



Provisional version

## Committee on Legal Affairs and Human Rights

# Ensuring accountability for the downing of flight MH 17

## Report\*

Rapporteur: Mr Titus CORLĂȚEAN, Romania, Socialists, Democrats and Greens Group

### A. Draft resolution

1. The Assembly recalls the downing over eastern Ukraine, on 17 July 2014, of Malaysia Airlines flight MH 17, which was en route from Amsterdam to Kuala Lumpur. All 298 people on board the plane, among them 198 Dutch nationals died.
2. On 21 July 2014, the UN Security Council unanimously adopted Resolution 2166 (2014) demanding that those responsible be held to account and urging all States to cooperate in establishing accountability.
3. The air safety investigation under Annex 13 of the Chicago Convention was delegated to the Dutch Safety Board (OVV). The OVV concluded that the crash of flight MH 17 was caused by the detonation of a model 9N314M warhead of a 9M38-series missile fired from a Buk surface-to air missile system.
4. The criminal investigation carried out in parallel with the air safety investigation by a Joint Investigation Team (JIT) composed of investigators from Australia, Belgium, Malaysia, the Netherlands and Ukraine is still ongoing. Its results so far have prompted the Dutch public prosecution service to indict four suspects, three Russians and one Ukrainian, requesting life sentences for all of them. Their trial before the Hague District Court started in March 2020 and is expected to be concluded by the end of 2022. The suspects, who belong to pro-Russian militias, are accused of being responsible for obtaining the missile described by the OVV from Russia and firing it at flight MH 17.
5. Inter-State cases lodged by the Netherlands and Ukraine and individual applications by 380 family members of the crash victims against the Russian Federation are pending before the European Court of Human Rights (ECtHR). Ukraine also launched applications pertaining to the downing of flight MH17 before the International Civil Aviation Organisation (ICAO) and the International Court of Justice (ICJ).
6. The Assembly has no doubts that the Dutch criminal courts, the ECtHR, the ICAO and the ICJ will decide in due course and in total independence on the possible criminal responsibility of the accused and on the possible state responsibility of Russia under the European Convention on Human Rights and other international conventions.
7. Based on the evidence made available to the Rapporteur by the Ukrainian and Dutch authorities, the Assembly considers as the most convincing scenario by far that flight MH17 was shot down by a BUK missile made available to the pro-Russian militias by the Russian military.
8. The Assembly is appalled by the failure of the Russian authorities to cooperate in good faith with the air safety investigation by the OVV and the criminal investigation by the JIT. Instead of providing reliable information to the competent investigative bodies, the Russian authorities spread disinformation, including successive contradictory versions of the events designed to create confusion. As demonstrated by open-source intelligence published in numerous reports, the Russian authorities even went so far as to submit

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\* Draft resolution unanimously adopted by the committee on 23 May 2022.

manipulated radar, satellite and other data in order to obfuscate the truth. In particular, the versions according to which a Ukrainian SU 25 or MiG 29 fighter jet had shot down flight MH 17 has been thoroughly disproved, as has been the version that a Ukrainian Buk missile fired from government-controlled territory was to be blamed. The Assembly calls on the Russian Federation to provide all satellite and radar data to the OVV and the JIT.

9. Disinformation by the Russian authorities and state-controlled media and the disrespectful treatment of the bodily remains of the crash victims by the pro-Russian separatists who were in control of the crash site have strongly aggravated and prolonged the suffering of the crash victims' relatives and friends. They desperately need to know the truth of what happened to their loved ones, and how and why, and they need a measure of accountability of the perpetrators in order to find closure.

10. The Assembly therefore calls on the Russian Federation to cooperate henceforth in good faith with the JIT by providing it with all the information requested and rectifying the falsified or otherwise misleading data already provided, and to formally apologise to the crash victims' relatives and friends for the pain and suffering caused by earlier disinformation.

11. It commends the Dutch authorities for their important contribution to the international investigations and for their manifold support for the victims' families and friends, providing them with as much information as possible without endangering the ongoing investigations and making psychological, legal and financial assistance available to them.

12. The Assembly also commends Australia, Belgium, Malaysia and, in particular, Ukraine for their strong support of the international air safety and criminal investigations led by the Netherlands and thanks the Dutch and Ukrainian authorities for their excellent cooperation with its own inquiry.

13. It calls on the United States of America and NATO to provide the JIT with any additional radar and satellite imagery, communication intercepts and any other data that may assist the JIT with holding to account all those responsible for the downing of flight MH17, including those who fired the missile in question, those who ordered the firing and those responsible for bringing it to Ukraine.

14. The Assembly encourages all relevant national and international authorities to provide an update of their procedures on overflight of conflict zones, in response to the OVV's recommendations.

15. The Assembly finally expresses its deep-felt condolences to the victims' relatives and friends and its admiration for the constructive and dignified role they and their associations have played in national and international public opinion, pushing for no more than the recognition of the whole truth and a measure of accountability of those responsible for this tragedy. In view of the intense and continuing suffering of the crash victims' next of kin, it invites the Court to consider granting priority to their applications.

## B. Explanatory memorandum by Mr Titus Corlăţean, rapporteur

### 1. Introduction

#### 1.1. *The downing of flight MH 17 and the ensuing investigations and legal proceedings*

1. On 17 July 2014, Malaysia Airlines flight MH 17 was shot down over eastern Ukraine. The plane was en route from Amsterdam to Kuala Lumpur. On board were 283 passengers and 15 crew members. Among the passengers were 196 Dutch nationals. All 298 people on board died.

2. On 21 July 2014, the United Nations Security Council unanimously adopted Resolution 2166 (2014) demanding that those responsible be held to account and that all States co-operate to establish accountability.

3. After every air disaster, two parallel strands of investigation must be distinguished: the air safety investigation under the Chicago Convention (Annex 13) shall determine the causes of the disaster and draw lessons from any shortcomings in safety arrangements found for purposes of improving future air traffic safety, without apportioning any blame or responsibility. In parallel, the competent law enforcement bodies shall attempt to establish criminal responsibility of individual perpetrators of a (negligent or intentional) offense. The international competence for criminal investigations and prosecutions can derive from the place where the crash occurred or from where it was caused (*locus delicti*), the place of origin of the flight, and the nationalities of the perpetrators or the victims of the offense.

4. As far as the downing of MH 17 is concerned, the air safety investigation under the Chicago Convention was delegated to the Dutch OVV<sup>1</sup>, on proposal of the National Bureau of Air Accidents Investigation of Ukraine (NBAAI), on account of the large number of Dutch victims and the fact that the flight originated in Amsterdam.<sup>2</sup> The OVV presented its final report on 13 October 2015. It concluded that flight MH 17 was brought down by a Russian-made 9M38-series Buk missile carrying a model 9N314M warhead.

