

IF YOUR FRIENDS WON'T TELL YOU ...

**UKRAINIAN SECURITY
&
NAZAROV'S CRUCIFIXION**

20 December 2020

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Pilate: "What then shall I do with Jesus...?"

Crowd: "Let Him be crucified!"

Pilate: "Why, what evil has He done?"

Crowd: "Let Him be crucified!"

Pilate: "I am innocent of the blood of this just Person...."

Crowd: "His blood be on us and on our children."

There is an old saying in America, that "if your friends won't tell when you are making a mistake, they are NOT your friends."

Since the beginning of the Donbas War in 2014 the two of us have had the unique opportunity to observe and interact with the Ukrainian Armed Forces of Ukraine. Hodges as Commander of U.S. Army Europe from 2014-2017, led American military assistance in training, supporting and equipping the Ukrainian military; Karber, invited by the government as a "front-line observer," arrived in March 2014, and in 33 trips to the country spent 180 days in the combat zone. Despite viewing the conflict from different perspectives, our joint observations have a high correlation, and we consider it our honor to have witnessed first-hand, the rebirth of the Ukrainian military, forged in caldrons of blood and bravery, and getting to know the new generation of combatant commanders now leading what has become Europe's largest Army.

Thus, it is with heavy heart that we feel compelled to tell our friends – you are in the process of making a terrible mistake – one that is not only unjust but will endanger Ukraine's future security.

It is painful to dredge up the past, and even harder to warn a friend about an impending mistake, but when untoward events resurface carrying a lamentable legacy forward, the honest observer and true friend cannot turn a blind eye and stay silent.

On 14 June 2014, a transport plane carrying 49 crew and troops was shot down over Luhansk airport, killing all on board.

The responsible party was Russia – unfortunately this obvious fact is increasingly lost in Ukraine's internalized demonization of its own military and cathartic need to punish a "criminal."

Only one man has been singled out and blamed for that tragedy, and now 78 months later, is remanded to prison for a seven-year term. He is 58 year-old retired Major General Viktor Nazarov, former deputy for operations in the ATO command. Ukrainian society has been led to view him as a "Villain," and the seven-year-long slander against him has become the modern media equivalent of social and juridical Crucifixion. But in reality, he and the Ukrainian Armed Forces are "Victims" of the misconceived prosecutorial malpractice in "civilian criminalization of combatant command decisions."

This sends a chilling message to every officer and troop leader in the Ukrainian military – and the caution, prevarication and indecision it inculcates is both self-defeating and deadly on the modern battlefield.

No other military in the West would permit this "civilian criminalization of combatant command decisions" and what American or Allied commander would want his troops to be put under the same onus, or worse, be compromised on the battlefield with partners suffering decidophobia (fear of making a decisions)?

Thus, with Nazarov's Crucifixion and personal tragedy, Ukraine is in danger of inflicting an even greater disservice to its own security, and while the evisceration of commanders is only in the embryonic stage, if not reversed, accelerating erosion will seal the country's fate in isolation and defeat.

THE WAGES OF NEGLECT

Ukrainian society was not ready for this war. The interim leadership had struggled to keep the country functioning in the wake of the collapse of the previous regime, while dealing with a rapidly escalating crisis, managed to pull off a Presidential Election – a democratic achievement that a free Ukraine’s nemesis, Valdimir Putin, had declared “won’t happen.”

Moreover, they were dealing with a patrimony of military neglect and foolish policy decisions made in the previous decades which set the stage for this Crucifixion, specifically:

- Abandonment of their Joint Operations Command (“JOC” - paid for in part by the American taxpayer, disestablished in 2010);
- Dissolution of Military Counter-Intelligence (significantly reducing military security and creating barriers to rapid dissemination of intelligence); and,
- Movement of the Military Adjutant (with judicial responsibility for military crimes) from the Ministry of Defense to the civilian General Prosecutor’s Office (abolished in 2005 under an initiative of then Prime Minister Yulia Tymoshenko).

With respect to the latter, it is a mantra of some “reform” proponents that the Military should not be allowed to “judge” themselves, out of concern for “cover-up” and “corruption,” which has some merit when applied to actions against civilians or criminal actions covered in the Civil code, but is a fundamental mistake when applied to command decisions where troops are put at risk.

Only a Military Court with senior members having experience and expertise understands that “putting troops at risk” is a job requirement under conditions of military necessity – which places the evaluation of performance in the context of a specific tactical and operation contingency. That involves not only access and comprehension of operational intelligence but a higher command appreciation of the competing demands of the situation, cost-risk trade-offs, the complexity of joint action, and the importance of making decisions in “the fog of war” where there is often a high-level of uncertainty. These are issues and perspectives that neither lawyers in the General Prosecutor’s Office (including junior uniformed Adjutants serving there) nor Civil judges are professionally qualified to evaluate. While other mistakes of the pre-war period have since been rectified, this one is still in effect.

Ukraine’s “Anti-Terrorist Operation,” (ATO) was hastily assembled in spring of 2014 as an emergency response to the Russian supported Donbas insurgency. A “hybrid war” situation not anticipated in the Constitution – in theory, the President of Ukraine, as Commander-in-Chief, could have declared Martial Law and called Russian aggression against Ukraine openly and legally by its name and to deploy Armed Forces according to the Constitution. A Presidential decree on the deployment of Armed Forces due to the aggression against Ukraine, approved by the Parliament, would have been a basic, fundamental step regarding the legal status of the Conflict. And, it would have helped make the case that combatant command decisions should not have been considered in Court according to peace time rules and proceedings.

