

Ukraine, A “Suspect in Crime” involved in the MH17 Criminal Investigation

What is the Joint Investigation Team, What Is It for, Who's Leading it and Why is Malaysia Excluded?

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Global Research, December 03, 2014

Region: [Russia and FSU](#)

Theme: [Law and Justice](#), [Media Disinformation](#)

In-depth Report: [UKRAINE REPORT](#)

Several authors have recently asked why Malaysia is not part of the MH17 joint investigation team and why is Ukraine, a suspect in this case, part of it? The questions we should first be asking are what exactly is the joint investigation team, in which legal framework is it operating and why was it established?

There are actually several investigations going on on the shutdown of MH17. We will, however, focus on two of them which people seem to get mixed up: the first official inquiry led by the Dutch Safety board (DSB), which published a preliminary report on September 9, 2014 and the joint investigation team inquiry, which was established August 7, 2014.

The first investigation, led by the DSB an independent organization, is ruled by the Convention on International Civil Aviation, also known as the Chicago Convention, which was established by the International Civil Aviation Organization (ICAO), a United Nations agency.

In the event of a plane crash, the country on which soil the accident occurs is responsible for the investigation, according to the Annex 13 protocol.

At Ukraine's request, the Netherlands is conducting the investigation through the Dutch Safety Board. This is not a breach of protocol, since the State of Occurrence, in this case Ukraine, “may delegate the whole or any part of the conducting of such investigation to another State by mutual arrangement and consent.” ([Annex 13 To the Convention on International Civil Aviation, paragraph 5.1](#))

Article 26 of the Chicago Convention also says:

“The State in which the aircraft is registered [Malaysia] shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.”

The states which participate in the Dutch Safety Board inquiry are Malaysia, Ukraine, the Russian Federation, the United Kingdom, the United States of America and Australia. Apart from Ukraine, the United States and Russia, all other countries part of the investigation had nationals onboard MH17. The fact that other states take part in the investigation is also

standard practice, so, for all we know, this investigation follows the international rules and recommendations of the Chicago Convention.

The “sole objective” of the Dutch Safety Board investigation “is the prevention of similar accidents and incidents” not “to apportion blame or liability in respect of any party.” In other words, this is not a criminal investigation. ([Preliminary report](#), Dutch Safety Board, September 2014)

On the other hand, that is, as we will see, the specific objective of the joint investigation team (JIT): to conduct a criminal investigation and “apportion blame”. It is a European entity conducting a criminal investigation under a European legal framework and which, unlike the Dutch Safety Board, does not have to abide by the rules of the ICAO. The JIT can include anyone or any state, but most importantly, and contrary to the DSB investigation, it is under no obligation to include Malaysia.

What exactly is a joint investigation team?

Under the auspices of Europol and Eurojust:

A joint investigation team (JIT) is a team consisting of judges, prosecutors and law enforcement authorities, established for a fixed period and a specific purpose by way of a written agreement between the States involved, to carry out criminal investigations in one or more of the involved States. ([Joint Investigation Teams, Historical background](#), Eurojust)

The team will be led by a person from the State in which the JIT operates. Although the members of the team may originate from various jurisdictions they are to carry out their duties in accordance with the national law of the territory where the investigation is taking place. ([General Legal Basis for JITs](#))

JITs can be set up with countries outside of the European Union as well, provided that a legal basis for the creation of such a JIT exists between the countries involved. The legal basis can take the form of an international legal instrument, a bi- or multilateral agreement or national legislation (e.g. respective Article(s) in the code of criminal procedure). (Ibid.)

Participants may come not only from EU bodies/agencies, e.g. Europol, Eurojust, OLAF, etc., but also from third States and their agencies, e.g. the FBI ([Joint Investigation Teams Manual](#))

Ukraine has acceded to the European Convention on Mutual Assistance in Criminal Matters and thus may set up a JIT. In Ukraine the authority “which decides on setting up a joint investigation team shall be the [General Prosecutor’s Office in Ukraine](#)”. The rules and regulations of JITs can be found in the Article 20 of the [Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters](#).

As you can see, there are clearly two investigations, operating under different legal frameworks and with two different purposes. It is convenient to note that nowhere in the DSB preliminary report is the word “crime” mentioned.

Establishment of a JIT in the Hague: Who is Leading this Criminal Investigation?

The JIT was created in late July, when “public prosecutors and investigators from the 12

countries that are involved in the investigation into the crash of Malaysia Airlines Flight MH17 met at Eurojust in The Hague to discuss their judicial cooperation strategy.” ([Eurojust coordination meeting: investigations into Flight MH17](#), Eurojust, The Hague, July 28, 2014)

The Eurojust press release states further:

Today, public prosecutors and investigators from the 12 countries that are involved in the investigation into the crash of Malaysia Airlines Flight MH17 met at Eurojust in The Hague to discuss their judicial cooperation strategy.

