports for March and September and then multiplying by the scaled air mileage within Yugoslavia via "Amber 10".

Data were inflated to annual volumes by multiplying by six. Source: Carrier reports to CAB and Pan American's New York office.

20. Experts of the Air Transport Association, a trade association of all American air carriers, report with respect to the origin and destination passenger miles covered by all aircraft in the Amber 10 corridor, which the El Al airplane was scheduled to fly. It is submitted to the Court that these figures too are particularly indicative of the grave importance, to all who travel by air, of this case. The report is:

On the basis of 1958 statistics of published schedules air traffic experts of the Air Transport Association of America have estimated that about eighty-nine commercial flights have been operating weekly in the Yugoslav Corridor and that, assuming that they operate at fifty percent capacity, they carry 3,100 passengers a week. The aircraft used include DC-6's, DC-7's, Constellations and Viscounts.

They have estimated also (Annex 44) that in 1951 world air passengers flying in international air transports, on the basis of reports filed by member governments with the International Civil Aviation Organization, were 7,047,000, whereas by 1956 there were 14,121,000. One can extrapolate this constant rate of growth by showing that in 1955 approximately 3,000 passengers a week were transiting Yugoslavia in or about the Amber 10 Corridor enroute to or from the Middle East and Far East. These figures include individuals traveling on the Dutch KLM, the Belgian Sabena, the British BEA, the Israeli El Al, the Polish LOT, the Yugoslav JAT, the Iraqi, the German Lufthansa, the Lebanese-British MEA, the United States Pan American, the Scandinavian SAS, Swiss Air, Air France, and possibly other airlines, such as the Greek Olympic Airline.

One may further consider that in the summer, which was when 4X-AKC flew, air tourist traffic, such as the flight in which 4X-AKC

was engaged, was in substantial excess of annual average, and that since 1955 it has been growing even greater.

A review of the *Official Airline Guide* schedules for August 1958 shows the following scheduled air services operated through the air space of Yugoslavia.

1. Vienna-Tel Aviv: 2 per week in each direction — El Al
2. Vienna-Istanbul:
 - a. 2 per week in each direction — Middle East Airways
 - b. 1 per week in each direction — Iraqi Airways
 - c. 3 per week in each direction — KLM
 - d. 3 per week in each direction — SAS
3. Belgrade-Athens:
 - a. 2 per week in each direction — Jugoslovenski Aerotransport
 - b. 2 per week in each direction — Polskie Linie Lotnicze
4. Vienna-Athens:
 - a. 1 per week in each direction — KLM
 - b. 3 per week in each direction — Sabena
 - c. 1 per week in each direction — SAS
5. Belgrade-Istanbul: 2 per week in each direction — Jugoslovenski Aerotransport

The foregoing shows a total of forty-four flights each week. It may be assumed that while the average annual load is usually taken as fifty percent of capacity, the summer load is far in excess of that, particularly considering tourists, summer visitors and the like.

This, of course, is exclusive of traffic in the Amber 10 corridor originating at other points than the above.

In every possible sense, therefore, the Yugoslav Corridor is, and was in July 1955, a highly important channel for air transportation of persons and cargo between the West and the Middle East and Far East, with their hundreds of millions of persons and the increasing contacts between the Middle and Far East and the rest of the world.

21. The "statement" of the Bulgarian Government of August 8, 1957 (Annex 4 to the Application), requested the American view. The American view was conveyed to the Swiss Legation in Sofia on October 11, 1957 (Annex 5 to the Application). The American note recited facts, based to some extent on American investigations theretofore conducted and largely on the published report of the Israel Government's Ministry of Communications called "Report of Commission of Inquiry on the Shooting Down of El Al Aircraft 4X-AKC on 27 July, 1955". The United States Government reject-

ed the proposal and repeated the request for the sum of \$257,875. The note expressed the United States Government's

"astonishment at the reversal of policy and attitude, as well as at the failure of the Bulgarian Government to keep its word solemnly made to the United States Government and to the world at large following the unjustified destruction of the El Al aircraft and the killing of its innocent passengers and crew. While the Bulgarian Government now denies responsibility for the destruction of the aircraft, that has not been its position heretofore."

The note pointed out further that if the Bulgarian Government had any complaint about overflight "it should have resorted to the usual international practice of noting and identifying the aircraft and engaging in diplomatic communications with the Israel Government looking toward a non-repetition of the incident if possible".

The note closed with the statement:

"The United States Government cannot accept, in such a case of clear and admitted violations of international law, any conditions making payment a matter of grace or arbitrarily limited in amount without regard to actual damage inflicted and suffered.

The United States Government is also concerned with the principles of this matter, in as much as its nationals operate the largest international mileage and number of aircraft in international civil aviation, and large numbers of its nationals use the international civil aviation airlines of other countries. It must assume that every government, whether or not involved in the El Al incident, is concerned with a declaration of the reprehensibility of the conduct of the Bulgarian Government in the El Al Case and an assurance that such conduct will never be repeated."

22. It will be seen, therefore, that the United States Government, on its own account and as *parens patriae* for the American people who travel by air, has a special interest in the safety, in foreign countries and in the international flight from country to country, both of American passengers and crews and of the crews and aircraft of other countries. It is also interested that law and order in the international transport by air shall reign everywhere according to civilized standards.

C. THE UNITED NATIONS MEMBERSHIP OF BULGARIA AS A FACTOR

The United States Government, of course, can only infer from the available facts what motives impelled the Bulgarian Government to reverse its widely and loudly announced previous commitment and to repudiate its international obligations in a matter of such concern to all nations and all governments, not only those whose nationals were the victims of the Bulgarian Government's conduct.

The United States Government in its Application noted that the Bulgarian Government's admission of liability to the United States

Government was made before Bulgaria's election to membership in the United Nations, and its repudiation was made after its election. This fact, it must be concluded, throws considerable light on the state of mind of the Bulgarian Government in making the promises and representations which it has now repudiated and colors them. For the Bulgarian Government undoubtedly knew the names of the pilots, ground control officers and senior commanders responsible for the destruction of the aircraft and the death of the 4X-AKC passengers and crew when it informed the United States and the world that it would seek to identify them, as though they were unknown, and would punish them, as though they had not already rewarded them and lauded them. In this case it appears clear that the Bulgarian Government's main concern was that this act of calculated killing of innocent people concerned the Bulgarian Government only to the extent that it might prevent its admission to the company of nations in the United Nations from which it had been excluded on account, in large part, of its prior conduct in violation of international agreements.

That this is true is intimated, particularly, in the Memorial of the Israel Government in the parallel case, pending before this Court, against Bulgaria. The Israel Government states, in substance, that, on September 15, 1955 and thereafter, the Bulgarian Government's representative in Israel requested the Israel Prime Minister and Minister for Foreign Affairs, Moshe Sharett, *not to use the incident of July 27, 1955, as an argument for the denial of the admission of Bulgaria to the United Nations.* The Israel Memorial states (paragraph numbered 30, page 61) that there were several conversations and that the first took place September 15, 1955. It says:

"In subsequent conversations the Bulgarian Minister further expressed the hope that the incident would not affect the favourable attitude traditionally held by Israel regarding Bulgaria's admission to the United Nations, at the forthcoming Tenth Session of the General Assembly, then about to convene."

The Bulgarian Government laid great importance on persuading the members of the United Nations to admit it to that body. From the beginning of its independence following the Peace Treaty of 1947 it continuously sent applications for membership, in various forms, to the Members of the United Nations, to the members of the Security Council and to the Secretariat, stressing its qualifications under the United Nations Charter and its promises to abide by its provisions.

At the same time the history of the attempts of Bulgaria to gain admission to the United Nations makes it clear that Bulgaria at no time suggested that it was not bound by all the provisions of the Charter. The failure of Bulgaria to be admitted was not Bulgaria's doing. The records of the United Nations show that Bulgaria attempted continuously to gain membership and its application was unconditional (see Annex 45 a).

Had members known of the concealed intent of the Bulgarian Government to repudiate the obligations solemnly undertaken openly before the whole world to punish those guilty of the killing of the passengers of the El Al airplane on July 27, 1955, to prevent a recurrence and to pay damages in full, and so to gain the respect of the world, it may be considered doubtful whether the admission of the Bulgarian Government to the United Nations would have taken place, or taken place with the celerity it did. Eleven governments lost nationals in this disaster and the world was horrified.

Bulgaria properly had long had a difficult time persuading the membership of the United Nations that it should be admitted. This is indicated in Annex 45 b.

The United States Government submits that the guilt of the Bulgarian Government for the incident of July 27, 1955, is compounded by its conduct with reference to its admission to the United Nations; for its representations of suitability for admission were in fact conditioned on the performance of its promises to punish the guilty and to exculpate itself from its heinous violations of basic human rights and decency.

The point does not need laboring that the Government of Bulgaria is controlled by the Government of the Soviet Union, not only in its legal standards but in its military operations. The United States Government thinks it relevant to call the Court's attention to documents in the files of this Court, forming part of its records, in Applications by the United States Government against the Government of the Union of Soviet Socialist Republics on account of unprovoked shooting down of innocent United States aircraft. It will be noted that several aspects of these Applications are relevant to a consideration of the Bulgarian conduct in the present case.

In the first place, the evidence offered to be produced by the United States Government in this Court, if the Soviet Government would accede to the Court's jurisdiction, would show that it was then apparently Soviet policy to shoot down allegedly overflying aircraft without warning and with the purpose of killing all of the persons aboard the innocent aircraft (see for example Aerial Incident of October 7, 1952, *United States of America v. Union of Soviet Socialist Republics*, pages 15 *et seq.*; *United States v. Union of Soviet Socialist Republics*, the Neptune Case, Application filed August 22, 1958; see also *United States of America v. Czechoslovakia*, Aerial Incident of March 10, 1953, pages 14 *et seq.*).

It is noteworthy that in the standard case of such shootings the Soviet Government would reply usually that its fighters did not intercept the innocent American aircraft for the purpose of shooting it down but for the purpose of advising the pilot of the American aircraft that it should follow the fighters and land on Soviet territory (see for example pages 17 *et seq.*, Incident of October 7, 1952) or in some cases to advise the American pilot that he was flying over Soviet territory and should fly away from it (Annex 46).

This Soviet position, which the United States has charged was factually untrue in regard to the incidents for which the United States made claims against the Soviet Union, is repeated in the Navy Neptune Case of September 4, 1954, now pending before this Court.

The fact is obvious that the military authorities in control of the Air Defense of Bulgaria on July 27, 1955, and at the relevant times thereafter, and the Bulgarian Government, had no intention of performing the promises of payment, punishment and correction; that they in fact had an opposite intention at the time, which constitutes deceit and fraud; that this was done in large part to gain admission into the United Nations, which might otherwise have been denied.

D. EVIDENCE PRODUCED BY INDEPENDENT INVESTIGATION

The United States Government submits that on the merits a sufficient case against the Bulgarian Government for judgment, in accordance with the Application filed with the Registrar instituting these proceedings, has already been made out. The points of law which support this submission will be discussed below.

But to make certain that there was no factual doubt as to what had happened, and to prevent an obfuscation of the issues by verbalisms, the United States Government has conducted its own investigation and relied upon its own experts in relevant aspects of this case. While necessarily limited by the notorious unwillingness of the Bulgarian Government to permit any investigation upon its soil, exemplified in the Bulgarian Government's treatment of the Israel Government's Commission of Inquiry after the incident of July 27, 1955 (discussed in the Memorial filed in this Court by the Government of Israel in regard to the same matter and in the Report of the Commission of Inquiry published by the Ministry of Communications of the Government of Israel, as well as by the Government of the United Kingdom in its Memorial regarding this matter), the United States Government has been able to amass evidence and testimony overwhelmingly demonstrating the liability of the Bulgarian Government to the United States Government in this case for the killing of the American nationals aboard the El Al plane 4X-AKC and other damage suffered by the claimants whose claims the United States Government has espoused.

At this stage the United States Government cannot anticipate what excuses will be made or what contentions of justification will be asserted by the Bulgarian Government in subsequent pleadings. In this Memorial the United States Government can only consider the allegations of fact, as well as the legal defenses, already asserted by the Bulgarian Government in so far as they affect the United States Government's case against Bulgaria.

The Bulgarian Government, in its note of August 4, 1955, stated that on July 27, 1955, at 7.10 local time an El Al Israeli aircraft

"entered Bulgarian air space in the area of the town of Trn without any warning". It stated that there followed a penetration of 40 kilometers and that then the aircraft overflew the towns of Breznik, Radomir, Stanke Dimitrov and Blagoevgrad, and continued in a southerly direction for approximately 200 kilometers over Bulgarian territory.

An examination of the map of Bulgaria and the surrounding Yugoslav area (see Annex 37) is useful for a consideration of this matter. In the absence of direct observer testimony, visual or radar, any reconstruction of the navigational situation which brought about the flight of this airplane from Vienna, past Belgrade, so that it crossed into Bulgaria instead of traveling through Yugoslavia to Greece, is a matter of conjecture and expert opinion. This is the consequence of the very conduct of the Bulgarian Government now complained of, its killing of the witnesses who could best explain how this diversion happened, namely the members of the crew. But it is noteworthy that the Bulgarian Government's description of overflight shows that the airplane came from the direction of Belgrade and that as soon as the pilot could see, in the daylight and lying ahead of him, the only large city in the area, which is Sofia, he immediately turned away and flew westward and then into a southerly direction following either the Struma Valley or the Yugoslav mountain area. The United States Government notes that the exact course of the 4X-AKC, from Belgrade over the Bulgarian border and within Bulgaria, is necessarily best known by Bulgaria, since Bulgarian radar and radio stations, ground observers and aircraft followed it. The Bulgarian Government should therefore, at the latest in its Counter-Memorial, make available duly authenticated copies of all logs, camera film, and reports which bear on this subject (see pp. 249-250 below).

When the Bulgarian authorities sent up their fighter planes to intercept, and it is believed to destroy, the airliner 4X-AKC, it had not only moved west from Sofia but was obviously going in a southwesterly direction which would soon bring it out over Yugoslavia or Greece.

1. The United States Government, as has been noted above, filed its Application largely upon the basis of the evidence obtained by the Israel Government's Inquiry Commission (Annex 18 in the Israel Memorial in the parallel case pending before this Court). From an analysis of the evidence recited in that report, plus such additional evidence as was then available, it was obvious that, as the Bulgarian Government itself admitted, its fighters had wilfully and unlawfully fired upon and destroyed the 4X-AKC while the civil airplane was innocently overflying Bulgarian territory enroute from Vienna to Tel Aviv. The United States Government said, based on the statements of the Bulgarian Government as to the course of the airplane and the statements of Yugoslav and Greek witnesses as to the circumstances of the shooting, that the

4X-AKC had "apparently unbeknown to the crew" been driven slightly off course, in Yugoslavia, by unpredicted strong local winds at high altitude in sudden turbulent weather and poor visibility. It was fired upon while attempting to return to its course and as it was about to leave Bulgaria.

The United States Government emphasized that the American individuals who were killed had no part in the navigation or control of the aircraft but were merely passengers who had purchased international flight tickets and the aircraft was flown in accordance with standard international civil aviation procedures.

The best evidence of what happened would come from the members of the crew and the passengers, of course, and they are dead. The conclusion in the United States Government's Application, on this score, is based on the conclusions consistent with the facts known. These conclusions would assume that the airplane might have been driven off its course, either at Belgrade or just south of it, or some other place in Yugoslavia on a route in the air, which the airplane had taken as its course. Whether the pilot of the airplane was trying to fly Amber 10 is a matter that is irrelevant and unknown. At least he had filed at the Vienna take-off that he was going to fly Amber 10 and Amber 10 was the only permitted corridor for overflight within Yugoslavia in accordance with the Yugoslav outstanding law at the time (Annex 47). Whether the beacon at Skoplje was reliable or in actual operation at the time or whether 4X-AKC made its course, with the implied consent of the Yugoslav Government, over the portion of Yugoslavia east of the Amber 10 corridor, is not essentially relevant. It will be recalled that 4X-AKC was about thirteen hours late; that there is no evidence that the beacon at Skoplje was operating at that hour, for the Yugoslav authorities became aware of a possible overflight presumably only at 0314 GMT when beacons not attended for twenty-four hours continuously would not be in operation; nor, if operating, whether it could be heard by the pilot in the prevailing atmospheric conditions. It is clear that the winds were, in different portions of the course, in fact, stronger than predicted. If 4X-AKC was for some reason flying further east of the corridor by intent, it could have been possibly driven still further east, and therefore slightly into Bulgaria, by any unpredicted velocity of local winds actually encountered. The guilt of the Bulgarian Government is no less obvious or heinous.

2. If we assume the correctness of the Bulgarian Government's version as to the course of the aircraft, one can grant the Bulgarian military authorities stationed near Sofia a certain amount of concern when an unidentified aircraft was seen on radar flying towards Trn and then from Trn to Breznik, which was parallel to the Kumaritsa air base and in a further line and proximity toward Sofia. Presumably this observation was made by various radar stations,

including the one at Kumaritsa. The Bulgarian Government does not state from what direction the plane had been flying before it reached Trn. It is consistent with the Bulgarian Government's actions that the airplane had been flying in the corridor allowed for travel from Belgrade to Sofia known as the Dimitrovgrad Corridor. Nevertheless, either before, or certainly after, the fighter aircraft from Kumaritsa were airborne, the ground controllers could not but have seen that the unidentified aircraft had turned and was on a southward course from Breznik to Radomir and from Radomir to Dupnitsa. That could mean to a ground controller, who must have conveyed this information to the fighter pilots in the air in order to enable them to find out where to go to intercept and identify the otherwise unidentified intruder, that the airplane was not flying toward any populated center nor constituting any security risk to Sofia or the airfields around it.

Whatever source of concern 4X-AKC could have been to the radar or mountain observer coverage of the aircraft while the El Al plane was at Breznik, its turn southward showed that it was leaving the country. In fact it must be presumed that the airplane would have been back in Yugoslavia after the pilot observed his error when he saw, near Breznik, that there lay before him the very large, and only large, city in that part of the world, Sofia. It must be presumed that he was attempting to get out of Bulgaria.

It seems hardly credible that at this point the pilot should not have been engaged in some communication with the Air Traffic Control Center in the area of Sofia by VHF as well, perhaps, as by CW. In this he made his presence known and, if he was intentionally there, he asked for permission either to come down or to continue to Greece. It is also hardly credible that Air Traffic Control did not reply, apparently denying him that permission or, even if it did not reply, it is not credible that the Air Traffic Control and military observers did not see him turn to a southwest course on his way back to the course described in his flight plan filed in Vienna and notified to Belgrade by CW, on an international frequency which could be monitored by all local governments, including Bulgaria. The other conversations the pilot or his radio operator had then, and from then on, with ground control in the area or with Lydda, is a matter on which this Government is at this time not fully informed. But the effect of such evidence could only lend support to the guilt of the Bulgarian Government; it is not otherwise necessary to the present case.

