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Abbreviations

ASR	Articles on State Responsibility
CNRC	Canada's National Research Council
COMINCO	Consolidated Mining and Smelting Company
CPA	Citizen's Protective Association
CWC	Chemical Weapons Convention
DARIO	Draft Articles on the Responsibility of International Organizations
EC OPCW	Executive Council of Organization for the Prohibition of Chemical Weapons
ECHR	European Court of Human Rights
EEZ	Exclusive Economic Zone
EU	European Union
FDHS	Field Deployable Hydrolysis System
GA	United Nations General Assembly
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICJ	International Court of Justice
IDA	International Development Association
IJC	International Joint Commission
ILC	International Law Commission
KFOR	Kosovo Force
NGOs	Non- Governmental Organizations
OPCW	Organization for the Prohibition of Chemical Weapons
SAR	Syrian Arab Republic
SC	United Nations Security Council
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNOPS	United Nations Office for Project Services
UNSMIS	United Nations Supervision Mission in Syria
USA	United States of America

WTO	World Trade Organization

Introduction

In the context of this thesis, there will be an effort to record and study an issue in progress, that of the Responsibility of International Organizations in the international arena. More specifically, we will try to approach and investigate an extremely difficult task, the hydrolysis of Syrian chemical weapons in the Mediterranean Sea, a hot modern issue of nowadays that particularly concerned the Mediterranean countries and the whole international community.

Now, it has to be clarified that the theme of this thesis was chosen because of the particular character of the hydrolysis of Syrian chemical weapons. The specificity of the matter lies in the fact that, the hydrolysis process that happens over a decade, took place in the sea at Cape Ray cargo ship. It is also generally known that it took place in the international waters of the Mediterranean Sea, in the west of the hometown of both, my supervisor teacher Ms. Ntaniella Marouda and my own, Crete and this is the other important reason for which I choose to write about such an interesting issue in progress.

At this point I would like to present an idea of "responsibility" a very long time ago. When Pilate saw that he was getting nowhere, but that instead an uproar was starting, he took water and washed his hands in front of the crowd saying the phrase: *"I am innocent of this man's blood. It is your responsibility" (Matthew 27:24).*

The issue of responsibility is a general issue in the human life and history and can take a lot of aspects. The first use of the word "responsibility" in French language dates from around 1783. The term derived from the word répondre, to answer to, and it only acquired a distinct legal connotation- the requirement to answer for a breach of an obligation in the 19th century.

"The expansion of international legal personality, comprising that of international organizations, is nowadays invariably accompanied by the expansion of international responsibility, including that of international organization[1]*"* states Antônio Augusto Cançado Trindade, Judge in the International Court of Justice (ICJ). We can note that until very recently, the domain of the law of international responsibility was centered above all in the international responsibility of States. It is not surprising that, in our days,

[1] A. A. Cançado Trindade, "Some Reflections on Basic Issues concerning the Responsibility of International Organizations" in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 3

it has extended to the responsibility of international organizations[2]. Professor Ian Brownlie observed that international responsibility is "in essence" a question inseparable from that of legal personality in all its forms[3].

The basic issue of international responsibility does not concern anymore only the States, but now also the International Organizations. The hot question is why International Organizations should have international responsibility and towards whom? The theory about the International Organizations which are only tools in the service of States has been confuted. The remarkable expansion of their function and operations, especially from 1990 and so on, proves that International Organizations can play starring role nowadays[4].

In the general course at the Hague Academy of International Law, the Brazilian Judge of the International Court of Justice, Antônio Augusto Cançado Trindade wrote: "*International Organizations, assuming a life of their own, have put an end to the former State monopoly of international legal personality and of privileges and immunities, have expanded the treaty-making power, have, in sum, changed the structure of International Law itself, which would nowadays be inconceivable without them. They have rendered the formation of International Law multifaceted, and the rules pertaining to their own structure, composition and decision- making ever more complex. Their resolutions, of varying contents and legal effects, have contributed to the ascertainment of the communis opinio juris. They have adjusted themselves to the new times and, responding to the needs and aspirations of the international community as a whole, they have enriched the International Law making process and the function of international regulation itself, in covering issues of concern to the whole of humankind*[5]".

The International Law Commission tried to answer in the above mentioned question concerning -why International Organizations should have international responsibility and towards whom- and in 2003 began the codification and the progressive development of International Law in relation with Responsibility of International Organizations.

The International Law Commission, led by the Special Rapporteur Giorgio Gaja followed the same approach as the one it had previously adopted in respect of State

[2] A.A. Cançado Trindade, Direito das Organizaçoes Internationais (5th edition, Belo Horizonte, 2012), 611 and 612-619.
[3] I. Brownlie, Principles of International Law, (7th edition, Oxford, 2008), 433.
[4] Ε. Δούση, "Η διεθνής ευθύνη διεθνών οργανισμών" σε: «Η ευθύνη και προβολή αξιώσεων στο Διεθνές Δίκαιο», συλλογικός τόμος: Το Δίκαιο της Διεθνούς Κοινωνίας (2η έκδοση, Αθήνα, 2014), 487-488.
[5] A.A. Cançado Trindade, International Law for Humankind: Towards a New Jus Gentium. (Brill/ Nijhoff, Leiden and The Hague, 2010) , 639.

Responsibility in 2001, starting from the presumption that the same principles apply but soon it became aware that this new project regarding Responsibility of International Organizations was actually an autonomous one and completely different the one text from the other, even though they are related because of the "mutual nature" of the question.

As a matter of fact, on December 2011, the General Assembly of the United Nations adopted the 67 Draft Articles of the International Law Commission in relevance to the Responsibility of International Organizations (DARIO). Thus, after almost ten years, the International Law Commission has completed its work and only after decades of broader commitment on the issue of international responsibility, which initially focused only on the Responsibility of the State.

The DARIO will be our guide and our tool in order to conceive and analyze the concept of responsibility for International Organizations in order to provide some basic research for the hydrolysis of Syrian chemical weapons and the Joint Mission of United Nations and The Organization for the Prohibition of Chemical Weapons. The 2011 Draft Articles address issues of both substantive and procedural law. Thus after determining that every internationally wrongful act of an international organization "entails the responsibility of that international organization" (article 3), and providing for the attribution of wrongful conduct (act of omission) to an international organization (article 4), the articles single out, for the purposes of attribution, the conduct of organs or agents of an international organization (articles 6-7).

We can note here that we enter into the domain of the regulation of relations between international organizations and individuals (their agents[6]) in addition to States. The expansion of international responsibility has necessarily accompanied, pari passu, the expansion of international legal personality and capacity as well as the expansion of international jurisdiction[7]. This pertains to the issue of the exercise of international legal capacity and in particular the component of procedural equality, as it will be seen later.

All these subjects and some others we will try to approach in order to understand the Responsibility of International Organizations and how it applies or not in the hydrolysis case of Syrian chemical weapons and the Joint mission of the United Nations and the Organization for the Prohibition of Chemical Weapons in order to eliminate all

[6] The 2011 Draft Articles define an "agent of international organization" as "an official or other person or entity, other than an organ, who is charged by the organization with carrying out or helping to carry out, one of its functions, and thus through whom the organization acts". (article 2(d)).

[7] A.A. Cançado Trindade, "The Expansion of International Jurisdiction", O. Delas and M. Leuprecht (eds.), Liber amicorum Peter Leuprecht (Brussels, 2012), 283-295.

the Syrian dangerous chemical weapons which caused so much human pain and suffer in the Syrian conflict.

Part 1

The Syrian Crisis, the response of the International Community and the decision for the Hydrolysis of Syrian chemical weapons in the Mediterranean Sea

Chapter I: The history of the Syrian crisis, the gross violations of human rights and the refugees

The freighter «Baris», under the flag of Kiribati state, became ungovernable at dawn of Tuesday, on November 25, 2014, while sailing in hellenic waters and particularly 30 miles southeast of Ierapetra of Crete. The weather conditions were terrible at that point.

The frigate "Hydra" of the Hellenic Navy was responsible in order to coordinate the procedure and help the freighter. “Hydra” was the local administrator according to the Coordination Center for Research and Preservation of the Ministry of Merchantile Marine. Near the ship were also commercial vessels, while a Super Puma Air Force helicopter was there since the very first moment. The frigate "Hydra" finally reached out to tow the freighter to Crete.

The disembarkation process of the refugees from the freighter *«Baris»* was approximately completed at 6:30 pm of Thursday evening. Earlier in the morning and more specifically, at 10:00 am, the freighter anchored half mile off the coast of Ierapetra, after a long tow from the frigate "Hydra".

On the first count, it seems that 595 persons were in «Baris» including 396 men, 99 women and 100 children. The vast majority of them are Syrians and some Afgans. Nine persons were arrested. Seven crew members and two Kurdish smugglers[8].

This is not the first case with refugees from Syria in Greece. This terrible incident was happening through the whole week and I could not resist to report it in this research

[8]Retrieved by http://news.in.gr/greece/article/?aid=1231366664 on 28 December, 2014 at 07:39 a.m

because cases like that actually happen very often since the Syrian Crisis in the early spring of 2011.

As the time passes, 3,5 years after the Syrian Crisis burst and the situation remains terrible. Bashar al- Assad remains the President of Syrian Arab Republic. He was sworn in for his third seven- year term, on July 16, 2014, in the presidential palace in Damascus. After so many violations of human rights, the extended use of chemical weapons and so many refugees that every day leave their country in order to save their lives, the international community observe all the details of the Syrian Civil War with actually no power to save or control the situation. Greece is one of the first countries that saw the consequences of the Syrian Civil Crisis.

The Syrian Civil War or also known as the Syrian Uprising, is an ongoing armed conflict taking place in Syria. It actually began in the early spring of 2011 within the context of Arab Spring protests, with nationwide protests against President Bashar al-Assad's government, whose forces responded with violent crackdowns.

Soon the situation went out of control and the conflict gradually became an armed rebellion. At first, the armed opposition consisted of groups such as the Islamic Front and the Free Syrian Army.

There were protests, civil uprising, defections and armed insurgency until October 2011, an escalation between November 2011 until March 2012, a ceasefire attempt with Kofi Annan's peace plan for Syria in April- May 2012 but the fighting renewed between June- July 2012 and the battles of Damascus and Aleppo continued in July- October 2012.

In 2013 Hezbollah entered the war in order to support the Syrian Army. In the east, a jihadist militant group originating from Iraq- the Islamic State of Iraq and Levant (ISIL) made very rapid military gains in both Syria and Iraq, eventually conflicting with other rebels. By July 2014, the ISIL controlled one third of Syria's territory and most of its oil and gas production.

As a result, by July 2013 Bashar al- Assad's government was in control of approximately 30% to 40% of the country's territory and about 60% of the Syrian population lives in government-controlled areas, while the rebels effectively control 60% to 70% of the actual territory[9]. That is because the rebels are strongest in less populated rural areas.

[9] Retrieved by http://www.nytimes.com/2013/07/18/world/middleeast/momentum-shifts-in-syria-bolstering-assads-position.html?pagewanted=1 on 25 April, 2014 at 08:50 a.m

A United Nations report of 2012 described the conflict in Syria as "*overtly sectarian*[10]" between the Alawite government forces, militia and other Shia groups[11] fighting against Sunni- dominated rebel groups[12]. But both parties, the government forces and the opposition forces answered that this *is* not true.

The Syrian National Council answered that: *"The Syrian revolution is neither sectarian nor bloody* [13]*"* and added that: "*The revolt against President Bashar al Assad will not divide Syrian society according to religious or ethnic lines. The only division that Syrian society is witnessing is between a bloodthirsty, oppressive regime... and people calling for freedom and equality*[14]*".* Also Hezbollah's leader, Nasrallah responded by warning that opponents of his party and the Assad regime *"they were trying to create a sectarian war in the region (...) the crisis in Syria is not pitting two sects against each other, the battle in Syria is not sectarian, but those who consider it as such are those who are weak and those who are losing out* [15]*"*.

The situation was completely out of control when many international organizations reported the terribly gross violation of human rights and the extended use of chemical weapons.

On March 2013 Amnesty International mentioned that the UN Security Council must refer war crimes committed by both sides in Syria's two-year conflict to the International Criminal Court. Amnesty's deputy director for the Middle East and North Africa, Ann Harrison asked *"How many more civilians must die before the UN Security Council refers the situation to the prosecutor of the International Criminal Court so that there can be accountability for these horrendous crimes?*[16]*"* .

In the meanwhile, Jen Psaki, the U.S. State Department Spokesperson said that *"these atrocities are exactly why we have supported efforts like the one that occurred in*

[10] Retrieved by http://www.aljazeera.com/news/middleeast/2012/12/201212201552505136 5.html on 25 May, 2014 at 09:15 a.m.
[11] Retrieved by http://www.theguardian.com/world/2014/mar/12/iraq-battle-dead-valley-peace-syria on 20 June, 2014 at 10:39 a.m.
[12] Retrieved by http://www.economist.com/news/middle-east-and-africa/21580162-sectarian-rivalry-reverberating-region-making-many-muslims on 26 May, 2014 at 12:05 p.m.
[13] Retrieved by http://www.naharnet.com/stories/en/65685 on 26 April, 2014 at 12:30 p.m.
[14] Retrieved by http://www.naharnet.com/stories/en/65685 on 28 April, 2014 at 1:30 p.m.
[15] Retrieved by https://now.mmedia.me/lb/en/lebanonnews/nasrallah-says-hezbollah-will-not-bow-to-sectarian-threats on 25 May, 2014 at 04:00 p.m.
[16] Retrieved by http://www.globalpost.com/dispatch/news/afp/130313/un-must-refer-syria-war-crimes-icc-amnesty on 25 May, 2014 at 04:40 p.m.

the UN Security Council to refer the Syrian regime to the International Criminal Court[17]".

According to three eminent international lawyers the officials of the Syrian government could face war crimes charges in the light of a huge cache of evidence smuggled out of the country showing the *"systematic killing[18]"* of about 11,000 detainees.

The three former prosecutors at the criminal tribunals for the former Yugoslavia and Sierra Leone, examined thousands of Syrian government photographs and files recording deaths in the custody of regime security forces from March 2011 to August 2013. The vast majority of the victims were young men, many corpses were emaciated, bloodstained and bore signs of torture. Some had no eyes; others showed signs of strangulation or electrocution.

It's a chilling figure that 191,369 men, women and children reported killed in Syria between March 2011 and the end of April 2014[19].

The former U.N. High Commissioner for Human Rights Navi Pillay mentioned that "*The killers, destroyers and torturers in Syria have been empowered and emboldened by the international paralysis (…) There are serious allegations that war crimes and crimes against humanity have been committed time and time again with total impunity, yet the Security Council has failed to refer the case of Syria to the International Criminal Court, where it clearly belongs [20]".*

She also pointed out that the total number of killings is more than double the number documented a year ago and that the new U.N. figure is based on analysis of 318,910 reported killings, in which the name of the victim, as well as the date and location of the death, had to be documented. In order to do so, five different sources of data were used to confirm details and exclude repetitions.

[17] Retrieved by http://www.aa.com.tr/en/u/333013--aa-reveals-new-set-of-photos-documenting-syria-war-crimes on 25 May, 2014 at 05:20 p.m.
[18] Retrieved by http://www.theguardian.com/world/2014/jan/20/evidence-industrial-scale-killing-syria-war-crimes on 15 June, 2014 at 05:40 p.m.
[19] Retrieved by http://edition.cnn.com/2014/08/22/world/meast/syria-conflict/index.html?hpt=imi_c2 on 22 October, 2014 at 06:20 p.m.
[20] Retrieved by http://edition.cnn.com/2014/08/22/world/meast/syria-conflict/index.html?hpt=imi_c2 on 22 September, 2014 at 08:20 p.m.

Pillay called for governments to take *"serious measures to halt the fighting and deter the crimes, and above all stop fueling this monumental, and wholly avoidable, human catastrophe through the provision of arms and other military supplies[21]".*

The Independent International Commission of Inquiry on Syria said in an update on gross violations of humans rights and casualty figures resulting from the conflict to the Geneva- based UN Human Rights Council that: *"The vast majority of serious violations were committed by the Syrian army and security services as part of military or search operations in locations thought to host defectors or armed people, and those seen as supporters of anti-government armed groups[22]"* and added that: *"A series of explosions have taken a heavy toll on human life in the capital, Damascus, and the cities of Idlib and Aleppo and other places[23]"* condemning the indiscriminate nature of the attacks.

