

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

AERIAL INCIDENT OF 4 SEPTEMBER 1954
(UNITED STATES OF AMERICA *v.* UNION OF
SOVIET SOCIALIST REPUBLICS)

ORDER OF 9 DECEMBER 1958: REMOVAL FROM THE LIST



COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

INCIDENT AÉRIEN DU 4 SEPTEMBRE 1954
(ÉTATS-UNIS D'AMÉRIQUE c. UNION DES
RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES)

ORDONNANCE DU 9 DÉCEMBRE 1958: RADIATION DU RÔLE



PART I

APPLICATION INSTITUTING PROCEEDINGS
AND PLEADINGS

SECTION A.—APPLICATION INSTITUTING PROCEEDINGS

PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE
ET MÉMOIRES

SECTION A. — REQUÊTE INTRODUCTIVE D'INSTANCE

APPLICATION
INSTITUTING PROCEEDINGS¹

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

DEPARTMENT OF STATE,
WASHINGTON.

July 25, 1958.

Sir:

1. This is a written application, in accordance with the Statute and Rules of the Court, submitted by the Government of the United States of America instituting proceedings against the Government of the 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.

The subject of the dispute and a succinct statement of the facts and the 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 Soviet Government on October 12, 1956. A copy of the note is attached to this application as an annex. The Soviet Government has asserted its contentions of fact and of law with reference to the United States Government's claim in other diplomatic correspondence on this subject, most recently in a note of January 21, 1957, a copy of which is also attached to this application as an 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 annexes, the legal dispute of the United States Government with the Soviet Government involves serious questions of international law. Among them are the validity of the Soviet Government's claim that it may, under international law, unilaterally extend its territorial limits in the international air space over the waters of the Sea of Japan in excess of three

¹ See Part IV, Correspondence, No. 1, p. 28.

REQUÊTE INTRODUCTIVE D'INSTANCE¹

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

[Traduction du Greffe]

DÉPARTEMENT D'ÉTAT,
WASHINGTON.

25 juillet 1958.

Monsieur le Greffier,

1. Le présent document est une requête écrite par laquelle le Gouvernement des États-Unis d'Amérique introduit, conformément au Statut et au Règlement de la Cour, une instance contre le Gouvernement de l'Union des Républiques socialistes soviétiques, à raison de certains actes commis volontairement par des avions militaires du Gouvernement soviétique le 4 septembre 1954, dans l'espace aérien international situé au-dessus de la mer du Japon, contre un appareil de la Marine des États-Unis du type P2-V, communément désigné type Neptune, et contre son équipage.

L'objet du différend et un exposé succinct des faits et des motifs sur lesquels se fonde la demande du Gouvernement des États-Unis d'Amérique sont énoncés comme il convient dans la note remise au Gouvernement soviétique le 12 octobre 1956. Copie de cette note est jointe en annexe à la présente requête. Le Gouvernement soviétique a exposé ses arguments de fait et de droit au sujet de la réclamation du Gouvernement des États-Unis dans une autre correspondance diplomatique relative à cette affaire et, tout récemment, dans une note du 21 janvier 1957 dont copie est également jointe en annexe à la présente requête.

2. Le Gouvernement des États-Unis constate que le présent différend porte sur des questions relevant des catégories énoncées au paragraphe 2 de l'article 36 du Statut de la Cour, comprenant les subdivisions a) à d). Comme le montrent les annexes, le différend d'ordre juridique qui sépare le Gouvernement des États-Unis et le Gouvernement soviétique met en jeu d'importantes questions de droit international. Au nombre de ces dernières figure la validité de la prétention du Gouvernement soviétique à pouvoir en droit international étendre unilatéralement ses limites territoriales,

¹ Voir Quatrième Partie, Correspondance, n° 1, p. 28.

nautical miles from the mean low water mark of the shoreline of the Soviet-held land masses in this area. In addition there are involved the scope and application of international obligations relating to the flight of military aircraft claimed to be intruding and the interception of such aircraft and attack upon them by military aircraft of the government making such claim; the nature of the rights, prerogatives and powers of the United States Government to conduct flights of military aircraft in the international air space over the Sea of Japan; together with other issues of law and of fact which, if resolved in favor of the United States Government, would prove breaches of international obligation by the Soviet Government; and the nature and extent of reparations to be made by the Soviet Government for all these breaches.

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.

