

INTERNATIONAL COURT OF JUSTICE

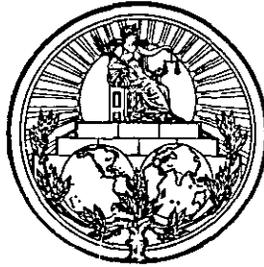
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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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TREATMENT IN HUNGARY OF  
AIRCRAFT AND CREW OF  
UNITED STATES OF AMERICA  
(UNITED STATES OF AMERICA *v.* HUNGARIAN  
PEOPLE'S REPUBLIC; UNITED STATES OF  
AMERICA *v.* UNION OF SOVIET SOCIALIST  
REPUBLICS)

ORDERS OF JULY 12th, 1954; REMOVAL FROM THE LIST



COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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TRAITEMENT EN HONGRIE  
D'UN AVION DES ÉTATS-UNIS  
D'AMÉRIQUE ET DE SON ÉQUIPAGE

(ÉTATS-UNIS D'AMÉRIQUE c. RÉPUBLIQUE  
POPULAIRE DE HONGRIE;  
ÉTATS-UNIS D'AMÉRIQUE c. UNION DES  
RÉPUBLIQUES SOCIALISTES SOVIÉTIQUES)

ORDONNANCES DU 12 JUILLET 1954: RADIATION DU RÔLE



PART 1

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APPLICATION INSTITUTING PROCEEDINGS  
AND PLEADINGS

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PREMIÈRE PARTIE

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REQUÊTE INTRODUCTIVE D'INSTANCE  
ET PIÈCES DE LA PROCÉDURE ÉCRITE

## SECTION A. — REQUÊTES INTRODUCTIVES D'INSTANCE

### 1. REQUÊTE INTRODUCTIVE D'INSTANCE CONTRE LA RÉPUBLIQUE POPULAIRE DE HONGRIE

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

*[Traduction]*

DÉPARTEMENT D'ÉTAT,  
WASHINGTON.

16 février 1954.

Monsieur le Greffier,

I. Conformément aux dispositions du Statut et du Règlement de la Cour, j'ai l'honneur de vous remettre la présente requête introduisant, au nom du Gouvernement des États-Unis d'Amérique, une instance contre le Gouvernement de la République populaire de Hongrie, en raison de certains actes accomplis par ce dernier Gouvernement de concert avec le Gouvernement de l'Union des Républiques socialistes soviétiques. En même temps que la présente requête, le Gouvernement des États-Unis d'Amérique en présente une autre introduisant une instance contre le Gouvernement de l'Union des Républiques socialistes soviétiques, pour la même question. Le Gouvernement des États-Unis d'Amérique demande que ces deux requêtes et la procédure qui s'ensuivra soient examinées en même temps, dans la mesure où cela sera commode et approprié.

L'objet du différend et l'exposé succinct des faits et des motifs par lesquels la demande du Gouvernement des États-Unis d'Amérique est prétendue justifiée sont énoncés dans deux notes remises l'une au Gouvernement hongrois, le 17 mars 1953, et l'autre au Gouvernement soviétique le même jour ; la note au Gouvernement soviétique est incorporée par référence dans la note au Gouvernement hongrois, la note au Gouvernement hongrois est incorporée par référence dans la note au Gouvernement soviétique, et chacun des deux Gouvernements a reçu du Gouvernement des États-Unis une copie de la note adressée à l'autre par ce Gouvernement. Copies des deux notes sont jointes à la présente requête <sup>1</sup>.

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<sup>1</sup> Voir pp. 11-39 et pp. 45-60.

2. Le Gouvernement des États-Unis constate que le différend actuel a trait à des questions relevant des catégories spécifiées à l'article 36, paragraphe 2, du Statut de la Cour, y compris les subdivisions *a)* à *d)*. Comme on le verra par l'annexe, le différend d'ordre juridique entre le Gouvernement des États-Unis et le Gouvernement hongrois met en jeu l'interprétation du traité de paix, signé à Paris le 10 février 1947, auquel le Gouvernement des États-Unis, le Gouvernement hongrois et le Gouvernement soviétique sont parties ; le traité d'amitié, de commerce et consulaire, signé à Washington le 24 juin 1925, qui était en vigueur à l'époque du différend et auquel le Gouvernement des États-Unis et le Gouvernement hongrois sont parties ; de nombreuses questions de droit international, indiquées dans la deuxième partie de chacune des notes en annexe ; de nombreux points de fait qui, s'ils étaient établis, constitueraient la violation d'un engagement international par le Gouvernement hongrois ; et des points relatifs à la nature et à l'étendue de la réparation due par le Gouvernement hongrois au Gouvernement des États-Unis en raison de ces violations.

