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Lessons of the MH17 disaster (revisited)

Introduction¹

On 17 July 2014 Malaysia Airlines flight MH17, en route from Amsterdam to Kuala Lumpur, crashed in eastern Ukraine. All the 298 people on board were killed, including 196 Dutch nationals.

The crash was the result of the unfortunate coincidence of four factors. If only one of the following four factors would have been absent, the crash would probably not have taken place:

- the use by commercial airlines of the airspace above Eastern Ukraine;
- the availability of BUK missiles to the separatist forces in Eastern Ukraine;
- the interference of Russia in Ukraine;
- the incompetence and corruption of Ukrainian governments.

Below I will address each of these four factors and suggest what can be done to prevent comparable disasters in the future.

What happened on 17 July 2014

The crash was thoroughly and meticulously investigated by the Dutch Safety Board² and by an international Joint Investigation Team.³

The goal of the Dutch Safety Board was to draw safety lessons from the accident for future use, whereas the criminal investigation by the Joint Investigation Team is aimed at identifying the people that were responsible for the crash. In the Joint Investigation Team the Dutch Public Prosecutor's Office and National Police work together with police and judicial authorities of Australia, Belgium, Malaysia and Ukraine.

Both investigations led to the conclusion that flight MH17 was shot down by a 9M38 series missile, that was launched by a BUK surface-to-air missile system from farmland near Pervomaiskyi, an area that was controlled by pro-Russian fighters. The BUK-system had shortly before been transported from Russia into eastern Ukraine and was transported back to Russia after the BUK missile was fired. The criminal investigation into the perpetrators of the crash was not yet finalised at the time of writing (March 2017). However, it is unlikely that a large and expensive weapon system like the BUK-system could have been transported to Ukrainian territory without the agreement of the Russian government.

If only airlines would have avoided the airspace above Eastern Ukraine

In retrospect it is clear that Ukraine should have closed the airspace above Eastern Ukraine as a precaution not partially (as was done), but completely and that commercial

¹ This article is based on a Policy Brief that was published by Clingendael in September 2014.

² <https://www.onderzoeksvaard.nl/uploads/phase-docs/1006/debcd724fe7breport-mh17-crash.pdf>

³ <https://www.om.nl/onderwerpen/mh17-crash/@96068/jit-flight-mh17-shot/>

airlines should have recognised the risks that the conflict posed to their planes. One might even wonder why civil aviation is flying over territories in conflict at all. That, however, would be overcautious as most conflicts take place on the ground and do not (yet) present a threat to airplanes flying at a height of about 10 kilometres. (This might change in the future, see below.) Avoiding all conflict zones might also present practical problems as a zone of conflicts stretches out almost continuously from Western Sahara and Mali in the West of Africa, through Chad, South Sudan, Somalia, Yemen, Iraq and Syria to the Caucasus.

The Dutch Safety Board concluded that the system had failed and made eleven recommendations to improve it. The report noted that the primary responsibility to share better information about risks to civil aviation lies with the country in conflict. However, it must become clearer in which circumstances these countries should close their airspace. Furthermore, the airlines themselves and the countries where the airlines are based have their own responsibility to analyse the risks related to flying over conflict zones. They should not blindly trust the information provided by the country in conflict.⁴

If only the pro-Russian forces in Eastern Ukraine would not have had access to BUK missiles

If the BUK missile has been fired by irregular pro-Russian fighters, it would be the first time in history that such a weapon has been used by non-governmental forces. However, the fact that the missile-system moved from Russia to Ukraine shortly before it hit MH17 and moved back to Russia shortly afterwards, makes it more likely that a Russian crew fired the missile. The Joint Investigation Team is still investigating this question.

⁴ <https://www.onderzoeksraad.nl/en/onderzoek/2049/investigation-crash-mh17-17-july-2014/publicatie/1701/following-up-the-recommendations-in-the-mh17-report-takes-time#fasen>.

The possibility that the Buk missile was fired by non-governmental forces should not be dismissed offhand, because firing it is relatively simple and the instructions can be found on internet. The most difficult part is probably to identify whether an aircraft is hostile, neutral or friendly. That is where the crew of the BUK-system clearly failed.

The reason that medium-range surface-to-air missile systems like the BUK-system had until now not been used in civil wars and the like, is not that they are difficult to handle, but that they are difficult to get, because they are sophisticated, big and expensive and only few countries are producing them.

