

Towards an alternative international investigation of Flight MH17?

Personal impressions from the conference *MH17: The Quest for Justice*, Kuala Lumpur, 17 August 2019.

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From 15 to 19 August I was in the capital of Malaysia for a conference organised by the International Movement for a Just World (JUST), the Perdana Global Peace Foundation (PGPF) and the Centre for Research on Globalization (CRG). I had been invited as the author of Flight MH17, Ukraine, and the New Cold War, meanwhile in four languages. All signs were that this would be a landmark event because for the first time, critics of the Dutch-led investigation into the tragedy were coming together for what the organisers called 'a modest endeavour to uphold the truth and to remain faithful to justice'. It would be much more than that and among those sharing that assessment was the Dutch embassy in Kuala Lumpur, which expressed its concern over the conference both to the Prime Minister's office and to the organisers. In what follows, I give a brief account of what I see as the effective establishment of an international task force on MH17 solely motivated by the quest for justice, not by any political position adopted beforehand. Since I was only an invited speaker it will be obvious that the organisers are in no way responsible for these notes.

Preliminaries

On arrival at Kuala Lumpur International Airport I was met by a functionary of the Perdana Foundation, one of the organisations established at the initiative of Dr Mahathir (for other Malaysians I rely on the abbreviated names as used in the conference programme). The Perdana Foundation, I learned, is committed to the criminalisation of war, and in my book I actually refer to the Kuala Lumpur War Crimes Tribunal, which in 2011, after extensive hearings, indicted George Bush and Tony Blair for crimes against the peace over the Iraq invasion of 2003. As was established at Nuremberg in 1945-46, all other crimes such as war crimes, crimes against humanity, genocide, and the like, follow from the supreme crime against the peace. Although Mahathir had excused himself for the conference, his public remarks

on the doubtful accusations made against Russia had been an obvious inspiration for the Kuala Lumpur event.

On the Friday evening before the actual conference there was a welcome dinner, an opportunity to meet with the organisers, their respective staffs, and the other speakers and moderators. The foreign guests were presented with a signed copy of Mahathir's autobiography, 'A Doctor in the House' (he is a medical doctor). Luckily I had a copy of the Manchester University Press edition of my own book with me to return the gesture via the organisers, several of whom are close to Mahathir.

At this dinner I first heard of steps taken by the Dutch embassy with the Prime Minister's office and with the organisers at the Perdana Foundation office (because the Dutch ambassador was new to the place, by his deputy) to express discontent and concern over the event. Apparently the deputy ambassador complained about holding this conference in the first place and extending an invitation to 'conspiracy theorists' (the label applied to all those doubting the JIT claim that Russia is guilty of the downing of MH17, a claim made already by Western politicians and media before any investigation had begun). I will come back to the possible role of the Dutch embassy when discussing the session at which two family members of Malaysian victims had been planned to speak.

Still at the dinner, I was seated next to the former Malaysian ambassador to the Netherlands, Dr Fauziah, who told me how the Dutch TV programme *Nieuwsuur* had approached her on the occasion of the fifth anniversary of the tragedy, only to castigate her for not being fully convinced of the validity of the JIT reading and then, why did she continue to defend the Russians?

The Conference: Introductions

The event was held in the main auditorium of the International Islamic University of Malaysia (since the country is constitutionally a multi-ethnic and multi-cultural society, this has no other relevance than that it is among Malaysia's largest and most prestigious academic institutions, on a par with the University of Malaysia).

After the arrival of guests and registration of participants and media representatives, the opening remarks were made by Dr Chandra Muzaffar, president of JUST. Dr Chandra is one of the country's leading intellectuals and besides his many academic credits, a well-known public figure since even a hotel assistant I spoke to, knew him. Chandra explained in his remarks that there were many justified

doubts about the Dutch-led investigations and many issues had not been satisfactorily resolved. In contrast to the adherence to one official account in the West, this conference was meant to be an open-minded event to bring together some of those whose views could enlarge or contest the JIT account; it was not based on any a priori position regarding the downing of MH17 or the conflict in Ukraine.

