

INTERNATIONAL COURT OF JUSTICE

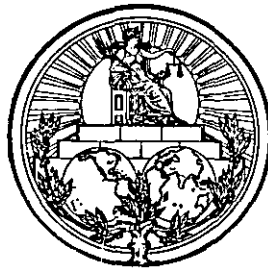
---

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

---

TREATMENT IN HUNGARY OF  
AIRCRAFT AND CREW OF  
UNITED STATES OF AMERICA  
(UNITED STATES OF AMERICA *v.* HUNGARIAN  
PEOPLE'S REPUBLIC; UNITED STATES OF  
AMERICA *v.* UNION OF SOVIET SOCIALIST  
REPUBLICS)

ORDERS OF JULY 12th, 1954; REMOVAL FROM THE LIST



COUR INTERNATIONALE DE JUSTICE

---

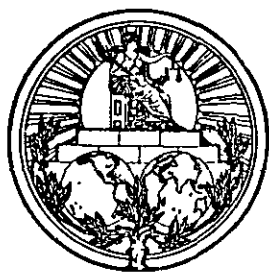
MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

---

TRAITEMENT EN HONGRIE  
D'UN AVION DES ÉTATS-UNIS  
D'AMÉRIQUE ET DE SON ÉQUIPAGE

(ÉTATS-UNIS D'AMÉRIQUE c. RÉPUBLIQUE  
POPULAIRE DE HONGRIE;  
ÉTATS-UNIS D'AMÉRIQUE c. UNION DES  
RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES)

ORDONNANCES DU 12 JUILLET 1954: RADIATION DU RÔLE



PART 1

---

APPLICATION INSTITUTING PROCEEDINGS  
AND PLEADINGS

---

---

PREMIÈRE PARTIE

---

REQUÊTE INTRODUCTIVE D'INSTANCE  
ET PIÈCES DE LA PROCÉDURE ÉCRITE

## SECTION A.—APPLICATIONS INSTITUTING PROCEEDINGS

### 1. APPLICATION INSTITUTING PROCEEDINGS AGAINST THE HUNGARIAN PEOPLE'S REPUBLIC

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

DEPARTMENT OF STATE,  
WASHINGTON.

February 16, 1954.

Sir :

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

The subject of the dispute and a succinct statement of the facts and grounds on which the claim of the Government of the United States of America is based are set forth in two notes, one delivered to the Hungarian Government on March 17, 1953, and one delivered to the Soviet Government on the same day; the note to the Soviet Government was incorporated by reference in the note to the Hungarian Government, the note to the Hungarian Government was incorporated by reference in the note to the Soviet Government, and each of the two Governments received from the United States Government a copy of the note addressed by the United States Government to the other Government. Copies of both notes are attached to this application as an annex<sup>1</sup>.

---

<sup>1</sup> See pp. 11-39 and pp. 45-60.

## SECTION A. — REQUÊTES INTRODUCTIVES D'INSTANCE

### 1. REQUÊTE INTRODUCTIVE D'INSTANCE CONTRE LA RÉPUBLIQUE POPULAIRE DE HONGRIE

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

*[Traduction]*

DÉPARTEMENT D'ÉTAT,  
WASHINGTON.

16 février 1954.

Monsieur le Greffier,

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

L'objet du différend et l'exposé succinct des faits et des motifs par lesquels la demande du Gouvernement des États-Unis d'Amérique est prétendue justifiée sont énoncés dans deux notes remises l'une au Gouvernement hongrois, le 17 mars 1953, et l'autre au Gouvernement soviétique le même jour ; la note au Gouvernement soviétique est incorporée par référence dans la note au Gouvernement hongrois, la note au Gouvernement hongrois est incorporée par référence dans la note au Gouvernement soviétique, et chacun des deux Gouvernements a reçu du Gouvernement des États-Unis une copie de la note adressée à l'autre par ce Gouvernement. Copies des deux notes sont jointes à la présente requête <sup>1</sup>.

---

<sup>1</sup> Voir pp. 11-39 et pp. 45-60.

2. The United States Government notes that the present dispute concerns matters of the character specified in Article 36 (2) of the Statute of the Court, including subdivisions (a) through (d). As will be seen from the annex, the legal dispute of the United States Government with the Hungarian Government involves the interpretation of the Treaty of Peace, signed at Paris February 10, 1947, to which the United States Government, the Hungarian Government and the Soviet Government are parties; the Treaty of Friendship, Commerce and Consular Rights, signed at Washington June 24, 1925, which was in effect during the period relevant to this dispute and to which the United States Government and the Hungarian Government are parties; numerous questions of international law, as set forth in Part II of each of the annexed notes; numerous issues of fact which if established would constitute breaches of international obligations by the Hungarian Government; and questions of the nature and extent of reparation to be made to the United States Government by the Hungarian Government for these breaches.

The United States Government, in filing this application with the Court, submits to the Court's jurisdiction for the purposes of this case. The Hungarian Government appears not to have filed any declaration with the Court thus far, and although it was invited to do so by the United States Government in the Note annexed hereto<sup>1</sup> it has not made any responsive reply to the invitation. The Hungarian Government is, however, qualified to submit to the jurisdiction of the Court in this matter and may upon notification of this application by the Registrar, in accordance with the Rules of the Court, take the necessary steps to enable the Court's jurisdiction over both parties to the dispute to be confirmed.

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

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

---

<sup>1</sup> Annex 1, see pp. 11-39.

2. Le Gouvernement des États-Unis constate que le différend actuel a trait à des questions relevant des catégories spécifiées à l'article 36, paragraphe 2, du Statut de la Cour, y compris les subdivisions *a)* à *d)*. Comme on le verra par l'annexe, le différend d'ordre juridique entre le Gouvernement des États-Unis et le Gouvernement hongrois met en jeu l'interprétation du traité de paix, signé à Paris le 10 février 1947, auquel le Gouvernement des États-Unis, le Gouvernement hongrois et le Gouvernement soviétique sont parties ; le traité d'amitié, de commerce et consulaire, signé à Washington le 24 juin 1925, qui était en vigueur à l'époque du différend et auquel le Gouvernement des États-Unis et le Gouvernement hongrois sont parties ; de nombreuses questions de droit international, indiquées dans la deuxième partie de chacune des notes en annexe<sup>1</sup> ; de nombreux points de fait qui, s'ils étaient établis, constitueraient la violation d'un engagement international par le Gouvernement hongrois ; et des points relatifs à la nature et à l'étendue de la réparation due par le Gouvernement hongrois au Gouvernement des États-Unis en raison de ces violations.

Le Gouvernement des États-Unis, en présentant à la Cour la présente requête, déclare accepter la juridiction de la Cour dans la présente affaire. Il ne semble pas qu'à ce jour, le Gouvernement hongrois ait remis une déclaration à la Cour, et bien qu'il ait été invité à le faire par le Gouvernement des États-Unis dans la note jointe en annexe<sup>1</sup>, il n'a fait aucune réponse utile à cette invitation. Le Gouvernement hongrois est cependant qualifié pour reconnaître la juridiction de la Cour en la matière et il lui est loisible, lorsque cette requête lui sera notifiée par le Greffier, conformément au Règlement de la Cour, de prendre les mesures nécessaires pour que soit confirmée la juridiction de la Cour à l'égard des deux parties au différend.

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

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

<sup>1</sup> Annexe 1, voir pp. 11-39.

and other reparation from the Hungarian Government. The Soviet Government has sought to justify some of its conduct by Article 22 of the Treaty of Peace to which reference has been made, a contention which the United States Government denies.

