**Security Council Fails to Adopt Resolution on Tribunal for Malaysia Airlines Crash in Ukraine, Amid Calls for Accountability, Justice for Victims**

29 July 2015

United Nations Press Release

[http://www.un.org/press/en/2015/sc11990.doc.htm](https://mail.hrvoices.org/OWA/redir.aspx?C=k6Rkz5bviU2Thqp3AIs4kUjxMZdYntIIYQdPXqDbViGiNHACcGgCMIZAM75_bOTpBWT4KAgKJJI.&URL=http%3a%2f%2fwww.un.org%2fpress%2fen%2f2015%2fsc11990.doc.htm)

The Security Council today failed to adopt a resolution that would have established an international tribunal for the purpose of prosecuting persons responsible for crimes connected with the downing of Malaysia Airlines flight MH17 on 17 July 2014 in Donetsk Oblast, Ukraine, following use of the veto by the Russian Federation, a permanent member.

The draft resolution, presented by the Minister for Transport of Malaysia on behalf of the Joint Investigation Team (Australia, Belgium, Malaysia, Netherlands and Ukraine), received 11 affirmative votes, three abstentions (Angola, China and Venezuela) and one negative vote (Russian Federation).

Had it passed, the Council, under Chapter VII of the United Nations Charter, would have adopted the Statute of the International Criminal Tribunal for Malaysia Airlines flight MH17 and demanded that all States and other actors refrain from acts of violence against civilian aircraft.  It would have called on all States and actors in the region to accord full cooperation in the conduct of the international investigation of the incident, as required by resolution 2166 (2014).

By other terms, the Council would have requested the Joint Investigation Team to continue to keep the Council fully and regularly informed of progress, and urged the earliest possible finalization of the international technical investigation into the cause of the crash, and the criminal investigation.

The meeting, attended by five Government ministers, as well as representatives of several countries whose nationals had perished on the flight, began with a moment of silence in tribute to the victims.

Introducing the text, the Minister for Transport of Malaysia said the time had come for the Council to demonstrate its will to pursue accountability and send a clear message to the growing number of non-State actors with the capability to mount such attacks.

Explaining his negative vote, the representative of the Russian Federation said his country did not support the creation of an international tribunal under Chapter VII of the Charter, as resolution 2166 (2014) had not considered the downing of the aircraft a threat to international peace and security.  An alternative draft put forward by his Government had sought to promote a genuine international and independent investigation, and remained on the table.

Several speakers regretted the Council’s failure to adopt the text, with the Minister for Foreign Affairs of Australia saying use of the veto had only compounded the atrocity.  The Foreign Minister of Ukraine said the Russian Federation’s veto had to be seen in the context of its aggression against his country.

The veto by the Russian Federation could not, and would not, deny the victims, and their families, justice, said the United States’ representative.  France’s representative said that, given the voting outcome, one of the Council’s major areas of action — fighting impunity — had been called into question.

The Foreign Minister of the Netherlands said the idea to establish a tribunal before the results of the investigations emerged had been aimed at depoliticizing the prosecutions.  “I find it incomprehensible that a member of the Security Council obstructs justice in a tragedy that has affected so many,” he said, adding that impunity would send a very dangerous signal and threaten the safety of civil aviation.

For the Council, which was charged with upholding international peace and security, not to agree on an accountability process when a commercial airplane had been shot out of the sky and 298 people had been killed was indeed a serious indictment, said the Foreign Minister of New Zealand, whose country holds the presidency of the 15-member body for July.

Explaining his decision to abstain, China’s representative said rushing through a text that did not enjoy consensus only impeded the cause it espoused.

Also making statements today were the representatives of Lithuania, Chad, Spain, Chile, United Kingdom, Venezuela, Angola, Nigeria, Jordan, Belgium, Canada, Germany, Philippines, Ireland, Israel, Viet Nam and Indonesia.

The representative of the Russian Federation made a further statement.

