

**Letter to the President of the House of Representatives from Minister of Foreign Affairs Frans Timmermans and Minister of Defence Jeanine Hennis-Plasschaert, regarding the MH17 air disaster, 9 October 2014**

In keeping with our pledge to the House, we are writing to inform you about the current situation regarding the aftermath of the crash of Malaysia Airlines flight MH17. This letter, which is also being sent on behalf of the Prime Minister, follows on from our letter of 27 August on the same subject.

As ever, the government remains fully focused on the three previously stated objectives:

1. repatriating any human remains and personal possessions that may still be in Ukraine;
2. investigating the circumstances of the crash;
3. conducting a criminal investigation.

The context in which we are operating is, as you know, highly complex. Time and again over the past few months, we have considered the feasibility of returning to the crash site to resume the repatriation mission. Unfortunately, in the light of the security situation on the ground, such a return would be irresponsible.

Given the ongoing instability and the unsafe situation in the vicinity of the crash site, the possibility of returning anytime in the near future is dwindling. The onset of winter is an additional obstacle to consider. Therefore, we have been actively reviewing other options for retrieving the victims' personal belongings. The interim mission will remain on site to continue coordinating these efforts and facilitate a swift return to the crash site, if the security situation should permit it at some point.

Security situation in eastern Ukraine

The security situation in eastern Ukraine remains fragile and complex. Despite the cease-fire agreed on 5 September between the Ukrainian authorities and pro-Russian separatists, and the subsequent agreements of 19 September establishing a 30-kilometre buffer zone for heavy artillery, the big picture remains the same. Although no large-scale military operations have been launched so far, the truce is violated on a daily basis, and little if any effort has been made to withdraw heavy artillery from the buffer zone. Complicating matters further is the fact that a number of pro-Russian separatist groups, and to a lesser extent various Ukrainian paramilitary units, are not under the direct control of their political leadership and, moreover, are internally divided. Artillery fire and small-scale fighting aimed at improving the

warring parties' military positions has been observed around the tactically important town of Debaltseve, which is located in the immediate vicinity of the crash site. Other hot spots are Donetsk airport (artillery fire and fighting between ground troops), Horlivka, Luhansk and, to the south, Mariupol. As a result, a significant threat still exists in and around the separatist-controlled area. Despite a number of incidents over the past few weeks, the security situation in the Kharkiv region is stable. The threat to Dutch personnel there is low.

#### Interim mission in Kiev and Kharkiv

Following the cease-fire of 5 September, a preparatory mission left from the Netherlands for Kharkiv on 12 September with a view to possibly resuming the repatriation mission in the short term. In addition, the Head of Mission (HoM) and the Strategic Military Adviser (SMA) returned to Kyiv to confer with the Ukrainian authorities and the OSCE. In view of the regular violations of the truce and the generally unsafe situation around the crash site, a resumption of the repatriation mission proved to be impossible. The preparatory group, the HoM and the SMA consequently returned to the Netherlands on 23 September, and the interim mission was reduced to the level described in the letters to parliament of 14 August 2014 (Parliamentary Papers 33 997, no. 10) and 27 August (Parliamentary Papers 33 997, no. 16).

For its part, the interim mission will remain on site, as the first point of contact for the local population, the OSCE and the Ukrainian authorities. Their presence is intended to ensure that the mission to the crash site can resume promptly, if the security situation should stabilise and on the condition that winter has not yet begun. The interim mission is also making preparations to put the equipment in Kharkiv into storage for the winter, so that, if the weather and the security situation allow it, the mission at the crash site can be resumed after the spring thaw.

During the past few months, the interim mission has also been looking for additional ways of returning the personal belongings of the victims to their next of kin. To that end, the mission has created both a Russian-language Facebook page and a VKontakte page asking the public to call a toll-free number if they find anything. Posters and fliers have also been distributed in the villages near the crash site. At the mission's request, the OSCE has spoken to the mayors of these villages about what to do with personal belongings and luggage. The OSCE has also been in contact with the Ukrainian State Emergency Service (SES) in Donetsk on the mission's behalf.

In the first few days after the disaster, the site was systematically searched by the Ukrainian authorities (SES) and local residents. At that time, the priority was the recovery of remains. To all appearances, this initial search and recovery effort was conducted efficiently, as the international repatriation mission found few remains after that time. Now the focus is mainly on returning the victims' personal possessions.

As the government has always maintained, we are keen to return to the crash site, but only on the condition that the mission can do its work in stable circumstances over a longer period. At the moment, this is unfortunately not the case. The SES has been active in the area for some time, and it has an extensive network at its disposal. It is therefore well placed to assess the security situation. It maintains a presence on the ground, and it can enter the area of the crash site, even if only for a short time. Back in Kyiv, Australia and Malaysia are being kept up to date about the progress of Dutch efforts to recover the victims' belongings.

The crash site must be secured. This is necessary in order to find clues and locate any remains that might still be present, for further identification. It is also our intention to remove all pieces of the wreckage from the area. This will also require extended access to the area and the cooperation of the separatists who control it. The interim mission is currently working with the OSCE to explore options for making this happen.

