

**MEMORIAL SUBMITTED BY THE GOVERNMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND¹**

PART I

Introductory

1. This Memorial is submitted to the Court upon the Application dated November 19, 1957, addressed by the Agent of the Government of the United Kingdom to the Registrar of the Court.

2. By an Order made on November 26, 1957, the President of the Court fixed June 2, 1958, as the time limit for the filing of the United Kingdom Memorial. By an Order dated May 19, 1958, this time limit was extended to September 2, 1958. By an Order made on January 27, 1958, the President of the Court fixed December 2, 1958, as the time limit for the filing of the Bulgarian Counter-Memorial. This time limit was extended to June 9, 1959, by the Order dated May 19, 1958.

3. As shown in their Application, the Government of the United Kingdom submit that the Court has jurisdiction in the present dispute under Article 36 (1) of its Statute because both the United Kingdom and Bulgaria have accepted the compulsory jurisdiction of the Court. The United Kingdom acceptance of the compulsory jurisdiction of the Court is contained in the Declaration dated April 18, 1957, replacing the previous Declaration of October 31, 1955, and covering disputes arising after February 5, 1930, with regard to situations and facts subsequent to that date. Bulgaria's acceptance of the compulsory jurisdiction of the Court is unconditional, and was made on July 29, 1921, when the instrument of Bulgaria's ratification of the Protocol of Signature of the Permanent Court of International Justice was deposited, and became effective as to the jurisdiction of the International Court of Justice by virtue of Article 93 (1) of the Charter of the United Nations and Article 36 (5) of the Statute of the Court, on the date of Bulgaria's admission to membership of the United Nations.

4. Alternatively, the Government of the United Kingdom in its Application of November 19, 1957, submitted specifically and unconditionally to the jurisdiction of the Court for all the purposes of the present dispute and, in this connection also, invoked Bulgaria's unconditional acceptance of the Court's compulsory jurisdiction, effective in the manner described in the preceding paragraph.

¹ See Part IV, *Correspondence*, Section C, No. 39.

PART II

The Facts

5. This claim arises out of an incident which occurred on July 27, 1955. A Constellation aircraft, registered number 4X-AKC (hereinafter referred to as 4X-AKC), owned and operated by El Al Israel Airlines Limited (a company incorporated in Israel) which was on a scheduled passenger flight (Flight Number 402/26) from London to Tel-Aviv was shot down by Bulgarian fighter aircraft at about 0540 hours G.M.T. on July 27, 1955. 4X-AKC broke up at an altitude of approximately 2,000 ft. at a point in the region of Petrich, Bulgaria, $3\frac{1}{2}$ km. south-west of the junction of the Rivers Strumica and Strumon in Bulgarian territory, and near the meeting point of the Bulgarian, Greek and Yugoslav frontiers. There were on board 4X-AKC, at the time at which it was shot down, 51 passengers, and 7 members of the crew, and there were no survivors. The Captain of 4X-AKC, Wing Commander Stanley Reginald Hinks, was a citizen of the United Kingdom and Colonies, and three of the passengers, Mr. Jack Brass, Mr. Herbert Laster and Master Charles Douglas Foxworthy-Windsor, were also citizens of the United Kingdom and Colonies. Mrs. Gunvor Sofia Morgan, another passenger carried on board 4X-AKC, who was herself a Swedish citizen, was the wife of Mr. Geoffrey Morgan, a citizen of the United Kingdom and Colonies. There was carried on board 4X-AKC freight owned by nationals of the United Kingdom. There are attached to this Memorial:

- (a) Particulars of the citizens of the United Kingdom and Colonies killed (Annex 1).
- (b) Particulars of the claimants who are citizens of the United Kingdom and Colonies and details of their claims (Annex 2).
- (c) Particulars of freight (Annex 3).

6. Her Majesty's Government in the United Kingdom contend:

- (i) that the admitted shooting down and destruction of 4X-AKC by Bulgarian armed forces was contrary to international law;
- (ii) that the Bulgarian Government is internationally responsible for the deaths, injury and damage caused thereby;
- (iii) that the Bulgarian Government is under an obligation in respect of the losses sustained by citizens of the United Kingdom and Colonies by reason of the deaths of persons on board that aircraft, as well as the loss of personal effects and freight owned by citizens of the United Kingdom and Colonies which were carried on the aircraft.

THE AIRCRAFT

7. 4X-AKC was owned and operated by El Al Israel Airlines Limited of 76, Maze Street, Tel-Aviv, Israel, a company incorporated in Israel. Its current certificate of registration (No. 2/53) was dated July 15, 1951, and was issued by the Ministry of Transport and Communications, Department of Civil Aviation, State of Israel. A certificate of airworthiness (No. 5/53) which was valid until May 18, 1956, had been issued in respect of it, and it carried a certificate of safety dated July 25, 1955. 4X-AKC, when purchased, was a Lockheed Type 049 bearing United States registration N90829. It was modified by El Al Israel Airlines Limited to a Type 149, generally conforming to Lockheed specifications except that there were additional modifications including two additional emergency exit stations, 480 and 685 on the right-hand side, which comprised the only significant structural alterations, and improved oxygen and water systems. The radio and instrument navigational equipment were those usual for a civilian airliner Lockheed Type 149. 4X-AKC was equipped with two serviceable radio compasses (Bendix). Two independent VOR units (Bendix) were also installed, and there were in addition one magnetic compass and one Flux-gate compass, both of which had been swung and adjusted on May 18, 1955. Both pilot positions were equipped with full instrument panels, including three operational gyros. At the navigator's position there was one Radar altimeter and a Loran set. There are attached to this Memorial, as Annex 4, five photographs of 4X-AKC in its undamaged condition, showing clearly its markings. Photograph No. E was taken at Lod on July 26, 1955, shortly before the departure of 4X-AKC on its outgoing flight from that airport.

THE CAPTAIN OF THE AIRCRAFT

8. 4X-AKC was, at the time of the incident on July 27, 1955, under the command of Wing Commander Stanley Reginald Hinks. He was commissioned in the Royal Air Force in 1938 and demobilized in 1946. He served in the Royal Air Force Transport Command, and flew a total of 3,202 hours, of which 2,877 were by day. Most of these hours were on multi-engined aircraft. His Service record shows him to have been a reliable officer and an above-average pilot with a high sense of duty.

THE SCHEDULED FLIGHT

9. In July 1955 and for some time previously, El Al Israel Airlines Limited had operated according to a published schedule two flights a week—one westbound and the other eastbound—between London and Tel Aviv. The eastbound flight was from London to Tel Aviv (Lod) with stops at Paris, Vienna and Istanbul.

The scheduled passenger flight (Flight Number 402/26) on which 4X-AKC left London on July 26, 1955, was, however, in accordance with instructions received from the Head Office of El Al Israel Airlines Limited, re-scheduled and re-routed so as not to land at Istanbul. By a Note Verbale No. 84058 dated May 3, 1955, from the Yugoslav Secretariat of State for Foreign Affairs to the Israeli Legation in Belgrade authority was granted for El Al Israel Airline Limited Flights Nos. 401 and 402 to overfly Yugoslav territory during the period May 15, 1955, to October 1, 1955. The course of the scheduled route London/Tel Aviv (Lod) to be followed by 4X-AKC on July 26-27, 1955, is shown on the map attached to this Memorial as Annex 5.

COURSE OF AIRCRAFT—LONDON TO DEPARTURE FROM VIENNA

10. 4X-AKC completed its previous incoming flight to London Airport at 1800 hours¹ on July 26, 1955. Wing Commander Hinks assumed command of 4X-AKC at London Airport. 4X-AKC left London Airport at 2013 hours on July 26 on the scheduled passenger flight (No. 402/26) from London to Tel Aviv. The aircraft landed at Paris at 2122 hours, and left there at 2246 hours. From Paris 4X-AKC flew onwards to Vienna, arriving at Schwechat Airport, Vienna, at 0139 hours on July 27, 1955.

11. (a) On arrival at Schwechat Airport, Vienna, the crew of 4X-AKC were met by Mr. Hans Weissbrod, who at that time was the Commercial Manager, Station Manager and Despatcher at Vienna of El Al Israel Airlines Limited. He held a United States (Civil Aeronautic Administration) Aircraft Despatcher's licence which had been issued to him in April 1951, and renewed every year since that date. As part of his duties as Flight Despatcher, Mr. Weissbrod had received from the Meteorological Office at Schwechat Airport, Vienna, at about 0030 hours on July 27, 1955, a weather forecast. Mr. Weissbrod used this document in preparing, before the arrival of 4X-AKC at Vienna, the Company's Short-Range Flight Plan which would be used as the basis for the navigation of 4X-AKC at the next stage of its journey. A copy of this Flight Plan is attached to this Memorial as Annex 7.

(b) Mr. Weissbrod met 4X-AKC on its arrival, and was informed by the Flight Engineer of 4X-AKC that no repairs or maintenance work were required. Mr. Weissbrod then immediately accompanied Captain Hinks, and Mr. Porat, the First Officer of 4X-AKC, to the Meteorological Office for the "Captain's briefing". Captain Hinks and Mr. Porat discussed the proposed flight with the Meteorological Forecaster, and studied the surface chart and the 500 millibar prognostic chart from which the Forecaster had prepared his forecast. A copy of this forecast is attached to this Memorial

¹ In this Memorial times are given in G.M.T. except where otherwise stated.

as Annex 6. The weather conditions prevailing over the proposed route were explained to Captain Hinks and Mr. Porat, and Captain Hinks put questions, especially about the cumulo-nimbus clouds in the area between Belgrade and Skoplje. In these ways Captain Hinks satisfied himself that the forecast was in accordance with the information available to the Forecaster before he signed, as he did, the Forecaster's copy of the flight forecast.

(c) Mr. Weissbrod then accompanied Captain Hinks and Mr. Porat to the Notam Office¹ where Captain Hinks considered and approved the route and altitude proposed by Mr. Weissbrod and set out in the Company's Flight Plan. Captain Hinks also checked with a computer calculations of ground speeds and true headings, having regard to the winds shown in the flight forecast. The Company's Flight Plan was then approved by Captain Hinks and signed by First Officer Porat. First Officer Porat also examined and checked the Air Traffic Control Flight Plan and signed it. A copy of this Flight Plan is attached to this Memorial as Annex 8.

NAVIGATIONAL PLAN FOR THE FLIGHT VIENNA-TEL AVIV

12. (a) The Air Traffic Control Flight Plan (Annex 8) indicates that the entire flight was to be flown at a cruising altitude of 17,500 ft. The route would be *via* Zagreb, at which point the flight would join Airway Amber 10² and thereafter follow this airway as far as Athens, from whence the flight would be *via* Rhodes to Tel Aviv. The course of 4X-AKC for this section of the route is shown on the map attached to this Memorial as Annex 9.