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

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

Very truly yours,

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

---



de ces violations d'obligations internationales, les États-Unis ont réclamé et réclament au Gouvernement hongrois des réparations monétaires et autres. Le Gouvernement soviétique a tenté de justifier en partie sa conduite en invoquant l'article 22 du traité de paix auquel on s'est déjà référé, thèse que le Gouvernement des États-Unis conteste.

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

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

Veuillez agréer, etc.

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

---

## ANNEXES

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

No. 115.

Excellency :

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

The Government of the United States of America refers again to the case of the four American Air Force personnel, Captain Dave H. Henderson, Captain John J. Swift, Sergeant Jess A. Duff and Sergeant James A. Elam, all nationals of the United States of America, who were detained in Hungary from November 19, 1951, to December 28, 1951. The United States Government has studied the communication of the Government of the Hungarian People's Republic of January 23, 1953, replying to the diplomatic note of the United States in this matter which was delivered to the Hungarian Government on December 10, 1952.

The United States Government's note of December 10, 1952, contained reasonable requests for information and other material entirely in the possession of the Hungarian Government with respect to the Hungarian Government's treatment of the four American nationals. The reply of January 23, 1953, must be characterized as completely unresponsive because the Hungarian Government fails to provide any of the material or information requested, and it must be characterized as completely unsatisfactory since it contains no valid excuse or justification for that failure.

The Hungarian Government cites two domestic Hungarian statutes as its sole justification for this failure. The United States Government finds nothing in either statute lending any color of justification for the Hungarian Government's failure to comply with its international obligations. One statute cited appears to make aliens in Hungary subject to Hungarian law ; but the Hungarian Government cannot seriously claim that this domestic legislation justifies or purports to justify manifest denial of justice, according to the standards of international law, to aliens found in Hungarian jurisdiction, or that it precludes or purports to preclude the Hungarian Government from supplying information of the character requested by the United States Government. The second statute cited appears to deal with the appellate procedure of domestic Hungarian courts ; but this can hardly be cited by the Hungarian Government as preventing collateral intergovernmental inquiry into the circumstances of any appeal in the light of the Hungarian Government's international obligations, or as precluding that

Government from disclosing to the United States Government judicial dossiers concerning American nationals in accordance with established international law and practice.

The United States Government has also received from the Hungarian Government a reply, delivered to the American Minister at Budapest on February 9, 1953, to the United States Government's communication of January 30, 1953, relating to the United States C-47 airplane 6026 said by the Soviet Government to have been turned over to the Hungarian Government by Soviet authorities in Hungary. The Hungarian Government's reply refused the request contained in the United States Government's communication of January 30 for the return of the plane, its equipment and its cargo and of the documents on board. The Hungarian Government appears to justify this behavior by the citation of an alleged order of confiscation of this property of the United States Government said to be contained in a judgment by a military court against the four airmen; but the Hungarian Government refuses to disclose to the United States Government the judicial record upon which the validity of such an order of confiscation must rest. Moreover, the United States Government cannot, under international law, or under any system of domestic law purporting to provide due legal process, be foreclosed from inquiry into the legal propriety of proceedings, or into the record thereof, which resulted in the confiscation of United States Government property when the United States Government was not permitted representation or participation in the proceedings or any prior opportunity at all to contest on the facts and on the law the order of confiscation. The Hungarian Government's reply must be taken as a flat refusal to comply in any respect with any of the requests so made by the United States Government. The United States Government can find no suggestion of legal justification for this refusal.

The inference is compelled that the Hungarian Government knows that to reply truthfully to the questions asked, and to provide the material requested, in the United States notes, would seriously incriminate the Hungarian Government and that the Hungarian Government is acutely aware of the legal and moral impropriety of its conduct in reference to the case above mentioned. The conclusion is reinforced that the Hungarian Government is in possession of evidence to which the United States Government is entitled, including that to which reference is made in both notes above mentioned, and that that evidence fully supports the findings which the United States Government has made on the basis of other available evidence gathered in its investigation of the case, as described in the same notes.

The purpose of the present communication is to place these facts, in summary form, formally upon the record and to prefer against the Hungarian Government an international diplomatic claim for the purposes and in the amounts set out below. Simul-

taneously, the Government of the United States of America is also preferring a similar claim against the Soviet Government, with which the Hungarian Government was associated and participated in the infliction of the wrongs against the United States and its nationals which are recounted herein. A copy of the diplomatic note embodying that claim is transmitted herewith as a part hereof; and a copy of the present note is being transmitted to the Soviet Government as a part of the claim against that Government.

## I

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

1. At approximately 11 o'clock in the morning of November 19, 1951, an American C-47 type aircraft, known as No. 6026, and bearing the identification symbol 43-16026, set off from Erding, Germany, for Belgrade, Yugoslavia. The crew of the plane, all of them then and at all times thereafter nationals of the United States of America, consisted of personnel attached to the Erding Air Depot, known as the 85th Air Depot Wing of the United States Air Forces in Europe. They were the pilot, Captain Dave H. Henderson (U.S. Air Force Serial No. AO-1-169-565), the co-pilot, Captain John J. Swift (U.S. Air Force Serial No. AO-7-42-797), the airborne radio operator, Sergeant James A. Elam (U.S. Air Force Serial No. AF-18-349-150), and the crew chief or engineer, Sergeant Jess A. Duff (U.S. Air Force Serial No. AF-39-450-853). The sole purpose and mission of the flight was to carry to the American Air Attaché attached to the American Embassy at Belgrade, Yugoslavia, various items of freight which that Air Attaché had from time to time ordered through normal channels to be supplied to him for the needs of his establishment in Belgrade. The United States Air Depot at Erding, Germany, was then and is now a supply and aircraft maintenance depot attending to the needs of American Air Attachés stationed at various American Embassies in Europe, Asia, and Africa, including the Embassy at Belgrade, Yugoslavia. The plane at no time had on board, nor was it at any time intended that there should be on board, any other persons than those above named. The aircraft and the crew were at all times, from their departure above noted until their landing, under circumstances to be described, at an air base situated near Papa in Hungary and controlled by the Soviet Government, unarmed, and the plane carried only its normal equipment and the cargo to which reference has been made; when the sole mission, the delivery of the cargo, as stated above, was completed, the plane and crew were required to return to Erding as promptly as possible, expected to be the next day, November 20, 1951.

These facts were fully described in the usual air flight documents and official orders on board the plane from its departure and after its arrival at the Soviet-controlled base mentioned above. These documents and official orders are last known to have been in the possession of the Soviet Government since November 19, 1951, and the Soviet Government has failed, although duly requested, to inform the United States Government unequivocally with respect to the disposition it has made of these documents and orders. In its note of January 30, 1953, to the Hungarian Government the United States Government also called upon the Hungarian Government to make these documents available to the United States Government. The United States Government believes, however, that if they have not yet come into the possession of the Hungarian Government the Hungarian Government has had access to their contents. They included the manifest of the cargo, the flight plan, the pilot's navigation log, the crew's official travel orders and other routine documents which the United States Government has described in its communications above mentioned.

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

2. The airplane and crew attempted at all times to follow the course so given for Belgrade, but while the crew, and in particular the pilots, believed that the plane was flying that course, it was actually blown by winds the existence and direction of which the pilots did not then know or have any warning of, and the velocity of these winds accelerated the speed of the plane considerably beyond the speed at which the pilots believed the plane was flying. The plane, therefore, flew somewhat north of the expected course and covered a distance considerably greater than the pilots then thought or had reason to believe they were covering. In consequence of the effect of these unknown winds, the plane flew beyond Belgrade to the north and the east and the crew were unable to find or descend at Belgrade; and at approximately 4 p.m. local time the pilots reversed the plane's course and flew westward with the intention on the part of the pilots of returning to Udine or Venice.