The meeting began at 3:03 p.m and ended at 5:10 p.m.

Statements

Speaking before the vote, LIOW TIONG LAI, Minister of Transport of Malaysia, said his country had introduced the text on behalf of the countries participating in the Joint Investigation Team against the background of the widespread international shock it had precipitated.  After the tragedy, the Council had unanimously adopted resolution 2166 (2014) calling for an independent investigation and holding to account those responsible.  Since then, an independent air safety investigation had been led by the Dutch Safety Board, assisted by experts from various countries.  A separate Joint Investigation Team had begun a criminal investigation in order to launch a full, thorough and independent investigation in accordance with that resolution.

It was now timely for the Council to demonstrate its will to pursue accountability, he said, adding that the draft had sought to establish an international tribunal under Chapter VII of the Charter of the United Nations, and send a clear message to the growing number of non-State actors with the capability to mount such attacks.  Further, all those who travelled by air would be at greater risk if the perpetrators were not held to account.  The establishment of the tribunal prior to the completion of the criminal investigation would ensure that the prosecution would be as depoliticized as possible.  Regardless of who the perpetrators were, there was a need to ensure that justice prevailed.  For its part, Malaysia, with the countries participating in the Joint Investigation Team, had engaged with all States to reach consensus in preparing the draft.  He urged all Council members to hear the calls for justice from the victims’ families, as well as the chamber’s own calls for justice and against impunity.

Speaking after the vote, Mr. Lai voiced deep regret and disappoint at the failure to adopt the draft despite persistent efforts to bridge differences.  Malaysia believed a united international prosecution mechanism would have been an achievement.  Unfortunately, the Council had taken a step back from its own resolution demanding justice and accountability.  Despite today’s setback, Malaysia would continue pursuing its efforts through outreach and consultation with relevant countries on any concerns they might have.  Malaysia also would explore other options, he said, stressing:  “Doing nothing is not an option.”

VITALY CHURKIN (Russian Federation), expressing condolences to the victims’ families, said his country had done everything in its power to ensure the rapid adoption of resolution 2166 (2014) and an independent and thorough investigation.  His Government was also in favour of a further resolution securing free and unimpeded access to the crash site.  However, countries had sought to work outside the Council through bilateral arrangements with Ukraine.  Russian experts had provided all information, including radar station data, to the Dutch investigators and his Government had conducted a briefing disseminating all satellite data.  Unfortunately, a year after the adoption of resolution 2166 (2014), serious issues remained, and Russian experts had not been provided equal access to information.

The criminal investigation was being carried out in a closed manner, he said, questioning whether such an approach would be able to conclude a thorough and impartial investigation.  The Russian Federation had proposed the appointment of a Special Representative of the Secretary-General, which had not been accepted.  Similarly, its proposal to involve the Organization more closely in the investigation had been rebuffed.  An alternative draft put forward by his Government had sought to promote a genuine international and independent investigation, and still remained on the table.

He said the Russian Federation did not support the creation of an international tribunal under Chapter VII, as resolution 2166 (2014) had not considered the downing of the aircraft a threat to international peace and security.  Moreover, the experience of the tribunal for the former Yugoslavia had not been useful, as such courts were expensive.  When Ukraine had brought down a Russian aircraft and the United States had brought down an Iranian aircraft, international tribunals had not been demanded. On the other hand, where there were threats to international peace and security, such as piracy, the idea of an international tribunal had not enjoyed support in the Council.  Efforts to present the draft for a vote, in full knowledge that it would not be adopted, underscored the political motives behind the move.  His Government’s position today did not promote impunity.