Next the conference was officiated by Professor Tan Sri Dzul, the president of the university and a world-renowned expert on health and drug issues. Through his participation in Malaysian public life and media, he too is a well-known figure in the country. That he was also a former student of Chandra's may have helped to make the facilities of the university available for this event, but his brief and lively introduction was testimony to a profound commitment to the cause of achieving justice for the victims of the disaster and their relatives.

Session 1. Documentary, MH17—Call for Justice

The title of this documentary makes clear how close its perspective is to the theme of the Kuala Lumpur conference. The documentary, which meanwhile has been seen by hundreds of thousands of viewers on YouTube (<https://www.youtube.com/watch?v=wkDWwYk4-Ho>), was introduced by the director, Yana Yerlashova. She explained this was her third documentary on the topic and paid tribute to Max van der Werff, the investigative journalist with whom she made this one. With her on the podium was Akash Rosen, founder of OG IT Forensic Services, who as a certified audio specialist has demonstrated with his colleagues that the phone taps provided by the Ukrainian intelligence service SBU to the Dutch-led investigation had been extensively tampered with, cutting and pasting different segments etc. Besides their appearance in the documentary, Akash Rosen and his colleagues also produced a special 143-page report detailing their investigations, which is in the public domain.

The documentary, shown at the conference on a big screen, shares the spirit of the event in that there is no a priori attribution of guilt. It merely seeks to highlight the inconsistencies and falsehoods of the JIT investigation. Its shocking revelations on the intimidation of a Dutch lawyer willing to challenge the government, the tampering with evidence, the testimony of experts such as the German lawyer, Professor Giemulla, witnesses of Ukrainian air force activity, plus the fraudulent nature of SBU-supplied evidence, made a great impression and set the tone for the conference.

Session 2. Review of evidence and background

This session was moderated by Tan Sri Fuzi, former Secretary-General of the Ministry of Foreign Affairs of Malaysia, an accomplished diplomat and currently active in a wide range of businesses as chairman of the board and director.

The first speaker was Michel Chossudovsky, emeritus Professor of Economics at the University of Ottawa and director of the Centre for Research of Globalization, one of the three organisations behind the conference. I am familiar with Chossudovsky's work from the time of the NATO intervention in the dissolution of Yugoslavia and his relation with Malaysia includes membership in the Kuala Lumpur War Crimes Commission. The website of the CRG, Global Research.ca, is one of the most read alternative news media in the world.

Chossudovsky argued that there have in fact been four investigations on MH17. Besides the Dutch Safety Board and the JIT, there was first the investigation immediately after the event and leading to the assertion of Russian guilt. It was based on radar images mentioned by US Secretary of State John Kerry, which were not heard of again but which yet made a great impact on the political climate in which subsequent investigations transpired. Next there was the investigation by then-SBU-head Nalyvaychenko who claimed to have discovered a Russian plot to shoot down one of its own civilian airliners and thus provoke a Russian military intervention in Ukraine. Chossudovsky highlighted the political credentials of Nalyvaychenko and the absurdity of this assertion on several counts, although it did not apparently disqualify the SBU as a source for the subsequent two investigations (DSB and especially, JIT).

The second speaker was Peter Haisenko, a retired civil aviation pilot with a long career as captain on international flights with Lufthansa. Meanwhile also a prolific author and publisher and well-known on this particular dossier, he was interviewed by the JIT but nothing of his findings in the end made it into their conclusions, perhaps also because the DSB had already excluded any other outcome than a Buk impact.

