MH17: Lack of Evidence and Political Chess Games

Following the Dutch Safety Board’s publication of the final report on the crash of Malaysia Airlines Flight MH17 in eastern Ukraine on July 17, 2014, the political positioning and posturing about the tragedy continues. The Dutch Safety Board is not tasked with determining the perpetrator, which is part of a criminal investigation. Russian BUK missile manufacturer Almaz-Antey states that the DSB report misrepresents data released by the company. Almaz-Antey has filed a lawsuit at the European Court of Justice for loss of reputation and economic damage due to unjustified sanctions.

Despite claims to the contrary, thus far, neither the bereft families nor independent media have seen as much as a shred of certified, independently testable evidence.

In October 2015 the Dutch Safety Board (DSB) issued the final report on the crash of Malaysian Airlines Flight MH17 in eastern Ukraine on July 17, 2014. The report was released concurrently with a press conference by DSB Chairman Tibbe Joustra who concluded that the MAS Boeing 777-200 had been brought down by a BUK missile. The warhead, said Joustra, exploded outside the left side of the airliner’s cockpit. The DSB concluded that a 9NC14N warhead had been installed in the BUK Surface to Air Missile (SAM). Joustra said:

“As a result of the detonation the forward part of the airplane was torn off. The airplane broke up in the air. The wreckage came down in an area of about 50 kilometers in the eastern part of Ukraine. The missile was launched from a 320 square kilometer area in the eastern part of Ukraine.”

Considering that the DSB’s task was not to identify a perpetrator but to conduct an investigation that clarified the probable cause so as to prevent similar tragedies, the DSB’s report revealed that stunning neglect was a major contributing factor to the crash that claimed the lives of all 298 souls on board.

The DSB Chairman stressed that 61 operators from 32 countries flew over the eastern part of Ukraine in the period between July 14 and July 17, 2014, where an armed conflict was taking place. One of these operators was Malaysian Airlines. Importantly, Tibbe Joustra noted that Ukrainian authorities failed to close the airspace above the conflict area, saying (emphasis added):

“On the day of the crash a total of 160 flights had operated above the area until the airspace was closed after the crash. Non of the aviation parties involved recognized the risks posed to civil aviation by the armed conflict on the ground. In the opinion of the Dutch Safety Board there was sufficient reason to close the airspace above eastern Ukraine as a precaution. The Ukrainian authorities failed to do so.”

Joustra added that the DSB investigators had asked themselves why the airplane was flying over an area where an armed conflict was in progress, and that this was one of the reasons why the DSB decided to dispatch experts on the day after the crash.

It is noteworthy that Australia, Malaysia, The Netherlands, The United Kingdom, The United States, Ukraine and The Russian Federation all deployed experts to participate in the DSB-led investigation. All attempts by the author to get access to certified evidence was ignored and/or rejected by all of the involved parties.
It was a DSB spokesperson who ultimately implied that all of those countries that had delegated experts to be part of the DSB-led investigative team have implicitly submitted to the Dutch Kingdom Act that exempts any evidence of DSB investigations from the Dutch Open Government Act (similar to Freedom of Information Act). This explains why no party has been forthcoming with independently testable evidence such as certified radar data, certified copies of air traffic control – flight crew recordings, certified data from the flight data recorder, the cockpit voice recorder, and so forth.

This also explains speculations about an alleged “secret agreement” between “western States, Australia and Malaysia. It would be more correct to state that all of the governments have agreed not to reveal evidence from the DSB-led investigation. What can be observed is geopolitical scapegoating and positioning without regard for the bereft.

On the day of the release of the DSB report the Russian arms manufacturer Almaz-Antey held a separate press conference.

Almaz-Antey stated that the DSB report misrepresents the data that were provided by the arms manufacturer. Among the points of contention are the location of the area from where the BUK missile had been fired and the specific type of warhead. Almaz-Antey stated that:

“A chart with a map given in the report designated the presumed area of the aircraft missile launch from a BUK air defense system according to the international technical commission's version. This version was adopted by the company's specialists as the initial conditions during preparations for the second part of the full-scale experiment with the explosion of the 9M38M1 missile near the fuselage of an Il-86 airliner and was convincingly rejected as part of the same experiment....

Points of contention are that Almaz-Antey means that its full scale experiment has pinpointed the location of the missile launch more accurately, and that the missile was not launched from an area that at that time was held by the rebelling forces in eastern Ukraine.

Moreover, Almaz-Antey notes that the missile and warhead described in the DSB report are no longer in use by the armed forces of the Russian Federation, but that it was not impossible that the older model still was in use in Ukraine.

The Dutch Safety Board had previously expressed that it was open to look at additional evidence and data but that any such new evidence was unlikely to change the conclusions reached in the report. It is worth noting that Almaz-Antey has filed a lawsuit at the European Court of Justice, claiming that the company suffered an unjustified loss of reputation and economic losses due to sanctions.

