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MH17 TRAGEDY: RUSSIA IS NOT INVOLVED, REALLY?

КАТАСТРОФА РЕЙСУ МН17: ЧИ СПРАВДІ РФ НЕ МАЄ ДО НЕЇ ВІДНОШЕННЯ?

КАТАСТРОФА РЕЙСА МН17: ДЕЙСТВИТЕЛЬНО ЛИ РФ К НЕЙ НЕ ПРИЧАСТНА?

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Abstract. *Examines the arguments used by Russia to accuse Ukraine in disaster of Malaysian Boeing 777 that occurred on July 17, 2014. In particular, the article analyzes the following lines of arguments developed by the representatives of the Russian government and doctrine: responsibility of the state in whose territory the crime has been committed; the campaign to discredit the investigation into the incident aimed at whitewashing Russia and at deflecting suspicion and accusations from Russia; criticism of the ideas and procedures for the establishment of an international tribunal to investigate crimes associated with the downing of MH17. The author points to the absurdity, contradictions of the positions of the Russian authorities and the doctrine of international law in terms of international law, and in terms of the facts. In his turn, the author qualifies accident in terms of international law against the general context of the war of aggression of the Russian Federation against Ukraine. The author also argues in favor of a qualified international investigation into the accident and the creation of an international tribunal to prosecute the perpetrators of the tragedy.*

Key words: *MH-17, Ukraine, Russia, responsibility, ICAO, international tribunal.*

Анотація. *Розглядаються аргументи, які використовує Росія для обвинувачення України у катастрофі малайзійського Boeing 777, яка сталась 17 липня 2014 р. Зокрема, в статті аналізуються наступні лінії аргументів представників російської влади та доктрини: ствердження, що держава, на території якої було вчинено злочин несе відповідальність; дискредитація розслідування інциденту, спрямованого на знання підозри та*

обвинувачень Росії; критика ідеї і процедури створення міжнародного трибуналу з розслідування злочинів, пов'язаних із збиттям МН-17. Автор вказує на абсурдність, протиріччя, а також на необґрунтованість позицій російської влади та доктрини міжнародного права як з точки зору міжнародного права, так і з точки зору фактів. У свою чергу, автор кваліфікує трагедію з точки зору міжнародного права на тлі загального контексту агресивної війни Російської Федерації проти України. Автор також наводить аргументи на користь міжнародного кваліфікованого розслідування аварії та створення міжнародного трибуналу для притягнення винуватців трагедії до відповідальності.

Ключові слова: МН-17, Україна, Росія, відповідальність, ІКАО, міжнародний трибунал.

Аннотація. Рассматриваются аргументы, которые использует Россия для обвинения Украины в катастрофе малазийского Boeing 777, которая случилась 17 июля 2014 г. В частности, в статье анализируются следующие линии аргументов представителей российской власти и доктрины: утверждение, что государство, на территории которого было совершено преступление несет ответственность; дискредитация расследование инцидента, направленного на снятие подозрения и обвинения в адрес России; критика идеи и процедуры создания международного трибунала по расследованию преступлений, связанных с катастрофой МН17. Автор указывает на абсурдность, противоречие, а также на их необоснованность позиций российской власти и доктрины международного права, как с точки зрения международного права, так и с точки зрения фактов. В свою очередь, автор приводит квалификацию аварии с точки зрения международного права на фоне общего контекста агрессивной войны Российской Федерации против Украины. Автор также приводит аргументы в пользу международного квалифицированного расследования аварии и создание международного трибунала для привлечения виноватых в трагедии к ответственности.

Ключевые слова: МН17, Украина, Россия, ответственность, ИКАО, международный трибунал.

Current problems. One of the most tragic events of the armed conflict in the Donetsk and Luhansk Oblasts of Ukraine was the downing of a scheduled international passenger flight from Amsterdam to Kuala Lumpur on 17 July 2014 [Borger, 2014]. All 298 persons on the board were killed [Walker, 2014], among them there were 44 citizens of Malaysia, 27 citizens of Australia, 12 – of Indonesia, 9 – of the Great Britain, 4 – of Germany, 4 – of Belgium, 3 – of Philippines, by ones of Canada, New Zealand, USA and Hong Kong [43] (some persons had a double citizenship) [Russell, 2014]. The international investigation of the accident continues. The crash attracted a lot of attention not only on the part of politics but also international law scholars.

The aim of the article is to analyze Russia's attempts to put the responsibility for the downing of МН-17 on the shoulders of Ukraine.