(b) From Belgrade to Kraljevo Airway Amber 10 lies on a track of 167° and from thence to Skoplje on a track of 161°. The next reporting point shown on the flight plan after Belgrade was Kraljevo with a further reporting point, Skoplje, before the reporting point at Gevgelia on the Yugoslav-Greek border. At Skoplje Airway Amber 10 changed direction from 161° to 142°.

(c) The Air Traffic Control Flight Plan also indicates the time of flight expected to elapse between each of the Air Traffic Control reporting points *en route*, computed by using the forecast wind speeds and directions as shown in the weather forecast prepared by the Vienna Meteorological Officer (Annex 5).

NAVIGATIONAL AIDS

13. (a) For the purposes of the present Memorial it is necessary to consider what aids to navigation were available to 4X-AKC

¹ The Notam Office receives and makes available to aircrew, current information on navigation (*e.g.*, changes in radio navigational facilities, airways, advisory routes, prohibited and danger areas, &c.).

² An airway is an aerial corridor within which specific air traffic control procedures for the safety of aircraft are in force. Airway Amber 10 was 10 nautical miles in width.

between Belgrade and Salonika. Medium frequency non-directional beacons (NDB) were sited at Belgrade, Skoplje and Salonika, and a very high frequency *omni range beacon* (VOR) at Belgrade. There was a distance of 107 nautical miles between Skoplje and Salonika, without any intervening navigational aids. A NDB and similarly a VOR, will enable a pilot, when within effective range, to determine his bearing in azimuth from the ground installation, but it does not enable him to fix his position. The effective range of these NDBs would of course vary with the normal power, siting and technical condition of the beacon. In the case of Skoplje the power of the beacon was published at the time of the incident as 1,200 watts, and tends to indicate that a range of something over 100 miles was planned by the Yugoslav authorities. It is, however, a characteristic of beacons in the medium-frequency band that their effectiveness is reduced when static electricity is present in the atmosphere. This can be so to the extent that in severe static conditions such as exist during heavy thunderstorms, it may be impossible to receive any guidance from the beacon even when the aircraft is quite close to it. It is not possible to state accurately the effective range of the Belgrade VOR, but it would be reasonable to expect something of the order of 80-100 miles at a height of 17,500 ft. A VOR is not affected by static conditions.

(b) Recommendations regarding navigational aids for this region were made at the Third European/Mediterranean Regional Air Navigation Meeting of the International Civil Aviation Organisation held in 1952. These included recommendations that there should be accurate all-weather navigational aids at Belgrade, Skoplje and Salonika to enable aircraft to remain within compulsory corridors. On July 27, 1955, only the VOR at Belgrade met this standard.

WEATHER ON THE SECTOR BELGRADE-SALONIKA

14. The forecast of weather conditions on this sector provided by the Meteorological Office, Vienna (see paragraph 11 of this Memorial) is shown in Annex 6.

From the record of regular international broadcasts of meteorological observations (recorded in code on the charts reproduced as Annexes 10 and 11 to this Memorial) it is possible to describe weather conditions on this sector at the time 4X-AKC should have been on this route, and to make an assessment of the winds at 17,500 ft.

Weather

A. Surface Synoptic Situation and Associated Weather

- (i) A weak slow moving low pressure area covered the Balkans with a central pressure about 1,004 mb., the centre being situated over the Adriatic Sea about 42° N., 18° E. Due to the westerly upper air flow and the lifting of moist air

over the western Yugoslav mountains in association with a diffuse frontal zone between 43° N. and 45° N. (*i.e.*, over some 120 miles of 4X-AKC's route south from Belgrade) outbreaks of thunderstorms were occurring north of 43° N. (*i.e.*, north of a line some 60 miles north of Skoplje). A thunderstorm was reported at 0300 G.M.T. at Belgrade and another between 0500 and 0600 G.M.T. at Nis (approximately midway between Belgrade and Skoplje and 20 miles east of Airway Amber 10).

- (ii) From Belgrade to 43° N. the flight of the aircraft is likely to have taken place in or above thick layered cloud with vertically deep thunderstorms embedded in the layers. The cumulo-nimbus clouds associated with thunderstorms extended to 20,000-25,000 ft. in places. There would have been moderate icing and severe turbulence in thunderstorms. Air temperatures at 17,500 ft. were minus 9 deg. C. to minus 10 deg. C. South of 43° N. to the Greek border the lowest layer of cloud would tend to decrease to little or none, leaving only well broken layers of cloud at heights between 10,000 and 20,000 ft. Air temperature in this sector was about minus 8 deg. C. at 17,500 ft. Surface visibility south of 43° N. was good and the ground is likely to have been visible from 17,500 ft. for all or most of the time south of about $42\frac{1}{2}^{\circ}$ N. The conditions south of 43° N. would also be applicable to the sector Kynstendil-Petrich.
- (iii) From the Greek border to Salonika the weather was mainly cloudless with good visibility.

B. Upper Winds

- (i) Upper winds at about 17,500 ft. on the route Belgrade to Salonika would probably be about 260 deg. true 30 knots Belgrade to about $42\frac{1}{2}^{\circ}$ N., 265 deg. true 50 knots $42\frac{1}{2}^{\circ}$ N. to 42° N., and 270 deg. true 70/75 knots 42° N. to Salonika. Similar conditions would apply according to latitude in the sector Kynstendil-Petrich.
- (ii) The upper winds may have been stronger temporarily over the last sector reaching a speed of 100 knots or more at lower heights of 13,000 to 15,000 ft. while retaining the same direction. The 0300 G.M.T. upper air ascent from Brindisi gave a recorded wind of 260 deg. true 120 knots at 13,300 ft. and 270 deg. true 70 knots at 18,000 ft.

C. Contemporaneous Aircraft Report

The Captain of an aircraft flying at 16,500 ft. from Salonika (ETD 1500 G.M.T.) to Belgrade via Skoplje during the afternoon of July 27, 1955, reported that the weather was clear over Salonika and the Greek-Yugoslav border where scattered low cloud began to appear. The town of

Skoplje was clearly visible. The aircraft began to fly into cloud about halfway ($43\frac{1}{2}^{\circ}$ N.) between Skoplje and Belgrade and nearer Belgrade there were large thunderstorm clouds across the track. The pilot reported that winds aloft changed radically between the Greek border and Belgrade and commented that a southbound aircraft might have found course-keeping difficult unless a large drift correction had been made.

15. Meteorological data for July 27, 1955, was supplied to the British Legation at Sofia by the Ministry for Foreign Affairs of the People's Republic of Bulgaria on April 11, 1958. The document containing this data, and an English translation thereof, are attached to this Memorial as Annex 12.

16. From the navigational standpoint the most important difference between the forecast weather and the actual weather is to be found in the upper winds. Captain Hinks had been briefed to expect a wind at 17,500 ft. from 270 degrees with a speed of 20 knots over the entire sector, Belgrade-Salonika. The description in paragraph 14 of this Memorial points to a sudden increase in wind speed to 50 knots in the area midway between Belgrade and Salonika, increasing to 70-75 knots in the vicinity of Skoplje, and maintaining this velocity for the remainder of the route to Salonika.

Progress of the Flight of 4X-AKC after leaving Vienna

17. 4X-AKC left Vienna at 0253 hours on July 27, 1955, and the progress of the flight, as reported from the aircraft, is shown in the record of Air Traffic Control Communications which is attached to this Memorial as Annex 13. 4X-AKC reported to Belgrade Air Traffic Control that it was overhead the Belgrade non-directional beacon (BD) at 0433 hours and gave its estimated time of arrival at Skoplje as 0517 hours. After Belgrade, the next report received from 4X-AKC was at 0513 hours when the aircraft reported its position as at Skoplje at 0510 hours. This time was seven minutes earlier than the estimate given for Skoplje when 4X-AKC was over Belgrade. When reporting its position at Skoplje 4X-AKC gave its estimated time for passing over Gevgelia, on the Yugoslav-Greek border, as 0528 hours.

18. At 0528 hours Belgrade Air Traffic Control received the following message from the aircraft:

"Belgrade. This is 4KC. Passed the border at 0528 at altitude 18,000. Changing to Athens frequency.—Goodbye."

This message was acknowledged by Belgrade.

The next recorded message from the aircraft was at 0537 hours when Air Traffic Control, Athens, received the following:

"SOS this is 4X-AKC."

The same message was heard repeatedly during the next two minutes after which no further messages were received from the aircraft.

Statements by Eye Witnesses of the Incident

19. There are attached to this Memorial as Annex 14 photostat copies (with English translations) of the originals of statements made to the Israeli Commission of Inquiry (see paragraphs 30 and 31 of this Memorial) by persons who, in the early hours of July 27, 1955, were at various points on the Yugoslav-Greek frontier adjacent to the frontier of Bulgaria. A map showing this area is attached to this Memorial as Annex 15. Five of the statements in Annex 14 were made by Yugoslav soldiers on duty at frontier posts, the position of which is indicated by the letters A, B and C on the map at Annex 15. Four of these statements record what the witnesses themselves saw. The fifth (made by Captain (First Grade) Ivan Stancic) records statements made to him on August 3, 1955, by two Yugoslav soldiers who then reported what they had themselves seen in the early hours of July 27, 1955. The other eleven statements contained in Annex 14 were made to the Israeli Commission of Inquiry by persons, the majority of whom were Greek soldiers, who were, at the time of the incident, present at various points on or near the Greek frontier adjacent to Bulgaria. The position of these points is indicated by the figures 0, 1, 2, 3 and 4 on the map at Annex 15.

20. The statements by the Yugoslav soldiers, Private Ilija Kukolj, Bogoslav Miloshevic, and Private Milos Vukic, described what was seen at a time estimated as approximately 0630 hours (local time) by persons on duty at the two frontier posts, indicated by the letters B and C on the map at Annex 15. Kukolj, at point B, heard from the north-east, and from the direction of Bulgarian territory, the sound of an aeroplane engine followed by machine-gun fire which came in two long bursts and then a short one, with an interval between them. About ten minutes after Kukolj saw a white vapour trail and then an aeroplane flying at a low speed, and at a height of about 100 metres, to the south-east towards Greek territory. When the aeroplane flew southwards Kukolj again heard firing "but this time in single shots and the fire lasted longer". Two or three short bursts of fire, followed three to five minutes later by two or three more bursts, were also heard at approximately the same time by Miloshevic, who was stationed at the same frontier post as Kukolj (point B) and who also saw, about ten minutes after hearing the sound of aeroplane engines, an aeroplane which flew low and had behind it a white vapour trail. Both Kukolj and Miloshevic described the sky as clear and cloudless. Similar observations were made by Vukic who was on duty at an adjacent frontier post which is indicated by the letter C on the map at Annex 15. He saw, at approximately

0630 hours (local time) an aeroplane over Bulgarian territory flying north-eastwards and afterwards turning southward, but did not notice any vapour trail coming from it. Two or three minutes after he had seen this aeroplane turn, Vukic heard two or three fire bursts, and, when the aeroplane turned southwards, noticed that it began to fly lower, and then heard three short machine gun bursts.

