

The Responsibility of a State in the Shooting Down of Malaysian Airlines Flight MH17

Authors:

Ewa Jasiuk, Anna Konert, Aleksandra Detyniecka, Elwira Targońska



Presentation:
Tadeusz Dunin
Łazarski University
Warsaw, Poland
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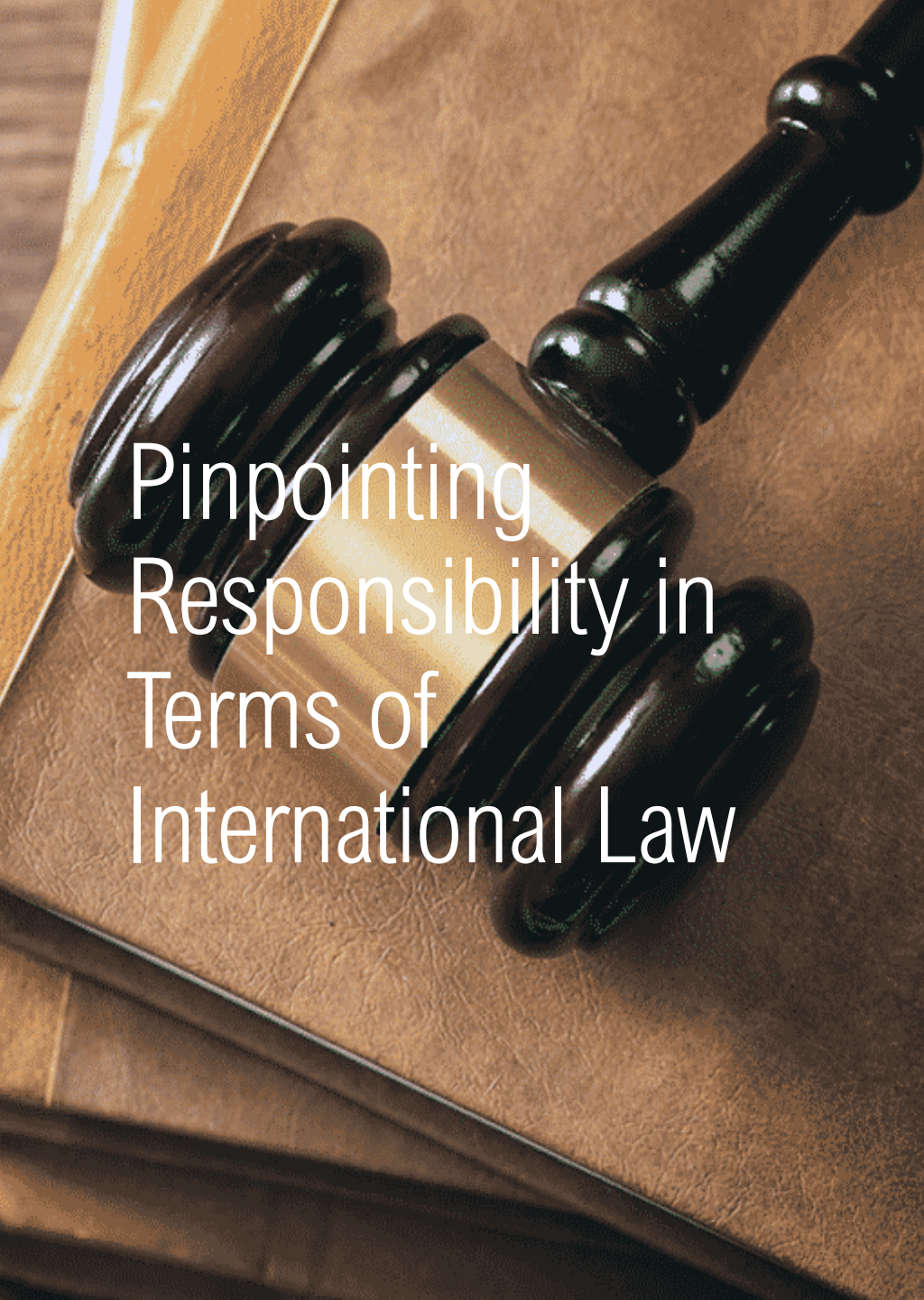


