



Security Council

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Letter dated 7 February 2023 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General and the President of the Security Council

We would like to share with you our assessments of the decision by the District Court of The Hague dated 17 November 2022.

Since the downing of the Malaysia Airlines flight MH17 in Donbas on 17 July 2014, the Russian Federation has called for a full, thorough, non-biased and depoliticized investigation into the causes of the crash, based on facts and irrefutable evidence. Our country initiated the adoption of Security Council resolution [2166 \(2014\)](#) and remains fully committed to its implementation.

The Russian side has repeatedly pointed out that the Joint Investigation Team (JIT) pursued a selective and politicized approach while collecting evidence on the MH17 case, which later served as the basis for criminal proceedings initiated by the District Court of the Hague against three Russian citizens – I.V. Girkin, O.Y. Pulatov and S.N. Dubinskiy, as well as one Ukrainian citizen, L.V. Kharchenko.

As a result, the court found S.N. Dubinskiy, L.V. Kharchenko and I.V. Girkin guilty on all counts of the charge, i.e. of intentionally causing an aircraft to crash, and murder, and sentenced them in absentia to life imprisonment. O.Y. Pulatov, the only Russian defendant whose interests were represented by lawyers, was acquitted.

The sentence was built mainly on the findings of the Public Prosecution Service of the Netherlands, which were drawn from statements of classified anonymous witnesses and data supplied by the Security Service of Ukraine, which has repeatedly been caught providing false, contradictory information and is an interested party in the case. The prosecutors and the judges failed to take into consideration the statements of the witnesses called by O.Y. Pulatov's defence and the entire set of materials provided by the Russian Federation, including radar raw data and reports on the live-fire test carried out by the Almaz-Antey company, the manufacturer of the Buk anti-aircraft missile system.

They also disregarded the fact that Ukraine had refused to provide radar data as well as records of communications of ground flight-tracking services. Furthermore, the Ukrainian air traffic control officers who were on duty that day and therefore could have shed light on the facts of the tragedy disappeared. Since the downing of the flight, the responsibility of Ukraine for not closing the airspace above the zone of hostilities where the Armed Forces of Ukraine deployed air defence systems, including Buks, has not been duly investigated.

Satellite images made by the United States on the day of the crash could have helped to clarify its circumstances, but Washington flatly refused to comply with the judges' request to disclose the data or at least allow it to be examined under special conditions.



It is crystal clear that the District Court of the Hague adopted a highly politicized approach when considering the MH17 case, disregarding the evidence that ran counter to its initial version of the tragedy. Despite this biased position, the verdict says nothing about Russia's guilt for the crash, as was speculated about in the Western media. Besides, the verdict contains important legal conclusions.

First, the Donetsk People's Republic troops were not recognized as being part of the Armed Forces of the Russian Federation – that is, the involvement of the Russian troops in the crash has not been established (sect. 4.4.3.1.4 of the verdict: "The court notes that the DPR was not part of the official Armed Forces of the Russian Federation ... the DPR cannot be viewed as part of the Armed Forces of the Russian Federation, the members of the DPR also cannot be considered part of those Armed Forces.").

Second, according to the Court judgement, a Buk missile was launched at a civil aircraft by mistake. In other words, one cannot speak of an act of terrorism attributed to Russia (sect. 6.3.5.3 of the verdict: "The court considers it completely implausible that a civil aircraft was deliberately downed ... A mistake being made is something the court does find plausible.").

Third, the court was unable to identify specific persons responsible for launching the missile. It is also noteworthy that the guilty verdict of complicity was handed down only to those defendants who did not participate in the trial (sect. 6.3.5.3 of the verdict: "The actions of the crew of the Buk TELAR when launching the Buk missile at MH17 cannot be established on the basis of the case file. The case file also fails to identify who gave the instruction to launch a missile, and why that order was given.").

Fourth, the court noted the improper work of the Dutch Public Prosecution Service in a number of cases. The judges found it a procedural violation to display the suspects' personal data and photographs at press conferences (sect. 4.4.4.2 of the verdict: "Communicating the full names and other personal details of the accused, combined with displaying their photographs, at a press conference broadcast globally goes beyond the type of dissemination of information that is usual for criminal cases ... the manner chosen by the prosecution and the JIT to communicate on the fate of flight MH17 and announce the suspects in these criminal proceedings does give pause for thought ... in the court's view they did contribute to shaping public opinion on this criminal case ... stating the personal details of the accused at the press conferences and showing their photographs might quite easily be considered to be a potential infringement of the right to privacy protected under Article 8 [of the European Convention on Human Rights]").

The trial in the Netherlands has every chance of becoming one of the most scandalous in the history of legal proceedings. Throughout the trial, the court was under unprecedented pressure from Dutch politicians, representatives of the Dutch Prosecution Service and the media seeking to impose a politically motivated decision. It is also obvious that the Netherlands, having initiated parallel hearings of the MH17 case against Russia in other forums, simply could not allow any verdict other than guilty at the national level because that would lead to their arguments falling apart in international formats. Needless to say that objectivity and impartiality in such circumstances are out of question.

I would be grateful if the present communication could be circulated as a document of the Security Council.

(Signed) Vassily Nebenzia