Le Gouvernement des États-Unis, en présentant à la Cour la présente requête, déclare accepter la juridiction de la Cour dans la présente affaire. Il ne semble pas qu'à ce jour, le Gouvernement hongrois ait remis une déclaration à la Cour, et bien qu'il ait été invité à le faire par le Gouvernement des États-Unis dans la note jointe en annexe <sup>1</sup>, il n'a fait aucune réponse utile à cette invitation. Le Gouvernement hongrois est cependant qualifié pour reconnaître la juridiction de la Cour en la matière et il lui est loisible, lorsque cette requête lui sera notifiée par le Greffier, conformément au Règlement de la Cour, de prendre les mesures nécessaires pour que soit confirmée la juridiction de la Cour à l'égard des deux parties au différend.

Ainsi, le Gouvernement des États-Unis fonde la juridiction de la Cour sur les considérations qui précèdent et sur l'article 36, paragraphe 1, du Statut.

3. La thèse du Gouvernement des États-Unis d'Amérique peut se résumer comme suit : le Gouvernement de la République populaire de Hongrie, de concert avec le Gouvernement de l'Union des Républiques socialistes soviétiques et avec la complicité de ce dernier, a volontairement et illégalement fait saisir, le 19 novembre 1951, un avion du type C-47 de la « United States Air Force » avec son équipage de quatre citoyens américains et son contenu, l'avion ayant été poussé au-dessus du territoire de la Hongrie par des vents inconnus de l'équipage ; par la suite, les deux Gouvernements ont pris des mesures illicites à l'occasion de l'incident, tant contre l'équipage que contre les États-Unis, mesures qui constituent à la fois des violations graves de traités en vigueur, des dénis de justice manifestes et autres délits internationaux. En raison

<sup>1</sup> Annexe 1, voir pp. 11-39.

de ces violations d'obligations internationales, les États-Unis ont réclamé et réclament au Gouvernement hongrois des réparations monétaires et autres. Le Gouvernement soviétique a tenté de justifier en partie sa conduite en invoquant l'article 22 du traité de paix auquel on s'est déjà référé, thèse que le Gouvernement des États-Unis conteste.

Comme le Gouvernement des États-Unis l'exposera plus en détail dans la suite des écritures, il propose de soumettre les points de droit et de fait du présent différend à la Cour pour être examinés et tranchés par elle, conformément à son Statut et à son Règlement. Il demande à la Cour de dire que les Gouvernements accusés sont conjointement et solidairement responsables envers les États-Unis des dommages causés. Il demande à la Cour de condamner le Gouvernement hongrois à payer au Gouvernement des États-Unis une indemnité de \$ 637.894,11 avec intérêts, comme il est dit dans les notes jointes. Il demande à la Cour de déterminer la nature et l'étendue des autres réparations et satisfactions que la Cour jugera convenables et de rendre les ordonnances et sentences nécessaires, y compris en matière de dépens, pour donner effet à ses décisions.

4. Le soussigné a été nommé par le Gouvernement des États-Unis d'Amérique comme son agent aux fins de la présente requête et de la procédure qui s'ensuivra.

Veillez agréer, etc.

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

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Government from disclosing to the United States Government judicial dossiers concerning American nationals in accordance with established international law and practice.

The United States Government has also received from the Hungarian Government a reply, delivered to the American Minister at Budapest on February 9, 1953, to the United States Government's communication of January 30, 1953, relating to the United States C-47 airplane 6026 said by the Soviet Government to have been turned over to the Hungarian Government by Soviet authorities in Hungary. The Hungarian Government's reply refused the request contained in the United States Government's communication of January 30 for the return of the plane, its equipment and its cargo and of the documents on board. The Hungarian Government appears to justify this behavior by the citation of an alleged order of confiscation of this property of the United States Government said to be contained in a judgment by a military court against the four airmen; but the Hungarian Government refuses to disclose to the United States Government the judicial record upon which the validity of such an order of confiscation must rest. Moreover, the United States Government cannot, under international law, or under any system of domestic law purporting to provide due legal process, be foreclosed from inquiry into the legal propriety of proceedings, or into the record thereof, which resulted in the confiscation of United States Government property when the United States Government was not permitted representation or participation in the proceedings or any prior opportunity at all to contest on the facts and on the law the order of confiscation. The Hungarian Government's reply must be taken as a flat refusal to comply in any respect with any of the requests so made by the United States Government. The United States Government can find no suggestion of legal justification for this refusal.

The inference is compelled that the Hungarian Government knows that to reply truthfully to the questions asked, and to provide the material requested, in the United States notes, would seriously incriminate the Hungarian Government and that the Hungarian Government is acutely aware of the legal and moral impropriety of its conduct in reference to the case above mentioned. The conclusion is reinforced that the Hungarian Government is in possession of evidence to which the United States Government is entitled, including that to which reference is made in both notes above mentioned, and that that evidence fully supports the findings which the United States Government has made on the basis of other available evidence gathered in its investigation of the case, as described in the same notes.

