The place of the State’s obligation to cooperate in the general theory of State’s international responsibility.

Depending on the response to this question will be clear the content of the mentioned obligation, whether it includes the post trial procedure of execution of Court’s judgment or not, as well as who are the subjects being in right to claim the violation of this duty. In the general theory of State’s international responsibility there exists a clear schema: violation of primary obligations give rise to the emergence of secondary obligations which makes in their turn the content even of the responsibility. Hereby we will try to discover if the mentioned above duty belongs to one or another group of obligations or does it play a completely different role.

The evolution of the international law of state responsibility took all the period of 20th century and found its achievement in 2002 with the work of codification made by the Commission of International Law. Two important issues were in the focus of this project: the bilateral or multilateral approach to the state’s responsibility and the gradation of offences. Each of these points of view has had his leaders which were in the head of the Commission in different periods of time: Dionisio Anzilotti and Roberto Ago. “While Anzilotti does not grade violations of international law according to their gravity. Ago differentiates between (lesser) delicts and (more serious) crimes. While Anzilotti only admits violations of obligations between two or more particular states as giving rise to responsibility under international law. Ago also postulates obligations towards the international community of states as a whole. These differences appear to be intimately connected with the respective author’s views concerning the source of the binding nature of international law: while Anzilotti insists on the (collective) sovereign will of the state as the one and only source of international obligation. Ago emphasizes their community interest”¹. The international jurisdictional and normative practice went on the principle of collective responsibility, the concept of *jus cogens* had been recognized by Articles 53 and 64 of the Vienna Convention on the Law of Treaties, and the International Court of Justice had decided the *South West Africa* and the *Barcelona Traction* cases. These cases had revealed the practical importance of distinctions in the law of state responsibility between more or less serious violations and between obligations *inter partes* and obligations *inter omnes*. Against this background, it seemed to be a less drastic step to introduce the concept of ‘crime of state’, as Ago did in 1976 in his famous proposal for Article 19 of his Draft Articles (ARSIWA). Sum of the facts his project was finally adopted on 28 of January 2002. According to the Articles on state responsibility the fact generating the due responsibility is “an every internationally

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¹ Georg Nolte « From Dionisio Anzilotti to Roberto Ago : the classical international law of state responsibility and the traditional primacy of a bilateral conception of inter-state relations » in European journal of international law November 2002
wrongful act of a State”. Long time the classical theory was attached to the idea of a prejudice as a necessary condition of an occurrence of state responsibility\(^2\). This position perfectly reflected the dominance of the principle of State sovereignty in the international law. The final project of Articles met the end to this concept and limited the generating responsibility conditions to the one as it results from the reduction of article 1 of the project cited and meaning that only an internationally wrongful act is a sufficient and necessary condition for the engagement of responsibility\(^3\). It is deduced of this that responsibility is engaged independently of the eventual consequences, and is generated by an objective fact, results of a failure of State to respect his obligations.

This brief historical retrospection being made we shall concentrate our scientific effort on two important issues. First we shall describe the features of the states responsibility in the field of human rights, the schema of its elements will be dressed to see after what place does take in this draft the obligation of States members to cooperate with the European Court of Human Rights.

**Part I The schema of states responsibility in human rights law**

The above evoked project of State responsibility left several questions regarding the sphere of human rights law, the biggest among them was who was the possessor of the right to invoke the states responsibility in case of the violations of human rights. In other words do the individuals have title to act in international law against the State which affected their rights? It must be emphasized that there is no question to know if the individual could be considered as a subject of international law as his consecration in such statute has produced during all the second half of 20\(^{th}\) century with the recognition of the rights belonging to him and obligations on his charge\(^4\). The resolution 56/83 announces in its article 42 only the capacity of an injured State to invoke the responsibility of another State including the fact if the obligation breached is owed to a group of States with that State, or the international community as a whole, and the breach of the obligation. The recognition of the common interests exceeding the individual interests of a concrete government, concerning all the community of states was a remarkable step towards the common international order from the quiet indifferent to the common wealth theory of state sovereignty.