SAMANTHA POWER (United States) recounted the personal stories of several of the victims of flight MH17.  Among the 298 people on board were families, students and some 80 children.  “Their loss is immeasurable,” she said, stressing that the grief had been felt most acutely by the victims’ families.  “This could have happened to any of our families,” she said.  The passengers had come from 18 nations, including the United States, but they could have come from any nation.  Those who had carried out that unspeakable crime could not remain unnamed and unpunished.  The United States had, therefore, supported the draft resolution.  Efforts to deny justice had only intensified the pain of the families.  That was the effect when Russian-backed separatists had blocked access to the crash site and of that delegation’s veto today.  “Russia has callously disregarded the public outcry in the grieving nations,” she said.  Today’s veto could not, and would not, deny the victims, and their families, justice.  There could not be impunity.  “While we are outraged and gravely disappointed, today we say to those families that no veto will deny you the justice that you deserve,” she said.

DAINIUS BAUBLYS (Lithuania) said the heinous crime being addressed today called for an answer from the Council.  The veto by the Russian Federation had denied, for now, an avenue to bring the perpetrators to justice.  Since 17 July 2014, that delegation had acted as if it had something to hide or somebody to throw off course by disinformation.  There had been no exception to that today.  Russian-backed illegal armed groups in control of the crash site had tampered with evidence, and restricted access for international experts and Organization for Security and Cooperation in Europe (OSCE) monitors.  Only after immense international pressure had independent experts been able to conduct identification of victims’ remains and collect evidence.  “The shooting down of MH17 constituted a threat to international peace and security, and it was a deliberate act,” he said.  Unhindered flows of arms, mercenaries and Russian troops into the sovereign territory of Ukraine had created the conditions for the tragedy.  The foreign-orchestrated conflict in the east of that country continued unabated, despite the Russian Federation’s denials of non-involvement.  The Minsk agreements must be implemented in good faith, with the Trilateral Contact Group, the OSCE and the United Nations playing critical roles.

MAHAMAT ZENE CHERIF (Chad) reiterated his delegation’s condemnation of the horrific attack on the MH17 aircraft.  Resolution 2166 (2014) had provided for those guilty of the disaster to be brought to account, and for all States to cooperate with efforts to hold them accountable.  The origin of the foreign objects that had brought down the aircraft had not been stated in the Dutch Safety Board report.  Chad favoured the creation of a tribunal to hold accountable those responsible for the destruction of the Malaysian airliner, in order to bring justice to the victims’ families and to send a deterring message to all those who could attempt to threaten the safety of international civil aviation.  Chad had voted in favour of the draft resolution, and regretted the fact that it had not been adopted.  Nevertheless, he remained committed to meeting the needs and demands of justice, and urged countries to spare no effort to meet the legitimate expectations of the victims.

JUAN MANUEL GONZÁLEZ DE LINARES PALOU (Spain) expressed regret over the Council’s failure to adopt a resolution that had been built on the parameters established by resolution 2166 (2014).  Despite that setback, the Council needed to ensure that those responsible were brought to justice, he said, expressing support to the technical and criminal investigations under way.  The creation of an international tribunal would be an important step towards justice and efforts must continue to that end.

LIU JIEYI (China), expressing sympathy to the bereaved families and affected countries, said his country had, from the outset, supported a thorough and independent investigation.  The focus should be on seeking justice and ending impunity, he said, adding that China had called on the Council to maintain unity.  Consensus on the draft would have sent a positive message, whereas a divided Council would impede the cause espoused.  Therefore, China had abstained from the vote.

FRANÇOIS DELATTRE (France) said he deeply deplored the defeat of the draft, which it had supported from the beginning as part of the fight against impunity.  One of the Council’s major areas of action had now been called into question.  The draft also had responded to the demands of resolution 2166 (2014) through a process of extensive consultations.  Nonetheless, the pursuit of justice and accountability would continue.  It was deeply shocking that the Council remained divided in its response to the grief and anguish of so many families and nations.

CARLOS OLGUÍN CIGARROA (Chile) said he would have liked the Council to have sent a unified message to the families of the victims who had perished on flight MH17.  His delegation was concerned at the abdication of the principle of accountability shown today.  Beyond legal interpretations, the exercise of jurisdiction should be as expeditious as possible.  His delegation had supported the draft because justice and reconciliation were some of Chile’s core values.