3. The claim of the Government of the United States of America is, briefly, that the Government of the Union of Soviet Socialist Republics, on September 4, 1954, willfully and unlawfully caused fighter aircraft to penetrate into the international air space over the Sea of Japan and without any provocation to attack and cause the destruction of a Neptune type aircraft of the United States Naval Air Arm, then lawfully and peacefully flying in that air space; that, of the crew, one member was trapped in the wreckage of the Neptune and lost his life, and all the others, though ultimately rescued by search aircraft of the United States Government, suffered injuries and shock. The damages suffered by the United States Government for which the Soviet Government is liable are specified in the annexed note.

dans l'espace aérien international situé au-dessus des eaux de la mer du Japon, au delà de trois milles marins à partir de la ligne moyenne de basse mer de la ligne de côte des terres sous occupation soviétique dans cette zone. Sont en outre mises en jeu la portée et l'application des obligations internationales relatives au vol des avions militaires accusés d'intrusion et à l'interception et à l'attaque de ces appareils par l'aviation militaire du Gouvernement les accusant d'intrusion; la nature des droits, prérogatives et pouvoirs du Gouvernement des États-Unis en vue de faire voler des avions militaires dans l'espace aérien international situé au-dessus de la mer du Japon; ainsi que d'autres points de droit et de fait qui, s'ils étaient tranchés en faveur du Gouvernement des États-Unis, établiraient des violations d'engagement international de la part du Gouvernement soviétique; enfin, la nature et l'étendue des réparations auxquelles le Gouvernement soviétique serait tenu à raison de toutes ces infractions.

Le Gouvernement des États-Unis, en déposant la présente requête auprès de la Cour, déclare accepter sa juridiction aux fins de la présente affaire. Il ne semble pas qu'à ce jour le Gouvernement soviétique ait déposé une déclaration auprès de la Cour, bien qu'il ait été invité à le faire par le Gouvernement des États-Unis dans la note 176 du 19 août 1957 jointe ci-après en annexe. Dans une note du 10 octobre 1957, également jointe en annexe à la présente requête, le Gouvernement soviétique a repoussé cette suggestion du Gouvernement des États-Unis. Le Gouvernement soviétique est cependant qualifié pour reconnaître la juridiction de la Cour en cette affaire, et il lui est loisible, lorsque la présente requête lui sera notifiée par le Greffier conformément au Règlement de la Cour, de prendre les dispositions nécessaires afin que soit confirmée la juridiction de la Cour à l'égard des deux parties au différend.

Le Gouvernement des États-Unis fonde donc la compétence de la Cour sur les considérations qui précèdent, ainsi que sur l'article 36 (1) du Statut.

3. La demande du Gouvernement des États-Unis d'Amérique peut se résumer comme suit: le 4 septembre 1954, le Gouvernement de l'Union des Républiques socialistes soviétiques a volontairement et illicitement envoyé des avions de chasse voler dans l'espace aérien international situé au-dessus de la mer du Japon et attaquer et détruire sans aucune provocation un appareil de type Neptune appartenant aux forces aéro-navales des États-Unis, lequel volait alors d'une manière licite et pacifique dans cet espace aérien; un des membres de l'équipage, pris dans l'épave du Neptune, y a trouvé la mort et tous les autres, bien qu'ils aient finalement été secourus par des avions de recherche du Gouvernement des États-Unis, ont souffert de blessures et de commotions. Les dommages subis par le Gouvernement des États-Unis et dont le Gouvernement soviétique est responsable sont indiqués dans la note jointe en annexe.

In diplomatic correspondence with reference to the matter, including the Soviet Government's note of January 21, 1957, all of which correspondence constitutes negotiations that must now be determined to have been exhausted, the Soviet Government has asserted a version of the facts and of the law contrary to that asserted by the United States Government.

A dispute is therefore presented which is appropriate for hearing and decision by this Court in accordance with the Statute and the Rules.

The United States Government, in further pleadings herein, will more fully set forth the issues of fact and the issues of law in this dispute. It will request that the Court find that the Soviet Government is liable to the United States Government for the damages caused; that the Court award damages in favor of the United States Government against the Soviet Government in the sum of \$1,355,650.52 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 orders and awards, including an award of costs, to effectuate its determination.

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) Loftus E. BECKER,
The Agent for the Government
of the United States of America.

