

Dutch court finds three guilty of murder of 298 on MH17 shot down over Ukraine in 2014



Dutch court delivering verdict in trial of four for murder of 298 passengers and crew members on Malaysian Airlines Flight 17 shot down over Ukraine on July 17, 2014.

At about 4:20 p.m. on July 17, 2014, Malaysian Airlines Flight 17, a Boeing 777 with 283 passengers and 15 crew members on route from Amsterdam to Kuala Lumpur and flying at 33,000 feet, was shot down by a Russian SA-11 surface-to-air missile. The missile was fired from a Russian Buk missile launcher positioned in a field outside the town of Pervomaisk near the small cities of Snizhne and Torez east of the larger city of Donetsk in eastern Ukraine. On November 17, a Dutch court found three men – two Russians and a Ukrainian – guilty of murder for the deaths of the 298 passengers and crew members on MH17. The men, who were tried in absentia, were sentenced to life in prison. They are Igor Girkin, aka Strelkov (Shooter), a former colonel in the Russian Federal Security Service (FSB), the domestic component of the former KGB, and at the time the defense minister and commander of the military forces of the newly-created Donetsk Peoples Republic; Sergey Dubinsky, a former general in Russian Military Intelligence (GRU) who was Girkin’s deputy and in charge of intelligence for the DPR; and Leonid Kharchenko, a Ukrainian who commanded a military unit of the DPR. A fourth man was found not guilty.

There was no doubt whatsoever that MH17 was shot down by an SA-11 missile fired from a Russian Buk. Indeed, at 4:50 p.m., a half-hour after the plane was shot down, the following message was posted: “Dispatches from Igor Ivanovich Strelkov VK group: In the area of Torez an AN-26 plane was just shot down, it is somewhere near the mine ‘Progress’. We warned them – do not fly in our skies.” Like the 777, the Antonov-26 has two engines; obviously, Strelkov’s group had mistaken the Malaysian 777 for a Ukrainian AN-26 military transport plane. Lt. Col.

Igor Belzer of GRU called his superior, Col. Vasily Geranin, and said, “We have just shot down a plane. Group Minera.” Three hours before the plane was shot down, Associated Press reporters saw and photographed a Buk with four missiles going through Snizhne. A number of other individuals photographed the Buk as well. At 2 a.m. that night, a Buk missile launcher was seen crossing the border back into Russia and carrying three missiles instead of the customary four. The Buk was subsequently determined, from identifying numerals, to belong to Russia’s 53rd Anti-Aircraft Missile Brigade headquartered in Kursk.

Why, one might ask, was a Russian Buk with four SA-11 anti-aircraft missiles positioned in a field in eastern Ukraine in July 2014? The answer, of course, lies in the conflict that developed in eastern Ukraine after Russia annexed Crimea in March. The annexation occurred because Russia feared the new government in Kyiv – formed by opposition parties and Maidan activists after President Viktor Yanukovich fled to Russia the night of February 21-22 in the midst of escalating protests and violence triggered by his refusal in November to sign an Association Agreement with the EU and was subsequently removed from office by the parliament for neglecting his constitutional duties – would not honor the terms of the 1997 Partition Treaty between Russia and Ukraine that granted Russia a long-term lease for its Sevastopol home port for the Black Sea Fleet and the 2010 Kharkiv Pact Yanukovich and Russian President Dmitry Medvedev signed that extended the lease. Russia also feared it would pursue membership in NATO.