Practically the entire return trip was made in darkness. The crew realized that they were lost, and finding that the plane's fuel supply was running dangerously low, they made every reasonable effort to find a landing place on the ground, to alert all persons

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

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

4. At all times beginning at the crossing of the Yugoslav frontier between Udine and Ljubljana until after the landing of the plane at the Soviet airfield near Papa in Hungary, as mentioned above, the crew thought and believed that the plane was flying solely within the territorial limits of Yugoslavia. Neither the crew nor any of the persons concerned in any respect with the origination, planning or expediting of the flight had any intention that the plane should at any time fly, or any knowledge that it was at any point during the trip flying, within the territory of any country adjacent to Yugoslavia other than Italy, through which the plane had necessarily to fly after leaving Erding, Germany, and before returning to Erding, Germany.

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

Government declares categorically that the aircraft carried no equipment intended for any illegal purpose whether with respect to Hungary, the Soviet Union or any other country.

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

6. Thus the Hungarian authorities, together with the Soviet authorities stationed in Rumania and Hungary, watched the plane's flight, knew that it was lost and in distress and was seeking a landing place, but refused to come to the aid of the plane or the crew, either to aid them in finding their true course, or to show them a landing field at any place by lights or signals from the ground or in the air, or to respond to their radioed calls for assistance. The Hungarian authorities, together with the Soviet authorities, deliberately permitted the plane to cross the Hungarian frontier and to overfly Hungarian territory, and then brought it down, lest, continuing in its flight, it would in a few minutes arrive safely in the British zone of Austria, or in other territory not controlled by the Hungarian Government or by the Soviet Government or its allies. The Hungarian Government, and the Soviet Government, were at all times aware, therefore, that neither the airplane nor the crew had any intention to cross into or to overfly Hungarian territory, or Soviet territory, or to engage in any improper activity during such flight.

7. From November 19, 1951, at approximately 6 p.m., until December 3, 1951, the four American airmen above named were held under arrest and incommunicado by the Soviet authorities and continuously interrogated with respect to their flight and other matters. The investigation conducted by the United States Government compels the conclusion, which the United States Government herewith asserts, that the Soviet and Hungarian

Governments aided and abetted each other in the interception and seizure of the plane, its contents and the crew, in the detention and interrogation of the crew while in Soviet custody, and in all the actions which took place thereafter with respect to the matter and until the release of the airmen to American authorities on December 28, 1951.

In particular all the actions of the Soviet authorities with respect to the airmen during this period were done in pre-arrangement with, and with the connivance and approval of, the Hungarian Government. The Hungarian Government is fully and equally guilty with the Soviet Government of the latter Government's violations of international law and responsible for the damages suffered by the United States and each of the airmen, above named, on account of all actions which befell these persons at the hands of the Soviet authorities. All these matters are fully described by the United States Government in a note to the Soviet Government, of even date, which is made part of the present note with the same force and effect as if fully repeated herein. The unlawful actions of which the Hungarian Government is thus guilty include the interception of the plane, its seizure, the detention of the men from November 19, 1951, to December 3, 1951, their interrogation, the denial during that period of access to American Consular or other authorities and the public statements with respect to the matter made by the Soviet Government, particularly the statements made in the General Assembly of the United Nations in Paris before and since December 1951 by the Soviet Foreign Minister, Andrei Y. Vishinsky. These constituted part of a concerted campaign of propaganda and vilification against the United States conducted by the Soviet Government, in and out of the United Nations, in connection with this matter, to cause injury to the four airmen and to the United States.

8. When it became known to the United States Government that the airplane 6026 had disappeared the United States Government made official inquiry of the Hungarian Government through the American Legation at Budapest asking whether the Hungarian Government had any information or knowledge on the subject. Such inquiries were made by the Chargé d'Affaires of the United States, George Abbott, on several occasions between November 19 and December 3. The Hungarian Government, replying through the Hungarian Foreign Office, denied knowledge of the whereabouts of the plane or of the crew. In the afternoon of November 19, 1951, the competent Yugoslav authorities, seeking to ascertain the whereabouts of the airplane after it was overdue at Belgrade; made inquiry of the competent Hungarian authorities who thereupon denied knowledge of the whereabouts of the airplane. This conduct of the Hungarian Government caused the United States Government to engage in an elaborate and expensive search for



the missing plane and crew which would have been obviated had the Hungarian Government truthfully answered the questions put to it or disclosed the information in its possession.

9. On December 2 and 3, 1951, the Soviet Government through its press and radio stated:

"According to information received by TASS the American military airplane and its crew which landed on Hungarian territory have been transferred by the Soviet Military Command to the disposition of the Hungarian authorities."

On December 3, the Hungarian Foreign Office informed the American Legation in Budapest that the airplane was

"put at the disposal of the Hungarian authorities by the Soviet Command".

Subsequently, in an announcement of December 23, 1951, concerning the trial of the four airmen by a Hungarian military court, the Hungarian Government announced that the military court purported, as part of its judgment, to "confiscate" the airplane.

As the Hungarian Government is aware, the Soviet Government has twice declined to give specific answers to the specific questions put to it by the United States Government, in the note to the Soviet Government of December 10, 1952, reiterated December 17, 1952, concerning the Soviet Government's actions with respect to the United States airplane 6026, its equipment, cargo and other contents. The Hungarian Government has likewise failed to respond to these specific questions. The United States Government therefore is compelled to infer, and so asserts, that apart from the liability of the Hungarian Government for aiding and abetting the Soviet Government's seizure of the airplane and its contents on November 19, 1951, the Hungarian Government committed an illegal act of conversion of the United States property in question on or about December 2, 1951, when it accepted from the Soviet Government the United States property in question. The United States Government alone had the legal authority to dispose of that property and neither the Soviet Government nor the Hungarian Government had any lawful right, title, or interest in the plane or its contents, or any authority to dispose of any part of it, and the United States Government never empowered either the Soviet Government or the Hungarian Government to make any such disposition. The United States Government calls attention to the fact that the Hungarian Government refused to permit the United States Government to be represented at the trial, to offer evidence or to participate in any appeal, and the United States Government therefore cannot be bound by any judgment in this case against United States property, and it asserts further that no Hungarian

military court or other tribunal or agency of the Hungarian Government had any lawful authority to order the confiscation of the United States property in question and such act of confiscation, if it took place, was legally null and void. Furthermore, the failure of the Hungarian Government, evidenced in its communication of February 9, 1953, to respond to or comply with the requests set forth in the United States note to the Hungarian Government of January 30, 1953, or to provide adequate legal justification for this failure, confirms the liability of the Hungarian Government for unlawful conversion of the airplane, its equipment, cargo and other contents, including the documents therein; the property in question, to the extent that it may still be in the custody or jurisdiction of the Hungarian Government, remains exclusively the property of the United States, and any disposition or retention thereof except by the United States is unlawful.

10. Following the delivery of the four American airmen to the Hungarian Government's custody they were kept under arrest and incommunicado by the Hungarian Government, being confined to a secret prison believed to be maintained in the city of Budapest by the Hungarian Secret Political Police, known as the AVH, acting under the personal direction of General Gabor Peter. They were subjected to pitiless, repeated interrogation, upon the false representation to the airmen that such interrogation was necessary in order to satisfy the Hungarian Government with respect to the innocence of the flight of November 19, 1951, prior to permitting them to return to their base in Germany. In truth and in fact, the Hungarian Government was thoroughly informed with respect to these facts by the Soviet authorities following the Soviet interrogations and knew the airmen to be innocent of any violation of Hungarian law in the premises. The Hungarian authorities attempted by such renewed interrogation to induce the men to desert their government or to provide confessions that they had crossed the Hungarian frontier and overflown Hungary with a premeditated purpose of committing espionage, sabotage or other unlawful acts, the Hungarian authorities knowing at all times full well that such confessions would be untrue and obtainable only by fraud, intimidation or coercion.