This set of rules being not satisfying to the human rights sphere the NGO were reclaiming the specific resolution which would precise the right of states unlawful actions victims to claim the

\(^2\) Droit International Public sous rédaction de Jean Combacau Serge Sur, Montchrestien 2004 p. 525

\(^3\) Droit international Public sous rédaction de Patrick Daillier, Mathias Forteau, Alain Pellet, L.G.D.J p. 850

\(^4\) Pierre d’Argent « Le droit de la responsabilité internationale complété ? Examen des principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l’homme et de violations graves du droit international humanitaire » in Annuaire français de droit international 2005. p. 28
reparation. Fifteen years of institutional, academic and NGO common effort resulted by adoption in 2005 by UN General Assembly of the resolution named “Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law”⁵. Leaving under the board the historical background of its elaboration we will concentrate hereby on the content its self, therefore we shall analyze how does this resolution clarify the fundamental elements of the responsibility in the context of human rights. Our attention will be brought initially to the first indispensable element of international responsibility, its generating factor – the violation of primary obligations (A), and will be concentrated further on the consequences precisely on the secondary obligations to which the emergence of responsibility gives rise: those of reparation (B).

A. The generating fact – violation of primary obligations

The key notions of the above resolution are those forming the condition of occurrence of the states responsibility on the one hand and of the rights to a remedy and reparation of victims on the other. As the name of the resolution indicates such condition is a gross violation of human rights law and serious violation of humanitarian law. Only violations characterized as gross and serious could open the door for reestablishment of victim’s rights or it suggests of all kind of delicts?

The initial study carried out by the Special Rapporteur under the mandate of the Sub-Commission referred to victims of gross violations of human rights and fundamental freedoms. In this study it was noted that the word “gross” qualifies the term “violations” and indicates the serious character of the violations but that the term “gross” is also related to the type of human rights that is being violated. In the ensuing discussions and negotiations it was, however, argued that the Principles and Guidelines would be unduly restrictive since all violations of human rights entail the right to redress and reparation. On the other hand, with the evolving opinion that the Principles and Guidelines should also cover serious violations of international humanitarian law, the view prevailed that the focus of the document should be on the worst violations. The authors had in mind the violations constituting international crimes under the Rome Statute of the International Criminal Court. On this premise, a number of provisions were included in the Principles and Guidelines spelling out legal consequences that are contingent, according to the present state of international law, upon international crimes. Such provisions affirm the duty of States to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish (principle 4). They also include the duty to make

⁵ A/RES/60/147
appropriate provisions for universal jurisdiction (principle 5), as well as references to the non-applicability of statutes of limitations (principles 6-7). While the Principles and Guidelines focus on “gross” and “serious” violations, it is generally acknowledged that in principle all violations of human rights and international humanitarian law entail legal consequences. Thus, in order to rule out any misunderstanding on this score, the following phrase was included in principle 26 on non-derogation:

“[i]t is understood that the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights and international humanitarian law”.

Another important issue being in rapport with the beginning of states responsibility is the notion of victims which is treated in the chapter 5 of the resolution. In order to devise and apply fair and just criteria for the rendering of reparative justice in terms of personal and material entitlements, it was argued that there must be an objective test to determine who is a victim. As a general compromise it was agreed to base the notion of victims, as reflected in principles 8 and 9 of the Principles and Guidelines, on the terms of the generally accepted Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in 1985 by the United Nations General Assembly (A/RES/40/34). This definition notes that a person is a victim if he or she suffered physical or mental harm, economic loss, or impairment of his or her fundamental rights; that there can be both direct victims and indirect victims, such as family members or dependents of the direct victim; that persons can suffer harm individually or collectively.