21. Captain Stancic's statement reports the statements made to him on August 3, 1955, by Sergeant Nikola Dakic and Private Filip Petrovic. All these persons were stationed at the point indicated by the letter A on the map at Annex 15. Dakic stated that he had seen "at 6 a.m." on July 27, 1955, a civil aeroplane flying southwards over Bulgarian territory, and that at the same time as he saw this aircraft he had noticed the arrival of two jet planes from the east from Bulgarian territory. Dakic also stated that one of the jet planes prevented the civil aeroplane from flying towards Yugoslavia "compelling him to fly over Bulgarian territory", and noticed that one of the jet aeroplanes circled round the civil aeroplane while the other manoeuvred over the interior of Bulgarian territory. Dakic heard machine gun fire which he presumed came from the jet aeroplane. Petrovic reported that on July 27, 1955, he had seen a big aeroplane, which he presumed was a passenger aircraft, and that this aeroplane had been pursued by two "hunters" who had driven it into the interior of Bulgarian territory. Both soldiers stated to Captain Stancic that they had heard machine gun fire and rifle shots from the ground and from the air, and also the sound of cannon fire from the interior of Bulgarian territory.

22. At approximately the time (corresponding to 0530 hours G.M.T.) that machine gun fire was heard by soldiers on duty at points along the Yugoslav border, a noise resembling thunder which was identified by some of the witnesses as heavy gun fire and which lasted about ten minutes, was heard by persons present at points along the Greek border indicated as points 0, 2 and 3 on the map at Annex 15. These persons also heard the droning of three aeroplanes. Several of these Greek witnesses state that, following this noise, they saw a large aeroplane flying at a low height from the west towards the south and travelling towards the south-west, *i.e.*, towards Greece, and that this aeroplane then abruptly changed course. It was then observed by several of the witnesses to turn north towards Petrich. Several of the Greek witnesses also stated that they saw smoke and flames coming from this large aeroplane "out of the right side of its fuselage where the fuselage joined the right wing".

23. Private Christophoros Anastasiou stated that "before it reached the River Strumon the aeroplane began to lean over and it gave ... the impression that it was trying to land... At the village

of Dragenova it began to make a turn westwards towards Koila." The aeroplane then became completely enveloped in flames and smoke and fell between two neighbouring heights. As it fell, it was broken into two pieces: one of the pieces fell to the west side of the ridge constituted by the neighbouring heights and the other fell to the east. The aeroplane was also seen to fall in flames by five other witnesses. Sub-Lieutenant Lekhovitis estimated, however, that the aeroplane broke into three pieces—one large and two small—and that one of the small pieces burst into flames as it fell.

24. Private Aristides Samaras stated that he saw three aeroplanes together, and the biggest of those was flying lower than the others and parallel to the Greek border, whilst the other two aeroplanes were flying on either side of the big one and considerably higher. Both Samaras and another witness, Athanasios Nakos, who was on duty at the same frontier post, state that when the large aeroplane crash-dived one of the two smaller aeroplanes was flying above it, but subsequently turned and followed the other which had disappeared earlier towards Bulgaria. Samaras's statement is corroborated by that made by Nakos, who saw two aeroplanes flying in the direction of Petrich, and then turning towards the valley of the Strumon and circling above Koila. Three minutes after the appearance of these two aeroplanes he saw a large aeroplane flying at about the height of the other two with flames coming from it. Sub-Lieutenant Demetrios Lekhovitis heard the droning of three aeroplanes, but only saw one smaller aircraft in pursuit of the big one. Lekhovitis observed, through glasses, that this smaller aeroplane was flying to the right of the big aeroplane and at a height considerably above it.

25. One Greek witness, Petros Kotselis, stated that at the time of the incident the sky was cloudless but that there was a strong wind blowing from west to east, which he estimated had begun to blow the previous evening "at 10 p.m." This witness was at the point marked 1 on the map at Annex 15.

Photographic evidence of damage to 4X-AKC

26. Photographs taken at the scene of the disaster (see paragraphs 32 and 35 of this Memorial) and which are attached to this Memorial as Annex 16, indicate that 4X-AKC was struck by at least one explosive shell. The hole in the rear fuselage (shown in the photographs numbered 1, 2, 3, 4 and 5) is similar in size and form to the wound a 37-mm. shell would make on entering from a direction about 10° to starboard of dead astern. Absence of blast or fragment damage in the immediate vicinity of this hole indicates that the shell did not detonate on first impact. The damage to the rear pressure bulkhead and to the fuselage skinning aft of this bulkhead shown in the photographs numbered

1, 6 and 7 is consistent with an explosive shell detonating about two feet aft of the pressure bulkhead main frame. This implies a shell fitted with a fuse having a post-impact delay of about 30 ins. or an insensitive fuse which did not function on first impact. It is almost certain that the damage referred to above would result in considerable hydraulic leaks in the supply lines to the elevator and rudder control boosters. It is possible that elevator and/or rudder control was lost by severance of cables or that one or both were jammed.

Notification of disaster to 4X-AKC

27. The SOS message from 4X-AKC received at 0537 by Air Traffic Control, Athens (see paragraph 18 of this Memorial) was immediately relayed to Air Traffic Control, Lod. Athens Flight Information Centre declared an emergency and search and rescue services were alerted. At 0842 hours Air Traffic Control, Athens, originated a further message to the effect that 4X-AKC had come down in flames at Tsirbanova, a place in Bulgaria near the Greek-Bulgarian border.

28. At 1100 hours on July 28, 1955, the Bulgarian Telegraph Agency put out a communiqué, of which the following is an English translation:

“Yesterday, July 27, at 7.35 hours Bulgarian time an Israeli passenger aircraft, as it was later found out, deviated from its course and in the area of the town of Trn entered, without preliminary notification, the Bulgarian airspace passing over the towns of Stanke Dimitrov and Blagoevrad, in a southward direction towards the town of Petrich. The anti-aircraft defence, having not been able to recognise the aircraft, and after the appropriate several warnings, opened fire, as a result of which the aircraft fell and crashed in the area north of the town of Petrich. All people who were in the aircraft were killed. In connection with this, the Bulgarian Telegraph Agency is authorised to announce that the Bulgarian Government and the whole Bulgarian public express their deep regret for the tragedy which took place.

The Council of Ministers of the People's Republic of Bulgaria has appointed a Government commission consisting of: the Minister of Foreign Affairs—Dr. Mincho Neichev, the Minister of the Interior—Georgi Tsankov, the Minister of National Defence—Army General Peter Panchevski, the Minister of National Health—Dr. Peter Koltrov, and the Chief Prosecutor of the Republic—Yordan Chobanov, to establish in a more detailed way the circumstances under which the accident took place.”

PART III

Investigations

29. (a) At 1200 hours on July 27, 1955, the Israeli Minister of Communications appointed by means of the Israeli Air Navigation Regulations (Commission of Inquiry No. 2) 5715-1955, a Commission "to enquire into the circumstances of the bringing down of the aircraft, 4X-AKC of the El Al Company within Bulgarian territory" on July 27, 1955.

The members of the Commission were:

Emmanuel Zurr: Director of Aeronautical Service, Department of Civil Aviation—Chairman.

Mordecai Laufer: Chief Inspector of Airworthiness, Department of Civil Aviation—Member.

Seren (Captain) Asher Vogel: Air Force—Member.

Joel Palgi: Deputy Director General, El Al Company—Member.

Michael England: Assistant Director of Maintenance Department, El Al Company—Member.

Zvi Tohar: Captain, El Al Company—Member.

(b) The Commission immediately on appointment applied to the Bulgarian Legation in Tel Aviv for visas to enter Bulgaria in order to carry out investigations on the site of the disaster. The Bulgarian Legation was also asked by the Israeli Foreign Ministry to allow the Israeli Commission of Inquiry to act in conjunction with the Investigation Committee appointed by the Bulgarian Government, in accordance with international practice. The answer to the application for visas was that the matter had been referred to Sofia with the request that visas be issued by the Bulgarian Legation in Athens. No answer was received to the request to participate in a joint investigation. On arrival at Athens, the Commission were informed that the Bulgarian Legation had not yet received instructions to issue the necessary visas, but they agreed to endeavour to do so at the frontier. In order to save time the Commission proceeded to a Greek border village called Kula, 14 km. from the site of the wreckage.

30. The Commission remained at Kula for two days—July 28 and 29. The Greek Authorities afforded the Commission facilities to interview any persons who had seen the aircraft or had heard something about it. The Commission visited two military frontier posts, where they took evidence from officers and soldiers; they also took evidence from civilian workers in a nearby village. Mr. Emanuel Zurr, Director of Aeronautical Service of the Israeli Department of Civil Aviation in 1955, who was the Chairman of

the Commission of Inquiry, put questions to the witnesses. These questions were translated by an interpreter provided by the Greek Authorities in Salonika, who wrote down in Greek the answers received. The answers given were then translated to Mr. Zurr in French. The witnesses read over their statements in Greek and signed them. In order to assist the witnesses, drawings of various types of aircraft, including a Constellation aircraft, were shown to them, and the witnesses identified what they had described as a "large aircraft" as a Constellation. The statements made by these witnesses have been summarized in paragraphs 20 and 21 of this Memorial and, together with English translations thereof made at the Foreign Office, London, form part of Annex 14 to this Memorial.

31. After their visit to the site of the disaster (see paragraphs 34 to 38 of this Memorial) four members of the Israeli Commission of Inquiry crossed the Greek/Yugoslav frontier at Gevgelia and interviewed military personnel who, on July 27, 1955, had been stationed at points along the Yugoslav/Bulgarian border. Statements were taken from these witnesses, in a manner similar to that described in paragraph 30. The statements made by a number of those witnesses have been summarized in paragraphs 22-25 of this Memorial and, together with English translations thereof made at the Foreign Office, London, form part of Annex 14 to this Memorial.

