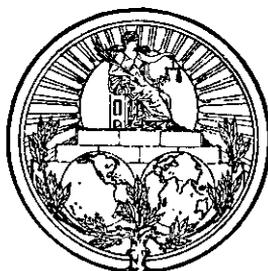


INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

AERIAL INCIDENT OF MARCH 10th, 1953
(UNITED STATES OF AMERICA *v.* CZECHOSLOVAKIA)
ORDER OF MARCH 14th, 1956: REMOVAL FROM THE LIST



COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

INCIDENT AÉRIEN DU 10 MARS 1953
(ÉTATS-UNIS D'AMÉRIQUE c. TCHÉCOSLOVAQUIE)
ORDONNANCE DU 14 MARS 1956: RADIATION DU RÔLE



PART I

APPLICATION INSTITUTING PROCEEDINGS

PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE

APPLICATION
INSTITUTING PROCEEDINGS

THE LEGAL ADVISER OF THE DEPARTMENT OF STATE
OF THE UNITED STATES OF AMERICA TO THE
REGISTRAR OF THE INTERNATIONAL COURT OF
JUSTICE

DEPARTMENT OF STATE,
WASHINGTON.

March 22, 1955.

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 Czechoslovakia on account of certain wrongful acts committed by MIG-type aircraft from Czechoslovakia within the United States zone of occupation in Germany on March 10, 1953.

The subject of the dispute and a succinct statement of the facts and grounds upon which the claim of the Government of the United States of America is based are adequately set forth in a note delivered to the Czechoslovak Government on August 18, 1954. A copy of the note is attached to this application as an annex. The Czechoslovak Government has failed, although the time therefor has long since elapsed and although the United States Government has duly urged the Czechoslovak Government to make reply, to respond to the United States Government's note, but the Czechoslovak Government asserted its contentions in prior diplomatic correspondence on this subject, and the nature of those contentions is adverted to in the annex.

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 Czechoslovak Government involves, among other questions of international law, the scope and application of international obligations relating to the overflight of intruding military aircraft, embodied in part in the Convention on International Civil Aviation, adopted December 7, 1944; the duties of the ground controllers and pilots of intruding military aircraft with respect to interception and identification by patrolling

domestic aircraft in the country of intrusion ; the content and application in case of such overflight of obligations to signal between patrolling and intruding aircraft ; the nature of the rights, prerogatives and powers of the United States Government and the United States Air Force in the United States zone of occupation in Germany with respect to the control of air traffic in general and the overflight of foreign military aircraft ; together with numerous issues of fact which if resolved in favor of the United States Government would constitute breaches of international obligation by the Czechoslovak Government ; and the nature and extent of the reparations to be made by the Czechoslovak Government to the United States Government for all 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 Czechoslovak Government appears not to have filed any declaration with the Court thus far, although it was invited to do so by the United States Government in the note annexed hereto. The Czechoslovak Government, however, is 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.

The United States Government thus 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 Czechoslovakia on March 10, 1953, willfully and unlawfully caused MIG-type military aircraft to overfly the Czechoslovak-German border, and without any provocation, to pursue and attack United States Air Force F-84-type aircraft which were engaged in peaceable routine patrol of the air space within the United States zone of Germany, destroying one F-84-type aircraft and causing physical injury to the pilot thereof, an American national, as well as other damage specified in the annexed note. The United States Government claims that in the circumstances described in the annex these actions constituted serious violations of international obligation on the part of the Czechoslovak Government. For these breaches of international obligation the United States Government has demanded and demands monetary and other reparation from the Czechoslovak Government.

At earlier stages of the diplomatic negotiations, which must now be determined to have been exhausted, the Czechoslovak Government asserted an entirely contrary version of the facts, which is described in the annexed note. The United States Government, in further pleadings herein, will more fully set forth such issues of fact and the issues of law in this dispute, for the purpose of hearing and decision by the Court in accordance with the Statute and Rules. It will request that the Court find that the Czechoslovak Government is liable to the United States Government for the damage caused ; that the Court award damages in favor of the United States Government against the Czechoslovak Government in the sum of \$271,384.16, with interest, and such other reparation and redress as the Court may deem to be fit and proper ; and that the Court make all other 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.