Annexes :

1. Note from the United States Government to the Soviet Government of October 12, 1956.
 2. Note from the Soviet Government to the United States Government of January 21, 1957.
 3. Note from the United States Government to the Soviet Government of August 19, 1957.
 4. Note from the Soviet Government to the United States Government of October 10, 1957.
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Dans la correspondance diplomatique relative à l'affaire, qui comprend la note du Gouvernement soviétique du 21 janvier 1957 et dont l'ensemble constitue des négociations qui doivent maintenant être considérées comme épuisées, le Gouvernement soviétique a présenté une version des faits et du droit contraire à celle du Gouvernement des États-Unis.

Il se présente dès lors un différend que la Cour peut examiner et trancher conformément à son Statut et à son Règlement.

Dans les pièces ultérieures de la procédure, le Gouvernement des États-Unis exposera plus complètement les points de fait et de droit du présent différend. Il demandera à la Cour: de dire que le Gouvernement soviétique est responsable à l'égard du Gouvernement des États-Unis du préjudice causé; d'accorder au Gouvernement des États-Unis des dommages à verser par le Gouvernement soviétique pour un montant de \$1.355.650,52, plus les intérêts, ainsi que les autres réparations et remèdes que la Cour pourra juger convenables et appropriés; et de rendre toutes autres ordonnances et sentences, y compris une sentence relative aux frais de procédure, en vue de donner effet à ce qu'elle décidera.

4. Le soussigné a été désigné par le Gouvernement des États-Unis d'Amérique comme son agent aux fins de la présente requête et de toute la procédure y relative.

Veuillez agréer, etc.

(Signé) Loftus E. BECKER,
Agent du Gouvernement
des États-Unis d'Amérique.

Annexes :

1. Note du Gouvernement des États-Unis au Gouvernement soviétique, 12 octobre 1956.
 2. Note du Gouvernement soviétique au Gouvernement des États-Unis, 21 janvier 1957.
 3. Note du Gouvernement des États-Unis au Gouvernement soviétique, 19 août 1957.
 4. Note du Gouvernement soviétique au Gouvernement des États-Unis, 10 octobre 1957.
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*Annex I*NOTE TO THE SOVIET GOVERNMENT
OF OCTOBER 12, 1956

No. 347.

Excellency:

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

The Government of the United States of America makes reference again to the destruction in the air space over the international waters of the Sea of Japan on September 4, 1954, of a United States Navy P2V-type aircraft, commonly known as a Neptune type, by military aircraft of the Government of the Union of Soviet Socialist Republics. Because the United States Government believed, and believes, that the repetition of such incidents might endanger the maintenance of international peace and security, it brought the incident to the attention of the Security Council of the United Nations, which discussed the incident and its implications on September 10, 1954. As it stated in its note to the Soviet Government, Number 202 of September 6, 1954, the United States Government also reserved all rights to claim damages for loss of property and lives and for other circumstances resulting from the illegal attack by Soviet aircraft.

A careful study and review of all the available evidence with respect to the incident confirms the essential correctness of the statements made by the United States Government and compels the United States Government to deny the version of the facts of the incident and reject the claims of justification for the attack advanced by the Soviet Government. The United States Government in this connection has given careful consideration to the statements of fact regarding the incident made by the Soviet Government's representative in the Security Council on September 10, 1954, and in the Soviet Government's latest note on this subject, Number 74/OSA, received by the American Embassy at Moscow on September 8, 1954.

The purpose of the present communication is to prefer against the Soviet Government a formal international diplomatic claim for damages as set forth below.

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I

The United States Government is prepared to prove by evidence in an appropriate forum, and it charges, the following:

1. By virtue of the Security Treaty between the United States of America and Japan signed at San Francisco on September 8, 1951, as well as by virtue of its rights under international law, the United States Government on, and from time to time prior to, September 4, 1954, dispatched military aircraft from the territory of Japan over adjacent international air space including the international air space over the Sea of Japan. These facts were undoubtedly well known at all relevant times to the Soviet Government.

2. Shortly before two o'clock in the afternoon of September 4, 1954, a P2V Neptune-type patrol aircraft, bearing Number 128357, of the United States Navy Air Arm departed from its base at Atsugi, Japan, under orders from appropriate United States Navy authorities to conduct a routine patrol mission in the international air space over the Sea of Japan upon a course from Niigata, Japan. The mission was entirely peaceable in character, and it was directed, and it was conducted, under the authorization of the Security Treaty with Japan and in the exercise of the United States Government's rights under international law.