MATTHEW RYCROFT (United Kingdom) said he was deeply “saddened, disappointed and frustrated” that the resolution had not passed.  The Russian Federation’s veto had disrespected the victims, and that delegation was not adhering to resolution 2166 (2014) by not cooperating fully with its provisions.  A year after the tragedy, this was precisely the moment to create a tribunal, and to send a clear message that the Council had a mandate to address violent acts against civilians.  An operational and fully staffed tribunal took time to establish; had that begun today, it would have been ideally placed to pursue justice.  Despite the veto, the investigations would continue.  They had been fully professional and he rejected any allegations to the contrary.  It was damaging that the Russian Federation had decided to block the best route to justice, but its use of the veto would not prevent justice.  “The perpetrators of those crimes should find no comfort in Russia’s actions today”, he said.

RAFAEL DARÍO RAMÍREZ CARREÑO (Venezuela) rejected the reprehensible act that had downed flight M17 and reiterated his delegation’s solidarity with the victims’ families. “Justice must prevail,” he said.  However, Venezuela had abstained because “political elements” had been involved that could deter the investigation.  The reference to Chapter VII of the United Nations Charter went beyond the legal framework of resolution 2166 (2014).  In addition, the description of the incident as a threat to international peace and security politicized the issue and was “extemporaneous”.  The Council did not have the mandate to create a tribunal.  Through resolution 2166 (2014), it had been agreed to conduct a transparent and impartial investigation into the tragedy; the investigation of the causes and search for perpetrators was ongoing.  “We must not prejudge or reach conclusions that are unfounded,” he said.

JOÃO IAMBENO GIMOLIECA (Angola), strongly condemning the downing of flight MH17, emphasized the need to hold the perpetrators accountable, bring justice to the victims and their families and ensure the safety of civil aviation.  His country had abstained from the vote because he believed resolution 2166 (2014) had provided sufficient space for a thorough and independent investigation.  Furthermore, the establishment of an international tribunal was premature, given that the investigations were ongoing.  The Council should focus attention on involving the Organization more closely in the investigation process.

U. JOY OGWU (Nigeria) said the draft would have established an international tribunal to bring justice to victims and closure to families, while sending a strong message that the international community would not tolerate any threats to civil aviation.  Today’s experience had brought to the fore the need for the Council to establish standards on matters of such critical importance.

DINA KAWAR (Jordan) said her country had supported the creation of an international tribunal in order to bring the perpetrators to justice under an independent judicial mechanism.  The importance of the draft also lay in efforts to deter threats to international civil aviation.  Although the text had not been adopted, efforts must continue towards reaching understanding on measures to be taken going forward.

MURRAY MCCULLY, Minister for Foreign Affairs of New Zealand, said today’s draft resolution had sought to establish a mechanism by which accountability could be sought for the tragic events of 17 July 2014.  “The fact that we have not preserved the unanimity that characterized resolution 2166 (2014) is deeply, deeply disappointing,” he said.  In failing to find a way forward, the Council had let down the families and friends of those killed on flight MH17, “and it has let itself down”.  For the Council, which was charged with upholding international peace and security, not to agree on an accountability process when a commercial airplane had been shot out of the sky and 298 people had been killed was indeed a serious indictment.

“This does not appear to me to be a matter which can be seen in shades grey — either we follow a path of accountability or there is impunity,” he said, expressing regret that the latter had been the Council’s decision.  That the outcome had been reached by use of the veto was a matter of special regret, as New Zealand had been opposed to the veto since 1945.  “We as a Council simply have to find better ways of working together,” he said.