5. The parallel criminal investigation by the Joint Investigation (JIT) led by the Dutch Prosecution Service and the Dutch National Police in co-operation with their colleagues from Australia, Belgium, Malaysia and Ukraine has the purpose of holding to account persons who may bear criminal responsibility for the catastrophe. The Dutch prosecution service has indicted four suspects: Igor Girkin, Sergey Dubinski, Oleg Pulatov and Leonid Kharchenko. Three of the four suspects named by the Dutch prosecution service have Russian nationality and one is Ukrainian. As they are out of reach of the Dutch and Ukrainian authorities, the suspects are being tried in absentia in the Netherlands. In December 2021, the Dutch prosecutors have requested life sentences against all four accused. A first instance judgment, which will be open to appeal, is expected later this year.

6. In January 2017, Ukraine instituted proceedings against the Russian Federation before the International Court of Justice (ICJ) based on the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*)<sup>3</sup>. This application also covers the MH17 case in so far as Russia is formally accused of having provided the separatists with the missile used to shoot down the Boeing.<sup>4</sup>

7. In July 2020, the Netherlands lodged an inter-State application against Russia before the European Court of Human Rights under Article 33 ECHR in “the pursuit of truth, justice and accountability”<sup>5</sup>. Previously, individual applications under Article 34 ECHR were lodged by 380 relatives of the victims (*Ayley and Others v Russia* and *Angline and Others v Russia*). The Dutch Government participates in those proceedings as a third party under Article 36 para. 1 of the Convention. The Dutch Minister of Foreign Affairs announced that “[t]he contents of the inter-State application will also be incorporated into the Netherlands’ intervention in the individual applications submitted by the victims’ next of kin against Russia to the ECtHR.” The MH17 case is also part of the inter-State application Ukraine lodged against the Russian Federation in 2016 (*Ukraine v Russia No. 8019/16*). On 27 November 2020, the Court’s Grand Chamber decided to join the cases of *Ukraine*

<sup>1</sup> Onderzoeksraad Voor Veiligheid (“Investigation Council for Safety”), Dutch Safety Board.

<sup>2</sup> See OVV statement, at <http://onderzoeksraad.nl/en/onderzoek/2049/investigation-crash-mh17-17-july-2014/onderzoek/1559/questions-and-answers-concerning-the-investigation-into-flight-mh17#fasen>

<sup>3</sup> See <https://icj-cij.org/en/case/166>

<sup>4</sup> See <https://www.ukrinform.net/rubric-politics/2814957-mh17-case-is-part-of-ukraines-lawsuit-against-russia-at-icj.html>

<sup>5</sup> <https://www.government.nl/latest/news/2020/07/10/the-netherlands-brings-mh17-case-against-russia-before-european-court-of-human-rights>

*v. Russia* (re Eastern Ukraine), *Ukraine v. Russia* (No. 43800) and *the Netherlands v. Russia* (no. 28525/20) into a single case "*Ukraine and the Netherlands v. Russia*". A first oral hearing focusing on admissibility issues took place on 26 January 2022. I attended part of it.

8. In March 2022, the Netherlands and Australia also launched proceedings against Russia before the International Civil Aviation Organization (ICAO) under an article of the Chicago Convention designed to protect civilian aircraft from weapons fire introduced in 1984 of the downing of a South Korean airliner by Soviet fighters the year before.<sup>6</sup>

### 1.2. *Interpretation of the mandate and objectives of the report*

9. In the words of the authors of the motion underlying this report<sup>7</sup>, it is of "utmost importance that justice be done and that all member States fully co-operate with the efforts in this respect by those States that have jurisdiction. Under Article 2 of the European Convention on Human Rights, all States Parties have the duty to carry out effective investigations to identify and punish those responsible for the loss of life that occurred under their jurisdiction. Suspects for serious crimes should be either extradited on the request of the State undertaking the investigation and prosecution or prosecuted in their home State, if this State does not extradite its own nationals."

10. In line with the motion, I saw it as my task to "inquire about the extent to which countries have carried out investigations required under the European Convention on Human Rights and co-operated with one another as instructed by the United Nations Security Council and to make appropriate recommendations".

11. I will not attempt to second-guess or anticipate on behalf of the Assembly the results of the air safety investigation or the findings of the JIT. The Assembly has neither the mandate, nor the expertise, nor the resources to do such a thing. But it is mandated to inquire and assess whether all States Parties to the European Convention on Human Rights have fulfilled their duty, under Article 2, to properly investigate and sanction any loss of human life. This assessment, which I submit to the Assembly in this report is political, not judicial, as the Assembly is not a court of law. On a personal basis, and without prejudice to future independent judicial determinations, I feel obliged, especially vis-à-vis the victims' families and friends, to share also my own conclusions also on the question of how flight MH17 was destroyed. I base myself solely on objective facts, which I interpret impartially.

12. In this report, before drawing conclusions in line with my mandate, I will briefly present the investigations carried out so far at national and international levels, focusing on progress made and obstacles encountered by the investigators.

### 1.3. *Fact-finding visit to The Hague and Kyiv (31 January to 4 February 2022)*

13. I should like to express my thanks to the Dutch and Ukrainian delegations for organising very useful meetings with all relevant stakeholders in The Hague and Kyiv (programme attached). I was particularly moved by the dignity and emotional strength displayed by the numerous relatives of the crash victims I met in The Hague. These meetings brought home the unspeakable horror of what the passengers and crew of flight MH17 must have gone through when their plane was hit by a missile, and the unending suffering of their friends and relatives. It is obvious that in order to find closure, they need to know the whole truth about what happened to their loved ones, and how and why and to see some measure of justice meted out to those responsible for this tragedy. Instead, their suffering was prolonged and made even worse by the outright lies and ever-changing "versions" of the events that were spread by the Russian authorities and the rulers of the so-called people's republics of Donetsk and Luhansk and by the total lack of respect for the victims' remains displayed by the pro-Russian separatists who were in control of the crash site.

## 2. **Investigations at international and national levels – progress and obstacles**

14. After the catastrophe, and the diffusion in the international media of the horrible images of the wreckage of the plane and the human remains scattered over a large area in the conflict zone in eastern Ukraine, it soon became clear that the cause of the crash was not a malfunction of the plane or pilot error, but the impact of a weapon of war. Investigations were hampered by the fact that the crash site was located in a zone under the

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<sup>6</sup> <https://www.reuters.com/world/australia-netherlands-start-legal-action-against-russia-downing-mh17-2022-03-14/>

<sup>7</sup> Doc. 14929 dated 27 June 2019; at its meeting on 28 June 2019, the Bureau decided to seize the Committee on Legal Affairs and Human Rights for a report. At its next meeting, on 1 October 2019 in Strasbourg, the Committee appointed Mr Titus Corlăteanu (Romania/SOC) as rapporteur. At its meeting on 10 December 2019 in Paris, the Committee heard a statement from him explaining his understanding of his mandate, as explained below.

effective control of separatist militias supported by Russia. There were even reports of looting of the personal belongings of crash victims. Only days after the crash, investigators from Ukraine, Malaysia and Australia and journalists, accompanied by OSCE observers, were able to access the crash site.