Before passing to the next step – the secondary obligations to which the responsibility gives rise – it would be necessary to precise that not only the liability of state to remedy and repair victim’s rights is considerate by the present UN act. The responsibility of non states actors could also be invoked when dispositions of human rights law and humanitarian law are violated. While the Principles and Guidelines are drawn up on the basis of State responsibility, the issue of responsibility of non-State actors was also raised in the discussions and negotiations, notably insofar as movements or groups exercise effective control over a certain territory and people in that territory, but also with regard to business enterprises exercising economic power. It was generally felt that non-State actors are to be held responsible for their policies and practices, allowing victims to seek redress and reparation on the basis of legal liability and human solidarity, and not on the basis of State responsibility. The Principles and Guidelines provide for equal and effective access to justice, “irrespective of who may ultimately be the bearer of responsibility for the violation” (principle 3 (c)).

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6 The van Boven explanation note to the “Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law”. 
In this connection reference is also made to the following provision: “In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim” (principle 15, last sentence). It is a victim-oriented perspective that was kept in mind in extending, albeit in a modest and cautious way, the scope of the Principles and Guidelines to include the responsibility and liability of non-State actors.

These essential notions have being exposed the question stays to know what is the juridical fundament for the announced by the resolution right of the victims to a remedy and reparation. Paragraphs 8 and 9 of resolution affirm that the principles and directives are returned to the “victims” which are collective or individual persons. In his final rapport of 1993 M. van Boven argues that in international law each attempt to one of human rights gives rise to the victim’s right of reparation. Since statement of the Permanent Court of International Justice in the case factory of Chorzow⁷ it is confirmed that each violation of international law is carrying, on title of international responsibility, the obligation to repair damage which is resulted of it. Thus, it is logically to conclude that this obligation constitutes the right in chief the persons who sustained the above damage from the moment when the violated norm was admitted in their benefit.

However this affirmation is not found in the present resolution. In reality, this document seems to base the right to remedy and reparation on benefit of victims on, one hand, the form of extrapolation of several conventional dispositions and, on the other hand, on the obligation to respect, make respect and apply the international human rights law and international humanitarian law.

Concerning the evocation of already existing conventional instruments on which the right to a remedy and reparation is based the resolution enumerates first those of universal level to remind than these regional ones. Thus, in paragraph 1 of the preamble it in particular mentions article 8 of the Universal Declaration of Human Rights,¹ article 2 of the International Covenant on Civil and Political Rights,² article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination,³ article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁴ and article 39 of the Convention on the Rights of the Child,⁵ and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV),⁶ article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,⁷ and articles 68 and 75 of the Rome Statute of the International Criminal Court. This repeal seems to have as an aim to indicate the dispositive of

⁷ Factory at Chorzow (Germ. v. Pol.), 1927 P.C.I.J. (ser. A) No. 9 (July 26)
the resolution underlining its classical character and the function to generalize all at this moment existing treaties. Although the deep examination of all noted dispositions will reveal the sparse character of them as well as sometimes the absence of direct link to the object of the due resolution as it is the matter with the article 3 of the Hague Convention IV of 1907 respecting the laws and customs of War on land and article 91 of protocol I of 1977 additional to the Geneva Conventions of 1949 which both don’t consecrate the right for individual victims of violations of jus in bello to obtain reparation.

Thus, according to the paragraph 3 of resolution the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to provide effective remedies to victims, including reparation. The paragraph 2 of resolution indicates that the States complete their obligations their international obligations making available adequate, effective, prompt and appropriate remedies, including reparation.

This chosen structure of the responsibility is not clear. Indeed it’s ensuing from the reading of the resolution that the right to a remedy and reparation is resulted from the elementary duty to respect, insure respect and apply the concrete right, that means in substance to execute its international obligations. Two objections could be brought to this position: primary that the right to the reparation could not be considered as only the appendicle to the right to a remedy and secondary that this last one is not simply included to the obligation to respect, insure the respect and apply the right. Most magically, that is the violation of this obligation that makes appear the right to the reparation which is implementing due to the right to a remedy. In other terms, it’s because the right to the reparation exists as an individual right consequently to the breach of the obligation to respect right that an effective remedy in intern juridical orders must be available for insure its enjoyment. In resume, the right to the reparation is born from the violation of right and is in this sense extern to the obligation to its respect; the right to a remedy is a mean to reclaim the enjoyment of the primary substantial right or if it’s impossible the reparation of damage ensuing of its violation.