In the course of these interrogations, the four American airmen answered fully, truthfully and adequately all questions put to them. At the end of approximately three weeks of arrest and interrogation the Hungarian police in charge of the airmen insisted upon and by coercive measures succeeded in obtaining signatures from three of the airmen to statements prepared by the Hungarian authorities. The signatures were obtained by the representation to the airmen that signed statements were necessary in order to effect the return of the airmen to the American authorities in Germany, and the men were informed that the statements were not

intended to be used in any legal proceeding against them by Hungarian authorities. The English translations were exhibited to the airmen as accurate translations of statements in the Hungarian language; specifically these translations, in the versions exhibited as final and true, excluded any admission that any of the individuals aboard the airplane 6026 had had any intention at any time of crossing the Hungarian border. The airmen had insisted, as was the truth, that there never had been such an intention and that written statements in any other sense could not be true and would not be signed. Unless, therefore, such statements have been tampered with, altered or forged by unauthorized persons the English language versions of these statements should still show, as the Hungarian Government must well know, that no confession of intention to cross, or of any legal guilt with respect to the crossing of, the Hungarian frontier was made by any of the airmen, orally or in writing.

11. Each of the airmen requested the Hungarian authorities to permit him to communicate with or have access to American diplomatic or consular representatives or other American authorities in Hungary or elsewhere, but the replies given by the Hungarian authorities were evasive or negative. Beginning December 3, 1951, when the presence of the airmen in Hungary was first made known to the United States Government by the Hungarian and Soviet Governments, the American Legation at Budapest made official requests to the Hungarian Government for access to the airmen as American nationals and the Hungarian authorities denied such access as well. Furthermore, the airmen requested from the Hungarian authorities opportunity to visit and converse with each other but this was denied and the men were kept throughout Hungarian detention incommunicado, seeing only Hungarian police officials concerned with questioning or detaining them.

12. The United States Government has found, and believes and so asserts, that the Hungarian Government in concert with the Soviet Government had determined soon after the fortuitous and innocent descent on Hungarian soil of the United States airplane 6026, and the four American nationals forming its crew, to contrive a so-called judicial trial on false charges and irrespective of the innocence of the four American nationals, in order to serve base and improper propaganda and political purposes of the Soviet Government, and of the Hungarian Government, and to enrich themselves unjustly at the expense of the United States. The Hungarian authorities, therefore, wilfully and deliberately failed to disclose to the airmen the true purpose of the questions put to them in the interrogation and of the documents which they were requested to sign and gave them no opportunity for access to any impartial or reliable advice but instead kept

them incommunicado and deliberately and wilfully deceived them with respect to the purposes of the interrogations and nature of the documents which the Hungarian authorities requested them to sign. They were led by the Hungarian Government to believe that these acts were technically necessary to effect their immediate release, as has been above noted, whereas in truth and in fact it was the intention of the Hungarian Government, and of the Soviet Government, to provide the color of some procedural basis for a criminal trial upon trumped-up charges.

13. On Sunday, December 23, 1951, without any prior notice to the United States Government of the holding of the trial, the men were placed on trial by a tribunal which the Hungarian Government subsequently described as a military court for the city of Budapest. This trial constituted a brazen violation of elementary human rights with regard to the administration of justice, and consisted throughout of manifest denials of justice according to the well-established principles of international law.

(a) Without prior warning that they were to be charged with crime or placed on trial, at about 8 o'clock in the morning the airmen were taken to a building which it now appears is the Civil District Court building on Fő Street in the city of Budapest. Upon arrival the men were taken one at a time to a person in military uniform, calling himself the military prosecutor of Budapest. Each man was told by this person that he was under arrest for violating the Hungarian border. He was told to sign a statement prepared in Hungarian, a language which none of the men understood, which allegedly stated that the men understood the charges. It was explained to the men that the charges merely were that they had come into Hungarian territory and that they had not been authorized by the Hungarian Government to do so. The men were informed specifically that there was no admission by such signature that the crossing of the frontier and the entry into Hungary had been in any way premeditated. Three of the men signed, upon this representation, but the fourth refused.

(b) The same person handed each of the accused separately a list of eight names. This person asserted that these were the names of the only persons entitled to practice before the court. Thereupon either the prosecutor himself selected a lawyer from the list, or the accused simply pointed to a name asserting that he did not know any of the lawyers on the list. In view of the subsequent conduct of each of the individuals so selected as lawyers and in view of the refusal of the Hungarian Government to provide information on this subject requested in the United States Government's note of December 10, above mentioned, the United States Government is compelled to draw the conclusion and therefore asserts that these individuals did not comprise all the lawyers available for the defense of the four airmen; that,

assuming these men were actually lawyers, they had been instructed by the Hungarian Government, or by the Soviet Government, not to conduct a defense of their clients in accordance with law and the standards of the legal profession applicable under established judicial procedures for the trial of criminal charges and in no event to take any action which would demonstrate the innocence of the accused or the unjustness of the government's accusations and procedures or which might otherwise hinder or embarrass the government in the execution of its unjust plan ; or that these lawyers were to the knowledge of the government so incompetent professionally and so compliant with the government's desires and instructions in the matter as to insure that the government's proposed trial would end in a judgment of guilt against the defendants as planned by the government.

(c) The trial was held almost immediately thereafter without the semblance of opportunity to the accused to understand the charges or to plan any defense. The accused were marched into the court room within approximately five minutes after the last introduction of counsel to accused had taken place. By the contrivance of the Hungarian Government, and the Soviet Government, the trial was held with maximum secrecy. It was held on a Sunday morning. There was no prior publication of the holding of the trial. There was no invitation to the public to enter the court room and otherwise no action which might cause the public to become aware of the proceedings. Only the accused, the so-called lawyers and Hungarian Government officials concerned in the case were present.

The accused were brought in for trial in states of mental shock, fear and mental confusion, which the Hungarian Government contrived and of which it was well aware. The trial was conducted in the Hungarian language which none of the accused understood. A single interpreter purported to give the accused only a summary running oral account of what was being said, and acted as interpreter both for statements by the court as well as for statements by the accused and the so-called lawyers. The person acting as interpreter was a paid employee of the secret police, biased against the defendants and in favor of the Hungarian Government, and who had so acted in the preceding interrogations.

The only evidence submitted in open court were answers of the accused themselves to questions put by the presiding officer. These answers were brief replies to a few questions to each accused, no one's testimony taking more than approximately five minutes, including translations. No question asked or answer given was incriminating to any of the accused, and no testimony or other evidence was adduced, read or offered which would support any finding or charge of the guilt of any defendant of the crime charged or any other crime, nor was any testimony adduced to satisfy the jurisdictional requirements of the military tribunal.

None of the accused had any clear idea of, nor did the Hungarian authorities make any reasonable effort to explain, the nature of the court or the charges and all the accused were impressed with the fact, which the United States Government charges was the truth, that no evidence was produced in the trial which established in any sense the guilt of any of the accused of the crime charged, or any other crime, and that they had no chance at all to interpose or be heard in any kind of defense on the facts or the law such as is the practice in courts, whether civil or military, in civilized countries.

The so-called lawyers for the accused made no attempt, such as is required and expected of members of the legal profession in all civilized countries purporting to dispense judicial justice, to challenge the prosecution's case, to introduce or to effect the introduction of existing available evidence for their clients, to raise questions of law or jurisdiction of the court or to perfect appeals or otherwise obtain review of the actions of the trial court.