The purpose of the present communication is to place these facts, in summary form, formally upon the record and to prefer against the Hungarian Government an international diplomatic claim for the purposes and in the amounts set out below. Simul-

These facts were fully described in the usual air flight documents and official orders on board the plane from its departure and after its arrival at the Soviet-controlled base mentioned above. These documents and official orders are last known to have been in the possession of the Soviet Government since November 19, 1951, and the Soviet Government has failed, although duly requested, to inform the United States Government unequivocally with respect to the disposition it has made of these documents and orders. In its note of January 30, 1953, to the Hungarian Government the United States Government also called upon the Hungarian Government to make these documents available to the United States Government. The United States Government believes, however, that if they have not yet come into the possession of the Hungarian Government the Hungarian Government has had access to their contents. They included the manifest of the cargo, the flight plan, the pilot's navigation log, the crew's official travel orders and other routine documents which the United States Government has described in its communications above mentioned.

As those documents show, the crew were instructed, and attempted, to follow a course from Erding to Munich, to Innsbruck, to Bolzano, to Venice, to Udine, to Ljubljana, to Zagreb, to Sela, to Sisak, thence to Belgrade. The course was a normal route for flight to Belgrade; it was determined by routine flying factors and, insofar as the Yugoslav portion was concerned, by the regulations of the Yugoslav Government with respect to international flights to Belgrade from the west.

2. The airplane and crew attempted at all times to follow the course so given for Belgrade, but while the crew, and in particular the pilots, believed that the plane was flying that course, it was actually blown by winds the existence and direction of which the pilots did not then know or have any warning of, and the velocity of these winds accelerated the speed of the plane considerably beyond the speed at which the pilots believed the plane was flying. The plane, therefore, flew somewhat north of the expected course and covered a distance considerably greater than the pilots then thought or had reason to believe they were covering. In consequence of the effect of these unknown winds, the plane flew beyond Belgrade to the north and the east and the crew were unable to find or descend at Belgrade; and at approximately 4 p.m. local time the pilots reversed the plane's course and flew westward with the intention on the part of the pilots of returning to Udine or Venice.

Practically the entire return trip was made in darkness. The crew realized that they were lost, and finding that the plane's fuel supply was running dangerously low, they made every reasonable effort to find a landing place on the ground, to alert all persons

Government declares categorically that the aircraft carried no equipment intended for any illegal purpose whether with respect to Hungary, the Soviet Union or any other country.

5. During the flight and thereafter both the Soviet Government and the Hungarian Government were fully aware, and neither the United States Government nor the crew in the airplane nor any other person associated with the United States Government then knew, that the airplane flew north of its fixed course in Yugoslavia on its trip eastward, had overflown Yugoslavia and entered Rumania, and had while attempting to return westward crossed the Hungarian frontier. The airplane was observed and monitored in its entire westward flight by Soviet, Hungarian and other Soviet-allied ground authorities from approximately 4 p.m. to 6 p.m. local time, first in Rumania and then in Hungary; and when the plane was brought down at 6 p.m. by the Soviet aircraft it had almost reached the British occupied zone of Austria. Moreover the Hungarian authorities near the eastern border of Hungary had notified the Soviet authorities in Hungary of the westward course of the plane, and the Soviet and Hungarian Governments thereupon agreed that the plane should be permitted to overfly Hungary, be observed in its flight and then be brought down by the Soviet aircraft stationed near the western border of Hungary.

6. Thus the Hungarian authorities, together with the Soviet authorities stationed in Rumania and Hungary, watched the plane's flight, knew that it was lost and in distress and was seeking a landing place, but refused to come to the aid of the plane or the crew, either to aid them in finding their true course, or to show them a landing field at any place by lights or signals from the ground or in the air, or to respond to their radioed calls for assistance. The Hungarian authorities, together with the Soviet authorities, deliberately permitted the plane to cross the Hungarian frontier and to overfly Hungarian territory, and then brought it down, lest, continuing in its flight, it would in a few minutes arrive safely in the British zone of Austria, or in other territory not controlled by the Hungarian Government or by the Soviet Government or its allies. The Hungarian Government, and the Soviet Government, were at all times aware, therefore, that neither the airplane nor the crew had any intention to cross into or to overfly Hungarian territory, or Soviet territory, or to engage in any improper activity during such flight.

7. From November 19, 1951, at approximately 6 p.m., until December 3, 1951, the four American airmen above named were held under arrest and incommunicado by the Soviet authorities and continuously interrogated with respect to their flight and other matters. The investigation conducted by the United States Government compels the conclusion, which the United States Government herewith asserts, that the Soviet and Hungarian

the missing plane and crew which would have been obviated had the Hungarian Government truthfully answered the questions put to it or disclosed the information in its possession.