ANNEX**TEXT OF NOTE OF AUGUST 18, 1954, TO CZECHOSLOVAK
GOVERNMENT**

Excellency :

I have the honor to transmit to you, upon the instruction of my Government, the following communication from my Government to your Government :

The Government of the United States of America refers again to the incident of the morning of March 10, 1953, in which MIG-type aircraft from Czechoslovakia attacked and destroyed within the United States zone of occupation in Germany an F-84 aircraft of the United States Air Force.

On July 29, 1953, the United States Government addressed a diplomatic note to the Government of Czechoslovakia informing the Czechoslovak Government that the United States Government had conducted and completed a most detailed investigation of all the facts regarding the incident of March 10, 1953. The United States Government stated that the differences between the findings of fact made by it respecting the incident and the version given by the Czechoslovak Government were not reconcilable ; that the issues of fact raised not only serious questions of credibility but important questions of international law ; and that, consequently, it desired to defer the taking of appropriate further action until it had afforded the Czechoslovak Government adequate opportunity to submit to the United States Government the detailed documentary and other evidence which the Czechoslovak Government had indicated was in its possession, but which was not available to the United States Government, and which if true would prove the Czechoslovak Government's version of the incident. The United States Government declared that it reserved the right, if this evidence was not disclosed, to proceed upon the premise that material requested from the Czechoslovak Government and not disclosed would, if it were disclosed, be unfavorable to the Czechoslovak Government's position.

On February 25, 1954, the Czechoslovak Government's Foreign Office informed the American Embassy at Prague that the Czechoslovak Government "have not replied and do not intend to reply" to the United States Government's diplomatic note of July 29, 1953. It alleged as the reason for this position that the Czecho-

slovak Government in its notes of March 11, 1953, and of March 30, 1953 (which, as received by the United States Government, was dated March 28, 1953), "had presented sufficient facts which indisputably proved the violation of the Czechoslovak air space by United States military aircraft, as well as other facts which fully confirm the responsibility of the United States Government for the regrettable incident".

From this behavior of the Czechoslovak Government the United States Government is compelled to conclude that the unwillingness of the Czechoslovak Government to produce any substantiation for the allegations of fact made in its notes of March 11, 1953, and March 30, 1953, arises from the absence of such evidence.

In consequence, the United States Government considers it is free to proceed henceforth in this matter upon the premises which were set forth for this contingency in the note of July 29, 1953.

The purpose of the present communication is to place upon the record the facts which the United States Government has found to be true and, on the basis of these findings of fact, to prefer against the Czechoslovak Government herewith an international diplomatic claim in the nature and in the amounts set out below.

I

Following its intensive investigation of the incident of March 10, 1953, to which reference has been made, the United States Government has made the following findings of fact, which it asserts are true and which it is prepared to prove by evidence in an appropriate forum :

1. Consequent to the surrender of the German Armies and the assumption of supreme authority in Germany by the Allied forces which was announced on June 5, 1945, and through and including March 10, 1953, the United States Government as the occupant of the United States zone of Germany lawfully had and exercised control of the air space of that zone. The United States Air Force authorities situated in Germany assumed and discharged on behalf of the United States Government the duties of air traffic control within the United States zone of Germany, as well as the duty of aerial defense of this territory and of the occupation thereof by the United States Government. The discharge of these duties by the United States Air Force was well known at all times by the Czechoslovak Government and had been specifically notified to the Czechoslovak Government directly.

As the Czechoslovak Government well knew, no Czechoslovak or other alien military aircraft could lawfully cross into or over the United States occupied zone of Germany unless prior authorization for such overflight had been duly requested from and granted by the United States authorities. The established practice and procedure of the United States authorities in Germany before and on March 10, 1953, was, as the Czechoslovak Government at all times well knew, to identify if possible all aircraft observed to enter the United States zone of Germany so that the purpose of such entry could be determined and the traffic pattern of such aircraft controlled. Where the identification of aircraft observed entering the United States territory of responsibility could not be determined from prior notifications, flight plans filed, or other information it was the practice where feasible to make use of fighter aircraft of the United States Air Force to perform interception for the purpose of identification, and for the purpose of reporting violations of applicable flight regulations committed by such overflying aircraft. At all times, before and on March 10, 1953, the pilots of such interceptor aircraft were under instructions under no circumstances to cross the border of Germany, and the persons controlling their movements were under instructions under no circumstances to permit the border to be crossed, or to engage in violence or force in effecting interception or identification.