32. On July 28, 1955, Mr. Nir Baruch, who was Attaché in the Israeli Legation at Sofia and who was then acting as Chargé d'Affaires, was given permission by the Bulgarian authorities to visit the scene of the disaster. He proceeded there shortly after mid-day with a driver and Mr. Molerov from the Bulgarian Ministry for Foreign Affairs. Two representatives of the British Legation in Sofia, Mr. Colin Thomas McGurk, Vice-Consul, and Mr. Peter Dunn Gardner, Attaché, to whom the same permission had been given by the Bulgarian authorities (see paragraph 53 of this Memorial), also proceeded to the site in another vehicle. At the site of the disaster, which was about five miles away from the village of Petrich, the party were joined by another Bulgarian named Yonkoff. The wreckage of 4X-AKC was scattered on the south-east and north-west descents of a hill on the western bank of the river Strumon over an area of approximately 35,000 square metres. A part of 4X-AKC, identified as one of its engines, was lying in the river which ran at the foot of the hill. In the first place visited, that on the south-east side of the hill, where the major part of the wreckage lay, there were many papers, mainly personal papers, scattered about as well as portions of clothing and burnt-out handbags; a smell of burning was noticeable. The party then proceeded in the British Legation's vehicle to a second place, on the north-west side of the hill, where more wreckage,

including the rear fuselage of 4X-AKC, and a wing span, was more widely scattered about. There were also more personal belongings, suit cases, blankets, some of the galley equipment of the aircraft, and also indications of a consignment of paint. With the permission of the Bulgarian authorities, which was obtained by telephoning Sofia from a frontier post, photographs of the wreckage (see paragraph 26 of this Memorial) were taken by Mr. Gardner. Mr. Baruch had a conversation in Bulgarian with a Bulgarian farmer who had been in the early hours of July 27, 1955, at Tsribanova. The farmer told him that he had seen an aircraft "a big one, a white one and a beautiful one" approaching him from the direction of Petrich and circling about as if it wanted to land. As the aircraft approached him, however, he saw smoke coming from what he described as the right side. He also saw two small aeroplanes flying after it and these had swept-back wings. The farmer told Mr. Baruch that when the bigger aircraft was immediately above Petrich, he had heard a loud noise resembling thunder. Very shortly afterwards, when the aircraft was immediately above the place where the wreckage fell, the farmer heard the noise of an explosion. The aircraft then broke up and fell.

33. The members of the Israeli Commission whilst at Kula were able to see the site of the wreckage through long-distance binoculars. One member of the Commission of Inquiry, Mr. Mordechai Laufer, saw a large number of people "milling round", but the other members of the Commission were unable to see anything more than that people were present on the site, and that there was some movement of wreckage. They could not, however, tell whether the wreckage was being moved by hand or whether some of it had merely rolled a small distance away.

34. On July 30, 1955, permission was given to three members of the Israeli Commission of Inquiry to enter Bulgaria. The members of the Commission who entered were Mr. Laufer, Mr. Joel Palgi and Mr. Zvi Tohar. Mr. Baruch revisited the site on that day accompanied by Mr. Nall, the Israeli Chargé d'Affaires, and Lieutenant-Colonel Stephenson, the Military Attaché at the British Legation in Sofia. Mr. Nall proceeded to the frontier with an officer from the Bulgarian Frontier police and Mr. Molerov of the Bulgarian Ministry for Foreign Affairs, to meet the three members of the Israeli Commission of Inquiry.

35. The party spent about six hours on the site of the disaster. Photographs were taken on the site by Lieutenant-Colonel Stephenson. The wreckage of 4X-AKC was, as described in paragraph 32 of this Memorial, in two distinct places on two sides of a hill. It was impossible, because of the crest of the ridge, to see one place from the other.

36. Both wings of 4X-AKC were broken off, and the fuselage was broken off and broken open. Mr. Baruch noticed that one

portion of 4X-AKC (that part of the empennage shown in the photograph attached to this Memorial as Annex 17) was in a different condition from that in which it had been on his former visit on July 28. On July 30 there were indications that something had been cut away from this portion; there was a perforation like that to be found on a postage stamp and there were also signs that a deep incision had been made in it. These indications were observed by Mr. Nall and Lieutenant-Colonel Stephenson as well as by Mr. Baruch. Mr. Baruch also considered that this portion of 4X-AKC had been moved a short distance—something between 8 and 15 metres—between the occasion of his two visits. On the first occasion it had been on a slight rise; on the second occasion it was at a lower elevation. He also noticed that on the south-east side of the hill most of the papers formerly lying there had been removed, and that remains of clothing, and suit cases which had been on the north-west side of the hill at the time of his first visit had also been removed. The members of the Israeli Commission of Inquiry, together with Mr. Baruch and Lieutenant-Colonel Stephenson, searched the wreckage to see if they could find any traces of the instruments normally to be found on board an aircraft. They were only able to find part of the dial of a radio compass which was in too battered a state to enable any reading to be taken from it. They also found the frames of instruments, but *no traces of the instruments themselves. They were also unable to find any trace of the steering column or of the steering wheel.*

37. Examination of the wreckage of 4X-AKC by the three members of the Israeli Commission of Inquiry, and by Mr. Nall and Lieutenant-Colonel Stephenson, disclosed a number of holes of varying sizes, some of which, particularly those in the rear part of the fuselage, appeared to have been caused by some object entering the rear of the aircraft at high velocity. In a portion of the wreckage lying on its side, in what appeared to be the rear portion of the fuselage, there was a large hole into which Mr. Baruch and Lieutenant-Colonel Stephenson crawled. There were other groups of holes which might have been caused by an explosion within the aircraft. On the part of the site to the south-east side of the hill, fastened seat belts were found and on another part of the site charred blankets which looked as if they might have been used as plugs.

38. After remaining on the site for a time estimated at the most as six hours, the Israeli members of the Commission of Inquiry were told that they must leave Bulgaria that night. They asked to be allowed to interview the person who was responsible for shooting down 4X-AKC, and to return, accompanied by experts, including armament experts, but both these requests were refused.

39. On the evening of July 28, 1955, and subsequently, Mr. Nall, the Israeli Chargé d'Affaires, asked the Bulgarian authorities for the return of all the papers, documents, identity papers and "toute autre chose" relating to the persons on board the aircraft and to the aircraft of whatever kind which had been found amongst the wreckage. The Bulgarian authorities replied that they were quite ready to return anything which was found. On August 2, 1955, there were handed to the Israeli Legation in Sofia a few personal identity papers, some unimportant personal effects and some mail. The items handed over were recorded in a series of Protocols drawn up by the Bulgarian authorities in the Bulgarian language. Several days later some documents relating to the cargo were handed to the Israeli Legation in Sofia. No other aircraft papers of any kind (e.g., operational documents or log-books) were handed over nor were any of the instruments and removable fittings in 4X-AKC produced by the Bulgarian authorities.

40. The Bulgarian authorities issued death certificates giving the cause of death as "par la suite d'un accident aérien". The bodies of the victims had been removed to a mortuary in Sofia and were subsequently sent to Israel for burial.

41. On July 28, 1955, the Bulgarian Ministry for Foreign Affairs presented to the Israeli Legation in Sofia a Note (Annex 19). In this Note the Bulgarian Government informed the Israeli Legation that a special governmental Commission had been appointed, charged with inquiring into the accident and establishing the circumstances in which it had taken place. In a Note dated August 4, 1955 (Annex 20) addressed by the Bulgarian Ministry for Foreign Affairs to the British Legation in Sofia, the Bulgarian Ministry for Foreign Affairs stated that, adopting the conclusions reached by a special governmental Commission appointed to inquire into the case, the Bulgarian Government summed up the causes of the accident as follows:

"1. L'avion s'est écarté de son itinéraire, il a violé la frontière d'État de Bulgarie et, sans aucun préavis, a pénétré profondément à l'intérieur de l'espace aérien bulgare. Muni d'outillages de navigation aérienne parfaits, il n'a pas pu ne pas voir qu'il avait violé la frontière d'État bulgare. Même après avoir été averti, il ne s'est pas soumis, mais a continué à voler vers le sud dans la direction de la frontière bulgare-grecque;

2. Les forces de la défense anti-aérienne bulgare ont fait preuve d'une certaine hâte et n'ont pas pris toutes les mesures nécessaires pour contraindre l'avion à se soumettre et à atterrir.

3. Le Gouvernement bulgare croit nécessaire de faire observer également la circonstance que, au cours de nombreuses années, n'observant pas la souveraineté de la République populaire de Bulgarie, certains milieux se permettaient de violer systématiquement les frontières bulgares. Pendant les dernières années en Bulgarie ont été enregistrés maints survols illégaux des frontières

bulgares de la part d'avions "de nationalité inconnue". Lors de ces survols illégaux, en territoire bulgare étaient parachutés des diversionnistes, munis d'armes, de stations de radio et d'autres matériaux. Le Gouvernement de la République populaire de Bulgarie a protesté à plusieurs reprises auprès du Secrétariat de l'Organisation des Nations Unies, ce qui, malheureusement, n'a donné aucun résultat. Tout cela créait une atmosphère tendue qui imposait la prise de mesures pour la sauvegarde de la sécurité de l'État. C'est dans une pareille atmosphère tendue qu'est devenu possible le malheureux accident avec l'avion israélien."

PART IV

Observations on the facts and investigations

42. In the Note Verbale of July 28, 1955, which the Bulgarian Ministry for Foreign Affairs transmitted to the Israeli Legation in Sofia (Annex 19), and which is referred to in paragraph 41 of this Memorial, the Bulgarian Government gave the following version of what had occurred:

... "Le 27 juillet a.c. vers 7 h. 30¹ un avion de voyageurs israélien a pénétré sans préavis dans l'espace aérien bulgare dans la région de la ville de Trn, il a survolé les villes de Stanké Dimitrov et de Blagoevgrad et il s'est dirigé vers le sud dans la direction de la ville de Pétritch. Aperçu par la défense anti-aérienne bulgare, l'avion, qui volait à une très grande altitude, a été averti à plusieurs reprises, conformément aux règlements internationaux, d'atterrir. L'avion ne l'a pas fait et la défense anti-aérienne bulgare a ouvert le feu à la suite de quoi, l'avion a été atteint et il est tombé au nord de la ville Pétritch.

Il appert des renseignements reçus que tous les voyageurs et tout l'équipage de l'avion ont péri."

43. In their subsequent Note Verbale of August 4, 1955 (Annex 21), which is also referred to in paragraph 41 of this Memorial, the Bulgarian Government gave a slightly different version of the facts:

"... Le 27 juillet a.c. à 7 h. 10¹ temps local, l'avion de la Compagnie de navigation aérienne d'Israel 'El Al' a pénétré dans l'espace aérien bulgare dans la région de la ville de Trn, sans aucun préavis. Après avoir pénétré à 40 km. en profondeur, l'avion a survolé les villes de Breznik, Radomir, Stanké-Dimitrov, Blagoevgrad et il a continué au sud. Il a volé au-dessus du territoire bulgare environ 200 km.

Au sud de la ville de Stanké-Dimitrov, l'avion a été intercepté par deux chasseurs bulgares qui ont reçu l'ordre de le contraindre à atterrir dans quelque aéroport bulgare..."

¹ The time given here was local time.

44. In the Report of the Commission of Inquiry on the Shooting Down of El Al Aircraft 4X-AKC on 27th July, 1955, published by the Government Printers, Jerusalem, the conclusion is recorded (at page 18) that: "The aircraft entered Bulgarian air space being approximately 35 nautical miles off track on a course which would have brought it to the Bulgarian-Greek border after traversing approximately 26 nautical miles (6-7 minutes flying) of the south-western corner of Bulgaria." The Report also records (*loc. cit.*) the opinion that "The Bulgarian statement as to the course and track of the aircraft is inconsistent with the facts as proved."