Had the country not been in the midst of internal political upheaval, with an Interim Government transiting to new Presidential elections, a pro-active approach might have been initiated by an established Commander in Chief. But, It should also be noted that in the Spring of 2014 up thru the Presidential election, there was grave concern in Ukraine and among their international supporters, not the least of which being the US, about provoking Russia. Some argued that Martial Law was the equivalent of a “declaration of war” – a perfect excuse for Putin to unleash full scale attack in an international conflict that Ukraine would be responsible for having provoked. A concern reinforced by Russian narrative and backed up by their mobilization of forces along the Ukrainian border that spring as well as evidence of the existence of Russian War Plan for invasion to the Dnepr suggesting Putin was ready to pounce on any

provocation. But neither Ukraine nor any of its international supporters were ready for that. Indeed, there was heavy Western pressure put on Kyiv to minimize provocative statements and actions. In fact, American military assistance in that period was explicitly kept “non-lethal” and focused on donations to the Internal Security Forces, in part because it was assumed (wrongly) that the struggle would remain “hybrid” between security troops and internal “terrorists” and in part to keep the conflict from escalating to a full-scale war Ukraine would lose.

Finally, Martial Law with Parliamentary approval (consistent with the Constitution) as was eventually done on 20 February 2018, when President Poroshenko changed the status of the ATO from an “anti-terrorist” operation” to “taking measures to ensure national security and defense, repulsing and deterring the armed aggression of the Russian Federation in Donetsk and Luhansk oblasts” which gave authority to the Ukrainian military to assume overall command of Donbas war zone instead of the Internal Security Service. Unfortunately, the four-year hiatus left military commanders to be judged in Court according to peace time rules and proceedings.

In the early period of the conflict, the ATO was an amalgamation of Ministry of Interior, State Border Guard, Security Service, volunteer and regular Air Force and Army units, many of which had to be thrown into the front piecemeal as ad hoc Battalion Tactical Groups, separated from their parent Brigades as they mobilized. NATO’s June 2015 Fact Sheet on “Practical Support to Ukraine” observed that the organization and structure of the embryonic ATO “puts the SBU rather Ministry of Defense or General Staff in the formal lead of the operations making it difficult at times to achieve unity of command,” inhibiting the “functioning as an effective operational command.” And NATO also noted that the disestablishment of the Joint Operations Command eliminated a “critical operational command echelon” which, as the conflict escalated in 2014, was informally reestablished on an ad-hoc basis without legislative remit. With neither formal authority or prescribed definitions of the roles and duties of officers operating in this Ad Hoc arrangement, left the vulnerable to ex post facto allegations of abuse of office and being held accountable to the Civil rules related to the use of force. This was eventually rectified, consistent with the revision of ATO command responsibility, by the re-establishment of a Joint Forces Operation command in Donbas on 30 April 2018.

The impact of these pre-war policy decisions, undoubtedly cost hundreds of lives for which no-one has been held accountable. That they had a very negative impact on the performance of Ukrainian Armed Forces between 2014-2018 is hardly surprising, that the commanders and troops in the field were able to fight and not be defeated under these limitations is to their credit and little short of amazing. That the combination of these policy decisions left combatant commanders vulnerable for actions taken -- that would be exploited by lawyers attempting to win financial compensation from the Government is also not surprising. What is shocking is that that “the civilian criminalization of combat command decisions” has, to this date, still not been revoked and that attorneys and prosecutors would continue to be allowed to get away with it at the expense of those who rose to the occasion and saved the country in its darkest moments.

BATTLE FOR THE AIRPORTS

At the beginning of the insurgency in 2014, Donbas contained three major airports – Kramatorsk military airfield, Donetsk International Airport and Luhansk International Airport -- and there were important reasons for the Ukrainian government to deny their occupation and operation by proxy forces and their Russian mentors:

First, these large airports with long-runways handling heavy aircraft could be used for rapid resupply and shifting of forces by Russian helicopters, as well as civil and military fixed-wing transports;

Second, Russian combat aircraft, both SU-25 ground attack and SU-24 strike fighters, had been photographed with ad hoc “separatist” markings painted over Russian Air Force camouflage at nearby airfields in Russia – with Donbas airports in proxy insurgent hands, these “little green planes” could be used against Ukrainian forces under the subterfuge that these were not really Russian, but Ukrainian Air Force jets flown by defecting Ukrainian forces operating from inside Donbas (a ruse used by Soviet fighter regiments as far back as the Korean War);

Third, as “international airports,” both Donetsk and Luhansk could provide the proxy insurgents with external connectivity to other countries and thereby gain legitimacy and recognition as “states” in the international system.

Thus, it is not accidental that for both sides, the three airports became strategic objectives. Nor is it a surprise that as government forces secured these objectives behind-the-lines, they became surrounded and besieged with some of the most intense battles of the war fought for their control.

Over the previous two decades, Ukraine’s Armed Forces had been underfunded, ignored and generally treated with “benign neglect” with only 6,000 infantry in 14 Battalion Tactical Groups ready for combat - the best trained and led units being the two Special Forces Regiments and five Airborne/Air Assault Brigades (and they were only at 70% strength). These units also had a natural affinity for airports as their base of deployment as well as having practiced their seizure and security.

The Battles for Donbas Airports occurred in the following sequence:

- **Kramatorsk Military Airfield** – Following the take-over of Slovyansk and Kramatorsk in mid April 2014, the separatists established a blockade of the airfield but it was retaken by the 8th Special Forces and elements of the 25th Airborne Brigade. Defended by less than 200 troops, the airfield was cut off from ground reinforcement and under periodic attack. Beginning 15 April, 9 aircraft in the area were engaged by ground fire, with MANPADS shooting down 1 fighter and 5 helicopters, the loss of a surveillance An-30 CLANK by MANPADs on 6 June triggered calls for an investigation by “prosecutors” (but, in the wake of Luhansk Il-76 events, was not pursued). The defenders held for 81 days until relieved in Ukraine’s counter-offensive following the liberation of Sloviansk in the first week of July.
- **Luhansk International Airport** – 18 kilometers south of the city and only 30 kilometers from the Russian border, was the farthest from Ukrainian controlled territory and the most vulnerable. Between April and May of 2014, detachments from the 25th and 80th Airborne Brigades were in place to control of the airfield and held a 10-kilometer defensive perimeter. Almost immediately, Russian Remotely Piloted Aircraft (RPV) and Electronic Warfare helicopters were flying overhead and soon the separatists blocked ground access to Luhansk. On the 8 June proxy insurgent launched a major attack to take the airport which was defeated but also a portent of what was to come. With combat closing in, Luhansk airport formally ceased civilian operations on the 11th. During this period, in a systematic campaign along the border, Russian forces overwhelmed multiple Ukrainian border guard positions leaving a 130km unprotected gap through which troops and weaponry began pouring into the Luhansk oblast. The surrounding force was getting stronger and the defensive perimeter shrinking with fighting a daily occurrence – and in the absence of a secure line of resupply – the situation at Luhansk airport was turning critical. To save the beleaguered troops, aerial transport for resupply, reinforcement and medical evacuation was the only option. The attempt to send transports in on 14 June, that involved the shoot-down of the IL-76 on the 14 June, ended resupply by fixed-wing aircraft, and again resulted in calls for an investigation. Luhansk airport was held for a total of 145 days, but sadly, in the end, assaulted with an armored offensive that included Russia’s latest T-90 tanks, the surviving Airborne defenders, the majority of whom were wounded, withdrew to Ukrainian lines via cross-country ex-filtration on 1 September.
- **Donetsk International Airport** – Ukraine’s newest and second largest airport, was seized by a combination of separatists and Russian/Chechen mercenaries on 26 May 2014. The government

reacted the same day, with the 3rd Special Forces and Air Assault troops, supported by Army Aviation Mi-24 HIND gunships, taking it back and inflicting the first major defeat on the insurgents when they tried to counter-attack. The airport was besieged and under heavy attack for a total of 242 days, with more than 1,000 troops from many other units participating, and massive artillery strikes leaving the runway unusable and facilities in ruin. It's valiant defense by volunteer "Cyborgs" became a national symbol of resistance, but with the collapse of the control tower on 16 January 2015, which Ukrainian forces used to observe insurgent ground movements, the defensive value was diminished and it finally fell to Russian assault on 21 January 2015.

It is worth noting that during summer 2014 battles, Ukraine reported 18 planes shot down (Fighters, Attack and Strike Aircraft, as well as Helicopters, Transport and Surveillance aircraft), but only one of those, the IL-76 at Luhansk was subject to an investigation that led to criminal charges.

Since the creation of airborne forces and their employment behind opposing lines, it has been common international practice to resupply them via air transport. This is not without risk and the potential loss of large, slower flying and vulnerable re-supply aircraft, an acknowledged cost is supporting these operations. However, if the position is strategically important with the survival of troops on the ground hanging in the balance, that risk is recognized as a military necessity. Such a mission, and the losses associated with it, is not new in the annals of modern military history, for example:

- In the 1942 Stalingrad encirclement of the German 6th Army in 1942, they were supported by military transports bringing in reinforcements and taking out wounded during which they lost 488 planes and 1,100 servicemen;
- In the 1944 Allied Airborne operation "Market Garden," three Airborne Divisions were dropped behind German lines to seize key river crossings and open a path for an armored penetration over the Rhine – the British 1st Airborne Division, the deepest and inserted at Arnhem, ended up being a "bridge too far" and while encircled 36 resupply transports were shot down;
- In 1954, at the Battle of Dien Bien Phu, French paratroopers were surrounded and lost 62 aircraft with another 167 damaged in trying to resupply their forces;
- In 1968, in the Battle of Khe Sanh, the besieged US Marines had numerous helicopters shot down and lost 3 (C-123) transport aircraft (two of which while on the ground) and the third, in a situation almost identical to that at Luhansk, had a C-123 hit by ground fire on-approach, was destroyed in flight, killing all 40 crew and troops on-board;
- In 2003, US Air Force transports were ordered to land at the Baghdad airport even though they were under fire on approach and during landing.

As can be seen in the above examples, supplying troops on the ground behind enemy lines is a high-risk venture, but it is accepted practice in every country fielding Airborne units. And, it should be noted, that in NOT one of the above (or any other similar example in military history) was any officer ever charged (let alone convicted) with "criminal negligence" for ordering or organizing aerial resupply of a surrounded force that endangered or produced the loss of a transport aircraft – except in Ukraine.

THE FACTS OF THE CASE

The shutdown of IL-76MD CANDID (Registered UR-76777) with 9 crew and 40 troops near Luhansk is now well documented.

The 25th Airborne Brigade, was holding the area around the airport. Luhansk was a strategic position – the center of proxy insurgents in eastern Donbas and declared capital of the "Luhansk People's Republic," as well as a major supply route for Russian weaponry moving toward Donetsk. As light infantry, the defenders of Luhansk airport lacked tactical mobility and anti-tank weapons – both of which became critically important as columns of Russian armor began infiltrating across the porous border during the

first two weeks of June 2014. The commander of the besieged unit at Luhansk, who requested armored anti-tank equipment and reinforcements, later stated:

The situation at Luhansk airport was very serious. Regarding the downing the IL-76... at that time, the airport was completely surrounded.

The response of the ATO command was rightly focused on his emergency request and immediately reacted. Major General Nazarov, as the ad hoc (informal) ATO deputy for operations, was tasked with the responsibility of organizing a response with the subordinate Airborne & Air Force units making the preparations and detailed flight instructions.

Prior to that fateful day in Luhansk, 14 reinforcing flights had made the trip safely to the Luhansk airport garrison. So, in response to the request by the commander at Luhansk airport and his need for armored vehicles which could only be carried by large transports, that was the natural and sole option available.

On Friday, 13 June 2014, a company of 118 elite paratroops from the 25th Airborne Brigade assembled on the tarmac at Dnepropetrovsk airport. During the afternoon and evening they loaded equipment and boarded three large four-engine IL-76MD transports of the 25th Transportation Brigade which had flown-in from their home base at Melitopol. The troops of the 25th Airborne had all volunteered for what they knew was a dangerous mission going to reinforce their comrades surrounded at Luhansk airport. In addition to the troops and ammunition resupply, the three IL-76 transports were tasked to bring six BMD-2 airborne armored combat vehicles equipped with anti-tank missile launchers, which were badly needed at Luhansk for both for mobility and defense against enemy armor.

