

INTERNATIONAL COURT OF JUSTICE

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REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

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CASE CONCERNING THE  
AERIAL INCIDENT OF  
SEPTEMBER 4th, 1954

(UNITED STATES OF AMERICA *v.* UNION OF  
SOVIET SOCIALIST REPUBLICS)

ORDER OF DECEMBER 9th, 1958

**1958**

COUR INTERNATIONALE DE JUSTICE

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RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

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AFFAIRE RELATIVE A  
L'INCIDENT AÉRIEN DU  
4 SEPTEMBRE 1954

(ÉTATS-UNIS D'AMÉRIQUE *c.* UNION DES  
RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES)

ORDONNANCE DU 9 DÉCEMBRE 1958

This Order should be cited as follows:

*“Case concerning the Aerial Incident of September 4th, 1954  
(United States of America v. Union of Soviet Socialist Republics),  
Order of December 9th, 1958: I.C.J. Reports 1958, p. 158.”*

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La présente ordonnance doit être citée comme suit:

*« Affaire relative à l'incident aérien du 4 septembre 1954  
(États-Unis d'Amérique c. Union des Républiques socialistes  
soviétiques),  
Ordonnance du 9 décembre 1958: C.I.J. Recueil 1958, p. 158. »*

<b>Sales number</b> <b>N° de vente:</b>	<b>201</b>
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INTERNATIONAL COURT OF JUSTICE

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YEAR 1958

December 9th, 1958

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CASE CONCERNING THE  
AERIAL INCIDENT OF  
SEPTEMBER 4th, 1954

(UNITED STATES OF AMERICA *v.* UNION OF  
SOVIET SOCIALIST REPUBLICS)

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ORDER

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*Present: President* KLAESTAD; *Vice-President* ZAFRULLA KHAN;  
*Judges* BASDEVANT, HACKWORTH, WINIARSKI, BADAWI,  
ARMAND-UGON, KOJEVNIKOV, Sir Hersch LAUTERPACHT,  
MORENO QUINTANA, CORDOVA, WELLINGTON KOO,  
SPIOPOULOS, Sir Percy SPENDER; *Acting Registrar*  
AQUARONE.

The International Court of Justice,  
composed as above,  
after deliberation,  
having regard to Articles 36 and 48 of the Statute of the Court,  
*Makes the following Order:*

Whereas on August 22nd, 1958, the Ambassador of the United States of America to the Netherlands filed in the Registry an Application dated July 25th, 1958, and signed by the Agent for the Government of the United States of America instituting pro-

ceedings before the Court against the Government of the Union of Soviet Socialist Republics on account of "certain willful acts committed by military aircraft of the Soviet Government on September 4, 1954, in the international air space over the Sea of Japan against a United States Navy P2-V-type aircraft, commonly known as a Neptune type, and against its crew";

Whereas the Application was duly communicated by the Registry on August 22nd, 1958, to the Ambassador of the Union of Soviet Socialist Republics to the Netherlands;

Whereas the Application was also communicated by the Registry to the Members of the United Nations, through the Secretary-General of the United Nations, and to the other States entitled to appear before the Court;

Whereas the Application contains the following paragraphs:

"The United States Government, in filing this application to the Court, submits to the Court's jurisdiction for the purposes of this case. The Soviet 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 note 176 of August 19, 1957, a copy of which is also annexed hereto. The Soviet Government in a note dated October 10, 1957, which is made an annex to the present application, rejected the United States Government's invitation. The Soviet 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.

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

Whereas in a letter dated September 26th, 1958, from the Chargé d'affaires *a.i.* of the Union of Soviet Socialist Republics in the Netherlands to the Registrar it was stated that:

"The Government of the USSR in its note of October 10, 1957, as well as in previous notes of September 5 and 8, 1954, and of January 21, 1957, stated that since the American military aircraft of the Neptune-type violated the state frontier of the USSR in the Cape Ostrovnoi region and opened fire on Soviet fighters first, responsibility for the incident taken place on September 4, 1954, and consequences of it fully lies on the American side. In the above-mentioned note of October 10, 1957, the Government of the USSR in response to the proposal of the Government of the USA transmitting this case for hearing in the International Court of Justice communicated that no basis for it can be seen.

I should like to draw your attention to the Article 36 of the Statute of the Court according to which any dispute may be transmitted to the International Court of Justice only by common consent of both sides.

As appears from above-stated the Government of the USSR has already informed the Government of the USA formerly that the Soviet Government does not give its consent for hearing this case in the International Court of Justice. Under these conditions the Government of the USA having applied to the Court, acted in disaccord with the Statute of the International Court of Justice.

The Government of the USSR deems that in this case there are no questions which are of need to be considered by the International Court of Justice and as before does not see any basis for turning this question over for examination by the International Court."

Whereas a true copy of the above-mentioned letter was communicated to the Agent for the Government of the USA on September 30th, 1958;

Whereas, in a letter dated November 25th, 1958, and addressed to the Registrar, the Agent for the Government of the United States of America stated:

"The United States has noted that the Soviet Chargé d'Affaires *ad interim* in the Netherlands, upon the instructions of his Government, stated that his Government did not give its consent for the settlement of the dispute described in the United States application by the International Court of Justice.

The United States Government must take this opportunity to express its profound disagreement with the further statement of the Soviet Government that in filing its application for a settlement of the dispute involved by the International Court of Justice the United States Government 'acted in disaccord with the Statute of the International Court of Justice' because the United States Government had not received the prior consent of the Soviet Government to submit the dispute to this Court for decision. The United States Government of course also contests the statement that 'there are no questions which are of need to be considered by the International Court of Justice and ... does not see any basis for turning this question over for examination by the International Court'. On the contrary, the United States Government believes that international law and order depend on the peaceful settlement of disputes between governments of international questions of fact and law as described in the Statute. It is now well settled that any government qualified to appear before this Court may file its application without prior special agreement."

Whereas, in these circumstances, the Court finds that it has not before it any acceptance by the Government of the Union of Soviet

Socialist Republics of the jurisdiction of the Court to deal with the dispute which is the subject of the Application submitted to it by the Government of the United States of America and that therefore it can take no further steps upon this Application;

THE COURT

orders that the case shall be removed from the list.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this ninth day of December, one thousand nine hundred and fifty-eight, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United States of America and to the Government of the Union of Soviet Socialist Republics respectively.

*(Signed)* Helge KLAESTAD,  
President.

*(Signed)* S. AQUARONE,  
Acting Registrar.