Upon its departure the Neptune-type aircraft had on board a crew of ten persons; all members of the United States Navy and all nationals of the United States.

The crew, officers and enlisted men, were competent by education, training, and skill to perform the various tasks relevant to the flight, particularly aerial navigation and pilotage. The Neptune aircraft and the equipment thereon were at all times during the flight in efficient and good working order.

The aircraft in the course of its flight attained, and at all times relevant to the present claim maintained, except as recited below, an altitude of about 8,000 feet, and it maintained a normal cruising speed of approximately 180 knots. At no time did the aircraft leave, after departing from Japanese territorial air space, the international air space of the Sea of Japan. As it approached closer to the land mass at the northern end of the Sea of Japan, the crew made repeated and careful navigational checks, confirmed by visual observation on the part of the crew and facilitated by the fact that weather and visibility in the area were good, to insure that they were flying, and would continue to fly, exclusively in the international air space well over the universally acknowledged high seas of the Sea of Japan.

At 5:58 o'clock in the afternoon, while the airplane was flying on a course of 090 degrees magnetic, over the high seas of the Sea of Japan, its position was approximately 41 degrees 51 minutes

north and 132 degrees 47 minutes east. At 6:07 o'clock in the afternoon, the course was changed to 067 degrees magnetic. The ground speed of the aircraft at the time continued at approximately 180 knots and its altitude was approximately 8,000 feet.

The course of 067 degrees had been continued for approximately five minutes, when, without prior signal or warning, Soviet fighter aircraft of the MIG type, at least two in number, came up behind the Neptune aircraft, approaching it in an offensive, hostile firing position, with the glaring sun behind the fighters, and then, having determined that this was a United States Neptune, still without any prior warning opened fire upon the Neptune several seconds after 6:12 o'clock shooting numerous rounds of ammunition at it from the rear in a manner calculated to effect the Neptune's immediate destruction. The pilot of the Neptune, perceiving that he was under hostile attack from the rear, although not seeing nor having seen the attacker or other Soviet aircraft, turned sharply to the right and went simultaneously into a steep dive at a rate of descent of approximately 2,000 to 3,000 feet per minute, attempting to fly farther and farther away from the Soviet land mass and seeking the protective cover of a cloud bank approximately ten miles farther away; but to no avail. The attacking Soviet aircraft, unrelenting, resumed the hostile attitude, from above and to the rear right of the Neptune; as the Neptune was descending, one of the Soviet aircraft approached from the rear right and from that rear position resumed hostile firing against the Neptune at 6:13 o'clock. The Neptune, continuing its steep dive in its attempt to reach the cloud bank above described, made evasive maneuvers to the right and left, carrying it farther still from the Soviet land mass. At the second firing pass by the Soviet aircraft, the pilot of the Neptune intensified evasive maneuvers directed toward reaching the cloud bank shelter. But the Soviet fighters, still unrelenting, resumed firing positions to the rear of the Neptune, now at an altitude of approximately 3,000 feet from the surface of the sea, and reopened firing attack and this time succeeded in hitting the left wing of the Neptune causing it visible, multiple injuries. Only then did the attacking Soviet MIG aircraft disengage and climb back to higher altitude westward.

The Neptune's left wing was set on fire in consequence of this final attack. The fire continued to spread quickly through the wing to the fuselage, and when the Neptune had reached an altitude of 400 feet over water and the protection of the cloud bank, the pilot determined that it was necessary to abandon the aircraft in the interest of the safety of the crew. The Neptune thereupon was landed on the sea and came to a complete stop within 50 to 75 yards after the initial impact.

The United States Government has determined that the point of the first attack by the Soviet fighter aircraft, above described, was over the high seas to the southeast of Cape Ostrovnoi, in the

neighborhood of 42 degrees 22 minutes north and 134 degrees and 11 minutes east, or further to the south and east of that position, that is, not closer to Soviet territory than approximately 33 to 40 nautical miles; that the point of the second attack by the Soviet fighter aircraft was slightly further to the east, but in the same area although, as indicated above, at lower altitude; that the point of the third attack was at the edge of the cloud bank, approximately 10 miles to the east of the position of the first attack, and in the neighborhood of 42 degrees 22 minutes north and 134 degrees 24 minutes east, and even farther from Soviet territory than the earlier attacks.