The United States Government charges that the proceeding was replete from beginning to end with violations not only of international law but even of the provisions of published Hungarian law and procedure, violations which no free, independent or reasonably competent Hungarian lawyer would fail to recognize and exploit on behalf of his client under conditions of freedom and the integrity of legal and judicial institutions, and which no free, independent or reasonably competent court would fail to recognize and thereby be moved to dismiss the charges and release the accused or at least to renounce military jurisdiction over the case.

(d) The time which elapsed between the reading of the charges by the prosecutor to the first of the four accused, at approximately 8 a.m., on Sunday, December 23, 1951, as noted above, and the completion of the reading of the judgment of the tribunal, was approximately seven hours. The so-called trial, from the arraignment of the accused to the completion of the testimony of the witnesses (that is, of the four accused), was approximately fifteen to twenty minutes, including translations. The defense offered by the so-called lawyers consisted of speeches to the court of approximately ten minutes each. The United States Government, as a result of its investigation, concludes and charges that the Hungarian Government, and the Soviet Government, contrived that the so-called trial should not consume more than a fixed period of time and that the lawyers, judges, prosecutor, interpreter and other participants should adhere to the time schedule without regard to the content of the testimony but merely provide the color of a *pro forma* judicial proceeding.

(e) The opinion of the court as made known to the accused, and the announcement made by the Hungarian Government with respect thereto on December 23, 1951, ruling that the men had

been found guilty of premeditated crossing of the Hungarian frontier, was completely without any foundation or support in the testimony adduced *before the tribunal or presented in open court* or in any other way made known to the accused. The Hungarian Government having refused to supply the United States Government, although repeatedly duly requested, with a copy of the judgment of the court, the United States Government calls attention to the December 23, 1951, declaration of the Hungarian Government with regard to the judgment of the court. The United States Government asserts specifically that, to the extent that the opinion of the court is reflected in the declaration, both it and the declaration were false and known by the Hungarian Government to be false when made, in the following respects :

(i) It stated that the men had admitted their guilt. This was false for the question of their guilt was not put and no such testimony was given in the course of the trial. In this connection the United States Government must characterize as also false the contrary statements made by the Hungarian Government in its notes of January 30, 1953, and February 9, 1953, in this matter.

(ii) It said that the accused could not explain satisfactorily why there were certain maps in the aircraft. This issue was not raised in the testimony at the trial, nor was it covered by any of the signed or other statements. One of the accused, the pilot, was merely asked by the court whether he had selected the maps in the plane and he truthfully replied that he had not. The other defendants were asked no questions concerning the maps. No maps whatever were produced in evidence at the trial, nor by any of the Hungarian interrogators during the interrogations preceding the trial. The men had previously explained fully, truthfully and adequately the circumstances and purposes of all maps in the aircraft to the apparent satisfaction of the Soviet interrogators. While the written indictment read to the accused in open court, as translated, stated that the airplane carried maps on which were shown countries friendly with the Soviet Union, neither the prosecutor, the judges nor the defendants' counsel presented in evidence any of the explanations already given by the airmen with respect to the maps on board the airplane; the pilot, in particular, made attempts during the trial, directed to the defense counsel appointed for him, to explain the innocent nature of the maps, but the pilot's attempts in this regard were in vain since he was given no opportunity to give testimony on this subject.

(iii) The statement said that the men could not explain "why they had necessity for a radio station suitable for field use". This was false. The only testimony on this subject at the trial was directed to the question whether there was a radio set on board the plane that could be used on the ground. The radio set was not produced in court and the men had many times explained in the

interrogations that the set in question was an emergency set which could not receive messages but was standard equipment and was for use to send out SOS signals by cranking, in the event of an emergency landing. Indeed, the equipment in question lacked a parachute section, so that the radio set could not have been used in an emergency calling for jumping from the plane.

(iv) The statement said that the men could not explain "why the airplane carried surplus parachutes". This was likewise false. The only testimony on this subject at the trial was that there were two more parachutes on the plane than crew members. The parachutes were not produced in court or brought in evidence. Moreover, the explanation for the presence of parachutes on board the plane had been given officially by the United States Government on December 20, 1951, in the course of the debate in the General Assembly of the United Nations on this subject. This was the only way in which the United States Government could submit evidence on this subject, since, while it was forewarned through Mr. Andrei Y. Vishinsky of the Soviet Delegation that the presence of parachutes was an incriminating fact, the United States Government was not forewarned of the date of the trial nor permitted access to the men or to the Hungarian authorities concerned.

(v) The statement said that blankets on board the plane "had been prepared for dropping". That was false and unsupported by any evidence. The blankets had not been in the court room and had never been examined in the presence of the defendants. The only testimony at the trial was that the blankets were presumably part of the cargo, so shown in the manifests, and had been placed on board with the rest of the cargo without the specific knowledge of the crew, who were not concerned with the contents of the cargo for delivery to the American Air Attaché at Belgrade.

(vi) The statement said that the crew "wanted to drop these items to propagandists and diversionists operating in the People's Democracies". This was similarly false and unsupported by any testimony.

(vii) The statement said that the men admitted that they maintained uninterrupted contact with the American Military Staff at Frankfurt et cetera. This was false where it was not misleading. No such statement was made at the trial. Statements with respect to radio contacts derive only, therefore, from the preceding interrogations. The Hungarian Government deliberately concealed, as it well knew from the interrogations, the fact that the accused had explained that such radio contacts were not directional and had no bearing on the location of the aircraft in flight.

(viii) The statement was made, and was likewise false, that the men "admitted that they knew they were flying in the air space of the Hungarian Republic". No such statement was made at the



trial. On the contrary, the men had specifically informed Hungarian authorities and Soviet authorities in the interrogation that they at all times believed that they were in Yugoslavia, and that they had no knowledge whatever that they had overflown or were even then in Hungary except insofar as their interrogators asserted that they were.

(ix) The statement said the men knew they were over a restricted area. This was likewise false. There was no such testimony at the trial and no evidence that any area over which the men flew was restricted to their flight, or made known to them in any way as being restricted, except to the extent that, believing they were in Yugoslavia, and finding themselves lost, the men considered that they had flown off the course from Zagreb to Belgrade which the Yugoslav authorities had prescribed as a corridor for the flight.

(x) The statement said that the accused admitted that they had deliberately avoided carrying out an obligation to transmit a signal indicating an off-flight and to land voluntarily at the nearest Hungarian airfield. This too was false. There was no such evidence at the trial nor was such a statement ever made in the interrogation conducted of the airmen ; on the contrary (as the Hungarian authorities well knew, having watched the plane attempting to find a landing place and after observing its distress signals for one hour and forty-one minutes, upon the Hungarian Government's own statement), the men transmitted all possible signals indicating off-flight, distress and urgent desire to find an airfield. The plane landed at the first airfield of which the crew had any indication and the first one lighted for them for the purpose.

(f) The statement said that the men on December 23 had acquiesced in the verdict. This was false.

(g) The Hungarian Government deliberately deceived the four accused airmen with respect to their right of appeal. The men had been told by the lawyers chosen by the Hungarian Government that they should not appeal from any verdict. The only appeals of which any of the defendants were aware of were, first, an appeal which was announced in the court by the prosecutor against the alleged leniency of the verdict, and second, one or more of the defendants' counsel indicated to the defendants that an appeal was lodged from the amount of the fine but saying nothing regarding the verdict of guilt. The men were left under the definite impression that they had in fact appealed through the actions of the lawyers. While the men remained in Hungarian custody until December 28, 1951, and were told in the court room that an appeal would be decided within three days after the verdict, namely, December 26, not even such an appeal appears actually to have taken place, for the men were never informed with respect thereto.