Three IL-76 aircraft with troops and supplies were organized at Dnepropetrovsk (Dnipro) airport -- a natural choice for the 25th since it was the only major field capable of handling the heavy transports within a 50km radius of the Brigade's garrison at Hvardiiske. Elsewhere, a fourth aircraft (smaller twin engine An-26 CURL) was added to the flight group. Dnepropetrovsk had one disadvantage -- as a joint civil/military airfield, the runway and loading area were exposed to public view, with some family and friends of the departing paratroops even making social media postings during and after departure.

The first IL-76 landed safely at 1am, (the pilot reported that it was done without incident, but others have claimed ground fire was seen near the airport as it landed). The second flight, tried to land 49 minutes later. For whatever reason (and only discovered after the event), this IL-76 did not follow normal protocol -- "requirements of security measures used during flights of aircraft in the area of ATO" -- for approaching an airport area where it could come under attack:

- It did NOT take an alternate route but followed the same flight path as its predecessor;
- In approaching the airport, the aircraft did not comply with the requirements concerning maximum gradient reduction (steep glideslope) to reduce exposure from ground fire (perhaps due to the heavy load of armored vehicles);
- The plane, at a distance of 10 kilometers used aeronautical lights, again in violation of the required security measures to be taken by flights in ATO, which demand that operations be performed in the dark with no navigation flares/lights and radio silence.

The implementation and exercise of these "requirements" were the responsibility of the Air Force and pilot, not ATO Operations, and may have contributed to its subsequent vulnerability.

As it approached Luhansk airport the second IL-76 was engaged by ground-fire, and, at an altitude of 400 meters, hit by an unexpected MANPADS (Man Portable Air Defense System Surface-to-Air Missiles), and exploded near Novohannivka, a small village 20 kilometers south of Luhansk, killing all on board. The trailing IL-76 and AN-26 aborted and returned to their bases.

Russia began introducing MANPADS in April 2014 but all of these had been in the Slovansk/Kramatorsk area. In the Luhansk region, during the second week of June, there rumors that local proxy insurgents might be receiving and training with MANPADS but no engagements or hard evidence. The intelligence

was fragmented, contradictory, flooded by rumors, 90% of which proved false or exaggerated and all of which took overloaded intelligence staffs time to evaluate. Some of the rumors were clearly tactics of Russian “disinformation warfare” intended to intimidate, inhibit and impede Ukrainian military initiative. Separatist leaders were quick to claim responsibility. Initially saying that the aircraft was shot down by anti-aircraft machine gun fire, but later forced to admit it was a Surface-to-Air Missile (MANPADS) – a claim backed-up when a Russian supplied tube for the launcher was found near the point of engagement. Subsequently it was learned that at the time of the shoot-down, within the Luhansk People’s Republic military command, there were two Battalions undergoing training with MANPADS, and one of those Battalion Commanders, named Hureyev took responsibility for the attack on the IL-76 (Note: recent revelations suggest it was a mercenary Wagner team secretly infiltrated in from Russia that brought the missile and did the firing). Alexei Toporov, military spokesman for the LNR, said “the aircraft was shot down after Ukrainian ‘occupiers’ refused an ultimatum to abandon the Luhansk airport.”

CLAMOR FOR CRUCIFIXION

The reaction to the shoot-down was immediate and involved both International and Ukrainian responses, with a notable difference between them -- the American and European leaders, based on their best intelligence, focused on Russian responsibility, while Ukrainians became increasingly preoccupied with an internal culprit.

World leaders immediately “expressed concern” over the IL-76 shoot-down and complained to Russia about its sending weapons into the Donbas in support of the insurgents. German Chancellor Angela Merkel stressed that “for a ceasefire to last, Russia must better control its border with Ukraine to stem the flow of weapons and fighters...” She and French President Francois Hollande called Vladimir Putin to convey their “dismay.” The White House, with its own U.S. intelligence data and awareness of those responsible, “rejected Russia’s statements that it was not arming the rebels,” and issued a formal and strong condemnation:

We condemn the shooting down of the Ukrainian military plane and continue to be deeply concerned about the situation in eastern Ukraine, including the fact that militant and separatist groups have received heavy weapons from Russia ... which is a significant escalation.

American Secretary of State John Kerry spoke directly to Russian Foreign Minister Sergey Lavrov to “complain” and in the wake of the shoot-down assured Ukrainian Prime Minister Arseniy Yatsenyuk that “the United States and its European Allies were prepared “to raise the costs for Russia if it does not end the flow of weapons across the border and break with separatists.”

One can debate whether the Western reaction was consistent with the rhetoric, and clearly it did not dissuade further Russian aggression, but nowhere in any official commentary was blame for the incident placed on any party other than Russian armed insurgents. If Western military commands and intelligence agencies thought that Ukrainian dereliction shared culpability in the loss of the aircraft, that would have been made known, and official condemnation of Russia far more muted.

For Ukraine, the shoot-down and number of losses from one incident was a shock to the nation and briefly seemed like a turning point in the conflict – bringing home to the Ukrainian people the realization that “little green men,” proxy insurgents and mercenaries were not going to be dealt with by words and diplomacy but at the cost of blood and body bags. And for a few days, Ukrainian society was fused and focused on the real culprit, with crowds marching through the streets of Kyiv targeting the Russian Embassy.