It could be regrettable that principles and directives don’t simply affirm that violation of each international law rule directly applicable admitting to individuals the right gives rise in their chief, in international law, the right to obtain the reparation of damages which are resulted by this violation.

B. The consequences of the emergency of states responsibility – secondary obligations

The larger part of the Principles and Guidelines, with strong domestic law implications, sets out the status and the rights of victims, and corresponds to the title of the document as it refers to the right of victims to a remedy and reparation (in particular principles 11-23). A core component of
the Principles and Guidelines, denoting a broad range of material and symbolic means to afford reparation to victims, is laid out in the principles describing the various forms of reparation. They were formulated with the Articles on State Responsibility of the International Law Commission in mind. The various forms of reparation and their scope and content, covering both monetary and non-monetary reparations, may be summarized as follows:

- **Restitution** refers to measures which “restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred” (principle 19). Examples of restitution include: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

- **Compensation**: “should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case” (principle 20). The damage giving rise to compensation may result from physical or mental harm; lost opportunities, including employment, education and social benefits; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

- **Rehabilitation** includes medical and psychological care, as well as legal and social services (principle 21).

- **Satisfaction** includes a broad range of measures, from those aiming at cessation of violations to truth seeking, the search for the disappeared, the recovery and the reburial of remains, public apologies, judicial and administrative sanctions, commemoration, and human rights training (principle 22).

- **Guarantees of non-repetition** comprise broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry and psychological and social services (principle 23).

Part II The place of the states obligation to cooperate with ECHR in the schema of states responsibility

It is convenient first of all to dress a little draft of what is the obligation of states members of ECHR to cooperate with Court. The Convention, by recognizing the right of individual application, has
given individuals the status of subjects of international law. But the effectiveness of the right of individual application largely depends on the states parties’ co-operation with the Court at all stages of the procedure, including, as shown below, before an application reaches the Court. The functioning of the various mechanisms employed by the Court in carrying out its task of examination of an individual application can only be maintained with the assistance of the member states. The Court requires the co-operation of all states parties at all stages of the procedure and even before a procedure has formally begun. In view of the subsidiary nature of the Court’s intervention, and its lack of investigatory resources in the countries concerned, national authorities have a positive duty to co-operate with the Court as regards the establishment of facts.

The states’ duties to co-operate with the Court flow principally from articles 34 and 38 of the Convention⁸, Rule 39 of the Court’s Rules, and from the European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights. Article 34 ECHR states that “the High Contracting Parties undertake not to hinder in any way the effective exercise of [the right of individual petition]”. In Bilgin v. Turkey, the Court has held that Article 34 prohibits improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy as well as direct coercion and flagrant acts of intimidation. Under Rule 39 of the Rules of the Court, the Court may “indicate to the parties any interim measure which it considers should be adopted in the interest of the parties or of the proper conduct of the proceedings before it.” In considering requests for interim measures, the Court has applied a threefold test: there must be a threat of irreparable harm of a very serious nature; the harm threatened must be imminent and irremediable; and there must be a prima facie case. Under Article 38 ECHR, after the Court declares an application admissible, it undertakes an investigation “for the effective conduct of which the states concerned shall furnish all necessary facilities.” In a number of its decisions, the Court has held that Article 38 bestows upon the states parties the duty to disclose and produce witnesses, and the duty to produce evidence.

The European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights (European Agreement) places specific obligations on states parties regarding correspondence between applicants and the Court, and travel arrangements. Under Article 3, the parties must respect the rights of applicants and their representatives to correspond freely with the Court. The correspondence of detained persons must be dispatched without undue delay and no adverse consequences must follow from the applicant’s petition to the Court. In addition, Article 4 of the European Agreement requires the Contracting Parties to allow free movement and travel of the

⁸ Convention for the protection of human rights and fundamental freedoms of 04/11/1950
applicants and their representatives for the purpose of attending and returning from proceedings before the Court.