The Bulgarian Government's disclosure, as above requested, and as detailed below (page 249), should include the radar coverage of all functioning Bulgarian radar equipment, as well as the contents of all mountain observer reports, and should include all messages between the fighter aircraft and the ground controllers, from the beginning of their dispatch to intercept the unidentified aircraft until, and including, the filing of their reports on returning to base.

Why the pilot of the El Al airplane, an established civil airliner, came down the Struma Valley rather than down the Vardar Valley in Yugoslavia, which was the route he or his radio operator reported he was on by standard international radio signals known as CW (Continuous Wave) to the Air Traffic Control authorities in Belgrade and the route which he was required by the Yugoslav overflight authority to take (Annex 48), the United States Government can only speculate, for the pilot and crew are dead. This speculation, is, in essence, of no legal consequence to the claims for the killing of the passengers nor, if it is submitted, would it be for the killing of the crew, and the passengers were in no sense responsible for the crew.

Certainly the passengers had no interest in overflying Bulgaria. Each of the American passengers' passport applications, and each passport thereunder, was specially stamped as "not valid for travel in Bulgaria". This policy of the United States Government was well-known to international carriers, whether by air or by sea.

But consideration has been given to several possibilities, necessarily as expert speculation.

3. If the pilot deliberately chose to fly over Bulgaria, his radio operator was nevertheless reporting to the Yugoslav authorities that he was over Yugoslavia. This is shown by the log of communications with the ground (see Annex 49). If this overflight of Bulgaria was deliberate, a consideration of the circumstances rings a conviction that the pilot had reason to believe, either from an understanding with Bulgarian ground authorities or from informal permission, that this would be safe both for himself and his passengers. The aircraft was well marked, as photographs attached to the Israel Government's Inquiry Commission Report and the United Kingdom Memorial show, in accordance with international civil aviation practices. It was not engaged in evasive maneuvers or in activities over Bulgarian defenses which might induce the Bulgarian authorities to be apprehensive. This is not even alleged by the Bulgarian Government, nor would it constitute a defense for the shooting without warning or opportunity to protect the passengers.

4. Furthermore, while the aircraft may have started out with navigational equipment in apparently good condition, as asserted by the Israel Inquiry Commission (report page 6 attached to the Israel Government's Memorial), local turbulence or defects developing in the equipment may have caused the pilot to be drawn onto the course from Belgrade toward Sofia, shown in the annexed map (Annex 37), following perhaps the Sofia beacon instead of the course from Belgrade to Skoplje. The pilot, BEN PORAT⁵, had flown

⁵ The United States Government has no information to the effect that Captain Hinks acted as commander of the aircraft as might be inferred from a reading of Annex 4 of the Israel Memorial. It is not clear from the Annex, or from the content of the Israel Memorial, what purpose this document serves. The United Kingdom

this course only twice, according to the Israel Memorial (paragraph numbered 32, page 63), in June 1955 and once earlier in July 1955. The Skoplje course, witnesses have stated, had a beacon that was not at that time always reliable. It was probably not in operation at the time of day 4X-AKC was in Yugoslavia, as has been indicated.

The Radio Facilities Chart for Europe, dated July 1, 1955, published by the United States Air Force, shows the Skoplje beacon to be operating from thirty minutes before sunrise to thirty minutes after sunset. The United States Nautical Almanac for July 1955 indicates that sunrise over Belgrade was at 3.17 A.M. GMT, or 4.17 A.M. Belgrade Zone Time (GMT plus 1 hour). At Skoplje on that day sunrise was at 3.21 A.M. GMT, or 4.21 A.M. Skoplje Zone Time (GMT plus 1 hour). It therefore would appear that the pilot might not have made radio contact, or did not succeed in making contact, with the Skoplje beacon, since he did not report over Belgrade until 0414 local time on July 27, 1955. He did not call Skoplje Tower (not the beacon, which was a separate installation) until 0613, saying he was over it at 0510 GMT. Whether the operators of the beacon were at work promptly at the time, particularly since no advance notice was given to the beacon employees of the flight of 4X-AKC—thirteen hours, perhaps, off schedule—is a question of fact.

Pilot BEN PORAT may have been moved off course by reason of the Sofia or Alexandroupolis beacons, or otherwise. Not finding the Skoplje beacon working, if indeed he was seeking it, he may have been seeking the Mikra (that is, Salonika) beacon, closer to course, and got the Alexandroupolis beacon. Or, of course, he may have sought to rely on the Sofia beacon.

The United States Government finds it of interest to point out that the air to ground station CW log of 4X-AKC in flight is confused. The Yugoslav Government's report indicates that at 0613 local time 4X-AKC called Skoplje ground station and reported passing over Skoplje at 0510. He was however having alto-stratus clouds at his altitude (see Annex 49). The ground-to-air communications first reported in the Israeli Ministry of Communications' report stated that at 0433 GMT the airplane estimated Skoplje at 0517 and at 0513 reported Skoplje beacon at 0510, 17,500 feet altitude. In a revised Annex 27 the Israel Government has stated to this Court that at 0433 4X-AKC estimated arrival at Skoplje at 0517 and at 0513 stated its position over Skoplje at 0510, altitude 17,500 feet.

The radio operator's report of his presence over Skoplje at 0510 would be approximately seven minutes ahead of flight schedule. The radio operator, no doubt under orders, had been making CW

Memorial claims that Captain Hinks acted as pilot when the aircraft left London; but the flight plan filed at Vienna, and the statements of witnesses on the ground, show the pilot was Ben Porat, who was being checked out as pilot. Captain Hinks, during this trip, was supposed to be checking Ben Porat out as a qualified pilot.

reports to the ground reporting points according to the flight plan calculated prior to leaving Vienna, rather than by visual observation. It may be that the radio operator, if not the pilot, had confused a town like Nis, or even a town in Bulgaria, such as Trn, by visual observation through clouds, with Skoplje and therefore increased the estimated speed of the aircraft in the air, revising further the times for the subsequent reporting points in its flight plan. Nis would appear on the right, on the route from Belgrade to Sofia, Trn possibly on the left, when the radio operator, if not the pilot, thought that the only large town at that point would be Skoplje. This, of course, at the present stage, is even more speculative. This might also explain the slight turn to the south east on the Belgrade-Sofia route evidently reported by the Bulgarian authorities. The Bulgarian radar and observers' reports would add much to a clearer explanation.

In any case, when the pilot saw a large city ahead, he obviously, as the Bulgarian Government's account states, attempted to fly away from it toward the west. In this connection, every person with any understanding of aviation, or even sailing at sea, knows how preposterous is the Bulgarian Government's assertion in its note of August 4, 1955, that "Equipped with the most modern aerial navigating instruments, it could not have failed to be aware of the fact that it had violated Bulgarian air space". The intrusion here was 24 miles, at an altitude of 17,500 to 18,000 feet, in an area of no sure landmarks or visual checks.

What part local weather conditions, local storms or local winds of unpredicted velocity had, we do not know, for the Bulgarian Government has made the knowledge of that impossible. We now know that in part of the area of Amber 10, mostly to the south, nearer Greece, winds were in excess of those predicted to the crew at Vienna (see Annex 50). The United States has found no evidence in fact, in the relevant meteorological data available to it, that the 4X-AKC could have been involuntarily forced into Bulgarian territory by unforecast winds. In this regard it is noted that forecasting of the influence of wind on navigation in air space is in large part dependent first on accurate and frequent observations of relevant meteorological data, such as upper air winds, and second on the accurate and frequent communication of these observations to other flight information centers, such as Vienna, from which airplanes take off or over which they fly, so that pilots undertaking flights may take these observations fully into account in flight planning and in navigation.

In any case the Bulgarian Government has made it clear by its own reports that at the place where the El Al aircraft was intercepted by Bulgarian fighters Bulgaria was indistinguishable at the aircraft's altitude from Yugoslav territory. Visual observation by the pilot could not show him, at the point of interception and southward, where Yugoslavia began and Bulgaria ended.

5. The United States Government submits that, in the circumstances of this case, as soon as the Bulgarian authorities noticed that an unidentified and unauthorized aircraft had entered Bulgarian air space it was the duty of the nearest Air Traffic Control Center to communicate with the 4X-AKC by voice or CW, inform it of its error, and order or permit it to go back to Yugoslavia. If it suspected danger to Bulgarian security it should have ordered the plane to land at an appropriate landing field. Instead, the Bulgarian Government, without warning, sent up fighters with orders to kill.

6. Whether or not the aircraft, having turned to the west, was intending to seek out its flight plan course, by visual comparison of the terrain with a pilot's map, the United States Government is prepared to prove, by testimony, that south of Blagoevgrad (generally known as Gorna Djumaja) the two Bulgarian fighters were seen from the ground, by numerous witnesses, engaged in hostile maneuvers.

One of the fighters moved in a manner to prevent the El Al aircraft from crossing the invisible line that would bring it into Yugoslavia. Undoubtedly, that Bulgarian pilot was being guided by ground controllers who were watching him on radar and by mountain top observers who were in communication with the ground controller by other methods of simultaneous communication. It is indeed quite possible that the 4X-AKC actually crossed into Yugoslavia, flying westward, and was driven back into the Struma Valley south of Blagoevgrad (or Gorna Djumaja). This may be true in spite of the testimony said to have been obtained by members of the Israel Inquiry Commission from Yugoslav mountain top observers near the point of joinder of the Yugoslav, Bulgarian and Greek borders to the southwest (see United Kingdom Memorial).

The second fighter plane was observed by ground witnesses to be making rolls and loops around the El Al airplane. The two fighters, between them having shot at the 4X-AKC setting it afire, kept the 4X-AKC from flying into Yugoslavia. Then as the three approached the Greek border, the fighters having shot at 4X-AKC some more, maneuvered to keep 4X-AKC from getting into Greece.

Shortly after the interception was made below Dupnitsa, as ground witnesses saw and heard, the fighter aircraft began firing at the El Al airplane, particularly at its tail portion, causing it at once to burn and smoke. This was seen along the route from as far north as Simitli, down across the mountains to the East-West Strumitsa Valley that lies just north of the Belasitsa mountains marking the frontier with Greece. The plane was then observed by ground witnesses to fall considerably in altitude (the log contained in the Israel Investigation Commission Report shows that in its last normal report, 4X-AKC was at 18,000 feet altitude) to a lower level of approximately 1,000 meters. It could not have gained

enough altitude to cross into Greece or into Yugoslavia. The airplane, according to eye witnesses, was seen coming over the mountains from the Yugoslavia area and into the East-West Strumitsa Valley obviously looking for a place to land. There was a possible landing place in the valley, northeast of Petrich, on the road to Sherbanovo. But the Bulgarian fighters, although the plane was burning and was coming down in Bulgaria, continued to fire. Witnesses have testified (and the testimony of some of them at the Greek border at the vantage point of Promachion is contained in the Appendix to the Israel Inquiry Commission Report), in the United Kingdom Memorial, as well as in Annex 52 to the United States Memorial, the Bulgarian fighters shot at the passenger aircraft from the side and directly into the part of the airplane in which the passengers were confined. This is confirmed by Yugoslav border witnesses, most of them cited in the same Israeli report and included in the United Kingdom Memorial.

As the United States Government will show, the Bulgarian fighters last shot into the 4X-AKC, while it was smoking and on fire, in about the area of Samuilovo, southeast of Petrich, and looking for a place to land on Bulgarian soil northeast of Petrich.

7. There is no question as to signals or warning. The witnesses interviewed by the United States Government indicate that none were ever given by the fighters. There is therefore no question whatever about the rules as to signals or their character. After the interception the Bulgarian fighters took up hostile positions, concentrating on the rear of 4X-AKC and then on the passenger area of the civil transport. The purpose of the fighters was to kill and destroy, not to convey any kind of signals at all.

8. There is room for considerable speculation why the CW communications from the aircraft to the ground, as published in the Israel Memorial and as taken down by Yugoslav authorities to whom the aircraft reported, show no communications whatever between 0528 GMT and 0537 GMT—nine minutes. The communication of 0528 was a good-by message to Yugoslav air traffic control and 0537 was an SOS message received by Athens from 4X-AKC. Obviously during this time the 4X-AKC was being attacked and shot at by the Bulgarian fighters.

The United Kingdom Memorial (paragraph 47) speculates that the lack of radio communications in the reported log may have been due to the radio operator's involvement in performing his duties respecting El Al decompression procedure resulting from the depressurization caused by the shooting by the fighters.

This, of course, is a matter of speculation. The United States Government wishes to point out that at this stage two other speculations are equally valid: First, whether, in fact, the radio operator was not busy transmitting messages by CW on another frequency, perhaps to Sofia and certainly to Lydda. Secondly,

whether he might not have been disabled by the shooting. Both possibilities are believed by the United States Government to be, at this stage, supportable.

The latter possibility is supported by the experience of the Sabena transport plane which was attacked by a Soviet fighter, without warning, on a flight from Munich to Belgrade, June 3, 1954. The shooting in that case killed the radio operator and wounded the pilot and another crew member (see Belgian Foreign Office communiqués of June 9, 1954 and July 10, 1954).

The SOS message at 0537 GMT, on this theory, from the 4X-AKC, would have been sent either by the disabled radio operator or by another crew member still alive.

9. The United States Government wishes to stress these facts, horrible though they are, because they show that the purpose and intent of the Bulgarian ground controllers and the pilots of the fighter aircraft were not just to induce the 4X-AKC to land in Bulgaria but to kill the passengers and the crew, including by implication the nine American nationals aboard. These facts also show that the pilots of the fighter planes had adequate opportunity to observe the markings of the Israel aircraft, to report those markings to the ground controllers, and to report also that the airplane showed no evidence of being military or hostile in any sense. The United States Government submits to the Court photographs of similar El Al aircraft, as well as photographs which show the markings of this airline (Annex 32). Photographs of 4X-AKC are contained in the United Kingdom Memorial. The United States also refers to the photographs of the wreckage taken by the Israel Inquiry Commission and associated investigators, with the permission of the Bulgarian Government, under the circumstances described in the Israel Inquiry Commission's Report (Israel Memorial, Annex 18), and by Colonel Stevenson, British military attaché in Sofia, some of whose photographs taken on the spot and received from the British Government are attached hereto (Annex 51), and are also in the British Memorial.

10. Furthermore, testimony of witnesses shows that the Bulgarian authorities, after the airplane had crashed and the world had been shocked, examined the remnants of the aircraft, explored its contents, cutting holes in the wings, engines, and other places where military or hostile equipment might be carried, seeking some justification for the shooting, and obviously found none.

Witnesses will also testify that the fighter aircraft, which came from the Bulgarian air base at Kumaritsa near Sofia, did not leave 4X-AKC until its destruction was certain; that is, until it had exploded in the air and its fuselage, passengers and crew had been splattered over the Kuzhukh Hill northeast of Petrich and near the railroad station known as General Todorov. This was within visible distance from the Greek border.

11. The Bulgarian authorities, as though to emphasize the intention to destroy 4X-AKC and kill its passengers and crew, did little to protect the aircraft, its contents or the remains of the victims. Apart from some minor attempts at protecting what was left of the aircraft pending the arrival of Bulgarian official inquirers, even this protection ceased as soon as the Bulgarian official inquirers left, on the day of the crash. The aircraft and the bodies of the deceased were then plundered by gendarmerie, local officials and local residents. Indeed, in the town of Petrich there seems to have been a market for plundered objects such as wrist watches, bracelets, silver, gold, clothing, and other effects. This, it is submitted, demonstrates the intention of the Bulgarian authorities from the beginning of the incident. It emphasizes the responsibility of the Bulgarian Government, whose callousness to the decencies of mankind permitted this horrible conduct to go on. The Bulgarian authorities, many witnesses will testify, did not even bury corpses and parts of corpses that were visible and should have been buried according to the universal practice of civilized mankind. Only a few of the local inhabitants, of their own accord, conducted such burials, apart from the few bodies that were sent to Sofia for medical examination and turned over to Israel authorities, as recited in the Israel Memorial (paragraph 14).

12. It is significant that the Bulgarian Government used every means to prevent a local inquiry, contrary to the practice in civilized countries, by the Inquiry Commission of Israel and by the British military attaché at Sofia. The story is told in the Israel Inquiry Commission Report, in the Israel Memorial, and in the United Kingdom Memorial, and it is supported independently by testimony obtained by the United States. This fact is substantially admitted in paragraph numbered 3 of the Bulgarian Government's announcement of August 3, 1955 (see Annex 34).

13. It is significant further that the Bulgarian Government not only misstated the facts to the United States and to other governments, and to the world, with regard to punishment, but witnesses will testify that the Bulgarian Government promptly gave awards to those who had participated in the sighting and destruction of the 4X-AKC. Among the ground observers rewards were given in the form of home leave. These facts are highly relevant to the intent of the Bulgarian authorities and to its liability in this Court.

14. The United States Government makes reference again to the speech of General Panchevski on Army Day (see page 186).

15. The United States Government at this point reproduces as annexes (see Annexes 52 *et seq.*) statements by a number of witnesses, among the large number interviewed from Bulgaria, Yugoslavia and Greece, whose testimony supports the foregoing statements of fact. These witnesses include many in addition to those cited (if not relied upon) by the Israel Government in its Memorial, refer-

ring to the investigation of 1955 by the Israel Inquiry Commission and printed in translation in the Israel Government's Blue Book (Annex 18 to the Israel Memorial). They include those cited and relied upon by the British Government in its Memorial. A number of the 1955 witnesses have been reinterviewed in the preparation of this Memorial.

The United States Government reserves the right to cite additional witnesses for oral testimony, with the permission of the Court, in accordance with the Rules of the Court. The United States Government conceives that it has a special duty with respect to witnesses deriving from Bulgaria. It has a duty to protect these witnesses and their relatives in Bulgaria who are subject to retaliation, pressure and devices for making them unavailable to this Court. For this purpose the United States Government now states that it may require the assistance of the Court although, of course, the United States Government will comply with all the applicable Rules of the Court such as those contained in Articles 49, 53, 54, 56 and others.

E. ADMISSIONS BY THE BULGARIAN GOVERNMENT TO OTHER GOVERNMENTS

The United States Government believes it appropriate to offer as evidence the various communications, on the subject of the Bulgarian Government's liability for the killing of the passengers of the 4X-AKC aircraft near Petrich on July 27, 1955, made by the Bulgarian Government to other governments whose nationals were on board the airliner and were similarly killed.