But the magnitude of the loss, particularly of young troopers who had heroically volunteered for the mission, at that early stage of the conflict also produced an immediate outcry from the families which became a “cause celeb” with press and public outcries to “hold those responsible” for the tragedy. Few could imagine that this was the start of a real war – a bleeding conflict that still continues with a cumulative loss of over 13,000 souls. But in early summer of 2014, Russia’s role in fueling war in Donbas was still embryonic, carefully concealed with a sophisticated disinformation campaign. So, with an ambiguous external target, Ukrainian outrage turned inward – directed against their own military whose lack of readiness and early performance was already under criticism. Given that Russian platforms, Vkontakte and Odnoklassniki, hosting much of Ukraine’s social media had yet to be banned, it is an open question as to the role (if any) pro-Russian trolls and proxies may have played in steering blame to the Ukrainian military and inflaming public anger, but it was a unique opportunity for the application of information warfare and worthy of a retrospective investigative answer. The vulnerability of the moment is underscored by the likelihood that if the plane had gone down later, during the big battles of late summer 2014 or winter of early 2015, the loss would have been put in a wartime perspective, and the truly guilty party, Russia, the focal point of accountable for one more atrocity.

In the immediate aftermath, Ukraine’s new Commander in Chief, President Petro Poroshenko, elected to office less than three weeks before the incident, declared a “Day of National Mourning” stating that “it’s a big loss not only to the victim’s families but also to the entire country.” Subtly, the political response to public outrage shifted. Poroshenko instructed the Cabinet of Ministers to provide assistance to the families of victims, and in a televised emergency meeting, publicly scolded the head of the country’s Security Service for “omissions” in measures to protect military aircraft and called for “a detailed analysis of the reasons,” vowed to punish “those responsible for the tragedy in Luhansk,” and hinted that personnel changes were imminent. Acting Minister of Defense Mykhailo Koval, reportedly relieved the Chief of the General Staff, Mykhailo Kutsyn, of his duties “for the period of the investigation” into the incident, and he was coincidentally retired three weeks later “due to a concussion received in the combat zone.”

On 17 June 2014, a parliamentary “Interim Commission” of the Verkhovna Rada was created to investigate the incident. They concluded that there was “negligence” in the planning of the aerial reinforcement. It should be noted that they did not evaluate what the military alternatives were for reinforcing the besieged garrison at Luhansk, they did not address the poor quality of “rumor” based intelligence in that period, and they did not find “criminal” intent.

Having looked at the situation and facts, the co-chair of the Commission, parliamentarian Oleksander Chornovolenko of the Batkivshchyna Party, gave an assessment of the military operational issues related to the Luhansk incident with an implied caution against a simplistic search for a scapegoat:

The best situation would be to not send anyone in battle, and not have anyone get killed. But that is not possible during war. The question is was this mission conducted professionally and morally. You have to reinforce the troops and the borders. How do you get reinforcements in? This is the point of securing an airport. A plane crashed while trying to send in reinforcements. If I were to say, they shouldn’t have flown in, then how would you justify that to the lives of our soldiers on the ground waiting at the airport. These questions are not straight forward.

But this informed, nuanced and rational explanation of military realities was ignored.

By August, Ukraine’s Prosecutor General, Vitaly Yarema, announced that “charges will soon be filed against the Defense Ministry officials who allowed this crime to be committed.” From this moment on, public attention was turned from the terrorist perpetrators who fired at the plane and their Russian suppliers who armed them with lethal missiles, to a frenetic search for the internal “criminals” who put

the IL-76 in harm's way. The families of the fallen were led to believe that "blood money" would salve the pain of their loss by lawyers lining up to make their fame and fortune. Vitaly Pogosyan, lawyer for the families, with history of supporting anti-government litigation, in numerous press appearances consistently linked the search for official "criminality" to monetary payment -- claiming 68 victims and filing suit for compensation of "moral damage at 500 thousand UAH" for each. It was openly acknowledged that IF the case succeeded, there could be more business to follow from other incidents.

On 23 November 2014, Major General Viktor Nazarov, deputy for operations in the ATO command, was indicted for "habitual neglect of duty" by the General Prosecutor's office. Two days later, the Pechersk District Court arrested Nazarov on "suspicion of involvement in the IL-76 collapse" and set bail in the amount of 365,000UAH. Thus began the "civilian criminalization of combatant command decisions" -- one of the most destructive things that can be done to any military organization.

For the next Thirty-four months Nazarov's case dragged on in civilian court proceedings and the public Crucifixion continued unabated. Ignoring the chaotic and confused situation at the time and the kludged nature of the ATO command structure, many in the "reform" movement took up the IL-76 incident as a "cause célèbre," not on the specifics of the crash or even Nazarov's specific diligence, but as a general indictment of the Armed Forces that were blamed for Illovaysk and Debal'tseve as well as other real and imagined military losses in the summer campaigns of 2014 and Russian winter offensive of 2015.

For example, the chief editor of [censor.NET](#), Yuri Butusov, reflecting the hostility of many reformers to the alleged failings of the Army in the early days of the war, declared this to be a trial not of a man, but an institution:

... the competence and expertise of the commander will be judged. It will be the first case in the Soviet and Ukrainian military history because the soldier's life has always been worth nothing in our country.... and the acting General, a senior official, will be held accountable for deaths of soldiers for the first time ever. It's a standard civilized practice for Europe and the United States but quite an event for us....

The last claim is demonstrably false with respect to the United States, which insists that Military Officers be tried for military offenses under Military Court Martial with senior officers as jury. Abandoning all pretense of journalist objectivity, the same editor gratuitously attacked the accused's family which had nothing to do with the charges and repeatedly called the general a "criminal" and "traitor." Exploiting the power of the press, [censor.NET](#) began promoting an agitprop campaign, calling on "fellow journalists and the public" to make this a "high profile trial."

The universal principle of an accused being "treated as innocent before found guilty" was thrown to the wind and angry voices in social media and on television excoriated Nazarov for "killing our boys." No politician, retired Ministers of Defense or former senior military officers, spoke out publicly to counter any of the inflammatory and derogatory language used against the general. A content analysis of Ukrainian language press coverage of the allegations against Nazarov and his trial, shows a 80% bias against him, 15% neutral, and less than 5% giving his side of the story.

TRIAL or CIRCUS?