15. As after every air disaster, two types of investigations needed to be carried out urgently, and independently from one another, namely an air safety investigation to identify the causes of the crash and criminal investigations to establish any criminal responsibilities (see above).

### 2.1. *The Air Safety Investigation under the Chicago Convention*

16. The objective of the technical investigations conducted under the international requirements established by Annex 13 to the Convention on International Civil Aviation (Chicago Convention) is not to apportion blame, but to draw appropriate lessons from any air disaster for the sake of improving air traffic safety in future.<sup>8</sup>

17. On proposal of the National Bureau of Air Accidents Investigation of Ukraine (NBAAI) the air safety investigation under the Chicago Convention was delegated to the Dutch OVV<sup>9</sup> because of the large number of Dutch passengers and the fact that the flight originated in Amsterdam.<sup>10</sup> The OVV presented its final report on 13 October 2015.

18. It concluded that flight MH 17 was brought down by a BUK missile, more precisely by a 9N314M-type warhead of a 9M38M1-type surface-to-air missile, mounted on Russian-built BUK mobile air defense systems. The warhead was identified beyond doubt by characteristic (bow-tie shaped and square) fragments found in the wreckage and in the remains of crew members. The fuselage had suffered the impact of more than 800 high energy objects originating from one spot outside the plane, their shape excluding air-to-air cannon shot. The OVV report also carefully considers and excludes any other causes for the crash such as a lightning strike, a hit by a meteorite or space debris, an explosion on board, expansive engine failure, lack of airworthiness of the plane and the crew.

19. The investigators identified characteristic sound peaks in the last 20 milliseconds of the CVR (Cockpit Voice Recorder) recording and located their source as being outside the plane, above the left side of the cockpit. The OVV report also establishes that no alerts or warnings of technical malfunctions were recorded on the CVR and the FDR (Flight Data Recorder). The OVV notes that the flight recorders could not be recovered by the Annex 13 investigation team. They were removed by two unknown officials and handed over only on 21 July 2014 to a Malaysian official in separatist-controlled Donetsk.

20. Radar data made available to the OVV by the Ukrainian and Russian authorities show that no other planes were in the vicinity of MH17, with the exception of three other commercial airliners, the closest at a distance of about 30 km. The OVV notes that the Russian authorities provided only video recordings of radar screens and not the raw radar data, which Russia claimed were not stored as they did not concern Russian airspace. The OVV recalls that this violates ICAO standards.

21. The OVV notes that it was first given access to the crash area only on 4 November 2014 and could only recover the wreckage in two missions starting on 16 November 2014 and 20 March 2015. It was however given access to information collected by other investigators given access earlier (see above). But the OVV also notes that some pieces of wreckage identified as having been in the wreckage area shortly after the crash were not found during the recovery missions. The conditions of the transfer of the human remains for purposes of identification are not described in the report (see pages 83-86 and 164-165). The description of the likely effect of the impact and the subsequent disintegration of the plane into three main segments (cockpit, cabin, tail) on the passengers makes for chilling reading (page 165).

22. A large part of the OVV report is dedicated to describing and analyzing the degree of risk of flying over a conflict zone such as that in eastern Ukraine (but also Afghanistan, Syria, Iraq, South Sudan, which commercial airliners overfly routinely in altitudes considered safe, as being out of the effective range of weapons used in these conflicts, such as "MANPADS" (portable surface-to-air missiles). It notes that in the months and days preceding the downing of MH17, the Donbass conflict had indeed extended into the air. Several Ukrainian helicopters, transport planes and even fighter jets were downed by the separatists supported by Russia, who clearly had "MANPADS" at their disposal. Most of the Ukrainian military aircraft shot down

<sup>8</sup> See <https://www.icao.int/Newsroom/Pages/ICAO-Welcomes-MH17-Accident-Investigation-Final-Report.aspx>

<sup>9</sup> Onderzoeksraad Voor Veiligheid ("Investigation Council for Safety"), Dutch Safety Board, see <https://www.onderzoeksraad.nl/en/page/3546/crash-mh17-17-july-2014>

<sup>10</sup> See OVV statement, at <http://onderzoeksraad.nl/en/onderzoek/2049/investigation-crash-mh17-17-july-2014/onderzoek/1559/questions-and-answers-concerning-the-investigation-into-flight-mh17#fasen>

were hit at low altitudes.<sup>11</sup> But in two cases, a military transport plane (Antonov AN-26) and a fighter jet (Sukhoi SU-25) were hit at altitudes nearing the prescribed cruising altitude for commercial aircraft.<sup>12</sup> These incidents, which were well-known also to Western observers, did not give rise to the complete closure of the airspace for commercial aircraft by Ukraine (lower altitudes had been closed beforehand), or to warnings by Governments addressed to their national carriers to avoid flying over this region. The OVV merely states the facts, without apportioning blame to the one or other Government. It does however state that the Dutch authorities were neither obliged nor even legally entitled to prevent Malaysian Airlines from using the route over eastern Ukraine mapped out in the flight plan, even though flight MH17 was a “code share” with the Dutch national carrier, KLM, and originated in the Netherlands. The airspace over the eastern part of Ukraine was heavily travelled on the day of the MH17 crash. Until the airspace was closed, 160 commercial airliners flew over the area.

23. During my meetings in The Hague and Kyiv, I asked several interlocutors where a specific warning against flying over the conflict zone in the Donbass region was given or received. I was told that this was not the case, as the presence of the BUK missile system at the disposal of the separatist fighters was not known before the tragedy happened.

## 2.2. Criminal investigations by the Joint Investigation Team (JIT)

24. The Joint Investigation Team (JIT) is made up of police officers and forensic experts from Australia, Belgium, Malaysia, the Netherlands and Ukraine.<sup>13</sup> It is led by the Dutch national police and has a field office in Kyiv. The JIT, set up under the auspices of Europol, is currently 50-strong<sup>14</sup> and has access to the full array of forensic, aviation and military expertise (including radar, missiles, weapons and explosives experts). The JIT has carried out extensive forensic analysis of the human remains, and aircraft debris transported to the Netherlands, stored and analysed at Gilze-Rijen Air Force Base. The JIT also has access to information collated by the OVV. It may use information from all sources, but its task is to gather evidence in accordance with the high standards of evidence required for use in criminal court proceedings.