Haisenko told the conference that he had studied photographs of the wreckage right after the MH17 disaster and discovered evidence of impact holes of 30 mm explosive shells in some of the high-definition pictures on the Internet. When he found these pictures had been removed the next day, he began his own investigation, among other things discussing the possibility of a Buk missile having exploded near the Boeing's cockpit. Following conversations with experts including the former East

German anti-aircraft officer and author, Bernd Biedermann, Haisenko came to the conclusion that the cause of the downing could not have been a Buk missile. Instead he claims an Su-25 ground-support fighter jet (which I in my book still rule out because it is subsonic and not fast enough to manoeuvre around a Boeing 777 at top speed) may have fired a heat-seeking air-to-air missile hitting an engine and slowing down the Boeing to around 600 km/h but not destroying it, after which the Sukhoi was able, flying at 0.9 Mach, to fire its cannon at the cockpit with the aforementioned shells (actually two types loaded alternately). With the pilots killed, the explosions of the anti-tank shells that are the standard armament of an Su-25, then caused the plane to break-up in mid-air.

After the presentations there was extensive Q & A and of course discussions continued in between sessions and after the conference. I suggested to Haisenko that for his account to be vindicated (it incidentally was the only express alternative theory of why MH17 was destroyed at the entire conference), we must know what was on the voice and flight recorders, a topic of dispute later.

As the third speaker in this session I relied for the greater part on my book, which deals primarily with the geopolitical and economic context of the tragedy. About the actual event, in contrast to DSB and JIT, I only list the different possible scenarios, so who had Buks, what do specialists say about the effect of a Buk hit, who had fighter jets, what are the characteristics of such jets, and so on. Ultimately I cannot say with certainty what was the cause of the downing except that all circumstantial considerations, so who had a motive, who profited, and so on, would seem to point to the coup regime in Kiev and its Atlantic backers. I also mentioned how the DSB Final Report has lied about the presence of 1.3 tons of lithium ion batteries right behind the cockpit, which if on fire, produce high explosive gases.

Also I asked why the Su-25 pilot, Voloshin, whom an airbase mechanic declared had returned from a sortie in great distress on 17 July, had never been interviewed by the DSB or JIT before he died, supposedly by suicide, in March 2018. That the DSB and JIT investigations are profoundly compromised because of the veto granted to the Kiev coup regime, is in my book, and here I also mentioned that the law establishing the DSB already rules that facts harmful to Dutch foreign relations will not be reported. Finally I asked why the JIT did not accept the evidence offered by the German investigator, Josef Resch, whilst relying extensively on the proven falsehoods of the amateur Internet collective, 'Bellingcat' (instead of one or more of the 17 US

intelligence agencies)—claims which I show in my book had been previously dismissed by the JIT as ‘unfit for evidence’.

Session 3. MH17: Legal dimensions

This session was moderated by Professor Mary George of the Faculty of Law, University of Malaysia, and a specialist on law of the sea and air and space law. In hindsight I would think this was the most important session determining the outcome of the entire conference. For whereas the other sessions gave details adding up to serious doubts about the tenability of the conclusions of the Dutch-led investigations, which led to the recent indictment of four individuals for murder and the announcement of a trial held in the Netherlands in March 2020, this session resulted in the recommendation to prevent that trial from taking place in the first place.

The first speaker, Canadian criminal defence lawyer John Philpot, a specialist in international criminal law with 35 years of experience including the tribunal for Rwanda and the International Criminal Court (ICC), brought his experience to bear on the MH17 case. In all the recorded cases of international criminal justice, the dedicated courts dealing with the Rwanda genocide, with the violent dissolution of Yugoslavia, and the ICC (which in practice turned out a court limiting its prosecution to criminal actions by Africans), Philpot had established that this is a highly politicised form of justice, far removed from the presumed neutrality of a normal court and with a prosecution which has to be mistrusted most because its role, too, differs fundamentally from a national prosecutor’s office. Since on the long flight back I read a large part of an edited collection on international criminal justice that he gave me as a present in Kuala Lumpur, I recognised many of the characteristics of the JIT (tunnel vision, prejudice, political pressure notably by the US and Western governments) in the cases analysed in that book (‘Justice Belied. The Unbalanced Scales of International Criminal Justice’).

