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Summary of the salient points of the statements
of the USSR and other Eastern European states on item 72

CONFIDENTIAL

Department of Political and
Security Council Affairs.

SUMMARY OF THE SALIENT POINTS OF THE STATEMENTS OF THE USSR
AND OTHER EASTERN EUROPEAN STATES ON ITEM 72
(COMPLAINT OF DETENTION AND IMPRISONMENT OF UNITED NATIONS
MILITARY PERSONNEL IN VIOLATION OF THE KOREAN ARMISTICE AGREEMENT)

For the sake of convenience, the following summary of statements made by the representatives of the USSR and other Eastern European States on the item entitled "Complaint of the detention and imprisonment of United Nations military personnel in violation of the Korean Armistice Agreement" has been arranged under sub-headings relating to the various points which seem of particular importance in the Soviet statements. The summary is not intended to be a detailed account of these statements, many aspects of which are not covered because they seem to be subsidiary in nature. In particular, details of arguments as to the facts of the case are omitted. A further point to be borne in mind is that the sequence of arguments and the emphasis placed on them varied to some extent in each of the statements made; the arrangement given below is arbitrary in that respect. Likewise, the terms in which the arguments were phrased in the various statements also varied to a certain extent; the wording used below has been selected as the most representative over the whole course of the debate. The summary does not cover arguments relating to the motives ascribed to the authors of the complaint.

(1) Applicability of Article 2, paragraph 7 of the Charter

The facts made it clear that all 13 convicted Americans had been performing espionage functions on the territory of the Chinese People's Republic. Questions concerning the administration of justice, according to universally recognized standards of international law, related wholly to the essentially domestic

jurisdiction of the State in whose territory crimes such as espionage and subversive activity had been committed and in which such criminals had been detained. According to the provisions of the Charter, and especially Article 2, paragraph 7, the Organization was not authorized to intervene in matters essentially within the domestic jurisdiction of any State.

(2) The question whether the convicted personnel could be regarded as United Nations personnel

The United States complaint was founded solely upon the allegation that the 13 American spies were United Nations military personnel. But the war against the Korean people had been waged by the United States, which had entered that war without any decision to that effect by the Security Council, the only organ of the United Nations endowed with the right to take military enforcement action. Illegal decisions had subsequently been adopted to cover up that intervention, but those decisions of the Council had been illegal by virtue of the fact that they had been adopted without the participation of two of the permanent Members of the Council, the USSR and the Chinese People's Republic. The use of the flag and name of the United Nations by the United States to cover up and justify its armed intervention was consequently equally illegal. To invoke subsequent decisions of the General Assembly was as invalid as to invoke the illegal decisions of the Council, since those decisions had been imposed upon the General Assembly.

(3) The question as to where the United States aircraft had been shot down

The statements of various United States authorities on the question of where the two aircraft in question had been shot down were completely contradictory, but nevertheless the General Assembly was expected to accept the view that they had been shot down over Korean territory. Indeed, the complaint was based on

that assertion. The facts showed, however, that the two aircraft had both been shot down over the territory of the People's Republic of China.

(4) The question whether the 13 Americans convicted could be divided into two groups

The proceedings of the Military Tribunal made it perfectly clear that all 13 United States personnel had been performing missions assigned to them by the United States Military Intelligence Service. There was no reason to divide them into two groups. (Other views particularly relevant to this point are summarized under (6) below).

(5) Applicability of the Armistice Agreement

The argument that the conviction was a violation of the Armistice Agreement was entirely unfounded, since that Agreement had nothing to say about releasing American or any other alien citizens from responsibility for crimes committed against the Chinese People's Republic. However, had there been any substance to the complaint, the normal course would have been to refer the matter to the appropriate bodies established under that Agreement. The fact that the Repatriation Commission had been disbanded did not prevent the United States from addressing itself to the States which had been members of that Commission. As for the argument that the convictions constituted a violation of the Armistice Agreement, experience showed that the United States and South Korean side had been the ones to commit such violations and to forcibly retain prisoners wishing to be repatriated. (In the course of proceedings in the General Committee, the representatives of the USSR and Czechoslovakia stated, inter alia, that the People's Republic of China was not a party to the Armistice Agreement, which had been concluded between the Commander in Chief of the United

Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers on the other. However, this view was not expressed in such a form in the subsequent discussion of the substance of the matter in the plenary meetings of the General Assembly.)

(6) The question whether the 11 airmen convicted could be regarded as prisoners-of-war

The eleven members of the U.S. Air Force who had been captured wearing uniform could not be regarded as prisoners of war, for they had been captured in the People's Republic of China which had not been a belligerent in the Korean war. According to the principles of international law, military personnel captured in a State that was not at war were subject to prosecution under the legislation of that State, for any crimes for which they might be responsible. In that respect reference was made to article 4 of the 1949 Geneva Convention on the treatment of prisoners of war as providing that prisoners of war were persons taken into custody by the enemy, and the conclusion was drawn that the military personnel of one State illegally on the soil of another State could be regarded as prisoners of war only in the event that the capturing State was in a state of war with the State of which the personnel were nationals. The fact that the eleven airmen had been in uniform was consequently irrelevant. The People's Republic of China had not been and was not in a state of war with the United States.