9. On December 2 and 3, 1951, the Soviet Government through its press and radio stated :

“According to information received by TASS the American military airplane and its crew which landed on Hungarian territory have been transferred by the Soviet Military Command to the disposition of the Hungarian authorities.”

On December 3, the Hungarian Foreign Office informed the American Legation in Budapest that the airplane was

“put at the disposal of the Hungarian authorities by the Soviet Command”.

Subsequently, in an announcement of December 23, 1951, concerning the trial of the four airmen by a Hungarian military court, the Hungarian Government announced that the military court purported, as part of its judgment, to “confiscate” the airplane.

As the Hungarian Government is aware, the Soviet Government has twice declined to give specific answers to the specific questions put to it by the United States Government, in the note to the Soviet Government of December 10, 1952, reiterated December 17, 1952, concerning the Soviet Government's actions with respect to the United States airplane 6026, its equipment, cargo and other contents. The Hungarian Government has likewise failed to respond to these specific questions. The United States Government therefore is compelled to infer, and so asserts, that apart from the liability of the Hungarian Government for aiding and abetting the Soviet Government's seizure of the airplane and its contents on November 19, 1951, the Hungarian Government committed an illegal act of conversion of the United States property in question on or about December 2, 1951, when it accepted from the Soviet Government the United States property in question. The United States Government alone had the legal authority to dispose of that property and neither the Soviet Government nor the Hungarian Government had any lawful right, title, or interest in the plane or its contents, or any authority to dispose of any part of it, and the United States Government never empowered either the Soviet Government or the Hungarian Government to make any such disposition. The United States Government calls attention to the fact that the Hungarian Government refused to permit the United States Government to be represented at the trial, to offer evidence or to participate in any appeal, and the United States Government therefore cannot be bound by any judgment in this case against United States property, and it asserts further that no Hungarian

intended to be used in any legal proceeding against them by Hungarian authorities. The English translations were exhibited to the airmen as accurate translations of statements in the Hungarian language; specifically these translations, in the versions exhibited as final and true, excluded any admission that any of the individuals aboard the airplane 6026 had had any intention at any time of crossing the Hungarian border. The airmen had insisted, as was the truth, that there never had been such an intention and that written statements in any other sense could not be true and would not be signed. Unless, therefore, such statements have been tampered with, altered or forged by unauthorized persons the English language versions of these statements should still show, as the Hungarian Government must well know, that no confession of intention to cross, or of any legal guilt with respect to the crossing of, the Hungarian frontier was made by any of the airmen, orally or in writing.

11. Each of the airmen requested the Hungarian authorities to permit him to communicate with or have access to American diplomatic or consular representatives or other American authorities in Hungary or elsewhere, but the replies given by the Hungarian authorities were evasive or negative. Beginning December 3, 1951, when the presence of the airmen in Hungary was first made known to the United States Government by the Hungarian and Soviet Governments, the American Legation at Budapest made official requests to the Hungarian Government for access to the airmen as American nationals and the Hungarian authorities denied such access as well. Furthermore, the airmen requested from the Hungarian authorities opportunity to visit and converse with each other but this was denied and the men were kept throughout Hungarian detention incommunicado, seeing only Hungarian police officials concerned with questioning or detaining them.

12. The United States Government has found, and believes and so asserts, that the Hungarian Government in concert with the Soviet Government had determined soon after the fortuitous and innocent descent on Hungarian soil of the United States airplane 6026, and the four American nationals forming its crew, to contrive a so-called judicial trial on false charges and irrespective of the innocence of the four American nationals, in order to serve base and improper propaganda and political purposes of the Soviet Government, and of the Hungarian Government, and to enrich themselves unjustly at the expense of the United States. The Hungarian authorities, therefore, wilfully and deliberately failed to disclose to the airmen the true purpose of the questions put to them in the interrogation and of the documents which they were requested to sign and gave them no opportunity for access to any impartial or reliable advice but instead kept

assuming these men were actually lawyers, they had been instructed by the Hungarian Government, or by the Soviet Government, not to conduct a defense of their clients in accordance with law and the standards of the legal profession applicable under established judicial procedures for the trial of criminal charges and in no event to take any action which would demonstrate the innocence of the accused or the unjustness of the government's accusations and procedures or which might otherwise hinder or embarrass the government in the execution of its unjust plan ; or that these lawyers were to the knowledge of the government so incompetent professionally and so compliant with the government's desires and instructions in the matter as to insure that the government's proposed trial would end in a judgment of guilt against the defendants as planned by the government.