In the Parliamentary Assembly Mr Christos Pourgourides report of 09 February 2007 the above mentioned duty contains three essential components\(^9\): duty to refrain from pressuring the applicants or potential applicants; duty to comply with interim measures and Duty to furnish necessary facilities for the effective conduct of the Court’s investigation.

There is no question in this essay to describe each of these duties, but to try to contribute to the research of whether it is a full list of obligation to cooperate components and on which stage does this duty lie the States. This answer could be found if we try to place this obligation in the States responsibility structure. In the construction of primary and secondary obligations studied above there could be possible two variants to place this concrete duty. According to the first hypothesis it could be the primary States obligation and in this case its violation would serve as a generating fact of states responsibility. Due to the second supposition this obligation could form the procedural guarantee of the invocation of state responsibility, the guarantee that the secondary obligation could be accomplished. Depending on which of these two hypothesizes would be chosen the few problematic could be resolved as at first does the non observation of the above duty imply the occurrence of sanctions, or in second, who is in right to reclaim the respect of this obligation and obviously at last it would clarify the question whether or not the execution of Court’s decision does enter in this obligation or not as well as other procedural moments as for example the conclusion of settling disputes.

A. Obligation to cooperate as a primary States obligation.

In favor of this supposition are applying the conventional dispositions which recognize by article 34 the right of individuals to deposit their application before the Court. This right being formulating as a negative obligation not to hinder the applicants in the effective execution of their right to remedy before Court. The obligation to cooperate contains however not the right to the petition but the right not to be refrained while applying before European Court. Concerning the right itself to apply before the Strasbourg’s jurisdiction it only appears if the person could pretend that it is a victim of violation of the rights set forth in the Convention or the protocols thereto. Thus, it is necessary that one of the primary right would be breached that the right to apply appears. This right

\(^9\) Christos Pourgourides « Member States duty to cooperate with the European Court of human rights” Parliamentary Assembly report of 09/02/2007
thus could be seen as a right to a remedy, more precisely to the access to justice. So far that the first component of the obligation to cooperate couldn’t be recognized as a primary right.

Hardly the nature of other two non doubtful elements of the states cooperation duty - interim measures and furniture of necessary facilities to the effective conduct of the Court’s investigation – could be observed as primary obligation in the international responsibility mechanism. So long as the first are not even conventionally consecrated, secondly because they can’t be applied separately of any other conventionally recognized right which application is under the danger. This last remark let to suppose that the interim measure assumes role of the procedural guarantee of the primary right which is not yet violated so doesn’t give rise to the state’s responsibility but needs its protection unless its existence would be under the danger. Moreover the obligation to respect interim measures appears only if ordered by Court and not independently of other rights recognized by Convention. Could be considered as evident the third cooperation duty element’s nature as a procedural guarantee of the secondary obligation as permitting to proceed to an effective remedy.

Another contra-argument of this analyzed hereby hypothesis is that the non observation of one of the cooperation duty elements – the right to an individual application before Court – could be invoked by the Court itself as it has been in the case Lopata v Russia: “The Court, of its own motion, raised the issue whether the applicant had been subjected to intimidation which had amounted to a hindrance to the effective exercise of his right of individual petition, in breach of Article 34 of the Convention, in particular, in respect of the events of 6 January 2004”\textsuperscript{10}. The Court being anxious about the good proceeding of the case examine didn’t limit itself by the field evoked by the applicant the fact that demonstrate in which degree this negative state’s obligation is important for the regular course of the procedure before the European instance and underline the procedural character of the individual petition right.

The violation of primary obligations normally gives rise to the emergence of the victim’s right as we saw in the previous part to remedy and reparation. The European Court practice reflects that the non observation by a State of its obligation to cooperate could invoke some sanctions in the form of recognition of violation of article 38 or 34 as it was the matter for example in the case Mamakulov v Turkey in which first the binding character of interim measures was recognized.

Sum of the facts, this analyze hardly permit us to conclude that the duty to cooperate forms the primary obligation. The opposite conclusion would lead us to consider that the breach of the rights resulting of this obligation makes occur the secondary obligations to a remedy and reparation while they are themselves accompanying these secondary rights. However when they are infringed

\textsuperscript{10} Lopata v Russia 13/07/2010 p. 147
they give right to an applicant to claim about this violation before European Court so far that being depending of the violation of primary rights they could themselves in case of their breach give rise to the secondary obligations having in this kind of situation the status of primary obligations.