Furthermore the Commission was investigating human rights abuses and confirmed at least 9 intentional mass killings in the period of 2012 to mid July 2013, identifying as perpetrator the Syrian governmental regime and its supporters in eight cases and the opposition in one[24]. The commission was chaired by the Brazilian diplomat Paulo Sergio Pinheiro who said that most casualties result from unlawful attacks using conventional weapons and any response to end the conflict *"must be founded upon the protection of civilians[25]".*

The basic targets of the government forces and the armed groups in Syria are the women because of their vulnerability or for political issues, such as bonds or affairs with opposition members or government- related members[26]. The report also says that women are being used as human shields, often with their children[27]. Approximately 6,000 women have been raped or gang-raped since the start of the conflict in March 2011 according to the Euro-Mediterranean Human Rights Network (EMHRN) report with the title

[21] Retrieved by http://edition.cnn.com/2014/08/22/world/meast/syria-conflict/index.html?hpt=imi_c2 on 30 November, 2014 at 09:20 a.m.
[22] Retrieved by http://www.un.org/apps/news/story.asp?NewsID=42079#.VHe36ousVUU on 26 July, 2014 at 09:40 a.m.
[23] Retrieved by http://www.un.org/apps/news/story.asp?NewsID=42079#.VHe36ousVUU on 2 August, 2014 at 10:10 a.m.
[24] Retrieved by http://www.huffingtonpost.com/2013/09/11/syria-massacres_n_3905323.html on 18 June, 2014 at 10:45 a.m.
[25] Retrieved by http://www.cbsnews.com/news/8-massacres-by-syria-regime-and-1-by-rebels-since-april-2012-un-war-crimes-report-shows/ on 20 June, 2014 at 11:05 a.m.
[26] Retrieved by http://www.bbc.com/news/world-middle-east-25100122 on 26 May, 2014 at 12:20 p.m.
[27] Retrieved by http://www.bbc.com/news/world-middle-east-25100122 on 26 May, 2014 at 12:25 p.m.

"Violence against Women, Bleeding Wound in the Syrian Conflict[28]*"*. But it is really necessary to have in our mind that the vast majority of the wounded women of Syria never really reported their rape because they felt very lonely, isolated from their families or in the worst case scenario extremely humiliated.

More than 6.5 million Syrians have been displaced by the war, according to the United Nations until September, 2013. Two million of them have fled to neighboring countries, and one in three are now living in Lebanon[29]. The others have fled to Turkey, Jordan and Iraq. Turkey seems to have accepted more than 1.000.000 refugees and have placed them in camps under the direct authority of Turkish Government. Satellite images confirmed that the first Syrian camps appeared in Turkey in July 2011[30].

Antonio Guterres, the United Nations High Commissioner for Refugees mentioned that *"The Syrian crisis has become the biggest humanitarian emergency of our era, yet the world is failing to meet the needs of refugees and the countries hosting them*[31]*"*.

[28] Retrieved by http://www.globalpost.com/dispatch/news/regions/middle-east/syria/131126/6000-women-raped-during-syrian-conflict on 26 August, 2014 at 12:55 p.m.
[29] Retrieved by http://www.nytimes.com/interactive/2013/09/05/world/middleeast/Syrian-Refugees-in-Lebanon.html on 26 September, 2014 at 01:20 p.m.
[30] Retrieved by http://www.geo-airbusds.com/en/4807-syrian-refugee-camps-in-turkish-territory-interactive-web-report on 27 November, 2014 at 07:20 a.m.
[31] Retrieved by http://www.reuters.com/article/2014/08/29/us-syria-crisis-refugees-idUSKBN0GT0AX20140829 on 27 October, 2014 at 9:05 a.m.

Chapter II: The international reaction and the first sanctions by European Union

Under the Charter of the United Nations, the Security Council has the primary responsibility for the maintenance of international peace and security. The Council also takes the lead in determining the existence of a threat against the international peace and security or an act of aggression.

During the conflict in the area of Syria, on April 14, 2012, the Security Council unanimously adopted the Resolution 2042 (2012). With this resolution the Security Council authorized a team of up to 30 unarmed military observers "to liaise with the parties and to begin to report on the implementation of a full cessation of armed violence in all its forms by all parties". As a result, the Council underlined the importance of pulling back all the military forces and urgently implementing the six-point plan proposed by Kofi Annan, Joint Special Envoy of the United Nations and the League of Arab States. It called all the parties to ensure the safety and free movement of the advance team in order to carry out its mandate. It reminded to the Syrian government its primary responsibility and it also reiterated its call for the authorities to allow immediate and unimpeded access of humanitarian personnel to all populations in need of assistance.

After a week and more specifically on April 21, 2012, the Security Council unanimously adopted the Resolution 2043 (2012), which established for an initial 90-day period, a supervision mission, known as United Nations Supervision Mission In Syria (UNSMIS), comprising an initial and expeditious deployment of up to 300 unarmed military observers, including an appropriate civilian component and air transportation assets, to monitor a cessation of armed violence "in all its forms by all parties " as well as the full implementation of the United Nations Joint Special Envoy's six-point proposal to end the conflict.

After a while, on July 20, 2012, the Security Council unanimously adopted the Resolution 2059 (2012). With this resolution the Security Council "decided to renew the mandate of UNSMIS for a final period of 30 days, taking into consideration the Secretary-General's recommendations to reconfigure the Mission, and taking into consideration the operational implications of the increasingly dangerous security situation in Syria".

There were also sanctions for the Syrian regime from the European Union. In particularly, on October 20, 2012, the Council of the European Union having regard to

the Treaty on the Functioning of the European Union, having regard to Council Regulation (EU) No 36/2012 of January 18, 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (1), and in particular Article 32(1) added some more persons and entities on the list of persons and entities subject to restrictive measures in Annex II to Regulation (EU) No 36/2012 . Up to this point on this list are Bashar al- Assad, his entire family -including his mother, sister, brother, wife, sister-in-law and their families- and the vast majority of his ministers and their families.

In response to the continued brutal repression and widespread violation of human rights by the Syrian government, the European Union had gradually introduced comprehensive restrictive measures, starting on May 2011. They consist in embargo on certain goods which might be used for the manufacture and maintenance of products which could be used for internal repression, ban on provision of certain related services, control of export of certain other goods which might be used for the manufacture and maintenance of equipment which might be used for internal repression, control of provision of certain services, import ban on arms and related materiel, ban on provision of certain related services, embargo on telecommunications monitoring and interception equipment, ban on provision of certain services (related to such equipment), import ban on crude oil and petroleum products, ban on provision of certain services (related to crude oil and petroleum products), embargo on key equipment and technology for the oil and natural gas industries, ban on provision of certain services (to the oil and natural gas industries), ban on provision of new Syrian banknotes and coins, ban on trade in gold, precious metals and diamonds with the Government of Syria, embargo on luxury and extremely special goods, ban on certain investment (in the oil and natural gas industries, in construction of power plants for electricity production), prohibition to participate in the construction of new power plants for electricity production, restraint on commitments for public and private financial support for trade with Syria and ban on new long term commitments of Member States, ban on new commitments for grants, financial assistance and concessional loans to the Government of Syria, prohibition for the European Investment Bank to make certain payments, restrictions on issuance of and trade in certain bonds, restrictions on establishment of branches and subsidiaries of and cooperation with Syrian banks, restrictions on provision of insurance and re-insurance, restrictions on access to airports in the EU for certain flights, inspection of certain cargoes to Syria and prior information requirement on cargoes to Syria, restrictions on admission of certain

persons, freezing of funds and economic resources of certain persons, entities and bodies and prohibition to satisfy claims made by certain persons, entities or bodies. All these measures were valid until 1.6.2015 .

But the European Union did not stop only to these measures. The European Union has stepped up pressure on Syria's president, Bashar al-Assad, by hitting his closest female relatives with new sanctions. The European Union has barred his mother, wife, sister and sister-in-law from travelling within European Union and has frozen their bank accounts and other assets.

Chapter III: The extended use of chemical weapons and the framework for their destruction, United Nations' reaction, the role of the Organization for the Prohibition of Chemical Weapons and the Volunteer Assisting Parties

But as it seems the Syrian tragedy does not stop here. On 21 August 2013, the world was shocked to see images of Syrian civilians, including many children, who appeared to have been the victims of a gruesome chemical weapons attack in the Ghouta area of Damascus. A United Nations fact- finding mission was requested by various member states in order to investigate 16 alleged chemical weapons attacks in Syria since October last year.

Following their investigation of the Sarin attacks that killed hundreds near Damascus on August 21 and based on the reports they had received, the United Nations inspectors eliminated nine of these from its inquiry for lack of *"sufficient or credible information*[32]*"*, leaving six to be investigated- in addition to the attacks on August 21. In four cases the United Nations inspectors confirmed use of sarin gas.

In contrast to the August 21 attacks, where the inspectors said there were *"clear and convincing evidence"* that chemical weapons were used against civilians *"on a relatively large scale",* their findings in relation to other instances were a lot more tentative.

Many countries, including the United States, Russia and the European Union have accused the Syrian government of conducting many chemical attacks, the most serious of them being the 2013 Ghouta and Damascus attacks. There was huge international pressure for the destruction of Syria's chemical weapons right after the above mentioned attacks.

The attack served as an impetus to diplomatic efforts to find a way to eliminate the chemical weapons programme of the Syrian Arab Republic. Those efforts produced the Framework for Elimination of Syrian Chemical Weapons dated on September 14, 2013, agreed upon between the Russian Federation and the United States of America in Geneva.

John Kerry, the United States Secretary of State and Sergey Lavrov, the Minister of Foreign Affairs of Russia met in Geneva in order to find a solution and "*a common*

[32] Retrieved by http://www.al-bab.com/blog/2013/december/sarin-in-syria.htm#sthash.qpRUwBMj.qP5c3jHm.dpbs on 27 May, 2014 at 09:20 a.m.

ground [33]" with the matter of the chemical weapons of Syria. Mr Kerry, Mr Lavrov and their teams of chemical weapons experts plunge into talks aimed at finding agreement on how to dismantle the chemical weapons of Syria and the whole danger that was caused because of them. Lakhdar Brahimi, the international envoy for Syria, was there too in order to have meetings with both of them.

On the same day, the Syrian Arab Republic deposited with the United Nations Secretary General its instruments of accession to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention) and declared that it will comply with its stipulations and observe them faithfully and sincerely, applying the Convention provisionally pending its entry into force in the Syrian Arab Republic, move which was very much welcomed by the Russian President Vladimir Putin because he called it *"an important step towards the resolution of the Syrian crisis"* and added that: *"This confirms the serious intention of our Syrian partners to follow this path[34]"*. Finally Mr Lavrov mentioned that the initiative must proceed *"in strict compliance with the rules that are established by the Organization for the Prohibition of Chemical Weapons[35]"*.

On September 27, 2013, "*the Security Council, deeply outraged by the use of chemical weapons on August 21, 2013, in Rif Damascus as concluded by the United Nations investigation team, endorsed the expeditious destruction of Syria's chemical weapons programme, with inspections to begin by October 1, 2013 and agreed that in the event of non-compliance on behalf of Syria, it would impose "Chapter VII" measures[36]. It also condemned the killing of civilians that resulted from it, affirming that the use of chemical weapons constitutes a serious violation of international law, and stressing that those responsible for any use of chemical weapons must be held accountable[37]".*

[33] Retrieved by http://www.independent.co.uk/news/world/middle-east/syria-crisis-john-kerry-and-sergei-lavrov-announce-constructive-geneva-meeting-to-continue-in-new-york-as-us-and-russia-push-for-geneva-2-peace-talks-8813829.html on 27 November, 2014 at 09:20 a.m.

[34] Retrieved by http://www.independent.co.uk/news/world/middle-east/syria-crisis-john-kerry-and-sergei-lavrov-announce-constructive-geneva-meeting-to-continue-in-new-york-as-us-and-russia-push-for-geneva-2-peace-talks-8813829.html on 27 November, 2014 at 09:40 a.m.

[35] Retrieved by http://www.reuters.com/article/2013/09/15/us-syria-crisis-kerry-lavrov-idUSBRE98E01W20130915 on 27 November, 2014 at 09:45 a.m.

[36] Retrieved by http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf on 27 November, 2014 at 09:58 a.m.

[37] Retrieved by http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf on 27 November, 2014 at 10.00 a.m.

As a result, the Security Council unanimously adopted the Resolution 2118 (2013) in a fast-breaking evening meeting, determined that the use of chemical weapons anywhere in the world constituted a threat to international peace and security.

Exactly the same day, the Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW) adopted the historic decision EC-M-33/DEC.1 on the destruction of Syrian chemical weapons programme. This decision was endorsed by the unanimous adoption of United Nations Security Council.

The Executive Council's decision set out an accelerated programme for achieving the elimination of Syrian chemical weapons by mid- 2014. It required inspections in Syria to begin on October 2013 and called for ambitious milestones for destruction which were to be set by the Executive Council by November 15.

The decision was informed by the preexisting Framework Agreement on the elimination of Syrian chemical weapons, reached by the Russian Federation and the United States of America (S/2013/565), on September 14, 2013 and facilitated the request by the Syrian Arab Republic that the Chemical Weapons Convention be applied ahead of the formal entry into force of the Convention for Syria on October 14.

Specifically, the U.N. Security Council prohibited Syria from using, developing, producing, otherwise acquiring, stockpiling or retaining chemical weapons, or transferring them to other States or non-State actors, and underscored also that no party in Syria should use, develop, produce, acquire, stockpile, retain or transfer such weapons.

It also recalled the obligation under resolution 1540 (2004) that "*all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use weapons of mass destruction, including chemical weapons, and their means of delivery*[38] *"* and that "*all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials*[39] *"*.

It also welcomed the Framework for Elimination of Syrian Chemical Weapons dated on September 14, 2013, in Geneva, between the Russian Federation and the United States of America (S/2013/565), *with a view to ensuring the destruction of the Syrian*

[38] Retrieved by http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004) on 27 November, 2014 at 10:24 a.m.

[39] Retrieved by http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004) on 27 November, 2014 at 10:38 a.m.

Arab Republic's chemical weapons program in the soonest and safest manner and expressed its commitment to the immediate international control over chemical weapons and their components in the Syrian Arab Republic[40].

Moreover the Council welcomed the decision EC-M-33/DEC.1 of the Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW) of September 27, 2013 which established special procedures for the expeditious destruction of the Syrian Arab Republic's chemical weapons program and stringent verification thereof, and expressed its determination to ensure the destruction of the Syrian Arab Republic's chemical weapons program according to the timetable which is contained in the OPCW Executive Council decision.

Also by the text, Syria should comply with all aspects of the OPCW decision, notably by accepting personnel designated by OPCW or the United Nations and providing them with immediate and unfettered access to - and the right to inspect - any and all chemical weapons sites.

Last but not least the Council stressed that the only solution to the current crisis in the Syrian Arab Republic is through an inclusive and Syrian- led political process based on the Geneva Communiqué of 30 June 2012[41]. Absolutely determined that the use of chemical weapons in the Syrian Arab Republic constitutes a threat to international peace and security, the Council underscored that the Member States are obligated under Article 25 of the Charter of the United Nations to accept and carry out the Council's decisions[42].

In the end it declares that it remains actively seized of the matter and waiting Syria's full compliance.

Simultaneously, the Minister of Foreign Affairs of the Russian Federation, Mr Sergey Lavrov, mentioned and emphasized that the responsibility for implementing the resolution did not lay with Syria alone. The text had not been passed under the Charter's Chapter VII, nor did it allow for coercive measures. It contained requirements for all countries, especially Syria's neighbours, which must report on moves by non-State actors to secure chemical weapons.

[40] Retrieved by http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf on 27 November, 2014 at 11:45 a.m.
[41] Retrieved by http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf on 27 November, 2014 at 11:55 a.m.
[42] Retrieved by http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf on 28 November, 2014 at 12:15 p.m.