(c) The trial was held almost immediately thereafter without the semblance of opportunity to the accused to understand the charges or to plan any defense. The accused were marched into the court room within approximately five minutes after the last introduction of counsel to accused had taken place. By the contrivance of the Hungarian Government, and the Soviet Government, the trial was held with maximum secrecy. It was held on a Sunday morning. There was no prior publication of the holding of the trial. There was no invitation to the public to enter the court room and otherwise no action which might cause the public to become aware of the proceedings. Only the accused, the so-called lawyers and Hungarian Government officials concerned in the case were present.

The accused were brought in for trial in states of mental shock, fear and mental confusion, which the Hungarian Government contrived and of which it was well aware. The trial was conducted in the Hungarian language which none of the accused understood. A single interpreter purported to give the accused only a summary running oral account of what was being said, and acted as interpreter both for statements by the court as well as for statements by the accused and the so-called lawyers. The person acting as interpreter was a paid employee of the secret police, biased against the defendants and in favor of the Hungarian Government, and who had so acted in the preceding interrogations.

The only evidence submitted in open court were answers of the accused themselves to questions put by the presiding officer. These answers were brief replies to a few questions to each accused, no one's testimony taking more than approximately five minutes, including translations. No question asked or answer given was incriminating to any of the accused, and no testimony or other evidence was adduced, read or offered which would support any finding or charge of the guilt of any defendant of the crime charged or any other crime, nor was any testimony adduced to satisfy the jurisdictional requirements of the military tribunal.

been found guilty of premeditated crossing of the Hungarian frontier, was completely without any foundation or support in the testimony adduced *before the tribunal or presented in open court* or in any other way made known to the accused. The Hungarian Government having refused to supply the United States Government, although repeatedly duly requested, with a copy of the judgment of the court, the United States Government calls attention to the December 23, 1951, declaration of the Hungarian Government with regard to the judgment of the court. The United States Government asserts specifically that, to the extent that the opinion of the court is reflected in the declaration, both it and the declaration were false and known by the Hungarian Government to be false when made, in the following respects :

(i) It stated that the men had admitted their guilt. This was false for the question of their guilt was not put and no such testimony was given in the course of the trial. In this connection the United States Government must characterize as also false the contrary statements made by the Hungarian Government in its notes of January 30, 1953, and February 9, 1953, in this matter.

(ii) It said that the accused could not explain satisfactorily why there were certain maps in the aircraft. This issue was not raised in the testimony at the trial, nor was it covered by any of the signed or other statements. One of the accused, the pilot, was merely asked by the court whether he had selected the maps in the plane and he truthfully replied that he had not. The other defendants were asked no questions concerning the maps. No maps whatever were produced in evidence at the trial, nor by any of the Hungarian interrogators during the interrogations preceding the trial. The men had previously explained fully, truthfully and adequately the circumstances and purposes of all maps in the aircraft to the apparent satisfaction of the Soviet interrogators. While the written indictment read to the accused in open court, as translated, stated that the airplane carried maps on which were shown countries friendly with the Soviet Union, neither the prosecutor, the judges nor the defendants' counsel presented in evidence any of the explanations already given by the airmen with respect to the maps on board the airplane; the pilot, in particular, made attempts during the trial, directed to the defense counsel appointed for him, to explain the innocent nature of the maps, but the pilot's attempts in this regard were in vain since he was given no opportunity to give testimony on this subject.

(iii) The statement said that the men could not explain "why they had necessity for a radio station suitable for field use". This was false. The only testimony on this subject at the trial was directed to the question whether there was a radio set on board the plane that could be used on the ground. The radio set was not produced in court and the men had many times explained in the

trial. On the contrary, the men had specifically informed Hungarian authorities and Soviet authorities in the interrogation that they at all times believed that they were in Yugoslavia, and that they had no knowledge whatever that they had overflowed or were even then in Hungary except insofar as their interrogators asserted that they were.

(ix) The statement said the men knew they were over a restricted area. This was likewise false. There was no such testimony at the trial and no evidence that any area over which the men flew was restricted to their flight, or made known to them in any way as being restricted, except to the extent that, believing they were in Yugoslavia, and finding themselves lost, the men considered that they had flown off the course from Zagreb to Belgrade which the Yugoslav authorities had prescribed as a corridor for the flight.

(x) The statement said that the accused admitted that they had deliberately avoided carrying out an obligation to transmit a signal indicating an off-flight and to land voluntarily at the nearest Hungarian airfield. This too was false. There was no such evidence at the trial nor was such a statement ever made in the interrogation conducted of the airmen ; on the contrary (as the Hungarian authorities well knew, having watched the plane attempting to find a landing place and after observing its distress signals for one hour and forty-one minutes, upon the Hungarian Government's own statement), the men transmitted all possible signals indicating off-flight, distress and urgent desire to find an airfield. The plane landed at the first airfield of which the crew had any indication and the first one lighted for them for the purpose.