The position of the Dutch Safety Board on the other hand, may be explainable by the fact that it was not tasked with identifying the perpetrator and eventually people who held command responsibility. Such an investigation is part of a separate criminal investigation. It is, however, uncertain whether the bereft families and media will gain access to certified evidence during the course of such a criminal investigation or an eventual criminal trial.

Thus, there remains room for justified speculation and for painful questions; Painful, particularly for those who lost family and loved ones during the tragedy.

One question is why flight MH17 flew an ever more northerly route during the days up to the downing of the Boeing 777-200 on July 17. Who exactly was responsible for routing the plane directly over a combat area while a more southerly route was available and had been used in the days before the crash?

Considering the involvement of NATO countries in the conflict, the speculation that the airliner was downed in an “Operation Northwood” style false-flag attack was of course not unjustified. The decision to task the DSB with leading the investigation was made on several grounds. Having a NATO country lead the investigation added credibility to such suspicions. On the other hand, the majority of passengers on board the flight from Amsterdam, scheduled for Kuala Lumpur, were Dutch citizens.

Another reason for tasking the DSB with leading the investigation was that Ukraine was a direct party to the conflict. That said, one may argue that The Netherlands, is a NATO member State and that the DSB could have a conflict of interests. Considering the geopolitical chess games related to the crash, why was the investigation not led by Malaysia or a third and neutral country?
Reports about a Ukrainian jet and radar data released by the Russian Ministry of Defense are another point that poses questions. Radar data and satellite images released by the Russian Ministry of Defense suggest that a military jet may have ascended and flown close to the Boeing 777-200 and that there were multiple operational BUK missile systems in areas of eastern Ukraine controlled by government forces.

There are several issues with these data. As long as the Russian Defense Ministry does not release certified copies of the satellite images that would stand in a court of law they are, legally speaking, not worth a lot. The same can be said about the radar data. Without the possibility to have the radar data tested by independent experts they may as well have been produced after the fact.

It is, however, interesting that Russian radar operators may have caught a Ukrainian military jet that was flying close to the Boeing 777-200 on radar. Several eyewitnesses reported that they had previously observed that Ukrainian jets were flying close to airliners, thus making it impossible for the rebelling forces to shoot them down. This may also explain speculations that the Boeing 777-200 was shot down by a Ukrainian military jet.

Taking into consideration that 16 Ukrainian planes and helicopters were brought down by the rebels in the weeks up to the downing of Flight MH17 one may ask whether a Ukrainian jet prompted rebels to fire at the military jet, accidentally bringing down the civil airliner. All of the above however, is and will remain painful speculation and the answers cannot be forthcoming unless all evidence from all of the involved parties is made available to the bereft and to media. That is, certified evidence that can be independently tested and evidence than can stand in a court of law.

Why should the bereft or media “believe” that the transcripts from the cockpit voice recorder or communications between the air crew and air traffic controllers are genuine. Won’t the wife of the pilot be in the best position to say whether or not the voice on the cockpit voice recorder is that of her now deceased husband?

Won’t the families of the aircrew not be the best to judge whether the voices of the flight crew, while speaking with air traffic control are that of their deceased family members? Won’t their lawyers not be the best to have independent experts analyze the recordings to see whether voice morphing or other falsifications have been used?

Considering that flight data recorder data can be fabricated, why are the media not provided with certified copies of the comma separated variable file from the data recorder to see whether or not the data have been tempered with or whether or not they are consistent with all of the other alleged evidence that nobody other than a select few who won’t release it to the public have had access to?

There is an urgent need for full transparency.

The need for full transparency is best expressed in the words spoken by Malaysian PM Nabil Rajab when he spoke to the families who lost loved ones after he blasted Ukraine, the USA, Russia and others for playing geopolitical chess games:

“As a leader, there has never been an occasion as heart-breaking as what I went through yesterday. Wives losing their husbands, fathers losing their children. Imagine their feelings from such a great loss. ... This is what happens when there is a conflict, whatever conflict that cannot be resolved through negotiations, with peace. In the end, who becomes the victim?”

In that sense, all of the bereft have been re-victimized by all of the involved sides’ lack of transparency. Another victim is the global flying public that is held hostage due to this lack of transparency. Another example for holding the international flying public hostage and for lack of transparency is the fate of Swiss Air Flight 111. CBS produced a stunning documentary about the crash of the UN shuttle from Canada to Switzerland and the lack of transparency with regard to the omission of probable criminal aspects of the crash. Can it stand that the flying public is systematically excluded from full investigations and access to evidence?

And ultimately, the final victim is the first victim of all conflict, the very much-needed truth. In the light of all of the involved governments’ and parties’ lack of transparency and ethical integrity one has to encourage those who have access to data to do what is right – even though it brings them into conflict with the law.

Dr. Christof Lehmann an independent political consultant on conflict and conflict resolution and the founder and editor in chief of nsnbc, exclusively for the online magazine “New Eastern Outlook”