The OPCW- UN Joint Mission in Syrian Arab Republic was formally established on October 16, 2013. The same day, Ms. Sigrid Kaag, diplomat of the Netherlands was named Special Coordinator of the Joint Mission[43]. Both the establishment of the Joint Mission and the appointment of the Special Coordinator were made in close consultations with the OPCW Director- General.

The Special Coordinator's mandate was to report to both the United Nations Secretary General Ban Ki-moon and the OPCW Director General Ahmet Üzümcü, provide overall coordination of the Joint Mission activities, and liaise and coordinate with the Syrian Government, opposition groups and the international community.

In order to support the Joint Mission's operations, separate but complementary Trust Funds were also established by the two organizations[44]. As mandated by the Security Council, the Joint Mission's main tasks were to oversee the timely elimination of the Syrian chemical weapons programme in the safest and most secure manner possible.

As a consequence a Multinational Maritime Task Force consisted of the naval forces of China, Denmark, Norway, Russia and the United Kingdom was positioned in the eastern Mediterranean Sea in order to provide secure transportation of Syrian chemicals to their ultimate destruction location. The cargo ships had additional capacity to deal with chemical spills or emergencies and a special chemical response team was available along with expert chemical response personnel from Finland.

An OPCW- UN advance team arrived in Damascus on October 1 where the Joint Mission had its operational base in order to start carrying out the *Mission's* activities.

The process of the transfer of the chemical materials outside of Syria started on January 7, 2014. The first delivery of priority chemical materials was removed from two sites to the Syrian port of Latakia. Latakia is the port of embarkation for chemicals to be removed from Syria. These chemicals had been packed and loaded securely in containers that meet international standards for the transport of dangerous goods by sea and had been inventoried and sealed by OPCW inspectors. At Lakakia, the chemicals are being loaded onto Danish and Norwegian cargo vessels, MV Ark Futura and MV Taiko respectively.

[43] Retrieved by http://opcw.unmissions.org/AboutOPCWUNJointMission/Background.aspx on 29 November, 2014 at 12:33 p.m.
[44] Retrieved by http://opcw.unmissions.org/AboutOPCWUNJointMission/Background.aspx on 29 November, 2014 at 01:45 p.m.

The Italia port of Gioia Tauro would be used for transferring some Priority I chemicals such as a precursor for chemical weapons and a small amount of mustard agent, from the Danish cargo vessel to the MV Cape Ray. The transloading would take place with minimal response equipment and personnel would be available to deal with any unlikely chemical incidents. OPCW inspectors were present at Gioia Tauro port to inventory the materials that would be transloaded from one ship to the other.

Speaking to reporters after briefing the Security Council on the following day, Special Coordinator Sigrid Kaag noted that "*this movement was very important because it was the first important step in an expected process of continued movement for the destruction out of Syria*[45]*".*

There is a contradiction between the whole multinational mission- process of the transfer of the chemical materials outside of Syria and Article I- General Obligations of the Chemical Weapons Convention which clearly mentions that "*Each State Party to this Convention undertakes never under any circumstances: To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone*[46]*".*

As we can understand from the principle in this Convention it is prohibited to transfer directly or indirectly any chemical weapon and according to International Law and the Law of the Treaties, this different approach is kind of difficult. In an interview that I recently had with the Legal Adviser of the OPCW in the headquarters of the organization in The Hague, I asked if this general obligation didn't apply due to the implementation of "broad interpretation" that induces fewer obligations of the parties. As he mentioned "*exceptional cases implement extraordinary measures".*

Up to this point, it is crystal clear that in case of any chemical accident the Organization for the Prohibition of Chemical Weapons, like the United Nations, bears no responsibility. In particular in respect of the neutralization on board the Cape Ray, the United States' Navy assumes all liabilities which would arise in case of an accident.

As it has been previously observed, this was a multilateral task in which the OPCW's primary role was strictly limited to the verification of the full completion of the

[45] Retrieved by http://opcw.unmissions.org/AboutOPCWUNJointMission/Background.aspx on 27 November, 2014 at 02:14 p.m.

[46] Retrieved by http://www.opcw.org/chemical-weapons-convention/articles/article-i-general-obligations/ on 27 November, 2014 at 03:05 p.m.

destruction of chemical weapons of the Syrian Arab Republic in accordance with the Chemical Weapons Convention. As a result, in case of a chemical accident the vessels would take full responsibility for their own actions.

This mutual understanding is also reflected in a letter from the UN Secretary General Ban Ki-moon, dated on December 17, 2013, to the President of the UN Security Council which states: *"Once on board the maritime vessels, relevant Member States will assume their respective responsibilities through the multilateral legal framework established by the Security Council in its resolution 2118 (2013) and by the decisions of the OPCW Executive Council".*

This understanding is also reflected in paragraph 15 of the The Plan for the Destruction of the Syrian Chemical Weapons Outside the Territory of the Syrian Arab Republic in which it is said that: *"With respect to their responsibilities, the States Parties assisting in the destruction of Syrian chemical weapons, transporting Syrian chemical weapons from the territory of the Syrian Arab Republic to a State Party hosting destruction activities, or hosting destruction activities on their territory ("Assisting States Parties") have arrived at certain common understandings. Accordingly, it is recognized that the United Nations Security Council resolution 2118 (2013) and the relevant Executive Council decisions establish a multilateral legal framework for the activities of the Assisting States Parties. The responsibilities of the Assisting States Parties, including liability for claims will be determined according to the circumstances, to the extent of their respective roles, and in light of the purposes of resolution 2118 (2013) and applicable Council decisions. Should an unexpected contingency arise in this regard, the Assisting States Parties could raise the situation to the United Nations Security Council or the OPCW Executive Council. An exchange of letters on this matter took place between the Secretary-General of the United Nations and the President of the United Nations Security Council on 11 December 2013[47]".*

As already noted, under Article IV- Chemical Weapons- the paragraphs 10-12 of the Chemical Weapons Convention are very descriptive about the responsibility of the state parties. As it is mentioned: *"Each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall transport,*

[47] Retrieved by http://www.scribd.com/doc/192339195/OPCW-plan-for-destroying-Syria-s-chemical-weapons on 27 November, 2014 at 04:15 p.m.

sample, store and destroy chemical weapons in accordance with its national standards for safety and emissions. Any State Party which has on its territory chemical weapons that are owned or possessed by another State, or that are located in any place under the jurisdiction or control of another State, shall make the fullest efforts to ensure that these chemical weapons are removed from its territory not later than one year after this Convention enters into force for it. If they are not removed within one year, the State Party may request the Organization and other States Parties to provide assistance in the destruction of these chemical weapons. Each State Party undertakes to cooperate with other States Parties that request information or assistance on a bilateral basis or through the Technical Secretariat regarding methods and technologies for the safe and efficient destruction of chemical weapons[48]*".*

Although this obligation would normally apply to a possessor State Party who is required to destroy its own chemical weapons, in the present case this obligation was transferred to the Assisting States Parties hosting destruction activities. In addition to being subject to the Chemical Weapons Convention and the decisions of its governing bodies, the Assisting States Parties also have responsibilities under international law, namely under the International Convention for the Safety of Life at Sea of 1974, the International Convention for the Prevention of Pollution from Ships of 1973, consequently the International Maritime Dangerous Goods Code and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

According with the Resolution 2118 (2013), the Joint Mission continued to report to the Security Council on a monthly basis on progress achieved by Syria in meeting the requirements towards the destruction of its chemical weapons.

On June 4, Ms. Kaag warned the Security Council that the 30 June 2014 deadline set for the destruction of Syria's full arsenal of chemical weapons would not be met. However, she stressed that "significant" progress had been made since January in disassembling most of Syria's declared chemical weapons. She also said that the mission would focus on the urgency of removing the remaining 7.2 percent of the declared material still held at one site, which had been hampered by volatile security conditions.

[48] Retrieved by http://www.opcw.org/index.php?eID=dam_frontend_push&docID=6357 on 27 November, 2014 at 05:12 p.m.

By June 23, the final delivery of the declared chemical weapons was shipped out of Syria for destruction at sea, bringing the total of declared chemical weapons materials destroyed or removed from Syria to 100 percent. In addition, all declared stocks of the Category I chemical isopropanol had been destroyed inside the Syrian territory.

A further milestone in the international community's unprecedented efforts to eliminate the chemical weapons of Syria was reached on August 20, 2014 with the completion of the destruction of all declared chemical weapons materials aboard U.S. ship Cape Ray.

The MV Cape Ray has been fitted with two Field Deployable Hydrolysis Systems[49] (FDHS) that would neutralize about 600 metric tonnes of Priority I[50] chemicals in the international waters of the Mediterranean. The Italian port of Gioia Tauro was used for transferring some Priority I chemicals from the Danish cargo vessel to the MV Cape Ray. At all stages of the process aboard the MV Cape Ray, the chemicals to be neutralized and the resulting effluent would be safely stored and handled by trained and experienced personnel. OPCW inspectors were continuously present aboard the MV Cape Ray to ensure that all requirements of the Convention would properly observed, including those related to the safety of the crew and protection of the environment.

The Chemical Weapons Convention strictly bans the dumping of chemicals in any body of water and requires States Parties to insure that during the operations the highest priority above them all is assigned to ensuring the safety of the people and the protection of the environment.

Inherently all the transportations of the chemicals and subsequent operations at their final destinations followed strict national and international regulations for transportation safety and protection of the environment.

There will take place shipments both in Europe and the United States of America. The shipments in Europe include shipments in United Kingdom, Finland and Germany.

Under an in-kind contribution from the Government of the United Kingdom, Veolia, a commercial waste company, will destroy around 150 tonnes of chemicals at

[49] The two Field Deployable Hydrolysis Systems has been designed on the basis of technology used over the past four decades in the US chemical weapons destruction programme to hydrolyse chemical warfare agents. The FDHS uses water, sodium hydroxide (NaOH), sodium hypochlorite (NaOCl) and heat to hydrolyse the chemicals with 99.9 percent effectiveness. All of the effluent resulting from the hydrolysis process will be safely stored on board the MV Cape Ray.

[50] Some Priority 1 chemicals will be destroyed through a two- step process. The first step, hydrolysis will occur at sea on board the MV Cape Ray. The chemicals will not be dumped or buried in the sea at any stage, and therefore no chemicals will be released into the environment.

Ellesmere Port. The chemicals are similar in nature to standard industrial materials which are safely processed on a regular basis at the facility. They will be off-loaded at a British port from the Danish cargo vessel Ark Futura and inventoried by OPCW inspectors.

The Finnish hazardous waste management company, Ekokem AB was awarded a contract by the OPCW to destroy around 360 tonnes of Priority 2 industrial chemicals. The chemicals will be off-loaded from the Norwegian vessel Taiko at a designated port in Finland, inventoried by OPCW inspectors and then treated at Ekokem's Riihimaki treatment center in southern Finland. Ekokem will also dispose of around 4.500 litres of effluent generated on the MV Cape Ray, which will be brought to Finland by the MV Cape Ray.

Under an in-kind contribution from the government of Germany, the Gesellschaft zur Entsorgung von chemischen Kampfstollen und Ruestungsaltlasten (GEKA) in Munster will destroy the effluent created by the neutralization of the mustard agent aboard the MV Cape Ray. The effluent will be off-loaded from the MV Cape Ray at a designated port in Germany and will be inventoried by OPCW inspectors also.

Veolia Environmental Services Technical Solutions in the United States of America was one of the two companies awarded a contract by OPCW in order to destroy chemicals from Syria following a rigorous solicitation process, in this case around 145 metric tonnes of Priority 2 inorganic chemicals. The chemicals will be off-loaded from the Norwegian vessel Taiko at a designated port in the USA and inventoried by OPCW inspectors. The five types of chemicals that will be destroyed here by incineration are standard industrial chemicals, which are transported and widely used across the United States every day.

OPCW inspectors will also confirm and report the destruction of the effluent and ensure that all requirements of the Convention are properly observed during the operations.

On August 25, 2014 the Secretary-General welcomed the final stage of the operations and told the Security Council that with the completion of all declared priority chemical weapons materials, and following consultations with the OPCW Director-General, he would bring the Joint Mission to a close on 30 September. He also encouraged the Syrian authorities to proceed expeditiously with the destruction of the remaining 12 production facilities.

Further updating the Security Council on September 26, the Secretary-General announced that arrangements were being finalized between the OPCW and the United

Nations Office for Project Services (UNOPS) to enable OPCW to continue its remaining inspection and verification activities in Syria beyond September 30, 2014.

While the OPCW- UN Joint Mission successfully completed its mandate, the Secretary-General expressed his deep gratitude to the Special Coordinator, Ms. Sigrid Kaag, as well as all the staff members from both the UN and the OPCW, noting that the mission had successfully conducted its work under extremely challenging and complex circumstances.

The United Nations has consistently stressed that conventional weapons continue to kill while Syria's conflict goes on and urged the international community to step up efforts to end the fighting through a peaceful political solution. The Secretary-General has also repeatedly stressed the need for a world free of chemical weapons and reiterated his call to those States that have not done so, to accede to the Chemical Weapons Convention.

Chapter IV: The Hellenic approach to the hydrolysis solution

On 20 January, 2014, the Vice President of the Hellenic Republic and Minister of Foreign Affairs, Evangelos Venizelos gave a Presentation related with the Hellenic Presidency's priorities to the European Parliament in Brussels.

In his presentation the Minister mentioned that the Hellenic Republic trusted a lot the United Nations, the Organization for the Prohibition of Chemical Weapons and all the European States that would operate in that effort. He added that essential role would play Denmark, Norway, Italy and Germany. He also said that he was sure about the whole procedure of the hydrolysis of Syrian chemical weapons and that the use of chemical weapons was completely unacceptable. He stated that chemical weapons are a threaten for the international peace and security all over the world and that after often conversations with the German and Italian Ministers of Foreign Affairs he did not fear that the Mediterranean Sea would be polluted from a possible accident, but in any case he expressed his doubts about the location of the Hydrolysis. He preferred the Atlantic Ocean as a different alternative because of the open waters instead of Mediterranean Sea. Finally, he closed his speech saying that he would communicate with Catherine Ashton in order to take all the necessary guarantees that the Mediterranean environment would not suffer any harm[51].

The day after, on 21 January, 2014 again from Brussels the Vice President Evangelos Venizelos told to the Greek journalists that the Greek Government had already spoken with UN, OPCW and the States that would took part in order to guarantee that any waste or toxic or other substance would reach the waters of the Mediterranean Sea[52].

He tried to calm down the local community of Crete that was very stressed and anxious about the whole procedure of the hydrolysis, the damage for the Mediterranean environment and themselves. It has to be mentioned that the Pancretan Committee for the destruction of Syrian chemical weapons in the Mediterranean Sea had sent a letter of complaints in the Director- General of OPCW, Mr. Ahmet Üzümcü, in order to express

[51] For more information of the comments of Vice President of the Hellenic Republic and Minister of Foreign Affairs Evangelos Venizelos, here : http://www.mfa.gr/epikairotita/diloseis-omilies/parousiase-proteraioteton-ellenikes-proedrias-apo-ton-antiproedro-tes-kuberneses-kai-upeks-eu-benizelo-sto-europaiko-koinoboulio-kai-apanteseis-se-eroteseis-eurobouleuton-bruxelles-20012014.html

[52] Retrieved by http://www.mfa.gr/epikairotita/diloseis-omilies/deloseis-antiproedrou-tes-kuberneses-kai-upeks-eu-benizelou-stous-ellenes-antapokrites-stis-bruxelles.html on 25 April, 2014, at 10:33 a.m.

all its doubts about the procedure and the chosen point for the case. The Minister mentioned that they are in a continuous dialogue with UN, OPCW and the other assisting member States in order to avoid the location of the Mediterranean Sea and tried to convince all the members who have taken part in this letter that everything is under control by the Hellenic side .