(f) The statement said that the men on December 23 had acquiesced in the verdict. This was false.

(g) The Hungarian Government deliberately deceived the four accused airmen with respect to their right of appeal. The men had been told by the lawyers chosen by the Hungarian Government that they should not appeal from any verdict. The only appeals of which any of the defendants were aware of were, first, an appeal which was announced in the court by the prosecutor against the alleged leniency of the verdict, and second, one or more of the defendants' counsel indicated to the defendants that an appeal was lodged from the amount of the fine but saying nothing regarding the verdict of guilt. The men were left under the definite impression that they had in fact appealed through the actions of the lawyers. While the men remained in Hungarian custody until December 28, 1951, and were told in the court room that an appeal would be decided within three days after the verdict, namely, December 26, not even such an appeal appears actually to have taken place, for the men were never informed with respect thereto.

In this connection the United States Government must characterize as false and misleading the Hungarian Government's state-

judges, and the lawyers chosen by the government as defense counsel for the accused and their failure to obtain revision of the trial court decision by an appellate or review body, further demonstrate the Hungarian Government's deliberate intention to deny to the accused American nationals, and to the United States, the semblance of any justice.

14. The evidence in the possession of the United States Government with respect to the Hungarian Government's actions in effecting the detention, arrest and conviction of the four airmen discloses numerous flagrant errors and glaring violations of Hungarian domestic substantive law and legal procedure and practice so serious and material as to render all the legal proceedings taken null and void. Among these errors and violations are the following :

(a) Applicable Hungarian law required the appropriate Hungarian authorities to give warning to the airplane 6026 when it was observed over Hungarian territory ; to show it to a safe landing place in its distress ; to notify the Hungarian Foreign Office for the purpose of notification thereupon to the United States Government of the presence of the plane and crew on Hungarian territory ; and to release the plane and the crew to the American authorities thereafter. The Hungarian Government failed to comply with any of these provisions of Hungarian legislation.

(b) There is no provision of Hungarian law authorizing the Soviet authorities on Hungarian territory to take such actions with respect to the airplane and its contents or with respect to the crew as were taken by them in this case.

(c) The detention of the crew by Hungarian authorities from December 3, 1951, was a violation of Hungarian law for the reasons, among others, that they were not permitted to obtain counsel or appeal against their detention, and that the detention, or interrogation, was not justified by the presence of any reasonable cause therefor.

(d) The trial by military court was illegal since it was not authorized by any statute conferring jurisdiction upon military courts ; furthermore, holding the trial in the city of Budapest was arbitrary and improper.

(e) The facts with respect to the choice or assignment of counsel evidence violation of Hungarian law in a number of respects. Among these are :

(i) The accused should have been notified at the very first interrogation that they were entitled to choose counsel for their defense and should have been given opportunity to make a free choice of counsel satisfactory to them.

(ii) Restriction to a list of only eight lawyers among whom the accused were to choose their counsel was improper since there

(iv) The court failed to dismiss the case or to divest itself of jurisdiction when it appeared that the statutory requirements respecting military jurisdiction were not satisfied by the evidence.

(v) The court failed to make the accused fully aware of the proceedings.

(j) Defense counsel in the conduct of the trial were guilty of a series of actions of professional misconduct and gross negligence, in that among other things :

(i) They did not protest against the shortness of the interval between the charge and the trial and did not request adequate time to prepare a defense.

(ii) They did not protest against the jurisdiction of the military court.

(iii) They did not suggest the availability of additional testimony and evidence in the support of the defendants' case.

(iv) They did not plead the invalidity of the indictment as a matter of law.

(v) They did not properly advise their clients with respect to the appeal upon the merits as well as against the arbitrariness of the punishment and with respect to the confiscation of the United States Government airplane and contents.

(vi) They did not obtain and deliver to the accused copies of the sentence of the court.

(vii) They did not inform the accused with respect to the alleged decision of the appellate court or take appropriate action with respect to such appeal.

(k) The secret character of the trial was not justified by Hungarian law. The conditions for a legally secret trial were not met. The requirements for any other trial would preclude the holding of a trial on a Sunday morning preceding Christmas eve. The date of the trial was not published. The defendants were not notified in advance of the scheduling of the date of the trial and were thus prevented from attempting to communicate that fact to counsel or to American authorities. The holding of a trial under such conditions, adverse to public knowledge or participation, is opposed to Hungarian judicial principle and practice.

(l) The findings of the court were erroneous with respect to the defendants' guilt for the reasons above mentioned as well as because the court failed to distinguish between the responsibilities of each of the four accused. The evidence did not support findings of guilt of the crime charged as against the two sergeants, who had no part in the navigation or flight of the plane or its crossing into Hungarian air space.

