MH17 investigation

Conducting an independent investigation under exceptional circumstances

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Content of the presentation

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- Start of the DSB investigation
- Exceptional circumstances
- Legal Framework
- Protection of information
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Dutch Safety Board established 2 February 2005

Total staff = 70 fte  Aviation section = 7 fte
MH 17 investigation

- **17 July 2014** flight MH17 crashes in the eastern part of Ukraine

- **23 July 2014** – Dutch Safety Board leads international investigation according to ICAO Annex 13

- Initially 3 parts:
  - Cause
  - Flight Routes
  - Passenger information
MH17 - Exceptional circumstances

- 298 victims from 10 different countries
- Crash site in conflict zone
- (Geo)political dimensions
- Recovery of the wreckage
- Criminal investigation and identification
Legal basis of MH17 investigation

- Article 26 Chicago Convention
- ICAO Annex 13
- Kingdom Act Dutch Safety Board
Legal basis of MH17 investigation

Annex 13, Standard 5.1: **delegation of the investigation**

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**AGREEMENT BETWEEN**

the National Bureau of Air Accident and Incidents Investigation with Civil Aircraft (NBAAII)

of Ukraine

AND

the Dutch Safety Board of the Netherlands

**DELEGATION OF INVESTIGATION IN RESPECT OF AIRCRAFT ACCIDENT INVOLVING BOEING 777-200, REGISTRATION: 9M-MRD “MALAYSIA AIRLINES” FLIGHT MH17**

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**MEMORANDUM OF UNDERSTANDING BETWEEN**

THE MINISTER FOR FOREIGN AFFAIRS OF UKRAINE

AND

THE MINISTER OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS


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Hereinafter referred to as "Participants", In their common aim to ensure that the investigations regarding the accident of the downing of civilian aircraft, Malaysian airlines, Flight MH 17 on July 17, 2014 will be conducted with the maximum impartiality and objectivity that will meet the expectations of the international community.

Have decided that the following arrangements will apply:

1. Taking into consideration that the overwhelming majority of the victims of the accident are citizens of the Kingdom of the Netherlands, Ukraine, as the State of Occurrence, will delegate investigation into the accident to the Netherlands through a legally binding agreement between the Ukrainian National Bureau for Accidents and Incidents Investigation with Civil aircraft and the Dutch Safety Board on delegation of investigation in respect of aircraft accident involving Boeing 777-200, "Malaysia Airlines" Flight MH17.

2. The Participants will cooperate to the fullest extent possible in returning the victims of the accident to the Netherlands. Ukraine will facilitate the transfer of the remains of the deceased and where possible of their personal effects. The Netherlands, as the Investigating State, will arrange for complete examination of the fatally injured passengers and crew on evidence related to the causes of the crash by experts experienced in accident investigation. The examinations will be expeditious and complete.

3. The Netherlands will coordinate the investigation into the circumstances of the accident and will be responsible for the conduct of the investigation in line with the provisions of Chapter 5 of Annex 13 to the Chicago Convention. The Netherlands will ensure the participation of other parties concerned, in particular Ukraine and the State of Occurrence, Malaysia as the State of Registry, the United States of America as State of Manufacture and the International Civil Aviation Organization (ICAO). The Netherlands will communicate the report and findings to the concerned states. Ukraine will use every means available to facilitate the investigation.
UN Security Council Resolution 21 66 – 21 July 2014

“...need for a full, thorough and independent international investigation...”

Resolution 2166 (2014)

Adopted by the Security Council at its 7221st meeting, on 21 July 2014

The Security Council,

Deploring the downing of a civilian aircraft on an international flight, Malaysia Airlines flight MH17, on 17 July in Donetsk Oblast, Ukraine, with the loss of all 298 passengers and crew on board,

Recalling the mandate of Security Council Resolution 2048 (2012),

Expressing serious concern that armed groups in Ukraine have impeded immediate, safe, secure and unrestricted access to the crash site and the surrounding area for the appropriate investigating authorities, the Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission in Ukraine and representatives of other relevant international organizations assisting the investigation in accordance with ICAO and other established procedures,

Notes that 2166 (2014)...