On August 24, 1991, the Rada declared Ukraine’s independence from the USSR and on December 1, 1991, 92 percent of the voters approved the declaration in a referendum. Several days later, Ukrainian President Leonid Kravchuk, Russian President Boris Yeltsin, and Belarusian Parliament Chairman Stanislav Shushkevich met in Belarus and formally agreed in the Belovezh Accords that “the USSR, as a subject of international law and a geopolitical reality, is ceasing its existence.” After the USSR ceased to exist, the Black Sea Fleet, the home port of which was Sevastopol in Crimea, continued as a joint operation of Russia and Ukraine. But in 1994, Leonid Kuchma, the prime minister, ran for president against Kravchuk and, after winning, decided Ukraine should create its own navy. Kuchma, who had previously run Yuzhmash, a large military aerospace manufacturer based in Dnipropetrovsk, began discussions with Russia over the still-unresolved allocation of ships and port facilities belonging to the former USSR in Crimea. In 1997, Russia and Ukraine signed the Partition Treaty, according to which Russia would receive 82 percent of the Black Sea Fleet in exchange for \$526 million. In addition, Ukraine granted Russia a 20-year lease, until 2017, for the Sevastopol home port and facilities, for which Russia agreed to pay \$57 million a year to be deducted from the amount Ukraine owed Russia each year for gas. The lease could be extended if both parties agreed. The Treaty also let Russia keep up to 25,000 troops, plus air bases and equipment, in Crimea.

Kuchma was reelected to a second five-year term in 1999 but decided not to run for a third term in 2004, and Yanukovich, who had served as the head of the Donetsk regional government from 1997 to 2002 and then as prime minister under Kuchma, ran as did Viktor Yushchenko, the leader of Our Ukraine, and almost two dozen other candidates. Yanukovich and Yushchenko both won a bit over 39 percent of the vote, but with no candidate having won 50 percent there

was a run-off, which Yanukovich won with 49.5 percent to 46.6 percent for Yushchenko. But there was considerable evidence of election fraud, especially in eastern Ukraine where Yanukovich had his greatest support, and the Supreme Court ordered a repeat run-off. Yushchenko won the run-off with 52 percent and took office with Yulia Tymoshenko of the Fatherland party as prime minister. Yushchenko and Tymoshenko subsequently made it clear they objected to the terms of the Partition Treaty. In 2008, Tymoshenko said the Russian fleet would have to leave Sevastopol when the lease expired in 2017. And in 2009, Yushchenko likewise said the lease wouldn't be extended and Russia would have to leave Sevastopol in 2017.

Yushchenko and Tymoshenko also believed Ukraine should seek a closer relationship with NATO. After Ukraine became independent in December 1991, it had joined the North Atlantic Cooperation Council and in 1994 the Partnership for Peace program. In 1997, it had agreed on a Distinctive Partnership with NATO that established a NATO-Ukraine Commission to increase cooperation and in 2002 the Commission had adopted a Ukraine-NATO Action Plan. But during the Yushchenko presidency, Ukraine's relationship with NATO came to focus not just on cooperation but on eventual membership. In early 2008, Yushchenko proposed that Ukraine develop with NATO a Membership Action Plan (MAP) and asked NATO to consider the proposal at its April 2008 Summit in Bucharest. At that summit, NATO decided not to begin a MAP but said Ukraine and Georgia, which had also expressed interest in joining, would eventually become members. That decision prompted Russia to invade Georgia in the summer of 2008, which in turn prompted NATO to decide in December 2008 to prepare an Annual National Programme for Ukraine to assist it in carrying out the reforms needed so it could join without a MAP, and in 2009 NATO directed the NATO-Ukraine Commission to move forward with the reforms that would enable Ukraine to qualify for membership.

In February 2010, Yanukovich ran for president again as did Yushchenko, Tymoshenko, and 15 other candidates. Yanukovich placed first, ahead of Tymoshenko, but well short of 50 percent so there was a run-off, which he narrowly won, thanks to the very substantial support he received in eastern and southern Ukraine. His election abruptly halted Ukraine's progress on the long road to membership in NATO; he said the current level of cooperation with NATO was sufficient, formal accession was not needed, and Ukraine would remain formally non-aligned. To ensure that membership wouldn't happen, legislation was enacted that excluded the goal of integration into any Euro-Atlantic security arrangement. And in regard to the possible non-renewal in 2017 of Russia's lease on Sevastopol and the port and facilities for the Black Sea Fleet, after meeting with Russian President Dmitry Medvedev and former president and current Prime Minister Vladimir Putin in April 2010, Yanukovich and Medvedev signed the Kharkiv Pact, which extended Russia's lease on Sevastopol and the fleet's base and facilities in Crimea for 25 years beyond 2017 in exchange for a 30 percent reduction in the price of Russian gas.