45. Any reconstruction of the flight of 4X-AKC, in the absence of any information from the Bulgarian authorities as to the circumstances of the interception of the aircraft, is necessarily a hypothetical one. All that can be stated with certainty is that 4X-AKC crashed at about 0540 hours in the vicinity of Petrich, in the south-west corner of Bulgaria and some fifty miles east of Airway Amber 10. How the aircraft came to be in that position is not known. The possibility that the pilot of 4X-AKC deviated radically from his predetermined route after reporting at the border at 0528 hours and then flew the aircraft in a north-easterly direction into Bulgarian territory is so unlikely that it may be discarded¹. A second possibility is that at some earlier stage of the route 4X-AKC deviated east of Amber 10, but that this was not recognised by the pilot. The factors which need to be taken into account in assessing the likelihood of this possibility are the weather conditions on this section of the route; in particular, any which could have caused inadvertent navigational errors. Two such conditions existed. Firstly, heavy static conditions would have been associated with the thunder storms north of Skoplje, and as a result the non-directional beacons at Belgrade and Skoplje may have been of little or no assistance to navigation. Thus, for a distance of some hundred miles or more after leaving the coverage of the Belgrade VOR, it is possible that the aircraft was receiving no reliable indications from any navigational aids. The heavy static conditions might also have caused indications to appear on the radio compass similar to those which would be shown by passing astern of a reporting point; this might have caused the pilot to believe that he had reached the point at which the track of Airway Amber 10 changed direction. Secondly, during the time when no reliable navigational aid may have been available, 4X-AKC came under the influence of a westerly wind of much greater force than had been predicted in the weather forecast on which the flight plan given to Captain Hinks in Vienna had been drawn up. This westerly wind would have carried the aircraft progressively further

¹ In accordance with normal practice, which would be well known to him, Captain Hinks should have reported any intentional deviation from his course to Air Traffic Control, Belgrade.

east of Airway Amber 10 unless the pilot had recognised the increasing drift and had made appropriate adjustments to the aircraft's course. Such recognition would be made very difficult if the pilot was unable to check his track by means of a bearing on a non-directional beacon or by visual reference to the ground. The combined effect of heavy static conditions and a much greater wind velocity than that which had been predicted could therefore have caused 4X-AKC to deviate to the eastwards of Airway Amber 10 in the direction of the Bulgarian frontier. If the increasing drift was not recognised by the pilot, for the reasons indicated above, he may well have believed himself to have crossed the Greek-Yugoslav border at the time of his estimated arrival at this reporting point which, in reporting himself over Skoplje at 0510 hours, he gave as 0528 hours.

46. The impossibility of any accurate reconstruction of what occurred between the time 0528 hours on July 27, 1955, when the aircraft reported itself as having passed the border (*i.e.*, the Greek-Yugoslav border) and the time 0537 hours on the same day, when the SOS from 4X-AKC was received by Air Traffic Control, Athens, is accentuated by the fact that apart from a portion of the dial of the radio compass, no instruments of any kind were found on the site of the wreckage by the Israeli Commission of Inquiry, or by members of Her Majesty's Legation in Sofia who visited the site, nor were any such instruments returned by the Bulgarian authorities. Similarly, there was no trace amongst the wreckage of the documents normally found on an aircraft, and none of these documents were returned by the Bulgarian authorities. In particular, the log book was missing.

47. There is therefore no evidence as to what happened on board the aircraft between 0528 hours and 0537 hours. It is possible that some object entering the aircraft from outside caused a loss of pressurization, and that the procedure to be followed in case of "Uncontrollable Decompression" laid down in the El Al Israel Airlines Limited Operations Manual, Part 4, Section 14, page 9 (a copy of which is attached to this Memorial as Annex 18) was followed. If this were the case, the duties which, under that procedure, would fall on the radio operator might account for the absence of any message from the aircraft until the SOS received by Air Traffic Control, Athens, at 0537 hours.

48. The evidence of eye witnesses on the Greek and Yugoslav sides of the border is sufficient to show that a large aircraft which the witnesses were able to identify from drawings shown to them as a Constellation was, after a series of shots had been heard, observed to be followed at its rear by a line of white smoke and almost immediately after the shots to lose height. The evidence of the witnesses on the Greek side of the border leaves no doubt that the aircraft burst into flames and shortly afterwards disinte-

grated in the air, falling to the ground near Petrich in several places. An examination of the photographs of the wreckage (see paragraph 26 of this Memorial) indicates that some of the holes in the wreckage were caused by the entry of a 37-mm. shell. Had this evidence not existed, however, the communications of July 28, 1955 and August 4, 1955, from the Bulgarian Ministry of Foreign Affairs (see Annexes 19 and 21) leave no doubt that the aircraft was brought down by fire directed at it by Bulgarian fighters. The sequence of events as described by the witnesses on the Yugoslav and Greek borders (see paragraphs 19-25 of this Memorial) gives no indication that any warning at all was given by the Bulgarian fighters to the aircraft before fire was opened upon it. This is borne out by the statement said to be based on the conclusions of the Bulgarian Governmental Commission and recorded in the Bulgarian Ministry for Foreign Affairs' Note of August 4, 1955, that "les forces de la défense anti-aérienne bulgare ont fait preuve d'une certaine hâte et n'ont pas pris toutes les mesures nécessaires pour contraindre l'avion à se soumettre et à atterrir". (Annex 21.)

49. Beyond the admission of the Bulgarian Government that its armed forces acted in haste, and did not take all the necessary measures to compel 4X-AKC to land, there is little evidence as to the circumstances of the interception of 4X-AKC by the Bulgarian armed forces. 4X-AKC is stated by the Bulgarian Government to have been warned to land "in accordance with established international regulations". If the Bulgarian Government intended to refer to the provisions of Annex 2 ("International Standards—Rules of the Air") to the Convention on International Civil Aviation signed at Chicago on December 7, 1944¹ it is pointed out that the provisions of this Annex are not mandatory even as between the parties to that Convention, and consist only of recommended standards, and that the investigation carried out by the International Civil Aviation Organisation in 1956² established that there was a wide diversity of practice amongst States as to the signals to be given to aircraft approaching or flying over restricted or prohibited areas. Whether or not any warning was given to 4X-AKC, and whether, if any warning was given, it complied with that for which the Bulgarian Regulations for the Supervision of Air Traffic (published in the Bulgarian State Gazette on February 14, 1958) themselves provided was presumably established by the Commission of Inquiry stated to have been set up by the Bulgarian Government. The Government of the United Kingdom must, however, emphasise that, in spite of a specific request that

¹ United Nations Treaty Series, Vol. 15, p. 296; United Kingdom Treaty Series (1952) No. 8. Bulgaria is not a party to the Chicago Convention.

² The results of this investigation are recorded in the Civil Aviation Organisation's document AN-WP/1614.

the report of the Bulgarian Commission of Inquiry be communicated to the British Legation in Sofia (see paragraph 55 of this Memorial), at no time has the report of the Bulgarian Commission of Inquiry been made available to Her Majesty's Legation in Sofia or to Her Majesty's Government.

50. The Government of the United Kingdom must also emphasise that any evidence as to the circumstances of the interception of 4X-AKC which might have been furnished by the log-book of the aircraft, or an examination of the instruments carried on board 4X-AKC, has not been available to the Government of the United Kingdom. Despite requests from the Israeli Legation in Sofia (see paragraph 39 of this Memorial) for the return of all documents normally to be found on board an aircraft, neither the log-book of 4X-AKC, nor any other documents which might have indicated the course of the aircraft, were handed over to the Israeli Legation. Furthermore, with the exception of a radio compass, no instruments of any kind were found amongst the wreckage of the aircraft when representatives of Her Majesty's Legation at Sofia visited the site of the disaster on July 28 and July 30, 1955, although the empty frames of instrument panels were noticed. (See paragraphs 32 and 36 of this Memorial; also paragraph 46 in which the absence of documents and instruments is also referred to.)

51. In drawing attention to the failure of the Bulgarian Government to make available to the Government of the United Kingdom the evidence upon which the Bulgarian Government must be taken to have based its own conclusions as to the circumstances of the interception of 4X-AKC, the Government of the United Kingdom would refer to the principle established in the *Corfu Channel* case in the following terms:

"It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that that State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and inquiry at its disposal. But it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances neither involves *prima facie* responsibility nor shifts the burden of proof.

"On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility.

Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognised by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion." (*I.C.J. Reports 1949*, p. 4 (at p. 18).)

PART V

Enquiries and negotiations through the diplomatic channel

52. (a) The British Legation at Sofia first heard of the disaster to 4X-AKC from the news bulletin issued at 2100 hours on July 27 by the British Broadcasting Corporation. This stated that the pilot and some of the passengers were British.

(b) On the morning of July 28, 1955, the Bulgarian Ministry for Foreign Affairs admitted to the British Legation that 4X-AKC had crashed near Petrich and was damaged. They stated that they had not received any information about the circumstances of the crash, the extent of damage, or the fate of the crew and passengers. They stated, however, that a Bulgarian Commission of Inquiry and five doctors had been sent from Sofia. The British Legation requested that the British Vice-Consul, Mr. McGurk, should be permitted to go to the scene of the disaster.

53. At about 1100 hours (local time) on July 28, the Bulgarian Ministry for Foreign Affairs informed the British Legation that there were no survivors from the disaster. They stated that the Bulgarian Commission of Inquiry was returning to Sofia, and that a statement, which they declined to anticipate, would be made. Later the same afternoon the British Legation were informed that all the bodies had been recovered and were being brought to Sofia. Permission was also given for the Vice-Consul, Mr. McGurk, and Mr. Gardner, to visit the site of the disaster. (See paragraph 32 of this Memorial.)

54. Four hours after it was broadcast on July 28, 1955, the British Legation received a copy of the statement issued by the Bulgarian Telegraph Agency at 1100 hours (G.M.T.), the text of which is given in paragraph 28 of this Memorial. This did not appear to be the statement anticipated by the Bulgarian Ministry for Foreign Affairs which they expected to include the findings of the Bulgarian Commission. The British Chargé d'Affaires protested to the Bulgarian Ministry for Foreign Affairs against the discourtesy of informing the British Legation of the circumstances of the disaster by means of a copy of a Press communiqué delivered to the British Legation four hours after it was issued. The Bulgarian Ministry for Foreign Affairs stated that the communiqué had been issued by the Council of Ministers direct, and without the knowledge

of the Ministry for Foreign Affairs. It was added that the Minister for Foreign Affairs was absent as a member of the Commission.