Due to the fact that the aircraft was shot down and fell on the territory which at that moment was occupied by the so-called "pro-Russian fighters" controlled by the the Russian Federation authorities, the latter was in a very delicate situation. It is logical that from the moment of the catastrophe, Russia, its representatives, doctrine, mass media covering the news all focused on a) accusing Ukrainian authorities of downing the Boeing on the own initiative or with the assistance of the West, primarily the USA; b) discrediting the investigation of the accident; c) criticising the idea and procedures to establish an international tribunal with a view to prosecute individuals responsible for the offense of 17 July 2014.

The accusations of the Boeing downing became the most crucial course of Russia's actions: the point was to deflect suspicion from the Russian Federation, engaged in the hostilities in Donetsk and Luhansk regions against the Armed Forces of Ukraine and volunteer battalions. Russia is argued to conduct the aggressive war against Ukraine.

On 18 July 2014, Vladimir Putin made a special statement on the Boeing tragedy, although the Russian Federation, according to assurances of the Russian leaders, was not and could not have been involved in the accident: “Certainly the state in whose skies the catastrophe occurred shall bear responsibility for this terrible tragedy... This catastrophe would not have happened if there were peace on this land and the hostilities in the southeast of Ukraine did not resume... We must do everything that depends on us to make the objective view of this event that would receive wide advertisement both in our country, Ukraine and worldwide” [51].

Other representatives of Russia upheld the above position repeatedly and consistently. Thus, on 15 October 2014, Dmitry Medvedev stated: “Ukraine bears the whole responsibility for all flight accidents that have occurred in its sky. In addition, if at one time or another Ukraine did not control part of its territory, the Ukrainian authorities should recollect courage and confess that they do not control this territory, the territory is a hot spot and request to change the air maps. They haven't done that and it is a gross violation under the international air law...

I am not an expert in the field of aircraft accidents investigation but I can say a few things: the state shall bear responsibility for the accident in the sky over its territory simply on the basis of international law” [69].

Envoy Extraordinary and Plenipotentiary, the member of International legal council of the Russian Foreign Ministry, the UN International arbitrary of the law of the sea, doctor of law, Vladimir Kotlyar expressed a more sincere opinion about this situation calling it “a provocation with Malaysian aircraft on 17 July 2014 in the sky over the territory of Ukraine controlled by Kyiv with almost 300 passengers on the board was unlikely to be shot down accidentally at the time when a number of the EU states opposed the USA demands to slap sanctions on Russia must be persuaded and subsequent shameless delay in disclosing the results of the investigation by the Netherlands” [Котляр, 2015].

On 14 October 2014, Deputy Head of Federal Air Transport Agency Oleh Storchevoy substantiated the accusation against Ukraine as following: “The fact that the Ukrainian authorities using combat aircraft and heavy weapons in conflict area at the east of Ukraine failed to close the sky for the passage of the civil aircraft became the fundamental and primary cause of the accident... The requirement of Article 9 of the Convention on International Civil Aviation that State may reserve the right in exceptional circumstances or during a period of emergency, or in the interest of public safety, temporarily restrict or prohibit flying over the whole or any part of its territory, is not fulfilled [66].

The representatives of Russian international legal doctrine made an attempt to justify the statements by Putin, Medvedev and other representatives of Russia that the blame for a crime committed on the territory of a state is put on this state. In October 2015 at the meeting of working group of Head of the State Duma of Russia on legal analysis of legislative procedures and acts adopted in Ukraine, the head of international law department of Moscow State Institute of International Relations of Ministry of Foreign Affairs of Russia Aleksandr Vylegzhanin stated: “We consider that the rule of international aircraft law from the standpoint of ICAO standards (International Organization of Civil Aviation) provides for the responsibility for an aircraft accident to be imposed not on the person who shot it down but on the state who were responsible for the route. I am referring to air communicators who set on the Malaysian Boeing altitude and route, gave corresponding instructions... Russia should prepare its counter claims to show that

the responsibility for this accident irrespective of persons who shot down that Malaysian Boeing shall be put on the territorially sovereign state represented in ICAO” [77].

The former Deputy Chairman of the Interstate Aviation Committee Aleksandr Knievel elaborated on this position: “The burden of responsibility lies, first of all, on Ukraine. The legal pillar stone of modern air law is the Chicago Convention on International Civil Aviation, with annexes and so-called “recommended practices”. Moreover, since 14 November 2013, Annex 19 “Safety management” applies.

The above-mentioned documents cover the cases of civil flights over the territory of hostilities. The “Recommended practice” (Doc 9554-AN/932 first edition – 1990) has a “Manual Concerning Safety Measures Relating to Military Activities Potentially Hazardous to Civil Aircraft Operations”. ICAO adopted this document in 1988 after the US cruiser destroyed an Iranian civilian aircraft by a missile. Unfortunately, not all states apply the documents written literally in the blood, which brings about new tragedies.