2. During March 9, 1953, and in the morning of March 10, 1953, observation by United States Air Force authorities showed that military aircraft from Czechoslovakia were engaged in repeated unauthorized overflights of the border of the United States zone of Germany in circumstances which could not be fairly interpreted as innocent or accidental. The conduct of the Czechoslovak military aircraft involved plainly indicated an aggressive disregard by the competent authorities in Czechoslovakia of the air space of the United States zone of Germany and of the air traffic regulations applicable to overflights by military aircraft, as well as of the rights of the United States Government and the Government of the Federal Republic of Germany respecting the territory of the Federal Republic of Germany.

At 9:38 a.m. Greenwich Mean Time in the morning of March 10, 1953, on account of the number of such repeated unauthorized overflights of the United States zone of Germany by military

aircraft from Czechoslovakia, the appropriate United States authorities dispatched two United States F-84 aircraft with instructions to proceed toward the border of Czechoslovakia, responding at all times to the orders of controllers, for the purpose of intercepting, identifying and reporting such aircraft overflying the United States zone of Germany. The two aircraft flew as an element, in accordance with the standard practice. The pilot of the lead aircraft was Captain Donald C. Smith, Serial Number AO 1903259. The pilot of the wing aircraft was First Lieutenant Warren G. Brown, Serial Number AO 753603. Both pilots were members of the 53rd Fighter Bomber Squadron of the United States Air Force in Germany.

Before becoming airborne, in accordance with the standard practice then obtaining in such cases, the guns of both aircraft had been rendered inoperative by the armorers. From the moment of becoming airborne until, in circumstances which will be more fully described below, the two F-84 aircraft came down within Germany, both aircraft remained continuously and exclusively in the air space of the United States zone of Germany and at no time crossed the Czechoslovak border and at no time entered the Czechoslovak air space.

By the time the two F-84 patrol fighter aircraft had reached the border area within Germany in which the unidentified aircraft from Czechoslovakia had been observed, the overflying, unidentified aircraft had disappeared from observation. The two F-84 patrol aircraft were, therefore, in accordance with the usual practice, directed to and they did conduct a border patrol pattern of flight within the territory of the United States zone of Germany.

Flying at an altitude of approximately 13,000 feet the two F-84 patrol aircraft were proceeding in a southeasterly direction on a heading of approximately 140 degrees within Germany parallel to the range of mountains along which the Czechoslovak frontier ran when, at approximately 9:59 a.m. Greenwich Mean Time, unidentified military aircraft were again observed to be flying within Czechoslovakia toward the German border on a bearing which would bring them within one minute directly into and within the United States zone of Germany. Consequently, Captain Smith and Lieutenant Brown turned northward on a heading of approximately 320 degrees, upon the instruction of the ground control, and while proceeding on this heading they noticed two aircraft on their right moving at great speed from Czechoslovakia at approximately the same altitude as the two patrolling F-84 aircraft and on a course which converged with theirs. Seeking to evade collision with the intruding aircraft, Captain Smith and Lieutenant Brown immediately turned leftwards in a counter-clockwise direction. At this time the speed

advantage of the intruding aircraft from Czechoslovakia was such that neither American pilot was able to identify the intruders from any markings, but from their silhouettes and speed they were identified as MIG-type aircraft. The MIG aircraft entered the United States zone of Germany at approximately 10:00 a.m. Greenwich Mean Time, flying in a westerly direction, near the German town of Arnstein north of the German town of Waldmuenchen.

The ensuing actions of these MIG intruders from Czechoslovakia, all taking place within the air space of the United States zone of Germany, were entirely aggressive and hostile and directed both to avoiding identification and to the willful destruction of the patrolling F-84 aircraft and the killing of the pilots, Captain Smith and Lieutenant Brown. These actions were carried out by the pilots of the intruding MIG aircraft, as the Czechoslovak Government has in substance admitted by its refusal to provide the information requested in the United States Government's note of July 29, 1953, at the specific direction of ground controllers and in accordance with instructions from the responsible competent authorities of the Czechoslovak Government.