1. The United States Government itself does not engage in direct diplomatic communication with the Government of Bulgaria. It suspended relations with Bulgaria in February 1950, because of false accusations made against American diplomats in Bulgaria by the Bulgarian Government. Its negotiations with Bulgaria on the present subject were therefore conducted through the intermediation of the Swiss Government. But the Bulgarian Government conducted direct negotiations with Her Majesty's Government in the United Kingdom and particularly with the Government of Israel. The negotiations with the Government of the United Kingdom are separately set forth in that Government's Memorial in a companion case in this Court.

2. With respect to the Government of Israel, the United States Government points out that there is considerable discussion that bears on this subject in the Memorial of the Government of Israel in a parallel case now filed in the Registry of this Court. Part I of that Memorial, beginning with paragraph 10, consists of an account of negotiations, first between the diplomatic representatives of Israel in Sofia and the Bulgarian Foreign Office authorities; secondly

between the Bulgarian representative in Jerusalem and the Prime Minister and Foreign Minister of Israel, in which the Bulgarian Minister reiterated the Bulgarian Government's liability and promised to atone and pay. The later negotiations had, in the beginning, according to the recitals in the Israel Memorial, to do with the amount of damages and not with the issue of Bulgarian liability. It was only after the Bulgarian admission into the United Nations that the negotiations broke down. This was because, as the Israel Memorial states, of the Bulgarian Government's insistence that it had no liability, that it would make payment only *ex gratia* and per capita, and that the El Al Israel Airlines Ltd. was liable because of the unauthorized intrusion of the 4X-AKC airplane into Bulgarian air space.

3. The United States Government is in no position to say what the details of the Israel-Bulgaria discussions were, particularly those regarding settlement, and it is, of course, not bound by any concessions, if there were concessions, made by the Israel representatives to the Bulgarian representatives, especially since the United States Government was not represented in these negotiations. But it is clear that the very admission of a duty to pay is a reiteration of the liability for the killing of the American passengers.

4. The United States Government rejects as inapplicable to its case against Bulgaria any suggestion that the liability of the Bulgarian Government should be divided or shared, as to the United States, with the El Al Israel Airlines Ltd. or with the Israel Government. The facts of the case, as discovered by United States investigators, and as testimony in this Court will show, make it clear, beyond peradventure of doubt, that the Government of Bulgaria is liable for all damages suffered and for a full performance of the obligations undertaken by it in its diplomatic negotiations with the United States Government through the intermediation of the Swiss Government following the incident of July 27, 1955. It is so liable without regard to whether there is any other tortfeasor or whether there may be any liability to the United States or to American nationals on the part of any other tortfeasor. Such a question of indemnity or contribution lies between the Governments of Israel and Bulgaria. The United States does not hesitate to say that from the facts known to it, the liability is entirely that of the Government of Bulgaria, but that subject is irrelevant to the United States Government's case against Bulgaria.

5. There have apparently been negotiations by Bulgaria, as to payment, with representatives of other governments having claims against Bulgaria on account of the destruction of 4X-AKC on July 27, 1955. The United States has reference to the United Kingdom, Sweden, Canada, Austria, France, Germany, Belgium, and perhaps others. The United States Government is, of course, not bound by any concessions which may have been made by any of

these governments in such negotiations; indeed, the United States Government is unaware that any have been made that relate to the substance of the Bulgarian Government's liability. But the United States offers as relevant the rejection by these governments, which the United States is informed they have all made, of any *ex gratia* basis to any Bulgarian admission of liability or offer of compensation as a matter of international law.

6. We do not know why the pilots erred in their pilotage, and the Bulgarian Government has prevented us from knowing, by killing the crew, apparently concealing the relevant documentary evidence, and preventing on-the-spot investigation. Definitely the passengers did not control the plane. If the pilot erred in his pilotage, guilt is just as ascribable to the Bulgarian authorities for this error. Such pilot error could not be lawfully punishable by any judgment of immediate, or subsequent, death of the passengers or of the crew.

The United States reserves such rights as it may have to supplement the present Memorial by additional evidence which is still in the process of being gathered.

PART III

THE ISSUES OF LAW

The facts described above, it is submitted, show the liability of the Bulgarian Government for the wilful killing of the nine American passengers by Bulgarian authorities to be beyond question. This is not a case of killing merely by negligence or mistake. Nor is it a case of an assertion of vicarious liability against the Bulgarian Government. Nor can the Bulgarian Government escape liability by pointing to the evidence that advisers of other nationality or higher rank than the Bulgarian officers who participated were in truth directing the killing operation.

A. RESUME OF THE UNDERLYING CONSIDERATIONS

In brief, we do not really know why the pilot of the 4X-AKC flew over Bulgarian territory. The suggestion in the Bulgarian note of August 4, 1955, that "Equipped with the most modern aerial navigating instruments, it could not have failed to be aware of the fact that it had violated Bulgarian air space", is completely misleading. In the first place, we do not know why the pilot deviated. He may, for instance, have become ill. In the second place, his navigational equipment could have been rendered inaccurate during the course of the flight. In the third place, weather conditions may have been such that his corrections for errors in flight were inaccurate. In the fourth place, his visual observation of the ground, over

the mountains running between Yugoslavia and Bulgaria, could not tell him whether he was in Yugoslavia or Bulgaria. Finally, no pilot of a civil airliner would expect to be shot down without opportunity adequate to give him a safe alternative and without opportunity adequate to keep his passengers and crew from being brutally killed.

1. A safe alternative means that the airplane should either have been told from the ground, by voice radio, or by CW transmission, on an international radio frequency used by airplanes in flight, or it should have been told by the fighters intercepting it, that it was off course. It should then have been either escorted back to Yugoslavia or given a route to fly safely to Yugoslavia, or even to Greece. If there were Bulgarian terrain security questions already raised, 4X-AKC should have been given *comprehensible communications* to lead it to a designated airport with safety for the crew, the passengers and the aircraft. There were enough of such airports in and around Sofia. The latter, however, seems a senseless alternative, for 4X-AKC was obviously on the regular corridor from Belgrade to Sofia and therefore, that corridor being open to foreign travel, had no security character. Nor, since Bulgaria had then other air traffic could any such direct route from Sofia to the Greek border have had security character. It was when 4X-AKC was on or near that Belgrade corridor that the fighters were sent up. The 4X-AKC flight southward thereafter was over obviously unsecure terrain being for the most part within eye sight of the Yugoslav frontier observers covering the Struma River Valley, and the rest of the Yugoslav-Bulgarian frontier.

True, the Bulgarian Government note says: "Even after having been warned, it did not obey but continued to fly towards the south in the direction of the Bulgarian-Greek frontier." But evidence of the giving of a warning or the giving of an alternative is lacking, and it is believed that testimony will show that there was no firing across the nose, or other firing not endangering the aircraft, that the first firing was at the tail of the airplane, starting a fire; then into the passengers' quarters.

Indeed, any firing would have been unnecessary since the pilots of the fighter planes, as the evidence shows, had an opportunity to identify the 4X-AKC from its appearance and markings, and to report them to the Bulgarian ground authorities. The latter, in accordance with the present international practice of civilized governments, then would take the matter up in appropriate diplomatic channels with the Israel Government. Diplomatic inquiry then would result in a disclosure whether the overflight was accidental, or rendered necessary by supervening circumstances, in which case it would be condonable.

2. In any case, should there have been a security necessity, which the Bulgarian Government has not claimed and cannot claim in

this case, to bring the Constellation aircraft down to the ground, only reasonable methods for doing so could be used. An airfield of proper facilities must have been shown to the pilot of the 4X-AKC and the fighters must have led him there. Evidence to this effect is completely lacking. So far as is known, the only suitable airfield for a Constellation four engine aircraft on July 27, 1955, was in Sofia, and there is no evidence or claim even that the pilots of the Bulgarian fighter aircraft attempted in any way to direct the Constellation to Sofia. Instead the fighters attempted to keep the Constellation from flying back to Yugoslavia to its proper course in the Vardar Valley, and then attempted to keep it from entering Greece, which was but a few kilometers away from Petrich, where the plane was shot down and exploded. The United States Government notes that when the plane was burning over Petrich and the Bulgarian fighters were still firing into its passenger portion, the Constellation 4X-AKC was circling Petrich and, having apparently seen the landing strip used by Bulgarian light planes, near Sherbanovo, was going there when it exploded.

3. The purpose of the Bulgarian fighters and the Bulgarian ground control authorities was not to divert the aircraft from Bulgaria, or even to use reasonable methods to compel it to land. Their purpose was to destroy 4X-AKC and kill its passengers and crew as the penalty for being flown or wafted within Bulgarian air space, regardless of the cause and without judicial or other inquiry.

4. There is no doubt that the questions presented to the Court by the facts are novel in this Court in a narrow sense. But that provides no comfort to the respondent government. All new cases have novel aspects, but Courts have, none the less, principles and precedents upon which to rely for rendering justice.

It is believed that Article 38 of the Court's Statute has special application to the issues of law which may be raised in this case. Particular reference is made to subsections "b" through "d":

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

.

(b) international custom as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

The legal issues raised specifically in the diplomatic exchanges on the substance of the controversy are divisible at this stage into three general headings:

First, there is the international liability of the Bulgarian Government for wilfully killing innocent nationals of the United States accidentally overflying Bulgaria.

The second, and related, subject is the international liability of Bulgaria for mistreating overflying civil transport aircraft, aircraft crew and passengers, among them nine innocent American passengers. Subsidiary to this question is the question of the modern rules of the air as derived from the principles of international law and morality and international practice.

The third is the question raised by the Bulgarian Government in its negotiations with the representatives of the Government of Israel, and by indirect communications to the United States Government, whether the liability of El Al as a tortfeasor exculpates the Government of Bulgaria to the United States Government for Bulgaria's wrongdoing.

There are, in addition, questions of the effect on the liability of the Bulgarian Government to the United States Government for fraud and deceit exercised upon the United States Government, as upon other governments concerned. These false representations, upon which governments may have relied, may have resulted in Bulgaria's obtaining membership in the United Nations without affirmative resistance in December 1955.

B. KILLING AS AN INTERNATIONAL OFFENSE AND TORT

It may be said that there is no existing treaty or international code which in terms prohibits a government from ordering the killing of innocent passengers in an innocent civil transport aircraft that has strayed without prior authorization into the territorial air space of the killing government. But it is submitted that any proposal in modern times to make such a treaty, bilateral or multilateral, would be viewed with consternation. The opinion of mankind constitutes the precedents and the international law which now make such action internationally criminal, and did so on July 27, 1955. It gives this Court jurisdiction to pronounce judgment and calls for atonement and compensation by the responsible government.

There are, of course, cases where the acts of a government in putting persons to death are justified by morality or by international practice and even permitted by international convention. But as to the rest, argumentation seems supererogatory. In the present context argumentation may even lend more dignity than the Bulgarian Government's position deserves. In the absence of the Bulgarian Government's Counter-Memorial, it is believed necessary only to point out some self-evident rules.

1. In no case, under any system of law, in any civilized country, have authorities been permitted deliberately and brutally to kill innocent and unprovoking persons who have been accidentally

carried across their border, particularly by air. The punishment for overflight is not death; certainly not to the innocent passengers. That is not even provided by any known Bulgarian statute.

It should not require any disputation to arrive at the conclusion that wanton and wilful, and particularly premeditated, homicide by one government through its official agents, against the innocent nationals of another State, especially such as are in innocent international transit over the killing government's terrain, is an international murder and gives rise to a direct claim, in an international tribunal, for damages and other amends.

2. Following the Rules of this Court and of international law, it is nevertheless perhaps proper for the record to refer to the fundamental principle that all organized societies have condemned such killing. As Professor Jerome Hall, in his book *Living Law of Democratic Society* (1949) has said, quoting the famous anthropologist, Professor Boas (*General Anthropology*, p. 677 (1938)):

“ ‘The languages of people all over the world prove that the vices that we know, such as murder, theft, lying, rape, are recognized and in most cases discountenanced within the social group in which mutual duties are recognized.’ ”

3. The Biblical injunction in the Ten Commandments is a general one: “Thou shalt not kill” (King James and Vulgate versions, *Exodus*, Chapter 20, Verse 12, and *Deuteronomy*, Chapter 5, Verse 17). The Jewish Publication Society of America (1948 edition) translation is: “Thou shalt not murder.” *Exodus* (Chapter 21, Verse 12) in this same translation states: “He that smiteth a man, so that he dieth, shall surely be put to death.”

The *Koran* (Chapter 17, Verse 35 in the Rodwell translation) reads: “Neither slay anyone whom God has forbidden you to slay unless for a just cause.”

In the Sermon on the Mount, Jesus said: “Ye have heard that it was said by them of old time, Thou shalt not kill, and whosoever shall kill shall be in danger of the judgment” (*Gospel of St. Matthew*, Chapter 5, Verse 21, King James Version).

4. The same may be said of all civilized ethical and legal societies. In the Panca Sila of the Buddhist faith, whose adherents are in large number, particularly in the Far East, a cardinal principle is “I take the precept to abstain from destroying life” (*Dhammapada*, Text and Translation by Narada Maha Thera, published by the Maha Bodhi Society of India in 1952).

5. Indeed, the Bulgarian law on the subject, contained in the Bulgarian Penal Code entitled “Assassination”, Articles 126, 127 and following, is to the same effect (*Les Codes pénaux européens*, by Marcel Ancel, p. 293) (Annex 53). The subject is fully covered in general comparative law studies (Annex 54).

6. From a more conventional and familiar international law standpoint the prohibition is implicit in all the conventions and

treaties which have to do with the rights of non-belligerents in time of war and the rights of soldiers and prisoners of war against inhumane treatment. It is implicit in the international law which makes a government liable for manifest denial of justice to an alien. Grotius said:

“He is, furthermore, bound to give to those whom the dead man was accustomed to support from a sense of duty, as parents, wife, and children, so much as that expectation of support was worth in view of the age of the person killed⁶.”

The illegality is essentially held, to come to the precedents of this Court, in the Corfu Channel Case Judgment in which this Court condemned the actions of the Government of Albania in killing British military personnel in the Corfu Channel. In its Judgment this Court said that the Court (*Reports of Judgments, Advisory Opinions and Orders*, 1949):

“Gives judgment that the People’s Republic of Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life that resulted therefrom; ...”

This was in response to the first question in the Special Agreement between the two parties giving the Court jurisdiction. As the Court stated in the majority opinion:

“In fact, nothing was attempted by the Albanian authorities to prevent the disaster. These grave omissions involve the international responsibility of Albania.

The Court therefore reaches the conclusion that Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom.

In the final submissions contained in its oral reply, the United Kingdom Government asked the Court to give judgment that, as a result of the breach by the Albanian Government of its obligations under international law, it had sustained damages amounting to £875,000.

In the last oral statement submitted in its name, the Albanian Government, for the first time, asserted that the Court would not have jurisdiction, in virtue of the Special Agreement, to assess the amount of compensation. No reason was given in support of this new assertion, and the United Kingdom Agent did not ask leave to reply. The question of the Court’s jurisdiction was not argued between the Parties.

In the first question of the Special Agreement the Court is asked:

⁶ Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*, Volume Two, Book I, Chapter XVII, “On Damage Caused Through Injury, and the Obligation Arising Therefrom”, Part 13.

(i) Is Albania under international law responsible for the explosions and for the damage and loss of human life which resulted from them, and

(ii) is there any duty to pay compensation?"

7. As has been averred, the more familiar rules of the conduct of war supply authority, *a fortiori*. The subject of rights of non-combatants is discussed in Oppenheim's *International Law* (Lauterpacht Edition, Volume II, Seventh edition) in various places, including Section 24I, which reads as follows:

"Since war is not a condition of anarchy and lawlessness, International Law requires that belligerents shall comply with its rules in carrying on their military and naval operations. So long, and in so far, as belligerents do this, their warfare is legitimate; if they do not, their warfare is illegitimate. Acts and omissions contrary to International Law can be committed by belligerent Governments themselves, by commanders or members of the forces, or by individuals who do not belong to the forces. Belligerents bear a vicarious responsibility for internationally illegal acts of their soldiers, which turns into original responsibility if they refuse to repair the wrong done by punishing the offenders and, if necessary, compensating the sufferers. Cases in which belligerent Governments themselves order or commit illegitimate acts, and also cases in which they refuse to punish their soldiers for illegitimate acts, constitute international delinquencies."

In Section 259 *a* he says, as to the killing of hostages, which was condemned in World War II:

"There ought to be no doubt as to the correctness of these decisions. Modern war—total and scientific—inevitably, in its effect, tends to blur the distinction between combatants and non-combatants. But this is not a sufficient reason for the deliberate killing of innocent persons for the sake of vindictive or preventive terror in violation alike of legal principle and of considerations of humanity. As stated, the Geneva Convention of 1949 has prohibited altogether the taking of hostages."

In Chapter VI on Compensation he says:

"There is no doubt that, if a belligerent can be made to pay compensation for all damage done by him in violating the laws of war, this will be an indirect means of securing legitimate warfare."

In Section 59 *a*, in discussing the duty to treat, in wartime, individuals in a humanitarian manner, he says:

"The four Geneva Conventions of 1949 provide uniformly that in the case of an armed conflict not of an international character occurring in the territory of one of the parties to the Convention each party to the conflict shall be bound to apply, as a minimum, certain humanitarian provisions of a fundamental character. Thus it is laid down that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms

or are incapacitated by sickness, wounds, detention or any other cause, 'shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria' (Article 3; this Article forms part of Chapter I which contains the General Provisions and which is common to each of the four Conventions). In particular the Conventions prohibit, with respect to such persons, murder, mutilation, cruel treatment, torture, and, generally, violence to life and person; taking of hostages; outrages upon personal dignity; and passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording all judicial guarantees recognized by civilized peoples. The wounded and sick must be collected and cared for. The parties to the conflict may conclude special agreements with the view to bringing into force other parts of the Convention."

8. The applicable law as it appears in the *Koran* has been discussed as follows:

"... Nous avons vu comment; en autorisant la guerre de légitime défense, le *Koran* a fait une distinction nette entre les belligérants et les non-belligérants, en ordonnant de ne combattre que les seuls combattants.

Il faut entendre par là ceux qui se trouvent effectivement sur le champ de bataille et qui font usage de leur force agressive. Ainsi, guidée par des instructions précises du Prophète, la législation islamique a eu le grand soin d'établir cette condition de manière à écarter toute confusion pour protéger les faibles contre les méfaits de la guerre et éviter aux civils toutes ses mesures violentes. Ainsi femmes, enfants, vieillards, infirmes, aliénés, paysans dans leurs champs, ermites dans leurs cellules, tous doivent être immunisés contre les hostilités."