25. On 30 March 2015, the JIT released [a video](#) calling for witnesses in eastern Ukraine to come forward with information regarding the transport of a BUK anti-aircraft system through eastern Ukraine on July 17<sup>th</sup> (the day of the MH17 crash) and 18<sup>th</sup>, 2014. In the video, the JIT summarize the transport route of the BUK from Donetsk, through Zuhres and Torez to Snizhne, to Luhansk, and back to Russia with photographs and videos of the BUK along with intercepted phone calls between separatists. The majority of this information has been in the public domain since a report by [Bellingcat](#) dated 8 November 2014 (see below). In addition, this video presents intercepted phone calls made shortly after the downing of MH17 that further implicate Russia and the separatists supported by Russia. In these three previously unpublished phone calls, separatists discuss a Volvo low-loader truck hauling a BUK from Snizhne to Russian territory shortly after the downing of MH17.

26. On 28 September 2016, the JIT announced that MH17 was shot down by a missile of the 9M38 series, launched from a BUK TELAR system, which had been transported from Russia to an agricultural field near Pervomaiskyi, in eastern Ukraine, from where the missile was launched. After firing – with one missile missing – the system was transported back to Russia.

27. On 24 May 2018, the JIT announced its conclusion that the BUK TELAR system used to shoot down MH17 belonged to the Russian armed forces’ 53<sup>rd</sup> Anti-Aircraft Missile Brigade stationed in Kursk. The JIT also launched a call for witnesses such as members of the 53<sup>rd</sup> Brigade in question.

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<sup>11</sup> See table in the OVV report, page 182; on 17 July 2014, a AN-26 transport plane flying at 6.500 meters was shot down. According to a Ukrainian statement, it must have been hit by a more powerful weapon than a MANPAD. On 16 July, two SU-25 fighter jets were hit, one most likely by a MANPAD. The other, shot down near Amvrosiivka, by the Russian border, was hit at 8250 meters (later corrected to 6.250 meters). The Ukrainian authorities suspected that either a Pantsir ground-to-air missile, or an X-24 air-to-air missile were used, in either case launched from Russian territory or airspace (see OVV report pages 182-184).

<sup>12</sup> A NOTAM (Notice To Airmen) in force since March 2014 by the Ukrainian authorities advised against flying below FL 260 (Flight Level 26000 feet or about 7900 meters). A Russian NOTAM published on 16 July 2014 (no. UUUUV6158/14) applicable to the Rostov area bordering eastern Ukraine was internally contradictory: whilst advising not to fly below FL 260 (as in the Ukrainian NOTAM), it also indicated that it applied from ground level to FL 530, i.e. over 16000 meters; see OVV report, page 180.

<sup>13</sup> See the informative official website on the MH17 crash at <https://www.prosecutionservice.nl/topics/mh17-plane-crash> featuring explanations on various aspects of the JIT’s work (in particular, forensic research into debris in Gilze-Rijen, the field office in Kiyv, the collection of soil samples in the areas suspected as the missile’s launch site, the investigation into the weapon system used to bring down MH17 and the use of international legal assistance).

<sup>14</sup> According to MH17 Magazine 03, ‘Incomparable investigation’, hundreds of people were initially working on this investigation under the supervision of eight prosecutors. Depending on the needs, people have joined over time whereas others left the investigation.

28. On 19 June 2019, the Dutch authorities announced that based on the investigation conducted by the Joint Investigation Team (JIT) the Public Prosecution Service of the Netherlands would prosecute four suspects for bringing down the airplane, namely Igor V. Girkin (aka Strelkov), Sergey N. Dubinskiy, Oleg Y. Pulatov and Leonid V. Kharchenko. The first three are Russian nationals, Mr. Kharchenko is Ukrainian. Mr. Girkin is a former colonel of the FSB. On 17 July 2014, he was “Minister of Defense” and commander of the army of the self-proclaimed Donetsk People’s Republic (“DPR”), from where MH17 was shot down. As the highest military commander, he also maintained contact with the Russian Federation. Mr. Dubinskiy is a former officer of the GRU (the Russian military intelligence service). He was one of Girkin’s deputies in 2014. He headed the intelligence service of the “DPR” and also maintained contact with the Russian Federation. Mr. Pulatov is a former military officer of the Russian “Speznaz-GRU”, the special units of the Russian military intelligence service. At the relevant time, he was one of the deputies of Dubinskiy. Mr. Kharchenko, the only Ukrainian suspect, has no military or special services background. Receiving orders directly from Dubinskiy, he was commander of a combat unit in the Donetsk region.<sup>15</sup>

29. The four suspects are being prosecuted for causing the crash of flight MH17, resulting in the death of all persons on board, punishable under Article 168 of the Dutch Criminal Code; and the murder of the 298 persons on board of flight MH17, punishable under Article 289 of the Dutch Criminal Code.<sup>16</sup>

30. On 14 November 2019, the JIT released another call for witnesses, linked to the publication of several intercepted telephone calls on its website. The JIT announced that recent analysis of information obtained by the JIT, including witness statements by former “DPR” members, revealed that Russian influence over the “DPR” went beyond military support, as shown by recorded telephone conversations between the leaders of the “DPR” and high-ranking Russian officials. In its latest call for witnesses, the JIT reveals details about secure means of communication used between “DPR” fighters and Russian officials. The telephone numbers, used daily, belonged to the same series and appeared to be provided by the FSB. The JIT called for information on who used these telephone numbers and witnesses who can share information about those who ordered the deployment of the BUK TELAR in question.

31. International arrest warrants had been issued and the four suspects have been placed on national and international lists of wanted persons. Three of the suspects have Russian nationality, the fourth is Ukrainian. As the constitutions of both countries do not allow extradition of nationals, extradition was not requested. The trial started on 9 March 2020 before the District Court of The Hague.<sup>17</sup>

32. On 2 December 2019, the Dutch Public Prosecution Service (PPS) announced that it had informed the Russian authorities of its request for the provisional arrest of a fifth suspect (“person of interest”), Mr Vladimir Tsemakh. He was arrested in Ukraine<sup>18</sup> for other criminal offenses. The investigation into his role in the downing of flight MH17 is still ongoing. The JIT, who questioned him several times, considers him a suspect. But it could not prevent him from being transferred to the Russian Federation on 7 September 2019 as part of a prisoner exchange. The PPS immediately requested Russia to arrest Mr Tsemakh for the purpose of extradition to the Netherlands. As Mr Tsemakh is a Ukrainian citizen, the Russian Constitution would not prevent his extradition. The PPS received confirmation of receipt of its request before the plane even landed in Moscow. But Mr Tsemakh was not arrested, despite repeated warnings by the PPS that he might flee to the “DPR”. On 23 September 2019 and several more times after this date, the Russian authorities requested additional information, which the PPS said it provided promptly, even though it had no relevance for the arrest of Mr Tsemakh. The request for his arrest was repeated at the highest political and diplomatic levels, to no avail. On 19 November, the PPS received notification from the Russian authorities that the request for the

<sup>15</sup> See press release of the Dutch prosecutor’s office dated 19 June 2019, at: <https://www.prosecutionservice.nl/topics/mh17-plane-crash/documents/publications/mh17/map/2019/speakers-text-press-meeting-19-6-2019>

<sup>16</sup> Section 168 of the Dutch Criminal Code reads:

“Any person who intentionally and unlawfully causes any vessel, vehicle or aircraft to sink, run aground or be wrecked, be destroyed, rendered unusable or damaged, shall be liable to:

1°. a term of imprisonment not exceeding fifteen years or a fine of the fifth category, if such act is likely to endanger the life of another person;

2°. life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fine of the fifth category, if such act is likely to endanger the life of another person and the offence results in the death of a person.”