But how long will this last? Here we should take two long-term trends into account. The first one is that, as technology advances, weapons become more effective, lighter, cheaper and easier to produce. The second is that knowledge and technology are spreading over the world. The consequence of these two trends is that, over time, it will become easier for non-governmental forces to obtain these weapons.

These trends are not laws of nature. If they wish, countries can stop the proliferation of certain weapons and technologies, or at least considerably slow it. So far, this has worked reasonably well with regard to nuclear and chemical weapons and long range missiles. However, in the long term it will be increasingly difficult to prevent a country like North Korea or an armed group like ISIS to develop or obtain such weapons, particularly when it believes such a weapon will help it win its war.

Who knows what missiles ISIS forces may have captured in Iraq and what they will do with them? So far, non-state actors will probably have given little thought to the use of long-range surface-to-air missiles. But if such weapons become available on the black market, they might reconsider. A terrorist group might believe that downing a civilian aircraft serves its cause. Of course, we should not overstate this risk. There are many other possible terrorist acts that are much easier to accomplish, such as kidnapping tourists or shooting an airplane with a shoulder-held missile just after take-

off or before landing. Nevertheless, it would be short-sighted to pay no attention at all to the possible proliferation of medium- and long-range surface-to-air (SAM) missiles.

So, what can be done? Few of the existing arms control treaties bear upon surface-to-air missiles. The most important one is probably the Arms Trade Treaty, that entered into force on 24 December 2014. The purpose of this treaty is to improve the regulation of the international trade in conventional arms. Its scope is wide and includes 'missiles and missile launchers'. However, although the number of parties has grown to 91, several of the most relevant states, such as China, India, Iran and Russia show little inclination to become party. The United States and Ukraine have signed the treaty, but not yet ratified it.

At the same time, additional measures should be considered, directed specifically at the trade and transfer of SAM systems. The Missile Technology Control Regime (MTCR) could be used as an example. The MTCR is an informal association of countries that try to prevent the proliferation of missiles that are capable of delivering weapons of mass destruction. It was established in 1987 by a number of Western countries but now also includes Russia and Ukraine. A comparable regime could be set up to prevent the proliferation of SAM systems.

If only Russia would not have interfered in Ukraine

Without active Russian involvement the separatist movement would not have been able to occupy a part of Eastern Ukraine for so long and certainly would not have been able to shoot down flight MH17. So the question is: why is Russia interfering in Ukraine and what can be done about it?

The deeper reason behind the Russian involvement seems to be that the current Russian government is not reconciled to the break-up of the Soviet Union and is attempting to salvage as much of the former empire as it can by keeping the former republics of the Soviet Union in its "zone of

influence", such as the Moscow-dominated Eurasian Economic Union or, failing that, by nibbling away parts of these countries, such as South Ossetia and Abkhazia from Georgia.

The restrained reaction of the Netherlands and other Western countries to the Russian interference in Georgia and its subsequent recognition of the independence of South Ossetia and Abkhazia in 2008 might have strengthened the Russian impression that these Western countries always give priority to short-term economic interests. The recent Western sanctions might have given Moscow pause for thought, but to solve the current crisis more will be needed.

So, what can be done? The priority given to economic diplomacy and the lack of a long-term view on its relations with Russia, has probably weakened the Dutch position with regard to Russia. What is needed now is for the Netherlands, together with other Western countries, to develop a long-term view on relations with Russia and to communicate that view to Russia. They should make clear that they will not accept that borders are changed by use of force or that Russia has any special *droit de regard* over Ukraine. They should be willing to take the concerns of Russia seriously, but should continue to argue that a democratic and stable Ukraine is also in Russia's interest and that a zero-sum game between Russia and the West about Ukraine is a loser's game.

That will not be easy, because zero-sum thinking about exclusive zones of influence is not only strong in Russia, but also in the West. It is significant that Western populist parties that long for the closed borders of an imaginary past, are so often full of praise for Putin.

However, the concept of exclusive zones of influence is based on a dangerous misunderstanding. In the real world zones of influence are not exclusive, but overlapping and combining. The zone of American technological influence covers most of the world, as does the economic influence of China. The combination of both influences makes that iPhones are available everywhere. Russia is in the zone of influence of European technology, while many European countries

are within Russia's zone of influence in the field of energy. Ukraine, if only because of its geography and history, falls clearly in both zones of influence.

If only Ukrainian governments had been more competent and less corrupt

At the heart of the Ukrainian crisis stands the failure of successive Ukrainian governments to build a sustainable democracy.

