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

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Primary Objective

“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
Donetsk People's Republic (DPR)

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


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

Accountability

§ Who was in charge of the airspace in which MH17 was shot 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