BERT KOENDERS, Minister for Foreign Affairs of the Netherlands, said 196 Dutch citizens had been killed on flight MH17, including innocent men, women and children.  Resolution 2166 (2014) had set out a three-step approach:  the swift repatriation and identification of the victims; a thorough and independent investigation into the cause of the crash; and justice for victims.  The Netherlands had regularly and thoroughly informed the Council of progress made on those three steps.  “We came to the Council with a desire to see justice done in the most effective, impartial and legitimate way, with the greatest possible chance of success,” he said.  He expressed his deep disappointment that the Russian Federation had used its veto to stop the Council from actively ensuring that justice was served.

“We listened carefully to the arguments and concerns Russia voiced,” he said, and “we have made the case for a prosecution mechanism that transcends politics”.  The idea to establish a tribunal had been born to ensure an independent and depoliticized procedure, before the results of the investigations pointed certain possible perpetrators.  “I find it incomprehensible that a member of the Security Council obstructs justice in a tragedy that has affected so many,” he said, adding that impunity would send a very dangerous signal and threaten the safety of civil aviation.

JULIE BISHOP, Minister for Foreign Affairs of Australia, noting that among the 39 Australian victims on flight MH17 were six children, two religious leaders, two doctors, teachers, a fiction writer and an aerospace engineer, said that grieving families and friends were desperate for answers and accountability.  For that reason, and to ensure that such an event did not recur, Australia had requested the establishment of a tribunal.  “It is inconceivable that the Security Council would now walk away from holding to account those who brought down a commercial plane,” she stated, adding:  “The veto only compounds the atrocity,” and had made a mockery of the Russian commitment to accountability enshrined in resolution 2166 (2014).  Nevertheless, her country was determined to bring the perpetrators to account, and with the other members of the Joint Investigative Team, would decide on an alternative prosecution mechanism.

PAVLO KLIMKIN, Minister for Foreign Affairs of Ukraine, said the day would be remembered not for the Russian Federation’s veto but for the outpouring of support for efforts to ensure justice and against impunity.  Once news of the downing had come in, the Ukrainian Government had immediately mounted rescue and relief efforts.  It had sought an independent and thorough investigation through the creation of an independent tribunal in order to bring those responsible to justice.  “There is no reason to oppose such a move unless you are one of the perpetrators,” he said.

The support the draft received today had shown that the sponsors were on the right side of the issue.  The Russian Federation’s role in the conflict in Ukraine was clear and well known, he said, and its veto needed to be seen in that context.  The hope for justice remained alive.  The Russian Federation’s use of the veto may have killed the draft resolution today; it would not be able to kill the hopes of people around the world to see justice prevail.

BÉNÉDICTE FRANKINET (Belgium) expressed solidarity with her country’s partners in the Joint Investigation Team, which was making every effort to shed light on the circumstances surrounding the tragedy and provide justice to the victims’ families.  An international tribunal would have advanced the cause of justice.  Despite the defeat, efforts would continue without politicization of the issue, based on resolution 2166 (2014) and in keeping with the expectations of the victims’ families.

GUILLERMO E. RISHCHYNSKI (Canada) said his country continued to mourn the terrible loss of lives aboard Flight MH17 and believed it was important for the Council to take decisive action to hold those responsible to account.  Expressing profound disappointment at the outcome of today’s vote, he said that, owing to the obstruction of the Russian Federation, the families and friends of the passengers and crew members who had lost their lives would not see those responsible immediately brought to justice by an international tribunal.

HARALD BRAUN (Germany) expressed his deep regret that an unequivocal commitment of the Council to accountability had been vetoed today.  With the adoption of resolution 2166 (2014), the Council had taken on the responsibility to bring the perpetrators of the heinous crime to justice.  “Today, it failed in this responsibility,” he said.  The unbearable situation that had led to the tragic downing of flight MH17 and loss of so many innocent lives continued.  Every day, people in eastern Ukraine were killed, wounded or lost their homes as a direct consequence of the conflict.  He called for an immediate and lasting de-escalation of the conflict and urged all sides to fully implement the Minsk agreements.  As had been seen in the long negotiations on nuclear issues with Iran — where delegations had cooperated closely with the Russian Federation and other permanent Council members — solutions were possible when all sides approached the issues in a constructive manner.  The failure today did not mean that the perpetrators could triumph and hope for impunity, he said, stressing that the grieving nations and their partners would not rest until those responsible were held to account.