In this connection the United States Government must characterize as false and misleading the Hungarian Government's state-

ment, in its note of January 23, 1953, reiterated in its note of February 9, 1953, in this matter, that the airmen "did not avail themselves of the right of appeal"; and it rejects as inadmissible in law or morals the suggestion that any failure by the accused in the circumstances of this case to take full advantage of the legal procedural possibilities of appellate review under Hungarian law precludes any reexamination by the United States Government, the Hungarian Government or any appropriate international body of the merits of the judgment of conviction of the men and confiscation of United States property.

Furthermore, the United States Government is compelled to conclude, and it so charges, that any attempt to obtain judicial review by the airmen in the channel of domestic Hungarian legal procedure would be futile and sterile, since the intentions and plans of the Hungarian Government and the Soviet Government, and their evident control over all judicial authority at every level, would dictate the procedures and decisions of every reviewing or appellate tribunal as of the trial court itself.

(h) As noted above, the United States Government has repeatedly requested the Hungarian Government for a record of the trial and other proceedings. The Hungarian Government has refused to provide the same. In the circumstances the United States Government is compelled to believe, and it asserts, that either no record, such as is the practice and the right of the accused in civilized countries, was kept by the Hungarian Government or that such record as exists would if disclosed support the findings made by the United States Government with respect to these proceedings.

Furthermore, the Hungarian Government has failed and refused, although duly requested in the note of the United States Government to the Hungarian Government of December 10, 1952, particularly paragraphs numbered 1 through 10, to provide the United States Government with an explanation of various aspects of this trial. From this conduct of the Hungarian Government, and from investigations conducted by the United States Government independently in the matter, the United States Government concludes, and therefore asserts, that truthful replies by the Hungarian Government would clearly demonstrate that its actions were arbitrary and unlawful both in international law and, as herein-after set forth, under applicable Hungarian domestic law. It asserts further that in violating and distorting provisions of Hungarian domestic law the Hungarian Government, in concert with the Soviet Government, wilfully and deliberately acted arbitrarily against the United States and its nationals in the application of that law in this matter and thereby further was guilty of a manifest denial of justice as established in the recognized principles of international law. The conduct of the police, the prosecutor, the

judges, and the lawyers chosen by the government as defense counsel for the accused and their failure to obtain revision of the trial court decision by an appellate or review body, further demonstrate the Hungarian Government's deliberate intention to deny to the accused American nationals, and to the United States, the semblance of any justice.

14. The evidence in the possession of the United States Government with respect to the Hungarian Government's actions in effecting the detention, arrest and conviction of the four airmen discloses numerous flagrant errors and glaring violations of Hungarian domestic substantive law and legal procedure and practice so serious and material as to render all the legal proceedings taken null and void. Among these errors and violations are the following :

(a) Applicable Hungarian law required the appropriate Hungarian authorities to give warning to the airplane 6026 when it was observed over Hungarian territory ; to show it to a safe landing place in its distress ; to notify the Hungarian Foreign Office for the purpose of notification thereupon to the United States Government of the presence of the plane and crew on Hungarian territory ; and to release the plane and the crew to the American authorities thereafter. The Hungarian Government failed to comply with any of these provisions of Hungarian legislation.

(b) There is no provision of Hungarian law authorizing the Soviet authorities on Hungarian territory to take such actions with respect to the airplane and its contents or with respect to the crew as were taken by them in this case.

(c) The detention of the crew by Hungarian authorities from December 3, 1951, was a violation of Hungarian law for the reasons, among others, that they were not permitted to obtain counsel or appeal against their detention, and that the detention, or interrogation, was not justified by the presence of any reasonable cause therefor.

(d) The trial by military court was illegal since it was not authorized by any statute conferring jurisdiction upon military courts ; furthermore, holding the trial in the city of Budapest was arbitrary and improper.

(e) The facts with respect to the choice or assignment of counsel evidence violation of Hungarian law in a number of respects. Among these are :

(i) The accused should have been notified at the very first interrogation that they were entitled to choose counsel for their defense and should have been given opportunity to make a free choice of counsel satisfactory to them.

(ii) Restriction to a list of only eight lawyers among whom the accused were to choose their counsel was improper since there

were then, and still are, many times more lawyers in Budapest competent to plead in a military court.

(iii) The lawyers selected had obviously been carefully selected and instructed with a view not to represent the interests of the accused but of the government.

(f) The period of time granted the accused to prepare their defense was patently too brief and in specific violation of law.

(g) The indictment was erroneous in law and should neither have been lodged by the prosecutor nor sustained by the court inasmuch as the subject of aviation overflights of Hungarian territory does not fall within the purview of the statute concerning illegal border crossing but is covered by special laws relating to aviation, with materially lesser penalties.

(h) The uncontroverted fact that the crew did not intend to enter or be in Hungary at any time, and that their overflying Hungary was unwitting and the result of unknown winds which blew the airplane off its course, exculpated the accused of any crime under Hungarian law. This is specifically provided in the statute relating to aviation overflights and the facts constitute a case of *force majeure* and therefore a defense to any criminal charge under Hungarian criminal law. These facts having been established, no indictment should have been lodged by the prosecutor or sustained by the court.

(i) The conduct of the trial by the court shows numerous violations of Hungarian law including:

(i) The written charge and all the testimony and proceedings should have been, but were not, translated verbatim into English.

(ii) The testimony was restricted to answering a few questions addressed to each of the accused—as to most of the accused only one or two questions were asked—and neither the questions nor the answers covered the issues raised by the charges.

(iii) No other testimony or evidence was admitted or allowed than the few answers of the accused; the most relevant items of evidence relating to the issues were completely unexplored by the court, by the prosecution and by the defense counsel. Evidence not offered included the lack of intention to cross the Hungarian border; the circumstances under which the airplane was driven over Hungarian territory, unknown to the crew; the attempts of the crew to obtain aid and directives from the ground; the fact that the Hungarian and Soviet authorities knowingly permitted the plane and crew to cross into and over Hungary without warning, knowing that the crew were unwittingly there and seeking a landing place or other assistance; and the financial situation of the defendants which, under Hungarian law, has a bearing upon the provisions of the judgment.

(iv) The court failed to dismiss the case or to divest itself of jurisdiction when it appeared that the statutory requirements respecting military jurisdiction were not satisfied by the evidence.

(v) The court failed to make the accused fully aware of the proceedings.

(j) Defense counsel in the conduct of the trial were guilty of a series of actions of professional misconduct and gross negligence, in that among other things :

(i) They did not protest against the shortness of the interval between the charge and the trial and did not request adequate time to prepare a defense.

(ii) They did not protest against the jurisdiction of the military court.

(iii) They did not suggest the availability of additional testimony and evidence in the support of the defendants' case.

(iv) They did not plead the invalidity of the indictment as a matter of law.

(v) They did not properly advise their clients with respect to the appeal upon the merits as well as against the arbitrariness of the punishment and with respect to the confiscation of the United States Government airplane and contents.

(vi) They did not obtain and deliver to the accused copies of the sentence of the court.

(vii) They did not inform the accused with respect to the alleged decision of the appellate court or take appropriate action with respect to such appeal.

(k) The secret character of the trial was not justified by Hungarian law. The conditions for a legally secret trial were not met. The requirements for any other trial would preclude the holding of a trial on a Sunday morning preceding Christmas eve. The date of the trial was not published. The defendants were not notified in advance of the scheduling of the date of the trial and were thus prevented from attempting to communicate that fact to counsel or to American authorities. The holding of a trial under such conditions, adverse to public knowledge or participation, is opposed to Hungarian judicial principle and practice.

(l) The findings of the court were erroneous with respect to the defendants' guilt for the reasons above mentioned as well as because the court failed to distinguish between the responsibilities of each of the four accused. The evidence did not support findings of guilt of the crime charged as against the two sergeants, who had no part in the navigation or flight of the plane or its crossing into Hungarian air space.