The second speaker, Dr Gurdial Singh Nijar, a solicitor, former Professor of Law at the University of Malaysia, and president of the Malaysian Human Rights Society, covered a different legal aspect, the question of a possible civil suit against the Kiev regime for keeping open the air space above a war zone (along the lines of the lawsuit on behalf of the German victims’ relatives by Professor Gjemulla, as in the ‘Call for Justice’ documentary). Since Kiev obviously did not fulfil its international obligations

in this domain, there should be good grounds for a successful civil suit, Gurdial argued.

Session 4. Ground Zero: The Unsung Heroes

This session, chaired by former Reuters staff correspondent Amy Chew, featured Colonel Sakri, who also appears in the 'Call for Justice' documentary. Col. Sakri was instructed by then Prime Minister Najib to fly to Ukraine and gain hold of the data recorders of the plane (black boxes) besides ensuring that the bodies of the Malaysian victims would be collected in a proper manner. Col. Sakri gave a chilling account of the operation he led, which included crossing ten checkpoints between the Ukrainian government-held territory and the rebel areas, against the will of the coup government in Kiev. As a military officer, he knew he exposed himself and his men to grave danger, but having reached the rebels, he was handed the black boxes without further ado, a sign they had nothing to hide. I was impressed by Sakri's sober account even of anecdotes that might have been presented with bravado. The same for the moment, also in the documentary, when he was confronted by FBI agents demanding the black boxes upon his return to Kharkov and said 'no'. His telephone conversation with Prime Minister Najib, in which the latter implored him to secure the black boxes at all cost, if only for the sake of national dignity after the successive disasters of MH370 and MH17, was very moving, certainly when Sakri, again in the most modest of terms, related how he effectively pledged his life. Whether MH370, lost in March 2014, was really the reason for Malaysia to turn down the offer to lead the (technical) MH17 probe, as maintained by the former head of the Civil Aviation Department, Mr Azharuddin, who made two long interventions at the conference in reply to questions, was a matter much discussed in the corridors. The same for the question of whether Malaysia had ever been allowed to listen to the original tape recordings of the voice and data recorders, referred to already.

Session 5. In Memory

This session had been planned to be dedicated to the victims and their families. However, although the two relatives, the widow of the first officer and the daughter of the chief stewardess, had been closely involved in the planning, including how they would be presented in the programme booklet (which was printed in accordance with their wishes), they withdrew two days before the conference (a single line in the

booklet was printed just in time to this effect, below their portraits). The letter in which they conveyed the decision to withdraw was cast in what the organisers told me was an uncharacteristically bitter and vehement mould. But not only did the letter unexpectedly complain about the lack of professionalism and transparency of the conference organisers, it so happened that the Dutch deputy ambassador knew about the letter and also, on his visit to the Perdana Foundation office, was able to report that a copy had been sent round to all foreign embassies in Kuala Lumpur.

The Malaysian organisers told me that it was certainly surprising that the previously cooperative family members would suddenly change their minds about participation, and also that they would be able to circulate their letter at such short notice to the foreign embassies, of which the addresses are not readily available outside the diplomatic milieu. The organisers also expressed their disquiet about the extent to which the Dutch had access to and were able to influence the victims' relatives more generally. Somebody else told me that a Malaysian cameraman filming commemorative ceremonies on the fifth anniversary of the tragedy, had reported that a statement praising the JIT work, read out by a young Malaysian victims' relative at an event in the Australian embassy, had just been handed to her by somebody else in the room. I was left with the feeling that the 'quest for justice' as interpreted by the Dutch (and Australian) diplomatic representation(s) may not be of the same quality as that which impressed me so much in the conference. The Dutch embassy had been given the assurance that the conference was a public event and that the deputy ambassador was most welcome to raise questions, express dissent, or whatever. However, I was told that the promise he made to call back later regarding the invitation was not honoured and nobody turned up in the end.

