

## **MEDIA RELEASE**

### **An MH17 Tribunal: Why it is Necessary and Timely**

Twelve months ago, on 21 July 2014, the UN Security Council unanimously adopted Resolution 2166, which called for an independent investigation into the downing of Malaysia Airlines flight MH17, and for those responsible to be held to account. It also decided to remain seized of the matter.

Australia, Belgium, Malaysia, the Netherlands and Ukraine, the countries undertaking the independent criminal investigation into the downing of MH17, are consulting closely with all members of the Security Council to seek their support to establish an independent tribunal to hold to account those responsible for the downing of MH17.

The independent air safety investigation has been conducted in full compliance with all International Civil Aviation Organization (ICAO) guidelines and Annex 13 of the Chicago Convention. It is an independent investigation with broad international participation.

The UN has expressed confidence that the investigation is being carried out in line with international standards. On 17 July 2015, the one year anniversary of the downing of MH17, UN Secretary-General Ban Ki-moon welcomed the progress made by the independent international investigation in accordance with Security Council Resolution 2166. On 28 October 2014, the ICAO Council expressed its support for the ongoing independent international investigation.

The objective of the air safety investigation is to determine the cause of the MH17 incident – it is not intended to identify whether any crimes have been committed or to identify those responsible.

Alongside the air safety investigation, the law enforcement authorities of Australia, Belgium, Malaysia, the Netherlands and Ukraine have been cooperating in a Joint Investigation Team to conduct a criminal investigation. This investigation has been equally comprehensive and independent, carried out in accordance with the highest international standards.

Consistent with standard practice, and to ensure that future prosecutions are not jeopardised, the criminal investigation is confidential: it will not result in the publication of a report that will be available to anyone other than the prosecuting authority.

The establishment of a tribunal by the Security Council prior to the completion of the criminal investigation would ensure that the tribunal was as depoliticised as possible. The judges, prosecutor and registrar would be appointed by the UN Secretary-General. The Prosecutor would be entirely independent and would have the power to conduct additional investigations.

Establishment of the tribunal at this stage is also consistent with the Security Council's own practice. All other ad hoc criminal courts and tribunals were established prior to the completion of investigations..

It is important for the Security Council to take clear and decisive action against those responsible for the downing of MH17 to send a clear message to the growing number of non-State actors with the ability to target civilian aircraft that such attacks will not be tolerated.

The Security Council unanimously demanded accountability. One year on, the time is right for the Council to put this demand into action.

Justice delayed is justice denied.