Primary Objective

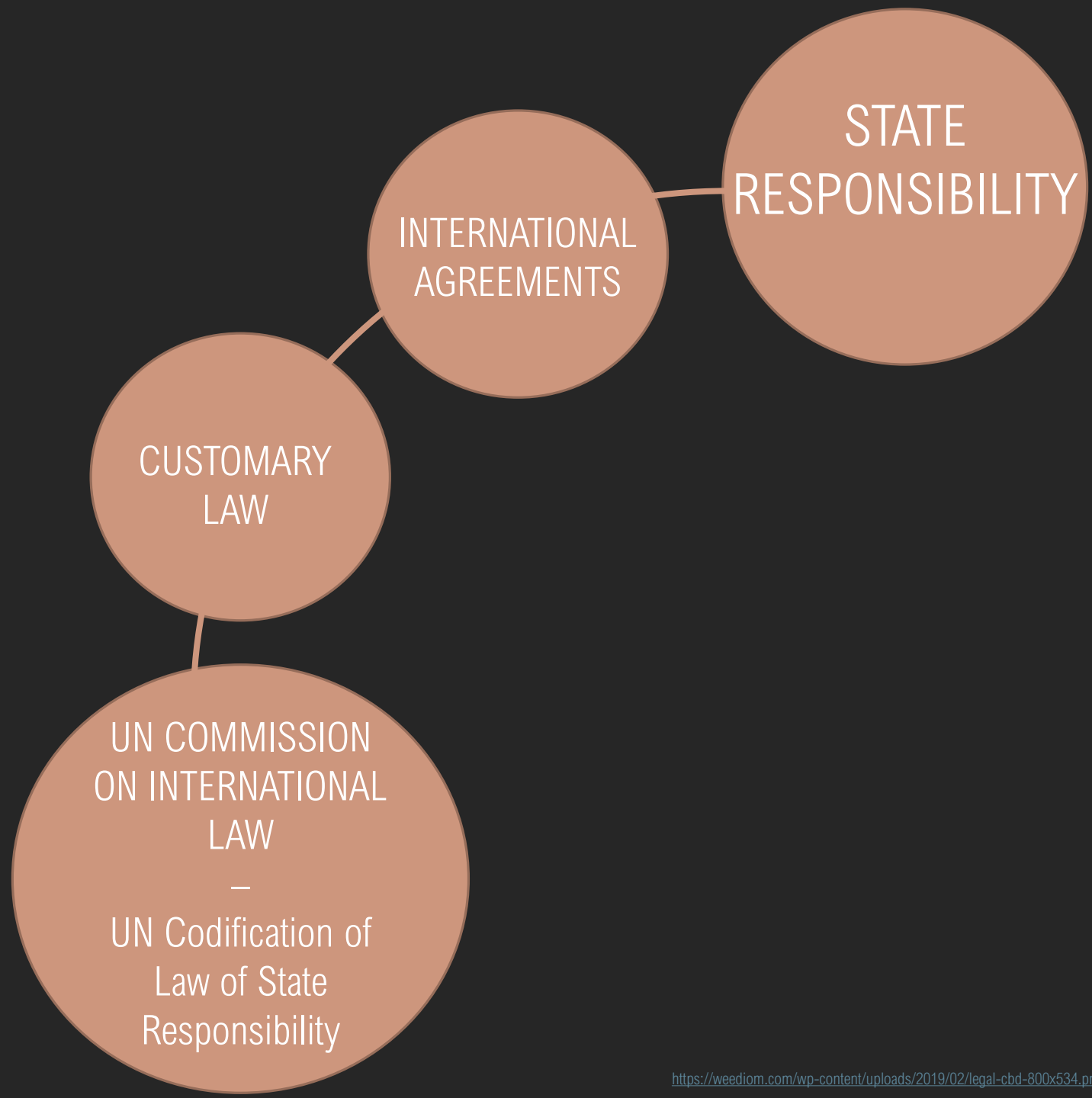


STATE RESPONSIBILITY

*“Under its **territorial sovereignty**, a state can be considered **responsible** for ensuring that its authorities, and persons within its territory, comply with generally applicable rules – including the principle of the **non-use of weapons against civil aircraft**”*



Pinpointing Responsibility in Terms of International Law



ATTRIBUTION = RESPONSIBILITY?