Having thus entered the United States zone of Germany, at approximately 10:02 a.m. Greenwich Mean Time, the MIG aircraft crossed the path of the patrolling F-84's over the German town of Kritzenast, while the F-84's for the purpose of avoiding collision were executing the counter-clockwise turn carrying them deeper into Germany. In the turn Captain Smith became separated from Lieutenant Brown. Thereupon one of the intruding MIG aircraft proceeded to pursue Captain Smith over the air space of the United States zone of Germany while the other intruding MIG placed itself directly behind Lieutenant Brown's aircraft and assumed a hostile and aggressive position, both evading identification and making ready to fire at Lieutenant Brown. Lieutenant Brown, noticing the MIG behind him in an aggressive attitude, proceeded to take evasive and defensive action, seeking to fly farther and farther away from the pursuing MIG and in ever-tightening counter-clockwise circles. But his attempts at disengagement failed, for the speedier pursuing MIG aircraft followed Lieutenant Brown in his 360 degree orbiting pattern, refusing to relent or disengage. Several additional MIG aircraft then appeared in the orbit area, aircraft coming from Czechoslovakia and responding to Czechoslovak controlling authorities. The new intruders joined the two original pursuing aircraft in a concerted, deliberate and hostile action in order to effect the destruction of Lieutenant Brown's aircraft and his death.

Acting upon the specific instructions of the responsible Czechoslovak Government authorities to whom they were responsible, the pilots of the pursuing MIG aircraft opened fire upon Lieutenant Brown's aircraft and continued firing in the unrelenting pursuit. The United States Government has found, and charges, that the first burst of fire was directed against Lieutenant Brown and his aircraft, while Lieutenant Brown was engaged in an evasive counter-clockwise orbit, at approximately 10:05 a.m. Greenwich Mean Time in the air space near the German town of Pemfling, at a point more than ten miles from the closest point of the Czechoslovak border.

Not succeeding in destroying Lieutenant Brown and his aircraft, the pursuing MIG aircraft continued shooting, following Lieutenant Brown in his counter-clockwise orbit, and then succeeded in disabling the aircraft by further firing at it in the air space above the German town of Friedersried, which is almost fifteen miles from the nearest point of the Czechoslovak border. His aircraft thus disabled, Lieutenant Brown lost control of it and it dived sharply, heading south. The MIG aircraft from Czechoslovakia nevertheless continued pursuing him. When Lieutenant Brown succeeded in regaining control of his aircraft, and restoring it to level flight, he abandoned orbiting and attempted to fly a heading of 220 degrees directed further into Germany. But the pursuing MIG aircraft reopened fire in the air space over the German town of Thiermietnach, more than eighteen miles from the nearest point of the Czechoslovak border. This time Lieutenant Brown's aircraft, mortally hit, went completely out of control and Lieutenant Brown was compelled to jettison the canopy of his aircraft and parachute out. Nevertheless, although the F-84 was thus abandoned in mid-air and Lieutenant Brown was parachuting out, the pursuing MIG aircraft continued firing, the last firing taking place in the air space between the German towns of Hofstetten and Sasselberg, twenty and one-half miles from the nearest point of the Czechoslovak border.

It was only at 10:08 a.m. Greenwich Mean Time that the MIG aircraft, pursuing and shooting as above described, disengaged themselves and ascended to higher altitude to leave the area.

The United States Government has found, and charges, that the MIG aircraft from Czechoslovakia therefore deliberately and

willfully overflow the air space of the United States occupied zone of Germany from Arnstein, near the border of Czechoslovakia, at 10:00 a.m. Greenwich Mean Time, to Kritzenast where they crossed the path of the patrolling F-84 aircraft, and flying to their left deeper into Germany to the air space north of the German town of Hiltersried, continued west and flew over Voitsried at approximately 10:03 a.m. Greenwich Mean Time, then turned southward and passed the German town of Hillstett at approximately 10:04 a.m. Greenwich Mean Time. Then, still pursuing Lieutenant Brown in his evasive attempts to orbit, they continued around to the air space of Alletsried, to Stamsried, and as far east as Löwendorf, then northwest to Rötze and then southward to Friedersried. At this point, his aircraft disabled, Lieutenant Brown took a turn of 220 degrees and attempted a straight flight to save himself and proceed to base.

Lieutenant Brown, parachuting out, landed south-southwest of the German town of Falkenstein and his aircraft, destroyed, crashed into the ground west-northwest of Falkenstein at a settlement known as Hundessen. The MIG aircraft involved in the incident turned north and passed to the east over the German town of Michelsneukirchen.