This discussion was taken from "Le Droit international public et l'Islam" by Dr. Mohamed Abdallah Draz, 5 *Revue égyptienne de Droit international* 17, 22 (1949).

9. To add further to these authorities would be, the United States Government submits, unnecessary at this stage. If there were an international penal Court, the Government of Bulgaria would suffer a penalty commensurate with those who commit crimes; the Bulgarian Government might not be asked just to pay damages or to show it has punished individual officers. The United States will have further to say on this subject below.

C. IT WAS THE AFFIRMATIVE DUTY OF THE BULGARIAN AUTHORITIES TO SUCCOR THE STRAYED 4X-AKC AND ITS PASSENGERS

I. *Maritime Law*

In the opinion of the United States Government, the well-known maritime precedents are particularly appropriate to cases of over-flying aircraft. The currents of the air are similar to the currents

of the sea and the effect of weather and the failure of instruments and of pilots are as notorious in the air as they are on the sea. The established law of the sea, in so far as relevant, may properly be consulted in determining novel difficulties of law arising with respect to navigation in the air.

There are of course numerous respects in which the situation with respect to aircraft is not fairly analogous to the situation with regard to vessels at sea. The cases must be examined as they arise. But in the present case and in similar cases, as will be seen, the analogy in broad outlines is clear.

The case of an aircraft off its proper course in the air is similar to a ship off its course on the sea. It is, therefore, assimilated to the cases at sea. Particularly relevant are cases of an act of God or *force majeure* driving a ship off its proper course. The law and practice have long been established at sea that a ship in such a plight should be aided, not ensnared or held for piratical aims of salvage, ransom, or enslavement of the crew. The ancient laws of the sea are pertinent.

The usages and practices of the sea, which have provided mariners with guides for their conduct for many centuries, form part of the basic law of civilized governments in the sense that their principles are incorporated in the codes and the Court decisions and accepted practices of many nations, including the maritime nations of the western world.

To cite American authorities:

(a) United States Courts have held that the federal Death on the High Seas Act, 41 Stat. 537, 46 U. S. C. §§ 761-767, which was enacted March 30, 1920, is applicable to deaths occurring in aircraft flying in the air space over the high seas. See, among other cases, *D'Aleman v. Pan American World Airways, Inc.*, C.C.A. 2d, decided October 2, 1958 (27 *United States Law Week*, October 14, 1958). The court said, among other things:

"The means of transportation into the area is of no importance. The statutory expression 'on the high seas' should be capable of expansion to, under, or over, as scientific advances change the methods of travel. The law would indeed be static if a passenger on a ship were protected by the Act and another passenger in the identical location three thousand feet above in a plane were not. Nor should the plane have to crash into the sea to bring the death within the Act any more than a ship should have to sink as a prerequisite."

(b) "Admiralty law is a body of concepts international in character like 'international law' itself, or the 'law merchant', which, like them, has its special history both in and outside of our Anglo-American 'law'. In this general and international sense, admiralty law has its roots in a more remote past than other branches of our law. It has also its own classic expositions ... its ancient codes and usages..." (Robinson, *Handbook of Admiralty Law in the U.S.*, p. 1.)

Of these codes, the ancient Rolls, sometimes called Judgments, of Oleron of medieval France are most cited; in Anglo-American jurisprudence they are particularly valid because they were adopted specifically by Richard the Lion-Hearted on his return from the Crusades. As Judge Coxe stated (in an article on "Admiralty Law" in 8 *Columbia Law Review* 172): "These three codes, the laws of Oleron, the laws of Wisbuy and the laws of the Hanse Towns, are the most important of the ancient codes—they are the three arches upon which rests the modern admiralty structure." See also the famous opinion of Justice Story, in *DeLovio v. Boit* (C.C. D. Mass., 1815) 7 Fed. Cas. at p. 419, approved by the Supreme Court in *Insurance Co. v. Dunham* (1870) 11 Wall. 1, p. 35.

As set out in 1 Peters Admiralty, Appendix Reports reprinted 30 Federal Cases, pp. 1171-1187, Articles XXV and XXVI of the Laws of Oleron read as follows:

"Article XXV.—If a ship or other vessel arriving at any place, and making in towards a port or harbour, set out her flag, or give any other sign to have a pilot come aboard, or a boat to tow her into the harbour, the wind or tide being contrary, and a contract be made for piloting the said vessel into the said harbour accordingly; but by reason of an unreasonable and accursed custom, in some places, that the third or fourth part of the ships that are lost, shall accrue to the lord of the place where such sad casualties happen, as also the like proportion to the salvors, and only the remainder to the master, merchant and mariners; the persons contracting for the pilotage of the said vessel, to ingratiate themselves with their lords, and to gain to themselves a part of the ship and lading, do like faithless and treacherous villains, sometimes even willingly, and out of design to ruin ship and goods, guide and bring her upon the rocks, and then feigning to aid, help and assist, the now distressed mariners, are the first in dismembering and pulling the ship to pieces; purloining and carrying away the lading thereof contrary to all reason and good conscience; and afterwards that they may be the more welcome to their lord, do with all speed post to his house with the sad narrative of this unhappy disaster; whereupon the said lord, with his retinue appearing at the place, takes his share; the salvors theirs, and what remains the merchant and mariners may have. But seeing this is contrary to the law of God, our edict and determination is, that notwithstanding any law or custom to the contrary, it is said and ordained, the said lord of that place, salvors, and all others that take away any of the said goods, shall be accursed and excommunicated, and punished as robbers and thieves, as formerly hath been declared. But all false and treacherous pilots shall be condemned to suffer a most rigorous and unmerciful death; and high gibbets shall be erected for them in the same place, or as high as conveniently may be where they so guided and brought any ship or vessel to ruin as aforesaid, and thereon these accursed pilots are with ignominy and much shame to end their days; which said gibbets are to abide and remain to succeeding ages on that place, as a visible caution to other ships that shall afterwards sail thereby."

"Article XXVI.—If the lord of any place be so barbarous, as not only to permit such inhuman people, but also to maintain and assist them in such villanies, that he may have a share in such wrecks, the said lord shall be apprehended, and all his goods confiscated and sold, in order to make restitution to such as of right it appertaineth; and himself to be fastened to a post or stake in the midst of his own mansion house, which being fired at the four corners, all shall be burnt together, the walls thereof shall be demolished, the stones pulled down, and the place converted into a market place for the sale only of hogs and swine to all posterity."

Article XXXI reads:

"If a ship or other vessel happens to be lost by striking on some shore, and the mariners thinking to save their lives, reach the shore, in hope of help, and instead thereof it happens, as it often does, that in many places they meet with people more barbarous, cruel and inhuman than mad dogs, who to gain their monies, apparel, and other goods, do sometimes murder and destroy these poor distressed seamen; in this case, the lord of that country ought to execute justice on such wretches, to punish them as well corporally as pecuniarily, to plunge them in the sea till they be half dead, and then to have them drawn forth out of the sea, and stoned to death."

There are several other articles of similar purport. The original old French and older English translation are contained in *The Black Book of the Admiralty*, Volume II, pp. 465-469, which is appended hereto, in photocopy (Annex 55).

The same are given in later French, in Cleirac, *Us et Coustumes de la Mer* published in 1661, as XXV, XXVI and following of the *Jugemens d'Oleron*; and in Pardessus, *Collection des Lois maritimes*, Vol. I (1828), Chapter VIII ("Coustumes de la Mer Connues Sous le Nom de Rooles ou Jugemens d'Oleron"), Articles 36 *et seq.* (pp. 346 *et seq.*). Pardessus (published in 1828), in fact, contains a classical discussion of ancient documents anterior to the 18th century, including the Roman law, the Greek law, and also the Byzantine law; that is, the law applicable not only to Northern and Western Europe but to the Orient (which would include the Black Sea). In describing the maritime commerce of the period he notes in his introduction (page lxxj) that Bulgaria was a center of European trade. In practically all of the authoritative documents mistreatment of shipwrecked persons or their goods was deprecated and punished.

In the famous *Ordonnance Touchant la Marine du Mois d'Août 1681*, of Louis XIV, the principles of Oleron were incorporated. It was provided in Title IX of Book Four, Article II (Annex 56):

"Enjoignons à nos sujets de faire tout devoir pour secourir les personnes qu'ils verront dans le danger de naufrage. Voulons que ceux qui auront attenté à leurs vie et biens, soient punis de mort

sans qu'il leur en puisse estre accordé aucune grâce..." (*Pardessus, op. cit.*, Vol. IV, p. 400.)

It is not, of course, asserted that we should at this time contend for a judgment against any accused carrying out the particular punishments specifically prescribed in the judgments of Oleron. As the British Court of Appeal said in *The Gas Float Whitton*, No. 2 (1896, p. 42, at pp. 47-48), citing Lord Tenterden's introduction to Abbott's *Treatise on Merchant Ships and Seamen*, 5th edition:

"To anyone who reads some of their strange enactments citing the punishments of chopping off heads, fastening to a stake and burning it must be ridiculous to suggest that they are part of the English law. But they contain many valuable principles and statements of marine practice which, together with principles found in the Digest and in the French and other ordinances, were used by the judges of the English Court of Admiralty when they were moulding and reducing to form the principles and practice of their Court. All these sources of legal principles were used by Lord Tenterden in his great work..."

In 1825, the United States Congress enacted a law (Chapter 65; now 18 U.S.C. Secs. 1658 and 1659) which embodies these standards in part. Its origin was in a Statute of the First Congress of the United States (Session II, chapter 9, Section 16, 1790). It provides, in the current revision:

"§ 1658. *Plunder of distressed vessel.*

(a) Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

(b) Whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or

Whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger of distress or shipwreck—

Shall be imprisoned not less than ten years and may be imprisoned for life. (June 25, 1948, ch. 645, § 1, 62 Stat. 775.)

§ 1659. *Attack to plunder vessel.*

Whoever, upon the high seas or other waters within the admiralty and maritime jurisdiction of the United States, by surprise or open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, § 1, 62 Stat. 775.)"

Of course the rules of the sea—probably underlying even the extension of the right of safe haven to belligerent vessels in distress in neutral, and once even belligerent, ports (see Oppenheim, *International Law*, Volume II (Lauterpacht, 7th edition), pp. 479, 718; see Hackworth, *Digest of International Law*, Vol. VII, p. 439)—are not applied to airplanes coming down in neutral territory (Hackworth, *Digest of International Law*, Vol. VII, pp. 549-557). But these latter cases relate entirely to ideas of neutrality in wartime.

If we assume then, as we must, with the witnesses in the 4X-AKC aircraft all dead and the Bulgarian Government having determined to kill them without opportunity for shelter, the similarity of the maritime cases to the case at bar is manifest.

2. *Duty to Succor Strangers—General*

The duty not to harm shipwrecked or straying mariners and ship passengers, which the United States Government contends should be applied to aircraft in the air as well, is found as far back as the *Book of the Dead* (Annex 57).

It is relevant to point out that the Old Testament contains prohibitions against the mistreatment of strangers who have entered another's domain. *Exodus* (Chapter 22, Verse 21) states:

“And a stranger shalt thou not wrong, neither shalt thou oppress him; for ye were strangers in the land of Egypt.”

Chapter 23, Verse 9, says:

“And a stranger shalt thou not oppress; for ye know the heart of a stranger seeing ye were strangers in the land of Egypt.”

3. *The Duty to Succor in Air Law—Brussels Convention, 1910*

There is no doubt, at sea or in the air, that an affirmative duty is owed to help an airplane, like a seagoing vessel, in distress or in danger. The rule is implied in the Brussels Convention of 1910 on “Unification of Certain Rules of Law with Respect to Assistance and Salvage at Sea⁷.” Attention is called to Article 11 of that Convention which reads as follows:

“Every master is bound, so far as he can do so without serious danger to his vessel, her crew and passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost.

⁷ States which have become parties: Argentina, Australia (including Papua and Norfolk Island), Austria, Belgium, Brazil, Canada, Ceylon, Denmark, Egypt, Estonia, Finland, France, Germany (convention applicable to the Federal Republic of Germany beginning November 1, 1953 except with respect to Poland, Uruguay, New Zealand, Rumania, and the Union of Soviet Socialist Republics), Greece, Haiti, Hungary, India, Italy, Japan, Latvia, Mexico, Netherlands, New Zealand, Norway, Poland (including Free City of Danzig), Portugal, Rumania, Spain, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States, Uruguay, and Yugoslavia. (*Treaties in Force* on January 1, 1958, page 213, compiled by the Treaty Affairs Staff, Office of the Legal Adviser, Department of State.)

The owner of the vessel incurs no liability by reason of contravention of the foregoing provision."

Reference is made for additional authorities to the discussion in the Memorial of the United Kingdom, part 6, paragraphs 68 *et seq.*

The rule in maritime law which requires vessels at sea to save mariners and passengers in distress is well-known and has been established from time immemorial. It was stated in the United States Case of *Sturtevant v. The George Nicholas* (District Court, E. D. Louisiana, Nov., 1853, Case No. 13,578, 23 Fed. Cas., page 333) as follows:

"The saving of life is an ingredient in a salvage service which is always highly estimated by the courts. The mere preservation of life, it is true, this court has no power of remunerating; it must be left to the bounty of the individuals; but if it can be connected with the preservation of property, whether by accident or not, then the court can take notice of it, and it is always willing to join that to the animus displayed in the first instance. *The Aid*, 1 Hagg. Adm. 84. It was, indeed, the duty of the master of the *Sarah Bridge* to interrupt his voyage for the purpose of taking on board the survivors of the crew of the *George Nicholas*, in their suffering state, for the safety of their lives. It was a duty imposed upon him by the first principles of natural law—the duty to succor the distressed, and it is enforced by the more positive and imperative commands of Christianity. The stopping for this purpose could not be deemed a deviation from the voyage, so as to discharge any insurance, or to render the master criminally or civilly liable for any subsequent disasters to his vessel, occasioned thereby."

4. *Brussels Convention, 1938*

There may also be cited as of relevance the "Convention for the Unification of Certain Rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea" adopted by the Fourth International Conference on Private Air Law, held at Brussels, September 1938. The fact that the governments have not found it necessary to ratify the Convention does not detract from its validity as a statement of international law, particularly since it carries into aviation the law of the Brussels Convention cited above. Article 2 of the 1938 Convention provided as follows:

"(1) Any person exercising the functions of commanding officer aboard an aircraft shall be bound to render assistance to any person who is at sea in danger of being lost, insofar as such person may do so without serious danger to the aircraft, her crew, her passengers, or other persons.

(2) Every captain of a vessel shall be bound, under the circumstances contemplated in paragraph (1), and without prejudice to more extended obligations imposed upon him by the laws and conventions in force, to render assistance to any person who is at sea in danger of being lost on an aircraft or as the consequence of damage to an aircraft.

(3) For the purposes of this convention, assistance shall mean any help which may be given to a person who is at sea in danger of being lost, even by merely giving information, consideration being given to the different conditions under which maritime navigation and air navigation operate.

(4) The obligation of assistance shall not exist unless the aircraft or the vessel is in the course of a trip or ready to depart, and unless it is reasonably possible for it to render useful aid.

(5) The obligation of assistance shall cease when the person who is under such obligation becomes aware that assistance is being rendered by others under similar or better conditions than it could be by himself.

(6) The national legislations shall determine the penalties designed to insure the execution of this obligation, and the high contracting parties shall communicate to each other through diplomatic channels the texts of such laws.

(7) No liability can rest with the owner or the *armateur* of the vessel or with the owner or operator of the aircraft, as such, by reason of failure to discharge this obligation, except in the case where he shall have ordered the person bound to render assistance not to render it."

This subject was discussed in Hackworth's *Digest of International Law*, Volume IV, pages 380 to 383. It will be seen from the discussion there that the analogy to "existing maritime principles" was embodied in the convention.

In the same connection there is cited in *Hackworth* a decision of the Aberdeen Sheriff Court involving a distressed seaplane and the applicability to that case of a domestic Air Navigation Act in Great Britain. The question was one of right to salvage costs, a problem not involved in the present case. The fact that salvage costs may not be recovered has no bearing on the humanitarian practices in which all humans, people at sea, people in the air, and authorities on the ground, are required to display.

5. ICAO

Annex L to the Final Act of the *International Civil Aviation Conference* of 1944, which was advisory in character, covered "Search and Rescue, and Investigation of Accidents". It is appropriate to cite, not as binding by force on Bulgaria as a signatory, since Bulgaria is not a member of ICAO, but as evidence of the opinions of mankind, the last sentence of the introductory paragraph:

"Upon finding an aircraft which has been involved in an accident' the State in which the accident occurs shall take all necessary steps for the safety of life of the personnel involved and to establish adequate protection of the aircraft from disturbance or pilfering, and take such other steps as are feasible and necessary to preserve the evidence in order to facilitate the work of investigation."

It is also to be noted that by footnote it was stated:

"In the case of aircraft lost within the territory of a non-signatory, the responsibility for search, rescue and salvage should be a matter of prearrangement between the State of registration and the non-signatory."

The remainder of the Annex was devoted to the requirements of investigation.

The internationally agreed standard on this subject is contained in Annex 13 to the Convention on International Civil Aviation (Aircraft Accident Inquiry):

3.1 The State in which an aircraft accident occurs shall take all reasonable measures to ensure the protection of evidence including the safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an accident inquiry. Such safe custody shall include reasonable protection against further damage, access by unauthorized persons, pilfering and deterioration, and shall include the preservation, by photographic records or other adequate means of any material evidence which might be removed, effaced, lost or destroyed.

3.2 If a request is received from the State of Registry that the aircraft, its contents, and any other evidence remain undisturbed pending inspection by an accredited representative of the State of Registry, the State in which the aircraft accident occurs shall take all necessary steps to comply with such request, so far as it is reasonably practicable to do so; provided that the aircraft may be moved to the extent necessary to extricate persons, animals, mails and valuables, to prevent destruction by fire or other causes, or to eliminate any danger or obstruction to air navigation, to other transport or to the public.

3.3 Subject to the provisions of 3.1 and 3.2, the State in which the aircraft accident occurs shall release custody of the aircraft, the contents, or any parts thereof, which are no longer necessary for the purposes of an accident inquiry, to any person or persons duly designated by the State of Registry. For this purpose the State in which the aircraft accident occurs shall facilitate access to the aircraft, the contents or any parts thereof, provided that, if the aircraft, the contents, or any parts thereof, lie in an area within which the State finds it impracticable to grant such access, it shall itself effect removal to a point where access can be given."

Reference might also be made to Article 25 of the Convention on International Civil Aviation whereby:

"Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention."

In line with this Article, Annex 12 to the Convention (Search and Rescue) requires contracting States to permit, subject to certain provisions, immediate entry into their territory of equipment or personnel needed for search and rescue.