Governments have time and again given priority to the personal interests of their members above fighting corruption and establishing the rule of law. Institutions that in a well-functioning democracy protect the rights of minorities and opposition groups were either non-existent or very weak.

Ironically, the protestors at Maidan and the protestors in Donetsk and Luhansk were, to a large extent, driven by the same dissatisfaction with the lack of good governance. However, the victory of the 'pro-European' Maidan movement over the corrupt 'pro-Russian' government of Yanukovych led to fears that the new government would neglect the interests of eastern Ukraine, the part of the country that has the closest connections to Russia. Russia used those fears to incite an armed rebellion.

Lessons for the Netherlands

Of course, reforming Ukraine is first of all a task for the Ukrainians themselves, but together with other countries the Netherlands could support this process in a decisive manner. This would however require a change of Dutch foreign policy from a reactive policy, mainly directed at short-term economic interests and short-term results to a more proactive, long-term policy, based on a wider view of the place of the Netherlands and the EU in the world.

At an abstract level, the Netherlands recognises that its future is inextricably linked with those of other countries. But although the Dutch Constitution states that the "Government shall promote the

development of the international legal order", successive governments have failed to convert this into a concrete strategy.

A short look at European history and at the current situation in the world, will make clear that the Netherlands needs a foreign policy that looks beyond short-term economic interests and gives high priority to supporting a sustainable international order. This requires long-term investment in international cooperation, both through relevant international organisations and through bilateral relations.

Due to lack of such a clear strategy, the Matra Program to support the transition of Ukraine into a multi-party democracy was dealt with as an act of charity rather than as a strategic investment. The support was useful but half-hearted and insufficient, and few protested when, a few years ago, the program was drastically reduced.

Cooperation with Ukraine should be based on the recognition that the transformation of Ukraine into a stable and just society is of strategic interest. Regardless of whether Ukraine will become a member of the European Union, due to its proximity the effects of a crisis in Ukraine will be felt in Western Europe.

The disaster at Chernobyl in 1986 was an acute reminder of that, but no less worrisome are the possible consequences of developments in Ukraine for the quality of water, air and health, for biodiversity and for illegal immigration and organized crime.

The current broad support in Ukraine for genuine reform presents a unique opportunity for helping Ukraine in the right direction. The transition process will be difficult and lengthy, but a stable democratic Ukraine would mean a significant enlargement of the European zone of peace and stability. Besides that, it would provide important economic opportunities. For example, a combination of the Ukrainian agricultural sector with Dutch agricultural innovation might feed the whole of Europe.

The transformation of Ukraine should therefore be considered as a strategic goal

that should guide Dutch policies, not only in its bilateral relations and within international organisations, but also in the policies of the other ministries. Transforming Ukraine will require, inter alia, reforming education, local government, public health, the tax system and the legal system. The ministries with expertise in these fields therefore have an important role to play in a strategy to support that transformation. For example, the ministry of Education should actively stimulate the study of Ukrainian students in the Netherlands.⁵ In short: an effective strategy to promote transformation of Ukraine would require active support and participation of the whole Dutch government.

For some time, the Dutch government has cherished the illusion that diplomacy is something of the past and that foreign policy is little more than promoting short term national interests. As a result it has sometimes yielded to the temptation to behave as a passive consumer rather than as a co-owner of the international order. However, diplomacy is clearly not something of the past and the promotion of a just international order should be the cornerstone of an active Dutch foreign policy.

Conclusion

The MH17 disaster was caused by the collision of the airplane with an exploding missile and made possible by the Russian military interference in Ukraine. But at a more abstract level the crash was the collision of two different worlds, a world where people cross borders to trade and cooperate with people on the other side and a world where people bomb and kill people on the other side.




The investigations of the Dutch Safety Board and the Joint Investigation Team both deal with the technical questions: What exactly happened? Who is responsible? and How to avoid the risks of flying above a country in conflict? These are important questions, but they should not make us lose sight of the fundamental problems that led to the disaster. These problems have so far received far less attention of the Netherlands government.

5 In 2011 (the most recent year with figures available) 54260 Ukrainians studied abroad. Of them only 216 studied in the Netherlands (0,4%). In 2015 there were 360 Ukrainian students in the Netherlands. That is still an extremely low number. See: <https://www.epnuffic.nl/en/internationalisation/mobility-statistics>.

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