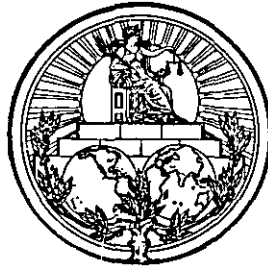


INTERNATIONAL COURT OF JUSTICE

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



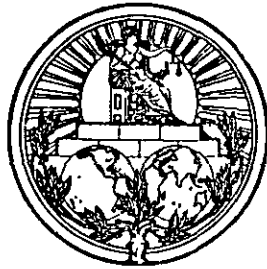
COUR INTERNATIONALE DE JUSTICE

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 :

I. 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 annex¹.

¹ See pp. 11-39 and 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 hereto¹ 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 finds 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

¹ Annex 1, see 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.

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

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.

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

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

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 overflowed 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

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,

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

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

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

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.

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.

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 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

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.

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.

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.