All of these provisions were violated by the Government of Bulgaria. They were violated directly, and in their implication. That governments owe a duty of safety to overflying passengers and crew and a duty not to kill or destroy or tolerate destruction and pilferage, is plain.

6. *Modern Precedents*

Modern aviation precedents are discussed by Lissitzyn, "The Treatment of Aerial Intruders in Recent Practice and International Law", Volume 47, *The American Journal of International Law*, page 559 (1953). Among other authorities quoted by him the following (p. 563), from Article 42 of the Rules of Aerial Warfare proposed by the Commission of Jurists in 1923, is of interest:

"Where aircraft and their personnel are in distress and seek shelter in neutral territory, knowing that their fate will be internment, or where the entry is due to the fact that the aircraft has lost its bearings or experienced engine trouble or run out of fuel, the neutral State is under no obligation to exclude them; it is, in fact, morally bound to admit them. This is due to the principle that those who are in distress must be succoured. The prohibition in the article is aimed at those who enter in violation of the rights of the neutral State."

The citation is given as *The American Journal of International Law*, Suppl., Vol. 32 (1938), p. 35.

He also quotes from the diplomatic negotiations between the United States Government and the Government of Yugoslavia of August 1946 concerning the treatment of deviating unarmed transports of the United States Government. These are relevant because of the general principles involved and the special relevance to the present case. He quotes first from the instructions to the American Ambassador in Belgrade, released to the press August 20, 1946 (reprinted on page 571, *ibid.*).

"It would be assumed that the authorities of Yugoslavia would wish to render a maximum of assistance and succor to aircraft of a friendly nation when the latter are forced by the hazards of navigation in bad weather over dangerous mountain barriers to deviate from their course and seek bearings over Yugoslav territory. On the contrary, Yugoslav fighter aircraft have seen fit without previous warning to take aggressive action against such a United States transport plane, the identification of which was clearly apparent from its markings, and have forced it to crash land after wounding one of its passengers. Subsequently Yugoslav authorities have detained the plane, its crew and passengers and refused to permit American consular officers access to the plane or personnel until specific representations were made by the United States

Embassy to the latter effect. Finally, no reply has been forthcoming to the Embassy's requests that the crew, passengers and plane be released from detention and the personnel permitted to depart from Yugoslavia without delay... The Embassy is instructed to protest most emphatically against this action and attitude of the Yugoslav authorities, to renew the United States demand for immediate release of the passengers and crew now able to travel, and in conclusion to request an urgent Yugoslav statement whether in the future the United States Government can expect that the Yugoslav Government will accord the usual courtesies, including the right of innocent passage over Yugoslav territory, to United States aircraft when stress of weather necessitates such deviation from regular routes."

He also quotes for the same reason the communication of the Acting Secretary of State to the Yugoslav Chargé d'Affaires of August 21, 1946, *ibid.*, page 571.

"These outrageous acts have been perpetrated by a government that professes to be a friendly nation... Regardless of whether the planes were a short distance within or without the corridor, they were unarmed passenger planes en route to Udine, in Italy. Their flight in no way constituted a threat to the sovereignty of Yugoslavia. The use of force by Yugoslavia under the circumstances was without the slightest justification in international law, was clearly inconsistent with relations between friendly states, and was a plain violation of the obligations resting upon Yugoslavia under the Charter of the United Nations not to use force except in self-defense. At no time did the Yugoslav Government advise the United States Government that if one of its planes should, because of weather conditions, be forced a mile or two outside of the corridor or, because of mechanical troubles, should find itself outside of that corridor, the Yugoslav Government would shoot to death the occupants of the plane. The deliberate firing without warning on the unarmed passenger planes of a friendly nation is in the judgment of the United States an offense against the law of nations and the principles of humanity."

The subject is also discussed in Spaight, *Air Power and War Rights* (3rd edition, 1947), particularly Chapter XVII, "Belligerent Entry of Neutral Jurisdiction". Referring to the Commission of Jurists of 1922-1923, which prepared The Hague Rules of Air Warfare, he says (p. 436) that they agreed that there is an obligation, even on the part of a neutral State, to a belligerent, "that asylum should be granted in all cases of evident distress...". It may be noted that, e.g., Article 20 provided: "When an aircraft has been disabled, the occupants, when endeavouring to escape by means of a parachute, must not be attacked in the course of their descent."

Article 37 provided:

"Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral

nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy."

D. LIABILITY OF BULGARIA AS A JOINT TORTFEASOR

As has been noted, the only basis which the Bulgarian Government appears to have given publicly for its change of mind on the question of liability is that nobody would have been killed on board the 4X-AKC if the airplane had not strayed into Bulgarian air space.

1. The assertion is curious. If A hires B to transport him safely to point X, and if B, out of negligence or otherwise, transports him through a land of brigands and bandits who fall upon A and injure him, can it be said that the brigands and bandits are not liable, if they are caught, merely because B is also liable? Indeed, can it be said that even if B is made to pay he does not have a right of indemnity against the brigands and bandits if he can catch them? Yet that is essentially the position now taken by the Bulgarian Government.

The assertion is more than curious. It is morally and legally inadmissible.

This is a very strange contention, and must derive from despair. It may be called a "but for" argument. "But for" the unauthorized crossing of the Bulgarian frontier the Bulgarian Anti-Air Defense Force would not have been moved to murder the passengers and crew of the 4X-AKC. Of course, "but for" the construction of 4X-AKC by Lockheed Aircraft it could not have crossed the Bulgarian frontier or any frontier.

As between the carrier and the passengers, the Rhodian Sea-Law (see Ashburner, *Rhodian Sea-Law*, Oxford, 1909, page 83) provided an analogy valid in admiralty and certainly for the eastern Mediterranean maritime commerce. It provided for the liability of the captain of a ship who did just this to passengers.

"4. The captain brings the ship into a place which is infested by thieves or pirates, although the passengers testify to the captain what is at fault with the place. There is a robbery. Let the captain make the loss good to the sufferers. On the other hand, if the passengers bring the ship in in spite of the captain's protests and something untoward happens, let the passengers bear the loss."

But the liability of the thieves and pirates is implicit and did not need to be specified in the Rhodian Sea-Law. It is specified sufficiently in the Rolls of Oleron, although the liability was necessarily criminal, in addition to being civil.

See also Ashburner, pages cxliii-cxlv:

"Piracy in the palmy days of the empire had practically disappeared from the Mediterranean. Strabo, III, 5, p. 144; Epictet. Diss. III, 13, 9; Plin. N. H. II, 46 (117). Of more weight than these bits of rhetoric is the rarity of allusions to pirates in the Digest. The Digest, on the other hand, deals at great length with wreckers, against whom various emperors were obliged to take strong measures (see especially Dig. XLVII, 9).

In the genuine part of the Sea-law there is no reference to wreckers. The reason for the omission is, not that wreckers did not flourish, but that the matter was sufficiently dealt with in the Basilica. On the other hand, sea-robbers and land-robbers received a great deal of attention. Pirates, fire, and wreck are the three normal maritime dangers. The acts of pirates give rise to general average contribution (c. 9) as they do in the Digest (XIV, 2, 2, 3). Land-robbers are often referred to. (1) The land-robber cuts cables or steals anchors (c. 1, 2). (2) The captain who, in defiance of the passengers, brings the ship into a place which is infested with robbers, must make good to the passengers their losses; and if the passengers bring the ship in contrary to the captain's wish they are responsible (c. 4). (3) If some of the passengers go ashore, and the captain has to put off suddenly for fear of robbers, he incurs no responsibility to those left behind (c. 15).¹⁷⁸

¹ Chapters 4 and 15 may also refer to risks from pirates.

⁸ It is true that in ancient times there were instances where the captain, the crew and the passengers were co-adventurers and where the faulty navigation was not chargeable to the captain and crew exclusively. Such a situation is discussed in Ashburner, *The Rhodian Sea-Law*, on pages cxli and cxlii:

"Dangers from Ignorance and Want of Discipline"

There was very little difference, as regards knowledge of navigation, between the different persons on board ship. Scientific knowledge there was none; and in point of experience every one was on much the same level. It was not merely that there was little difference between officers and crew. The merchants had often made many voyages accompanying their goods, and were as well qualified to give an opinion in matters of wind and weather, of coasts and harbours, of shoals and quicksands, as the oldest mariner on board. The inevitable result was that in times of emergency every one did give an opinion, and that the movements of the ship were decided upon in the last resort by a majority. Some legislations attempt to check, or at least to regulate, this tendency to anarchy by providing a committee of navigation—a sort of representative body. Thus the Venetian statute of Zeno (c. 73) prescribes the appointment of five men—the patronus, the nauclerius, and three merchants chosen by the whole body of merchants on board. This body has entire control of the navigation. The maritime statute of Ancona (c. 32) is substantially to the same effect. [Compare *rooles d'Oleron*, c. 2 (Pard., I, p. 324) requiring the captain to consult the crew.]

The influence of the merchants and passengers upon the navigation is illustrated in the Sea-law. Apparently the passengers (c. 4) or the merchants

The Bulgarian position may be further reduced to absurdity.

Whatever may be said of the various formulations of the rules of proximate cause and legal causality, it is quite clear that the only relevance that the crossing of the Bulgarian frontier in this case has to the killing of the passengers and crew of 4X-AKC is that it gave to the Bulgarian authorities, and to those who dominate them, an opportunity to exercise with relative impunity the wilful and wanton and independent act of murder which they might otherwise have been impeded from exercising had the 4X-AKC been over some other government's terrain. It is appropriate, at least in this context, to dispose of the Bulgarian Government's contention by citing the dictum of Lord Bacon:

"In jure non remota causa, sed proxima, spectatur. [In law the near cause is looked to, not the remote one.] It were infinite for the law to judge the cause of causes, and their impulsion of one another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree." (Bacon, *Maxims of the Law*, Reg. I, as cited in Prosser, *Handbook of the Law of Torts* (1944).)

2. Beyond that, and strictly in the idiom of lawyers, the offense of the Bulgarian Government is a separate one; but even if it were single, with an alleged but undemonstrated related offense of El Al, the liability would be "in solidum". In all known legal systems these offenses are and must be joint and several.

3. It is true that the Statutes and Rules of this Court do not, nor, as far as can be seen, does the jurisprudence of this Court, deal specifically with the problems of the apportionment of liability between joint tortfeasors. But the application, if need be, of Article 38, 1 (c) and (d) of the Statute, provides adequate authority, for it appears that in all civilized countries the rule is substantially the same. An aggrieved plaintiff may sue any or all joint tortfeasors, jointly or severally, although he may collect from them, or any one or more of them, only the full amount of his damage.

(c. 39) can insist on taking the ship into a place notwithstanding the protests of the *vavuznos*. [Cp. *Constitutum Usus of Pisa* c. 28, ed. Bonaini, II, p. 915; *Consulate of Sea*, c. 56, 64.]

How late this state of things lasted is shown by various passages in the *Voyages of Andrea Pitti*. On one occasion the commander summons the whole ship's company to give their opinion what the land is which they see ('il padrone di nave, ragunato tutto huomo a consiglio, volse il parere di tutti', p. 16). The identity of education and experience in captain and crew accounts also for the loss of all discipline in time of danger. See the accounts in *Andrea Pitti of the mariners' behaviour in a great storm*: 'Io vedi alcuni marinari vechi cominciare a piangere e dare ordine a procacciare barile vote per potere sopra esse salvarsi' (p. 15). 'In ultimo rimedio tutti abandonamo la nave gittati in terra ginocchioni, tutti ad alta voce chiamando Sant' Ermo' (p. 40)."

Rhodian law is the ancient authority, from Byzantine times and earlier, covering the eastern Mediterranean and the Byzantine Empire. It further, as is well-known, spread to other areas.

4. The relationship between the joint tortfeasors themselves is a separate problem. Whether a joint tortfeasor who has paid may have recourse for indemnity or contribution against the others frequently depends on the relative degree of culpability involved. Certainly in the present case, the persons who caused the injury of which the United States complains were those who killed the American citizens on board 4X-AKC, and they were the Bulgarian authorities. What rights the next of kin of the passengers may have against *El Al Israel Airlines Ltd.* is not relevant in the present proceeding, which is an international proceeding, nor is it relevant to discuss whether any rights exist against the Government of Israel.

5. The law that the liability of joint tortfeasors is both joint and several appears universal.

The American and Anglo-American Common Law rules are stated in the following quotation from *American Jurisprudence* (Annex 58):

“A person who joins in committing a tort cannot escape liability by showing that another person is liable also.”

The highly authoritative *Restatement of the Law of Torts* by the American Law Institute states (Annex 59):

“... each of two persons who is independently guilty of tortious conduct which is a substantial factor in causing a harm to another is liable for the entire harm in the absence of a superseding cause”.

Halisbury, in *The Laws of England*, states the Common Law as follows (Annex 60):

“Where two or more persons have so conducted themselves as to be liable to be jointly sued, each is responsible for the injury sustained by reason of their common act.”

The French law on the subject has been stated as follows:

“Origin of the principle. A very old jurisprudence acknowledges that all persons who have participated in the same delict or quasi delict are obliged to make compensation. This jurisprudence has its origin in the Roman principles concerning fraud and violence. If several persons committed the delict, all were liable for the whole of the damages, because the responsibility of one was not diminished by the tort of the others; but if one made compensation to the aggrieved party, all the others were discharged, because there was no more damage to indemnify. This rule has always been preserved in our old law. Article 55 of the Penal Code which established joint liability among the authors of a major or minor crime must be regarded as an application of the traditional principle, and it is likely that the omission of this principle in the Civil Code is the result of an inadvertence.” (Georges Ripert, 2 *Traité élémentaire de Droit civil* 356 (2d ed. 1943).)

Referring to Article 1382 of the Civil Code, authorities have stated:

"The liability for the whole of the damages of each wrongdoer was, in fact, established in the old law which inherited it from the Roman law. To the draftsmen of the Civil Code it appeared as an indisputable principle. If they wanted to discard it, they would not have failed to explain it in a special text. The text of Article 1382 was probably considered broad enough to include the principle without being necessary to state it expressly." (Henri Mazeaud et Léon Mazeaud, 2 *Traité théorique et pratique de la Responsabilité civile* 791 (4th ed.).)

Article 1382 provides:

"Any act of a person that causes damage to another shall oblige him, by whose fault it occurred, to compensate."

Another legal writer, René Rodière ("Responsabilité", in Dalloz, 4 *Répertoire de Droit civil* 582 (1954)), states that "the best discussion and explanation of this liability is found in a decision of the Court of Cassation of July 11, 1892:

'Reparation for a wrongful act due to the fault of two or more persons must be ordered for the whole amount against either (of the tortfeasors) for the benefit of the injured party, whenever there is a direct and necessary relation between each fault and the entire damage.' (Civ. 11 Juillet 1892, two decisions, D.P. 94. I. 513 and 561.)"

It is not necessary to discuss, in the present context, the French law as to contribution and indemnity between joint tortfeasors except to state that the doctrine applies.

"Contribution among joint tortfeasors. The responsibility of each for the whole amount is justified by the interest of the aggrieved party. When the latter has been compensated, it is not justifiable that the choice he has made among those who are liable should exonerate those he did not sue." (Planiol et Ripert, 6 *Traité pratique de Droit civil français* 981 (2d ed. 1952).)

6. The joint and several liability of joint tortfeasors was established in Roman Civil Law as has been indicated. In *Sohm's Institutes of Roman Law* (Second Edition, Ledlie (1901), Section 74), the law is put in these terms:

"A correal obligation is a plurality of obligations, where there is, economically speaking, only one obligation... A correal obligation means a plurality of obligations based on a community of obligation; a joint liability in respect of the whole of the same debt or a joint right in respect of the whole of the same claim.

From a correal obligation we have to distinguish a solidary obligation. A solidary obligation means the *separate* liability of several persons in respect of one and the same object. The commonest example of a solidary obligation is the case of a joint delict, as when

two or more persons, acting jointly, do damage to property or commit a theft. So far as the obligation creates a duty to pay damages, it is solidary. Each of the co-delinquents is liable to make good the entire damage...

... In the law of Justinian the rule continues to hold good that correal obligation—joint agreement—means *joint* liability, and solidary obligation—joint delict—*separate* liability in respect of one and the same act."

7. In fact, the Bulgarian law is precisely the same. In Mevorah, *Commentary on the Law of Obligations and Contracts*⁹, the following is stated and a photocopy of this statement is included as Annex 61:

"According to Article 91 any joint debtor may be forced to pay the entire debt. This is the most important effect of passive joint liability. This means that the creditor may demand full payment from all debtors, from several of them, or from only one of them (Baudry, 12/2). The court which is competent with regard to one of the debtors is also competent with regard to all the remaining debtors (Article 163 of the Civil Code). This is so obvious that the legislators did not even have to state it. The sharing of debts (beneficium divisionis) is incompatible with the idea of joint liability; it may be sought only by a simple co-guarantor (Article 648), but not by a joint guarantor or debtor. Indeed, joint co-debtors are guarantors with regard to one another, but they have that status only in their mutual relations. With respect to the creditor every one of them is liable for the entire debt."

The liabilities of joint debtors and of joint tortfeasors are in the present context similar. A fuller text of Mevorah's study is contained in Annex 62.

Indeed, the current Bulgarian Civil Code under the present regime contains the same. In the 1955 edition of the Bulgarian Code, the following is stated:

"122. The creditor may request liquidation of the entire obligation of any one of the debtors.

Suit brought against any one of the joint debtors shall not prejudice the rights of the creditor with regard to the other co-debtors¹⁰."

8. The Soviet Code is to the same effect. Article 408 of the Civil Code of the RSFSR provides: "Persons who jointly cause an injury shall be jointly and severally liable to the injured person." (See Gsovski's *Soviet Civil Law*, Volume II (1948), page 212.)

Discussing liability for tortious injury and breach of contract, and commenting on the work of Professor Agarkov, Soviet legal authority, it is stated (Gsovski, *Soviet Civil Law*, Volume I, pages 516 and 517) as follows:

⁹ Dr. N. Mevorah, D. I. Lidzhi and Leon Farkhi, *Commentary on the Law of Obligations and Contracts* (1926), Second Edition, Articles 1-333, Vol. I.

¹⁰ *Collection of Civil Laws*, Law of Obligations and Contracts, adopted November 22, 1950, published in Official Gazette, amended thereafter, page 243.

"In instances of tortious injury, several persons are held jointly and severally liable if under Section 408 they have 'jointly' caused the injury.

'Jointly' (Professor Agarkov comments) means that it is impossible to conceive one portion of injury as inflicted by the acts of one tortfeasor and another portion thereof inflicted by another tortfeasor. Under Section 405 parents, guardians, et cetera, are liable jointly and severally together with their minor children over fourteen years of age and wards, for injuries caused by the latter."