55. On July 30, 1955, the British Chargé d'Affaires in Sofia, Mr. John McKenzie, addressed to the Bulgarian Minister for Foreign Affairs a Note, the text of which is attached to this Memorial as Annex 20. This Note protested on behalf of Her Majesty's Government in the United Kingdom against the unjustifiable action of the Bulgarian forces in shooting down an unarmed civil aircraft, and stated that "Her Majesty's Government cannot accept that any Government is within its rights in shooting down a civil aircraft in time of peace, and demand punishment of those responsible". The Note also referred to the Commission of Inquiry stated to have been set up by the Bulgarian Government, and expressed the hope that the Commission's report would be produced without delay and that a copy would be furnished. The Note finally reserved "all rights on behalf of Her Majesty's Government in the United Kingdom, Canada and the Union of South Africa in the matter of compensation for the loss of British, Canadian and South African lives".

56. On August 3 a further announcement was made by the Bulgarian Telegraph Agency. With the exception of an introductory paragraph the language of that announcement was identical to that used in a Note Verbale of August 4, 1955, from the Bulgarian Ministry for Foreign Affairs to the British Legation in Sofia, which is attached to this Memorial as Annex 21. After reciting its version of the course followed by 4X-AKC (see paragraph 43 of this Memorial) the Note continued as follows:

"Les chasseurs ont averti l'avion, conformément aux règlements internationaux établis, d'atterrir. Malgré ce fait, il ne s'est pas soumis, mais a continué à voler vers le sud, essayant de s'enfuir à travers la frontière bulgare-grecque. Dans ces circonstances, les deux chasseurs des forces de la défense anti-aérienne bulgare dans cette région, étonnés par la conduite de l'avion, ont ouvert le feu, en raison de quoi un peu plus tard, il a pris feu et est tombé dans la région de la ville de Pétritch",

and ended as follows:

"Le Gouvernement et le peuple expriment une fois de plus leurs profonds regrets pour ce grand malheur qui a causé la mort de personnes complètement innocentes. Le Gouvernement bulgare désire ardemment que de pareils malheurs ne se répètent jamais plus. Il fera établir et punir les personnes coupables de la catastrophe survenue avec l'avion israélien et il prendra toutes les mesures nécessaires pour que de pareilles catastrophes ne se répètent plus en territoire bulgare.

Le Gouvernement bulgare compatit profondément aux parents des victimes et il est prêt à assurer le dédommagement dû à leurs familles, ainsi que sa part de l'indemnité des dégâts matériels."

57. On March 12, 1956, the British Minister in Sofia addressed to the Bulgarian Minister for Foreign Affairs a Note which is attached to this Memorial as Annex 22. After referring to the Note of Her Majesty's Chargé d'Affaires of July 30, 1955 (Annex 20), and to the Bulgarian Ministry for Foreign Affairs' Note of August 4, 1955 (Annex 21) in which it was stated that the Bulgarian Government "est prêt à assumer le dédommagement dû à leurs familles ainsi que sa part de l'indemnité des dégâts matériels", the following claim, of which a full and early settlement was requested from the Bulgarian Government, was presented:

"(a) For pecuniary loss suffered by the families of Mr. J. Brass, Wing Commander S. Hinks, Master C. Foxworthy-Windsor, Mr. H. Laster and Mrs. Morgan, which families are all citizens of the United Kingdom and Colonies, the sum of £58,000. This sum does not include any amount in respect of any dependents who may have been left by Mrs. Morgan who are not British subjects.

(b) For loss of baggage and personal effects of the above victims, with the exception of Mrs. G. Morgan, the sum of £810.

(c) For loss of cargo owned by citizens of the United Kingdom and Colonies the sum of £59 11s. 5d. Total £58,869 11s. 5d."

and payment of the claim in sterling was requested. Details of the claim presented were included and are attached to this Memorial as part of Annex 22.

58. No reply was received from the Bulgarian Minister for Foreign Affairs to the Note of March 12, 1956, from the British Minister in Sofia. On January 31, 1957, the British Minister in Sofia addressed to M. Karlo Lukanov a Note which is attached to this Memorial as Annex 23. This Note referred to the Note of March 12, 1956 (Annex 22), and then continued as follows:

"It is almost one and a half years since the incident occurred which gave rise to these claims and, although it inevitably took some months to prepare and submit them the Bulgarian Government have by now had ample time in which to consider their reply. Despite the further representations which I made on the 21st of August last to the Vice-Minister of Foreign Affairs, Monsieur Tarabanov, no reply has, however, been received to any of the Notes under reference, and it does not appear that any steps have yet been taken to meet the claims. The failure of the Bulgarian Government to take any action in this matter is the more difficult to understand in view of the statement in its Note of 4th August, 1955, that it was ready to assume responsibility for compensation to the families of those who were killed. It has thus taken over eight months to consider no more than the question whether the amounts claimed represent a fair estimate of the losses sustained."

59. No reply was received to the British Note of January 31, 1957, and attempts by the British Minister in Sofia to see the Bulgarian Minister for Foreign Affairs met with no success until

March 15, 1957, when the British Minister, Mr. Richard Langford Speaight, was able to see M. Tarabanov. M. Tarabanov enquired whether the families of the victims had not already received compensation from El Al Israel Airlines Limited on the basis of the latter's passenger insurance policy. Mr. Speaight stated that this was a separate issue which did not affect the validity of the claims presented to the Bulgarian Government. He also maintained that nothing could possibly justify the shooting down of a civil airliner in peacetime.

60. At the beginning of July 1957 the French and Belgian diplomatic representatives in Sofia were informed that the Bulgarian Government were prepared to settle the claims arising out of the disaster to 4X-AKC by an *ex gratia* payment of 56,000 transferable leva per victim without prejudice to the question of responsibility.

61. On July 19, 1957, the British Minister, Mr. Speaight, called on the Bulgarian Vice-Minister for Foreign Affairs. He was immediately informed that the Bulgarian Government had decided to make the same offer in respect of the British victims of the disaster as had been made in respect of the French and Belgian victims. The Bulgarian Government were therefore ready to pay 56,000 transferable leva for each of the eleven victims who were citizens of Commonwealth countries. The British Minister informed the Bulgarian Vice-Minister that it was unlikely that the Commonwealth Governments concerned, the United Kingdom, Canada and South Africa, would consider his proposal to be adequate. The Bulgarian Vice-Minister replied that the *ex gratia* payment was being offered as a gesture of goodwill; if it was considered to be inadequate, the Governments concerned must look to El Al Israel Airlines Limited or to other sources for the balance.

62. On September 14, 1957, the British Minister in Sofia saw M. Zhiko Zhikov, the Second Vice-Minister for Foreign Affairs, and informed him that the Bulgarian offer represented a retreat from the earlier position adopted by the Bulgarian Government who had previously assumed responsibility for compensating the families of the victims. M. Zhikov was also informed that, as the offer left open the question of responsibility, it could be seriously considered only if the amounts involved were to be treated as payments on account, and that no complete discharge could be given. M. Zhikov replied to these representations by stating that the Bulgarian Government was not prepared to accept responsibility for the accident, and that the shooting down of the aeroplane was in accordance with the law. It was possible that the Bulgarian forces had acted "perhaps a little hastily", and it was with this in mind that the Bulgarian Government had made the offer of 56,000 leva per victim as an act of goodwill, and in order to close the question. The Bulgarian offer was made on the understanding

that once the amount was handed over the matter would be considered fully settled and closed as far as the Bulgarian Government was concerned. He added that 56,000 leva had already been set aside in the Bulgarian National Bank for each victim.

63. On October 29, 1957, the British Minister in Sofia, Mr. Speaight, had a further interview with M. Zhikov. He reminded M. Zhikov of the inadequacy of the Bulgarian offer. M. Zhikov first repeated his previous arguments about the offer being final, and justified it by reference to the "Warsaw Convention" (the International Convention for the Unification of certain Rules relating to International Carriage by Air signed at Warsaw, on October 12, 1929)¹, an instrument which the Government of the United Kingdom cannot consider as relevant in connection with a claim for the shooting down of an unarmed civil aircraft, and which had not been referred to before by the Bulgarian Government in connection with the claim. When pressed, M. Zhikov said that if any of the claimants felt they had a strong case for extra compensation, it might be possible for the Bulgarian Government to look into the matter again. He made it clear, however, that any negotiations regarding this must come from the claimants themselves and not from Her Majesty's Government, and even suggested that the Bulgarian Government would be glad to deal with the claimants direct if they could have their addresses. Mr. Speaight also mentioned the question of compensation for losses of freight, and M. Zhikov said he would look into this.

64. On November 21, 1957, the British Minister in Sofia, on instructions from Her Majesty's Government, informed the Bulgarian Ministry for Foreign Affairs that Her Majesty's Government had decided to reject the Bulgarian offer of compensation on an *ex gratia* basis, and had decided to institute proceedings before the International Court of Justice forthwith. The British Minister informed the Bulgarian Minister for Foreign Affairs that Her Majesty's Government could not regard compensation on the basis offered as satisfactory, and therefore had no alternative but to reject it, and to submit the case to an independent tribunal.

PART VI

The Law

65. There is no dispute as to the basic facts of this case, namely, that on July 27, 1955, 4X-AKC, a civil airliner, was shot down over Bulgarian territory by members of the Bulgarian armed forces. The Bulgarian Government admitted these facts in their Note Verbale of July 28, 1955, to the Israeli Legation in Sofia

¹ League of Nations Treaty Series, Vol. 137, p. 11; United Kingdom Treaty Series (1933) No. 11.

(Annex 19) and in their Note Verbale of August 4, 1955, addressed by the Bulgarian Minister for Foreign Affairs to Her Britannic Majesty's Legation in Sofia (Annex 21). In the latter Note, the Bulgarian Ministry for Foreign Affairs also admitted that:

“Les forces de la défense anti-aérienne bulgare ont fait preuve d'une certaine hâte et n'ont pas pris toutes les mesures nécessaires pour contraindre l'avion à se soumettre et à atterrir.”

66. The Government of the United Kingdom submit that the shooting down of 4X-AKC on July 27, 1955, by members of the Bulgarian armed forces was wrongful and contrary to international law. In general, the use of armed force against foreign ships or aircraft is not justified in international law unless it is used in the legitimate exercise of the right of self-defence. This basic principle is reflected in the Charter of the United Nations, under paragraph 4 of Article 2 of which all members of the United Nations have undertaken to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. The Government of the United Kingdom submit that there can be no justification in international law for the destruction, by a State using armed force, of a foreign civil aircraft, clearly identifiable as such, which is on a scheduled passenger flight, even if that aircraft enters without previous authorization the airspace above the territory of that State.

67. The principles on which the Government of the United Kingdom rely are illustrated by the judgment of the International Court of Justice in the *Corfu Channel* case (*I.C.J. Reports 1949*). That judgment shows that international law condemns actions by States which in time of peace unnecessarily or recklessly involve risk to the lives of the nationals of other States or destruction of their property. In the *Corfu Channel* case (at page 22) the International Court of Justice based Albania's duty to warn shipping of the presence of a minefield in its territorial waters on “general and well-recognized principles”, one of which was “elementary considerations of humanity even more exacting in peace than in war”.