On 4 October 2001, the Russian aircraft, Tu-154M was shot over the Black sea in the area of responsibility of Ukrainian organization of air traffic control. Ukraine has not recognized its responsibility for that accident. What’s surprising is that ICAO did not find Kyiv guilty in that accident. The history repeats this time with the Malaysian Boeing-777 and passengers on its board downed in the sky over Ukraine and once again ICAO “kept a discreet silence”.

There is no reaction from the International Aviation Committee. The IAC is obligated to give explanations about the responsibility from the international legal point of view.

Few people know that on 24 September 1993 the Heads of Governments of the CIS adopted the Council Decision “On ensuring the safety of civil aircraft operations in the zones of local military conflicts”. It authorized the competent bodies of member states of Commonwealth and Republic of Georgia together with the IAC to take legal, military, organizational and technical measures to prevent the civil aviation from the potential threat for the flights of civil aircraft in the areas of local armed conflicts.

I will cite the key passages from ICAO documents. Try to grasp the meaning: ‘The responsibility for taking measures to guarantee safety of international flights of civil aircraft shall be imposed on states providing air traffic services in the airspace affected by the conflict. The state responsible for providing traffic services should determine the geographic area of conflict, estimate the potential danger of flights of civil aircraft of international aviation and determine whether should the area of conflict be avoided or the flights over this area may be permitted subject to some conditions’.

The incorrect determination of flight risks over the area of armed conflict by Ukraine is the main reason of the accident in the sky over this country. In accordance with international law, the authorities of Ukraine and organization of air traffic control “Ukraerorukh” bear the whole responsibility for the Malaysian Boeing crash. Blame is not to be put on fighters or the Kyiv authorities label them, terrorists, in this case. Even if we suppose that the missile “surface-to-air” was launched from the territory under their control. They are only the participants of regional hostilities, whether they are lawful or not, is another question. Only Kyiv is responsible for the safety of air traffic in the area of the conflict. Besides that the Euro control should also share the responsibility because Ukraine is its member and it had agreed the flight route of Malaysian Boeing before its departure from Amsterdam. After all, they closed the sky over Crimea in no time, although there were no hostilities there” [Птичкин, 2014].

The member of the board of the World Flight Safety Foundation, the president of Consultations and analytical agency “Safety of flights” shared the “strong feelings” and stated: “Since early March 2014 there have been worrying developments taking place in the air of Ukraine

and it also assumes the area of Euro control responsibility. Why did Euro control prohibit the flights of its member-states over Crimea on the basis that its airspace safety cannot be guaranteed, while expressing no objection to the flights over the territory where hostilities were conducted? Only after the accident, the air space over Ukraine was closed.

Why did the Euro control fail to hold meetings with the Army Forces of the Russian Federation, Ukraerorukh, NATO, Ministries of defense of Ukraine and the Russian Federation as required by the ‘Manual Concerning Safety Measures Relating to Military Activities Potentially Hazardous to Civil Aircraft Operations’?’ [Ячменникова, 2014].

First of all, we should note the obvious absurdity of assertions that the state on whose territory the crime was committed and not the offender allegedly should carry full responsibility (one may observe that right after the MH17 tragedy Russia began to refer to the respective territory as Donetsk region of Ukraine instead of “Donetsk People’s Republic” like it used to). The actual (and the only) cause of the crash is not the incorrect flying control run, aircraft’s speed, altitude and other variables, as Vylegzhanin states, not the incorrect determination of risks of flights over the area of hostilities by Ukraine, as Storchevoy, Knievel, Shelkovnikov and others consider, but the strike of Boeing by the missile. In fact, they confuse, whether Ukraine is to carry ‘full responsibility’ or ‘is primarily responsible’ because these are principally different approaches.

Second of all, even the rules cited by Knievel indicate “The responsibility for taking measures to guarantee safety of international flights of civil aircraft shall be imposed on states providing air traffic services in the airspace affected by the conflict”. It means that it is presumed that we speak about the responsibility for taking measures to guarantee safety of international flights of civil aircraft but not about responsibility for crimes committed in respect of aircraft.

Moreover, Knievel recognizes: when in case of the 4 October 2001 incident with the Russian aircraft, Tu-154M, which was shot over the Black sea in the area of responsibility of Ukrainian organization of air traffic control, ICAO failed to put the responsibility on Kyiv. In fact, ICAO acted in accordance with the rules of international law, which in no way imply the responsibility of the state in whose air the incident took place instead of the one who actually stroke an aircraft.