Captain Smith, pursued by the other MIG aircraft, was kept separated from Lieutenant Brown, but succeeded in evading the shooting and, when the MIG aircraft disengaged at 10:08 a.m. Greenwich Mean Time, was enabled to proceed to his base in Germany.

Lieutenant Brown landed in a state of shock and received personal injuries, both of which required medical attention and hospitalization thereafter. His F-84 aircraft, completely destroyed, caused damage to the ground at and near the point of impact.

3. The United States Government has found as a result of its investigation, and it charges, as indicated above and as is made clear by the Czechoslovak Government's notes of March 28, 1953, and February 25, 1954, that all the acts of the pilots of the MIG aircraft involved in the unauthorized overflight into the United States zone of Germany, as described above, both those observed by Captain Smith and Lieutenant Brown and those which joined in the onslaught upon Lieutenant Brown, were at the specific direction, and at all times under the direct control, of the responsible authorities of the Czechoslovak Government, being vectored and directed by ground radio and ground radar operators who in so doing were carrying out the instructions and acting under the authority of the Czechoslovak Government. These directions were

in deliberate and calculated disregard of the air traffic control regulations and of the authority of the United States Government in German territory.

4. The United States Government charges further that these acts and directions were without provocation or justification whatever ; that they were maliciously intended with knowledge that they were wrongful under applicable international law and morals ; and that they were in deliberate and calculated disregard of and for the purpose of flaunting the air traffic control regulations of the United States authorities along the Czechoslovak-German border and within Germany, and the sovereignty of the United States Government, and of the German Government, and that they were carried out in an effort to exert terror, threats and illegal force over the area of Germany near the Czechoslovak border, and thereby to make it possible to overfly the United States zone of Germany and other areas unlawfully, at will, for such purposes as espionage, aggrandizement and propaganda demonstrations of strength. The United States Government charges further that the Czechoslovak Government in its notes of March 11, 1953. and of March 28, 1953, in pursuance of the same unlawful and wrongful plan, made assertions of fact with respect to the incident which it knew to be demonstrably preposterous and flagrantly untruthful, as will appear more fully below.

II

The United States Government has given the Czechoslovak Government full opportunity to prove the allegations with respect to the incident which are contained in the Czechoslovak Government's versions in its notes of March 11, 1953, and of March 28, 1953, but the Czechoslovak Government has failed to respond.

The United States Government is therefore compelled to state categorically that the following statements of fact, among others, in the Czechoslovak Government's notes are contrary to the truth, and were known at all times by the Czechoslovak Government to be contrary to the truth, and that they were nevertheless asserted for the motives and purposes set forth herein above.

A. With respect to the note of March 11, 1953 :

1. The statement that two United States jet aircraft of the F-84 type entered the Czechoslovak territory on March 10, 1953.

The only border crossing made by aircraft was made, as the Czechoslovak Government has at all times well known, with respect to the incident of March 10, 1953, to which this note relates, by MIG-type aircraft crossing into Germany from the east, specifically from Czechoslovakia. These MIG-type aircraft crossed the Czechoslovak-German frontier at 10:00 a.m. Greenwich Mean Time near the town of Arnstein, as above indicated.

2. The statement that these F-84 aircraft met with Czechoslovak fighters on patrol at a distance of 18 kilometers south-southeast of Pilsen and 40 kilometers from a state frontier. It is assumed that the Czechoslovak Government apparently intended to state that the 18 kilometers distance was south-southwest of Pilsen.

The facts, however, are, as investigation referred to above has overwhelmingly disclosed, that the two F-84 aircraft in question met at 10:02 a.m. Greenwich Mean Time the two MIG aircraft from Czechoslovakia. The meeting took place in the area of the town of Kritzenast, which was approximately four and one-half miles inside the United States zone of Germany, and the Czechoslovak aircraft penetrated and remained in the United States zone of Germany, performing the acts and under the circumstances related above.

The United States Government attaches hereto a graphic presentation of its findings with respect to the routes flown by the MIG aircraft and the F-84 aircraft, showing the area of orbit and the points at which the MIG aircraft from Czechoslovakia directed fire against, and hit, Lieutenant Brown's F-84 aircraft. It must be inferred that the Czechoslovak Government's version of the situs of the incident is in complete variance from the facts.