(m) The imposition of punishment was without legal justification. There exists no legal justification for setting the fine at

The foregoing errors and violations are so glaring and numerous as to be consistent only with concerted action by all participating Hungarian authorities, including the prosecution, the courts and the defense counsel, to accomplish a prearranged manifest denial of justice to the accused without any opportunity to the accused for the presentation of their defense, or of the true facts and the applicable law in their behalf or of appropriate argument.

15. The United States Government agreed to pay and paid to the Hungarian Government the sum of \$123,605.15 as the only practicable alternative available to it to effect the release of the men, making such payment under protest.

As further evidence of the true purposes, and of the arbitrary and unlawful character of the acts, of the Hungarian Government, the United States draws attention to certain circumstances surrounding the Hungarian Government's stipulations for payment. On December 28, 1951, the date of payment, and for a considerable period of time prior thereto, the Hungarian Government was indebted to the United States Government in a sum exceeding \$380,000 in interest and several million dollars in principal, payable in dollars, arising out of an uncontested obligation of the Hungarian Government. The Hungarian Government under written agreements of April 24, 1946, August 9, 1946, and March 21, 1947, had purchased from the United States Government several millions of dollars of property of the United States Government. By the specific provisions of these agreements the United States Government was entitled, if it so desired, to call upon the Hungarian Government to make available to the United States Government local currency of the Hungarian Government for the payment by the United States Government of any or all expenditures in Hungary. Although the fines imposed by the Hungarian military court against the four airmen were payable in local currency and although the Hungarian Government had agreed to release the four airmen on the payment of their fines by the United States Government, the Hungarian Government in violation of its written agreements refused to make available to the United States Government local currency in the amount of the fines, as provided in the agreements, or to *apply the equivalent in dollars against the liquidated dollar obligation due and owing to the United States Government above mentioned*. Instead the Hungarian Government arbitrarily and unlawfully demanded as a condition to the release of the airmen that the United States Government turn over to the Hungarian Government United States dollars from sources outside Hungary; the United States Government made the payment with such dollars, under protest.

The United States Government now solemnly declares that this sum was knowingly and wilfully demanded and obtained from the United States Government by the Hungarian Government as a

States. Knowing at all times that the charges against the airmen, as against the United States, were false and unfounded and that a free and open hearing or investigation according to the practice of civilized and honorable governments would demonstrate the falsity of these charges, the Hungarian and Soviet Governments in concert deliberately denied the airmen access to American consular or diplomatic authorities, denied the airmen representation by independent legal counsel, subjected the airmen to a trial by a military court whose judgment was predetermined and dictated in advance, held the trial *in camera* where no member of the public or representative of the accused was present, kept the airmen continuously incommunicado, denied them and the United States Government access to judicial records and dossiers in the case, and in other ways attempted to conceal from the airmen, the United States Government, and the international public the manifest injustices deliberately perpetrated by the Hungarian and Soviet Governments upon these American nationals as upon the United States Government.

The statements issued by the Hungarian and Soviet authorities in concert with respect to this matter were deliberately and wilfully broadcast to the world by these governments, or were uttered so as to be so broadcast in the usual dissemination of news of international interest, with the purpose and intention of causing damage to the United States and to the airmen themselves.

18. As has been indicated, the four airmen with whom this claim is concerned have at all times been and now are citizens and nationals of the United States of America. Dave H. Henderson was born September 20, 1919, at Dale, Oklahoma, in the United States of America; John J. Swift was born July 31, 1917, at Syracuse, New York, in the United States of America; Jess A. Duff was born October 12, 1919, at Scotia, Nebraska, in the United States of America; and James A. Elam was born November 3, 1931, at Kingsland, Arkansas, in the United States of America. All four airmen were members of the United States Air Force on the dates relevant to this claim, Dave H. Henderson and John J. Swift being captains and Jess A. Duff and James A. Elam being sergeants.

19. The United States Government is compelled to conclude, and it charges, that the foregoing actions, whether committed separately by the Hungarian Government or in conjunction or concert with the Soviet Government, were deliberately and unlawfully committed with ulterior intent to serve a propaganda purpose of the Soviet and Hungarian Governments, to cause unlawful damage to the four American airmen above named, and to the United States, to convert unlawfully to the use and profit of the Hungarian Government and the Soviet Government the United

to the inquiries made of it by the United States Government, and by the Yugoslav authorities, beginning on November 19, 1951, concerning the Hungarian Government's knowledge of the whereabouts of the plane and the crew.

(4) The Hungarian Government was not legally justified in continuing the arrest and detention of the crew and the plane, particularly after these had been turned over to it by Soviet authorities in Hungary on December 3, 1951, and the Hungarian Government should then have arranged for the immediate turning over of the men and the plane to American authorities.