Third, and yet another confirmation of the above statement, one should emphasize that the allegation about the prohibition of civil aircraft flights over the conflict zone is false.

Convention on international civil aviation of 1944 referred to by Oleh Storchevoy (Article 9) in fact contains the provision on closing of air space. Article 9 (a) provides that Each contracting State may, for reasons of areas military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory; and Article 9 (b) provides that Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory.

However, the representative of Rosaviation misinterpreted these provisions because they mean the “right” and “may-clause” but not the “obligation”, as Storchevoy points out. “May-clause” is not laid down in any other provision of the 1944 Convention [3]. The state practice does not back up his position as well.

The ICAO “Manual Concerning Safety Measures Relating to Military Activities Potentially Hazardous to Civil Aircraft Operations” of 1990, the main document Knievel refers to, states (Article 9 (3)) that “whenever possible, a flight level should be designated, at or above which civil aircraft may continue to operate normally without any hazard [2]. Annex 19 “Safety management” of 2013 to the Chicago convention on civil aviation contains no provisions on the closure of air space over the armed conflict area” [9].

The CIS Council Decision “On ensuring the safety of civil aircraft operations in the zones of local military conflicts” of 1993, in fact, contains a provision on “immediate measures of the competent bodies of member states of Commonwealth and Republic of Georgia together with Interstate Aviation Committee to ensure the safe operation of civil aviation, that means the establishment of districts of potential danger for the flights of civil aircraft in the areas of local armed conflicts and introduction in the prescribed manner of restrictions and bans in these areas, as well as on the avoidance of such actions by the parties to the armed conflicts that endanger civilian objects and persons not participating in hostilities”.

This provision corresponds to the above rules adopted within the framework of ICAO and means “introduction in the prescribed manner of restrictions and bans of flights”. First of all, the reference rule (the prescribed manner) is at stake; second, the absence of prescription of complete closure of the air space for flights is mentioned.

Thus, by not completely closing its air space over the Donbas before the accident of MH17, Ukraine did not violate the law. Neither Ukraine nor ICAO, or the representatives of foreign states expected and could not have expected, in accordance with the principle of reasonability, that the air defense systems may be used against civil aviation to down an aircraft at an altitude of 10 thousand meters in the area of conflict [76]. Ukrainian military aircraft and helicopters both before and after the accident of 17 July 2014 were shot down at much less altitude [Федченко, 2014; 48; 65; 53; 72; 11; 50], and the “rebels” had no aviation.

In fact, it was possible to shoot the Boeing at the altitude 10 km only using the powerful means of air defense. The conventional irregular paramilitary groups, which the separatists allegedly represent, could not have possessed such weapons: such arms are available to regular armies and states do not use them in local armed conflicts. Besides that, to use them properly serious training is required and, therefore, the participation of military units is also required [Каневський, 2014; 34]. These assumptions were fully confirmed by the world practice.

Thus, any accusations against Ukraine contravene the rules of international law and actual circumstances. It should be noted, that Russia admits that “At the moment of an accident all the space of south and east parts of Ukraine was declared closed at the altitude up to 7 thousand meters” [Ячменникова, 2014]. That means that Ukraine adhered to ICAO recommendations and restricted the flights of civil aviation over the area of conflict. President of Ukraine Petro Poroshenko confirmed the above: “Ukraine strictly followed all the recommendations of International civil aviation organization (ICAO). And when we closed our air space at the altitude of 9725 meters, we had no information bringing us to a conclusion to close it at that altitude” [71].

The contradiction of the Russian position is obvious. On the one hand, its representatives state that the Russian military troops do not participate in the conflict in Donetsk and Luhansk Oblasts and these are rebels who fight there (as Putin said in February 2015 we speak about “yesterday’s miners and tractor drivers”) [56]. On the other hand, Ukraine is accused of failure to close the air space for flights at the altitude of 10 thousand meters. However, is there any international practice of such restrictions in connection with the actions of “miners and tractor drivers” or other similar “formations”?

Fourthly, the air space over Crimea was closed not because of the hostilities but due to the annexation of the peninsula by Russia and actual impossibility of Ukraine to fulfill its obligations in respect of flights of aircrafts [58].