1. Breach of International Obligations
2. Imputability of the State

FAULT



EFFECT





★ Moscow

RUSSIA

Amsterdam

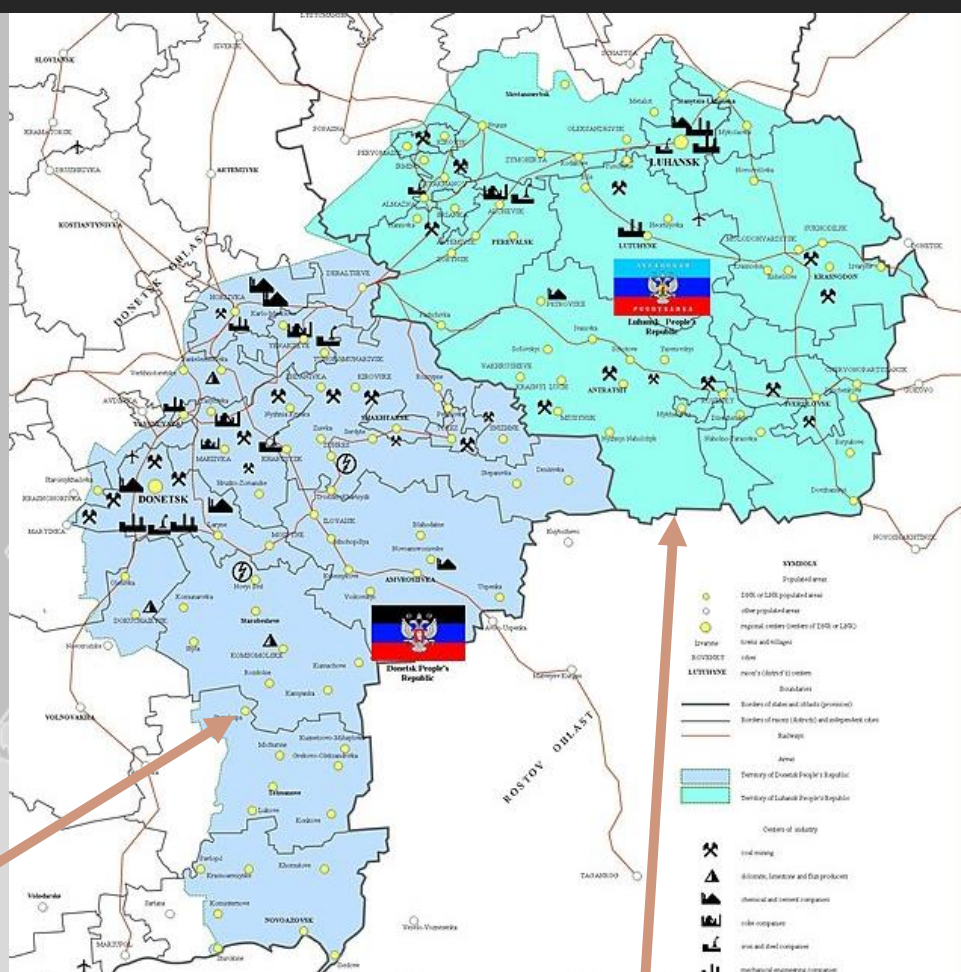
Kiev

UKRAINE

Lost contact

Typical
route

Kuala Lumpur MALAYSIA



Luhansk People's Republic

Responsibility of the Ukrainian State?

§ Under international law, a State may be considered responsible for ensuring compliance by its authorities and **persons within its territory** with generally applicable regulations, such as the principle of the **non-use of weapons against civil aircraft**.



Territoriality & Sovereignty Over Airspace

§ Art. 1 of the **Montevideo Convention of 1933** – a State as a subject of international law should consist of **territory defined by borders**.

§ **Paris Convention of 1919 & The Chicago Convention** – “Every State has **complete and exclusive sovereignty** over the airspace above its territory.”

§ A state's sovereignty over its airspace – found in many international conventions – has become **customary norm**.

§ **Sovereignty = Competences & Obligations**



Circumstances

§ MH17 shot down during military operations.

§ In Eastern Ukraine. In airspace under Ukraine's jurisdiction.

§ Ukrainian authorities closed the airspace over Donbass on July 17th after the incident.



The Investigation

§ Art. 26 of the Convention on International Civil Aviation, Annex 13 to the Convention – Ukraine must investigate.

§ Ukraine requests that the Netherlands take over the investigation.

§ Dutch Safety Board tasked with conducting the investigation.



Cause of MH17 Crash by Dutch Safety Board



A First Instance Case?