The trial of Nazarov was unprecedented for Ukraine, and in the absence of a proper model, it became evident that the event was more about social catharsis than discovery of facts or search for justice. The civilian prosecutor made numerous prejudicial publicity statements before the trial began declaring he would search out the internal "criminals" who "caused" the crash. With families protesting in front of the court building, holding photos of the deceased and demanding that Nazarov be found guilty, the proceeding turned into a "show trial." When officers of both the Eastern and Western Military Districts attempted to make the case that Nazarov's trial was ignoring the military realities at the time of the

incident, they were rebuked as “active officers” for going public and received scant press attention. Attendance in the courtroom was prioritized in favor of the plaintiff families versus uniformed military supporters of Nazarov who were left outside.

As a legal proceeding it was held “*coram non iudice*” -- in a court neither competent to judge the military operational context of the event nor following fundamental judicial standards. As the trial evolved over multiple sessions, all sense of probity was lost, violating virtually every modicum of courtroom demeanor and standard of justice in the civilized world, it turned into a Circus:

- A common criminal court presided over by a civilian judge who blatantly pandered to the complainants and permitted the spectacle to be televised.
- The cramped courtroom was packed to overflowing with family of the lost soldiers allowed to yell accusations and vituperations during the court proceedings, including one emotionally distraught mother physically assaulting the defendant.
- Although the prosecutor’s office claimed to have interrogated 132 witnesses and conducted 112 examinations, of those called testify, which included ecologists, criminologists, psychologists, economists, technical engineers and experts in intellectual property, 95% had no relevant facts actually bearing on the charges.
- Hearsay testimony was allowed and treated as “revealed truth,” the evidence with respect to intelligence regarding the arrival of MANPADS in the Luhansk area was contradictory, and one of the two reports came from a source that observed them in the city on 15 June, the day after the attack; nor was the possibility that the rumored locals were not the shooters considered. Considering that the entire case of “negligence” rested such on ambiguity – it was hardly “evidence beyond shadow of doubt” which in Western courts would have been dismissed or viewed as mitigating.
- Former Acting Minister of Defense at the time of the shoot-down, Mykhailo Koval, was initially deposed as a witness for the prosecution but neither he nor his testimony is appeared again, and there is no public record of it.
- Only one military officer with direct knowledge of Nazarov’s orders and range of responsibility was permitted to testify – and of the 100 minutes allocated for this pivotal evidence, the Judge gave 40% of the time to emotional interrogatories and statements from family members in the audience.
- Despite their requests, neither the Commander on the ground at Luhansk, nor the Commander of the reinforcing unit whose troops were lost -- arguably the most knowledgeable with respect to the situation -- were allowed to testify.
- The fact that there were others with a potentially decisive impact on the chain of events, specifically Air Force or pilot disregard of ATO precautionary methods, or the whether the Luhansk garrison was capable of patrolling or sweeping the approach lane, was never addressed.
- There was no consideration of the “military necessity” behind the mission referenced in the verdict.
- The verdict was not rendered by a “jury of peers” -- only a single female judge with no military experience.

The Nazarov “show trial” was so blatant that even Stalin would have been embarrassed to orchestrate it – more akin to the courts of Idi Amin’s Uganda or Kim Jong-Il’s Korea, certainly nothing Ukraine’s judicial system should be proud of staggling.

Both the prosecution and trial were atypical of proceedings dealing with other professions that expose their practitioners to potential risk and loss of life in service to the greater public good:

- As evidenced in the current COVID epidemic, doctors and nurses in hospitals put their lives on the line every time they treat infected patients.
- Firemen, are expected to expose themselves to high risk-environments in the rescue of trapped victims.

- Police are armed in the realization that while doing their duty to maintain law & order they may come under attack.

Those who lead these organizations and manage their operations have an obligation to anticipate practitioner exposure and minimize that risk albeit with recognition that “accidents happen.” When loss of life occurs, they are very seldom held accountable, and on those rare occasions that they are charged with “criminal neglect,” it is predicated on a pattern “habitual negligence” not a one-time event.

The Criminal Code of Ukraine recognizes this, and it is instructive to consider, that Article 425, Part 3, the law under which Nazarov was charged, specifically defines “criminality” as the “habitual negligence in office during war, causing grave consequences.” While the trial focused on the tragic “consequences” it never established “habitual negligence.” Nowhere was any evidence given to even hint that Nazarov’s alleged neglect was recurrent. In fact, although the law allows a sentence of 8 years and the loss of rank (with both prosecution and plaintiff lawyers unified in asking for the maximum), in passing sentence, the Judge allowed Nazarov to remain a general and commuted his prison term to only 7 years, taking into account: “his positive character in [military] service along with his being a smart and talented leader-organizer with experience and management skills and awards, as well as no previous problems with the law.” A clear recognition by the presiding Judge that “habitual” was missing. But, this trial was not about truth or justice – the crowd wanted blood and they got the Crucifixion they asked for.

Given the farce of a trial, Nazarov filed for Appeal and in doing so, to his credit and honor, publicly refused to accept a “pardon” that would have spared him imprisonment but imply his guilt. For 33 months, he dangled in the wind, as the Appeal process ground on at a snail’s pace. Interestingly, it does not appear that the Appellate court considered the recent revelation that it was actually a specialist Wagner team, secretly inserted with MANPADS that did the firing, not the local proxy insurgents who claimed credit (and served as cover for the professional mercenary operatives who actually did the downing). IF verified, that would mean that the “rumored” intelligence of threat from locals was not treated negligently – and neither Nazarov nor any other Ukrainian should be held accountable for dismissing what they did not know. But in this case, neither the truth nor fairness prevailed and in December 2020 the Appellate Court sustained the verdict against Nazarov and ordered him returned to jail to begin his sentence.

With Nazarov’s incarceration WHO WINS?