As for the investigation, revealing the facts of the case, the report of Security Council of the Netherlands was published on 13 October 2015. The investigation has shown that flight MH17 progressed normally up to the moment when the airplane was flying over the eastern part of Ukraine. At 13.20 UTC (Coordinated Universal Time) a 9N314M warhead, launched by a Buk

surface-to-air missile system from a 320-square-kilometre area in the eastern part of Ukraine, detonated to the left and above the cockpit [1]. This coincides with the version of Ukraine (Boeing was shot down by a missile fired by a Russian Buk surface-to-air missile system which was operated by the Russian armed forces and separatists controlled by the Russian Federation from the territory they occupy) [12]. The USA [Шинкарук, 2014], Bellingcat MH17 investigation team both believe the same Buk was part of the Russian convoy [32; 33; 38; 67]; their respective reports so indicate [Borger, 2014; 34; 37; 42].

The Bellingcat team, for example, believe the same Buk was part of a convoy travelling from the 53rd Anti-Aircraft Missile Brigade in Kursk to near the Ukrainian border with elements of the convoy separating from the main convoy at some point during that period, including the Buk missile launcher and was filmed in Ukraine on July 17th [33; Нехезин, 2016].

A significant number of versions of the events of 17 July 2014 put forward by Russia's officials and state-controlled media with relevant factors that are constantly modified only point to the involvement of the Russian Federation in the accident. To mention just a few: "the Spanish air traffic controller from airport Borispol" [41]; "Ukrainians were trying to shoot down Putin's plane flying from Warsaw" [46]; "extraordinary situation in training of air defence unit of Ukrainian Armed Forces" [54]; "Confessions of Captain Voloshin of the Armed Forces of Ukraine" [Варсезов, 2014]; an Armed Forces of Ukraine Buk" [68; Бойко, 2015; 39] ("the downing by the rocket decommissioned by Russian army from the controlled by the Ukrainian army") [73]; "Joint Ukrainian attack (attack of aircraft) and Buk" [55], and the like allegations and examples" [Бойко, 2015].

The report of the Security Council of the Netherlands provides a detailed analysis of Russia's versions except those based on blatant fraud, such as "confessions of the Spanish air traffic controller". It was consistently denied that "the Ukrainian air traffic controllers reduced the altitude of flight MH-17" (they did not give such instruction); "Ukrainian air traffic controllers sent the Boeing outside the air corridor" (the pilots exited from the corridor on their own initiative and Boeing was shot down after returning to the corridor); "other aircraft were noticed near the Boeing (the nearest aircraft was at a distance of more than 33 km); Boeing was allegedly attacked by rocket fire or "air-to-air" (traces of destruction do not meet these versions) [40; 57].

Other circumstances also point to the involvement of Russia. To mention Putin's extraordinary speech devoted to the downing of the Boeing in Ukraine, delivered immediately upon his return which is not a typical behavior for a state which has nothing to do with the incident [60]. Secondly, the Russian TV-channels immediately after the downing of "Boeing", when the accident had not been even reported yet, rushed to voice the message of Ihor Hirkin that they had shot down the aircraft of the Armed Forces of Ukraine [64]. Thirdly, Ukrainian party made public the negotiations of fighters and their curators from the authorities of the Russian Federation, both before the launch of the missile (convoy of a Buk across the border) and the respective implementation [44; 61; 30; 59].

Fourth, Ukrainian army did not use anti-aircraft missile systems because the enemy did not use the aviation. Fifth, an icing on the cake of Russia's involvement could be considered a Russian media message that the aircraft MH17 could be shot down accidentally, which they repeat starting from the early June 2016 [59; 62; 70; 75; 49].

The 17 July 2014 crimes could not be qualified in isolation from the general context of the aggressive war of the Russian Federation against Ukraine. They were committed on the territory of Donetsk region occupied by Russia during the war using the military equipment (the Russian side sticks to this version as the most likely one [73]. Moreover, it is not the first crime committed in the course of the aggressive war of Russia against Ukraine and the total number of aircraft and helicopters of the Armed Forces of Ukraine downed varies to 20 [48]. Thus, there

are no international legal grounds to consider it as the crime of international significance; the killing of civilians during the armed conflict amount to the crime against humanity is at hand.

Proceeding from this, any statements that the crash Malaysia Airlines Flight 17 is not related to international peace and security are groundless. Moreover, the possible inability of the international community to bring the perpetrators to justice may cause serious threat of repetition of such crimes and, consequently, the increase of danger for the civil aviation and international peace and security.

The second direction of the Russian Federation information activity is the discreditation of the incident investigation, aimed to whitewash Russia and leave no room for the accusations against it, making the investigation look falsified, politically motivated and legally groundless, etc.

With this in mind, the criticism of everything connected with the investigation is Russia's main tool. For instance, already on 25 August 2014 Serhey Lavrov stated: "It seems that the rest has lost any interest in the investigation. After the first blunt within an inch of hysterics accusations of Russia and rebels, everybody has become silent as a grave... We are the only ones, in fact, who keep the finger on the pulse of this serious problem" [63]. However, the process of investigation clearly points to the contrary.