On 22 January, 2014, the Ministry of Foreign Affairs made its official announcement about the hydrolysis of Syrian chemical weapons and the whole procedure. The Minister along with the General Director of Greenpeace Mr. Nikos Charalambidis reassured that three NGOs, Greenpeace, WWF and Oceanica had already informed by General Director of OPCW about the whole procedure, that there was no risk in this plan and that the Mediterranean environment would not be damaged under any circumstances[53]. For another time the Minister repeated all the above mentioned comments of 20/01 and 21/01 and finally closed his speech by saying that he would personally tried to communicate with the High Commissioner of European Union in order to guarantee once more that there was no risk of harm or damage for the Mediterranean Sea.

Two months later, on 28 March, 2014 Evangelos Venizelos sent an open letter[54] to the local community of Crete in order to inform them about the situation. He mentioned that they did not have the chance to change the location of the hydrolysis but they did have all the guarantees that the operation would take place with success. He explained that the Organization of United Nations and the Organization for the Prohibition of Chemical Weapons are the only two entities that can guarantee that all the necessary measures had already been taken in order to be the Mediterranean environment safe and sound and that the lives of the Cretans do not run under any danger.

The Ministry of Foreign Affairs quite often informed the public opinion about the procedure of hydrolysis. Moreover, until last May, the Minister was very active and answered a lot of times in questions of Members of the Hellenic Parliament, journalists and others.

[53] Retrieved by http://www.mfa.gr/epikairotita/eidiseis-anakoinoseis/anakoinose-upourgeiou-exoterikon-gia-to-zetema-tes-katastrophes-ton-khemikon-oplon-tou-suriakou-oplostasiou.html on 28 April, 2014 at 11:52 a.m.

[54] Retrieved by http://www.mfa.gr/epikairotita/eidiseis-anakoinoseis/epistole-tou-antiproedrou-tes-kuberneses-kai-upourgou-exoterikon-eu-benizelou-pros-phoreis-tes-kretes-anaphorika-me-ten-katastrophe-tou-khemikou-oplostasiou-tes-surias.html on 29 April, 2014 at 11:38 a.m.

Part 2

International Responsibility for Acts of States and International Organizations not Prohibited by International Law

Chapter I: The relationship between States and International Organizations

States are one of the three basic players in International Law. The other two are International Organizations and the Individuals. It is not necessary to say that the practice and theory of international law must increasingly be investigated through a multipolar prism[55]. States, international organizations, non- governmental organizations (NGOs), members of the civil society and individuals all converge, interact and transact against a multipolar backdrop. States no longer enjoy an unfettered monopoly over resource to force or seemingly sacrosanct status as the dominant players on the international plane. In this chapter we will try to approach the general character of the States and International Organizations, the interplay among them and their relationship.

The Article 2 of paragraph 1 of the United Nations' Charter underlines that: *"The Organization is based on the principle of the sovereign equality of all its Members*[56]". The same Principle lies on the Declaration 2625 (XXV) of the United Nations' General Assembly as follows: "*All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature*[57]*"*.

States, whether they are big or small, wealthy or poor, participate in international organizations equally in order to intensify and promote their mutual special interests. The international community functions better when the international arena is complete as a whole and secure and everyone works for the international security, justice and peace.

[55] V.- j.Proulx, "An Uneasy Transition? Linkages between the Law of State Responsibility and the Law governing the Responsibility of International Organizations", in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 109.

[56] Retrieved by http://www.un.org/en/documents/charter/chapter1.shtml on 26 March, 2015 at 3:15 a.m.

[57] Retrieved by http://www.un-documents.net/a25r2625.htm on 26 March, 2015 at 3:20 a.m.

Until 1919, the only players who had duties and rights directly in International Law and they had international legal personality, were the States. Only after the great development of International Relations, International Organizations are nowadays subjects of International Law with first of all, the United Nations and then the vast majority of them. They function for many different purposes and in the general framework of international community. All these international organizations can have different will from their member states. It is useful to admit that every State which participates in an International Organization confers a big and strong part of its control and jurisdiction and makes some compromises in order to join the Organization.

Every International Organization has been established under a Convention or a Treaty that States have already agreed on. This Convention set the purposes, the structure and the extent of the responsibilities and jurisdiction of the International Organization. The basic distinction of International Organizations lies in the question if they are International, Regional, General or Special, their basic characteristics and organs and their international personality. As a matter of fact, special and basic characteristics are different mechanisms through which they try for international cooperation. Their special organs differ from them of member states and international personality is really essential for every international organization as it can express its demands and through them the international responsibility in front of the others.

As we have seen earlier all International Organizations are not the same. There is a big diversity among them. They do not possess a general competence in contrast with States. Moreover they have been established in order to exercise some very specific functions (Principle of Speciality). There are so many differences among international organizations due to their powers and functions, size, members, relations between the organization and its members, procedures for deliberation, structure, facilities and the primary rules of law including treaty obligations by which they are bound.

Generally, States confer powers on international organizations in order to allow them to achieve specified objectives. However, when considering issues of responsibility whether of the Organization or the State or both of them, careful consideration is really necessary because of the nature of the specific relationship between the State and the International Organization since these vary a lot in international practice. The mechanism by which these powers can be conferred by States on an International Organization also varies much, for example they may be conferred by means of a State's ratification of a

constituent treaty which provides for such conferrals[58] or they may be conferred by States on an ad hoc basis outside the context of a membership scenario[59].

A helpful way of considering these relationships is to analyze the degree to which a State has given away or has conferred its powers to an International Organization. There are three characteristics of conferrals that can be used to determine the degree to which powers have been given away by a state and thus within which category a particular conferral of powers can be placed. First is the question of revocability: Can a State lawfully revoke its conferral of powers onto an International Organization? Second is the degree to which States retain control over the exercise of powers by the International Organization. And the third question is whether an International Organization possesses an exclusive right to exercise conferred powers or whether States have retained the right to exercise powers concurrently with the International Organization.

The conferral of powers is revocable on a unilateral basis in the case of "agency relationship[60]"; States can exert direct control over the International Organization's exercise of powers and States retain the right to exercise powers concurrent with, and independent of, the Organization's exercise of powers.

The conferral of powers is revocable on a unilateral basis also in the case of a "delegation of powers"; however States cannot exert direct control over the International Organization's exercise of powers and States retain the right to exercise powers concurrent with, and independent of, the Organization's exercise of powers.

Finally, in the case of a "transfer of powers", the conferral of powers is irrevocable according to law; States cannot exert direct control over the International Organization's exercise of powers and nor do States retain the right to exercise powers concurrent with, and independent of, the Organization's exercise of powers, that is, a State has consented to be bound by obligations that flow from the international organization's exercise of conferred powers.

As a matter of fact, it is hard to examine the exact degree to which States have given away their powers in the case of transfers. For this reason, it is necessary to distinguish

[58] Legality of the Treat of Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, p. 66, at p. 79, para. 25.

[59] D. Sarooshi (ed.), "International Organizations: Personality, Immunities and Responsibility" in Mesures de réparation et responsabilité à raison des actes des organisations internationals/ Remedies and Responsibility for the Actions of International Organizations, (Hague Academy of International Law/ Académie de Droit International de la Haye, Martinus Nijhoff Publishers, Leiden/ Boston, 2014), 8, 20.

[60] D. Sarooshi, "Conferrals by States of Powers on International Organizations: The Case of Agency", 74 BYIL (2004), 291-332.

between "partial transfers" and "full transfers". The difference between them depends on the extent to which States can be said to have consented to be bound by obligations that flow from the international organization's exercise of conferred powers.

In the case of "partial transfers", a State agrees to be bound by obligations that flow from the international organization's exercise of powers on the international plane. Such an example of a partial transfer is appeared in the case of the World Trade Organization (WTO) dispute settlement system where States have consented to be bound on the international plane by decisions of the WTO panels and Appellate Body in a case. In the case of "full transfers" however the State has also agreed to give direct effect within its domestic legal order to the obligations that flow from the international organization's exercise of powers such that they can be relied on by persons within the State without the need for separate domestic legislation. The most obvious instance of a full transfer is the European Union where for example Council regulations have direct effect within the legal systems of Member States and will prevail over all domestic law sources according the view of the European Court of Justice.

These categories of transfers are very useful when considering the differing relationships between States and International Organizations and can help clarify a number of the consequences that flow from these relationships, including for present purposes, the issue on question, this of responsibility.

There are no doubts today that both states and international organizations are subjects of international law. They possess international legal personality even though it is not necessarily identical in its scope and nature.[61] Due to their international legal personality, it is not difficult to deduce that such organizations can not only demand that other international individuals be responsible to them, but they can also be held responsible to other international individuals because they have obligations at international law[62]. In case of a breach of international law by an international organization, the question arises. Who is responsible in such a case: the international organization, its member states, both of them, or neither of them? Responsibility is a key concept of any legal order, including the system of international law. States have international responsibility in general because their duties flow from the "effective

[61] See *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949,* 174, at 178.

[62] D. Sarooshi, "International Organizations and State Responsibility", in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 82.

control" that they have over their territory, airspace and individuals or from their relations with other international entities or individuals arising from treaties or otherwise. On the other hand, International Organizations have no control over some of the elements that the States do have.

The parallel expansion of international personality and responsibility is unquestionable. In the case of international organizations, the expansion of their international legal personality is without exception accompanied by the expansion of their international responsibility[63]. A while ago, the States were in the center of the law of international responsibility but it is not unexpected that nowadays it has extended to the Responsibility of International Organizations[64]. As a result the international organizations have overcome the traditional "compétence nationale exclusive" and have given their own contribution to the expansion of international responsibility.

In relevance with the responsibility of international organizations, practice always recognized that such organizations are subject to such responsibility, particularly since the establishment of the United Nations and its special agencies. The breach of a substantive international obligation would entail international responsibility as international organizations are liable for breaches in international agreements. For instance when International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) enter into a financial agreement with a State, the failure of IBRD or IDA to carry out their obligations would involve their international responsibility.

About States, Professor Alain Pellet writes that: *"States can be big or small, wealthy or poor but they are supposedly equal and, whatever their actual situation, when their responsibility is entailed for an internationally wrongful act, they are under an obligation to make full reparation for the injury caused by the internationally wrongful act[65]"*. In this concept as we can see, it can be said that the law of international responsibility ignores the concrete situations and does not take into account whether or not the concerned States can make the full reparations as demanded. Although this is a

[63] A.A. Cançado Trindade, "Some reflections on basic issues concerning the responsibility of International Organizations", in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 3.

[64] A.A. Cançado Trindade, "Direito das Organizações Internacionais", (Del Rey, 5th edn, Belo Horizonte, 2012), 611- 619.

[65] A. Pellet, "International Organizations are definitely not States. Cursory remarks on the ILC Articles on the Responsibility of International Organizations", in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 42.

complex problem, statistically a big, wealthy and powerful State is probably better equipped and able to cause a huge damage than a small and poor one and the former can make full reparation much more easily than the latter[66]. Taking everything into consideration, we can say that States may usually be better equipped to face the consequences of their internationally wrongful acts than the International Organizations.

To sum up, all the subjects of international law appertain to the judicial system while the international responsibility guarantees their normal mutual coexistence. An international organization which has legal personality is an independent entity in international relations and as a matter of fact bears responsibility for its actions or "omissions" and has to stand all the negative consequences because of its conduct. The real difference between the responsibility of States and International Organizations is that the responsibility of States is directly related with their sovereignty. On contrary, the responsibility of International Organizations is related with their autonomous nature which expressed through their legal personality.

However, in the framework of the present dissertation, it is necessary to examine the special case of the Hydrolysis of Syrian chemical weapons in the Mediterranean Sea. As it has been already mentioned, this was an OPCW-UN joint mission for the elimination of the chemical weapons programme of the Syrian Arab Republic with the contribution of some volunteer assisting states, such as: United States of America, Russia, China, Denmark, Norway, United Kingdom, Finland and Germany. On one hand, the Organization for the Prohibition of Chemical Weapons was the inspector of the whole procedure, its only tasks were to verify the destruction of the chemicals and ensure that all the necessary measures have been taken. On the other hand United States of America had to destroy the chemical weapons, all the other states were there in order to provide secure transportation of chemicals to their ultimate destruction location and deal with chemical spills or emergencies and United Nations had the final and ultimate leadership for the mission- operation in order to be completed with success and safety.

The OPCW-UN Joint Mission on the elimination of Syrian chemical weapons has completed its mandate and its operations drew to a close on 30 September 2014. From there on, OPCW mission in Syria will continue to deal with the destruction of chemical

[66] A. Pellet, "International Organizations are definitely not States. Cursory remarks on the ILC Articles on the Responsibility of International Organizations", in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 53.

weapon production facilities and clarification of certain aspects of the Syrian initial declaration.

Chapter II: Parallel Worlds, Parallel Clauses: Remarks on the relationship between the two sets of International Law Commission's Draft Articles on the Responsibility of International Organizations and State Responsibility

After a ten- year effort, finally in 2011, the International Law Commission (ILC) adopted a set of draft articles on the Responsibility of International Organizations (DARIO), led by the Special Rapporteur, the Italian jurist, Giorgio Gaja. The above mentioned articles based on 2001 International Law Commission's Articles on the Responsibility of States for internationally wrongful acts and to a large extent, the draft articles on the Responsibility of International Organizations are the result of a literal transposition[67] *mutatis mutandis* of the 2001 Articles on State Responsibility (ASR) with the replacement of the word "State" by "International Organization".

The adoption of the 2011 DARIO, can now shed light on important questions, such as the *locus standi in judicio* of international organizations before the International Court of Justice, as active and passive subjects or the judicial control of acts mainly of the Security Council, but and also of the General Assembly[68]. Other questions are concerning the joint responsibility of international organizations and states and of the impact of international *jus cogens*[69] rules on the law of international organizations.

As stated in article 57 of articles on the responsibility of States for internationally wrongful acts: *"These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization*[70]*"*. The International Law Commission tried to find out the answers in the two questions that had been left without prejudice in article 57 on State

[67] B. Montejo, "The Notion of 'Effective Control' under the Articles on the Responsibility of International Organizations" in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 389.

[68] A. A. Cançado Trindade, "Some Reflections on Basic Issues concerning the Responsibility of International Organizations" in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 11-12.

[69] For a critical assessment of the evasive international case- law, see Y.Sandoz (ed.), *Quel droit international pour le 21e siècle? (*Brussels, 2007), 99, 116-117, 119, 129-131 and 133-134. On recent advances in contemporary international case- law, see A. A. Cançado Trindade, *La ampliación del contenido material del ius cogens" XXXIV Curso de Derecho Internacional Organizado por el Comité Jurídico Interamericano-2007* (Washington, D.C., 2008), 1-15.

[70] Retrieved by http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf on 15 February, 2015 at 19:56 p.m.

responsibility. The majority of the present draft articles describe the first issue, regarding the responsibility of an international organization for an act which is internationally wrongful. The draft articles of Part Five describe the second one about the responsibility of a state for the conduct of an international organization.

While the number of International Organizations rises, the importance of these articles, that set the basic framework on the responsibility of International Organizations, is really essential.

The International Law Commission made a significant but thoughtful use of the *mutatis mutandis approach*[71]. As stated earlier the Draft Articles on Responsibility of International Organizations follow the same pattern with the articles of State responsibility for internationally wrongful acts of 2001, but this does not mean in any case that these draft articles are not completely autonomous. Quite the contrary, they represent an autonomous part.

The draft articles rely on the basic distinction between primary and secondary rules of international law. On one hand there are the primary rules of international law, which establish obligations for international organizations, on the other hand secondary rules, which the existence of a breach of an international organization and its consequences for the responsible organization. In the same approach with articles about State responsibility, the present draft articles set secondary rules.