LOURDES ORTIZ YPARRAGUIRRE (Philippines) said that, 12 months after the downing of flight MH17 and adoption of resolution 2166 (2014), the world was still grappling for answers.  The perpetrators remained free of all responsibility and the victims’ families continued to seek answers and closure.  As one of the grieving nations, the Philippines had co-sponsored the draft resolution and supported the establishment of an international tribunal to prosecute the perpetrators.  “We deeply regret that the Council was not able to adopt this resolution because of a single veto. which represents a huge disservice to those who perished, to their families, to their nations and to the world,” he said.  The search for answers and justice would continue.

TIM MAWE (Ireland) said that, in adopting resolution 2166 (2014), the Council had sent an unequivocal message of compassion towards the victims of flight MH17.  It had also acted on the desire for the humane and dignified treatment of their remains, for a full, thorough and independent international investigation and for the holding to account of those responsible.  A year on, progress had been made in the identification and swift repatriation of victims and the establishment of an effective, professional and independent investigation led by international experts.  The sole remaining task was the setting up of an independent and impartial accountability mechanism to bring those responsible to justice in a credible and legitimate manner.  Today’s draft resolution merely had sought to deliver on the objectives of resolution 2166 (2014).  Underscoring the importance of civil aviation for global communication, security and prosperity, he stressed that threats to civil aviation constituted a threat to international peace and security.

RON PROSOR (Israel) declared his country’s support for the investigation and insisted that those responsible should be held to account.  Israel had learned from painful experience that if steps were not taken to deter attacks, the future consequences could be dreadful.  The Council must send a clear and strong message that attacks on civilian aircraft would not be tolerated, and must not be repeated.  Memorializing the innocent victims, among them a 27-year-old Israeli student on a family visit, he expressed support for those carrying out the investigation into the incident and looked forward to their final report.

NGUYEN PHUONG NGA (Viet Nam) reiterated his delegation’s request for a continued independent, objective and transparent investigation in line with resolution 2166 (2014).  Perpetrators must be brought to justice through appropriate mechanisms in accordance with international law and the United Nations Charter.  He called on all parties to fully cooperate with the investigation, stressing that Viet Nam stood ready to work closely with all parties concerned to adequately address the downing of flight MH17.

DESRA PERCAYA (Indonesia) said that the pain and sorrow over the loss of those who had perished on flight MH17, among whom were Indonesians, had not diminished in the past year, and he expressed deep regret over the failure of the Council to unite to address the issue today.  There must be appropriate measures to hold those responsible accountable and mechanisms to prevent similar incidents from happening again.  He urged, in that context, full follow-up to the implementation of resolution 2166 (2014).  Welcoming the ongoing investigation, he underscored the importance of thoroughness, transparency and impartiality.  He called on the Council to continue its work to forge consensus on all appropriate measures to ensure accountability.

Taking the floor a second time, Mr. CHURKIN said the meeting had been an emotional one, which had forced him to ask whether there were any limits to the political exploitation of the grief of the victims’ families.  He could not understand why disapproval of one mechanism of ensuring justice was being equated with impunity.

Turning to the statement by the Minister for Foreign Affairs of Ukraine, he asked why that Government had allowed a civilian aircraft to fly over what it had known was a conflict zone.  He wondered whether anyone in Ukraine had been punished for such dereliction of duty.  Indeed, the tragedy was terrible for the affected countries and families, as well as for the diplomats and experts working together to ensure justice and accountability.  Unfortunately, today’s meeting was unlikely to shed light on all aspects of the tragedy and bring the perpetrators to justice.