On 7 July 2015, Oleh Storchevoy informed, "the experts of Rosaviation have a number of significant comments to the document, to the offered arguments and even technical information" [*Воздвиженская*, 2014]. On 3 September 2015, at her briefing Mariia Zakharova expressed the following critical opinion: "The massive information attacks against Russia accompanied by baseless accusations of its involvement in the accident are being carried out by the West media. Thus, an extremely negative background is created in connection with the investigation casting doubts on the independence and impartiality of the investigation. We believe this is nothing else but pressure on the investigation" [10].

Earlier, on 16 July 2015, Serhey Lavrov stated: "When this terrible catastrophe occurred nearly a year ago we were among those who initiated the adoption of the UN Security Council resolution. Since then we called on the performance of the Resolution No.2166 in good faith. As you remember, this resolution laid down undertaking a full, thorough and independent investigation into the downed flight in complete compliance with this resolution and rules of ICAO.

In accordance with the resolution, the investigation shall be mainly carried out by ICAO. Unfortunately, both the above paragraph of the resolution along with some others have not been exercised; the investigation is carried out without ICAO playing the key role and under its auspices. Instead, the investigation is based on bilateral agreements of some states with Ukraine. If my memory does not fail me, these agreements have not been made public in full" [74].

On 1 April 2016, Serhey Lavrov commented on the situation as following: "We are still expecting the investigation to establish solid facts. They tell us that something must be done for more than a year already to achieve results but there are no results. Meanwhile, they continue faking they know everything. But there are still no credible official results and that, of course, raises questions" [47].

Lavrov's statement that subject to the resolution of the UN Security Council the investigation should be transferred to ICAO is false. First of all, the Resolution 2166 underlines the need for a full, thorough and independent international investigation into the incident in accordance with international civil aviation guidelines, noting in this regard the crucial role played by ICAO. Secondly, it welcomes the decision of ICAO to dispatch a team to work in coordination with the Ukrainian National Bureau of Incidents and Accidents Investigation of Civil Aircraft in this investigation, following a request for assistance by Ukraine to ICAO and others.

Thirdly, it expresses a serious concern that the armed formations in Ukraine have impeded immediate, safe, secure and unrestricted access to the crash site and the surrounding area for the forensic investigation team, the Organization for Security and Cooperation in Europe, Special Monitoring Mission in Ukraine and representatives of other relevant international organizations assisting the investigation in accordance with ICAO and other established procedures. The Resolution contains demands that the armed groups in control of the crash site and the surrounding area refrain from any actions that may compromise the integrity of the crash site.

Finally, fourthly, it recognizes the efforts under way by Ukraine, working in coordination with ICAO and other international experts and organizations, as well as states to institute an international investigation of the incident, and calls on all states to provide any requested assistance to civil and criminal investigations related to this incident [7].

As we see resolution does not provide for a transfer of investigation to ICAO.

Lavrov's arguments about "a too significant role of Ukraine" are generally untenable, not only in connection with the content of Resolution 2166. Under Article 26 "Investigation of accidents" of Convention on civil aviation of 1944 in the event of an accident to an aircraft of an accident of a contracting state occurring in the territory of another contracting state, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the state in which the accident occurred will institute an inquiry into the circumstances of the accident, In accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization [3]. It is commonly known that the accident of 17 July 2014 happened on the territory of Ukraine; Russia recognizes this territory as part of Ukraine and refuses to recognize the so-called "DPR".

Another universal international Convention for the suppression of unlawful acts against the safety of civil aviation of 1971 (Article 5), provides that, Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases: (a) when the offence is committed in the territory of that State; (b) when the offence is committed against or on board an aircraft registered in that State; (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board; (d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State [8]. Subject to Article 5(a) Ukraine not only can but must take steps that may be necessary to establish its jurisdiction over the offenses, connected with Boeing accident of 17 July 2014. That is why the organizational format of investigation selected before the appearance of international tribunal idea completely corresponds to the rules of international law.

The Russian Federation has failed to substantiate its allegations of political nature, partiality, political bias of investigation or predetermination of its results. Moreover, Russia itself constantly tries to attach political nature to the respective problems, whips up tension concerning investigation, which only speaks for its intention to go unpunished.

The third direction of information activity of the Russian Federation is *criticizing the idea and procedure of institution of an international tribunal on an investigation of crimes of 17 July 2014*.