Section 289 of the Dutch Criminal Code reads:

“Any person who intentionally and with premeditation takes the life of another person shall be guilty of murder and shall be liable to life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fine of the fifth category.”

<sup>17</sup> <https://www.prosecutionservice.nl/topics/mh17-plane-crash/news/2020/03/09/criminal-proceedings-start-against-four-suspects-charged-with-bringing-down-mh17>.

<sup>18</sup> Reportedly, he was arrested in “DPR” territory and transported to Kyiv by Ukrainian special forces.

arrest of Mr Tsemakh could not be executed because his whereabouts were unknown. According to media reports, Mr Tsemakh had already returned to his residence in separatist-controlled eastern Ukraine. The PPS concluded that “Russia willingly allowed Mr Tsemakh to leave the Russian Federation and refused to execute the Dutch request. While under the European Convention on Extradition, it was obliged to do so.”<sup>19</sup>

33. Rather astonishingly, Mr Tsemakh has turned to the European Court of Human Rights to complain about the conditions of his detention and interrogation in Ukraine.<sup>20</sup>

34. The alleged failure of the Russian authorities to cooperate with the JIT on the arrest of Mr Tsemakh clearly falls within my mandate as Rapporteur. I have raised it in my meetings in The Hague and Kyiv. The chronology of events indicated by the PPS was not contradicted. My Ukrainian interlocutors stressed the fact that the Russian side had strongly insisted on the inclusion of Mr Tsemakh in the exchange of prisoners and that the Dutch investigators had been given the opportunity to interrogate him before he was allowed to leave for Russia.

### 2.3. *Investigations by Bellingcat*

35. Bellingcat, a collective of researchers specializing in fact-checking based on “OSINT” (Open Source Intelligence) was founded by British journalist Elliot Higgins and started making a name for itself for investigating the use of chemical weapons in Syria. It describes itself as “an independent international collective of researchers, investigators and citizen journalists using open source and social media investigation to probe a variety of subjects – from Mexican drug lords and crimes against humanity, to tracking the use of chemical weapons and conflicts worldwide. With staff and contributors in more than 20 countries around the world, we operate in a unique field where advanced technology, forensic research, journalism, investigations, transparency and accountability come together.”<sup>21</sup> Regarding the downing of flight MH17, Bellingcat carried out several investigations.

36. On 8 November 2014, Bellingcat published a report on the “Origin of the Separatists’ Buk”. Based on social media posts, in particular photographs posted online, using different tools permitting to identify the location where the photographs were taken, and individualizing one particular BUK missile launcher (“3x2”, the x representing the illegible middle number) by comparing its distinctive features with others, Bellingcat documented the transportation route of a Buk system originating from the base of the 53<sup>rd</sup> Anti-Aircraft Missile Brigade in Kursk, via a larger convoy from which it separated and moved close to a separatist-held border crossing. “3x2” was inside separatist-controlled territory on 14 July 2014, moving from Donetsk via Zhures and Torez to Snizhne, where it was unloaded from the (allegedly stolen) civilian low-loader truck about three hours before the downing of MH 17 and taken under its own power to a field near the village of Pervomayskyy, from where the fateful missile was fired. A video taken in the early morning of 18 July 2014 shows the BUK being transported on top of the same low-loader truck through Luhansk, in the direction of the Russian border – missing one missile.<sup>22</sup>

37. Bellingcat’s 31 May 2015 report on “Forensic Analysis of Satellite Images Released by the Russian Ministry of Defense” analyses satellite images showing Ukraine’s Military Unit A-1428 north of Donetsk on 14 and 17 July 2014, which were presented by the Russian Ministry of Defence (MoD) at a press conference on 21 July 2014. Bellingcat compares the Russian images with commercial satellite images acquired by Bellingcat from Digital Globe of the same location on 17 July 2014 and images available on Google Earth showing the same location at several different dates during 2014. Bellingcat finds that:

“It is clear from these comparisons that there are multiple differences between the Digital Globe 17 July imagery and the Russian MoD’s 14 July 2014 and 17 July 2014 imagery. These discrepancies can only be explained if the Russian MoD imagery is incorrectly dated. Similarities between the Russian MoD imagery and Google Earth satellite imagery from May and June clearly demonstrate that the Russian MoD imagery was at least a month old on 17 July 2014.”

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<sup>19</sup> Press release Netherlands Public Prosecution Service concerning Mr Vladimir Tsemakh, 2 December 2019, available at <https://www.prosecutionservice.nl/topics/mh17-plane-crash/news/2019/12/02/press-release-netherlands-public-prosecution-service-concerning-mr-vladimir-tsemakh>.

<sup>20</sup> See CoE news item of 19 December 2019, “MH17 case: Tsemakh files lawsuit against Ukraine”.

<sup>21</sup> See <https://www.bellingcat.com/about/>

<sup>22</sup> See ‘A Birdie is Flying Towards You’, Identifying the Separatists Linked to the Downing of MH17, A Bellingcat Investigation, 19 June 2019, page 74 (available at: <https://www.bellingcat.com/news/uk-and-europe/2019/06/19/identifying-the-separatists-linked-to-the-downing-of-mh17/>).



38. In its conclusion, Bellingcat excludes that the Russian Ministry of Defence misdated the images accidentally. In a reply to previous allegations of misrepresentation, the Ministry of Defence had made the following statement:

“The images released by the Russian Defence Ministry on July 21 are absolutely accurate in terms of the location and time.”<sup>23</sup>

39. If the Russian MoD deliberately provided misleading satellite imagery, this would be a clear violation of the Russian Federation’s duty to cooperate with the investigation into the causes of and responsibilities for the MH 17 disaster.