Prompted by the failure of its Neighborhood Policy to develop political and economic relations with the post-Soviet states, in 2009 the EU had created the Eastern Partnership with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The aim was to strengthen political and economic ties between the EU and the six in trade, investment and travel while also increasing public transparency, democratic governance, and the rule of law. One important element in the

partnership would be negotiation on a country-by-country basis of an Association Agreement that would include a commitment to create a Deep and Comprehensive Free Trade Area between the country and the EU. By 2013, the EU and Ukraine had completed negotiation of an Association Agreement and plans were made for the EU and Ukraine to sign it at the Vilnius Summit of the EU and its Eastern Partners in November 2013.

But Ukraine was, not for the first time, in the midst of a serious economic crisis. It had a current account deficit over 8 percent of GDP, a budget deficit over 6 percent of GDP, foreign reserves that covered less than three months of imports, and it owed \$8 billion in payments on international debt, including almost \$4 billion outstanding on a 2008 loan from the IMF. It was paying Russia about \$12 billion a year for gas and had a deliberately overvalued currency which, while keeping the price of Russian gas lower than it would otherwise be, made its exports more expensive and hence less competitive. Ukraine needed \$15-\$20 billion of international assistance without which it would default on its debt in early 2014.

In November 2008, Ukraine had negotiated a two-year \$16 billion standby arrangement with the IMF that had been renewed in July 2010 for 29 months through 2012. In early 2013, the EU said it would provide Ukraine with €600 million in macro-financial assistance provided Ukraine agreed with the IMF on a new standby arrangement. Ukraine went to the IMF but in November 2013, the IMF offered only to refinance the country's outstanding debt to the IMF – \$3.7 billion from the 2008 loan plus the remaining outstanding balance on the 2010 loan. And that came with the usual conditions: greater exchange rate flexibility, fiscal consolidation (meaning freezing public salaries and reducing social spending, pensions, and the budget deficit), increasing the domestic price of energy for businesses and consumers, eliminating preferential tax reductions for some segments of the population, introducing structural reforms in the economy, and tackling corruption.

The IMF informed Ukraine of its likely offer and the conditions that would accompany it in early November 2013. Soon thereafter, Yanukovich met secretly in Moscow with Putin, who had been elected president again in 2012 after serving two four-year terms as president in 2000-08 and then switching places with Medvedev and serving as prime minister in 2008-12. Putin made Yanukovich an offer he couldn't refuse: Russia would purchase \$15 billion of Ukraine short-term debt through its National Wealth Fund, which receives a portion of the state's revenues from oil and gas, with \$3 billion arriving in December and the remainder in 2014. In addition, Russia would reduce its price for gas from \$400/1,000 cubic meters to \$269/1,000 cubic meters, an estimated savings of \$7 billion. The quid for the quo was simple: Ukraine would not sign the Association Agreement with the EU and would proceed instead with the agreements negotiated by the two prime ministers to strengthen trade, investment, and other ties between the two countries.

Why did Putin insist that Ukraine not sign the Association Agreement? Perhaps he envisioned Ukraine as a member of the Eurasian Economic Community formed by Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan in 2000 and, in particular, the Eurasian Customs Union formed by Russia, Belarus and Kazakhstan in 2010 and the Eurasian Economic Union those three countries were about to create in May and believed that, with an Association Agreement

with the EU, Ukraine would have little interest in membership in the Eurasian Community, Customs Union, and Economic Union and might even be precluded from joining one or more of them by the EU. Another reason, of course, might be that, while an Association Agreement carries no presumption, much less guarantee, of future membership in the EU, Putin believed the Association Agreement would increase the likelihood that at some future point Ukraine would join the EU. And as he knew very well, by then 11 central and eastern European states – the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, the Slovak Republic, Slovenia, Bulgaria, Romania, and Croatia – had joined the EU and all of them were members of NATO.

