

2. REQUÊTE INTRODUCTIVE D'INSTANCE CONTRE L'UNION DES RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES

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 l'Union des Républiques socialistes soviétiques en raison de certains actes accomplis par ce dernier Gouvernement de concert avec le Gouvernement de la République populaire de Hongrie. 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 la République populaire de Hongrie, 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 soviétique, le 17 mars 1953, et l'autre au Gouvernement hongrois le même jour ; la note au Gouvernement hongrois est incorporée par référence dans la note au Gouvernement soviétique, la note au Gouvernement soviétique est incorporée par référence dans la note au Gouvernement hongrois, 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 requête¹.

2. Le Gouvernement des États-Unis constate que le différend actuel a trait à des questions relevant des catégories spécifiées à

¹ Voir pp. 11-39 et 45-60.

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 soviétique met en jeu l'interprétation du traité de paix, signé à Paris le 10 février 1947, auquel le Gouvernement des États-Unis, le Gouvernement soviétique et le Gouvernement hongrois 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; de nombreux points de fait qui, s'ils étaient établis, constitueraient la violation d'un engagement international par le Gouvernement soviétique; et des points relatifs à la nature et à l'étendue de la réparation due par le Gouvernement soviétique 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 soviétique 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 annexe¹, il n'a fait aucune réponse utile à cette invitation. Le Gouvernement soviétique 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 l'Union des Républiques socialistes soviétiques, de concert avec le Gouvernement de la République populaire de Hongrie 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 de ces violations d'obligations internationales, les États-Unis ont réclamé et réclament au Gouvernement soviétique des réparations

¹ Annexe 1, voir pp. 45-60.

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 soviétique 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.

Veillez agréer, etc.

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

of December 10 and December 17. The United States Government believes that the Soviet Government has been and is fully aware of the contents of both notes ; that the Soviet Government has no intention of responding to the questions which it alone could answer, or of complying with the requests which it alone could satisfy, set out in the note of December 10 and reiterated in the note of December 17. The United States Government believes that the Soviet Government knows that to reply truthfully to the questions raised and to provide the material requested would seriously incriminate the Soviet Government. The inference is compelled that the Soviet Government is acutely aware of the legal and moral impropriety of its conduct with reference to the case above mentioned and the conclusion is reinforced that the Soviet Government is in possession of evidence to which the United States Government is entitled, including that to which reference is made in the communication of December 10, 1952, and that that evidence fully supports the findings which the United States Government had made on the basis of other available evidence gathered in its investigation of the case, as described in the December 10 communication.

The purpose of the present communication is to place these facts, in summary form, formally upon the record and to prefer against the Soviet Government an international diplomatic claim for the purposes and in the amounts set out below. Simultaneously, the Government of the United States is also preferring a similar claim against the Hungarian Government, with which the Soviet 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 Hungarian 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

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 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 transpired later 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

their allies 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 Soviet Government or its allies. The Soviet Government, and the Hungarian 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, the four American airmen above named were held under arrest and *incommunicado* by the Soviet authorities and continuously interrogated with respect to their flight. In this interrogation attempts were made by the Soviet authorities both to induce the airmen to desert the United States Government and to indoctrinate them with anti-American propaganda, and the Soviet authorities asked the airmen questions for the purpose of obtaining from them military intelligence with respect to the United States which the men were unauthorized to divulge, all outside the scope of any lawful interrogation in the circumstances.

8. All proper questions by Soviet authorities concerning the flight and the matters relevant to the arrival of the plane in Hungarian territory, and into the custody of the Soviet authorities, were fully, truthfully and adequately answered by the airmen. It therefore was definitely then, as it had theretofore been, the duty of the Soviet Government to permit the plane and crew to depart for their base in Germany or to notify the appropriate American authorities of all the facts. The Soviet Government, however, wilfully and knowingly failed to do so. It also denied the repeated requests of each of the crew members for permission or opportunity to communicate with American consular officials in Hungary, or with their superiors elsewhere, or to have access to such persons.

9. The Soviet Government, and the Hungarian Government, were at all times aware that the United States Government, following the disappearance of the plane on November 19, had made public inquiries and announcements with respect to the loss of the plane and had engaged in an elaborate and notorious search for the missing plane and the crew; but during this time the Soviet Government gave no indication that it was holding either the plane or the crew or possessed any information on the subject. Late in the evening of December 2, 1951, for publication in the Soviet press of December 3, 1951, the Soviet Government for the first time publicly revealed that it had had custody of the men and the plane and that it was turning the men over to Hungarian authorities.

tion of the men, their interrogation and denial of access to American consular or other authorities, the denial by the Hungarian Government to the American diplomatic authorities in Hungary of the right of access to the men, the trial and conviction of the men, the imposition of sentence and the exaction from the United States Government of the sum of \$123,605.15 and all actions and damages to the men and to the United States related thereto. These actions are more fully described in the note of the United States Government to the Hungarian Government of even date which is made part of the present note, with the same force and effect as if fully repeated herein.