- The prosecutor’s judicial over-reach in “civilian criminalization of combatant command decisions” is now enshrined as precedent.
- Forty-two of the bereaved families are in line to receive their sought financial compensation from the Ministry of Defense because its “official” was found culpable.
- The plaintiff’s lawyers now have how a hunting license to bring charges against any Ukrainian military leader who has put his troops at risk over the last seven years of war -- and thus guaranteed themselves decades worth of retainers.
- Those in the “reform” movement who have long sought to defame and defang the General Staff have their sacrificial lamb.

But the only real winner is Russia – gloating over driving another wedge between Ukraine’s Military and Civil society and anticipating the gelding of the battlefield commanders who stopped their aggression.

With the “criminal in jail WHO LOSES?”

- Obviously Viktor Nazarov’s torment will continue. A well-respected Major General of the Ukraine Armed Forces, by all accounts an honorable man, retired after nearly 40 years dedicated to national service and the country’s defense, highly qualified expert in military operations, one whom any NATO country would consider a privilege to have in their service, a soldier who and already subjected to seven years of public excoriation -- is now slated to rot in prison for another seven years.

- But civil detractors and media pundits should not be smug, it is not his loss alone. That an officer, implementing a tough war-time decision, has been publicly Crucified, subjected to a Circus trial with his reputation and career ruined by unrelenting media-hyped social clamor for a “Judas goat” – is a gross injustice and national embarrassment. And with it, the undermining of the very meaning of Ukrainian Democracy – no civil society can long exist where an innocent person is sacrificed for the “collective catharsis.” Nazarov’s continued tribulation is now Ukraine’s enduring shame.
- The painful consequences are not only for Nazarov to suffer and to the country’s judicial disgrace. His imprisonment sets in motion an impending tragedy for the Ukrainian Armed Forces and nation’s long-term security -- the cumulating damage compounded for decades to come.

IMPLICATIONS FOR UKRAINE’S FUTURE SECURITY

The military profession is uniquely different from civil of professions that put their people at risk -- it is the only occupation in which the practitioners are expected, even demanded by an Oath to the State, to put those under their command in mortal danger. The rules and expectations of civil society are thus not relevant to the most uncivilized form of human interaction – war. Armed conflict on the modern battlefield is mean, violent and deadly -- characterized not only by the loss of life but the unpredictability of every barbaric encounter.

Few in the civilian world, particularly those who have not been in combat, understand the enormous burden that is placed on every military leader; from the General in charge of a campaign, to the Brigade Commander, to the Kanpan leading a rifle squad. Unlike all other jobs, the role of a military commander is predicated on them placing those under their charge at risk. In every military organization on the globe, and for millennia of recorded history, soldiers who refuse to take personal risk on the battlefield are branded with “cowardice” and the leaders who equivocate are charged with “dereliction of duty.”

Those who are trained to fight and successfully lead others in combat understand three principles:

- The outcome of life and death decisions on the battlefield are seldom predictable.
- There is never enough information or time in which to craft the optimum plan or course of action to minimize losses.
- The worst decision is the one that is not made -- because that cedes to the enemy the power of the initiative and the dictation of events – certain to produce dire and much more costly consequences.

Decisive action under conditions of high entropy (not knowing what you don’t know) is neither intuitive nor common in civil society and thus easily dismissed or demeaned.

There is one more seldom recognized insight -- vividly illustrated in the Nazarov trial – every decision made by a commander at any level in the heat of battle can be deconstructed after the fact by those who have the luxury of *ex-post facto* knowledge, are not being pressured by time and limited resources nor confronted with opposing forces actively trying to deceive and destroy them. Retrospective analysis of past operations is important -- lessons need to be learned from past mistakes for future success. But exploiting that backward look to *ex post facto* find blame, let alone criminalize practitioners before a civilian court professionally incapable of assessing it – is not only unfair but ultimately self-defeating.

When we both became directly involved with Ukraine security in 2014, the common assessment was that the Ukrainian forces were so weak, unready and mal-deployed that they would only be able to resist Russian aggression a couple days before being overrun or giving up. Against all odds the fighting troops of Ukraine have defied that prediction a thousand-fold – they won some battles and lost some battles but today are standing stronger than ever. From our joint perspective, the single and most transcendent impact of the last seven years of war is the rise of a new generation of front-line, combat-hardened commanders who have learned that they must: Lead from the front, not from behind a desk; Seize the initiative; and Take risks to throw the enemy off their game plan.

Since 2014, we have gotten to know many of these new generation of commanders and to a man they have deep trepidation over the impact of the civilian court's verdict. One journalist recently claimed to have spoken to several "anonymous" soldiers believing Nazarov should be jailed. Perhaps ... everyone's entitled to their opinion. But, as we write this (completely independent of our effort and unknown by us until made public), on 19 December 2020, over 100 officers, with extensive experience in combatant command, have petitioned the leadership of Ukraine (President of Ukraine- Supreme Commander-In-Chief of the Armed Forces, Chairman of the Verkhovna, Secretary of the National Security and Defense Council, Prosecutor General, and Chairman of the Supreme), with the following demands:

- *Ensure strict observance of the rights and freedoms of servicemen in accordance with the requirements of the Constitution and laws of Ukraine and their legal protection by law enforcement agencies.*
- *Implement the legislative initiative to establish highly professional military courts in reality and not just in words.*
- *Avoid biased incompetence and prevent political pressure and manipulation by government officials in the performance of official duties and decision-making by military defense officials*
- *To take all possible and decisive legal measures against any persons suspected of treason to Ukraine particularly within the judiciary system. National interests and the impartial use of facts and evidence should guide the investigation and not political ambitions and machinations.*
- *Exhaust all possible measures and legal where-with-all to prevent the detention of Major General Viktor Nazarov and other military officials who have defended the territorial value of Ukraine since 2014, when there are serious doubts about their guilt.*

We believe that these officers, willing to put their signatures and careers on the line, take precedence over those who launch smears in anonymity.

Why do they care?