The Dutch Public Prosecution Service has started the coordination of international cooperation, and requested the assistance of Eurojust in arranging today’s coordination meeting. Eurojust is the EU’s judicial coordination and cooperation agency. Its mandate is to facilitate the coordination and cooperation of the Member States, and it can also invite countries from outside the European Union to participate in coordination meetings to plan strategies in fighting serious organised crime.

At today’s meeting, chaired by Mr Han Moraal, National Member for the Netherlands at Eurojust, representatives of the 11 countries whose citizens are victims – the Netherlands, Australia, Malaysia, UK, Belgium, Germany, the Philippines, Canada, New Zealand, Indonesia and the USA – in addition to Ukraine, Europol and Interpol, were present.

The goal of today’s meeting at Eurojust was to discuss cooperation and ways of broadening and accelerating the investigations, including the establishment of a Joint Investigation Team (JIT). The JIT will focus first on the technical and forensic investigation in Ukraine, the location of the criminal offence. (Ibid.)

Unlike the DSB, an independent organization, the Dutch Public Prosecution Service, which “started the coordination of international cooperation” is a governmental agency. The Eurojust press release states that the investigation, initiated by the Dutch, will take place in Ukraine. Is it being conducted under Ukrainian or Dutch national law? Remember, according to [General Legal Basis for JITs](#), the “team will be led by a person from the State in which the JIT operates” and even though “the members of the team may originate from various jurisdictions they are to carry out their duties in accordance with the national law of the territory where the investigation is taking place.”

What the press release above does not mention is that the Ukrainian “Prosecutor General’s Office was one of those who initiated the formation of an international investigative group,” according to an [article by Interfax](#).

Does it mean that, since the JIT investigation is taking place in Ukraine, it is ruled by Ukrainian law and that Ukraine, one of the suspects, is leading the investigation? If so, this JIT investigation has no credibility whatsoever and is absolutely not independent. It is a parody of justice.

The Ukrainian Prosecutor General Vitaliy Yarema said:

“It is our priority or even our duty to the international community to hold a detailed inquiry into this tragedy and restore justice...”([Ukrainian Prosecutor General: Intl probe into MH17 flight crash to go on](#), Interfax, October 29, 2014)

The Interfax article stated further:

The Prosecutor General's Office recalled that an agreement setting up the joint investigative group of the Netherlands, Belgium, Australia, Ukraine, Malaysia and Eurojust was signed on August 7, 2014.

That JIT agreement, initiated at The Hague on July 28, 2014, includes a non-disclosure agreement between all the countries except Malaysia, which was only granted a "participant" status:

In the framework of the 4-country agreement signed on 8 August between Ukraine, the Netherlands, Belgium and Australia, information on the progress and results of the investigation of the disaster will remain classified.

This was confirmed at a briefing in Kiev under the auspices of the office of the Prosecutor General Yuri Boychenko. In his words, the results of the investigation will be published once completed only if a consensus agreement of all parties that have signed the agreement prevails.

Any one of the signatories has the right to veto the publication of the results of the investigation without explanation.

Following the signing of this agreement, the Verkhovna Rada of Ukraine ratified the agreement and allowed for the participation of Malaysian staff to participate in the investigation. ([The Causes of the MH17 Crash are "Classified". Ukraine, Netherlands, Australia, Belgium Signed a "Non-disclosure Agreement"](#), Live Journal, August 23, 2014)

So one of the major differences between the Dutch Safety Board investigation and the JIT investigation is that in the DSB investigation "The State in which the aircraft is registered [Malaysia] shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State."

The JIT investigation, on the other hand, is under no obligation to "communicate the report and findings" to Malaysia.

On October 9, Dutch Minister of Foreign Affairs Frans Timmermans and Minister of Defence Jeanine Hennis-Plasschaert wrote the following in a [letter to the President of the Dutch House of Representatives](#):

A meeting was held at Eurojust on 28 July 2014, laying the groundwork for a good working relationship between the police and justice authorities of the countries involved. One of the forms this has taken is the establishment of a Joint Investigation Team (JIT), comprising representatives of the Netherlands, Australia, Belgium, Ukraine and Malaysia [as a "participant"]. This team will pave the way for better international cooperation, facilitating the exchange of knowledge, expertise and evidence.