§ United States Diplomatic and Consular Staff in Tehran – “inaction” – authorities “failed to take appropriate steps.”

§ Corfu Chanel – no attempt to prevent disaster – indication of international responsibility.



Accountability

§ Who was in charge of the airspace in which MH17 was shot e down?

“Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory (...)” – Convention on International Civil Aviation.

§ Air traffic control and air navigation services for Donetsk Oblast provided under the authority of Ukraine.



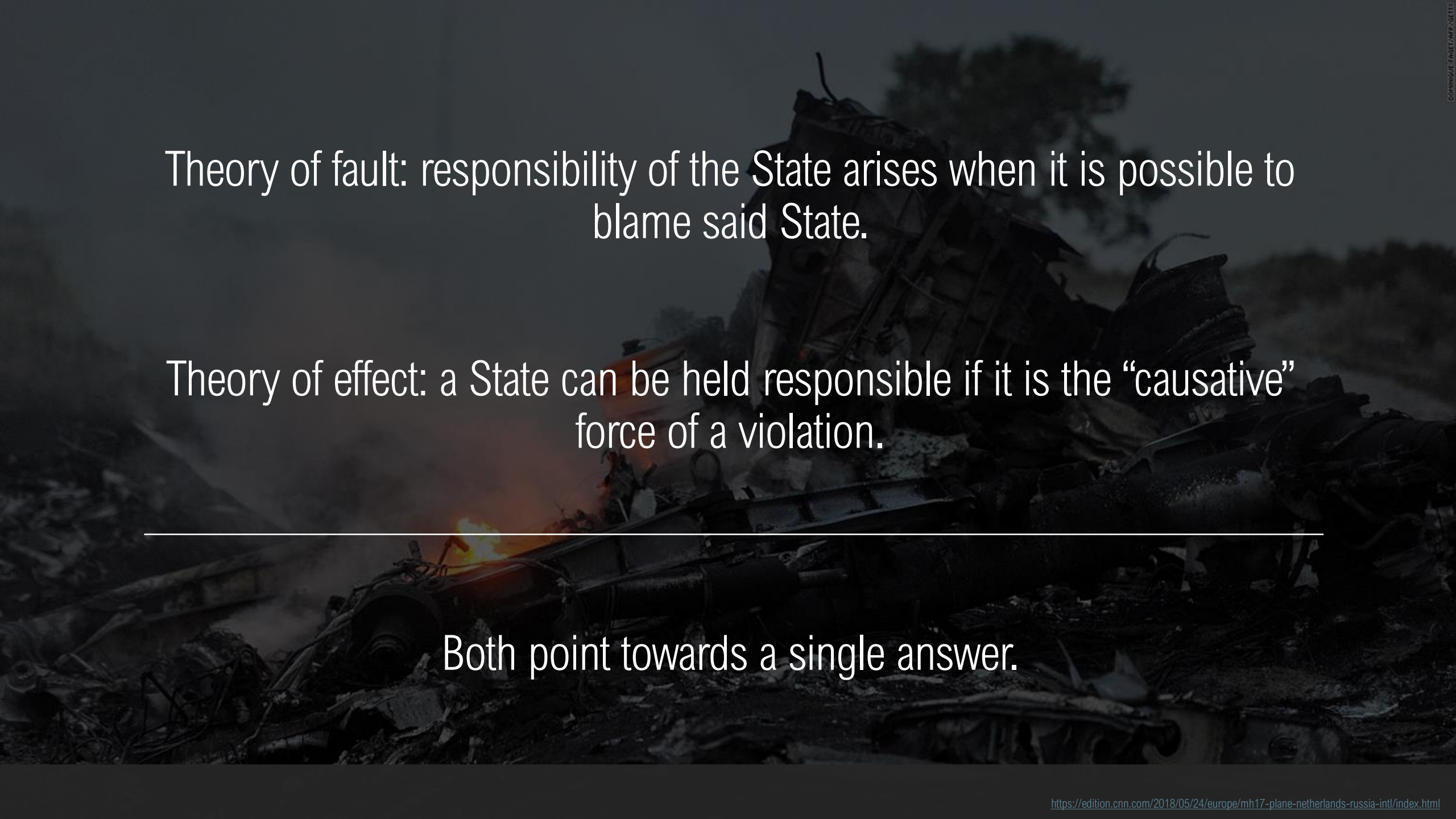
Could This Have Been Avoided?