In this regard the United States Government notes that in the reply of February 25, 1954, to the United States Government's note of July 29, 1953, the Czechoslovak Government has refused to give the nationalities of all the pilots of the MIG aircraft involved in the incident or the nationalities of all the MIG aircraft so involved or of the ground controllers and directors of their actions. The United States Government, therefore, takes this opportunity to state that while for the purposes of the present international claim against the Czechoslovak Government it takes note of the Czechoslovak Government's description of the intruding aircraft as Czechoslovak fighters, the identification by the Czechoslovak Government of the intruding aircraft as Czechoslovak aircraft does not relieve or absolve any other Government or authority

to whom the original two aircraft, or the additional intruding aircraft involved in the same incident, belonged, and under whose control they were dispatched and directed, from separate liability to the United States Government for the damage inflicted.

3. The statement that the United States aircraft were called upon to land.

This statement is false, for no such communication was made to either of the two F-84 aircraft involved. Moreover, the statement is irrelevant since the MIG aircraft from Czechoslovakia flew over German territory when they encountered the F-84 patrol aircraft and had no legal authority to call upon the American aircraft to land at any place or at any time.

Furthermore, the United States Government notes that the Czechoslovak Government, in its reply of February 25, 1954, to the note of July 29, 1953, has refused to specify, although duly requested, the signals or the contents of the alleged communication from the Czechoslovak aircraft to the American aircraft, or the method by which the alleged communication was made, or the content of each alleged message. The United States Government has found, and charges, that in truth the pilots of the MIG aircraft involved, knowing that they were overflying the United States zone of Germany, and being so instructed to do, made no attempt whatever to signal the F-84 aircraft but, on the contrary, assumed immediately upon convergence an unmistakably hostile aggressive attitude. The lead MIG aircraft flew in front of the lead F-84 aircraft from east to west, and the wing MIG aircraft assumed a shooting position behind the wing American aircraft. Even had the Czechoslovak authorities having control of the MIG aircraft, or the pilots of the MIG aircraft themselves, assumed, however erroneously, that the American aircraft were overflying Czechoslovak territory, the appropriate signals to land would require the Czechoslovak intercepting aircraft to point to and fly towards an appropriate Czechoslovak air base on Czechoslovak territory, and to take other warning measures prior to engaging in any firing of any kind.

4. The statement that the United States aircraft did not comply with the challenge of the Czechoslovak aircraft.

This statement is in view of the foregoing not only false but irrelevant, the F-84 patrolling aircraft being under no obligation to comply with any challenge or direction from Czechoslovak aircraft in the circumstances of this case.

5. The statement that "in the engagement which ensued one of the United States planes took flight to the west, the second plane was hit, caught fire and falling constantly disappeared to the south-west".

This statement is misleading where it is not completely false. The statement is misleading in implying that one or both of the two American aircraft engaged in firing. The fact is, as the Czechoslovak Government has at all times well known, that neither American aircraft involved opened fire at any time, and the so-called "engagement" was a vicious onslaught without warning upon peaceful patrolling American aircraft seeking to disengage themselves, although in self-defense they were entitled to use force to repel the hostile conduct of the MIG aircraft from Czechoslovakia.

The statement is further misleading and false in suggesting, in order to rebut the widely-known fact that Lieutenant Brown and his F-84 aircraft came down deep in the United States zone of Germany, that the aircraft was hit in Czechoslovakia and somehow managed to fly back to the United States zone of Germany without being noticed or followed by observers from Czechoslovakia. For the fact is, as the Czechoslovak Government has at all times well known, that the pursuing MIG aircraft not only intercepted and attacked the F-84 aircraft entirely within the United States zone of Germany, but the MIG aircraft did not desist pursuit and firing until after the attacking MIG pilot, and other intruding MIG pilots associated with him, had seen and had no doubt reported by voice radio to ground controllers within Czechoslovakia, that the F-84 aircraft had been destroyed and its pilot forced to parachute to safety over the United States zone of Germany.

B. With respect to the Czechoslovak Government's note of March 28, 1953:

The Czechoslovak Government's reiteration of the statements in the note of March 11, 1953, is accompanied by the statement that the facts asserted in the March 11 note are based on the logbook records of the ground radio operators, the goniometer

records and the radar reports, as well as on the statements of the Czechoslovak pilots involved.