The IMF's letter with its offer and conditions arrived in Kyiv on November 20, 2013. Not only was there no standby arrangement; because there wasn't a standby Ukraine wouldn't receive the €600 million in macro-financial assistance the EU had offered, conditional on agreement on a standby. The next day, the prime minister told the Rada the offer was "the last straw." Yanukovich's Regions Party voted against seven pieces of legislation that addressed the remaining issues of concern to the EU that had to be approved prior to signing the Association Agreement – most notably, in the eyes of the EU, the release of Tymoshenko, who had been jailed for abuse of her office in an earlier gas deal. On November 21, Yanukovich announced that, while he would go to the Vilnius summit, he would not sign the Association Agreement. Several days later, he said: "We don't have to be humiliated like this. We are a serious country. A European one. When it corresponds to our interests, when we have agreed on normal conditions, then we can consider signing."

The decision not to sign the Agreement prompted an outpouring of public protest that filled the Maidan, the large Independence Square in Kyiv – especially when it became known that Yanukovich had met secretly with Putin in Moscow and had agreed to his terms for financial assistance, including Ukraine not signing the EU Association Agreement and, instead, developing closer economic ties with Russia. The protests continued throughout the rest of November, and when Yanukovich went to Moscow and shook hands with Putin at the Kremlin in a public announcement of the deal on December 17, 2013, the protests escalated in intensity and came to involve daily battles between the police and the protesters. As the protests escalated, the government responded in January with laws against "extremist activity" and more police, which only further escalated the violence.

In late January, after four rounds of negotiations with opposition leaders, Yanukovich dismissed the government, offered positions in a new government to opposition leaders (which they rejected), agreed to repeal the "extremist activity" laws, support reform of the Constitution to reduce the power of the president relative to that of the parliament, and offer amnesty to the protesters – all of which led Russia to suspend its second tranche of assistance. But on February 17, one day before the Rada was to reconvene, Russia announced the second tranche of assistance would be made available after all. The Maidan protesters, fearing that Russia's announcement indicated the Rada would approve a new government of Yanukovich supporters, marched en masse toward the Rada – and, as they did, they were attacked by police and state security forces, including snipers on the rooftops of the buildings along which the protesters were marching. Many protesters were killed, hundreds were wounded, those that survived were

driven back to the Maidan, and the Maidan itself was attacked that evening. A truce was negotiated by Yanukovich and the opposition parties on February 19, but it was broken on February 20 in fighting between the protesters and Ministry of Interior troops and police in and around Independence Square, and more than 60 were killed, many by police and Special Forces snipers on the rooftops. The foreign ministers of France, Germany, and Poland traveled to Kyiv and met for several hours with Yanukovich, then with the opposition leaders, and then with Yanukovich again throughout the night of February 20-21. On February 21, they announced an agreement that would restore the 2004 Constitution immediately, thereby rebalancing power between the president and the parliament. A new national unity coalition government would be formed within 10 days, new presidential elections would take place by the end of the year. The interior ministry forces and police were ordered to withdraw from the government district. That night Yanukovich fled to Kharkiv and on to Russia.

