

Flying over or near Conflict Zones – *The Way Forward*

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Preface

On October 13, 2015, the Dutch Safety Board published the Final Report MH17 Crash following the crash of Malaysia Airlines flight MH17 on July 17, 2014. This report contained eleven recommendations aimed at better controlling the risks associated with flying over and near conflict areas. These recommendations have been addressed to the International Civil Aviation Organization (ICAO), the International Air Transport Association (IATA), states and airlines.

The Dutch Cabinet sent its response to the Dutch Safety Board on December 8, 2015 (Parliamentary Papers II 2015-2016, 33 997, no. 56), in which the recommendations are endorsed. The recommendations logically have a strong international component. As a result, the follow-up of the recommendations depends on the cooperation between and the joint approach of all international partners involved. The Netherlands is actively promoting this. The Dutch Parliament was periodically and extensively informed about the progress of the follow-up of the recommendations via debates and answers to parliamentary questions and letters.

Follow-up investigation

The Dutch Safety Board launched a follow-up investigation in 2018 to gain insight whether risk management for flying over conflict areas has improved since the crash of flight MH17 and to gain insight into the extent to which international organizations, states and airlines have followed the recommendations and have addressed the underlying safety deficiencies.

In the follow-up investigation, the Dutch Safety Board finds that since the crash of flight MH17, various parties have taken important steps to better manage the risks associated with flying over and near conflict areas. The changes introduced have also led to a better control of the risks of flying over conflict zones and the related risk management has been given a concrete place in the safety thinking of the aviation sector. The Board notes that not all of the intended changes have been realized yet and concludes that permanent attention is needed to maintain the course that has been taken, and sees the following three focal points:

- Practice shows that states in which there is an ongoing armed conflict will not implement restrictions for their airspace on their own initiative. States involved in an armed conflict will have difficulty when it comes to guarding the safety of their airspace. Although ICAO, as an intergovernmental organization, is in this position, ICAO does not take an active role in urging states to ensure the safety of their airspace and to support them in this.
- Information sharing in rapidly escalating conflict situations occurs ad hoc and through informal networks. In this way, states and airlines do not ensure that threat information is shared timely and airlines are in the position to take measures. To ensure access to relevant information it is essential to maintain a good relation and reciprocal communication between an airline and the intelligence services of the state where the airline is established.
- The public accountability of chosen flight routes by airlines is the final link in keeping airlines attentive to their responsibility for performing thorough risk assessments related to flying over or near conflict zones. Airlines account only little or not at all for their chosen flight routes. IATA does not stimulate this either.

Response to the follow-up investigation

The Dutch government agrees with the findings of the Dutch Safety Board that not all intended changes have been realized, that it is important to consolidate the changes already implemented and that the parties are taking the announced next steps. It is essential here that the follow-up of the

recommendations depends on the cooperation between and the joint approach of all the international partners involved. In addition, it is important the willingness of parties to actively inform each other about (possible) threats to protect citizens and passengers worldwide.

From the 11 recommendations of the Dutch Safety Board, addressed to ICAO (6), IATA (4), states (2) and airlines (1), 1 recommendation is assessed "adequate", 6 as "partially adequate" and 4 as "inadequate" (see Appendix D of the follow-up investigation). The cause of the number of partially / inadequately appreciated recommendations (10 out of 11) can be explained by the fact that the proposals as such have already been prepared and are well advanced, but have not yet been fully completed for 100%. The development of proposals by international organizations takes a lot of time, because these organizations, in particular ICAO, must propose proposals to tackle regulatory actions, first of all with the member states to be prepared, discussed and then supported by a large majority. This takes place through structured consultation, whereby the implementation of change proposals is scheduled at fixed times of the year to limit the administrative burden for the member states. As a result, according to the Dutch Safety Board, it will certainly take until 2020 before all the changes that are now envisaged have been implemented.

The 4 recommendations with "inadequate" assessment are diverse in nature and progress depends primarily on the commitment of the international world community of states, IATA and the wide variety of airlines worldwide. This process often leads to globally formulated proposals, which means that it is not to be expected that all recommendations in the future can be assessed entirely satisfactory to the wishes of the Dutch Safety Board. In addition, the Dutch Safety Board indicates that only a (very) limited part of the target group has been surveyed and draws its conclusions based on this (12 national civil aviation authorities and 36 airlines from 18 different countries, from within and outside Europe; Appendix A, p75 [editorial note: p69 in the English version] under Surveys). ICAO has 192 member states and IATA has around 290 members from 120 countries.

With regard to the three focal points mentioned by the Dutch Safety Board, the following is noted:

States involved in an armed conflict may have difficulty monitoring safety in their airspace. Since in these countries the authority of the national government is often weak or factually absent, the Netherlands has promoted at ICAO and IATA that (other) countries and airlines seek cooperation on a regional scale to share information. More practical effect is expected from this than relying on the information from the aforementioned states. The new ICAO manual Doc 10084 describes examples of good practices on cooperation on a regional scale.

In the field of information sharing and risk assessment, the Netherlands remains actively committed to the completion of the international actions that are necessary to comply with the recommendations. At national level, the Netherlands has signed an agreement with government services and the airlines for sharing civil aviation threat information that is functioning satisfactory (see evaluations, Parliamentary papers II 2016-2017, 24 804, no. 95 and Parliamentary papers II 2017-2018, 24 804, no. 97). The third evaluation has taken place. The Civil Aviation Directorate from the Ministry of Infrastructure and Water Management will continue to explain the functioning of the agreement - which is included as a good practice in the aforementioned ICAO manual Doc 10084 - in various workshops on a European and international scale.

In order to provide public accountability for the chosen flight route as the final link for the airlines, the Dutch Safety Board finds that, unlike most airlines worldwide, the major Dutch airlines post their flight routes on their websites. It also states that the passenger can request information about the flight route from the airline. The Civil Aviation Directorate will continue to plead towards IATA to address this on a wider scale.

The Dutch government will continue to work nationally, European and internationally with the parties involved to better manage the risks associated with flying over and near conflict areas. The focal points of the Dutch Safety Board are part of this commitment.