#### Consular aspects of the mission

Providing good support and aftercare for the next of kin remains a key focus. For victims who resided in the Netherlands (both Dutch and foreign nationals), the process of issuing death certificates is nearly complete. In the case of foreign nationals who did not reside in the Netherlands, a special procedure for issuing death certificates has been agreed with the Ukrainian authorities. Two Ukrainian observers have visited the Netherlands in order to guarantee the quality of the identification process. In their final evaluation they spoke positively about the Dutch approach. They will also draw up a report that will allow death certificates to be issued in Ukraine. This way, all the death certificates for the latter group of victims can be processed at the same time in Ukraine. The embassies of the countries concerned have been closely involved in this process, as they are responsible for providing information and consular assistance to families in their countries. A number of information meetings have been held with these embassies, to the general satisfaction of those involved. Weekly email updates have also been sent out to the embassies of the countries concerned and the victims' relatives to keep them informed about the latest developments. A core team

at the Ministry of Foreign Affairs is still actively involved in the process surrounding the issuing of death certificates, and in fielding questions related to consular matters.

#### Support for next of kin

At this point 262 of the 298 victims have been identified. Thanks to modern DNA technology, more identifications are expected to follow in the near future. Police family liaison officers and case managers from Victim Support Netherlands (SHN) are working together closely to offer the necessary support to the next of kin. The two organisations are combining their expertise in order to provide care in a variety of areas, addressing psychosocial, practical and legal issues.

To the greatest possible extent, the care being provided is designed to meet the needs and preferences expressed by the next of kin themselves. Since our letter to the House of 27 August, many victims' remains have been identified and transferred to the next of kin. In many cases family liaison officers and case managers have offered practical and psychosocial support to the next of kin in preparing for the funerals.

In the past few weeks the next of kin have had an increasing number of questions about the legal dimensions of the disaster, particularly the matter of compensation. In response, Victim Support Netherlands will be holding one or more information meetings for any next of kin who wish to attend. The Information and Referral Centre (IVC), an informational website containing both a public and private section (the latter accessible only to next of kin), will continue to be maintained and updated for some time, at least the next 18 months to two years.

#### National Remembrance Ceremony

Preparations for the MH17 National Remembrance Ceremony are well under way. The ceremony will be held at the RAI conference centre in Amsterdam on Monday 10 November 2014. The day's programme is gradually taking shape. The event will honour all 298 victims of the MH17 disaster. The ceremony will aim to foster a sense of security and connection. The next of kin have been asked to provide their input regarding both the form and content of the programme. Over 2,000 relatives, including a number of foreign nationals, are expected to attend. All countries affected by the disaster will be represented by their ambassadors. The contacts for the affected families are now submitting lists of the relatives

they would like to invite. These relatives will then receive a personal invitation to attend the ceremony from the Prime Minister, on behalf of the government as a whole.

To ensure a safe environment for the next of kin during the remembrance ceremony, the gathering at the RAI will be closed to the public. The official part will consist of a remembrance ceremony, which will be broadcast live by state broadcaster NOS on radio and television. Their Majesties the King and Queen will also be in attendance, and both houses of parliament will be represented by official delegations. After the remembrance ceremony, there will be an informal, by-invitation-only programme at which family members can meet with one another and offer comfort and encouragement. The King and Queen will also be present for this part of the event.

#### Investigation of the crash

The investigation by the Dutch Safety Board is well under way. On 7 October, its chairman Tjibbe Joustra informed the House about the provisional report and the status of the investigation. With the backing of the Public Prosecution Service, the Board expressed its desire to have as much of the aircraft wreckage as possible at its disposal, to make a full reconstruction.

#### Criminal investigation

##### *Comments by the Minister of Foreign Affairs in the media*

On 8 October, during an appearance on the television programme *Pauw*, the Minister of Foreign Affairs said that one of the victims of the MH17 crash had been found with an oxygen mask. This is accurate: an oxygen mask was found in the course of the identification process. The Minister of Foreign Affairs expressed regret for his remark, since this information had not yet been shared with all the next of kin. Early this morning, this information was passed on to all next of kin by the family liaison officers.

### *Oxygen mask*

In the course of the identification process, an oxygen mask was found on one of the victims, a foreign national. The mask was fastened around the victim's neck with an elastic strap. The Netherlands Forensic Institute examined the mask for fingerprints, saliva and DNA, but the results were inconclusive. It is not known how and at what point the mask came to be around the victim's neck. The passenger's relatives were informed at the time. None of the other victims recovered were found to be wearing oxygen masks.

The reason this information was not previously made public is that the Public Prosecution Service is still investigating the circumstances surrounding the discovery of the oxygen mask and its possible significance. At this point it would be premature to draw any conclusions.