(5) The arrest, detention and interrogation by the Hungarian authorities from December 3, 1951, to December 28, 1951, were unlawful in principle and unlawful in addition as excessive in length and in scope.

(6) In violation of its legal duty the Hungarian Government did not inform the four airmen that they were being detained for the purpose of trial on criminal charges but instead represented to them that they were merely being questioned prior to release to American authorities. This representation was false, and known to the Hungarian Government to be false, inasmuch as by arrangement with the Soviet Government the Hungarian Government had already determined to place the men on trial for the purposes and in the circumstances set forth in the present note.

(7) The detention, trial and conviction of the airmen in the circumstances of the case constitute a flagrant and manifest denial of justice, particularly in that :

(a) The actions of the Hungarian Government with reference to the airmen were in manifest violation of established Hungarian law and practice, and they therefore constituted arbitrary and unlawful actions directed against American nationals as such.

(b) No reasonable cause existed for indicting or otherwise charging the accused with the violation of any Hungarian law.

(c) The trial of the accused by military court and under military procedure was without legal authority and the court was without jurisdiction to try them.

(d) The accused were denied the advice and representation of independent counsel or consultation with representatives of the United States Government, they were denied adequate opportunity to prepare and present a defense on the facts and on the law, or to argue their case before their judges, and to prepare and present a proper appeal from the judgments against them. Had these denials not taken place the innocence of the accused would have been made manifest.

(e) The accused were tried by judges who were not independent of Hungarian Government direction but in fact acted throughout the trial upon instructions, both as to the conduct of the trial and

(10) The actions and statements of the Hungarian authorities and of the Soviet authorities in the premises constitute legal and actionable wrongs to the United States for which the Soviet Government and the Hungarian Government are jointly and separately responsible. These, as has been stated above, include all the violations of law and the denials of justice set forth in the note of the United States Government which is simultaneously being delivered to the Soviet Government, a copy of which is attached hereto and which is made a part hereof with the same force and effect as if fully set forth herein.

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

### III

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

1. The United States Air Force airplane C-47 type known as 6026 and its equipment, and the cargo thereof as shown in the manifests on board the plane when seized, valued in total at \$98,779.29, with interest at 6 per cent from November 19, 1951.

2. The amount paid by the United States Government to the Hungarian Government, under protest, to obtain the release of the four airmen, \$123,605.15, with interest at 6 per cent from December 28, 1951.

3. Damages to the four airmen, American nationals, in consequence of their unlawful detention and mistreatment and manifest denials of justice to them, \$200,000.00.

4. Damages to the United States by the wilful and unlawful conduct of the Hungarian Government in concert with the Soviet Government, \$215,509.67.

Total \$637,894.11, with interest at 6 per cent as indicated.

The United States Government declares that the figure of \$215,509.67, contained in paragraph 4 above, does not include any sum on account of the items of intangible injury deliberately and intentionally caused the United States Government and the American people by the wrongful actions of the Soviet and Hungarian Governments. Such injury is not easily calculable in money and money could not compensate for it. The United States Government has determined therefore, for the present, to defer the formulation of the kind and measure of redress or other action

*Enclosure to the note to the Hungarian Government  
of March 17th, 1953*

NOTE TO THE SOVIET GOVERNMENT  
OF MARCH 17, 1953

[See pp. 45-60]

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*Annex 2*

NOTE FROM THE HUNGARIAN GOVERNMENT  
OF NOVEMBER 2, 1953

No. 00207/3/1953.

Dear Mr. Chargé d'Affaires,

I have the honour to refer to Note No. 115 of March 17, 1953, addressed by Mr. Abbott then Chargé d'Affaires ad interim to my predecessor, raising again the matter of the four flyers concluded by a final sentence almost two years ago.

The Government of the Hungarian People's Republic established that this latest Note of the Government of the United States does not contain any new element whatsoever which could induce the resumption in merit of this matter concluded by a final sentence.

As it had been stated in Notes No. 2123/953 of January 23, 1953, and No. 207/1/1953 of February 9, 1953, of my predecessor, the crime committed by the four American flyers on the territory of Hungary is a case belonging exclusively to the sphere of matters which are within the domestic jurisdiction of the Hungarian judicial authorities. The competent Hungarian court had in this matter passed a sentence which according to the provisions of the Hungarian Criminal Law in force ordered the confiscation of the objects serving as instruments of the crime that is of the airplane, its cargo and equipment. This sentence of the court, the American flyers having not appealed, became final.

Concerning the judicial settlement of international disputes it is generally known that the jurisdiction of the International Court of Justice, according to Article 36 of its Statute is recognized in procedures concerning the interpretation of treaties and other legal disputes of international law ; a criminal procedure falling exclusively within the jurisdiction of a sovereign State is, however, not subject to international jurisdiction.