Nevertheless ambassador Fauziah, who had agreed to chair this session, volunteered to do it on her own. Her account of how the Malaysian embassy in The Hague dealt with the tragedy when it happened, the harrowing details of sorting the body parts that kept coming in once the recovery of the bodies began, the negotiations with the relatives about repatriation, all of it was presented with professional sang froid. At the same time, she told us, the embassy had to continue its other work too, as in the field of economic, especially agricultural matters, for which it has special attachés (at the dinner Dr Fauziah had told me more than 100 Dutch companies are active in Malaysia).

Session 6. Formulation of an Action Plan

This was the closing session of the conference, chaired by Mr Tan Sri Jawhar, a senior government official in the foreign affairs area, with a long list of distinctions awarded on account of his international activities for Malaysia in the fields of security, in ASEAN, and the Asia-Pacific Leadership Network for Nuclear Non-Proliferation.

In this final session, Dr Zulaiha Ismail, a trustee of the Perdana Foundation who earned her Ph D in Human Resource Development at George Washington University in the US, was joined by Ms Askiah Adam, a lead writer in the New Straits Times and the executive director of JUST, and Dr Chandra Muzarraf. It was at this session that the plans for further action were formulated first, I assume on the basis of ideas that had already been explored previously. At the centre is the idea of seeking to obtain a suspension of the preparations for a trial, rightly seen as premature given the flawed, one-sided nature of the evidence presented so far. This was discussed in its various aspects with an energy that was most surprising given that this was one of the longest one-day conferences I have attended, with hardly a break except for lunch. Whether it was at this point that the intention to present the outcomes of the conference, including the proposal to have the Malaysian prime minister contact his Dutch counterpart directly, to Dr Mahathir, or whether I heard it later or read it in the Sunday papers the next day, I don't recall because my energy certainly was at a low ebb.

With Dr Zulaiha, one of the driving forces of the conference, I had spoken before about another plan to come to Malaysia, earlier in August, for a conference proposed by friends and colleagues I had met in Moscow when presenting the Russian translation of my MH17 book in May. This had clearly been an initiative for which the time to prepare had been too brief. Dr Zulaiha told me that she had been aware of it, but that Malaysia as a long-standing non-aligned country would always have preferred to organise an event like this on its own, also to avoid being seen as a channel of Russian concerns. For the present conference the Russian embassy had been invited (like all other embassies, the media, etc.) and three junior diplomats had indeed turned up but they had no active role.

The third speaker in this closing session, Dr Chandra Muzaffar, also used the occasion to respond to questions posed by young reporters of Malaysian newspapers, which I found provocative by their lapidary form and insistence. Thus one young

reporter asked, where was our ‘rock-solid evidence’ that the JIT investigation was flawed. To this Chandra replied by going over a number of instances of how Kiev was given a veto, and also how Malaysia had been kept out of the JIT until, effectively, March 2015, almost a year after the tragedy. He patiently explained that such a course of events, which is beyond dispute, is itself evidence too. He also went over to the counter-attack, asking why the newspapers had unanimously refused to carry the announcement of the conference, so that few people outside the circles associated with the organisers knew of it. As a result, the public turnout was limited, although this did not of course affect the quality of the debate.

I can only say that Chandra’s role in this matter was impressive by his consistent courtesy and eloquence in the face of arrogant, puerile questioning. Whether that may have helped the turnabout of the media the next day, when all the major newspapers carried the key message that came out of the conference, viz., that the trial should be suspended, I don’t know. The Sunday edition of the New Straits Times had a two page report covering various aspects in depth, with pictures of several speakers, the audience, and the same conclusion in the headline, ‘Bid to Halt Prosecution of MH17 Suspects’.

Whatever the actual success of this aim, I do feel that with this conference a momentous step has been taken to establish an international alternative task force on the topic of the downing of MH17. With each of the foreign participants relying on their own associates at home, further research can be made part of a collective resource base now that face-to-face contact and mutual confidence have been established at Kuala Lumpur. As to myself, I will make an effort to get my contacts in Russia and in the other countries where my book has been translated, also on board of this enterprise. In this and in other respects this inspiring, flawlessly organised conference has brought the quest for justice for the victims and relatives of the MH17 tragedy a huge step forward.