9. Further generally applicable comparative law on joint and several liability of joint tortfeasors is contained in Annex 63.

See also "Responsibility of Joint Wrongdoers in Continental Laws", by Ernst J. Cohn, 51 *Law Quarterly Review*, p. 468 (1935).

E. MODERN RULES OF THE AIR FOR STRAYING AIRCRAFT

It must be remembered that there is a vast amount of current practice among civilized nations with respect to the treatment of straying aircraft, which is not necessarily codified in published regulations containing exhortations and prohibitions. It is well known that governments issue notams (i.e. notices to airmen) and that some governments issue prohibitions and warnings. The important thing in this case is that the Government of Bulgaria, by July 27, 1955, had issued no truly applicable warning or notam, so far as can be ascertained, controlling straying traffic, emergency situations, or the like; nor has it relied on any in the diplomatic exchanges upon which the present litigation is based.

In general, as the United States Government is fully aware, its nationals having among the largest and most numerous air carriers in the world, the largest air traffic, and having a great number of active intercepting aircraft, the following facts must be borne in mind by this Court, at the risk of reiteration:

1. In the first place, the appearance of the 4X-AKC over Bulgaria must have been seen, particularly by observers on mountain tops, belonging to the Anti-Air Defense, who reported it to the ground control at Sofia. It must also have been seen on the numerous radar screens which the Bulgarian Government undoubtedly possesses at different points in Bulgaria that cover substantial adjacent areas of Yugoslavia as well as the Bulgarian border; and the radar observers undoubtedly reported the tracking of 4X-AKC as it came from Belgrade into Yugoslavia and then followed it within Bulgaria. These facts and the continuous tracking were undoubtedly reported by the radar observers to their local controls, and by the local controls to the central control staff in Sofia. They may even have been reported to the highest political and defense authorities of the Bulgarian Government in Sofia for information and instructions—a matter on which the Bulgarian Government has the best testimony available.

2. The speed of the aircraft and its size could undoubtedly be observed in this manner. It was obvious to the ground observers that this was not a jet bomber or fighter but a relatively lumbering, propeller-driven, civil international transport plane, probably off course. In any case, the ground control could have easily managed to communicate, or tried to communicate, with the 4X-AKC in the air by voice radio, or CW, near Trn, obtaining a description of its identification and its purpose in Bulgaria. If the ground control authorities wished to issue orders that 4X-AKC should leave Bulgaria, they could have done so and described a route for the airplane to follow. This is a common practice.

3. The Bulgarian Government obviously possessed fighter planes of far greater speed and maneuverability than the 4X-AKC, a relatively slow, propeller-driven Constellation civil transport plane. The description given in the Bulgarian diplomatic notes and statements on the interception of the 4X-AKC shows that its jet airplanes intercepted it below Dupnitsa, perhaps near Sopovo. Undoubtedly the jets started from Kŭmaritsa, which is 35 nautical miles, approximately, from the point of interception. Yet 4X-AKC itself had only traversed, including its turns east and west, 45 nautical miles from Trn and a considerably shorter distance from the moment the fighter aircraft were ordered into the air. Furthermore, it may be emphasized, the weather was good, the visibility clear (see Annex 50). The case need not be discussed, therefore, of an intruding aircraft of unidentified nationality, faster than, or as fast as, defensive fighter aircraft, or insufficiently marked for identification by intercepting fighters. The case need not, similarly, be discussed of an aircraft flying evasively or erratically over a known prohibited security area. This aircraft, 4X-AKC, according to the Bulgarian Government's own account, flew in a methodical manner as would a relatively slow transport of an international civil airline.

Inasmuch as the United States Government finds it difficult to believe that the Bulgarian Government did not engage in some communication with the 4X-AKC in the air prior to ordering it shot down, and certainly even afterwards, the point becomes even more important that the two fighters, making loops and passing around and in back of the slower transport, as thousands of witnesses in the Struma Valley saw, were easily able to see its full markings. This is the testimony of witnesses (see Annex 52) who further indicate that the 4X-AKC descended in altitude after interception. These markings gave the name of the line as El Al Israel Airlines and the number of the plane as 4X-AKC, and showed clearly that the plane had no armament—indeed, the fighter aircraft may have flown close enough to see the passengers in the passenger portion of the aircraft and the crew in the crew section.

It is, moreover, incredible that the crew of the 4X-AKC, in the circumstances, did not by voice, hand signals and CW implore the

fighters and the ground control not to shoot, not to continue to shoot, to let 4X-AKC land or to let it pass back into Yugoslavia or down into Greece.

It seems equally incredible that the authorities at high level in the Bulgarian Government, as well as those at lower levels, such as the fighter planes' pilots and their ground controllers, determined to kill the crew and the passengers and to destroy the 4X-AKC despite the pleas of the crew and the inhumanity of the act. But that is what happened.

4. In these circumstances it was the Bulgarian Government's international legal duty, the United States Government submits, in accordance with the long-held principles of international law and morality and the practice of civilized governments:

(a) To have noted the number of the aircraft and its nationality and permitted the aircraft to fly out into Greece or into Yugoslavia and then taken the matter up in diplomatic channels to obtain an explanation or prevent a recurrence.

This practice has been followed and adopted by the civilized governments of the world. The United States Government has had occasion to invoke this rule in the past, and it has never been challenged diplomatically. Indeed, in the case of the destruction by Yugoslav fighters, on August 19, 1946, of an American transport airplane with military personnel, near Bled, the Yugoslav Government paid damages for the killing of the personnel of the overflying airplane and the Prime Minister of Yugoslavia stated, in part, in a note of August 31, 1946 (No. 10381) as follows:

“(Two) As I already stated both orally and in writing to Anglo-American correspondents, I have issued orders to our military authorities to the effect that no transport planes must be fired at any more, even if they might intentionally fly over our territory without proper clearance, but that in such cases they should be invited to land; if they refused to do so their identity should be taken and the Yugoslav Government informed hereof so that any necessary steps could be undertaken through appropriate channels.”

(For exchange of diplomatic correspondence see U.S. State Department Press Release of September 3, 1946, in 15 *Department of State Bulletin*, p. 505, and *U.S. Naval War College International Law Documents 1948-49*, pp. 208-216) (Annex 64.)

Moreover, since that time the United States Government has obtained payment from the Yugoslav Government for the loss of the aircraft in the case under discussion (see *Settlement of Claims* by the Foreign Claims Settlement Commission of the United States and its Predecessors from September 14, 1949 to March 31, 1955, pp. 192 ff.).

(b) If the Bulgarian authorities feared that a security violation or damage sufficient to require the examination of the crew, passengers or contents of the aircraft had occurred they could, by under-

standable conversation on voice radio, by CW or intelligible maneuvers, have made it known to the aircraft that it was to follow a fighter to a properly designated airfield, the fighters' orders being formulated with due care for the safety of the passengers, the crew and the aircraft. After proper examination had taken place on the ground it would have been the duty of the Bulgarian authorities to release the innocent and to have taken the matter up with the Israel Government in diplomatic channels.

This practice is universal. The United States Government has called attention to it in international discourse on a number of occasions. Most recently it called the attention of the Soviet Government to it in a note of September 12, 1958, in inquiring concerning the destruction of a United States Air Force transport airplane in Soviet territory. The United States Government said:

"The United States Government emphasizes that the missing C-130 aircraft was an unarmed transport aircraft clearly marked and operating on an instrument flight plan duly filed in advance in accordance with the regulations of the International Civil Aviation Organization. As the Government of the USSR is aware, it is recognized international custom when intercepting an unarmed aircraft to indicate by signals that the intercepted aircraft shall follow the intercepting aircraft to the nearest appropriate airfield for investigation."

(c) If the Bulgarian authorities were concerned that thereafter, and while still in Bulgarian air space, the 4X-AKC might offend the security of the country by overflying prohibited territory or fly errantly, it was the duty of the fighters to show the 4X-AKC a safe route into Yugoslavia or into Greece. In fact, this appeared to be unnecessary since obviously the pilot of the 4X-AKC had discovered the Struma Valley and was following the valley or the Bulgar-Yugoslav ridge-tops into Greece. Indeed, eye-witnesses observed that the aircraft was trying, in this narrow corridor, to fly into Yugoslavia, but was prevented from doing so by the Bulgarian authorities. It may, in fact, be doubtful whether the pilot of 4X-AKC did not believe he was over Yugoslavia when the fighters first shot at him, flying in a southerly direction.

5. It certainly was the duty of the Bulgarian fighters, once they had disabled the aircraft by shooting it, forcing it to go down to a lower altitude, so that it was unable to fly over the Belasitsa Mountains separating south Bulgaria from Greece, to have permitted it to land in the Struma or Strumitsa Valleys. There it could have gone to the Sherbanovo strip, which was used by small planes, although this was a risk to the lives of the crew and passengers who were still alive after the ghastly shooting which the fighters had directed against the 4X-AKC in flight.

Instead the Bulgarian fighters shot into the fuselage, where the passengers were, while the 4X-AKC was in flames and the pilot

was evidently trying to land it in Bulgaria, on the flying strip at Sherbanovo.

The United States Government has had occasion to protest diplomatically, and to reserve its right for compensation for similar action which it has charged against a Soviet fighter aircraft, in a note to the Soviet Government of July 11, 1958. There, too, an unarmed C-118 cargo aircraft described as a "slow, four-engine, propeller-type, unarmed aircraft" ... "while on a routine flight on the established commercial air route to Tehran inadvertently crossed the Soviet frontier near Yerevan owing to circumstances beyond its control". In that case, as in the present case, the fighters made no attempt to point out a safe landing area to the burning aircraft and, the note continued, "While the C-118 was on its final approach to an emergency landing, the Soviet fighters made another firing run on the crippled transport". The Soviet Government has not attempted to defend this action; it has merely denied it. The Bulgarian Government's actions have been admitted by that Government.

6. There is nothing in modern civil aviation history which compares, in the United States Government's belief, to the heinous conduct of the Bulgarian Government's fighters in this case. There have been, as the United States Government has charged in cases in this Court, cases where military aircraft of the Soviet Government have destroyed United States Government aircraft engaged in innocent flight in international air space in similar fashion. There have also been cases of shooting of civil aircraft by Soviet and Chinese Communist fighters in other contexts. But there has been no case of a civil international and clearly marked aircraft so ruthlessly, horribly and indefensibly attacked as this. The United States Government hopes that, in consequence of the Court's action in this proceeding, this type of killing will be ended.

7. The United States Government has become aware, in the course of preparation of this Memorial, that in 1948 the Ministry of the Interior of the Government of Bulgaria issued certain decrees and regulations with respect to the overflight of foreign registered aircraft over Bulgaria (*State Gazette*, No. 36, February 14, 1948, Protocol No. 21, 13th Decree of the Council of Ministers; *State Gazette*, No. 68, Sofia, Wednesday, March 24, 1948, UKASE, No. 424).

The Protocol of the Ministry of the Interior, containing the 13th Decree of the Council of Ministers, purports to contain Regulations for the Supervision of Air Traffic (Annex 65). The Protocol and the regulations cannot be cited as justification for the Bulgarian Government's conduct in this case.

(a) They have no provision with regard to the activity of military aircraft, such as the fighters that were involved in this case, for

it is specifically stated that the Minister of National Defense deals with regulations on this subject.

(b) These regulations, which do not appear to have been superseded, were not generally known. Bulgaria is not a member of the International Civil Aviation Organization and was not in 1948.

(c) The regulations have nothing to do with an airplane wafted over Bulgarian territory or mistakenly crossing there. They have only to do with foreign aircraft which deliberately fly over Bulgaria, in which case permission is required through diplomatic channels. Article 16 specifically provides that a foreign aircraft with a "permit to fly over the country, must cross the frontier at a specified place" and can land only at "Vrazhdebna" airfield or in the publicly designated place; Vrazhdebna appears to be the official civil airfield of Sofia, far away—to the north and east—from the place of interception of the El Al 4X-AKC and the Bulgarian fighters.

(d) Article 20 provides as follows:

"Any foreign aircraft flying over Bulgarian territory without a permit, or having a permit but failing to fly across the frontier at the specified time, place or height, or failing to observe the air corridors, entering a forbidden zone, not landing at 'Vrazhdebna' airfield or the airfield indicated in a convention or in its permit, from which parachutes or objects are dropped, which causes damage, deviates from its route or delays without notifying the reasons for the delay, or which violates the laws and these regulations is warned by an order—a landing signal—three shells fired at an interval of 10 seconds, which obliges it to take the shortest route to the nearest corridor and following it to make for 'Vrazhdebna' airfield or the airfield indicated in the convention or in its permit, flying under a height of 500 meters.

If the aircraft fails to observe the warning signal, it is forced to observe the order by opening fire or by other compulsory methods in the event of which it may be destroyed."

The United States Government is not aware whether the pilot of 4X-AKC knew of the contents of this article. Certainly the United States Government was not aware of it. The presence of innocent passengers on an aircraft, unknowingly and involuntarily wafted over Bulgaria, not knowing they were there, should certainly be a ground for not applying this article.

(e) Moreover, there is no evidence that the type of warning, which would lead the fighter planes to conduct the border-crossing aircraft to Vrazhdebna, was ever performed. It is perhaps for this reason, among others, that the Bulgarian Government in acknowledging liability described the shooting as premature, performed in "a certain haste". The United States Government wishes to add that if Article 20 may ever have international validity, the present case is not one in which the article can be validly cited.

Finally, then, as to Article 20 of the Decree of February 7, 1948, the following may be observed:

(i) The Bulgarian Government does not claim to rely upon this decree. That may be because to do so would in itself violate fundamental elementary principles of international law.

(ii) Article 20 calls for an order consisting of a landing signal of three shells fired at intervals of 10 seconds, "which obliges it [the intruding aircraft] to take the shortest route to the nearest corridor and following it to make for 'Vrazhdebna' airfield ... flying under a height of 500 meters". This did not happen and is not claimed to have happened.

(iii) It is only then that "opening fire" or "other compulsory methods" may be used, including the phrase "in the event of which it may be destroyed". In other words, the methods used must be appropriate methods of warning the aircraft to go to Vrazhdebna; they do not include destruction of the aircraft.

(iv) There is no evidence in this case that any warning signals were used, for the firing into the aircraft began almost immediately on interception. Furthermore, the firing was directed to the destruction of the aircraft and not to making it land. The aircraft could have been made to land without firing. In fact, it could have been boxed in by fighters and shown the route to Sofia.

Any interpretation of this order, which was not generally known, justifying killing, could hardly apply to a passenger plane with passengers. They cannot be deemed to be covered. This regulation, however severe it may be, must be deemed inappropriate and irrelevant. In fact this the Bulgarian Government has done in not citing it in its diplomatic exchange.

(v) To give the regulation any international validity it must be interpreted for the most extreme cases where, under international law, no alternative consistent with the security of the country could be resorted to other than destruction. Even the Bulgarian Government, in speaking of undue haste and punishment of the guilty, concedes this.

(vi) In order, then, for this provision to have any international validity, it must be assumed that it grants authority to the Air Defense Organization to destroy an aircraft only when such circumstances exist as under civilized international law or practice leave no alternative to the security of the country but destruction. Such, for example, might be the case of an unauthorized, unforewarned flight of a military aircraft of great speed, too much for fighters to control, which refuses to listen to or comply with reasonable orders of air traffic control, or of fighters in the air, to identify itself, which bears no clear markings and which proves by its character and conduct in other ways to possess, by objective evidence, a clearly hostile intent, directing its flight toward a high

security area, without deviation. Such a case is not presented, in the slightest, in the events of July 27, 1955. There the facts were presumably all to the contrary. Indeed, if the Bulgarian Government will divulge the conversations and other communications between the aircraft and the ground, and the aircraft and the fighter planes pursuing it, the United States Government believes an entirely different situation will be expressed. It is undoubtedly for that reason that the Bulgarian Government has failed to refer to the decree of 1948.

8. The Ministry of Interior's ukase, under the authority of the decree of the Council of Ministers, prohibits the overflight of foreign aircraft and landing in Bulgaria, unless by special permission (Article 5). It is to be noted, however, that Article 15 calls not for death as a punishment, but for imprisonment, for unauthorized overflight, and it recognizes "extreme necessity" as a justification.

9. If it be assumed, as has been indicated, that the Bulgarian authorities at Sofia became concerned with the unidentified aircraft going toward Sofia, as the Bulgarian Government claims in its notes on this subject, by the description of the direction of the aircraft from Trn, that course had been changed and every peril to the security had ended. Therefore, the rule must apply, as is well established in various contexts of international law, that a prior emergency situation justifying hostile action by one government against the national of another is no longer justified when the emergency is over. Such is the case of the *Russian American Bering Sea Arbitration of 1902*. The Russian Government was held guilty of unlawful international conduct in seizing American vessels on the high seas. The Russian justification that they must have violated Russian territorial water regulations some time prior to seizure was denied.

F. THE DUTIES OF THE BULGARIAN GOVERNMENT REGARDING PRIOR NOTICE OF BORDER VIOLATION

1. The interest of the United States Government in asserting the sole liability of the Bulgarian Government derives not only from the facts of the case but from the general proposition that what was done by the Bulgarian Government, if permitted to stand in this Court, can be done to other American citizens flying near Bulgaria, or other countries, and on other airlines. It can be done to nationals of other countries and of all governments. The United States emphasizes again that its interest is in obtaining from this Court a condemnation of universal character against the shooting of innocent civil aircraft inadvertently overflying without prior authorization. It seeks such a judgment both because the Bulgarian practice is inhumane and unjust to the passengers and to the crews

and is a wrong against the airline involved and because the practice of civilized nations is otherwise.

2. The position of Bulgaria on this subject is difficult to follow. It talks of a failure of 4X-AKC to obey a warning. Just what "warning" does it allege its fighters gave to the 4X-AKC? Was it a warning that unless the airplane landed at a designated place the fighter aircraft would take necessary action, such as boxing it in to make it land? Was it a warning that unless the aircraft left Bulgaria and went to Yugoslavia other similar action would be taken against it? Was there a signal that the airplane should descend to a lower altitude? If it was a warning that the fighters would take more vigorous action to compel the 4X-AKC to come down in Bulgaria, what place was indicated as the place for descending and what route was indicated for the airplane to follow? The Bulgarian Government's notes are completely silent on these subjects.

On the basis of the evidence available, the United States Government must conclude that there were no warnings and no conversation giving the 4X-AKC opportunity to save itself, the crew and its passengers.

3. The cases where bringing a plane down is resorted to must be justified by special security considerations, which were not asserted to be present in this case. In those cases the utmost care must be taken that no unnecessary firing takes place and that the safety of the passengers, crew and aircraft are solicitously cared for.