Of the ten members of the crew on board the Neptune aircraft, nine succeeded in making their way out of the aircraft to the surface of the sea and entered a survival raft which had been carried aboard. Such was the deadliness of the damage effected by the Soviet aircraft however that one member of the crew, Ensign Roger H. Reid, was trapped in the fuselage which sank as the crew members were leaving it and while he was attempting to put out an additional survival life raft.

The nine surviving crew members in their survival raft remained afloat in the area in which they had been shot down. No attempt whatever was made by any authority of the Soviet Government at rescue of the survivors. As the result of an emergency radio message sent from the Neptune aircraft upon the Soviet attack, rescue aircraft of the United States Government from Japan and Korea discovered the survivors shortly before dawn on September 5, 1954, at 42 degrees 19 minutes north and 134 degrees 20 minutes east, and the survivors were duly rescued and returned to Japan. All were in a state of shock resulting from the incident and their exposure, and one suffered physical injuries resulting directly from the unlawful action of the Soviet aircraft. In spite of a diligent and careful search by aircraft and surface vessels, the body of Ensign Roger H. Reid could not be found.

3. The United States Government concludes from its investigation that the two Soviet MIG-type attacking aircraft were dispatched by responsible Soviet ground authorities and their pilots were then and continuously thereafter under the control, and performed the actions of approach and firing upon the explicit direction, of responsible Soviet ground authorities.

4. The United States Government must conclude from its consideration of all the evidence and all the surrounding circumstances that the acts of interception of the Neptune aircraft, attack upon it and its destruction, were deliberate and calculated on the part of responsible Soviet Government authorities; that each of these acts was committed with full knowledge on the part of such authorities that the Neptune aircraft was then lawfully flying in the international air space over the Sea of Japan; and that

these acts were directed and committed with the preconceived intention of accomplishing both the destruction of the aircraft and the death or injury of the crew.

II

The Soviet Government in its various notes to the United States Government on this incident has given a version of the facts which has by now taken on the character of a stereotype. The United States Government finds as a result of its investigation that the Soviet Government's version contains material misstatements of fact. These misstatements were repeated and additional ones were made by the Soviet representative in the Security Council on September 10, 1954, in the course of the discussion of this incident in the Security Council.

Of these material misstatements of fact the most significant are the following:

1. The Soviet Government states and has reiterated that the Neptune aircraft at 18 hours 12 minutes local time on September 4, 1954, "violated the state frontier of the USSR in the region of Cape Ostrovnoi to the east of the Port Nakhodka". At no time, in any of its notes or in the statements made by the Soviet representative in the Security Council, has the Soviet Government stated any position in coordinates of latitude and longitude at which any known or claimed frontier of the Soviet Government in this area was crossed by the Neptune aircraft in the course of its flight. The United States Government categorically denies any such crossing at any time during the flight and reiterates that the Neptune aircraft at all times stayed within the international air space over the Sea of Japan.

2. The Soviet Government states that two Soviet fighters approached the American airplane "for the purpose of showing it that it was within the limits of the frontiers of the Soviet Union and of proposing that it immediately leave the air space of the USSR". This statement the United States Government categorically denies. At no time did the attacking Soviet aircraft or any other aircraft make any approach to the Neptune in flight in any attitude consistent with any peaceable purpose, conveying any signal or attempting to communicate any such message whatsoever; on the contrary, the Soviet fighter aircraft approached the Neptune aircraft from behind and made their presence known only by firing from hostile firing positions calculated to effect the immediate destruction of the Neptune aircraft and without any prior warning whatsoever. The United States Government notes again that this stereotype Soviet allegation, made in the Soviet versions of other incidents of similar illegality, is not supported by any allegations as to the means or methods by which the Soviet fighter aircraft are claimed to have undertaken to convey the alleged message.

3. The Soviet Government further states that the American airplane "opened fire on the Soviet airplanes" when the latter approached for the above-mentioned purpose. This statement the United States Government categorically denies. The only firing by any member of the crew of the Neptune aircraft took place while the Neptune was in its sharp descent and seeking disengagement, when one of the attacking Soviet fighters, having already fired on the Neptune aircraft for the purpose of destroying it, appeared again in continuation of the hostile attacks and one of the Neptune crew, in self-defense and in a vain attempt to ward off a repetition of the previous hostile attack, sent fire in the direction of the oncoming attacker, which simultaneously fired at the Neptune. As was pointed out in the Security Council discussion, and as the Soviet Government is well aware, an allegation that a patrol-aircraft of the Neptune type initiated hostile firing at a fighter-aircraft of the MIG type is senseless.