40. On 17 July 2017, Bellingcat presented its report “MH17, The Open Source Investigation, 3 Years Later”<sup>24</sup>. It sums up the information establishing the transport path and launch site of the Russian Buk that was used to shoot down flight MH17. The report also includes information on narrowing down the possible launch site of the missile, including through geolocation of a photographed missile smoke trail. The researchers also present detailed information and analysis disproving several “alternative scenarios” presented in the meantime by the Russian authorities and the manufacturer of the Buk system, Almaz-Antey. These include the use of one of the Buk systems in the possession of the Ukrainian army and the downing of MH17 by a Ukrainian fighter jet. Last but not least, the Bellingcat researchers also took a first look at the roles and identities of potential suspects.

41. Bellingcat’s detailed report “A Birdie is Flying Towards You’, Identifying the Separatists Linked to the Downing of MH17” (dated 19 June 2019) establishes the identities of most of the individuals heard or mentioned in the intercepted conversations released by the Ukrainian SBU and the JIT. Bellingcat, again, based itself on open (mostly digital) sources, trawling through social networks, online forums, reading leaked messages, using facial recognition tools and analyzing interviews given by separatist soldiers and published telephone conversations. The researchers thereby established the hierarchy of the “DNR” forces involved in obtaining and making use of the Buk system used in the downing of MH17. According to Bellingcat, the “GRU DNR” led by Sergey Dubinskiy (one of the four suspects named by the Dutch OPP) was responsible for procuring the Buk missile launcher in question, and for guarding the Buk at the launch site around the time when MH17 was shot down. Dubinskiy’s group also oversaw the transport of the Buk back to Russia in an attempt to hide evidence of its deployment – which was “seemingly approved by the DNR’s most senior commander – Igor Strelkov.”<sup>25</sup> Strelkov is one of the aliases of Igor Girkin, another of the four suspects named by the Dutch OPP. According to Bellingcat, the other two suspects named by the OPP, Oleg Pulatov and Leonid Kharchenko, also played key roles in procuring and guarding the Buk. Valery Stelmakh, a member of another group of separatists first spotted the aircraft (the “birdie”) and misidentified it as a target; he first reported this information to his commander, Igor Bezler, shortly before the downing of the plane. As of Bellingcat’s report, it remains unclear who channeled this message to the Buk crew - which, according to intercepts, had definitely come from Russia.

42. In its most recent report on this matter dated 28 April 2020 “Key MH17 Figure Identified as Senior FSB Official: Colonel General Andrey Burlaka”<sup>26</sup>, Bellingcat identified an obviously high-ranking person referred to in intercepted telephone conversations as “Vladimir Ivanovich” as Colonel General Andrey Ivanovich Burlaka. The report explains in detail the methodology used for this “man-hunt” based on public and leaked data and voice identification tools, which led to the identification of the person who was clearly in charge of authorizing the delivery of all kinds of military hardware to the ostensibly independent separatists and without whose consent a large and complex weapons system such as a BUK TELAR could not have been transported over the border to Ukraine.

43. The Bellingcat investigations are highly professional and enjoy a great deal of credibility, based on its track record. In the letter I sent to the Russian authorities, as authorised by the committee, I referred to the Bellingcat reports and invited the Russian authorities to provide me with explanations and data that might put Bellingcat’s findings into question. I did not receive any reply, although the letter was sent well before Russia’s exclusion from the Council of Europe. This strengthens my conviction that these findings reflect the actual facts.

<sup>23</sup> ‘Comparison of Digital Globe 17 July Satellite Imagery with Russian Ministry of Defense 17 July Satellite Imagery’, A Bellingcat Investigation,

<sup>24</sup> Available at : <https://www.bellingcat.com/news/uk-and-europe/2017/07/17/mh17-open-source-investigation-three-years-later/>

<sup>25</sup> Ibid., page 87.

<sup>26</sup> Available at: <https://www.bellingcat.com/news/2020/04/28/burlaka/>

#### 2.4. *Different versions of the events spread by Russian authorities and media*

44. Russia rejects the findings of the Dutch OVV, the accusations made by the Joint Investigation Team and the information and analysis published by Bellingcat outright.<sup>27</sup>

45. In particular, the Russian MoD stated that no Russian army missile system had ever crossed the Ukrainian border. At a press conference on 21 July 2014, the Ministry of Defense (MoD) presented satellite imagery to show that a Buk battery belonging to the Ukrainian military might have brought down MH 17 (this was rebutted by Bellingcat, see above). At the same press conference, the MoD presented images purporting to show that the video showing the transport of a BUK battery through (separatist-held) Donetsk was in fact filmed in (government-held) Krasnoarmeisk, as evidenced by a billboard purportedly showing the address of a car dealership in this town. But in its article of 16 July 2015 “Russia’s Colin Powell Moment – How the Russian Government’s MH17 Lies Were Exposed”<sup>28</sup>, Bellingcat convincingly established that the video was indeed filmed in Donetsk and that the images presented by the MoD were manipulated.

46. In June of 2015, Almaz-Antey (the State-owned Russian manufacturer of Buk missile systems) held a press conference in Moscow presenting the results of their own investigation into the destruction of MH17 which confirmed that it was hit by a BUK 9M38M1 surface-to-air missile armed with a 9H314M warhead. Shrapnel holes in the plane were consistent with that kind of missile and warhead, it said. Such missiles had not been produced in Russia since 1999 and the last ones were delivered to foreign customers. Almaz-Antey added that the Russian armed forces now mainly use a 9M317M warhead with the BUK system. It also said that Ukraine’s armed forces still had nearly 1,000 such missiles in its arsenal in 2005, when it held talks with Almaz-Antey on prolonging their lifespan. But the Russian military still has 9H314M warheads for Buk missiles, too.<sup>29</sup> The Almaz-Antey study also postulates an alternative zone for possible launch sites.

47. To further bolster the thesis that a Ukrainian Buk brought down MH17, the Russian MoD presented additional radar data “accidentally discovered” in September 2016 during “scheduled maintenance” which purports to show the missile coming from Ukrainian Government-held territory, namely in from a field south of Zaroshchenske. But this radar data is considered inconclusive by the JIT and other international experts.<sup>30</sup> Given the fact that Zaroshchenske itself and its surrounding areas were held by separatist forces around 17 July 2014, this location would have been an unlikely choice for the Ukrainian military to expose a vulnerable and valuable missile system.<sup>31</sup> Also, the field south of Zaroshchenske was not within the area of possible launch sites depicted in the investigation by Almaz-Antey.<sup>32</sup> Bellingcat, with the help of commercial satellite imagery of the same area at different times, demonstrated conclusively that satellite images provided by the Russian Ministry of Defense in support of its “Ukrainian BUK theory” were misdated.<sup>33</sup>

48. In an article dated 22 April 2016<sup>34</sup>, Bellingcat published a detailed response by the Russian Ministry of Foreign Affairs to Bellingcat’s findings until then, followed by a rejoinder refuting the MFA’s replies point-by-point. The MFA’s reply to Bellingcat is the closest I could find in terms of an engagement of the Russian authorities with the findings of the various international investigations.