In addition, the International Law Commission comments "*one of the most significant difficulties in elaborating rules concerning the responsibility of international organizations is due to the limited availability of relevant practice. The main reason for this is that practice concerning responsibility of international organizations has developed only over a relatively recent period. One further reason is the limited use of procedures for third- party settlement of disputes to which international organizations are parties. Moreover, pertinent practice resulting from exchanges of correspondence may not be always easy to locate, nor are international organizations or states often willing to disclose it […] In other words, the provisions of the present draft articles do not necessarily yet have the same authority as the corresponding provisions on state*

[71] T. Scovazzi, "Within and beyond the Mutatis Mutandis" in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 121.

responsibility. As was also the case with the articles on State responsibility, their authority will depend upon their reception by those to whom they are addressed[72]*".*

Article 64 states: *"These draft articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the responsibility of an international organization, or of a State in connection with the conduct of an international organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of the organization applicable to the relations between an international organization and its members*[73]*".* So certain special rules on international responsibility may apply in the relationship between the international organization and its members. These rules are very specific for every organization and are usually referred to as rules of the organization. They include the constituent instrument of the organization and the rules flowing from it. The present draft articles on responsibility of international organizations do not attempt to define all these rules, but do consider their impact for the good function of the organization really crucial. The rules of the organization do not bind per se non-members but they may be relevant for them also. For instance, in article 20 of DARIO is stated that: *"Valid consent by a State or an international organization to the commission of a given act by another international organization precludes the wrongfulness of that act in relation to that State or the former organization to the extent that the act remains within the limits of that consent*[74]*"*, so in order to establish whether an international organization has expressed its consent to the commission of a given act, it may be necessary to establish whether the organ or agent which gives its consent is competent to do so under the rules of the organization.

As we can easily understand, International Organizations are quite different from States. States can be big or small, wealthy or poor but they are (supposedly) equal[75] when they are responsible for an international wrongful act and they have the obligation to make full reparation for the damage they caused as stated in article 31, paragraph 1. However,

[72] Retrieved by http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf on 25 March, 2015 at 07:39 a.m.
[73] Retrieved by http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf on 30 May 2015 at 08:56 a.m.
[74] Retrieved by http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf on 30 May 2015 at 10:06 a.m.
[75] A. Pellet, "International Organizations are definitely not States. Cursory remarks on the ILC Articles on the Responsibility of International Organizations", in Responsibility of International Organizations, Essays in memory of Sir Ian Brownlie, Maurizio Ragazzi (Ed), (Martinus Nijhoff Publishers, Leiden- Boston, 2013), 49.

all International Organizations are not the same in the meantime. There is big diversity among them. They do not possess a general competence in contrast with States. Moreover they have been established in order to exercise some very specific functions (principle of speciality). There are so many differences among international organizations due to their powers and functions, size, members, relations between the organization and its members, procedures for deliberation, structure, facilities and the primary rules of law including treaty obligations by which they are bound. Because of this diversity and its results, the draft articles may not apply for certain examples of international organizations in the light of their powers and functions or some of the draft articles where appropriate give weight to the specific character, powers and functions of these organizations like for example article 8 on *excess of authority or contravention of instructions*. In this context article 64 on *lex specialis* can be very important. Taking everything into consideration, we can say that States may usually be better equipped to face the consequences of their internationally wrongful acts than the international organizations.

Chapter III: The Organization for the Prohibition of Chemical Weapons

The Organization for the Prohibition of Chemical Weapons (OPCW) is an independent, autonomous international organization with a working relationship with the United Nations[76]. It is the implementing body of the Chemical Weapons Convention (CWC), which entered into force in 1997. As of today Organization for the Prohibition of Chemical Weapons has 190 Member States, who are working together to achieve a world free of chemical weapons. The OPCW Member States represent about 98% of the global population and landmass, as well as 98% of the worldwide chemical industry[77]. Only Myanmar and Israel are not member states of the Organization. Syria is the last member State which ratified the Convention since 14 of September 2013.

The OPCW Member States share the collective goal of preventing chemistry from ever again being used for warfare, thereby strengthening international security[78]. To this end, the Convention contains four key provisions:

- destroying all existing chemical weapons under international verification by the OPCW;
- monitoring chemical industry to prevent new weapons from re-emerging;
- providing assistance and protection to States Parties against chemical threats; and
- fostering international cooperation to strengthen implementation of the Convention and promote the peaceful use of chemistry.

The main function of the Organization is to ensure the implementations of the provisions established in the Chemical Weapons Convention (CWC). It is responsible for the elimination of the chemical weapons stockpiles and chemical weapons production facilities subject to the verification measures established in the Convention, for the non-proliferation of Chemical Weapons, through the application of verification and implementation measures, assists and protects against Chemical Weapons, their use, or threat of use, in accordance with the Convention for Chemical Weapons. Moreover OPCW's international cooperation programmes focus on capacity building for the peaceful applications of the chemistry, promoting the Universality of the Convention and

[76] Retrieved by https://www.opcw.org/our-work/ on 2 May, 2015 at 07:30 a.m.
[77] Retrieved by https://www.opcw.org/about-opcw/member-states/ on 2 May, 2015 at 07:38 a.m.
[78] Retrieved by https://www.opcw.org/about-opcw/ on 2 May, 2015 at 07:58 a.m.

the Benefits of becoming a Member State and finally supports States Parties in implementing national requirements of the Convention (CWC).

The Chemical Weapons Convention comprises a Preamble, 24 Articles, and 3 Annexes—the Annex on Chemicals, the Verification Annex, and the Confidentiality Annex. The Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties[79]. States Parties, in turn, must take the steps necessary to enforce that prohibition in respect of persons (natural or legal) within their jurisdiction[80].

All States Parties have agreed to chemically disarm by destroying any stockpiles of chemical weapons they may hold and any facilities which produced them, as well as any chemical weapons they abandoned on the territory of other States Parties in the past[81]. States Parties have also agreed to create a verification regime for certain toxic chemicals and their precursors (listed in Schedules 1, 2 and 3 in the Annex on Chemicals to the CWC) in order to ensure that such chemicals are only used for purposes not prohibited[82].

A unique feature of the CWC is its incorporation of the 'challenge inspection[83]', whereby any State Party in doubt about another State Party's compliance can request the Director-General to send an inspection team. Under the CWC's 'challenge inspection' procedure, States Parties have committed themselves to the principle of 'anytime, anywhere[84]' inspections with no right of refusal.

[79] Retrieved by https://www.opcw.org/chemical-weapons-convention/ on 14 May, 2015 at 10:45 a.m.
[80] Retrieved by https://www.opcw.org/chemical-weapons-convention/ on 14 May, 2015 at 10:50 a.m.
[81] Retrieved by https://www.opcw.org/chemical-weapons-convention/ on 14 May, 2015 at 10:55 a.m.
[82] Retrieved by https://www.opcw.org/chemical-weapons-convention/ on 14 May, 2015 at 11:05 a.m.
[83] Retrieved by https://www.opcw.org/chemical-weapons-convention/ on 14 May, 2015 at 11:25 a.m.
[84] Retrieved by https://www.opcw.org/chemical-weapons-convention/ on 14 May, 2015 at 11:45 a.m.

Chapter IV: The Trail Smelter Case and the Gabčíkovo-Nagymaros Dams Case

i) The Trail Smelter Case

The Trail Smelter arbitration case is more than well-known to any student of international or environmental law. Trail Smelter case is the first arbitration in which there are many international environmental law decisions. More specifically, it is usually the only case cited in which "transboundary damage was settled by the application of the general principles of international law on State liability for cross-border damage…"[85].

The Trail smelter is situated in British Columbia in Canada and is operated by the Consolidated Mining and Smelting Company (COMINCO) and has processed lead and zinc since 1896. Smoke from the smelter caused damage to forests and crops in the surrounding area and also across the Canada and United States border in the area of Washington. The smoke from the smelter distressed the residents, resulting in complaints to COMINCO and demands for compensation. The dispute between the smelter operators and affected landowners could not be resolved, resulting in the case being sent to an arbitration tribunal. Negotiations and resulting litigations and arbitration was settled in 1941[86].

The major players of the Trail Smelter dispute were the owners of the smelter, the Consolidated Mining and Smelting Company of Canada (COMINCO) and the American residents- mostly farmers and landowners who were affected by the smoke that generated from the smelter. The farmers and the landowners in the area of Washington who had a mutual concern for the smoke drifting from the smelter, formed the Citizens' Protective Association (CPA) when their direct complaints to COMINCO were not addressed. At first, the regional governments became involved, both the province of British Columbia and Washington State also, but eventually the two federal governments took leadership roles in the dispute because of the issue of national boundaries and extraterritoriality. Both governments were initially involved in the foundation of the International Joint Commission (IJC) in 1909, which was later responsible for investigating and then

[85] X. Hanqin, Transboundary Damage in International Law, (Cambridge Studies in International and Comparative Law- No. 27, Cambridge University Press, Cambridge, 2003) 269
[86] J. D. Wirth, The Trail smelter dispute: Canadians and Americans confront transboundary pollution, 1927-41, Environmental History, April 1996, Vol. 1 Issue 2, 34

recommending the settlement for the alleged damages in the Trail smelter case. The transformation of the smelter dispute into a foreign policy issue resulted in more institutions joining the dispute. This included the Canada's National Research Council (NRC) and the American Smelting and Refining Company, which each contributed scientific experts to assess the damages from the smelter's smoke[87].

In 1925, a growing concern was the smoke that drifting from the smelter across the border into the area of Washington, allegedly causing damages to crops and forests. As it seems, the smoke generated from the smelter and became the source of complaints from the American residents. Their complaints included: sulphur dioxide gases in the form of smoke generated from the smelter and was directed into the Columbia River Valley by prevailing winds, scorching crops and accelerating forest loss[88]. Effects of the smoke, as investigated by the US Department of Agriculture, included both "visible damage[89]" in terms of "burned leaves and declining soil productivity[90]" and "invisible damage[91]" which consisted of "stunted growth and lower food value" for the crops.

After the complaints COMINCO accepted responsibility and offered to compensate the farmers who were affected and also proposed installing fume-controlling technologies to limit future damage and reduce the emissions of sulphur dioxide. The company had initially raised smoke stacks to four hundred feet in an effort to increase the dispersion of pollutants but this had resulted in prevailing winds moving the noxious fumes downwind to the inhabitants of the Columbia River Valley, making the situation even worse. The company also tried to pay the affected residents or even offered to purchase the land outright, which some would have accepted. On the other hand, the company was denied this method of compensation because of Washington State's prohibition of property ownership by foreigners. This conduct led to the official petition by the farmers and

[87] J. E. Read, "The Trail Smelter Dispute [Abridged]" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 27

[88] J. R. Allum, "An Outcrop of Hell" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 17

[89] J. R. Allum, "An Outcrop of Hell" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 19

[90] J. R. Allum, "An Outcrop of Hell" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 20

[91] J. R. Allum, "An Outcrop of Hell" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 21

landowners of Washington in 1927 for state and federal support against the smelter, claiming that the smoke was damaging United States lands. The International Joint Commission (IJC) awarded the farmers with $350,000 in damages in 1931, but did not set guidelines for sulphur dioxide emission reduction. The compensation was far less than the expected one and the IJC settlement was eventually rejected under the pressure of Washington's State Congressional Delegation. The unsatisfactory result of the IJC decision led to the establishment of a three-person Arbitral Tribunal to resolve the dispute in 1935.

The Arbitral Tribunal had to answer in four basic questions: a) Whether damage caused by the Trail Smelter in the State of Washington has occurred since the first day of January, 1932, and, if so, what indemnity should be paid?, b) In the event of the answer to the first part of the preceding question being is positive, to what extent should there be compensation?, c) In light of the answer to the preceding question, what measures or regime, if any, should be adopted or maintained by the Trail Smelter? and d) What indemnity or compensation, if any, should be paid because of any decision or decisions rendered by the Tribunal pursuant to the next two preceding questions?

The consequences of the arbitration came in two parts, one being economic compensation for the local farmers of Steven's County, Washington and two effecting laws for transboundary air pollution issues. Transboundary issues meaning those that stretch between states and nations.

COMINCO initially agreed to pay a fine of $350,000 in compensation to the local farmers for all damages before January 1, 1932[92]. However, this offer was rejected by the local residents and farmers, and the Washington government thus resulting in the arbitration. The arbiters' final decisions were based on evidence for visible injury to the farmers' livelihood, the US' case was poorly presented thus the tribunal's final decision in 1941 granted an additional $78,000 to the farmers and also imposed COMINCO's duty of regulating the smoke output[93].

The Trail Smelter arbitration successfully imposed state responsibility for transnational air pollution. This set precedence for no states being able to use their

[92] J. E. Read, "The Trail Smelter Dispute [Abridged]" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 27-33.

[93] J. E. Read, "The Trail Smelter Dispute [Abridged]" in Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 27-33.

territories in such a way that would cause harm by air pollution to another territory[94]. It was COMINCO's responsibility to regulate and control the pollution their smelting industries created.

This arbitration was extremely significant because it defined the limits of environmentally permissible conduct between international boundaries: nations must not perpetrate significant harm to other nations through pollution. Thus, the dispute between Canada and USA required the Tribunal to decide, for the first time, the limits of the fundamental legal concept of the sovereign equality of states. Where Canada's sovereignty implied the right to exploit its natural resources as it willed, the same sovereign norm protected the US' right to the inviolability of its national territory. The activities of COMINCO, by virtue of climatic conditions that sent its emissions downstream and into the United States, implicated both sovereign rights at the same time.

The Trail Smelter Tribunal navigated this clash of sovereignties by enunciating what have come to be known as the *Trail Smelter principles*: a) the state has the duty to prevent transboundary harm which is commonly expressed in the Latin maxim *sic utere tuo ut alienum non laedas* (use your property in such a way that you do not damage others) and b) the "polluter" pays principle, which means that the polluting state should pay compensation for the transboundary harm it has caused[95]. Both of these principles were first announced by the Trail Smelter Tribunal in 1941.

"Transboundary harm is a term of art that international law reserves almost exclusively for environmental issues[96]. Implied in the use of the term is a relatively direct line of causation from activity from activity to physical consequences[97]. Defining "harm" or "damage", as the Trail Smelter Tribunal learned, may be the most difficult explanation of the legal response to transboundary harm.

In its Draft Articles on State Duties to Prevent Transboundary Harm, the International Law Commission (ILC) accepted a distinction between physical and more

[94] J. E. Read, "The Trail Smelter Dispute", Canadian Yearbook of International Law, vol.1, 1963, 213-229.
[95] A. Kiss, D. Shelton, GUIDE TO INTERNATIONAL ENVIRONMENTAL LAW, (Martinus Nijhoff Publishers, Leiden- Boston, 2007), 15-19.
[96] R. M. Bratspies and R. A. Miller, Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration, Bratspies, Rebecca M. and Russell A. Miller (eds.) (Cambridge University Press, Cambridge, 2006), 7.
[97] In her survey of the field, *Transboundary Damage in International Law,* Xue Hanqin eloquently makes this point.

inchoate harms when it defined transboundary harm to include a component of physical manifestation[98].

But the Trail Smelter Arbitration legacy was not being limited only in these steps. The Trail Smelter Case set the basic issues for the Protection of the Environment from Transboundary Pollution, Unilateralism, the Limits of Extraterritorial Jurisdiction, the Nuclear Energy context, the framework of Air Pollution, the Radioactive Contamination, but on top of all, Trail Smelter case had a great impact on the Law of the Sea.

The decision of 1941 Trail Smelter Arbitration is often referred as a landmark case in the development of international environmental law[99]. Even if it is not a case dealing with the marine environment, the same claim has been advanced in the context of the law of the sea, with the case exerting a significant impact on aspects of the development of the Law of the Sea Convention of 1982. Some of the principles underlying the provisions in the Convention, especially with respect to marine pollution, clearly have their antecedents in the 1941 Trail Smelter decision.

One key impact on the Law of the Sea Convention possibly attributable to the Trail Smelter arbitration is in the context of the environmental jurisdiction of the costal state in the exclusive economic zone (EEZ) as it described in Article 56 of the Convention. The theory of this concept owes something to the Trail Smelter arbitration. There, Canada was liable because it allowed environmental harm to damage property and interests across the border in the United States.

In addition, the provision with the most essential apparent linkage, is Article 194 paragraph 2 of the Convention, as it mentions: *States shall take all the necessary measures to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention*[100].

An excellent example of the use of Trail Smelter can be seen in Article 195 of the Law of the Sea Convention. Under this Article the states have the duty not to transfer

[98] Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, together with Commentaries, Article 1, Commentary (2), Report of the International Law Commission on the Work of its Fifty-third Session, UN GAOR, 56th Session, Supp. No. 10 at V.E.1, UN Doc. A/56/10 (2001).
[99] G. Handl, Territorial Sovereignty and the Problem of Transnational Pollution, 69 American Journal of International Law 50, 60 (Washington D.C . , 1975) 854- 867.
[100] Article 194(2) of Law of the Sea Convention of 1982 in Montego Bay.

damage or harm caused by pollution from one area to another. Similarly Article 196 provides for measures to prevent, reduce or control pollution of the marine environment (...).