13. The Soviet Government knowingly and wilfully made untrue public statements with respect to the matter before and since December 28, 1951, intending to cause, and causing, injury to the four airmen, American nationals, and to the United States. These statements include those above mentioned made by the Soviet Government on December 2 and December 3, 1951, and those contained in the various speeches delivered by the Soviet Foreign Minister, Andrei Y. Vishinsky, in the course of the meeting of the General Assembly in Paris in December 1951 and January 1952. The untrue statements by the Hungarian authorities in the same regard were made in pursuance of an agreement with the Soviet Government and with the same intention and effect.

In particular, the United States Government specifies the following to have been such untrue statements :

(a) The statements made in the name of TASS, the official news agency of the Soviet Government, through the Soviet radio and press on December 2 and 3, 1951, that Soviet patrol fighters had forced the plane to land in an airport near Papa, Hungary, and that the plane had come into a zone "where, in accordance with Article 22 of the Peace Treaty, Soviet aviation in Hungary is located". This was false and was known by the Soviet Government to be false when it was made. On the contrary, the place at which the airplane was intercepted by Soviet aircraft was not within any known zone in which the Soviet Government maintained aviation under Article 22 of the Peace Treaty ; nor did that Article grant to the Soviet Government any authority to engage in the actions which it took against the airplane and its crew. Insofar as the pilots were concerned, they were led by Soviet authorities to believe when intercepted that they were being shown a landing place, as they had requested, and no indication was given to them by these Soviet authorities that they were being forced down.

(b) Allegations in the same statement that an examination of the flight plan of the plane showed that the crossing of the Hungarian border was premeditated by the crew. These allegations were false and were known by the Soviet Government to be false when made, since the flight plan in fact showed no purpose of

subversive work on the territory of the Soviet Union and the countries of the People's Democracies". As the Soviet Government well knew, the plane had never landed in Yugoslavia, the plane was openly seeking assistance on a westward trip toward Udine and Venice or Germany when intercepted. Furthermore, the charge that the plane intended to overfly Hungary was inconsistent with the charge of intention to land in Yugoslavia. All of this the Soviet authorities well knew, since they had conducted detailed and thorough investigation of the plane, the cargo and the crew during the entire period from November 19 to December 2, 1951.

(d) The statements of M. Andrei Y. Vishinsky in the General Assembly of the United Nations on December 14, 1951, December 19, 1951, December 21, 1951, and January 12, 1952, were false in many respects and were known by the Soviet Government to be false when made. The following are examples of such statements :

(i) That the plane was carrying out "its intelligence spy mission" when it went over Hungary. On the contrary, the plane was being monitored at the time by the Soviet and Hungarian authorities, and no such activity was going on.

(ii) That the plane was made to land on "the ground of the Soviet regime of the Soviet State".

(iii) That "there was no question of an accidental landing or an accidental deviation in the normal course of flight". On the contrary by that time both the Soviet and Hungarian authorities had a full account from each of the airmen showing that the plane was blown off course by unknown winds.

(iv) That the plane had radio facilities and the statement that there was on board "radio direction finding equipment", except insofar as the plane had the normal radio communication facilities.

(v) The reference to maps, blankets and radio equipment on board, and other references repeated above.

(e) Mr. Vishinsky on December 21, 1951, said in the General Assembly : "I venture to assure you that the reason why these flyers were arrested, why the proper attention was given them by our military border authorities—and I hope that due attention will be given by our military judicial organs—was because these flyers flew there with reconnaissance aims in the interest of your Atlantic Bloc, in the execution of its plan." The American representative in Moscow called on the Soviet Foreign Office for an explanation. The Soviet Foreign Office, through its representative, Mr. Zorin, then falsely stated that the allegations of the United States Government that the aircraft was lost were "not in accordance with the evidence revealed in interrogations by Hungarian and Soviet authorities". The fact is that these statements corresponded entirely with the evidence revealed in these interrogations, as the Soviet and Hungarian authorities well knew, and while the United

The statements issued by the Soviet and Hungarian authorities in concert with respect to this matter were deliberately and willfully 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.

15. 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.

16. The United States Government is compelled to conclude, and it charges, that the foregoing actions, whether committed separately by the Soviet Government or in conjunction or in concert with the Hungarian Government, were deliberately and unlawfully committed with ulterior intent to serve a propaganda purpose of the Soviet Government, 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 Soviet Government and the Hungarian Government the United States Air Force plane 6026, its equipment, cargo, and other contents, 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 Soviet Government, aided and abetted by and in concert with the Hungarian Government, has by committing the foregoing acts in the circumstances set forth violated international law and unlawfully caused the violation by the Hungarian Government of the Treaty of Peace, signed February 10, 1947, between Hungary and the United States, to which the Soviet Government is also a party, particularly the provisions in Article 2 thereof relating to human rights; and unlawfully caused the violation by the Hungarian Government of the Treaty of Friendship, Commerce and Consular Rights between Hungary and the United States, proclaimed October 24, 1926, and then in effect, particularly Articles 1, 14, 18 and 19 thereof.