Because Nazarov's treatment and imprisonment produces a cold chill that runs down the spine of any military leader conveying a foreboding that he may be charged, ex post facto with performing his responsibility in taking risk and putting the lives of his troops in danger. With that internal threat behind their back, the natural human response is for military commanders to not make any decision until they have "complete information;" to not give any command, irrespective of how important, that puts their troops at risk lest they too become the target of zealous prosecutors, self-promoting lawyers, and, if things go wrong, the ire of a media frenzied civil society led by arm-chair reformers looking for one more excuse to besmirch the Armed Forces of Ukraine.

Why should Ukraine care?

Because Nazarov's incarceration starts in motion the insidious reversal of all the progress in command professionalization made during the current conflict. This isn't about general morale but a much more insidious infection – the socially induced inhibition of military commanders to make timely decisions and the erosion of their willingness to take risks in conditions of uncertainty. The largest Army is nothing but a hollow shell if its commanders sit passively, afraid to act in dread of social condemnation and judicial prosecution for putting troops at risk.

Why should Allies of Ukraine care?

At a time when both American and NATO commands are reassessing the importance of Ukraine in defense of the West as well as reevaluating options for more lethal aid, the Nazarov verdict endangers that entire effort. If Ukraine punishes rather than honors its military commanders making tough decisions under high uncertainty and difficult circumstances, what other army would want to entrust the lives of their troops

in defense of a country that neither understands nor appreciates the unique demands placed on front line commanders?

In 2017, coincident with Nazarov's trial, his case came up at a conference on Capitol Hill in Washington with members of Congress, Administration officials, and a large Ukrainian delegation present. Karber was asked about Nazarov as an example of reform in the Ukrainian Armed Forces, and gave the following warning:

There is not an army in the world that would survive the treatment of their officers this way. A country that does this to their military sends a terrible message to the troops in the front line. Rather than taking the initiative or sending patrols out under risk of casualties, they will sit in is their bunkers and hide and wait until the infiltrator comes and slits their throats; and that is a metaphor for the country. We can give up talking about the defense of Ukraine and American military support until someone in authority stops this madness....

There is an ancient Chinese curse that warns; "be careful what you ask for, you may get it" and in this context the last line of the Biblical passage carries a dark omen for the crowd asking for Crucifixion: "*His blood be on us and on our children.*"

For whatever it is worth ... from two friends of Ukraine.

Lieutenant General Ben Hodges (US ARMY Retired) holds the Pershing Chair in Strategic Studies at the Center for European Policy Analysis. Joining CEPA in 2018.

A native of Quincy, Florida, General Hodges graduated from the United States Military Academy in May 1980 and was commissioned in the Infantry.

After his first assignment as an Infantry Lieutenant in Garlstedt, Germany, he commanded Infantry units at the Company, Battalion, and Brigade levels in the 101st Airborne Division, including Command of the First Brigade Combat Team “Bastogne” of the 101st Airborne Division in Operation IRAQI FREEDOM (2003-04).

He studied at the Command & General Staff College, is a graduate of the School of Advanced Military Studies and graduate of the National War College.

His other operational assignments include Chief of Operations for Multi-National Corps-Iraq in Operation IRAQI FREEDOM (2005-06) and Director of Operations, Regional Command South in Kandahar, Afghanistan (2009-10).

General Hodges has also served in a variety of Joint and Army Staff positions to include Tactics Instructor; Chief of Plans, 2nd Infantry Division in Korea; Aide-de-Camp to the Supreme Allied Commander Europe; Chief of Staff, XVIII Airborne Corps; Director of the Pakistan Afghanistan Coordination Cell on the Joint Staff; Chief of Legislative Liaison for the United States Army.

In Europe he served as Commander, NATO Allied Land Command (İzmir, Turkey). His last military assignment was as Commanding General, United States Army Europe (Wiesbaden, Germany) from 2014 to 2017. In that position he led American military assistance in training, supporting and equipping the Ukrainian military. He retired from the U.S. Army in January 2018.

Among his many Awards, are the Legion of Merit, Bronze Star, Defense Meritorius Service Medal, Army Commendation Medal and National Defense Service Medal.

Dr. Phillip A. Karber, is President of The Potomac Foundation, a non-profit think tank, which he helped found in 1968, and became its third CEO in 2011.

A native of Los Angeles, California, Karber is a veteran of the US Marine Corps, received his College degree at Pepperdine and PhD (International Law – with specialty in Aviation Security) from Georgetown University, and since 1978 teaching there as Adjunct Professor of Strategy; he also holds certificates from Harvard and Wharton Business Schools.

In Washington, DC, Karber has served on staff of Congressional Committee on Atomic Energy, directed the National Security Council interagency assessment of NATO-Warsaw Pact capabilities, and served as Strategy Advisor in the Pentagon reporting directly to the Secretary of Defense and Chairman, Joints Chiefs. He was an advisor to the Secretary General of NATO, British Prime Minister Thatcher and has testified before parliamentary committees of Britain, France, Germany, Netherlands, Philippines, Poland & S.Korea. In 1990-91, he recruited, trained & delivered the Free Kuwait Brigade for service in OPERATION DESERT STORM. He currently serves on the US Army Science Advisory Board.

In private industry he was senior executive at the BDM Corp, Ford Motor, on the Board of Directors of Weirten Steel, and Chairman of the Board, JFK-IAT, Kennedy Airport, New York.

In March 2014, the Ukrainian Government asked Karber to help assess the country’s security situation, and in 33 trips since, he spent 180 day in the Donbas conflict area. He and GEN Clark (former SACEUR & 2004 presidential candidate), were the first to report to the US Congress on Ukraine’s defense needs, the first to advocate for Lethal Weapons as part of US military assistance, and in 2017 they were the first recipients of the Friends of Ukraine Award for “Contributions to Ukrainian-American Security” from the Ukraine Congress Committee of America and presented by Ukrainian Foreign Minister Klimkin. He has also received Awards from the Minister of Internal Affairs, the Dnipro-1 Regiment St. George Medal for Bravery, Reconnaissance Medal and General Staff Medal (as liaison with US General H.R. McMaster in the joint study of “Russian New Generation Warfare”)