4. The United States Government wishes to take this opportunity to point out that had the Bulgarian Government made known in advance, to the world, that its standing orders to its pilots and so-called Anti-Air Defense were, as the United States Government has learned and asserts them now to have been, to shoot overflying aircraft without warning and for the purpose of killing and destruction, it would have made this fact known to all its citizens and all airplanes. They would have been cautioned to avoid all routes from which they might be wafted over Bulgaria. All airlines would undoubtedly have taken extreme measures to avoid flight in the corridor of Yugoslavia, known as Amber 10, from Belgrade through Skoplje to Salonika, unless special navigational aids of higher order than existed on July 27, 1955, were available.

Bulgaria would be known and avoided as a wilderness, not governed by the rules of civilized conduct, and shunned in every possible way by international aviation; international aviation would have provided a large and wide margin of safety to passengers, aircraft and crew. The absence of such warning is particularly worthy of the condemnation of this Court however much the shooting, even with prior warning, would have been condemnable. The failure of Bulgaria to have made known to the world its orders or

purpose to shoot to kill automatically on mere overflight and without warning is a grave violation of international obligation.

5. It is, as has been noted, highly doubtful that any warning to refrain from entering Bulgaria, to leave it, or to land at a safe place, was given to the airplane 4X-AKC before it was shot and attacked. The United States Government calls attention to the statement in the Bulgarian Telegraph Agency report of August 3, 1955, that when the Israeli aircraft 4X-AKC began to overfly Bulgaria, military aircraft were ordered by "the appropriate command post" and flew up to intercept (see Annex 34).

The United States Government has been informed by reliable testimony that the Bulgarian Government, by July 27, 1955, had divided the territorial air space of Bulgaria into zones; and that over some zones unauthorized overflight of any kind, whether by civil or military airplanes, and whether friendly or unknown, required that the aircraft be shot down and destroyed without warning; that in fact, on a number of occasions, such incidents took place, and had taken place, before the incident of July 27, 1955; and that in other zones restricted air space was limited to certain altitudes; and that the shooting might be by Bulgarian fighter aircraft or by anti-aircraft artillery.

If an order of such content existed on July 27, 1955, it was, as applied to such aircraft as 4X-AKC, internationally invalid and should have been, and should be, withdrawn as in violation of international law.

G. THE DUTY NOT TO LEAVE BULGARIA

1. The Bulgarian Government, in its notes, while admitting liability (repudiated now, however, since Bulgaria's admission into the United Nations) seeks color of extenuation for the action of its fighters and its ground controllers, at least as against 4X-AKC and its owners, in the fact that the 4X-AKC was about to enter Greece when it was destroyed. In the note of August 4, 1955, the Bulgarian Government states that the fighter planes warned the 4X-AKC to land "in accordance with international regulations". As has been noted, it has never cited specifically what warnings it gave or how they were communicated. Nor has it indicated whether the fighters or other appropriate Bulgarian authority indicated to the plane that it should land in the rocky mountains and hilly countryside of the Yugoslav-Bulgarian border or whether they directed the airplane to some proper place for a four-engine aircraft with passengers, cargo and crew, and if so what place that was. Above all, it has not stated or demonstrated that it was necessary to effect any landing for the security of Bulgaria or any other internationally proper reason. To have any semblance of international legal validity such evidence would be essential.

The note continues:

“In spite of this, it did not obey but continued to fly in a southerly direction in an attempt to escape across the Bulgarian-Greek frontier.

In these circumstances, the two fighter planes of the Bulgarian Anti-Air Defense of this area, astonished by the behavior of the aircraft, opened fire, as a result of which it caught fire shortly thereafter and crashed in the area of the town of Petrich.”

In continuing to summarize the conclusions of the special governmental commission which investigated the incident, the Bulgarian Government says:

“Even after having been warned, it did not obey but continued to fly towards the south in the direction of the Bulgarian-Greek frontier.”

While the Bulgarian Government admits “a certain haste” in shooting the aircraft—that is, it admits the fighters should not have shot—the emphasis on the attempt of the 4X-AKC passenger plane to enter Greece is, by implication, considered a wrong.

2. The United States Government challenges this characterization. If it was wrongful for the 4X-AKC to be over Bulgarian territory, and the Bulgarian authorities had decided that there was no need to force it to land, then the Bulgarian authorities should have welcomed the attempt of the 4X-AKC to leave the Bulgarian air space, especially since it was surrounded by two fighters who were in a position to ensure that it could not endanger the security of Bulgaria. There is no question under international law that an innocent airplane, such as was 4X-AKC, wafted into, or for any innocent reason flying within, unauthorized air space should get, and should be helped to get, away from there. A special satisfactory reason must be shown for endangering the lives of the passengers and crew in forcing such an airplane down rather than letting it depart under convoy or escort or other observation. The final destruction took place within eyesight of the Greek frontier, but the shooting had begun when the plane was far up near, or on, even over, the Yugoslav border south of Dupnitsa, not far south from Trn, where it had allegedly entered. The shooting continued along the Yugoslav frontier. Thus the Bulgarian fighters had prevented the 4X-AKC from leaving Bulgaria at any point and re-entering Yugoslavia from which it had strayed.

3. The United States Government emphasizes again that to lend validity for any rule of law in a case such as this, decreeing death for the presence in its air space of an unauthorized aircraft, the pilot of the aircraft must be given adequate and reasonable opportunity for an alternative course of action to cure the invalidity or to extenuate it to the minimum. If the Bulgarian Government did not desire the 4X-AKC to stay on any course going further into

Bulgaria it should have taken adequate measures, such as escort by fighters, to force it to land or to get it out of Bulgaria with the minimum risk to the passengers, the crew and the aircraft. But in this case, as has been noted, there must have been conversation between the 4X-AKC pilot and the Bulgarian ground authorities near Sofia. In this conversation the Bulgarian authorities did not grant 4X-AKC permission to land or proceed in an orderly way back to its flight plan course from which it had strayed. The 4X-AKC was therefore left no alternative but to try to make its own way out. The Bulgarian Government's conduct was therefore in violation of international law.

4. As has been noted above (see *supra* p. 195), the Soviet Government has itself enunciated the doctrine of international law that where there is no necessity or need for the alleged intruding plane to land, the proper rule is to show it a way out of the territorial air space of the country entered upon¹¹.

5. It is really not necessary to cite more international law on this point. In this case the action of the Bulgarian Government not only was unjustified, but inhumane and cruel, and a violation of international custom (Statute of the Court, Article 38 (b)).

H. THE DUTY TO PERMIT EXIT

1. The corollary of the foregoing is plain. There was in the circumstances a duty to permit exit. The point has been made, but deserves reiteration, that a government over whose territory an innocent aircraft such as was 4X-AKC has wafted or been driven has an affirmative duty, in modern times, absent security considerations, to permit the airplane to leave the country without descent, of its own accord, or after notice by the overflown country, that it is there without authority. This is certainly the practice of civilized nations. It is particularly important here because the 4X-AKC undoubtedly tried to get back to Yugoslavia and undoubtedly tried, as the Bulgarian Government has charged in its notes and statements, to enter Greece. Such entry could be effected without any injury, under the facts stated, to Bulgarian security, and the

¹¹ The Swedish Government circulated a document through the Secretary-General of the UN in September 1952 (*Attacks Upon Two Swedish Aircraft Over the Baltic in June 1952*, New Series II: 2) describing an incident in which two unarmed Swedish aircraft were shot down by Soviet fighters over the Baltic Sea, one of them a rescue aircraft looking for a missing aircraft.

The Soviet Government's justification for the shooting of June 16 was (Soviet note of June 17, 1952, p. 12) that the Swedish aircraft flew over the Soviet territory and refused to obey a request to follow interceptors and to land at an air field, but instead opened fire on the leading aircraft. The rescue aircraft were wholly unarmed and carried out their search exclusively over international waters according to a note of Minister of State Hammarskjöld to the Soviet Government of June 18, 1952 (p. 13).

overflight could have been made the subject of diplomatic correspondence. This, in substance, is what the Soviet Government has contended in the cases cited above and this is undoubtedly the rule of reason and, therefore, of international law.

2. In this regard it is interesting to note the rule of law that once a vessel has ceased to be within the proper jurisdiction of a government, the fact that the vessel may have committed some wrong when within the jurisdiction of the complaining government does not entitle that government to seize the vessel. Moore's *International Law Digest*, Volume I, Section 173, pages 923-929, discusses the *Bering Sea Fisheries Arbitration* between the United States and Russia.

Since the Bulgarian authorities did not attempt to arrest the aircraft at any time, when there was a claim that it was a security menace, and did not attempt to bring it safely down, the circumstances justifying such action had passed when the shooting began and the aircraft was destroyed. The aircraft would surely not be subject to seizure or injury, much less destruction, over Greece or Yugoslavia. Therefore, in the circumstances the right of exit was clear and should have been respected by the Bulgarian authorities.

3. It is true that in the present case the Bulgarian Government, for the purposes of ordinary jurisdiction, did have authority to take some appropriate action, in appropriate circumstances, against an aircraft flying in its, Bulgarian, air space. But the propriety of such action would depend not merely upon the technical crossing of the border but upon the fact that it was a potential security or traffic menace flying as far east as Breznik. Its attempts to get out of Bulgaria, therefore, extenuate whatever wrong it may have been guilty of and indicate an intention to remove itself as quickly as possible from Bulgarian air space. The Bulgarian Government would be entitled to complain, to demand an investigation of the overflight and make clear its disapproval of any recurrence, but in the circumstances recited, that would be all.

PART IV

DAMAGES

The United States Government does not believe that there is any necessity at this time to burden the Court, or this Memorial, with a fine exposition of the nature or computation of the monetary damages alleged against the Bulgarian Government in this case on behalf of American claimants for the deaths of American decedents. The Bulgarian Government has not contested the amount of the damage suffered; it has contested its substantive liability. The United States Government has submitted, with its Application, an adequate specification of the damages suffered and, unless the

Bulgarian Government admits its liability and seeks only to challenge the quantum of damages asserted, the United States Government sees no point in enlarging, in this Memorial, on the statement or the theory of the damages, which are most modest and normal.

1. The United States Government desires to remind the Court again that the case is not one of damages suffered by negligent act or vicarious liability. The case is one which, if committed by individuals, would submit them to charges of murder and in many countries to capital punishment and certainly to maximum penalties. The fact that this Court may feel it has no power to issue such judgments should not, it is submitted, prevent it from noting that the Bulgarian government is hardly in a position to quibble about dollars. However, the sum of \$257,875 requested in the Application on behalf of the private American claimants, is purely compensatory.

2. On the subject of additional amends, of which the United States gave notice in its Application, paragraph 3, the United States Government respectfully submits that the Court should grant an additional judgment to the United States Government for \$100,000 for the additional wrongs wantonly committed by the Bulgarian Government; that is, other than those committed against the next of kin whose monetary claims for compensatory damages have been espoused by the United States. For if we were to follow only the compensatory theory of civil damages in general, we might conceivably reach a point where no damages would be payable though treacherous murders were committed internationally by one government of the nationals of another government. Additional amends to the injured government are therefore desirable and even necessary.

International law authorities have recognized the existence of this problem (see, for example, the reservation to the judgment of Judge Parker in the *Lusitania* case which is cited by the Memorial of the Government of Israel in the parallel case, paragraph 104, page 108, last sentence).

On the issue of damages the applicable case is, therefore, the *I'm Alone* case, which is discussed in Volume I, Whiteman's *Damages in International Law* (1937), pages 151-157, 717. In that case the commission, consisting of Mr. Justice Van Devanter of the United States Supreme Court and Duff, Canadian Commissioner, ruled that the United States should pay, in addition to individual sums for the sinking of a rum-runner of Canadian registry as compensation to the members of the crew who were not parties to the illegal conspiracy to smuggle liquor into the United States, a sum of \$25,000 to the Canadian Government in addition to apologizing to that Government for the intentional sinking of the suspected vessel. The commission said that:

"... the sinking could not be justified by any principle of international law... The act of sinking the ship ... by officers of the United States Coast Guard, was an unlawful act;"

and the commissioners considered that the United States ought:

"... formally to acknowledge its illegality and to apologize to His Majesty's Canadian Government therefor; and, further, that as a material amend in respect of the wrong the United States should pay the sum of \$25,000 to His Majesty's Canadian Government; and they recommend accordingly." (Whiteman, page 157.)

It is noted that in the *Imbrie* Case, against Persia, the United States took a similar view (see Whiteman, Vol. I, page 732).

Courts have long recognized that there are situations in which no showing of monetary loss need be made to justify a monetary award. The relevance of the domestic Anglo-American law on Defamation is an example. As is well known, injury to reputation does not need to be proved to the penny and juries and courts are permitted to award substantial damages without a showing of actual injury. The damage inflicted on the United States and the American people is obviously greater than the damage to an individual, especially when the guilty party is a government rather than an individual.

The case presented in this Memorial is not simply a civil problem of claims of American nationals. The whole problem of the freedom of the air and the safety of the nationals of all governments from murderous attack by the government of overflowed terrain is involved. The problem presented transcends the individual 4X-AKC.

The principle that a government is liable for its torts, both for those committed against the nationals of other governments and those against other governments themselves, is clear. The subject is discussed, for example, in Hackworth's *Digest of International Law*, Volume V, Section 486. There is cited among other authorities the judgment of the Permanent Court of International Justice (I Hudson, *World Court Reports*, page 589) in the *Chorzów Factory* Case, decided July 26, 1927. There the German Government sought damages from the Polish Government for the seizure of German properties in violation of a commitment in a convention known as the Geneva Convention. The Court said (page 602):

"It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself."

The failure of the Bulgarian Government to comply with its promises to make compensation to the United States for injury to the United States and its nationals, together with the injuries to the United States nationals and the well-recognized tortious char-

acter of a false statement as to its intentions to make the compensation, to punish the guilty and to prevent a recurrence, are in international law to be resolved by "reparation in an adequate form". In addition to the breach of contract involved there is thus also the element of false representation as to its state of mind and intention, which at least aggravates the wrong even if it did not by itself constitute a cause of action on behalf of the United States against the Bulgarian Government.

The wrong complained of is justiciable and legal and is therefore not to be confused with wrongs which are merely political in character (see Lauterpacht, *Oppenheim's International Law*, 7th edition, Volume II, pages 4 and 5).

In view of the limitations on tort and criminal punishment powers of this Court, an additional judgment for \$100,000 to the United States Government on account of the elements of fraud, deceit, and wilful and premeditated killing of American nationals would be proper, in addition to the awards of monetary damages for the account of the next of kin of the American passengers.

3. The facts recited make it also clear that any judgment by this Court must include an order for the punishment by the Bulgarian Government, in accordance with its solemn promise to the United States Government and other Governments, of the individuals, subject to its jurisdiction, who ordered and participated in the killing. The case must remain open until adequate proof has been received by the Court and the United States Agent that payment has been made as ordered, that the punishment has in fact been meted out in adequate character, and that appropriate steps have been taken to prevent a recurrence. These steps by the Bulgarian Government must include a public denunciation by it to its citizens and military of any orders to shoot overflying innocent civilian aircraft, at least in such a way as to imperil the occupants. The punishment of the responsible individuals must be in accordance with the law applicable to murder and the individuals covered should include all the guilty, regardless of rank.

4. The United States Government is also entitled to a judgment from the Court for the costs of this proceeding. The United States Government has been forced into expensive litigation, including complicated and expensive investigations of fact caused by the refusal of the Bulgarian Government to provide information to which the United States Government is entitled. The amount thereof will not be known until the proceeding is complete. The United States Government submits that:

(a) Its costs in this case, which it is prepared to support in detail, if properly requested, should be fixed at not less than \$100,000.

(b) Its further costs beyond \$100,000 should be allowed at the end of this proceeding.

PART V

RULINGS AS TO THE EVIDENCE

The Government of the United States of America believes that the foregoing facts, supplemented by the facts adduced in further testimony before this Court, or as this Court may direct, and the foregoing statements of law compel certain conclusions as to the evidence. Pursuant to the Statute and Rules of this Court, for example, Articles 49 and 54 of the Rules, and Article 49 of the Statute of the Court, and the practice of this Court, the United States Government requests the Court to order as follows:

1. The Bulgarian Government must make available to the United States Government the evidence, data, documents, and other material in the Bulgarian Government's possession or available to it relating to the flight of 4X-AKC, on July 27, 1955, its observation and its treatment by Bulgarian authorities, and the treatment of the passengers and crew, as well as the fulfilment by the Bulgarian Government of the promises made by it in its note to the Legation of Switzerland at Sofia on August 4, 1955.

2. In the alternative, as respects any material evidence, the Bulgarian Government shall permit representatives of the United States Government to examine such material under appropriate guarantees as the Court may provide. All such evidence must be the original or best available legal evidence.

3. Should the Bulgarian Government not comply with any of the foregoing directions the United States has the right to proceed hereafter on the premise that such evidence so requested but not made available would be unfavorable to the Bulgarian Government. In that case the United States Government may consider and contend, whenever and wherever appropriate, that the Bulgarian Government should be estopped (*a*) from producing evidence in its behalf relating to the evidence thus concealed, and (*b*) from contesting the admissibility or value of secondary evidence relating thereto which the United States Government may proffer.

The United States Government calls attention in this regard to the principles established, among other cases, in the Corfu Channel Case by this Court (*International Court of Justice Reports*, 1949, page 18) which is also cited in the United Kingdom Memorial, paragraph 51.

4. In this case the United States Government reserves the right to contend that such failure is in itself *prima facie* a confession of guilt on the part of the Bulgarian Government of the charges against it made in the Application and in this Memorial of the United States Government.

5. Specifically, the following is a list of the material which should be made available to the United States Government, and to the Court, at the latest in the Bulgarian Government's Counter-Memorial.

(a) The full report of the Bulgarian official inquiry commission, allegedly consisting of the Cabinet officers, and of all other Bulgarian inquiry commissions, of the incident of July 27, 1955. There should be included all reports by subordinate and advisory investigators and review officials.

(b) The original, or a photocopy, of the manifest and other passenger identification documents found on board or in the area of the crash of the aircraft during examination of its contents on the ground near Petrich if more documentary legal evidence of the presence of any of the American nationals on board the 4X-AKC is desired, or such presence contested. This shall be in addition to the production of all copies of other documents, including manifests, flight plans, working charts and radio logs found at the crash site near Petrich.

(c) Who, by name, position and rank, made the determination that the El Al aircraft 4X-AKC could not be identified after crossing the Bulgarian frontier; (2) when and under what circumstances the determination was made; (3) what instructions were given to the fighter pilots, and by whom, by name, position and rank, on dispatch from the airfield and during flight in the air.