The relationship to the Trail Smelter case can be seen also in the Report of the International Law Commission's Working Group on International Liability for Injurious Consequences arising out of Acts not Prohibited by International Law[101]. That report draws heavily on the Trail Smelter arbitration in the context of general principles for liability arising out of transboundary harm but uses more recent materials in the context of its discussion of marine pollution.

To sum up, the principle that a state is under the duty not to allow harm to escape from its jurisdiction owes much to Trail Smelter Case and has been already indicated, that this principle resounds within parts of the Law of the Sea Convention. Not to mention that the issues surrounding protection of the marine environment are more difficult than the factual situation faced in the Trail Smelter Case. Last but not least, the Trail Smelter arbitration can be seen as a starting point in the development of marine environmental protection. However the most basic idea of this area of international law tries to prevent harm before even occurs and not attribute liability afterwards.

[101] International Law Commission, Working Group on International Liability for Injurious Consequences arising out of Acts not Prohibited by International Law, 48th Sess,) U.N. Doc. A/CN.4/L.533 and Add.1 (F), (1996).

ii) Gabčíkovo- Nagymaros Dams Case

On 16 September of 1977, People's Republic of Hungary (now Hungary) and Czechoslovak Socialist Republic (now Slovak Republic) signed the "Budapest Treaty" for the construction of dams and other projects along the Danube River that bordered both nations. Danube River is the second longest river flowing through Europe and has been the reason for many natural disasters for both countries in the past.

The treaty envisioned a cross-border barrage system between the two towns of Gabčíkovo in Slovak Republic and in Hungary. In this way the dams would eliminate regular flooding, like the disastrous ones of 1954 and 1965 and provide a clean source of electric power. They would also allow year- long navigability of the river and serve as a part of the Rhine-Main-Danube Canal system of inland navigation.

The initial plan was to divert a part of the river into an artificial canal at Dunakiliti, a village in Hungary, to the hydroelectric power plant near Gabčíkovo. In this way the canal would return the water into a deepened original riverbed and at Nagymaros a smaller dam and power- plant would be constructed. The plant in Gabčíkovo was to be a peak- power plant and the dam in Nagymaros, about 100 kilometers downstream, was to limit fluctuations of the water level.

Because most of the constructions were planned to occur in Slovak territory, the Hungarian government was obligated to participate in some of the constructions in Slovakia in order to ensure equal investment by both sides.

An important provision of the treaty was its Article 15 paragraph 1, which stated that: *"The Contracting Parties shall ensure, by the means specified in the joint contractual plan, that the quality of the water in the Danube is not impaired as a result of the construction and operation of the System of Locks*[102]*".*

Slovak Republic began work on damming the river in its territory but due to political movements in Hungary and change of government, the Republic of Hungary suspended and subsequently abandoned, in 1989, the works on the Nagymaros Project and on the part of the Gabcikovo Project for which the Treaty attributed responsibility to the Republic of Hungary. It claimed that the project was affecting the quality of groundwater in Hungary affecting in this way over a million people.

[102] P. K. Rao, International Environmental Law and Economics, (Blackwell Publishers Ltd., 2002) 230.

During this period, negotiations took place between the two parties. In the meanwhile Czechoslovakia started investigating alternative solutions. One of them, was an alternative solution subsequently known as "Variant C[103]", entailed a unilateral diversion of the Danube river by Czechoslovakia on its territory some 10 kilometers upstream of Dunakiliti. In its final stage, "Variant C" solution included the construction at Cunovo of an overflow dam and a levee linking that dam to the south bank of the bypass canal. Provision was made for ancillary works[104].

This action diverted in a very direct way the Danube River into Slovak territory and kept the development entirely within its borders[105]. The amount of water flowing into Hungary was dramatically reduced and had a significant impact on that nation's water supply and environment[106]. Therefore, negotiations and alternative solutions could not resolve the matter which led Hungary to terminate the Treaty of Budapest. Hungary based its action on the fact that the damming of the river had been agreed to only on the ground of a joint operation and sharing of benefits associated with the project, to which Slovak Republic had unlawfully unilaterally assumed control of a shared resource.

The issues for the International Court of Justice were to decide: a) Whether or not watercourse states shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner, b) Whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Gabcikovo- Nagymaros Project for which the Treaty attributed responsibility to the Republic of Hungary, c) Whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the "provisional solution[107]" and to put into operation from October 1992 this system and d) What are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty of Budapest by the Republic of Hungary.

[103] O. McIntyre, "Gabčíkovo Project: A Test Case for International Water Law?" in Transboundary Water Management: Principles and Practice, Anton Earle, Anders Jagerskog and Joakim Öjendal (eds) (Stockholm International Water Institute, 2010) 228.
[104] Retrieved by http://www.icj-cij.org/docket/index.php?sum=483&code=hs&p1=3&p2=3&case=92&k=8d&p3=5 on 15 December, 2014 at 8:30 a.m.
[105] O. McIntyre, "Gabčíkovo Project: A Test Case for International Water Law?" in Transboundary Water Management: Principles and Practice, Anton Earle, Anders Jagerskog and Joakim Öjendal (eds) (Stockholm International Water Institute, 2010) 228.
[106] O. McIntyre, "Gabčíkovo Project: A Test Case for International Water Law?" in Transboundary Water Management: Principles and Practice, Anton Earle, Anders Jagerskog and Joakim Öjendal (eds) (Stockholm International Water Institute, 2010) 232
[107] The alternative solution "Variant C".

For the answer to the first question, The Court answered that yes, watercourse states shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Hungary was deprived of its rights to an equitable and reasonable share of the natural resources of the Danube River by Czechoslovakia and also failed to respect the proportionality that is required by international law.

For the answer to the second question, The Court rejected Hungary's argument to the effect that, in 1989, in suspending and subsequently abandoning the works for which it was still responsible at Nagymaros and at Dunakiliti, it did not suspend the application of the 1977 Treaty of Budapest itself or then reject the above mentioned Treaty. The conduct of Hungary at that time was to be interpreted as an expression of its unwillingness to comply with at least some of the provisions of the Treaty and the Protocol of 6 February 1989, as specified in the Joint Contractual Plan for the dams. The effect of Hungary's conduct was to render impossible the accomplishment of the system of works on the dam's project.

Hungary in order to justify its actions, it relied on *"state of ecological necessity"*. The Court however considered the question of whether there was, in 1989, *a state of necessity*[108] that would have permitted Hungary without incurring international responsibility, to suspend and abandon works that it was committed to perform in accordance with the 1977 Treaty of Budapest and related instruments.

Following the argument of Hungary, Slovakia argued that the state of necessity upon which Hungary relied, did not constitute a reason for the suspension of a treaty obligation recognized by the law of the treaties. At the same time, it cast doubt upon whether "ecological necessity" or "ecological risk" could, in relation to the law of State responsibility, constitute a circumstance precluding the wrongfulness of an act.

At that point, The Court cited the criteria laid down by the International Law Commission in Article 33 of the Draft Articles on the International Responsibility of States for the state of necessity as a defense. It mentioned that this act could be justified if a) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril or b) the act did not seriously impair an essential interest of

[108] The state of necessity is a ground recognized by customary international law for precluding the wrongfulness of an act not in conformity with an international obligation. It considers moreover that such ground for precluding wrongfulness can only be accepted on an extremely exceptional basis.

the State towards which the obligation existed. The Court set some parameters[109] in this case in order to check the state of necessity were:

1. It must have been occasioned by an "essential interest" of the State which is the author of the act conflicting with one of its international obligations[110]
2. That interest must have been threatened by a "grave and imminent peril"; the act being challenged must have been the "only means" of safeguarding that interest[111]
3. That act must not have "seriously impair(ed) an essential interest" of the State towards which the obligation existed[112]
4. The State which is the author of that act must not have "contributed to the occurrence of the state of necessity"[113].

The Court understood that the "state of necessity" for Hungary transformed into "essential interest" within the meaning given to that expression in Article 33 of the Draft of the International Law Commission. In addition, The Court found that the installations of the Slovakian government were not done in accordance with preserving Hungarian environment but they could not, alone, establish the objective existence of a "peril[114]" in the sense of a component element of a state of necessity.

As a matter of fact the Hungarian argument on the state of necessity did not convince the Court unless it was at least proven that a real, "grave" and "imminent" "peril" existed in 1989 and that the measures taken by Hungary were the only possible response to it.

"*The Court found that both Hungary and Slovakia had breached their legal obligations…called on both States to negotiate in good faith in order to ensure the*

[109] Retrieved by http://www.icj-cij.org/docket/index.php?pr=267&p1=3&p2=1&case=92&p3=6 on 27 December, 2014 at 10:30 a.m.
[110] Retrieved by http://www.icj-cij.org/docket/index.php?pr=267&p1=3&p2=1&case=92&p3=6 on 27 December, 2014 at 10:56 a.m.
[111] Retrieved by http://www.icj-cij.org/docket/index.php?pr=267&p1=3&p2=1&case=92&p3=6 on 27 December, 2014 at 10:58 a.m.
[112] Retrieved by http://www.icj-cij.org/docket/index.php?pr=267&p1=3&p2=1&case=92&p3=6 on 27 December, 2014 at 11:00 a.m.
[113] Retrieved by http://www.icj-cij.org/docket/index.php?pr=267&p1=3&p2=1&case=92&p3=6 on 27 December, 2014 at 11:01 a.m.
[114] The word "peril", according the International Law Commission, evokes the idea of "risk": that is precisely what distinguishes "peril" from material damage. But a state of necessity could not exist without a "peril" duly established at the relevant point in time: the mere apprehension of a possible "peril" could not suffice in that respect. It could moreover hardly be otherwise, when the "peril" constituting the state of necessity has at the same time to be "grave" and "imminent".

achievement of the objectives of the 1977 Budapest Treaty, which it declared was still in force, while taking account of the factual situation that had developed since 1989…[115]"

Both states in the end were asked to compensate each other with respect to the damage they caused to each other by violating the treaty of Budapest and agree on new terms to complete the project.

As we can understand, the significant importance of Gabčíkovo- Nagymaros Dams Case is really appreciated as it contributed towards international law because it gave the interpretations of the parameters of "state of necessity" as a defense in international law for wrongful acts. Thus, it can be mentioned as an academically crucial case while dwelling on the fundamental principle of International State Responsibility which set the basis for the Responsibility of International Organizations.

[115] Retrieved by http://www.icj-cij.org/docket/files/92/7375.pdf on 18 November, 2014 at 23:56 p.m.

Chapter V: The International Standard of "Due Diligence" and the "effective control" criterion

i.i. The route of "due diligence"

In this chapter there will be an effort to describe the international standard of "due diligence" and the notion of "effective control". What describes the "due diligence" rule and how it applies for a state? And what expresses the "effective control" criterion?

In view of the fact that a state is an abstract[116] legal entity of international law, it can be held responsible only for those acts and omissions which are attributable to it under international law. The conduct of all its organs and agents is attributable to a state[117]. But according to another view, an act of a private individual may be attributed also directly to a state as long as the act took place within the state's jurisdiction and provided also that the activity involved is "extra-hazardous[118]". A fundamental disagreement frequently exists to the basis of state responsibility. On one hand there is the view that state responsibility is based on an objective breach of an international organization, on the other hand there is the view that responsibility is based on fault.

In international practice there are many examples of international tribunals which have held states responsible for their conduct on the grounds that they have failed to exercise due diligence[119]. This practice has led some authors to argue that negligence is an independent tort (or delict) of international law, comparable to the tort of negligence as it has come to be accepted in English and Anglo- American law since the beginning of the last century: namely as an independent basis of liability[120]. A breach of due diligence just as any other breach of international law entails the responsibility of the state. Does "any breach of an engagement involve an obligation to make reparation[121]"? Negligence is a conduct whether it consists in action or in an omission to act.

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[116] Willisch J., "State Responsibility for Technological Damage in International Law", Duncker & Humblot, Berlin, (1987) 261.
[117] Jiménez de Aréchaga E., "International law in the past third of a century", Hague Receuil Vol. 159, Brill/ Nijhoff, Leiden- Boston, (1978), 275.
[118] Jenks W., " Liability for ultra- hazardous activities in international law", Hague Receuil Vol. 117, Brill/ Nijhoff, Leiden- Boston, (1966), 178- 179.
[119] The classical case is the *Alabama- Award*, Moore, Arbitrations, I, 653: Briggs, 1026 et seq.; numerous other examples of international decisions are to be found in the comments to Aric.10-14 Harvard Draft on the Law of Responsibility of States for damage done in their territory to the person or property of foreigners (1929) at 187-198.
[120] Willisch J., "State Responsibility for Technological Damage in International Law", Duncker & Humblot, Berlin, (1987) 279.
[121] Chorzow Factory Case, PCIJ Ser. A, No. 17 at 29.

The law of state responsibility does not even accept a dichotomy between tortious (delictual) and contractual liability. Rather, the same rules determine the consequences of a breach of an international obligation whether it flows from treaty, custom or from some other source[122]

"Due diligence" came out as a concept in international law to arbitrate interstate relations at a time of significant change. Grotius laid the intellectual foundations for the concept in the 17th century[123], however it was not until the 19th century that due diligence began to take shape and was applied as both a duty and a constraint upon state behavior. With greater movement of citizens across territorial borders, it was accepted that governments were under the obligation to take all necessary measures to protect aliens within their territory[124].

And with the appearance of strong notions of state sovereignty, it was also recognized that states were required to protect the security of other States in times of peace and war. Therefore in the Alabama Claims Arbitration, the tribunal set out an international, due diligence, standard for neutral States in meeting their obligation of neutrality[125] by using the agreed standard contained in Article 6 of the 1871 Treaty of Washington[126], but the most crucial question was whether Britain had acted with due diligence so as to fulfill its duties of neutrality.

[122] Brownlie I., at 434, Draft Art. 17 on State Responsibility.

[123] Grotius considered that a sovereign could become complicit in crimes of individuals through principles of patientia (where a community or its ruler know of a crime committed by a subject but fail to prevent if they can and should) and receptus (where a ruler fails to punish or extradite fugitives). See also Jan Arno Hessbruegge "The Historical Development of the Doctrines of Attribution and Due Diligence in International Law", 36 New York University Journal of International Law and Politics, (2003-2004), 283.

[124] Pisillo-Mazzeschi, R. "The Due Diligence Rule and the Nature of International Responsibility of States", German Yearbook Int'l L, vol. 35, (1992), 38-42.

[125] A neutral Government is bound-- First.--To use due diligence to prevent the fitting out, arming or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use. Secondly.--Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men. Thirdly.--To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties. Retrieved by http://www.marshall.edu/special-collections/css_alabama/pdf/treaty_washington.pdf on 30 May, 2015 at 10:30 a.m.

[126] Treaty between Great Britain and the United States of America for the Amicable Settlement of all Causes of Difference between the Two Countries, signed 8 May 1871, entered into force 17 June 1871 [1870-1871] 61 BSP 40, for the text here: http://www.marshall.edu/special-collections/css_alabama/pdf/treaty_washington.pdf

During the American Civil War Alabama was built in secrecy in 1862 by British shipbuilders in northwest England at Birkenhead, Wirral, opposite Liverpool. The construction was arranged by the Confederate agent Commander James Bulloch, who led the procurement of very valuable ships for the inexperienced Confederate States Navy. Alabama was used as a commerce raider and did great damage to the United States Navy.

The Tribunal agreed with the more exacting standard argued by the United States, that a due diligence standard requires a neutral government to act in exact proportion to the risks to which belligerents may be exposed from any failure to fulfill obligations of neutrality[127] and that Great Britain has in this case failed, by omission, to fulfill the duties prescribed in the first[128] and the third[129] of the rules established by the 6th article of the Treaty of Washington. Due diligence was therefore a flexible concept, the content of which varied depending on the circumstances of the case. Importantly, the Tribunal rejected the British plea that it was constrained by English constitutional law from interfering with private acts, and upheld the supremacy of international law[130]. Given that Britain initially refused to submit to arbitration, on the grounds that it was the sole guardian of her own honor[131], the Alabama Claims Arbitration was very important because it worked as the precursor in attributing State responsibility over private acts occurring within its territory and conditioning that responsibility by reference to an internationally defined due diligence standard. In the "Alabama Claims" case the requisite standard of due diligence was held to depend upon the risks to which either of the belligerents may be exposed from a failure on the part of the neutral state to fulfill its obligations of neutrality.