49. As to the purported “motive” for Ukrainian forces shooting at an airliner mentioned by Russian sources – namely that Ukraine intended to shoot down a plane carrying President Putin (who was travelling around this time from Moscow to Warsaw) – experts pointed out that a missile fired from Zaroshchenske could not possibly reach a plane flying much further north between Moscow and Warsaw.

<sup>27</sup> See for example statements referred to in Bellingcat’s article dated 22 April 2016, available at: (<https://www.bellingcat.com/resources/articles/2016/04/22/the-russian-ministry-of-foreign-affairs-presents-its-evidence-of-mh17-fakery/>) and <https://news.sky.com/story/putin-dismisses-mh17-findings-and-says-of-course-russia-is-not-to-blame-for-tragedy-11385434> )

<sup>28</sup> Available at: <https://www.bellingcat.com/news/uk-and-europe/2015/07/16/russias-colin-powell-moment-how-the-russian-governments-mh17-lies-were-exposed/>

<sup>29</sup> See Bellingcat report of 17 July 2017, page 60

<sup>30</sup> See for example <https://www.prosecutionservice.nl/topics/mh17-plane-crash>.

<sup>31</sup> See in detail : [https://www.bellingcat.com/wp-content/uploads/2015/07/Zaroshchenske\\_ENG.pdf](https://www.bellingcat.com/wp-content/uploads/2015/07/Zaroshchenske_ENG.pdf)

<sup>32</sup> See Bellingcat, 5 January 2018, “The Kremlin’s Shifting, Self-Contradicting Narratives on MH17”

<sup>33</sup> See [The Russian Ministry of Foreign Affairs Publishes "Their" Evidence of MH17 Fakery - bellingcat](#)

<sup>34</sup> Note 24 above.

50. Another “version” spread by Russian officials was that flight MH17 was shot down by a Ukrainian fighter jet. But that version was also widely rejected by international experts. The type of aircraft allegedly used (a SU-25 ground attack plane) was technically not capable of carrying out such a high-altitude attack, and the purported “witness”, Evgeny Agapov, who described how a Ukrainian pilot (Captain Voloshin) returned from a combat mission distraught and with a missile missing from his plane did not withstand scrutiny; nor did the radar and satellite imagery and the tweet of a Spanish air traffic controller in Kyiv presented in support of this version.<sup>35</sup> Another variant of the “jet fighter version” purportedly involved a Ukrainian MiG29 or SU-27 fighter jet, both of which are technically capable of high-altitude attacks. Russian State TV showed satellite images purporting to show MH17 and an approaching fighter jet. But a closer look at the images revealed that they were clearly manipulated: the Boeing in the picture did not have the Malaysian Airlines markings in the right place and the scale of the planes, in relation to features visible on the ground, was completely wrong.<sup>36</sup>

51. In my above-mentioned letter, I asked the competent Russian authorities for clarification regarding the obvious contradictions<sup>37</sup> between different “versions” and supporting materials presented to the international investigators. I did not receive any answer. In light of all available information, it appears that the one or the other, if not all of the different “versions” spread by the Russian authorities are false. Such misleading statements, let alone the presentation of manipulated radar and satellite data, clearly contravene Russia’s international obligations to cooperate in the establishment of the truth.

### 2.5. *The Malaysian position*

52. On 17 July 2019, Malaysian Prime Minister Mahathir Mohamad was quoted by TASS as claiming that the Malaysian investigators had been excluded from the investigation, that the case was political and that investigators were blaming Russia from the beginning without examination. He had been awarded the Russian Order of Friendship by Vladimir Putin in 2003.

53. By contrast, the Malaysian prosecutor Mohamad Hanafiah bin Zakaria, who was part of the JIT, said at a press conference in the Netherlands on 19 June 2019 that the findings of the investigation “are based on extensive investigations and also legal research,” adding: “We support the findings.”<sup>38</sup>

## 3. **Conclusions and final comments**

54. The Dutch OVV, the Joint Investigation Team and Bellingcat published their results successively, step-by-step, always providing more detail and further corroboration of the narrative according to which a Buk missile originating from Russia, launched from separatist-held territory in eastern Ukraine, was used to shoot down MH17. By contrast, Russia has been spreading different “versions”, even simultaneously, according to which one or another Ukrainian fighter jet, or a Ukrainian Buk had brought down the plane. As shown by evidence collected meticulously by international investigators, including the OVV, the JIT and Bellingcat, much of the satellite, radar and video material presented by the Russian authorities in support of these versions lacks credibility. By submitting manipulated data, the Russian authorities clearly failed in their duty to cooperate with international investigators in establishing the truth.

55. During my information visits to The Hague and Kyiv, I made it clear that it is not within my mandate to take position on the legal apportionment of individual guilt or state responsibility for the downing of MH17. The criminal responsibility of individual perpetrators will be determined in due course by the Dutch courts dealing with the accusations brought against the persons identified by the JIT; and State responsibility will be determined by the European Court of Human Rights in Strasbourg, which deals with the interstate applications brought by Ukraine and the Netherlands against the Russian Federation, and within the limits of their competences by the International Court of Justice and the ICAO. But my mandate allows me to present the Assembly with a conclusion as to whether all States potentially involved have fulfilled their duty to cooperate in establishing the truth about what exactly happened to flight MH17, and why.

<sup>35</sup> See <https://www.polygraph.info/a/Russian-military-channel-produces-new-mh17-theory/28920956.html>;  
<https://www.polygraph.info/a/kremlins-debunked-mh17-theories/29251216.html>;

<https://www.bellingcat.com/news/2014/11/14/russian-state-television-shares-fake-images-of-mh17-being-attacked/>

<sup>36</sup> Either the Boeing was just 300 metres away from the satellite, or it was about four miles long, based on the perspective between the camera and the ground, see BBC, “Conspiracy Files, who shot down MH17?” by Mike Rudin, available at: <https://www.bbc.com/news/magazine-35706048>

<sup>37</sup> See Bellingcat, 5 January 2018, “The Kremlin’s Shifting, Self-Contradicting Narratives on MH17”.

<sup>38</sup> See “Malaysian Investigator Contradicts Nation’s PM on MH-17 Findings, at <https://www.polygraph.info/a/malaysia-pm-mh17-russia-jit/30059031.html> )

56. One of the key takeaways from my information visits is the unanimous view of all my interlocutors that the Russian authorities failed to provide data they must have in their possession, such as relevant primary radar data, and that they were generally not responsive or cooperative, but responded in a dilatory and formalistic manner. One mutual legal assistance request from the Netherlands to interrogate certain individuals in Russia was refused outright, with the tell-tale explanation that answering it would run against the interests of the Russian Federation.<sup>39</sup> I was told that the information submitted by Russia was never sufficient or complete; sometimes it was even wrong. The had “only bad memories”, and the Dutch OVV even discovered an attempt to hack into its server emanating from a Russian location. My Dutch interlocutors expressed their frustration with the “bad faith” of their Russian counterparts in even stronger terms than the Ukrainian officials who, in light of their previous experiences, had clearly not expected any better from Russia. By contrast, the Dutch and Ukrainian officials were all pleased with the level of cooperation they received from each other.