B. Obligation to cooperate as a procedural guarantee of the invocation of state responsibility.

When the primary obligation is breached the secondary obligations occur and it is at this perspective that obligation to cooperate plays its role in insuring procedurally the execution of these secondary duties.

The States parties to the Convention are not only linked by the obligations that the substantial rules of treaty impose i.e. rules that are relating to the content and extended of recognized rights and freedoms; they are also linked by the rules of implementation of treaty relative to the European organs of control. Thereby the violation of the Convention can as well result of two facts of different character whether of states conduct non compatible with what is required by the rules of the implementation or by states conduct non corresponding to the attitude prescribed by the substantial rules.

In its very first case concerning the negative obligation of the States not to impede the right of the applicants to the individual remedy the Court underlined this procedural character of this right: « the Court reminds that in its ordinary meaning Article 25 § 1 (art. 25-1) imposes an obligation not to interfere with the right of the individual effectively to present and pursue his complaint with the Commission. Such an obligation confers upon an applicant a right of a procedural nature distinguishable from the substantive rights set out under Section I of the Convention or its Protocols. However it flows from the very essence of this procedural right that it must be open to individuals to complain of alleged infringements of it in Convention proceedings».

Technically in the decision making Court practice the elements of cooperation are inseparable of the right to the petition especially when it suggests of two first elements as the duty not to refrain the petition right and the right to interim measures. The possibility of their violation is always examined under the dispositions of article 34 what means that it’s in insurance of execution of the right to a remedy consecrated in this norm that these duties exist what revels their status as a procedural guaranty of secondary State obligation. As in its settlement in the case Mamatkulov and Askarov v Turkey11 the Court reiterates “that by virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant’s right of application. A failure by a Contracting State to comply with interim

11 Mamatkulov and Askarov v Turkey of 04/02/2005 p 128
measures is to be regarded as preventing the Court from effectively examining the applicant’s complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34”.

The same situation could be observed in case of the duty under the article 38 to furnish necessary facilities for the effective conduct of the Court’s investigation. Very often in Court practice the breach of this obligation is invoked in the link with violation of the substantive conventional right as it is the matter in the case Celikbilek v Turkey: “the applicant submitted that there was sufficient evidence for the Court to conclude beyond reasonable doubt that his brother had been intentionally killed by the police. The applicant drew the Court’s attention to the domestic authorities’ failure to carry out a proper investigation and also to the Government’s failure to produce certain key documents requested by the Court”\textsuperscript{12}. In the same case Court traces the direct link between the right to petition and duty to furnish the necessary facilities underlining by this the procedural character by the last: “before proceeding to assess the evidence, the Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications”\textsuperscript{13}.

To resume our analyze some conclusions could be made. First, it seems to be evident sum all the facts that the obligation to cooperate serves as a procedural guarantee of the secondary obligations in the mechanism of States responsibility. This constant allows us to proceed to another step in our reflection and to admit that this obligation occurs in the moment the primary rights are breached and need reparation, and after even this reparation was not possible in the intern order as principle of subsidiarity dictates and only the reparation in the international order would remedy the situation. This means that the due obligation can’t include the elements preceding the emergence of the right to the petition under the European Convention. Thus, only when all the conditions to apply before the Court are unified the above States duty appears. Regarding the moment when this duty ends it must be the stage when the secondary obligation of reparation is accomplished. Thus, it must also accompany the process of execution of Courts decisions as only at this time the reparation knows its achievement. The third statement resulting of our initial conclusion about the nature of obligation to cooperate is that not only the applicant could claim its observation but also the Court might initiate the examination of its observation as it relates directly to the development of the proceedings before it and of which effectiveness it is the guaranty.

\textsuperscript{12} Celikbilek v Turkey of 31/05/2005 p 49
\textsuperscript{13} Idem p 56