[127] Retrieved by http://legal.un.org/riaa/cases/vol_XXIX/125-134.pdf on 31May, 2015 at 11:48 a.m.

[128] First.- To use due diligence to prevent the fitting out, arming or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use. For more details see the full text here: http://www.marshall.edu/special-collections/css_alabama/pdf/treaty_washington.pdf

[129] Thirdly.- To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties. . For more details see the full text here: http://www.marshall.edu/special-collections/css_alabama/pdf/treaty_washington.pdf

[130] Ibid, p. 131.

[131] C. C. Hyde, "International Law Chiefly as Interpreted and Applied by the United States" Second Revised Edition, Little, Brown & Co.,vol 3, Boston, (1945), 120.

i.ii. Due Diligence and State Responsibility

The International Law Commission does not use the term of "due diligence" in Articles on State Responsibility[132] of 2001, neither in Draft Articles on the Responsibility of International Organizations[133] of 2011, as the articles take an agnostic approach to the question of fault, simply requiring, in Article 2 of ASR and 4 of DARIO respectively, an internationally wrongful act of a(n) State/ International Organization when conduct consisting of an action or omission:

(a) Is attributable to that State/ Organization under international law; and

(b) Constitutes a breach of an international obligation of the State.

Even though the issue of fault attracted significant attention in the development of the Articles on State and International Organizations Responsibility and, it is to primary rules of conduct, rather than secondary rules of responsibility, that we must look is to determine the applicable standard of behavior. As the Commentaries explain, the Articles lay down no general standard, whether it involves "some degree of fault, culpability, negligence or want of due diligence[134]".

In the second- half of the twentieth century, the progress of the "due diligence" standard has been monopolized by practice in the field of international environmental law on which there is extended discussion below. The omission of due diligence from the Articles on State Responsibility in relation to state wrongs generally, led the Commission to take up the concept in other contexts, most notably in the Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities[135] where the Commentaries explained that the duty to take "preventing or minimization activities measures is one of due diligence[136]", and that "[t]he standard of due diligence against which the conduct of the State of origin of [transboundary environmental harm] should be examined is that which is generally considered to be appropriate and proportional to the risk of transboundary harm in the particular instance[137]".

[132] Articles on Responsibility of States for Internationally Wrongful Acts, for the full text here: http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf
[133] Draft Articles on the Responsibility of International Organizations, for the full text here: http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf
[134] Crawford J., Pellet A., Olleson S. (eds.), "The Law of International Responsibility", Oxford University Press, Oxford, (2010), 153.
[135] Report of the International Law Commission, 53rd Session, UN Doc. A/56/10 (2001).
[136] Ibid, 154.
[137] Ibid.

Professor James Crawford states that: *"Despite the uncertainty surrounding their future status, the Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities provide an authoritative statement on the scope of a state's international legal obligation to prevent a risk of transboundary harm*[138]*"*.

Articles 3 and 7 of the Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities provide that*: "The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof*[139]*"* and that: *"Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment*[140]*"*.

The commentary continues: article 3 is based on the fundamental principle *sic utere tuo ut alienum non laedas*[141], which is reflected in principle 21 of the Stockholm Declaration[142], reading: "*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own natural resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*[143]*"*. This article, together with article 4, provides the basic foundation for the articles on prevention. The article thus emphasizes the primary duty of the State of origin to prevent significant transboundary harm; and only in case this is not fully possible it should exert its best efforts to minimize the risk thereof.

Also it states that under article 7, a State of origin, before granting authorization to operators to undertake activities referred to in article 1, should ensure that an assessment is undertaken of the risk of the activity causing significant transboundary harm. This assessment enables the State to determine the extent and the nature of the risk involved

[138] Crawford J., "Brownlie's Principles of Public International Law", 8th edition, Oxford University Press, Oxford, (2012), 356- 357.
[139] Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries. Retrieved by http://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf on 1 June, 2015 at 11:45 a.m.
[140] Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries. Retrieved by http://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf on 1 June, 2015 at 11:58 a.m.
[141] "So use your own as not to injure another's property".
[142] Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972 (United Nations publication, Sales No. E.73.II.A.14 and corrigendum), part one, chap. I.
[143] Ibid.

in an activity and consequently the type of preventive measures it should take. Although the assessment of risk in the Trail Smelter case may not directly relate to liability for risk, it nevertheless emphasized the importance of an assessment of the consequences of an activity causing significant risk. The tribunal in that case indicated that the study undertaken by well-established and known scientists was "probably the most thorough [one] ever made of any area subject to atmospheric pollution by industrial smoke[144]".

Professor Tim Stephens explains that "the obligation to take preventative measures is one of due diligence but unfortunately not an absolute guarantee against the occurrence of harm[145]".

Further, the Commentary continues that: "*the obligation of the State of origin to take preventive or minimization measures is one of due diligence. It is the conduct of the State of origin that will determine whether the State has complied with its obligation under the present articles. The duty of due diligence involved, however, is not intended to guarantee that significant harm be totally prevented, if it is not possible to do so. In that eventuality, the State … [must] exert its best possible efforts to minimize the risk. In this sense, it does not guarantee that the harm would not occur[146]*".

One final comment is worth noting, International Treaty Law rarely uses the term of "due diligence" but there is one of the most notable examples, the 2011 Council of Europe Convention on Preventing and Combatting Violence against Women. Its use is exceptional. However, as the case law and the International Law Commission commentary reveal, the standard of due diligence is a fundamental feature of many different areas of international law.

i.iii. Due diligence and international environmental law

The concept of due diligence is a key component of the obligation to prevent harm in international environmental law. In the case of environmental damage to a neighboring State, the actual cause is often a private company. The Trail Smelter case provides the example. A private company, situated in British Columbia in Canada, is operated and has processed lead and zinc since 1896. Smoke from the smelter caused damage to forests and crops in the surrounding area and also across the Canada and United States border in

[144] Retrieved by http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf on 15 June, 2015 at 08:39 a.m.
[145] Stephens T., "International Courts and Environmental Protection", Cambridge University Press, Cambridge, (2009), 158.
[146] Report of the International Law Commission, 53rd Session, UN Doc. A/56/10 (2001), p. 154.

the area of Washington. Also smoke from the smelter distressed the residents, resulting in complaints to COMINCO and demands for compensation. The dispute between the smelter operators and affected landowners could not be resolved, resulting in the case being sent to an arbitration tribunal. Negotiations and resulting litigations and arbitration was settled in 1941. The Tribunal famously stated that "under the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence[147]".

The subjective component of the principle of prevention of environmental damage, which was at the heart of the Trail Smelter case, was developed by the International Court of Justice in its 1949 decision about the Corfu Channel case, referring generally to "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States[148]". This principle evolved in time to cover broader responsibility for States over environmental damage:

- States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction[149].
- According to Article 1 of the 2001 International Law Commission's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities[150], the obligation to prevent harm applies to "activities not prohibited by international

[147] Trail Smelter, RIAA, III, p. 1965, http://legal.un.org/riaa/cases/vol_III/1905-1982.pdf Even if the Trail Smelter case confirmed the no significant harm principle in relations between states, it left open whether states need to act diligently to ensure that no significant pollution ensues from the activity of its own or a private enterprise in its territory to other states. This is because the two states had already settled the issue of Canadian legal responsibility over the pollution effects via a compromise, making it possible to argue that the state of origin carries legal responsibility even if it has acted diligently and harm nevertheless ensues.

[148] Corfu Channel case, (United Kingdom of Great Britain and Northern Ireland v. Albania) [1949] ICJ Rep 22. For the full text here: http://www.icj-cij.org/docket/files/1/1645.pdf

[149] Article 2 of the Rio Declaration on Environment and Development, UN Doc A/CONF.151/26 (1992). For the full text here: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm See also Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), [1996] ICJ Rep 241-242, para. 29; Gabčikovo-Nagymaros Project (Hungary v. Slovakia) [1997] ICJ Rep 7, para. 53.

[150] Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries. For the full text here:http://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf

law which involve a risk of causing significant transboundary harm through their physical consequences[151]". Article 2(d) provides that the holder of this obligation is the State of origin, defined as "the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in draft article 1 are planned or carried out".

i.iv. Due diligence: yesterday and nowadays

Still there is no standard obligation according to international public law incumbent upon states to exercise in all circumstances prudent care in order to safeguard all aliens and foreign states against any kind of detriment. On contrary, the duty to exercise due diligence, like the duty to fulfil obligations in good faith, is accessory to and dependent upon another obligation involved: Unless a state is required by a particular primary obligation to achieve a certain result, the duty to exercise due diligence does not arise. As a consequence, the due diligence rule cannot and does not create any international obligation by itself. *"Due diligence only depicts the requisite standard of conduct incumbent upon a state which by virtue or an international obligation is required to prove a certain conduct or to achieve a certain result, while at the meantime the obligation does not prescribe the means, the purposes or any particular conduct of how to achieve these objectives[152]".*

Throughout the 19th and 20th centuries, due diligence had a particular relevance in the context of the protection of aliens/ foreigns. In his work *"The Law of Nations",* on 1758, Emer de Vattel had confirmed the customary international norm that, a sovereign, by allowing foreigners the right of entry to his territory, *"agrees to protect them as his own subjects and to see that they enjoy, as far as depends on him, perfect security[153]".* This included both a duty to protect citizens from private criminal acts, and also a duty to

[151] It is sometimes claimed that the due diligence obligation does or should apply to situations of transnational harm where both the activity and physical damage occur within one country, yet an international dimension is introduced by the transfer of hazardous technology from a state of origin. See Xue Hanqin, Transboundary Damage in International Law (2003) pp. 9-10; Shinya Murase, 'Perspectives from International Economic Law on Transnational Environmental Issues' (1995) 253 Recueil des Cours 287 at 396-399.

[152] Willisch J., "State Responsibility for Technological Damage in International Law", Duncker & Humblot, Berlin, (1987) 280-281.

[153] Vattel e., "The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury" edited and with an Introduction by Béla Kapossy and Richard Whitmore, Liberty Fund, Indianapolis, (2008), 145.

prosecute and punish those who caused injury to foreigns and their property. By the 19th century, this norm was being tested in relation to the large number of foreigners and extensive foreign property interests within the territorial jurisdiction of emerging nations. Clearly, these developing nations could not be held responsible for every private act that violated the rights of foreigners within its territories and the question became what standard of protection could be expected in the framework of due diligence.

According to international public law a state owes an obligation to all other states to protect their nationals while present in its territory against injury, harm or damage at the hands of individuals. As it seems this is not an absolute obligation and the exercise of due diligence in this particular obligation is a very low standard. A state also owes to other states an obligation to protect the members and the premises of their diplomatic missions against damage, injury or harm. Even though the requisite standard of conduct is still one of due diligence, in this specific case it is a higher standard than the first example but in both cases there is an exact international obligation which requires the observance of a certain standard of due diligence.

Another instance is the obligation of neutral states to prevent certain private acts on their territory which favor or damage a belligerent. Again a state has discharged this obligation when it has exercised due diligence. This point was established by the third of the Three Rules of Washington as stated earlier: "Due diligence ought to be exercised by neutral governments in exact proportion to the risks to which either of the belligerents may be exposed, from a failure to fulfill the obligations of neutrality on their part".

ii. "Effective Control" Criterion

The criterion of "effective control" lies on article Article 7 of DARIO[154]- Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization. The article states: "*The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct".*

[154] Retrieved by http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf on 30 April, 2015 at 10:15 a.m.

The traditional criterion of "effective control" states that the wrongful act and the resulting responsibility is attributed to the actor exercising the real control over the conduct. The ultimate control criterion is according to this doctrine an incorrect understanding of effective control[155].

The dichotomy between the criteria of "ultimate authority and control" and of "effective control" is the most noticeable in the framework of the authorized exercise of delegate powers. Since execution imposed by a binding decision adopted by an international organization is absent, it is necessary to research the execution based on an authorization, that is the legal basis of the ultimate authority and control criterion in order to give rise to the international organization's responsibility within the framework of DARIO.

The wrongful act of a State, during the execution of the powers delegated to it upon authorization, is always attributable to that State since it exercises voluntarily the effective control over the unlawful conduct. In terms of DARIO, the state acts as a delegate that put itself at the disposal of the international organization in compliance with Article 7. Taking into account the fact that the state is a co- author of this authorization which based on a junction of two wills, the adherence of Article 7 which expresses a certain degree of subordination to the international organization is not even necessary[156]. The responsibility of a state can arise directly from Article 4 of ILC's articles on state responsibility. However this does not prevent the parallel attribution of the act to the international organization under the DARIO. This justification would be advanced by the proponents of the "effective control" criterion. The European Court of Human Rights referred to Article 7 in the 2011 *Al-Jedda case* as "the test to be applied in order to establish attribution" with respect to "the conduct of an organ of a State placed at the disposal" of an international organization[157].

Under the DARIO the shared responsibility of an international organization and states raises several questions regarding the attribution of responsibility to the international organization. If the articles envisage expressly the "effective control" exercised over the wrongful conduct, no mention is made of an "ultimate authority and

[155] Sarooshi D. (ed.), "Mesures de réparation et responsabilité à raison des actes des organisations internationals/ Remedies and Responsibility for the Actions of International Organizations", Hague Academy of International Law/ Académie de Droit International de la Haye, Martinus Nijhoff Publishers, Leiden/ Boston, (2014), 210.
[156] Ibid, 206-207.
[157] Retrieved by http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105612#{"itemid":["001-105612"]} on 28 June, 2015 at 06:52 a.m. Case of Al- Jedda v. UK, 7 July 2011, ECHR (GC), No. 27021/08.

control" criterion. The effort of the ILC in order to integrate this latter criterion in the text of DARIO is apparent after the *Saramati case* where the ECHR founded the attribution of the wrongful conduct and the resulting international organization's responsibility exclusively on that criterion. The ECHR referred to Article 3 of DARIO[158]: "Every internationally wrongful act of an international organization entails the responsibility of that international organization". The Court of Strasbourg considered the internationally wrongful act as an "act of an international organization" simply because the KFOR "was exercising the lawfully delegated Chapter VII powers of the UNSC[159]". The reference to this general principle of international organizations' international responsibility combined with article 6 paragraph 1 of DARIO: "The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization".

The resulting combination of Article 7 and Article 6 of the DARIO as a legal basis for the shared responsibility of the international organization and the states would maintain the coherence of the whole framework of international responsibility based on the delegation of powers. Article 7 confirms the general rule of attribution of conduct based on the exercise of effective control over that conduct and Article 6 respectively attributes to the international organization the responsibility for its internationally wrongful act, committed during the exercise of its exclusive power.

The flexibility of the legal combination of Articles 6 and 7 reflects the participative weight of each and also can serve as a legal justification in cases involving an authorization leaving a margin of discretion to states. As the weight of responsibility for the wrongful acts falls to the states, the international organizations seem to have subsidiary responsibility[160]. Nothing prevents raising the subsidiary responsibility of the international organizations under Article 6 of DARIO.

This hybrid relationship can be easily expressed by Article 17 paragraph 2 of DARIO: "An international organization incurs international responsibility if it

[158] Article 3 of DARIO adopted during the 55th session of the ILC in 2003.

