

Russia's UN Security Council Veto on MH17 Resolution to Establish and Ad Hoc Tribunal: Next Step the ICC?

The Jumbo remains in the Living Room

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Russia used its veto right at the UN Security Council to stop a Malaysian drafted resolution that called for the establishment of an ad-hoc tribunal to investigate the downing of Malaysian Airlines Flight MH17 over eastern Ukraine on July 17 2014.

The investigation of the crash is led by the Dutch Safety Board. Russia described the resolution as premature, considering that a final report from the DSB is expected to be published in October. The case could be brought before the International Criminal Court – an extremely dubious scenario that would not remedy that the general public and independent media need independently testable data rather than geopolitical chess games.

✖ A UN Security Council Resolution is only fully binding with the concurrent vote of all its permanent members; although there have been “gentlemen agreements” on that point. Agreements like UNSC Resolution 1973 (2011) that led to the disaster in Libya. China abstained from voting while Russia used its veto right. Eleven other countries voted in favor of the resolution, blocking for the establishment of an, arguably, quasi-legal ad-hoc tribunal. The situation does not exclude the possibility that another, modified draft resolution eventually could be adopted.

Russian President Vladimir Putin and senior Russian diplomats argued that Russia is fully cooperating with the ongoing investigation that is led by the Dutch Safety Board, that Russia cooperates beyond this investigation, but that it was premature and inexpedient to establish an ad-hoc tribunal.

The Russian veto was harshly criticized by the nations that backed the Malaysian-drafted resolution, resulting in blame-games, political posturing and positioning at the UN and among top-diplomats, and the very “geopolitical chess-games” that the Malaysian PM Razak condemned after the downing of the Malaysian Airliner.

Next Stop the ICC?

One option that is being discussed is to transfer the case to the office of the prosecutor at the International Criminal Court (ICC) in The Hague, The Netherlands. Proponents of this move argue that the ICC has the mandate to deal with alleged crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

While the details about the downing of MH17 remain unknown – or unpublished and unverifiable for independent media, the DSB concluded in its preliminary report that the Boeing 777-200 was struck by high-velocity objects that penetrated the hull from the outside. The DSB is currently investigating two scenarios; the use of a BUK missile system and/or the shooting down of the airliner by a military jet.

The Rome Statute affords non-ICC member States such as Russia, Ukraine and the USA to ask the court for assistance. One of the main points of criticism with that scenario is that neither Russian, Ukrainian or US American citizens can be made subject to prosecution, let alone punitive action by the ICC. Considering that all three countries have been directly or indirectly involved in bringing about the crisis in Ukraine that led to the civil war and arguably to the downing of the Malaysian airliner, any case that is brought before the ICC could only yield highly questionable results. One exemption from a “free ride” at the ICC would be that non-ICC-member State that asks the ICC for assistance.

There’s an Elephant in the Room when the Downing of the Jumbo is being discussed.

One fact that non of the directly or indirectly implicated parties discusses is that all those countries who have delegated members to the investigative team of the Dutch Safety Board have [implicitly submitted themselves to the Dutch Kingdom Act. That means Australia, Malaysia, the USA, the UK, The Netherlands, Ukraine as well as Russia.](#)

The Dutch Kingdom Act exempts investigative details from the Dutch Freedom of Information Act (WOB). That means, neither Russia, The Netherlands, Ukraine, the UK, the USA, Australia or Malaysia will be giving independent media access to the raw data for independent verification. All that may and will be published will be the DSB’s final report.

Considering that fact, any trial at the ICC would, arguably, also have to be dealing with closed evidence that cannot be independently verified by media – The Elephant remains in the room no matter what.

The families and loved ones of the 298 that perished on board the Malaysian Jumbo and the global flying public will be held in the dark – the geopolitical positioning, scapegoating and chess games will continue – unless “someone” in an appropriate position within the Australian, US, UK, Ukrainian, Russian, Dutch or Malaysian government musters a much-needed amount of courage, of backbone and integrity and passes certifiable, testable evidence on to media as whistle-blower.

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