The United States Government in its note of July 29, 1953, requested the Czechoslovak Government to produce this corroborative evidence allegedly in the Czechoslovak Government's possession and described as the basis for its assertions, but the Czechoslovak Government has failed and refused to produce this evidence. The United States Government must therefore assert that such evidence does not exist and has never existed and the Czechoslovak Government's statements with respect thereto are wholly false.

III

The United States Government is compelled to conclude, and it charges, that the foregoing actions of the Czechoslovak Government, and for which it is responsible, were deliberately and unlawfully committed with the ulterior malicious intent to cause grievous injury to the United States Government and to the American people, as well as to Lieutenant Warren G. Brown and Captain Donald C. Smith, and to execute a purpose of unlawful aggrandizement within the air space over the United States zone of Germany by terror and other unlawful and wrongful methods.

The United States Government further asserts the following :

1. Captain Donald C. Smith, element leader of the F-84 patrolling fighter aircraft as above described, was a competent and efficient pilot, qualified to act as element leader in border patrol activity within Germany in which he engaged as above described, and was then and at all times involved in this matter an American national.

2. Lieutenant Warren G. Brown, wing pilot of the F-84 patrolling fighter aircraft as above described, was a competent and efficient pilot, qualified to act as wing pilot in border patrol activity within Germany in which he engaged as above described, and was then and at all times involved in this matter an American national.

3. The ground controllers involved in the vectoring and control, and in the radar observation, of and voice radio communication with Captain Smith and Lieutenant Brown, were members of the United States Air Force, fully competent and qualified to perform

the duties assigned to them and these duties were performed by them with efficiency and accuracy.

4. The radar equipment used by the radar personnel and ground controllers in the observation of the aircraft referred to as coming from Czechoslovakia in overflying the United States zone of Germany and in following and controlling American patrolling aircraft as above described were all adequate in their coverage and accurate in all respects and in good working condition.

5. The patrolling F-84 aircraft piloted by Captain Smith and Lieutenant Brown were at the time of the incident above mentioned F-84E-type, owned and controlled by the United States Government without any defect affecting their flying efficiency or normal operation and in good working order for the purpose of patrol within the United States zone of Germany.

IV

The United States Government charges that the Czechoslovak Government has by committing the foregoing actions in the circumstances set forth above violated international law. Specifically, and without limiting itself by enumeration, the United States Government charges that in the circumstances set forth above the Czechoslovak Government is guilty of the willful and intentional violation of its international obligations and of the willful and intentional commission of internationally unlawful actions as follows:

1. On March 10, 1953, as at all other times, it was unlawful for military aircraft of Czechoslovakia, and for the aircraft involved in the present incident, to fly into the air space of the United States zone of Germany unless the Czechoslovak Government had obtained prior authorization for such overflight from the United States Government. Furthermore, it was the duty of the Czechoslovak Government to identify to the air traffic control authorities within the United States zone of Germany all aircraft from within Czechoslovakia which intended to overfly the United States zone of Germany in any respect and for any distance and to file flight plans in accordance with applicable air traffic control regulations. The failure of the Czechoslovak Government to comply with the applicable regulations to which reference has been made, and the unauthorized overflight by the military aircraft involved, constitute violations of international obligations, specifically recognized in

Articles I and 3, Chapter I, Part I of the Convention on International Civil Aviation, adopted December 7, 1944, at Chicago, Illinois, adhered to by numerous governments including the United States Government and the Czechoslovak Government.

2. Having unlawfully entered the United States zone of Germany, and having been intercepted within the air space of the United States zone of Germany by the policing aircraft, it was the duty of the pilots of the MIG aircraft from Czechoslovakia to submit peacefully to identification by the policing aircraft and to obey orders which the pilots of the policing aircraft might convey. It was further the duty of the Czechoslovak authorities controlling the actions of the pilots of the intruding MIG aircraft to instruct these pilots to permit identification and obey such orders. The failure of the pilots of the MIG aircraft from Czechoslovakia and of the Czechoslovak ground authorities controlling their actions to perform these duties constitute violations of international obligations; and their attempts to take aggressive action seeking to destroy the patrolling United States aircraft and to kill the United States pilots involved constitute heinous violations of international law.