[159] Retrieved by http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80830#{"itemid":["001-80830"]} on 25 July, 2015 at 10:56 a.m. Agim BEHRAMI and Bekir BEHRAMI v. France and Ruzhdi SARAMATI v. France, Germany and Norway

[160] Sarooshi D. (ed.), "Mesures de réparation et responsabilité à raison des actes des organisations internationals/ Remedies and Responsibility for the Actions of International Organizations", Hague Academy of International Law/ Académie de Droit International de la Haye, Martinus Nijhoff Publishers, Leiden/ Boston, (2014), 210.

circumvents one of its international obligations by authorizing member States or international organizations to commit an act that would be internationally wrongful if committed by the former organization and the act in question is committed because of that authorization". This latter condition merits a particular comment. While the international organization incurs international responsibility by the sole adoption of a decision binding a member state to commit an act that would be wrongful for the international organization itself, the authorization entails such consequences only if the act is actually committed. Nevertheless, the adoption itself of the authorization contains an imposition of a binding obligation similarly to the effects of the adoption of a binding decision.

Chapter VI: The International Responsibility for the hydrolysis of Syrian chemical weapons in the Mediterranean Sea

At this final stage, we will explain how the International Responsibility for Acts of States and International Organizations not Prohibited by International Law is related with the Hydrolysis of Syrian chemical weapons.

Let see the facts from the beginning. On 21 August 2013, the world was shocked to see images of Syrian civilians, including many children, who appeared to have been the victims of a gruesome chemical weapons attack in the Ghouta area of Damascus. The United Nations investigation of the incident confirmed that chemical weapons were used on a large scale, in the ongoing conflict in the Syrian Arab Republic. This attack served as an impetus to diplomatic efforts to find a way to eliminate the chemical weapons programme of the Syrian Arab Republic. Those efforts produced the Framework for Elimination of Syrian Chemical Weapons[161] as stated above.

On the same day, the Syrian Arab Republic accessed to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention), and declared that it will comply with its stipulations and observe them faithfully and sincerely.

On 27 September 2013, the OPCW Executive Council adopted the historic decision EC-M-33/DEC.1 on the destruction of Syrian chemical weapons programme. This decision was endorsed by the unanimous adoption of United Nations Security Council resolution 2118 (2013) on the same day. The Executive Council decision set out an accelerated programme for achieving the elimination of Syrian chemical weapons by mid-2014. It required inspections in Syria to commence from 1 October 2013 and called for ambitious milestones for destruction which were to be set by the Executive Council by 15 November.

The decision was informed by the preceding Framework Agreement on the elimination of Syrian chemical weapons and facilitated the request by the Syrian Arab Republic that the Chemical Weapons Convention be applied ahead of the formal entry into force of the Convention for Syria on 14 October.

[161] Part 1: The Syrian Crisis, the response of the International Community and the decision for the Hydrolysis of Syrian chemical weapons in the Mediterranean Sea, Chapter III: The extended use of chemical weapons and the framework for their destruction, United Nations' reaction, the role of the Organization for the Prohibition of Chemical Weapons and the Volunteer Assisting Parties, 18-28.

The OPCW- UN Joint Mission was formally established on 16 October 2013, based on recommendations developed in close consultations between the United Nations Secretary-General and the OPCW Director-General. The mandate of the Joint Mission, derived from OPCW Executive Council decision EC-M-33/DEC.1 and UN Security Council resolution 2118 (2013), both dated on 27 September and was to oversee the timely elimination of the chemical weapons programme of the Syrian Arab Republic in the safest and most secure manner possible. Within the Joint Mission, the OPCW and the United Nations operated in areas of their particular competencies. Given the operating environment, the Joint Mission had a "light footprint" in Syria, deploying only those personnel whose presence was necessary to perform key tasks.

There is a contradiction between the whole multinational mission- process of the transfer of the chemical materials outside of Syria and Article I paragraphs 1-4: General Obligations of the Chemical Weapons Convention which clearly mentions that:

- ✓ *Each State Party to this Convention undertakes never under any circumstances: To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone*[162]
- ✓ *Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention*[163]
- ✓ *Each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party, in accordance with the provisions of this Convention.*[164]
- ✓ *Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.*[165]

As we can understand from this principle in the Convention it is prohibited to transfer directly or indirectly any chemical weapon and according to International Law and the Law of the Treaties, this different approach is kind of difficult. In an interview that I recently had with the Legal Adviser of the OPCW in the headquarters of the

[162] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, for the full text here: https://www.opcw.org/index.php?eID=dam_frontend_push&docID=6357
[163] Ibid.
[164] Ibid.
[165] Ibid.

organization in The Hague and I asked if this general obligation didn't apply due to the implementation of "broad interpretation" that induces fewer obligations of the parties, he answered that "exceptional cases implement extraordinary measures".

In combination with articles 9 and 10 of the CWC, we notice the general framework about the cooperation, assistance and protection between the member states against the chemical weapons. Article 9 states that: *"States Parties shall consult and cooperate, directly among themselves, or through the Organization or other appropriate international procedures, including procedures within the framework of the United Nations and in accordance with its Charter, on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of this Convention"* and article 10 continues: *For the purposes of this Article, "Assistance" means the coordination and delivery to States Parties of protection against chemical weapons, including, inter alia, the following: detection equipment and alarm systems; protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures. Nothing in this Convention shall be interpreted as impeding the right of any State Party to conduct research into, develop, produce, acquire, transfer or use means of protection against chemical weapons, for purposes not prohibited under this Convention. Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons[…]Nothing in this Convention shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance. Each State Party undertakes to provide assistance through the Organization".*

We see that in the case of the hydrolysis of Syrian chemical weapons the protocol of the CWC is not being followed exactly the way the Convention orders. Syria not only did not destroy chemical weapons it owned or possessed alone in its territory, but also this procedure did not happen in the place under its jurisdiction or control. It happened in the international waters of the Mediterranean Sea, in the west of Crete and that is another contradiction of the whole process as stated above because each party undertakes never under any circumstances to transfer, directly or indirectly, chemical weapons to anyone…As we notice some basics from the hard core of the rules of CWC are not being followed. Is this happened because of the crucial of the situation? Or was it another

perspective on the situation? It may be a gap in hydrolysis procedure that we will try to understand and follow the concept under which it happened.

The role of the OPCW was really important and determinant as the Organization was there as an inspector who wanted to guarantee the security and the verification of the full completion of the destruction of chemical weapons of the Syrian Arab Republic in accordance with the Chemical Weapons Convention rules. Even though the OPCW was in a joint mission with the UN, in case of a chemical accident, the vessels of the volunteer assisting members would take full responsibility for their own actions.

This mutual understanding is also reflected in a letter from the UN Secretary General Ban Ki-moon, dated on December 17, 2013, to the President of the UN Security Council which states: *"Once on board the maritime vessels, relevant Member States will assume their respective responsibilities through the multilateral legal framework established by the Security Council in its resolution 2118 (2013) and by the decisions of the OPCW Executive Council".*

This understanding is also reflected in paragraph 15 of The Plan for the Destruction of the Syrian Chemical Weapons Outside the Territory of the Syrian Arab Republic in which it is said that: *"With respect to their responsibilities, the States Parties assisting in the destruction of Syrian chemical weapons, transporting Syrian chemical weapons from the territory of the Syrian Arab Republic to a State Party hosting destruction activities, or hosting destruction activities on their territory ("Assisting States Parties") have arrived at certain common understandings. Accordingly, it is recognized that the United Nations Security Council resolution 2118 (2013) and the relevant Executive Council decisions establish a multilateral legal framework for the activities of the Assisting States Parties. The responsibilities of the Assisting States Parties, including liability for claims will be determined according to the circumstances, to the extent of their respective roles, and in light of the purposes of resolution 2118 (2013) and applicable Council decisions. Should an unexpected contingency arise in this regard, the Assisting States Parties could raise the situation to the United Nations Security Council or the OPCW Executive Council. An exchange of letters on this matter took place between the Secretary-General of the United Nations and the President of the United Nations Security Council on 11 December 2013[166]".*

[166] Retrieved by http://www.scribd.com/doc/192339195/OPCW-plan-for-destroying-Syria-s-chemical-weapons on 27 November, 2014 at 04:15 p.m.

As already noted, under Article IV- Chemical Weapons- the paragraphs 10-12 of the Chemical Weapons Convention are very descriptive about the responsibility of the state parties. As it is mentioned: *"Each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall transport, sample, store and destroy chemical weapons in accordance with its national standards for safety and emissions. Any State Party which has on its territory chemical weapons that are owned or possessed by another State, or that are located in any place under the jurisdiction or control of another State, shall make the fullest efforts to ensure that these chemical weapons are removed from its territory not later than one year after this Convention enters into force for it. If they are not removed within one year, the State Party may request the Organization and other States Parties to provide assistance in the destruction of these chemical weapons. Each State Party undertakes to cooperate with other States Parties that request information or assistance on a bilateral basis or through the Technical Secretariat regarding methods and technologies for the safe and efficient destruction of chemical weapons*[167] *".*

Although this obligation would normally apply to a possessor State Party who is required to destroy its own chemical weapons, in the present case this obligation was transferred to the Assisting States Parties hosting destruction activities. In addition to being subject to the Chemical Weapons Convention and the decisions of its governing bodies, the Assisting States Parties also have responsibilities under international law, namely under the International Convention for the Safety of Life at Sea of 1974, the International Convention for the Prevention of Pollution from Ships of 1973, consequently the International Maritime Dangerous Goods Code and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

Up to this point, it is crystal clear that in case of any chemical accident, the Organization for the Prohibition of Chemical Weapons, like the United Nations, bears no responsibility. In particular in respect of the neutralization on board the Cape Ray, the United States' Navy assumes all liabilities which would arise in case of an accident. But is this the case? Who exercised the "effective control" of the procedure? The volunteer

[167] Retrieved by http://www.opcw.org/index.php?eID=dam_frontend_push&docID=6357 on 27 November, 2014 at 05:12 p.m.

assisting parties such as Denmark, Finland, Germany, Russia, China, Norway, UK and USA or the UN and the OPCW? In such case can we say that the assisting member states had the effective control of the hydrolysis procedure or UN and OPCW had the "ultimate authority and control" as coordinator and inspector of the procedure respectively? Or is this a hybrid relationship between the ultimate international organization- UN- and OPCW which is an independent, autonomous international organization but with a working relationship with the United Nations and the assisting member states finally?

A multinational Maritime Task Force comprised of naval forces from China, Denmark, Norway, Russia, China and the United Kingdom was positioned in the eastern Mediterranean Sea in order to provide secure transportation of chemicals to their ultimate destruction location. The cargo ships had additional capacity to deal with chemical spills or emergencies and a special chemical response team was available along with expert chemical response from Finland. But in the case of a leak, these states would bear the responsibility or the OPCW that did not take all the necessary measures in order to avoid such a situation, or the UN that did not coordinate well the whole procedure?

In my point of view and taking everything into consideration it is a complicate relationship because indeed the assisting member states exercised the effective control on their part of neutralizing and transporting the chemicals respectively, but the OPCW and UN joint mission was to control and authorize the next moves respectively also. The states had to exercise the international standard of due diligence and the international organizations had to do the same also in order not to harm the international environment of Mediterranean Sea and consequently the adjacent states that lie around. Last but not least, the case of hydrolysis for the Syrian chemical weapons is important because under any circumstances this cannot be *res judicata* for the future. It has to be an exception due to the rough situation in the country because of the Syrian Civil Crisis.

Conclusions

Even though there may be some vagueness with regard to particular articles on both, State responsibility and the Responsibility of International Organizations, International Law Commission's approach was to create a coherent system of responsibility for States and International Organizations too, and should be supported.

The Special Rapporteur has often concluded with respect to specific draft articles, that "there would be no or hardly any reason" to depart from the wording of state responsibility articles[168]. At the same time the reports of the Special Rapporteur and the ILC reports make abundantly clear that the "copying" of the state responsibility articles was never done without analyzing the law and practice of international organizations as well as legal doctrine. Even though one may criticize the substance of the draft articles, they are neutral and apply in each case where an international organization has committed an internationally wrongful act, and do not specify any "primary" rules and the substance of such wrongful acts.

It is perhaps understandable that ILC's work on the issue has been criticized, in view of the limited practice that is available. It is true that sometimes is somewhat theoretical exercise. Gradually the activities that international organizations carry out have become more numerous and violate more deeply the social life, so as to make it more likely for responsibility issues to arise and more necessary to have a set of general rules in place. Moreover, in some cases the activities carried out by international organizations are very important and receive a lot of public and political attention, for example UN peacekeeping and UN authorized operations, and are brought in front of national and international courts. Without the DARIO, these courts would probably use the ASR by analogy. DARIO would therefore fill the gap of need. To sum up, the ILC should continue to take international organizations seriously and the same should be done by states when considering the work of ILC.

Responsibility as established here can serve as an important aspect of enhanced accountability of international organizations. While they have legal international

[168] E.G. http://legal.un.org/ilc/documentation/english/a_cn4_541.pdf
http://legal.un.org/ilc/documentation/english/a_cn4_553.pdf
http://legal.un.org/ilc/documentation/english/a_cn4_583.pdf

personality, they must have international responsibility for wrongful acts or acts not prohibited by International Law.

The regime of state responsibility is of course older than that of responsibility of international organizations and courts as well as the Commission have grappled with the former for a long period of time and thus have had time to develop it. The DARIO on the other hand are young and still rather in their teenage stage of development. They can be given more time now to evolve in practice. As DARIO's older, adult sibling, the ASR has turned out so well, it can at least be hoped for the younger member to turn out equally well. What should, however, be developed now, out of its rather embryonic stage, are the remedies available to claim the responsibility of an international organization.

The Hydrolysis case of Syrian chemical weapons related in such an extend with the Articles on State Responsibility and the Draft Articles on the Responsibility of International Organizations as it expands the practice in the international legal personality of organizations, such as United Nations and Organization for the Prohibition of Chemical Weapons and the States also, such as the assisting member states that voluntarily cooperated in order to secure the world away of chemical weapons which are a threat for the international peace and security.

Responsibility of States and International Organizations means parallel expansion of the international legal personality and international legal personality entails liability and consequences and these are being followed by reparation- redress which are basic norms in international law.

However when we comment about international responsibility, international legal personality, reparation- redress, it is really necessary to bear in mind the due diligence rule which still is no a standard obligation according to international public law incumbent upon states to exercise in all circumstances prudent care in order to safeguard all aliens and foreign states against any kind of detriment. On contrary, the duty to exercise due diligence, like the duty to fulfil obligations in good faith, is accessory to and dependent upon another obligation involved: Unless a state is required by a particular primary obligation to achieve a certain result, the duty to exercise due diligence does not arise. As a consequence, the due diligence rule cannot and does not create any international obligation by itself. *"Due diligence only depicts the requisite standard of conduct incumbent upon a state which by virtue or an international obligation is required to prove a certain conduct or to achieve a certain result, while at the meantime the obligation does*

not prescribe the means, the purposes or any particular conduct of how to achieve these objectives[169] *''*.

It seems now that the international organizations such as the UN and OPCW and the assisting member states (Finland, Denmark, Germany, China, Russia, UK, USA, Norway) were there in order to coordinate, inspect and transport respectively the procedure for the elimination of the Syrian chemical weapons. Each organization and state had to accomplish a very specific task and role in order for the procedure to be completed. The above mentioned situation was a hybrid case of execution based on authorization which demanded the total cooperation of international organizations and states and in this way proved that the international cooperation between states and their relationship with international organizations is beyond the limitations of international responsibility.

The assisting member states had the effective control of the neutralization of chemicals (USA) and of their transportation (Finland, Denmark, Germany, China, Russia and UK), while the UN and the OPCW had the ultimate authority and control for coordination and inspection respectively on the procedure for the elimination of the Syrian chemical weapons in the Mediterranean Sea.

It is sure that this case must be an exception and not a res judicata for future use. The Syrian Arab Republic might not be able to destroy alone its chemicals weapons as the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemicals Weapons and on their Destruction dictates but this does not mean that will continue to happen.

Taking everything into consideration we can say with some kind of precaution that the international responsibility both of states and organizations can be of great importance because the relationship between them is complex and difficult. The states take part in organizations in order to promote and secure their special interests but this does not mean that they lose their sovereignty or their immunities. The state immunity continues to exist in a wide variety of aspects in international law and at some point it has to be clear the immunity of the organizations, its extent and depth. The International Law Commission may surprise the international law community by presenting a new set of articles about immunities of states and international organizations.

[169] Willisch J., "State Responsibility for Technological Damage in International Law", Duncker & Humblot, Berlin, (1987) 280-281.

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