

The Dutch Investigation into Flight MH17 and Kiev's Veto

Flight MH17, Ukraine and the New Cold War. Prism of Disaster. Except from Chapter 5, 'Aftermath. A failed state on NATO's front line'

By [Prof. Kees van der Pijl](#)

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Towards Kiev's Veto

The Dutch government, soon to be given charge of the investigation, ruled out any dealings with the insurgency. After foreign secretary Timmermans at the UN called local volunteers 'thugs' on 21 July, falsely accused them of robbing the victims' corpses, the option of negotiating with the insurgents was effectively closed. Although the Dutch government later apologised, contact was now only possible via the OSCE. A Dutch public prosecution team did fly to Ukraine, but it remained in Kiev to discuss matters with the coup government. Australian experts on the other hand arrived at the scene of the disaster without delay, as did a Malaysian team led by prime minister Najib Razak. As noted, it received the Boeing's black boxes from the insurgents without any fuss and passed them on to the Netherlands on the 22nd of July. When the recorders were forwarded to London for analysis, Kiev, apparently concerned they would reveal damaging information, claimed that the insurgents had manipulated them, something that is practically impossible.

Meanwhile the regime's troops were advancing in spite of a truce for an area of 40 kilometres around the crash site announced by Poroshenko. As the *Infonapalm* website of the fiercely anti-Russian interior ministry spokesman and NSDC [National Security and Defence Council of Ukraine] member, Anton Gerashchenko, later reported, they took Debaltsevo 'shortly after the tragic shoot down of flight MH17 by a Muscovite Surface to Air Missile', and by July 28, were pushing further along a corridor to the high ground of Saur Mohyla that effectively separates the two insurgent provinces. Also on the 28th, one day after plans for deploying 11 Air Mobile brigade had been shelved, Timmermans was in Kiev to discuss security, because the crash site was under fire from the Ukrainian side. This chain of events cannot fail to prompt the suspicion that Kiev had something to hide, certainly after the regime refused to call a halt to the fighting when asked to do so.

Already on the 23rd of July, the Dutch Safety Board (DSB, *Onderzoeksraad voor Veiligheid*, OVV) had negotiated an institution-to-institution (rather than state-to-state) agreement with Ukraine's National Bureau of Air Accidents Investigation of (NBAAI), giving the Dutch the leading role in the technical investigation of the disaster. The agreement crucially included a clause about *keeping information received by the investigation secret*. On this condition Dutch and Australian officials gained access to the crash site on 31 July. However, what unfolded upon their arrival the next day only raised more questions. While searching an area considered safe (i.e., under Ukrainian control), the inspectors came under mortar fire from government positions. On 4 August, Kiev forces reportedly advanced further; Dutch-

Australian repatriation teams returning from the crash site passed military columns moving in the opposite direction. On 6 August, the Dutch investigators, who had been at the crash site barely 20 hours and covered an area of 3.5 out of 60 km², retrieving some large pieces of wreckage, withdrew again without having inspected the crucial cockpit section or taking top soil samples. When local officials showed them photos of the co-pilot found strapped in his seat, whose shirt 'looked like a sieve', they were not interested although this was obviously highly significant information. They also refused to accept DNA samples when asked to sign for receipt, apparently to avoid any official dealings with the insurgency.

Meanwhile a political crisis had erupted in Kiev when parliament refused to accept a budget intended to meet stringent IMF criteria and Svoboda and Klitschko's UDAR (which supported the government in parliament) left the coalition. With the second tranche of the IMF's \$17.5 billion credit line blocked as a result, Yatsenyuk tendered his resignation on 25 July, arguing that he would no longer be able to pursue the war without new money: that would merely risk the 'demoralisation of the spirits of those tens of thousands of people who are sitting not in this hall, but in trenches under bullets.' The vice-premier responsible for the MH17 portfolio, Volodymyr Groysman, took over as interim head of government. Elections were announced for October. Though parliament rejected Yatsensuk's resignation on the 31st, frontline fighters, alarmed about the governmental deadlock amidst rumours of a Russian invasion, were not appeased.