(m) The imposition of punishment was without legal justification. There exists no legal justification for setting the fine at

360,000 forints each. The maximum provided by law in case of felony was 50,000 forints, and in case of petty offenses provided by statute 25,000 forints and petty offenses provided by cabinet order 20,000 forints ; and there exists no justification in the record for denominating the case one of felony rather than petty offense.

(n) The court failed to take account in the imposition of sentence of the fact that the accused had been detained under conditions of arrest from November 19 to the date of trial. The fine should have been reduced considerably on that account or the defendants should have been released from any payment.

(o) There was no justification under Hungarian law for barring access to the accused by American diplomatic or consular authorities before or after trial. This was particularly so after the announcement of the court's judgment when the defendants should have been given an opportunity to consult persons in their confidence with respect to the course of the appellate proceedings.

(p) The Hungarian Government was under a legal obligation to permit the defendants, and the United States Government on their behalf, and on its own behalf, to examine the judicial dossiers in the case. The four airmen are entitled under Hungarian law to access, at any time after the written charge has been served upon them, to the dossiers in their cases in the possession of the Hungarian Government. International law recognizes the right of the government in such matters to act on behalf of its nationals and is applied in Hungarian judicial practice. Therefore, the United States Government may under Hungarian law properly obtain access to the dossiers of the four airmen, who are American nationals. Furthermore, the United States Government, being the owner of the property which the court ordered confiscated, is under Hungarian law an aggrieved party in the case and is therefore entitled to appeal against the confiscatory measures of the judgment, should be served with a copy of the judgment and should be given access to the dossiers in the case on its own behalf.

(q) The legislation of the Hungarian Government concerning the confiscation of property was not applicable to the facts of the case and the order of confiscation was therefore erroneous.

(r) Contrary to the statements contained in the note of the Hungarian Government to the United States Government, dated January 23, 1953, the Hungarian law provides adequate remedies for reexamination of the legal propriety of the proceedings, for setting aside the judgments of conviction, fine and confiscation of the airplane and its contents, and for the return to the United States Government of the money paid and of the airplane and its contents or the fair value thereof. Such remedial action by the Hungarian Government may take place at any time and regardless of the limitation of time provided for appellate proceedings.

The foregoing errors and violations are so glaring and numerous as to be consistent only with concerted action by all participating Hungarian authorities, including the prosecution, the courts and the defense counsel, to accomplish a prearranged manifest denial of justice to the accused without any opportunity to the accused for the presentation of their defense, or of the true facts and the applicable law in their behalf or of appropriate argument.

15. The United States Government agreed to pay and paid to the Hungarian Government the sum of \$123,605.15 as the only practicable alternative available to it to effect the release of the men, making such payment under protest.

As further evidence of the true purposes, and of the arbitrary and unlawful character of the acts, of the Hungarian Government, the United States draws attention to certain circumstances surrounding the Hungarian Government's stipulations for payment. On December 28, 1951, the date of payment, and for a considerable period of time prior thereto, the Hungarian Government was indebted to the United States Government in a sum exceeding \$380,000 in interest and several million dollars in principal, payable in dollars, arising out of an uncontested obligation of the Hungarian Government. The Hungarian Government under written agreements of April 24, 1946, August 9, 1946, and March 21, 1947, had purchased from the United States Government several millions of dollars of property of the United States Government. By the specific provisions of these agreements the United States Government was entitled, if it so desired, to call upon the Hungarian Government to make available to the United States Government local currency of the Hungarian Government for the payment by the United States Government of any or all expenditures in Hungary. Although the fines imposed by the Hungarian military court against the four airmen were payable in local currency and although the Hungarian Government had agreed to release the four airmen on the payment of their fines by the United States Government, the Hungarian Government in violation of its written agreements refused to make available to the United States Government local currency in the amount of the fines, as provided in the agreements, or to *apply the equivalent in dollars against the liquidated dollar obligation due and owing to the United States Government above mentioned*. Instead the Hungarian Government arbitrarily and unlawfully demanded as a condition to the release of the airmen that the United States Government turn over to the Hungarian Government United States dollars from sources outside Hungary; the United States Government made the payment with such dollars, under protest.

The United States Government now solemnly declares that this sum was knowingly and wilfully demanded and obtained from the United States Government by the Hungarian Government as a

form of barbarous extortion or ransom for American nationals unlawfully arrested and unlawfully detained, and that this factor itself constituted an act of manifest denial of justice and violation of international morality, law and due process.

16. As indicated above, after the trial was over the pilot of the plane, Captain Dave H. Henderson, was subjected to further intensive interrogation as late as the night of December 27, that is, after arrangements for the payment of the sum demanded as a condition to the release of the accused had been made, directed at forcing or tricking him into a false confession that the crossing into Hungary on November 19, was premeditated and further that the pilot knew that he had also crossed into Rumania. Such interrogation could only have been motivated by the awareness on the part of the Hungarian Government of the illegality of the proceedings against the airmen, of the denial of justice to them and to the United States, and of the wrong perpetrated in demanding and obtaining the payment of the aforesaid sum of \$123,605.15; and by a purpose to provide a basis, despite the payment of the sum demanded and the agreement of the Hungarian Government to release the men upon payment, for further wrongful persecution and oppression of the same defendants in Hungary and also by Rumanian and perhaps other authorities active as allies of the Hungarian and Soviet Governments.

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

Largely unsuccessful in this campaign, the Hungarian and Soviet Governments in concert seized upon the fortuitous and wholly innocent presence, within their physical power, of four American airmen whom they had caused to come down in Hungary and be detained there, in order to provide so-called evidence to prove the Soviet and Soviet-allied propaganda charges against the United



States. Knowing at all times that the charges against the airmen, as against the United States, were false and unfounded and that a free and open hearing or investigation according to the practice of civilized and honorable governments would demonstrate the falsity of these charges, the Hungarian and Soviet Governments in concert deliberately denied the airmen access to American consular or diplomatic authorities, denied the airmen representation by independent legal counsel, subjected the airmen to a trial by a military court whose judgment was predetermined and dictated in advance, held the trial *in camera* where no member of the public or representative of the accused was present, kept the airmen continuously incommunicado, denied them and the United States Government access to judicial records and dossiers in the case, and in other ways attempted to conceal from the airmen, the United States Government, and the international public the manifest injustices deliberately perpetrated by the Hungarian and Soviet Governments upon these American nationals as upon the United States Government.

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

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

19. The United States Government is compelled to conclude, and it charges, that the foregoing actions, whether committed separately by the Hungarian Government or in conjunction or concert with the Soviet Government, were deliberately and unlawfully committed with ulterior intent to serve a propaganda purpose of the Soviet and Hungarian Governments, to cause unlawful damage to the four American airmen above named, and to the United States, to convert unlawfully to the use and profit of the Hungarian Government and the Soviet Government the United

States Air Force plane 6026, its equipment and its cargo, and to obtain unlawfully from the United States the sum of \$123,605.15.

## II

The United States Government, as a result of its investigation above mentioned, believes and asserts that the Hungarian Government, aided and abetted by and in concert with the Soviet Government, has by committing the foregoing acts in the circumstances set forth violated, first, international law ; second, the provisions of the Treaty of Peace between Hungary and the United States, particularly the provisions in Article 2 thereof relating to human rights ; and, third, the provisions of the Treaty of Friendship, Commerce and Consular Rights between Hungary and the United States, then in effect, particularly the provisions in Articles 1, 14, 18 and 19 thereof.