§ Had the right to establish a prohibited area under.

§ There **cannot** be a **legal vacuum** in any airspace.

“The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft” – Convention on International Civil Aviation.

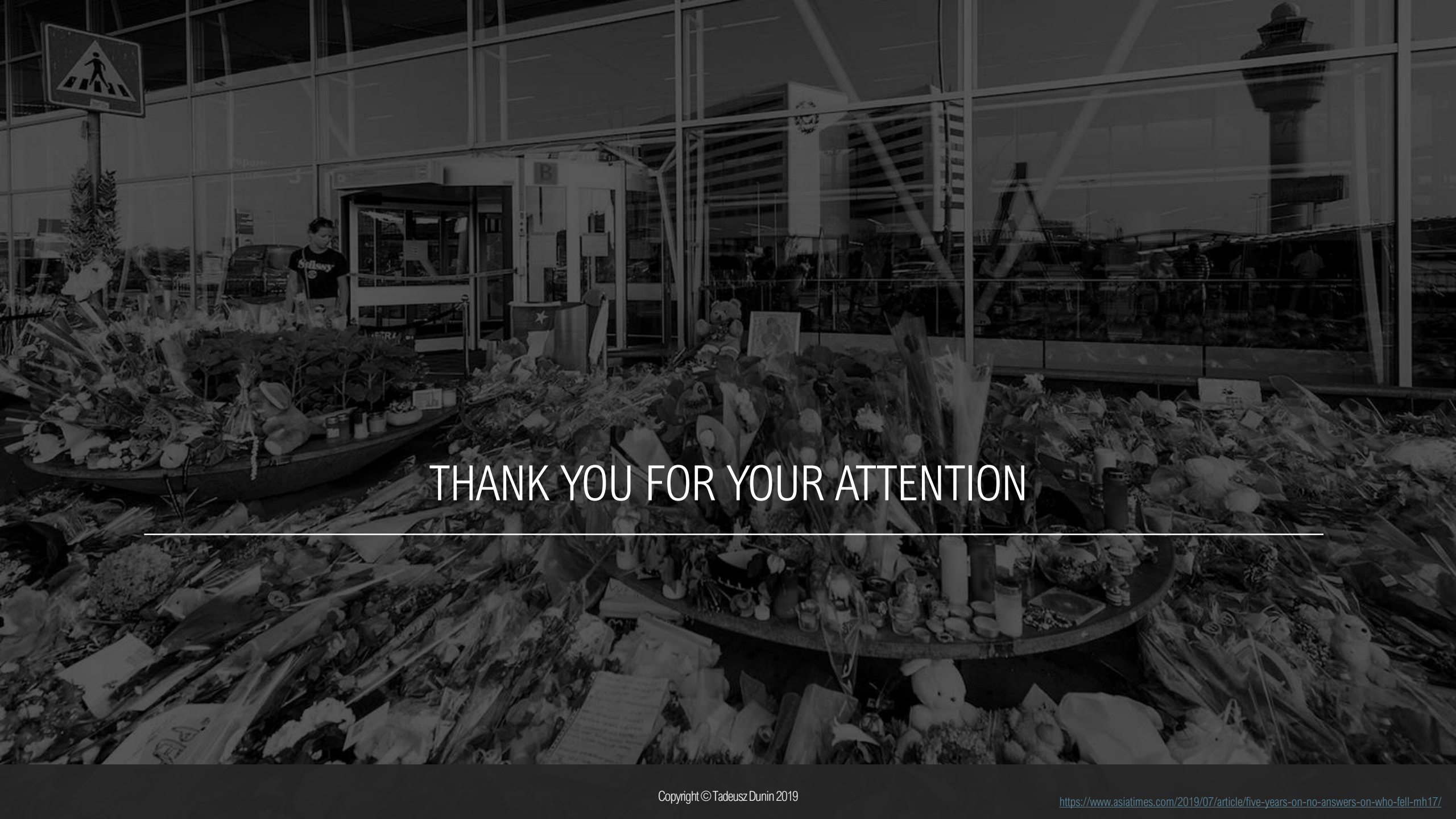




Theory of fault: responsibility of the State arises when it is possible to blame said State.

Theory of effect: a State can be held responsible if it is the “causative” force of a violation.

Both point towards a single answer.



THANK YOU FOR YOUR ATTENTION