4. The Soviet Government states that the Soviet airplanes "were obliged to open answering fire". This the United States Government categorically denies. At the time of the attack the Neptune aircraft was following an easterly course which, if continued, would place it progressively farther and farther away from the Soviet-held land mass. The MIG-type Soviet aircraft, moreover, could easily place itself out of range of the Neptune's armament when the crew member fired in vain self-defense, and this must have been obvious. Had the Soviet pilots been instructed or had they intended to convey any signals to the Neptune aircraft, they could easily with their speed and maneuverability disengage the Neptune aircraft and remain out of range of its guns and still observe it and communicate any signal. They were not "obliged" to fire at the Neptune.

5. The Soviet Government states that after the opening of answering fire upon it the American airplane "withdrew in the direction of the sea" and that Soviet authorities have no further information of the fate of the Neptune aircraft. As the facts above recited show, the attacking Soviet fighters did not disengage until the obviously mortally wounded Neptune aircraft had reached an altitude so low above the surface of the sea as to make further attack by fighter aircraft risky as well as unnecessary, and was approaching the protective cover of a low lying cloud layer approximately ten miles to the right of the Neptune at the point of first attack. These facts were known to the Soviet pilots and undoubtedly were communicated to the competent higher Soviet authorities.

The United States Government notes that having wrongfully accomplished the destruction of the Neptune aircraft the responsible Soviet authorities made no attempt to mitigate their wrong by attempting to effect any rescue of the survivors even though, contrary to fact, the Soviet Government asserts that the Soviet action

against the Neptune aircraft took place within Soviet territorial air space.

III

The United States Government concludes, and it charges, that the foregoing actions of the pilots of the Soviet aircraft and of the competent Soviet authorities made the Soviet Government guilty of deliberate violations of international law on account of which it has become liable to the United States Government for damages and other amends. The United States Government has dealt in other communications to the Soviet Government with allegations by the Soviet Government of versions of fact and implications of law similar to those contained in the Soviet Government's notes regarding the present incident. Particular reference is made to the United States Government's note of October 9, 1954, concerning the case of the United States B-50 aircraft shot down by Soviet aircraft over the Sea of Japan on July 29, 1953. In regard to the present incident, however, the United States Government desires specifically to state:

1. To the extent that the Soviet Government claims a violation of any Soviet frontier, the United States Government again declares that the limit of the territory of the Soviet Government in the area in which the present incident occurred extends no farther than three nautical miles from the mean low water mark of the Soviet-held land mass, following the sinuosities of the coast and the sinuosities of each of the Soviet-held islands. The United States Government prefers, however, to challenge the Soviet Government's territorial claims in this regard only in the channels of peaceful diplomatic negotiation and judicial determination. The present incident occurred in international air space well outside any territorial air space officially claimed by the Soviet Government at any time so far as is known. But the United States Government reasserts that in its opinion there is no obligation under international law to recognize any Soviet claims to territorial waters or air space in excess of three miles from the Soviet coast.

2. The Soviet Government, in its note of September 8, 1954, has made statements questioning the conduct by United States military aircraft of patrol flights over the Sea of Japan. The United States Government reiterates that any peaceable flights conducted by United States military aircraft in international air space have the unquestionable sanction of international law and that particularly the flight of the Neptune aircraft in the international air space over the Sea of Japan recited above was so sanctioned. In addition, as the United States Government has stated, apart from their general international law sanction, peaceable flights in this area by United States military aircraft, and the flight of the Neptune in the present case, were and are specifically sanctioned and

envisaged by the Security Treaty of September 8, 1951, between the United States of America and Japan. The Government of Japan has, at all relevant times, been, and it is, a sovereign government having littoral rights along the Sea of Japan and in the air space above it.

3. Any shooting by the crew of the Neptune aircraft at the attacking MIG-type aircraft in the circumstances described above was lawful in the exercise of the right of self-defense. In the circumstances described above, had the purpose of the Soviet fighter aircraft been to communicate signals or warnings, it was the duty of their pilots and of their ground controllers to engage in no hostile approach or fire as a method of communication or to engage in any hostile maneuver or attitude in flight.