The next day the Rada voted to remove Yanukovich from office for neglecting his constitutional duties and scheduled a new presidential election on May 25. After the Speaker of the Rada resigned, it elected the deputy leader of the Fatherland party as the speaker and, with the prime minister having already resigned, he became the acting president. On February 26, after several days of discussion, a new government was formed consisting of the Fatherland and Freedom parties, non-partisans, and Maidan activists. On February 27, the new government obtained the support of a majority in the Rada and took office. Later that day, Russian marines and special forces that, under the terms of the 1997 Partition Treaty, were already in Crimea began taking control of the Crimean Supreme Council, the parliament of the autonomous republic, government offices, communications facilities, port facilities and airfields in Crimea. The takeover occurred quickly and without casualties, largely because Russia had many more troops in Crimea than Ukraine.

On March 1, Putin asked the Federation Council, one of the two chambers of Russia's Federal Assembly, for authorization to use Russian armed forces in the territory of Ukraine until the social and political situation in that country was "normalized." On March 6, the Crimean Supreme Council voted unanimously to hold a referendum on March 16 in which voters would be asked whether they wanted Crimea to remain in Ukraine with greater autonomy or become part of the Russian Federation. On March 13, Russia announced it would be conducting "heavy training" involving more than 10,000 troops as well as tanks, planes, and field artillery in nearby regions. On March 16, 82 percent of the registered voters in Crimea went to the polls and 96.8 percent voted in favor of becoming part of the Russian Federation. On March 17, the Crimean Supreme Council declared independence and Russia recognized Crimea as an independent state. On March 18, a treaty of accession of Crimea and the city of Sevastopol to the Russian Federation was signed and ratified by the Russian Duma. Three days later, the treaty was ratified by the Federation Council and Putin signed into law the legislation formally annexing Crimea and Sevastopol.

A few days later, Russian forces, including a regiment of a tank division, a battalion-sized tactical group of a motorized division with armored personnel carriers, a tank company and communications units, and several battalions of airborne divisions moved close to the border

with Ukraine. In early April, pro-Russian separatists in eastern Ukraine took government buildings in Donetsk, Luhansk and Kharkiv, called for referendums like the one held in Crimea, and formed the Donetsk Peoples Republic and soon thereafter separatists in Luhansk region did the same thing. By mid-April, the pro-Russian separatists had taken government buildings in several cities in the Donetsk region and Ukrainian efforts to retake the cities had faltered, and by the end of April, the separatists had taken control of more than a dozen cities. In May, the Ukrainian forces pushed the separatists back and set up checkpoints along their front lines and the separatists began attacking the checkpoints. In late June, as the separatists' attacks continued, Ukraine declared a unilateral week-long ceasefire for a week, during which the separatists continued their attacks. The ceasefire was extended for three days but ended at the end of June and Ukraine renewed its effort to retake territory from the separatists.

In July, Ukraine began to win the battle on the ground and retake some of the cities and territory taken by the separatists with Russian support in the Donbas. As that happened, Russia increased its assistance for the separatists, both in personnel and weapons, including tanks, heavy artillery, and anti-aircraft weapons. And as the separatist insurrection escalated, it became, in addition to a battle on the ground, a battle for control of the airspace over the region. On July 14, a Ukrainian Antonov-26 military cargo plane was shot down near the Russian border in Luhansk region while at 21,000 feet. On July 15, Ukrainian planes attacked Snizhne and destroyed an apartment building, killing 11. And on July 16, a Ukrainian Sukhoi SU-25 fighter was shot down. As the battle for control of the airspace over eastern Ukraine developed in July, Russia sent in the BUKs with their SA-11s. And so it was that on July 17, thinking it to be another Antonov-26, Russian troops deployed with a Buk in a field near Snizhne and Torez fired an SA-11 missile at MH17 and destroyed the plane, killing the 298 people on board.

More than eight years later, three individuals have now been found guilty of murder. But responsibility for the destruction of MH17 and the death of the 298 people on board obviously lies not just with those three individuals but with Russia as well – specifically, all those, up to and including Putin, who were responsible for the presence of Russian military forces in eastern Ukraine, including the Buk that fired the SA-11 missile that destroyed MH17, on July 17, 2014.

David R. Cameron
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