(8) The Soviet Government was under a legal duty to return the airplane, its equipment, its cargo and its other contents, including the documents therein, to the American authorities at the earliest opportunity and in any event was under a legal duty to turn that property over to the United States Government in response to the United States Government's request contained in the note of December 10, 1952, above described, or, upon a showing of a valid inability to do so, it should have made payment to the United States of the monetary value of the property as requested.

(9) The Soviet 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 by the Soviet Government, and to provide access to the various dossiers, reports and other documents of the Soviet Government described in the United States Government's note of December 10, 1952.

(10) The actions and statements of the Soviet authorities and of the Hungarian authorities in the premises constituted 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 Hungarian Government, a copy of which is attached hereto and which is made a part hereof with the same force and effect as if fully repeated herein.

The United States Government believes that it has on account of the violations by the Soviet Government of the foregoing legal duties, and it hereby asserts and prefers against the Soviet 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 Soviet Government is responsible, the United States has suffered the following items of damage, and the United States Government demands that the Soviet 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.

in the 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.

(Signed) Jacob D. BEAM,
Chargé d'Affaires *ad interim*.

American Embassy
Moscow, March 17, 1953.

His Excellency
V. M. Molotov,
Minister for Foreign Affairs
of the Union of Soviet Republics,
Moscow.

Enclosure to the note to the Soviet Government of March 17, 1953

NOTE TO THE HUNGARIAN GOVERNMENT
OF MARCH 17, 1953

[See pp. 11-39]

being carried by winds behind the Hungarian frontier, are clearly groundless. This is evident from the fact that the American military plane was forced to land not close to the border but at a point about 200-212 kilometers from the Udine-Belgrade route mentioned in the U.S. note.

(b) The groundlessness of the above version is also confirmed by the fact that, as is evident from the U.S. note, special U.S. personnel followed the plane's flight, who, keeping in communication with the plane all along its route, certainly could have helped the plane crew and assisted it in selecting the proper direction, if this was actually necessary.

(c) The reference in the U.S. note to the effect that the plane's fuel reserve was "running dangerously low" and the plane "was in distress" is also devoid of any foundation. Actually, the plane had enough fuel and the plane was not "in distress". In the document of transfer of plane and crew by the Soviet authorities to the Hungarian authorities, drawn up on December 3, 1951, it is set forth that the plane had 1000 liters of gasoline, and 100 kilograms of oil, which could have taken care of the plane's normal flight needs for several hours.

(d) It is also necessary to draw attention to the fact that the plane crew—the pilot, Captain Henderson, the second pilot, Captain John Swift, the radio operator, Sergeant James A. Elam, the plane mechanic, James (*sic*) A. Duff—as stated in the U.S. note of March 17, were all experienced and competent airmen; that this was also completely confirmed by an examination in this regard of the plane's crew after its landing; and that this excludes any kind of assumption that the violation of the frontier by the above-mentioned airplane could have been the result of the inexperience of its crew.

(e) As to the plane and its equipment, as noted in the U.S. note, the plane and its equipment were in suitable condition for the flight. In this circumstance, when the plane's means of communication and apparatus permitted the plane to fly under difficult weather conditions, although according to verified meteorological data, on November 19, 1951, the weather was completely satisfactory with a visibility of 15 to 20 kilometers and a wind speed of 20-25 kilometers per hour, and there could not have been any difficulties for a competent and experienced plane crew.

(f) From the above-mentioned document of transfer of the plane it is also evident that the plane carried military operations maps, a portable radio transmitter, six parachutes and two bales of warm blankets. From the inspection, it was established that these were military operations maps of the most important areas of the USSR including the Ukrainian SSR and the Volga Area, and also maps of Czechoslovakia and Hungary; but the portable radio transmitter

violation of generally recognized principles and standards of international law.

As to the statement in the U.S. note concerning the duration and illegality of the interrogation of the American plane's crew, this statement does not correspond with the actual facts and is tendentious.

4. All the facts brought forth above prove the complete baselessness of the attempt to present the matter in such a way as to allege the U.S.A. is the injured party in the given case. If the Government of the U.S. had taken into consideration the established facts and had actually been guided by generally recognized precepts of international law, it could not have failed to recognize that the actions taken by the Soviet planes vis-à-vis the American plane and its crew which violated the state boundary of Hungary were legal and could not have failed on its part to take a position *on this question corresponding to the elementary requirements of correctness and normal relations between states.*

5. In view of the foregoing, the Soviet Government considers the proposal of the U.S. Government concerning the submission of this question to the consideration of the International Court to be without foundation since there exists no subject for such consideration and equally since there exists no basis for bringing any claims whatsoever against the Soviet Union.

Moscow, June 19, 1953.