IV

The United States has suffered the following items of damage in direct consequence of the foregoing illegal acts and violations of duty and international legal obligations, for which the Soviet Government is liable, and the United States Government demands that the Soviet Government pay the following sums on account thereof:

1. Loss of the United States Navy P2V-5 aircraft, Neptune type, No. 128357, and the equipment thereon, amounting in total to \$939,183.00.
2. Damages to the United States by the willful and unlawful conduct of the Soviet Government, amounting in total to \$316,467.52.
3. Damages to the next of kin, nationals of the United States, for the death of crew member Ensign Roger H. Reid, amounting to \$50,000.00.
4. Injuries to the nine surviving members of the crew, amounting to \$50,000.00.

TOTAL \$1,355,650.52

The United States Government has not included in its demand for damages, specified above, any sum on account of items of intangible injury deliberately and intentionally caused to the United States Government and to the American people by the wrongful actions of the Soviet Government in this case. In this regard the United States Government has determined to defer to a future date the formulation of the kind and measure of redress or other action which the Soviet Government should take which would be appropriate in international law and practice to confirm the illegality of the actions directed by the Soviet Government against the United States Government and against the American people.

The United States Government calls upon the Soviet Government to make its detailed answers to the allegations and demands made in this communication. Should the Soviet 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.

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

Annex 2

NOTE FROM THE SOVIET GOVERNMENT
OF JANUARY 21, 1957

No. 5/OSA.

In connection with the note of the Government of the United States of America No. 347 of October 12, 1956, the Government of the Union of Soviet Socialist Republics considers it necessary to state the following.

The circumstances of the violation of the frontier of the USSR in the region of Cape Ostrovnoi on September 4, 1954, by an American aircraft of the "Neptune" type were set forth in the notes of the Soviet Government of September 5 and 8, 1954.

In these notes it was communicated that according to precisely established facts on September 4, 1954, at 1812 hours local time an American military twin-engined aircraft of the type "Neptune" violated the frontier of the USSR in the region of Cape Ostrovnoi. On the approach to the American aircraft of two Soviet fighter-aircraft with the aim of indicating to it that it was within the limits of the frontier of the Soviet Union, and of proposing that it leave the air space of the USSR, the American aircraft under reference opened fire on the Soviet airplanes. In view of such a hostile, unjustifiable act of the violating American aircraft toward the Soviet aircraft, the latter were forced to open return fire, after which the American aircraft withdrew toward the sea. Soviet authorities have no information about the further fate of the violating aircraft.

The carefully verified data set forth in the Soviet notes fully correspond to reality, and it was not necessary for the Soviet party, in contradistinction to the American, to replace several times one set of data with another, declaring that the information given earlier was erroneous.

In this connection attention cannot but be directed to the following.

In note No. 202 of September 6, 1954, the Government of the USA stated that the encounter of the American aircraft with the Soviet fighters occurred over the open sea 100 miles to the east of Vladivostok. But soon it retracted its assertion since it turned out that the point 100 miles to the east of Vladivostok was not located over the open sea, but on the territory of the USSR.

On September 10, 1954, the US representative, Mr. Lodge, speaking in the Security Council of the United Nations Organization, named a new point for the encounter of the aircraft with the coordinates $42^{\circ}15'$ north latitude and $134^{\circ}24'$ east longitude and stated that "there could be no doubt" about the encounter at precisely this point. However, as is obvious from the text of the U.S. Government's note of October 12, 1956, at present the American party indicates still a third point with the coordinates $42^{\circ}22'$ north latitude and $134^{\circ}11'$ east longitude. In reality the encounter of the aircraft occurred in the air space of the USSR in the region of Cape Ostrovnoi at a point with coordinates $42^{\circ}42'$ north latitude and $133^{\circ}39'$ east longitude, as the American military command is undoubtedly aware.

The statement of the American party concerning whether the American aircraft opened fire on the Soviet fighters has also undergone changes. Thus, in the note of the Government of the USA No. 203 of September 6, 1954, it was maintained that the American aircraft during the course of the whole time of flight did not open fire on the Soviet aircraft. However, in the note of October 12, 1956, the American party already acknowledges that the American aircraft opened fire on the Soviet fighters.

The numerous changes by the American party in the version of the flight of the aircraft "Neptune" in the region of Cape Ostrovnoi and of its action upon the encounter with the Soviet aircraft testifies that the American party is trying in every way to escape responsibility, and notwithstanding the facts, to create the impression that the American aircraft did not violate the frontier of the Soviet Union and was the victim of an attack by Soviet fighters over the open sea.