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

(1) It was the legal duty of the Hungarian Government as soon as it was aware of the flight of the airplane 6026 over Hungarian territory to show it to a safe landing place ; the plane having belatedly been intercepted and shown to a landing place, it was the legal duty of the Hungarian Government to have prevented the arrest of the men and the seizure of the plane by the Soviet authorities ; and it was further the legal duty of the Hungarian Government to have assisted the plane and the crew to return promptly to their base in Germany ; specifically, no provision of the *Treaty of Peace with the Soviet Union* or any other valid treaty obligated or entitled the Hungarian Government to permit such arrest or detention in Hungarian territory by Soviet authorities.

(2) The plane having been brought down in Hungary to the knowledge of the Hungarian Government, it was the legal duty of the Hungarian Government to notify the United States representatives in Hungary, or the superior officers of the airmen in Germany, or other appropriate American authorities that the airplane and crew were being held in Hungary, and to do so promptly.

(3) It was the legal duty of the Hungarian Government, knowing that the United States Government was engaged in a search for the plane and the crew, to have made truthful and affirmative statements informing the United States Government that the plane and the men were safe and search was unnecessary and it was further the Hungarian Government's legal duty to reply truthfully

to the inquiries made of it by the United States Government, and by the Yugoslav authorities, beginning on November 19, 1951, concerning the Hungarian Government's knowledge of the whereabouts of the plane and the crew.

(4) The Hungarian Government was not legally justified in continuing the arrest and detention of the crew and the plane, particularly after these had been turned over to it by Soviet authorities in Hungary on December 3, 1951, and the Hungarian Government should then have arranged for the immediate turning over of the men and the plane to American authorities.

(5) The arrest, detention and interrogation by the Hungarian authorities from December 3, 1951, to December 28, 1951, were unlawful in principle and unlawful in addition as excessive in length and in scope.

(6) In violation of its legal duty the Hungarian Government did not inform the four airmen that they were being detained for the purpose of trial on criminal charges but instead represented to them that they were merely being questioned prior to release to American authorities. This representation was false, and known to the Hungarian Government to be false, inasmuch as by arrangement with the Soviet Government the Hungarian Government had already determined to place the men on trial for the purposes and in the circumstances set forth in the present note.

(7) The detention, trial and conviction of the airmen in the circumstances of the case constitute a flagrant and manifest denial of justice, particularly in that :

(a) The actions of the Hungarian Government with reference to the airmen were in manifest violation of established Hungarian law and practice, and they therefore constituted arbitrary and unlawful actions directed against American nationals as such.

(b) No reasonable cause existed for indicting or otherwise charging the accused with the violation of any Hungarian law.

(c) The trial of the accused by military court and under military procedure was without legal authority and the court was without jurisdiction to try them.

(d) The accused were denied the advice and representation of independent counsel or consultation with representatives of the United States Government, they were denied adequate opportunity to prepare and present a defense on the facts and on the law, or to argue their case before their judges, and to prepare and present a proper appeal from the judgments against them. Had these denials not taken place the innocence of the accused would have been made manifest.

(e) The accused were tried by judges who were not independent of Hungarian Government direction but in fact acted throughout the trial upon instructions, both as to the conduct of the trial and

decisions made in the course thereof and as to the decisions taken thereafter, of superior Hungarian or Soviet officials. Had these denials not taken place the innocence of the accused would have been made manifest.

(f) The punishment imposed was not justified by any valid provision of Hungarian law, either in the provision for fine in Hungarian currency, or the conversion into incarceration, constituting in this respect a discriminatory application of Hungarian law to American nationals.

(g) The confiscation of the United States airplane 6026 and its contents was unlawful since it was not justified by any pre-existing Hungarian statute or other provision of law; since the United States Government was not given prior notice of the proceedings nor made a party thereto and was not permitted to be represented in the proceedings; and since the airplane and its contents came into Hungarian jurisdiction innocently.

(h) The entire proceedings were initiated and conducted by the Hungarian Government without regard to the interest of justice or due process of law, knowing the accused to be innocent of any crime, in particular the crime charged, and to have been unjustly convicted and sentenced, for the purpose of satisfying international propaganda purposes of the Soviet Union and the Hungarian Government, to arouse domestically and internationally hatred, distrust and ill will against the people and Government of the United States, and to obtain from the United States Government the sum of \$123,605.15, and the United States C-47 airplane and its contents, to which the Hungarian Government was not entitled.

(8) The Hungarian Government was under a legal duty to return the airplane, its equipment, its cargo and other contents, to the extent that the Hungarian Government had possession thereof or power to effect a return thereof, to the United States Government at the earliest opportunity and in any event in response to the United States Government's request contained in the note of January 30, 1953, above described, or upon the showing of a valid inability to do so it should have made payment to the United States Government of the monetary value of the property as requested.

(9) The Hungarian Government was under a legal duty to furnish to the United States Government the documents and other evidence belonging to the United States taken from the airmen and the airplane, to the extent that the same was in the possession of the Hungarian Government in any form or the Hungarian Government had power to furnish the same, and to provide access to the various dossiers, reports and other documents of the Hungarian Government as set forth in the United States Government's communications of December 10, 1952, and January 30, 1953.

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

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

### III

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

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

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

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

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

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

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

the Hungarian Government and the Soviet Government should take which would be appropriate in international law and practice to confirm the illegality of the actions directed by them against the United States Government and the American people.

#### IV

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

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

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

Budapest, March 17, 1953. (Signed) George M. ABBOTT,  
Chargé d'Affaires, a.i.

Enclosure :

Copy of note to  
Government of U.S.S.R.

His Excellency  
Erik Molnar,  
Minister for Foreign Affairs of the  
Hungarian People's Republic,  
Budapest, Hungary.

---

*Enclosure to the note to the Hungarian Government  
of March 17th, 1953*

NOTE TO THE SOVIET GOVERNMENT  
OF MARCH 17, 1953  
[See pp. 45-60]

---

*Annex 2*

NOTE FROM THE HUNGARIAN GOVERNMENT  
OF NOVEMBER 2, 1953

No. 00207/3/1953.

Dear Mr. Chargé d'Affaires,

I have the honour to refer to Note No. 115 of March 17, 1953, addressed by Mr. Abbott then Chargé d'Affaires ad interim to my predecessor, raising again the matter of the four flyers concluded by a final sentence almost two years ago.

The Government of the Hungarian People's Republic established that this latest Note of the Government of the United States does not contain any new element whatsoever which could induce the resumption in merit of this matter concluded by a final sentence.

As it had been stated in Notes No. 2123/953 of January 23, 1953, and No. 207/1/1953 of February 9, 1953, of my predecessor, the crime committed by the four American flyers on the territory of Hungary is a case belonging exclusively to the sphere of matters which are within the domestic jurisdiction of the Hungarian judicial authorities. The competent Hungarian court had in this matter passed a sentence which according to the provisions of the Hungarian Criminal Law in force ordered the confiscation of the objects serving as instruments of the crime that is of the airplane, its cargo and equipment. This sentence of the court, the American flyers having not appealed, became final.

Concerning the judicial settlement of international disputes it is generally known that the jurisdiction of the International Court of Justice, according to Article 36 of its Statute is recognized in procedures concerning the interpretation of treaties and other legal disputes of international law ; a criminal procedure falling exclusively within the jurisdiction of a sovereign State is, however, not subject to international jurisdiction.

On the grounds of the aforesaid I reject on behalf of my Government the allegations of the Note relating to the procedure of the Hungarian Government and authorities and the commenting, in the intercourse of sovereign States uncustomary statements and wish to emphasize that the Hungarian Government considers the case of the four American flyers as closed.

I avail myself of this opportunity to express to you the renewed assurances of my high consideration.

Budapest, November 2, 1953.

*(Signed)* BOLDOCZKI.

---