57. Most importantly for the purposes of this report, my interlocutors in the Hague and Kiyv pointed out that the Russian authorities actively spread disinformation and provided manipulated data – which were convincingly disproved by international investigators, as we have seen above (paras. 44-51).

58. This said, I cannot help noting that I did not receive data I requested from the United States authorities either, including data likely to have been collected by AWACS flights over the conflict zone, warships participating in a naval exercise taking place in the Black Sea at the time or satellite data that should be available given the fact that the downing of MH17 took place in a conflict zone that must have been under close surveillance from several sides. My interlocutors in The Hague hinted that the United States had shared certain data with the Dutch prosecution and the OVV on a confidential basis. It would be preferable if these data could be made public at some stage, provided this does not create security risks by exposing working methods, capabilities and sources.

59. Given that it is in any case not the role of the Assembly to take position on the issue of individual criminal responsibility or state responsibility, I do not consider it necessary to wait for the completion of the ongoing legal proceedings, in the Netherlands and before the European Court of Human Rights, the International Court of Justice and the ICAO. The national and international courts and specialised organisations concerned can be trusted to adjudicate the cases before them in full independence and without any political interference. The questions before the courts are difficult ones – did the crew of the Russian BUK know they were targeting a civilian plane? If not, should they have known? Was their mistake caused by negligent or even reckless behaviour? Is Russia responsible for the actions of the BUK crew, either because Russia made such a powerful weapon available to unreliable operators, or because the crew members were effectively controlled by, or even belonged to the Russian military? How high in the military or political hierarchy does any criminal responsibility reach? These questions, however important, do not fall within the mandate of the Assembly as such.

60. But on a personal basis, as indicated above, I should also like to express my own conclusion as to how flight MH17 was destroyed. I have studied the detailed findings of the Dutch OVV as well as those by the JIT and Bellingcat. I met with numerous interlocutors in The Hague and Kyiv, including representatives of the Ukrainian Security Service (SBU), and I listened to the intercepted communications between separatist commanders shortly before and after the downing of flight MH17. In light of all the information I collected, I cannot help concluding that it was indeed a Russian Buk missile from the 53<sup>rd</sup> Brigade in Kursk transported to separatist-held territory in Ukraine shortly before the tragedy which shot down the Malaysian Boeing. The final determination is of course up to the courts, which will also decide on who exactly has incurred criminal responsibility for this tragedy, whether they acted intentionally or recklessly, and whether state responsibility attaches to the supply by Russia of the Buk missile truck in question (without the central radar unit) for use in a conflict zone over which numerous civilian aircraft were still passing at high altitude. This said, I believe that I owe it to the victims’ families, whose despair coupled with dignity has deeply impressed me to state clearly what I believe has actually happened to flight MH17.

61. As far as the Assembly’s mandate is concerned, my findings are sufficiently clear and solidly based to conclude that the Russian Federation has indeed failed to fulfil its obligation under international law to cooperate in good faith with the international investigations led by the Dutch OVV, the JIT and the Dutch prosecutor’s office, which were properly delegated to perform these investigations by the countries concerned.

62. The second issue the Parliamentary Assembly is entitled and indeed duty-bound to comment on is the devastating effect that the Russian failure to cooperate and its disinformation campaign has had on the families

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<sup>39</sup> See <https://www.prosecutionservice.nl/topics/mh17-plane-crash/news/2018/09/17/reaction-jit-to-press-conference-of-russian-ministry-of-defense>

and friends of the 298 victims of this tragedy. I was moved very much by the testimonies of family members I met in The Hague, and I am appalled by the callousness of the Russian authorities' response to their pleas for help with establishing the truth. To expose the victims to disinformation and changing "versions" of the events prolonged and worsened their suffering. In order to find closure, the victims' families and friends need the truth about all the circumstances that allowed such a tragedy to happen, and they need a measure of accountability of those responsible. It is my deeply felt wish that the Assembly makes a small contribution to this end.

63. I should like to add a final observation. Already in 2016, the Assembly, in the report by our former colleague Marieluise Beck<sup>40</sup>, established beyond reasonable doubt that the separatists operating in the Donbass region of Ukraine were fully controlled by Russia. Their leaders were members of different Russian security services. They enjoyed military support not only in the form of ample supply of weaponry, including the notorious Buk battery which shot down flight MH17, but also in the form of regular Russian soldiers including those who intervened in the notorious battle of Ilovaisk, where up to 400 Ukrainian soldiers were killed at short range in the safe "corridor" they had been promised for retreat.<sup>41</sup> The fact that these Russian soldiers wore no insignia, as did the "green men" who took over Crimea shortly before, or that they were purportedly "on holiday" from the army does not change the fact that they were Russian soldiers.

64. The creation of an "alternative reality" through the endless repetition of false allegations and the official denial of obvious facts can also be observed very clearly during the ongoing full-scale aggression against Ukraine. While pictures show beyond any doubt the almost complete destruction of the city of Mariupol, including hospitals, schools, theatres and residential areas, the Russian propaganda claims that Russian bombs and rockets hit only military objectives. After the discovery of the atrocities committed by Russian soldiers in the vicinity of Kiyv, and in particular in Bucha, the Russian Government offered mutually exclusive alternative "versions" – namely that the murders of hundreds of civilians discovered after the departure of the Russian military had been committed by Ukrainian "nazis", or that the bodies filmed were in fact those of actors taking part in a "provocation" by Ukraine. The ample video footage, witness testimony, satellite imagery showing that the bodies were already littering the streets before the departure of the Russian troops are simply refuted as "fake".

65. This is the same modus operandi Russia used in the MH17 case: obfuscating the truth by creating confusion, alternative "versions" supported by fake evidence, with the intention to let the general public tire and end up concluding that there is no truth and that nothing, or just anything, can be believed. We must continue to resist this perfidious strategy, by performing thorough, unbiased research and meticulously documenting evidence, using all the technical tools available to establish the truth and debunk lies. This is what the Dutch OVV, the JIT and non-governmental groups such as Bellingcat have done to establish the circumstances of the downing of flight MH17.

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<sup>40</sup> Doc. 14139.

<sup>41</sup> See BBC 29 August 2019, Ukraine's deadliest day: The battle of Ilovaisk, August 2014, at: <https://www.bbc.com/news/world-europe-49426724>