3. Even if, as is not the fact, the ground authorities in Czechoslovakia or the pilots of the MIG aircraft from Czechoslovakia had erroneously believed that they had intercepted the United States F-84 aircraft within Czechoslovakia, it was the duty of the intercepting aircraft and the duty of the ground controllers to make intelligible signals to the overflying American aircraft, such as by flying across the path of the American aircraft in an easterly direction toward a suitable airfield and directing the aircraft to land at that airfield, or to take similar action, to acquaint the overflying aircraft with the fact that they were overflying Czechoslovak territory without prior authorization and should turn and proceed back to the United States zone of Germany. The failure to do so in this case therefore constitutes an aggravation of the liability of the Czechoslovak Government as well as further evidence that neither the Czechoslovak ground authorities nor the MIG pilots in the air were under any illusion as to the sovereignty of the air space in which the interception, the pursuit, the firing and the destruction of the American aircraft were then effected, nor as to the situs of any stage of this unlawful conduct.

4. Having become fully aware of the true facts of the incident prior to its notes of March 11 and of March 28, 1953, and its note of February 25, 1954, even assuming which is not the fact that the responsible Czechoslovak Government authorities were not already fully aware of the true facts, the Czechoslovak Government violated its international legal obligations in knowingly stating to the United States Government and to the international public a false version of the true facts and emitting false propaganda concerning them.

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

V

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

1. The value of the United States Air Force airplane F-84E-type Number 49-2192A and its equipment, piloted by Lieutenant Warren G. Brown in the circumstances and in the times above described, \$235,349.41.

2. Damages to Lieutenant Warren G. Brown, an American national, in consequence of the unlawful actions of the Czechoslovak Government above described, \$10,000.

3. Damages to Captain Donald C. Smith, an American national, in consequence of the unlawful actions of the Czechoslovak Government above described, \$1,000.

4. Damages to the United States Government for the willful and unlawful conduct of the Czechoslovak Government, \$25,034.75.

Total \$271,384.16.

VI

The Government of the United States calls upon the Government of Czechoslovakia promptly to make its detailed answer to the allegations and the demands made in this communication. Should the Czechoslovak Government in its answer acknowledge its indebtedness to the United States Government on account of the foregoing and agree to pay the damages suffered, the United States Government is prepared, if requested, to present further proof in support of its calculations of damage suffered and alleged.

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

Enclosure :

Graphic Chart.

VI

Le Gouvernement des États-Unis invite le Gouvernement tchécoslovaque à fournir promptement une réponse détaillée aux allégations et demandes contenues dans la présente lettre. Si, dans sa réponse, le Gouvernement tchécoslovaque reconnaît la dette contractée par lui envers le Gouvernement des États-Unis, à raison de ce qui précède, et s'il accepte de verser les sommes nécessaires afin de réparer les dommages subis, le Gouvernement des États-Unis est prêt, si une demande lui est adressée à cet effet, à fournir de nouvelles preuves, à l'appui de son calcul des dommages subis et évalués par lui.

Dans le cas où le Gouvernement tchécoslovaque nierait sa responsabilité, ce Gouvernement est invité à le dire dans sa réponse. Dans cette éventualité, le Gouvernement des États-Unis notifie, par la présente, au Gouvernement tchécoslovaque qu'il considère qu'un différend international existe entre le Gouvernement des États-Unis et le Gouvernement tchécoslovaque, et qu'il propose que le différend soit soumis à l'examen et à la décision de la Cour internationale de Justice. Comme le Gouvernement tchécoslovaque n'a pas, semble-t-il, déposé jusqu'à présent auprès de la Cour une déclaration portant acceptation par lui de la juridiction obligatoire de la Cour, le Gouvernement des États-Unis invite le Gouvernement tchécoslovaque à déposer près la Cour une déclaration appropriée ou à conclure un compromis permettant à la Cour de se prononcer, conformément à son Statut et à son Règlement, sur les points de fait et de droit énoncés dans la présente note ; le Gouvernement tchécoslovaque est invité à faire connaître au Gouvernement des États-Unis, dans sa réponse à la présente note, ses intentions au sujet d'une telle déclaration ou d'un tel compromis.

Veuillez agréer, etc.

Annexe :

1 graphique.