“...calls on all States to provide any requested assistance to civil and criminal investigations...”
Legal basis of MH17 investigation

1. Causes

2. Flight route

3. Occupants

4. Passenger information

CIVIL AVIATION LEGAL ADVISORS FORUM
Recorders – 22 July 2014

Flight Data Recorder

Cockpit Voice Recorder
Protection of information

- The final DSB report is public, all other collected information is NOT. (art. 59 Kingdom Act DSB)

- Investigation information can:
  - **Not** be used as evidence in criminal, disciplinary or civil proceedings; (including final report!!)
  - **Not** be used as basis for disciplinary or administrative measure or sanction; (including final report!!)
  - **Not** be demanded for inspection or be seized for the purpose of a criminal or disciplinary investigation or for proceedings for imposing a disciplinary or administrative measure

- **EXCEPT:** data recordings in case of a criminal investigation into hostage taking, murder, manslaughter or terrorism. (art. 69 Kingdom Act DSB)
Independence – International Cooperation

- DSB independent SIA
- ICAO Annex 13 – progress meetings
  - 16-25 February 2015
  - 6-7 May 2015
  - 11-12 August 2015

- Participating Member States (accreps):
  - The Netherlands
  - Ukraine
  - Malaysia
  - United Kingdom
  - United States
  - Australia
  - Russian Federation
DECISION CONCERNING THE GRANTING OF MANDATE

Hereby I grant Mr. R. Smits BSc, coordinator operations MH17, the mandate to sign any agreement regarding the salvage of the wreckage concerning the aircraft accident involving the Boeing 777-200, registration 9M-MRD, Malaysia Airlines, Flight MH17.

The Hague

5 November 2014

CHAIRMAN OF THE DUTCH SAFETY BOARD

[Signature]

Mr. Tjibbe Joustra LL.M.
Transport by train from Torez to Kharkov
Arrival of first convoy in the Netherlands - 9 December 2014
Investigation of the wreckage
MH17 Investigations Dutch Safety Board

1. Causes

2. Flight route

3. Occupants

4. Passenger information
Main conclusions

Causes of the crash

- The crash of the Malaysia Airlines Boeing 777-200 was caused by the detonation of a model 9N314M warhead, fitted to a 9M38-series missile that was fired from a Buk surface-to-air missile system.

Flying zones

- None of the parties involved adequately identified the risks to civil aviation brought about by the armed conflict in the eastern part of Ukraine.
Recommendations

– **States** >>> airspace management

– **ICAO** >>> new standards and guidance material on flying over conflict zones (doc 10084)

– **Aviation branche** (IATA and operators) >>> risk assessment
Informing next of kin

• **During the investigation**
  – Next of kin ahead of media
  – Help and advice of third parties
  – MH17 Aviation Disaster Foundation

• **Meetings**
  – Presentations
  – Informal part for questions
Visits to the wreckage

March 2015, visited by 533 next of kin
Presentation final report relatives - 13 October 2015
Special means for next of kin
Visits to the reconstruction

October 2015, visited by 428 next of kin
Publication

- Informing surviving relatives about the findings
- Press presentation in front of the reconstruction
- Website
- Reports
- Brochures in various languages (incl Russian and Ukr.)
- Video (also with Russian and Ukrainian subtitles)
- Book for next of kin
- Informing the Cabinet, the Dutch House of Representatives and the Embassies
- Television program about MH17
- Surviving relatives visit the reconstruction
- Contact centre

CIVIL AVIATION
LEGAL ADVISORS FORUM
Means to communicate to the public
Publication 13 October 2015
Dit is de voettekst
Follow up on investigation

- Informing Dutch Parliament
- Informing ambassadors
- Presentations IATA and ICAO
- Two public hearings Dutch Parliament
- Questions Dutch Parliament
- 21 February 2019: Report on the follow-up of recommendations
Questions, remarks etc.

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