68. So far from permitting the use of force in circumstances such as those of the present case, international law, on grounds of humanity, recognizes for ships a right of entry into the territory of a foreign State in cases of overriding necessity. It has also been maintained that a similar right arises in respect of the entry of aircraft into the airspace above the territory of a foreign State.

69. It is a rule of the law of the sea that ships which are driven to take refuge in a foreign port by stress of weather, or are compelled to do so by *force majeure* or any other overruling necessity,

are not subject to the local regulations of the port with regard to any incapacity, penalty, prohibition, duties or taxes in force at that port (Colombos, *International Law of the Sea* (3rd edition, page 249)). This rule was affirmed by Lord Stowell in *The Eleanor* (Edw. 135) where it was held that "real and irresistible distress" proved by clear and satisfactory evidence "must be at all times a sufficient passport for human beings" entitling them to the rights of hospitality in a British port. The French Court of Cassation also decided in the *Carlo-Alberto* ((1832) Sirey, part i, page 577) that a ship in distress "is placed, among civilized nations, under the protection of good faith, humanity and generosity". The same principle has been followed in the United States. It was, for instance, held in *The Brig Concord* ((1815) 9 Cranch, 387), that "where cargoes are brought by superior force, or by inevitable necessity, into the United States, they are not deemed to be so imported, in the sense of the law, as necessarily to attach the right of duties becoming payable". The rule based on circumstances of *force majeure* extends to ships seeking refuge in a foreign port for vital repairs or a strict necessity of provisioning. In such a case, international customary law declares "that the local State shall not take advantage of ships' necessity" (Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, page 194).

70. It has been maintained that there is, on the analogy of the right of entry to foreign ports for ships in distress, a right of entry into the airspace of a foreign State for aircraft in distress. This right is not specifically recognized in either the Convention for the Regulation of Aerial Navigation signed at Paris on October 13, 1919¹, or the Convention on Civil Aviation signed at Chicago on December 7, 1944², but Article 22 of the Paris Convention provided that:

"Aircraft of the contracting States shall be entitled to the same measures of assistance for landing, particularly in case of distress, as national aircraft."

Article 25 of the Chicago Convention is headed "Aircraft in Distress" and reads as follows:

"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..."

71. In both World Wars there was some recognition by neutral States that belligerent aircraft in distress should be given favourable

¹ League of Nations Treaty Series, Vol. 11, p. 174. United Kingdom Treaty Series (1922), No. 2.

² United Nations Treaty Series, Vol. 15, p. 296. United Kingdom Treaty Series (1953), No. 8.

treatment. In the First World War certain neutral States agreed that such aircraft should not be fired upon if they gave a distress signal and landed. This practice was supported by the Commission who drew up the draft Rules of Aerial Warfare in 1923, and is given some recognition in Articles 41 and 42 of the draft Rules (32 *American Journal of International Law* (1938) Supplement, pages 35-37). At the Paris Conference of 1910 on Aerial Navigation, the position of military aircraft crossing a frontier without permission in the case of distress or *force majeure* was considered, and it appears to have been the general opinion that such aircraft should land and submit to an inspection and, if the distress was real, should be accorded the privileges of extraterritoriality (*Procès-verbaux des Séances: Conférence Internationale de Navigation Aérienne*, pages 110 and 288 *et seq.*).

72. On the basis of the considerations referred to above, and the somewhat inconclusive evidence of the practice of States, Mr. Oliver J. Lissitzyn, in an article entitled "The Treatment of Aerial Intruders in Recent Practice and International Law" (47 *American Journal of International Law* (1953) 559), reached the following conclusion:

"Despite the unqualified assertions of the sovereignty of the subjacent states over the airspace and the express prohibitions of unauthorized entry of foreign state aircraft which are found in international conventions, there is a right of entry for all foreign aircraft, state or civil, when such entry is due to distress not deliberately caused by persons in control of the aircraft and there is no reasonably safe alternative. In such cases the entry may be 'intentional' in the sense that the pilot knows he is entering foreign airspace without express permission, but the probable alternatives, such as crash landing or ditching, expose the aircraft and its occupants to such unreasonably great risk that the entry must be regarded as forced by circumstances beyond the pilot's control (*force majeure*). Foreign aircraft and their occupants may not be subjected to penalties or to unnecessary detention by the territorial sovereign for entry under such circumstances, or for entry caused by a mistake, at least when the distress or mistake have not been due to negligence chargeable to the persons in control of the aircraft. The full acceptance of this standard in practice may be impeded by security considerations, since simulated 'distress' could be used as a ruse to gain access to restricted areas and installations, but it may be possible to reduce this risk to a minimum by properly planned precautions on the part of the territorial sovereign, which, of course, is entitled to conduct a full investigation into the circumstances of the intrusion, to inspect and search the aircraft and its contents, and to search and question its occupants."

M. de La Pradelle in a study entitled "Les incidents de frontière aérienne et leur règlement" (*Académie de Droit International—Recueil des Cours*, 1954, Volume II, page 180) supports the view

that the subjacent State is under a duty to give help to an intruding aircraft which signals that it is in distress, although he does not expressly accord to such aircraft a right of entry. M. de La Pradelle cites, with apparent approval, Article 344 of Cosentini's Code on the *Law of the Air* which provides that :

« Les aéronefs qui arrivent sur le territoire d'un État, sans autorisation de circuler dans l'espace aérien, doivent atterrir dans un des lieux désignés par l'autorité aéronautique et se soumettre au contrôle de cette autorité. Ils restent sous saisie jusqu'à ce qu'ils aient reçu l'autorisation de circuler. »

Commenting on this de La Pradelle (*op. cit.*, at page 191) says: « Il n'est question, on le voit, ni d'attaque, ni de confiscation, ni de détention. »

73. That international law condemns action by States which in time of peace unnecessarily or recklessly involves risk to the lives of the nationals of other States or destruction of their property is shown by the following examples. In the *Valencia* incident in 1897 (Moore's Digest II, pages 280-282) a Spanish warship fired on an American merchant ship in Spanish territorial waters because she failed to show her flag. The United States Secretary of State addressed a strong protest to the Spanish Government. "The fact remains", he wrote, "that the falling of a solid shot near the stern of an American ship under such circumstances imports wanton and unjustifiable peril to the citizens and property of a friendly State. This Government has never admitted that life and property may be unnecessarily jeopardized by superior force, even when an offence against the revenue or other formal laws may have been committed by an American ship within a foreign jurisdiction, and it cannot be expected to admit that one of its ships or those on board may be endangered because of a friendly foreign commander's ideas as to maritime punctilio." Again, in the case of *Dr. Bonilla* (Moore's Digest II, page 880) an American ship had been called upon, when in a port within the jurisdiction of Honduras, to hand over to the authorities one of its passengers for an alleged offence. Instead of complying with the demand the captain of the ship set sail. Cannon shots were then directed at the ship. The United States protested against "the reckless and offensive resort to arbitrary force against an unarmed ship", and the Government of Honduras apologized.

74. Limitations on the use of force in exercising the right of hot pursuit are also recognized by customary international law. In the case of *The I'm Alone* (3 United Nations Reports of International Arbitral Awards, 1609) which was referred to an arbitral Commission set up by the United Kingdom and United States Governments under the Anglo-American Liquor Treaty of 1924¹

¹ United Kingdom Treaty Series (1924), No. 22.

a British vessel of Canadian registry was intentionally sunk by a United States coastguard vessel, because it had refused to stop and to allow itself to be boarded and searched. The Commissioners decided that the intentional sinking of the suspected vessel could not be justified by any principle of international law, even if the vessel had been within the limits recognized by the Convention and its subsequent pursuit were justified. The decision of the Commissioners appears to have been on the basis that international law condemns the deliberate use of force to sink a ship by a State exercising the right of hot pursuit.

75. The exercise of jurisdiction on the high seas by a naval vessel of a State for the purposes of verifying the flags of merchantmen of other States also illustrates the limitations which international law places on the use of force in peacetime. It is recognized that the warship shall first call on the merchant vessel to show her flag. The warship does this by hoisting her own flag, and firing a blank cartridge. If the other ship takes no notice, the naval vessel may not resort to force without first giving warning by firing a shot across the bows of the other ship. If the merchant vessel still does not hoist its flag "the suspicion becomes so grave that the man-of-war may compel her to bring to for the purposes of visiting her and thereby verifying her nationality". (Oppenheim, *International Law*, 8th Edition, Volume I, page 605.)

76. Further examples of the principle stated in paragraph 67 above are afforded by cases in which action has been taken against foreign nationals illegally crossing the frontier of another State. In the case of *Garcia v. the U.S.A.*, 1928 (4 United Nations Reports of International Arbitral Awards, 119) which was decided by the Mexico-United States General Claims Commission, an American officer opened fire with a rifle on a raft which had crossed the Rio Grande from the Mexican to the American side and was just setting out on the return journey. The officer stated that he fired at a distance of about 1,500 yards to 2,400 yards, not with the intent of hitting anybody but with the object of frightening the persons on the raft. One of the persons on the raft was killed. The majority of the Commission held that the action by the American officer was illegal, and in particular that the act of firing in such circumstances should not be indulged in "unless the importance of preventing or repressing the delinquency by firing is in reasonable proportion to the danger arising from it to the lives of the culprits and other persons in their neighbourhood", nor should it be used "when other practicable ways of preventing or repressing the delinquency might be available".

77. The general principle of international law that force may not be used in reckless disregard of human life and safety against intruders in time of peace, has been asserted, explicitly or implicitly, in protests made on several occasions since the Second World

War against the shooting down of aircraft which overflow the territory of certain European States. Those incidents are enumerated by Lissitzyn and de La Pradelle (*op. cit.*). The protest made by the Government of the United States to the Yugoslav Government in respect of two incidents, in the second of which an unarmed United States military air transport was shot down over Yugoslavia on August 19, 1946, and its occupants killed, asserted that "the deliberate firing without warning on the unarmed passenger planes of a friendly nation is in the judgment of the United States an offence against the law of nations and the principles of humanity". The Yugoslav Government, although offering compensation on an *ex gratia* basis only, stated that orders had been given that in future transport aircraft should not be fired at even in cases of intentional over-flight, but should be invited to land. If they refused, their identity would be noted and the necessary steps taken through diplomatic channels (15 Department of State Bulletin (1946) 415-419, 501-505, 544 and 725). The principle that the appropriate remedy, in the case of an alleged violation of airspace, is for the State which alleges such violation first to attempt to obtain satisfaction from the owner of the aircraft, and, failing this, to take the matter up through the diplomatic channel with the State whose nationality the aircraft bears was affirmed, on behalf of the Government of the United Kingdom, on December 5, 1955, at the 682nd meeting of the Third Committee of the General Assembly of the United Nations (10th Session).