With this aim the American party is attempting again to place in doubt the legality of the establishment by the Soviet Union of the twelve-mile limit of territorial waters. Attempts of this kind, as was pointed out in the note of the Soviet Government of December 31, 1954, are groundless and have no basis whatsoever.

The Government of the USA in its note states that the American aircraft "Neptune" could not have violated the borders of the USSR if only because during its flight on September 4, 1954, there was clear weather, good visibility and the aircraft was navigated by a qualified crew. In this connection the Soviet Government considers it necessary to point out that good conditions of the flight of the aircraft in question merely confirm the correctness of the conclusion contained in the Note of the Soviet Government of

September 8, 1954, that the violation by this aircraft of the frontier of the USSR was not accidental and was connected with the carrying out of a specific assignment of the military command of the USA. It is appropriate to recall that three other American aircraft which violated the Soviet frontier December 11, 1956, invaded the air space of the Soviet Union, as was indicated in the Note of the Soviet Government of December 15, 1956, also in conditions of clear weather with good visibility.

On the basis of the foregoing, the Soviet Government states that if the American party has incurred any damage whatsoever in connection with the incident which took place September 4, 1954, then the responsibility for that damage and for all other consequences connected with the incident under reference lies entirely on the American party, inasmuch as it has been precisely determined that the US military aircraft, having violated the frontier of the USSR, invaded the air space of the Soviet Union and without any basis opened fire on Soviet fighters. In view of this the Soviet Government rejects as unfounded the claim set forth in the Note of October 12 of the Government of the USA.

The Soviet Government entirely confirms its notes of September 5 and 8, 1954.

Annex 3

NOTE TO THE SOVIET GOVERNMENT OF AUGUST 19, 1957
No. 176.

Excellency,

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

The Government of the United States of America has received the note No. 5/OSA of January 21, 1957, replying to the United States Government's note delivered by its Embassy in Moscow as note No. 347 of October 12, 1956, relating to the destruction in the air space over the international waters of the Sea of Japan on September 4, 1954, by military aircraft of the Government of the Union of Soviet Socialist Republics of a United States Navy P2V-type aircraft, commonly known as a Neptune type. The United States Government notes that the Soviet Government has categorically rejected the United States Government's claim for damages; that the Soviet Government has disputed the United States Government's allegations of fact on this subject as well as its allegations of law. It notes further that the Soviet Government, in material variance from the allegations of the United States

Government in its note of January 21, 1957, contends that the "encounter" took place at "a point with coordinates 42°42' north latitude and 133°39' east longitude", which the Soviet Government claims is within Soviet territorial air space. The United States Government denies the factual as well as the legal validity of this contention and further reasserts that the actions of the Soviet Government against the P2V aircraft were without warning and unprovoked, and, under the circumstances which obtained, illegal.

In view of the foregoing considerations, the United States Government believes, and hereby notifies the Soviet Government, that it deems that an international dispute exists between the two Governments falling within the competence of the International Court of Justice and proposes that that dispute be presented for hearing and decision in the International Court of Justice. Since the Soviet 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 Soviet 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 between the parties. The Soviet Government is requested to inform the United States Government of its intentions with respect to such a declaration or Special Agreement.

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

Annex 4

NOTE FROM THE SOVIET GOVERNMENT
OF OCTOBER 10, 1957

No. 61/osa.

In connection with Note No. 176 of the Government of the United States of America dated August 19, 1957, the Government of the Union of Soviet Socialist Republics considers it necessary to state the following:

In its notes of September 5 and 8, 1954, and in the note of January 21, 1957, the Soviet Government has already set down on the basis of factual information the conditions of the violation on September 4, 1954, of the state border of the USSR in the region of Cape Ostrovnoi by an American airplane of the type "Neptune".

From the above-mentioned notes of the Soviet Government it is clear that the American airplane violated the state border of the USSR in the region of Cape Ostrovnoi on September 4, 1954, and without provocation opened fire on Soviet interceptors guarding the state border of the USSR.

Taking into consideration that the facts of the violation by the American airplane of the state border of the USSR and of its firing upon Soviet airplanes fulfilling the function of defense of the state border of the USSR are exactly established and that, in view of this, responsibility for the above-mentioned incident lies fully on the American side, the Soviet Government does not see any basis for turning this question over for examination by the international court as is proposed in the note of the Government of the USA of August 19, 1957.

The Soviet Government confirms its notes of September 5 and 8, 1954, and of January 21, 1957.