On the 6th of August, the day Dutch investigators withdrew from the Grabovo crash site, paramilitary battalions staged threatening demonstrations in Kiev, raising the prospect of a new coup. The next day, 7 August, Andriy Parubiy, a key figure in the seizure of power and the civil war, unexpectedly resigned from the National Security and Defence Council. Though according to *Wikipedia*, he declined to comment on his motives 'in time of war', others reported that his 'move [was] mostly provoked by the fact he did not get an extended ethnic cleansing overdrive in Eastern Ukraine, and had to endure a ceasefire'. There was, in fact, no ceasefire; even Poroshenko's order for a local truce after the downing of MH17 had been ignored. However, the extremists were rampant and reining them in was increasingly urgent. This was the situation in which NATO secretary-general Anders Fogh Rasmussen turned up in Kiev on the 7th of August. Was it to ensure that, with the crucial NATO summit in Wales less than a month away (4-5 September), the narrative of 'Putin' as the new threat to the alliance would not be spoiled by Ukrainian ultras? Certainly the official reason offered—that the trip was about the NATO trust fund for the purchase of communication equipment—was not credible; that matter had already been settled in June. Ukraine's representative at NATO headquarters was tight-lipped, saying only that the trip would be extremely brief, a few hours at most. When Rasmussen landed, tanks were patrolling the streets of Kiev; whether to ward off a new coup d'état or consolidate the situation after averting one, we do not know.

Gordon Hahn, a seasoned observer of the post-Soviet space, ventures to suggest that Parubiy may have calculated he was better out of government should the militias attempt a seizure of power; this is not incompatible with another suggestion that he stepped down to 'focus on his work supporting the volunteer militias'. These suggestions, if held out, would bring us a step closer to why Rasmussen flew to Kiev, viz., to reinforce Poroshenko's position amid coup threats and removing extremists like Parubiy from overall control of the armed forces. As Rasmussen declared on receiving the inevitable medal from the president,

'We stand by Ukraine and *your struggle to uphold the fundamental principles on which we have built our free societies.*' Unless it was routine rhetoric, this may well have been intended as a NATO endorsement of a president disobeyed by his troops and directly threatened by the most militant units.

Of course, much of this is conjecture, however suggestive, but there is more. Still on the same day, 7 August, the Netherlands, Belgium, and Australia agreed with Kiev on the format of the criminal investigation of the MH17 disaster through the Joint Investigation Team, under the proviso that the publication of any findings would require the consent of the four parties. (Malaysia was added later given its overwhelming stakes in the matter). This effectively removed the other seven countries that lost citizens in the MH17 disaster and which had been part of the preliminary consultations on the JIT, from any role in determining its further course. It also removed the investigation from the auspices of an EU institution, Eurojust in The Hague, by which the JIT had been formed. The Dutch public prosecution service (*Openbaar Ministerie, OM*) was entrusted with the coordination of the criminal investigation.

Though Ukraine is not a member of Eurojust and there were no Ukrainians on the plane, the 7 August agreement not only brought Ukraine on board but, through the consent provision, also gave the Kiev government 'an effective veto over any investigation results that attributed blame to them, an astonishing situation and probably without precedent in modern air crash investigations'. Ukraine now enjoyed a double indemnity: having absolved it from the responsibility of investigating the disaster, the West now handed it entirely unwarranted rights over the outcome of the investigation. Was this part of a deal in which Kiev removed Parubiy in return for immunity from prosecution over the downing of MH17, also saving the NSDC secretary personally from implication? It may be pertinent here that the acting Ukrainian Air Force commander at the time the Boeing was shot down, Lt. Gen. Serhiy Drozdov, was transferred to the reserve not long afterwards, without official explanation—only to be promoted to air force commander again in July 2015.

When the notoriously loose-lipped public prosecutor of the Kiev regime, Yu. Boychenko, leaked news of the veto on 8 August, Ukraine's press agency, UNIAN, concluded that this effectively exculpated Russia and the insurgents from responsibility. Why otherwise would Kiev have insisted on the veto? The Dutch government, too, only acknowledged the unanimity agreement after a Freedom of Information request by the magazine, *Elsevier*. The fact that the very same day, 7 August, forensic evidence from the crash site was already confidentially shared with the Ukrainian military, certainly highlights how concerned the rulers in Kiev were.

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Prof. Kees van der Pijl is fellow of the Centre for Global Political Economy and Emeritus Professor in the School of Global Studies at the University of Sussex.

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Prism of disaster



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