With its non-stop blaming Ukraine for Malaysian jet crash, Russia was on thin ice when in July 2015 it vetoed the UN Security Council Resolution on establishment of the international tribunal closing the door to resort to such an option for the international community. This intransigence made Russia a key suspect for downing of the jet. To recall the Security Council resolution No. 2166, adopted on 21 July 2014, condemns in the strongest terms the actions resulting in the destruction of passengers airplane; demands that the armed groups in control of the

crash site and the surrounding area refrain from any actions that may compromise the integrity of the crash site; demands that all military activities, including by armed groups, be immediately ceased in the immediate area surrounding the crash site to allow for security and safety of the international investigation; calls on all States and actors in the region to cooperate fully in relation to the international investigation of the incident [7]. All members of the Security Council including Russia voted for this Resolution [36].

The draft resolution, proposed by Malaysia in July 2015, in its turn, contained a provision on establishment of an international tribunal for the purpose to bring to justice persons responsible for the downing of Malaysia Airlines flight MH-17 (annexed to the draft). It was underlined (paragraph 6) in the draft resolution that the sole purpose of an international tribunal is prosecuting persons responsible for the crime.

In accordance with the UN Charter and the law enforcement practice in the field of international criminal law it was indicated that all states shall cooperate fully with the International Tribunal and its organs; shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued in accordance with the Statute of the International Tribunal: (paragraph 7).

It was stipulated that the International Tribunal shall be funded through voluntary contributions and encouragements. In connection thereto it contained the calling for States and inter-governmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel (paragraph 8).

Also, the draft resolution contained the provision that the work of the International Tribunal shall be carried out without prejudice to the existing right of the families of victims to seek, through appropriate means, compensation [6].

These and other provisions of the draft resolution do not give any preconditions for doubt that it fully complies with the provisions of the UN Charter and other rules of international law. However, on 30 July 2015, during the voting in the UN Security Council from among 15 members of this body 11 members voted for adoption of this draft, 3 (China, Venezuela and Angola) refrained and only Russia voted against using its veto power and blocking the adoption of the resolution [Smith-Spark, 2015].

The Russian Federation seemed to be the most interested in the just and detailed investigation that would set aside all accusations of its involvement and confirm the guilt of the Ukrainian side. The establishment of the international tribunal where Russia would directly participate as a member-state of the UN Security Council could have provided such an investigation. However, the decision to block the establishment of a tribunal was taken instead. The Russian Federation position on the draft, in such a way, is directly the opposite to all previous and subsequent statements made by its representatives on Russia's "support for an early establishment of the causes of flight MH17 crash and punishing of perpetrators".

The representative of the Russian Federation in the UN Security Council Vitalii Churkin explaining the state's position stated that "intention to pass resolution through the UN Security Council is an evident attempt to create one more center of confrontation that could have very far-reaching consequences for international relations under conditions when there are so many problems in the world that need a comprehensive cooperation... We mean that they want the international community, including Russia, to buy such a big pig in a poke. It would be unreasonable. As for me it is a risky game for so many of us. Everyone who would like the international relations to develop normally and step by step normalize the relations between the Russian Federation and the West should not be interested in that" [52].

Churkin did not explain why the establishment of tribunal where all the members of the UN Security Council would participate is a big pig in a poke. Similar political rhetoric with no relation to international legal arguments has been further developed in many statements of the representatives of Russia.

The rare attempts to formulate the legal arguments (“tribunal must be established only after the termination of investigations” [Гришин, 2015], “another tribunal showed its ineffectiveness” [10], “the tribunal doesn’t seem to be international”) [31] do not stand up to criticism. With regard to the first thesis, the practice of the UN Security Council testifies the opposite: institution of mechanisms of international criminal responsibility took place before the termination of the investigation [4]. In addition, Russia itself would receive all opportunities to participate in the functioning of the tribunal as provided by the respective rules of international law.

On 3 September 2015, official representative of the Ministry of Foreign Affairs of Russia Mariia Zakharova voiced the most detailed arguments on ineffectiveness of international tribunals at her briefing: “Raising the question of the establishment of the International Tribunal for the MH17 crash subject to the UN Security Council resolution under Chapter VII of the UN Charter by some Western states is clearly premature and counterproductive. The existing examples of international tribunals instituted under Chapter VII of the Statute, such as ICTY (for the former Yugoslavia) and ITR (for Rwanda) proved to be ineffective, costly, partial, with protracted proceedings and political nature. Needless to say that any prosecution, carried out on the basis of the investigation in bad faith, is committed to failure. We believe that now it is important not to establish the international Tribunal for the MH17 and at any cost but to provide a qualitative investigation of the Boeing crash” [10].