How is excluding Malaysia from the team and granting it an inferior status in the investigation paving "the way for better international cooperation, facilitating the exchange of knowledge, expertise and evidence?" It does exactly the opposite.

Malaysian officials have complained in late November that they were excluded from the JIT and are headed to the Netherlands on December 3 to discuss their status:

Come Dec 3, Malaysia's inspector-general of police (IGP) and the attorney-general (A-G) will head for the Netherlands to discuss among others, the role of the Malaysian team in the joint international investigations into the downing of Malaysia Airlines (MAS) Flight MH17 in July...

"At the moment, Malaysia is not in the joint investigation team. We are merely, a participant. We must be included in the joint investigation team," he said...

Currently, the Netherlands, Belgium, Ukraine and Australia are in the joint investigation team.

During his visit to Malaysia earlier this month, Netherlands Prime Minister Mark Rutte had agreed to Malaysia's participation in the international investigation. ([MH17: IGP, A-G Off To The Netherlands On Dec 3](#), Bernama, November 19, 2014)

Why is Belgium part of the JIT and not Malaysia? Four Belgians died on the plane compared to 43 Malaysians. But more importantly, it was a Malaysian plane which was attacked. How can Malaysia be excluded from this investigation? Some authors argue that it is due to Malaysia's reluctance to put the blame on the Russians or the Donetsk separatists without irrefutable evidence.

Media Blackout on Ukraine's Official Report blaming Russia and the "Pro-Russian Rebels"

Ukraine did not hesitate to point the finger at the militants in the Donetsk region though. We may recall that the exact same day the JIT agreement was signed, on August 7, 2014, Ukraine's Secret Service (SBU) published its own investigation report entitled [Terrorists and Militants planned cynical terrorist attack at Aeroflot civil aircraft](#). This report, which blames "pro-Russian rebels", went virtually unnoticed in the mainstream press.

According to the official SBU report entitled [Terrorists and Militants planned cynical terrorist attack at Aeroflot civil aircraft](#), the Donetsk militia (with the support of Moscow) was aiming at a Russian Aeroflot passenger plane and shot down the Malaysian MH17 airliner by mistake. That's the official Ukraine government story which has not been reported by the MSM.

Following the release of the SBU report, the Western mainstream media went silent. (Michel Chossudovsky, [Desperate MH17 "Intelligence" Spin. Ukraine Secret Service Contends that "Pro-Russian Rebels had Targeted a Russian Passenger Plane". "But Shot Down Flight MH17 by Mistake"](#), August 11, 2014)

Why did Ukraine issue a report blaming the separatists the same day it joined the investigation team? And why didn't the mainstream press talk about it? We can only speculate, but it is unusual that it was not a "breaking news".

Western governments, particularly the U.S., were quick to place the blame on Russia and/or the militants in Eastern Ukraine, who had allegedly "shot the passenger plane" down with a missile, or so they said. Without a shred of evidence, that narrative was parroted by the western mainstream media and is still upheld today, even though the preliminary report published by the Dutch Safety Board last September does not even mention once the term

“missile”. The very unusual term “high energy objects” was used to describe what had hit the plane and caused its demise.

Moreover, of significance, a major piece of legislation introduced into the US Congress H.Res. 758 refers to the downing of MH17 allegedly by Russia and pro-Russian separatists as a potential casus belli, which could be used to justify military action against the Russian Federation.

Whereas Malaysia Airlines Flight 17, a civilian airliner, was destroyed by a Russian-made missile provided by the Russian Federation to separatist forces in eastern Ukraine, resulting in the loss of 298 innocent lives; ([See full text of H.Res. 758, 113th Congress](#), November 14, 2014)

For Western governments and their subservient media, the preliminary report “proved” they were right: “high energy objects” confirmed it was a missile that brought the plane down. Why then was not the word “missile” used in the report?

[Independent analysts](#) as well as OSCE monitor Michael Bociurkiw have rather mentioned no signs of a missile could be found on the wreckage, only [machine gun-like holes](#), evidence which corroborates the Spanish air traffic controller’s testimony who claimed Ukrainian fighter jets had shot MH17 down. Eyewitnesses on the ground have also told the BBC Russian service that they saw Ukrainian fighter jets next to MH17 before it crashed. The report was censored by the BBC. (You can view it and read the transcript in this article: [Deleted BBC Report. “Ukrainian Fighter Jet Shot Down MH17”, Donetsk Eyewitnesses](#))

It poses a serious problem that Ukraine is part of an investigation into an incident for which it is a suspect, when the main victim, Malaysia, is excluded. The investigation should either include all the suspects as well as the victims or none of them. But most importantly, Ukraine should not lead an investigation into a crime for which it is a suspect.

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