78. No justification for the use of force against civil aircraft on a scheduled flight which enters, without authorization, the airspace of another State, can be derived from the Convention for the Regulation of Aerial Navigation signed at Paris on October 13, 1919, or the Convention on International Civil Aviation, signed at Chicago on December 7, 1944. Both Conventions¹ provide that Contracting States may establish areas in which, for military reasons or in the interests of public safety, the entry of aircraft of the other Contracting States may be prohibited (Article 3 of the Paris Convention and Article 9 of the Chicago Convention). Under Article 4 of the Paris Convention, an aircraft finding itself above a prohibited area established under Article 3 of that Convention must, as soon as it is aware of the fact, give the signal of distress provided for in paragraph 17 of Annex (D) to the Paris Convention, and land as soon as possible outside the prohibited area at one of the nearest aerodromes of the State whose territory it has entered. Under paragraph (c) of Article 9 of the Chicago Convention, each Contracting State, under such Regulations as it may prescribe, may require any aircraft entering one of the restricted or prohibited

¹ Bulgaria is not, and was not on July 27, 1955, a party to the Chicago Convention. She was, however, a party to the Paris Convention which is now regarded as no longer in force.

areas for the establishment of which paragraph (a) of Article 9 provides "to effect a landing as soon as practicable thereafter at some designated airport within its territory". The Government of the United Kingdom submit that, since the Conventions on Aerial Navigation do not sanction the use of force against aircraft flying above prohibited or restricted areas, no Contracting State can be in any stronger position against civil aircraft on scheduled flights which overfly other areas of their territory without permission.

PART VII

Measure of Reparation

79. As to the measure of reparation or compensation, the Government of the United Kingdom submits that this should be based upon the losses sustained by citizens of the United Kingdom and Colonies (as set out in Annexes 2 and 3), by reason of the deaths of the citizens of the United Kingdom and Colonies on board 4X-AKC and the loss of personal effects and freight, owned by citizens of the United Kingdom and Colonies and carried on that aircraft. The Government of the United Kingdom accepts as applicable to the present case the principles laid down by the Permanent Court of International Justice in the case concerning the *Factory at Chorzów* (Judgment No. 13, Series A, No. 17, p. 47) in which the judgment contained this passage:

"The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice, and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."

These principles were also regarded as applicable by the Government of the United Kingdom in the *Corfu Channel* case and were upheld by the International Court of Justice in its assessment on December 15, 1949, of the amount of compensation due in that case from the People's Republic of Albania to the United Kingdom of Great Britain and Northern Ireland. (*I.C.J. Reports 1949*, pp. 244-250.) The Government of the United Kingdom cannot regard the compensation offered by the Bulgarian Government to the Government of the United Kingdom on July 19, 1957, in respect of the citizens of the United Kingdom who were killed when

4X-AKC was shot down on July 27, 1955 (see paragraph 61 of this Memorial), as being in conformity with the principles stated above or as fulfilling the Bulgarian Government assurance in the last paragraph of their Note Verbale of August 4, 1955 (Annex 21), that they were ready "à assurer le dédommagement dû à leurs familles [*i.e.*, the families of the victims], ainsi que sa part de l'indemnité des dégâts matériels".

80. The Bulgarian Government's offer of compensation, that is, 56,000 transferable leva in respect of each victim of the incident, bears no relation to the amount of the losses suffered by citizens of the United Kingdom and Colonies through the deaths of other citizens of the United Kingdom and Colonies who were aboard 4X-AKC on Jul 27, 1955. The amount of these losses is set out in Annex 2 to this Memorial.

PART VIII

Conclusions

81. The Government of the United Kingdom asks the Court to adjudge and declare as follows:

- (1) That on July 27, 1955, the death of four citizens of the United Kingdom and Colonies was caused by the shooting down near Petrich in Bulgaria of 4X-AKC.
- (2) That 4X-AKC was shot down by members of the Bulgarian armed forces.
- (3) That 4X-AKC was an unarmed civil aircraft bearing the proper visible markings.
- (4) That no warning, or in the alternative, insufficient warning, was given to 4X-AKC that it was flying over Bulgarian territory.
- (5) That no, or in the alternative, insufficient attempt was made by the Bulgarian forces to request 4X-AKC to land before fire was opened upon the aircraft.
- (6) That 4X-AKC entered the airspace above the territory of Bulgaria either in distress or inadvertently.
- (7) That even if for any reason it is held that Conclusions Nos. 4, 5 or 6 are not established the action of the Bulgarian forces in firing at 4X-AKC and so causing its destruction and the loss of lives and property was unjustified in international law.
- (8) The facts on which the Government of the United Kingdom relies in support of the findings in conclusions (1) to (7) are set out in Part II of this Memorial and the Annexes thereto.

- (9) That in the circumstances set forth in this Memorial as summarized in the preceding paragraphs of these Conclusions, the Bulgarian Government has committed a breach of its obligations under international law and is internationally responsible to Her Majesty's Government in the United Kingdom for the losses sustained by citizens of the United Kingdom and Colonies by reason of the death of persons on board 4X-AKC on July 27, 1955; and for the loss of personal effects and freight owned by citizens of the United Kingdom and Colonies which were carried on that aircraft.
- (10) That the Bulgarian Government is under an obligation to the United Kingdom Government to make reparation in respect of the breach of its international obligations.
- (11) That Her Majesty's Government has as the result of the breach by the Bulgarian Government of its obligations under international law sustained the following damage:

	£	s.	d.
Compensation for deaths of citizens of the United Kingdom and Colonies (Annex 1)	58,000	0	0
Compensation for loss of personal baggage owned by citizens of the United Kingdom and Colonies (Annex 2)	810	0	0
Compensation for loss of freight owned by citizens of the United Kingdom and Colonies (Annex 3)		59	11 5
Total	58,869	11	5

Dated this twenty-eighth day of August, 1958.

(Signed) J. A. C. GUTTERIDGE.
Agent for the Government of the United Kingdom.

**Annexes to the Memorial of the Government
of the United Kingdom**

Annex 1

**PARTICULARS OF THE CITIZENS OF THE UNITED KINGDOM
AND COLONIES KILLED**

[Not reproduced]

Annex 2

**PARTICULARS OF THE CLAIMANTS WHO ARE CITIZENS OF
THE UNITED KINGDOM AND COLONIES AND DETAILS OF
THEIR CLAIMS**

[Not reproduced]

Annex 3

**PARTICULARS OF FREIGHT OWNED BY JURIDICAL PERSONS
INCORPORATED OR CONSTITUTED IN THE UNITED KINGDOM**

[Not reproduced]

Annex 4

**PHOTOGRAPHS OF 4X-AKC IN ITS UNDAMAGED STATE TAKEN
AT CIAMPINO AIRPORT, ITALY, AND LOD AIRPORT, ISRAEL**

[Not reproduced]

Annex 5

**MAP OF ROUTE OF THE SCHEDULED FLIGHT LONDON/TEL
AVIV (LOD) OF 4X-AKC ON JULY 26-27, 1955**

[Not reproduced]

Annex 6

**WEATHER FORECAST PROVIDED BY METEOROLOGICAL
OFFICE, VIENNA, TO CAPTAIN OF 4X-AKC**

[Not reproduced]

Annex 7

EL AL'S SHORT RANGE FLIGHT PLAN FOR THE FLIGHT OF
4X-AKC FROM VIENNA TO TEL AVIV (FLIGHT 402/26)

[Not reproduced]

Annex 8

AIR TRAFFIC CONTROL, VIENNA, FLIGHT PLAN FOR 4X-AKC

[Not reproduced]

Annex 9

MAP SHOWING AIRWAY AMBER 10

[Not reproduced]

Annex 10

UPPER AIR CHART FOR 500 MILLIBARS RECORDING
OBSERVATIONS AT 0300 HOURS AND 1500 HOURS G.M.T. ON
JULY 27, 1955

[Not reproduced]

Annex 11

SURFACE SYNOPTIC CHART FOR 0600 HOURS G.M.T. ON
JULY 27, 1955

[Not reproduced]

Annex 12

METEOROLOGICAL DATA PROVIDED BY THE BULGARIAN
GOVERNMENT WITH ENGLISH TRANSLATION

[Not reproduced]

Annex 13

RECORD OF AIR TRAFFIC CONTROL COMMUNICATIONS
CONCERNING 4X-AKC

[Not reproduced]

Annex 14

PHOTOSTAT COPIES OF ORIGINALS OF STATEMENTS MADE
BY YUGOSLAV AND GREEK WITNESSES WITH ENGLISH
TRANSLATIONS

[Not reproduced]

Annex 15

AERONAUTICAL CHART, SCALE 1:1,000,000, SHOWING AREA
NEAR YUGOSLAV/GREEK/BULGARIAN FRONTIERS

[Not reproduced]

Annex 16

PHOTOGRAPHS OF PARTS OF THE WRECKAGE OF 4X-AKC

[Not reproduced]

Annex 17

PHOTOGRAPH OF PART OF TAIL UNIT OF 4X-AKC, SHOWING
PERFORATION

[Not reproduced]

Annex 18

PART 4, SECTION 14, PAGE 9 OF EL AL ISRAELI AIRLINES LTD.
OPERATIONS MANUAL ("UNCONTROLLABLE
DECOMPRESSION")

[Not reproduced]

Annex 19

NOTE VERBALE OF JULY 28, 1955, FROM THE BULGARIAN
MINISTRY FOR FOREIGN AFFAIRS TO THE ISRAELI
LEGATION IN SOFIA

[See Annex 3 to Application of Israel, p. 12]

Annex 20

NOTE OF JULY 30, 1955, FROM HER BRITANNIC MAJESTY'S
CHARGE D'AFFAIRES IN SOFIA TO THE MINISTER FOR
FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF
BULGARIA

[See Annex 1 to Application of United Kingdom, pp. 9-11]

Annex 21

NOTE VERBALE OF AUGUST 4, 1955, FROM THE BULGARIAN
MINISTRY FOR FOREIGN AFFAIRS TO HER BRITANNIC
MAJESTY'S LEGATION IN SOFIA

[See Annex 2 to Application of United Kingdom, pp. 11-12]

Annex 22

NOTE OF MARCH 12, 1956, FROM HER BRITANNIC MAJESTY'S
MINISTER IN SOFIA TO THE MINISTER FOR FOREIGN
AFFAIRS OF THE PEOPLE'S REPUBLIC OF BULGARIA

[See Annex 3 to Application of United Kingdom, p. 12]

Annex 23

NOTE OF JANUARY 31, 1957, FROM HER BRITANNIC
MAJESTY'S MINISTER IN SOFIA TO THE MINISTER FOR
FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF
BULGARIA

[Not reproduced]