Both Zakharova and other representatives of Russia have failed to elaborate on allegations of “ineffectiveness”, “costly”, “protracted proceedings”, “political nature”, “partiality”, which once again only underlines that these they suffer from factual and legal problems. However, even if the first three “arguments contra” would be true it would not impede the possibility to establish the tribunal on the crash of MH17 and punish the guilty in the death of hundreds of people. It turns out that only such assessments as “political nature” and “impartiality” stay on the way of establishment of a tribunal, which are, in fact, certain value judgment.

At the same time, naturally not completely flawless, both the ICTY and ICTR proved to be effective and played their role in history. The Russian researchers agree with this. Thus, Mikhail Nakashidze pointed out that the International tribunals for the former Yugoslavia and Rwanda became the new stage of establishment of bodies of international criminal justice, made a significant contribution to the progressive development of international law. He considers that the judicial practice of the tribunal, especially in The Hague, was strongly committed to independence, in particular, on the issue of anonymous witnesses.

At the same time, procedural mistakes and shortcomings of the International Military Tribunals at Nuremberg and Tokyo served as a constant reminder to those who drafted the Statute and Rules of Procedure and Evidence of the International Tribunals for the former Yugoslavia and Rwanda (the “Rules of Yugoslavia” and “Rwanda Rules”) and the Rome Statute of the International Criminal Court.

The statements about political nature and partiality of the tribunals are groundless. Most of the cases decided by the ICTY were on the alleged crimes committed by the Serbs and the Bosnian Serbs, in connection with the actual circumstances and characteristics of the conflict; however, the Tribunal investigated and served charges to a significant number of persons from all ethnic groups who participated in the conflict. Croats, the Bosnian Muslims, Kosovo Albanians were convicted for crimes committed against the Serbs and other ethnic groups [5].

Whatever negative evaluations of the Tribunals are expressed by representatives of the Russian Federation, they could not but admit that any judicial bodies including (even to a greater extent) national courts have disadvantages but it is not an argument that could deny the necessity of their existence. In the same way, the disadvantages of Nuremberg tribunal recognized by the Russian researchers [Бондаренко, 2007] do not prevent the Russian Federation from constant references to its decisions for a particular purpose.

These factors only strengthen the general puzzlement in connection with the position of the Russian Federation permanently and actively criticizing the idea of the establishment of a tribunal to investigate the crash of flight MH17 and generate doubts that Russia really has intention to find and punish the persons guilty in this crime. In its turn, by not putting forward any constructive proposals to contribute to the achievement of these objectives the Russian side only adds fuel to the fire of doubts that it is willing to establish the tribunal.

The actions of Russia may be explained by the legal obligation to cooperate with the tribunal should it be established under the UN Security Council and, accordingly, the additional justification of involvement the Russian Federation in case of its failure of such cooperation.

Thus, the allegations that Ukraine is guilty and shall bear responsibility for the crash of MH17 flight of 17 July 2014 as the state on whose territory the accident happened and is responsible for the regulation of flights over its airspace contravene the content of rules of international law and actual circumstances. Moreover, the data of both official and unofficial investigations show that not only does the Russian Federation directly relate to the catastrophe - the Russian military and Russia-controlled militia did shoot down Boeing on an international flight MH17 launching the missile from the territory occupied by the Russian army.

The accusations of Russia that the investigation of the 17 July 2014 accident has a political nature is aimed at accusing Russia without any grounds do not withstand any criticism. The criticism of idea of the institution of an international tribunal to bring to justice those who are guilty in crimes connected with the accident is not confirmed either by rules of international law, or actual circumstances, or the practice of other tribunals. The use of a veto power in the UN Security Council, as well as other factors, speaks for the involvement of Russia in the crash of the aircraft and its intention to escape the responsibility and the obligations to cooperate with such a tribunal.

Conclusions. The Russian Federation accusations of Ukraine in the downing of Boeing became the most important message to deflect suspicion from the Russian Federation, engaged in hostilities in Donetsk and Luhansk regions against the Armed Forces of Ukraine and volunteer battalions. The representatives of Russian international legal doctrine made an attempt to justify Putin's, Medvedev's and other representatives of Russia statements that the state bears responsibility for a crime committed on its territory and thus putting the blame on Ukraine. However, Russia is not very good at substantiating its position, which is quite understandable because its position is at odds with international law and common sense. The preliminary results of the investigation, reports of international organizations point to Russia's involvement in the MH17 crash.

In addition, Russian unwillingness to support the idea of establishing an international tribunal to investigate the tragedy where Russia could participate cast a serious doubt on this state's genuine interest not only in an international but a general investigation and punishment of guilty.

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