(d) A full account of the tracking of the 4X-AKC by all radar stations and ground observers situated in Bulgaria from Belgrade through Trn and then the passage farther into and within Bulgaria. This should include the movements of the Bulgarian fighters. The account should be supported by all the logs, observation reports, communications reports and memoranda which bear on these airplane movements, both of and with the 4X-AKC and the Bulgarian fighters, and of ground observers and anti-aircraft units. They should cover the period from the first observation of the 4X-AKC within Yugoslavia and the dispatch of the fighter planes to intercept the 4X-AKC, however identified or unidentified, until and including the filing of the reports of their pilots upon returning to base.

(e) There should be included, therefore, with respect to the incident, the names and ranks of the fighter pilots, copies of their orders with regard to this incident and, if oral, the written embodiment of the full terms of those orders, the names and ranks of the radar observers and ground observers, the names and ranks of the ground controllers, the name and rank of each commandant of the air fields to which they belonged and to which they reported, the names and ranks of the senior supervisors, up to and including the highest rank of those participating, including advisers, or however denominated, both of Bulgarian and other nationality.

(f) Gun camera film of all the participating fighters, all available logs and reports of radio and radar information covering conversations with 4X-AKC by CW and voice radio with the air traffic control in the area of flight, with all the military air defense units participating and all other participating Bulgarian aircraft.

(g) The full content of all communications between the intercepting fighters and 4X-AKC including those which, in the opinion of the Bulgarian Government, constituted "warnings", giving in detail the name of the individual who delivered each "warning" and the specific recital under oath of all the surrounding circumstances by the individuals involved on the Bulgarian side.

(h) The name of the air field, if any, to which the Bulgarian fighters attempted to direct the 4X-AKC to land, if they did so, and how this attempt was accomplished; if they did not do so, the names of the available air fields on which the 4X-AKC could have landed on its own motion in the conditions of the flight.

(i) All orders outstanding on July 27, 1955, binding upon Anti-Air Defense personnel of every rank, aircraft as well as ground, relating to the treatment of unauthorized overflying civil aircraft, with particular reference to shooting or destruction.

(j) Without regard to the foregoing, there should be specifically included all CW and voice communications between 4X-AKC and civil and military ground control authorities prior to the crash and after the 4X-AKC entered Bulgaria; the full radar coverage report of the entire incident; all radio communications of the 4X-AKC in the air that the Bulgarian Government possesses, together with the names of all the Bulgarian witnesses and actors involved, whether directed to and from Bulgaria or any other place, including Israel; the conversations and other communications of 4X-AKC with the ground in Bulgaria and the 4X-AKC with the fighter planes pursuing it; and the exact verified conversation of the fighters and the ground control with the 4X-AKC.

(k) An account of the payment of money, the grant of leave, the promotion or change of status for the personnel of the Anti-Air Defense personnel and particularly the pilots, radar operators and ground observers and ground controllers who participated in the incident of July 27, 1955, ending with the crash of 4X-AKC. This statement should be made particularly with reference to the promotion of any of the pilots of the fighters who attacked the 4X-AKC and the award to them of cash, or the equivalent, or of decorations, or citations of merit, on or after July 27, 1955.

PART VI**SUBMISSIONS**

The Government of the United States of America believes that the foregoing facts, supplemented by such facts as may be adduced in further testimony before this Court, and the foregoing statements of law, supplemented by such other statements of law as may be hereinafter made, compel the following submissions, and the Court is asked to adjudge and declare the following:

1. That on July 27, 1955, responsible authorities of the Bulgarian Government, in violation of international law, wantonly and wilfully killed nine innocent American passengers while they were in the course of flight in a scheduled international civil airliner flying over Bulgaria, who had done nothing to provoke or justify such killing, under circumstances of innocent flight described above.

The names of these Americans are given in this Memorial and in Annex 3 to the Application instituting these proceedings.

2. That as a direct effect of the killing of the aforementioned American nationals, the claimants, also American nationals, whose names are listed in the same Annex, suffered a total damage of \$257,875 representing pecuniary losses and other damages directly attributable to the act of the Bulgarian authorities. The Government of Bulgaria is obligated under international law to pay this sum to the United States Government.

The United States does not believe it necessary to break down this figure further; the breakdown is sufficiently given in the aforesaid Annex to the Application.

3. That the Bulgarian Government obligated itself, under international law, and is now obligated, to pay to the United States Government the sum of \$257,875 by virtue as well of the Bulgarian Government's communication of August 4, 1955, transmitted through the intermediation of the Legation of Switzerland at Sofia (Annex 2 to the Application); and that by its repudiation of this promise, as evidenced by its conduct and by its communication to the Swiss Government, contained in the communication of the Swiss Government to the United States Government of August 8, 1957 (Annex 4 to the Application), the Bulgarian Government became liable to the United States Government for a breach of an international obligation, within the meaning of Article 36 (2) of the Statute of the Court, requiring the Bulgarian Government to pay to the United States Government the aforesaid sum with interest.

4. That in representing to the United States Government and to the world, by its Note No. 42803 to the Legation of Switzerland at Sofia, and through other forms, as set forth hereabove, that it would "cause to be identified and punished those guilty of causing

the catastrophe" and "take all necessary steps to insure that such catastrophes are not repeated on Bulgarian territory", the Bulgarian Government made representations upon which the United States Government and other governments, members of the United Nations, were entitled to rely in their diplomatic treatment of Bulgaria, and particularly with respect to its application for membership in the United Nations.

5. That in making the foregoing representations the Bulgarian Government had no intention of complying with them and made them knowing them to be false and untruthful; and that they were made with the intention that they should be relied upon to the benefit of Bulgaria and to the detriment of the United States Government, as well as other governments, and that these representations were material.

In the alternative, that the making of the foregoing false representations aggravates the wrongs committed by the Bulgarian Government against the United States Government specified in the foregoing submissions, 1 to 4 inclusive, and subjects the Bulgarian Government to the duty to make additional amends.

6. That the Bulgarian Government has failed, and continues to fail, to fulfil any of its obligations in this matter, undertaken by it in its various diplomatic notes and other public representations, such as the note of August 4, 1955 (Annex 2 to the Application), and has thereby, as well as by its false representations, which aggravate and exacerbate the obligation, become liable to the United States Government both for the damages sought in the Application and for other amends and reparations, which should be set at \$100,000.

7. That the Court should adjudge and declare that the unlawful and deceitful action and the breaches of contractual obligation recited above constitute delicts for which the Bulgarian Government is liable to the United States Government under international law, and that the nature and extent of the reparations to be made for these breaches of international obligation shall, in addition to the \$100,000 fixed in the preceding section, include the payment of the aforesaid sum of \$257,875 plus interest from July 27, 1955, at six per cent per annum.

8. That the Court shall continue to be seized of this proceeding until the Bulgarian Government has submitted proof to the Court (a) of the payment in full of the aforesaid sum of \$257,875, with interest as aforesaid, and the additional sum of \$100,000, and costs of the proceeding by payment to the United States or to the Registrar of the Court for the United States; (b) of the punishment of the individuals responsible for the delicts and crimes complained of, namely:

(i) the two pilots of the fighter aircraft who killed the passengers of the El Al plane on July 27, 1955, near Petrich;

(ii) the ground controllers who issued the directions for the killing;

(iii) the advisers who supervised the giving of the directions;

(iv) all authorities of the Bulgarian Government who knowingly ordered or permitted the killings.

The identification of these persons should be disclosed to the Court and to the United States Government by the Bulgarian Government together with the nature of the punishment inflicted, which should be on the basis of charges not less strict than those provided by Bulgarian law for intentional homicide.

9. That the Court should issue such other and further awards and orders to effectuate its determinations, including an award of costs of not less than \$100,000 (Statute, Article 64, and Rules, Articles 74.1 and 77).

10. That if the Bulgarian Government shall fail to comply with any orders of this Court as to production of evidence and witnesses (including orders to supply the report of the Inquiry Commission which investigated the incident of July 27, 1955, the names of the participants as described above (paragraph 8), and all the other orders for the production of evidence and witnesses), the Court will make the inference that the evidence or witnesses, if produced, would be detrimental to the Bulgarian Government's position on the issues in this case and favorable to the United States Government's position, and will proceed on that premise in making its judgment.

Dated this second day of December, 1958.

(Signed) Loftus E. BECKER,
Agent for the United States
of America.

**Annexes to the Memorial of the Government of the
United States of America**

Annex 1

UNITED STATES — ISRAEL AIR AGREEMENT

[Not reproduced. See United Nations Treaty Series, Vol. 212, pp. 106-127]

Annex 2

**FOREIGN AIR CARRIER PERMIT ISSUED TO EL AL
AIRLINES LTD**

[Not reproduced]

Annex 3

**EL AL ISRAEL AIRLINES SCHEDULE FROM OFFICIAL
AIRLINES GUIDE**

[Not reproduced]

Annex 4

**PASSPORT APPLICATION OF MRS. RACHEL AVRAM,
EXCERPT**

[Not reproduced]

Annex 5

COPY OF TICKET OF MRS. RACHEL AVRAM

[Not reproduced]

Annex 6

AFFIDAVIT OF MENDEL AVRAM

[Not reproduced]

Annex 7

DEATH CERTIFICATE OF MRS. AVRAM

[Not reproduced]

Annex 8

COPY OF TICKET OF MRS. ORA COHEN

[Not reproduced]

Annex 9

PASSPORT APPLICATION OF MRS. ORA COHEN, EXCERPT

[Not reproduced]

Annex 10

DEATH CERTIFICATE OF MRS. ORA COHEN

[Not reproduced]

*Annex 11*AFFIDAVIT CONCERNING PURCHASE OF TICKET OF
MRS ANNA HAHN IN NEW YORK CITY*[Not reproduced]*

Annex 12

PASSPORT APPLICATION OF MRS. ANNA HAHN, EXCERPT

[Not reproduced]

Annex 13

COPY OF TICKET OF MRS. ANNA HAHN

[Not reproduced]

Annex 14

DEATH CERTIFICATE OF MRS. ANNA HAHN

[Not reproduced]

Annex 15

PASSPORT APPLICATION OF MRS. MARY KATZ, EXCERPT

[Not reproduced]

Annex 16

COPY OF TICKET OF MRS. MARY KATZ

[Not reproduced]

Annex 17

COPY OF TICKET OF MISS ANNE KATZ

[Not reproduced]

Annex 18

DEATH CERTIFICATE OF MRS. MARY KATZ

[Not reproduced]

Annex 19

DEATH CERTIFICATE OF MISS ANNE KATZ

[Not reproduced]

Annex 20

PASSPORT APPLICATION OF A. M. MANN, EXCERPT

[Not reproduced]

Annex 21

COPY OF TICKET OF A. M. MANN

[Not reproduced]

Annex 22

DEATH CERTIFICATE OF A. M. MANN

[Not reproduced]

Annex 23

COPY OF TICKET OF MISS RIVGA SACKS

[Not reproduced]

Annex 24

COPY OF TICKET OF MISS DEBORAH SACKS

[Not reproduced]

Annex 25

COPY OF TICKET OF MRS. ANNA SACKS

[Not reproduced]

Annex 26a

PASSPORT APPLICATION OF MRS. ANNA SACKS, EXCERPT

[Not reproduced]

Annex 26b

PASSPORT APPLICATION OF MISS DEBORAH SACKS, EXCERPT

[Not reproduced]

Annex 26c

PASSPORT APPLICATION OF MISS RIVGA SACKS, EXCERPT

[Not reproduced]

*Annex 27*AFFIDAVIT CONCERNING THE PURCHASE OF FLIGHT
TICKETS FOR RIVGA, DEBORAH, AND ANNA SACKS*[Not reproduced]*

Annex 28

DEATH CERTIFICATE OF MRS. ANNA SACKS

[Not reproduced]

Annex 29

DEATH CERTIFICATE OF MISS RIVGA SACKS

[Not reproduced]

Annex 30

DEATH CERTIFICATE OF MISS DEBORAH SACKS

[Not reproduced]

*Annex 31*BULGARIAN TELEGRAPH AGENCY COMMUNIQUE OF
JULY 28, 1955 (TRANSLATION FROM BULGARIAN HOME
SERVICE, JULY 28, 1955, 1000 GMT)*[Not reproduced]*

Annex 32

PHOTOGRAPHS OF EL AL CONSTELLATION AIRPLANES

[Not reproduced]

*Annex 33*RABOTNICHESKO DELO, No. 210, JULY 29, 1955
COMMUNIQUE OF THE BTA (BULGARIAN TELEGRAPH
AGENCY)*[Not reproduced]*

*Annex 34*RABOTNICHESKO DELO, No. 215, AUGUST 3, 1955,
COMMUNIQUE OF THE BTA (BULGARIAN TELEGRAPH
AGENCY)*[Not reproduced]*

*Annex 35*BULGARIAN GOVERNMENT'S ENGLISH RADIO BROADCAST
ON AUGUST 12, 1955*[Not reproduced]*

*Annex 36*RABOTNICHESKO DELO, No. 223, AUGUST 11, 1955,
"WHO IS INTERESTED IN DISTORTING THE TRUTH?"*[Not reproduced]*

*Annex 37*ANNOTATED MAP OF
YUGOSLAVIA—BULGARIA—GREECE*[Not reproduced]*

*Annex 38*UNITED NATIONS RECORDS—HISTORY OF BULGARIAN
COMPLAINTS OF OVERFLIGHTS*[Not reproduced]*

*Annex 39*UNITED NATIONS RECORDS—BULGARIAN INTERFERENCE
IN GREEK CIVIL WAR*[Not reproduced]*

*Annex 40*EXCERPTS OF SPEECH BY THE MINISTER OF NATIONAL
DEFENSE, GENERAL PANCHEVSKI, SEPTEMBER 23, 1955*[Not reproduced]*

*Annex 41*INTERNATIONAL CIVIL AVIATION ORGANIZATION'S
STATISTICS ON INTERNATIONAL AIR TRAFFIC*[Not reproduced]*

Annex 42

UNITED STATES TREASURY DEPARTMENT STATISTICS

[Not reproduced]

*Annex 43*UNITED STATES DEPARTMENT OF JUSTICE STATISTICS
ON INTERNATIONAL TRAFFIC*[Not reproduced]*

*Annex 44*AIR TRANSPORT ASSOCIATION STATISTICS ON AMBER 10
TRAFFIC*[Not reproduced]*

*Annex 45a*BULGARIAN APPLICATIONS FOR MEMBERSHIP IN THE
UNITED NATIONS*[Not reproduced]*

*Annex 45b*BULGARIAN APPLICATIONS FOR MEMBERSHIP IN THE
UNITED NATIONS—U.S. POSITION*[Not reproduced]*

Annex 46

PRECEDENTS IN AMERICAN-SOVIET INCIDENTS

- A. B-29 Case of October 7, 1952
- B. B-50 Case of July 29, 1953
- C. B-29 Case of November 7, 1954
- D. Bering Sea Case of June 23, 1955

[Not reproduced]

Annex 47

YUGOSLAV NOTAMS ON OVERFLIGHT OF CIVIL AIRCRAFT

[Not reproduced]

Annex 48

YUGOSLAV PERMISSION FOR EL AL OVERFLIGHT JULY 1955

[Not reproduced]

*Annex 49*YUGOSLAV LOG OF 4X-AKC COMMUNICATIONS WITH THE
YUGOSLAV GROUND STATIONS
(EXTRACT FROM ANNEX 50c)*[Not reproduced]*

Annex 50a

UNITED STATES WEATHER OPINIONS FOR YUGOSLAVIA
AND BULGARIA, JULY 27, 1955: UNITED STATES WEATHER
BUREAU

[Not reproduced]

Annex 50b

UNITED STATES WEATHER OPINIONS FOR YUGOSLAVIA
AND BULGARIA, JULY 27, 1955: CAPTAIN OTTO JENISTA,
UNITED STATES AIR FORCE

[Not reproduced]

Annex 50c

YUGOSLAV GOVERNMENT WEATHER RECONSTRUCTION
FOR JULY 27, 1955

[Not reproduced]

Annex 51

BRITISH PHOTOGRAPHS OF THE AIRPLANE CRASH NEAR
PETRICH, JULY 30, 1955

[Not reproduced]

Annex 52

WITNESSES' STATEMENTS

- A. Bulgarian Witnesses
- B. Greek Witnesses
- C. Yugoslav Witnesses

[Not reproduced]

Annex 53

BULGARIAN PENAL LAW ON HOMICIDE, FROM ANCEL'S
"LES CODES PÉNAUX EUROPÉENS"

[Not reproduced]

Annex 54

INTERNATIONAL CODES ON HOMICIDE

[Not reproduced]

Annex 55

LAWS OF OLERON

The Black Book of the Admiralty, Volume II
(Sir Travers Twiss Edition, 1873)*[Not reproduced]*

*Annex 56*EXTRACT FROM VALIN'S *COMMENTAIRE DE LA MARINE**Nouveau Commentaire Sur L'Ordonnance De La Marine, Du Mois D'Août*
1681, Volume II, A La Rochelle, 1681*[Not reproduced]*

*Annex 57*SOME ANCIENT TEXTS SUPPORTING MODERN
MARITIME LAW*[Not reproduced]*

*Annex 58*AMERICAN JURISPRUDENCE ON LIABILITY OF JOINT
TORTFEASORSFrom *American Jurisprudence**[Not reproduced]*

*Annex 59*RESTATEMENT OF THE LAW OF TORTS ON JOINT
TORTFEASORSFrom *Restatement of the Law of Torts* by the American Law Institute*[Not reproduced]*

*Annex 60*HALISBURY'S *THE LAWS OF ENGLAND ON JOINT
TORTFEASORS*

The Earl of Halsbury, *The Laws of England*, Volume XXVII
[Not reproduced]

*Annex 61*PHOTOCOPY OF MEVORAH, *COMMENTARY ON THE LAW
OF OBLIGATIONS AND CONTRACTS*

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Annex 62

FULLER TEXT OF MEVORAH'S STUDY

Commentary on the Law of Obligations and Contracts, Second Edition,
by Dr. N. Mevorah, D. I. Lidzhi and Leon Farkhi, Preface by Dr. Y.
Fadenhecht, Printed by Herman Pole & Sons, Sofia, "3 Ears Street," 1926

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*Annex 63*COMPARATIVE LAW ON LIABILITY OF JOINT AND SEVERAL
TORTFEASORS

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*Annex 64*1946 DIPLOMATIC INTERCHANGE RELATING TO FLIGHT OF
AMERICAN PLANES OVER YUGOSLAV TERRITORY

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*Annex 65*BULGARIAN DECREES AND REGULATIONS REGARDING
OVERFLIGHT OF AIRCRAFT

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