### *Requests by the Permanent Committee on Security and Justice*

By letter of 11 September the Permanent Committee on Security and Justice asked the Minister of Security and Justice to report on the work being done by the Public Prosecution Service in its investigation of the MH17 disaster. The minister was also asked to inform the House about the Netherlands' cooperation with the authorities of Ukraine, Belgium, Australia and Malaysia, the involvement of Eurojust and the procedural status of the case. The House also asked for the findings of experts in international criminal law regarding the options for prosecuting and trying those responsible, and the associated risks, opportunities and obstacles. The House went on to request that special attention be given to assessing the legal pros and cons of the various potential venues for such a trial: one of the countries involved, the International Criminal Court or a tribunal specially established for that purpose.

In response to these requests (re. 20174Z15255/1014D31570), we can inform you as follows.

### **Public Prosecution Service**

The team in charge of the criminal investigation currently consists of three prosecutors, plus an additional public prosecutor who is stationed in Ukraine. The latter is important for overseeing the investigation on site, coordinating international cooperation and maintaining contact with the local authorities. Two additional public prosecutors have been specially assigned to the forensic side of the investigation, and another two are specifically involved with victim affairs and support for the next of kin. The investigation team consists of expert detectives from a variety of backgrounds, including international crime, high-tech crime, financial crime and forensics. The Royal Military and Border Police and the Aviation Police

have also been involved in the investigation. The criminal justice authorities are working closely with the Dutch Safety Board.

## **Investigation**

The criminal investigation into the MH17 disaster is a highly complex undertaking which will take considerable time. A great deal of information is available via the internet, social media and other open sources. Other information must first be obtained from other countries. At this stage, efforts are focused on gathering and analysing as much information as possible. This is a time-consuming task that requires highly qualified detective work. The authorities have secured a vast amount of online material, amounting to almost 350 million web pages, including photographs and videos from eastern Ukraine, both before and after the crash. Investigators are also poring over blogs, tweets and online forums. It takes a great deal of human and material resources to interpret internet publications and determine if they contain any useful evidence. This entails validating and verifying messages and postings. Investigators are also reviewing telecom data and tapped phone calls. If these conversations are to be used as evidence in a criminal case, their authenticity must be established beyond question and any possibility of manipulation must be ruled out. Other forensic work is being handled by various parties, including the Netherlands Forensic Institute (NFI). Finally, the Dutch police have issued a call for photographic and video material to be uploaded to their website. This request has been made available to the public in Ukraine in four languages (Russian, Ukrainian, Dutch and English), and the response has been impressive. This material is also being analysed and investigated to determine its authenticity. The investigation team has now secured 20,000 photographs and 750 videos. The investigation is pursuing various leads and possible scenarios. Identifying and providing indisputable evidence is a lengthy process.

## **International cooperation**

International cooperation is crucial, given that much of the evidence is located outside the Netherlands and that other countries have now launched their own investigations. In light of this, good coordination and effective teamwork is necessary to ensure that all the available evidence finds its way to a single centralised location. This is one of the reasons the Netherlands has taken a leading role from the start. The Public Prosecution Service, which has appointed one of its prosecutors to coordinate these international efforts, has also asked Eurojust to do its part to oversee international cooperation. A meeting was held at Eurojust on 28 July 2014, laying the groundwork for a good working relationship between the police and justice authorities of the countries involved. One of the forms this has taken is the establishment of a Joint Investigation Team (JIT), comprising representatives of the

Netherlands, Australia, Belgium, Ukraine and Malaysia. This team will pave the way for better international cooperation, facilitating the exchange of knowledge, expertise and evidence. The JIT, which is coordinated by the Dutch Public Prosecution Service, meets twice weekly by video link to discuss the state of the investigation and other matters. Eurojust has a key role in bringing together representatives of the participating countries and organising coordination meetings where agreements are made about cooperation. On 16 August a follow-up meeting was held at Eurojust. The parties involved are also working closely with Eurojust to coordinate the work of the JIT. In addition to our work with the JIT partners, the Netherlands is cooperating with a number of other countries. Requests for legal assistance have been sent to several of them, including Germany, the United States, the United Kingdom, New Zealand, Italy, Indonesia, Finland, the Philippines and Canada.

### **Prosecuting the offenders**

The Minister of Security and Justice aims to send the Permanent Committee on Security and Justice a letter before 28 November, examining in broad terms the options for prosecuting and trying possible offenders, along with the associated risks, opportunities and obstacles. The Chief Public Prosecutor of the National Public Prosecutor's Office is in charge of making this assessment.

### **Humanitarian aid**

The humanitarian situation in eastern Ukraine is still troubling, particularly as winter approaches. There is still a shortage of good winter-proof accommodation and basic facilities, like medical care. The government has set aside €500,000 for UNHCR in response to the UN's emergency aid request. An additional €200,000 has been donated to the Ukrainian Red Cross, via the Dutch Red Cross.

According to conservative estimates by the UN, at least 3,550 people have been killed in eastern Ukraine since the beginning the conflict (this figure includes the passengers and crew of MH17) and 8,330 wounded, as of the end of September. Over five million people live in the conflict zone. There are over 295,000 displaced persons, and around 341,000 people have sought refuge abroad; 169,000 of the latter group have gone to Russia. Two-thirds of the displaced persons are women; the men generally stay behind to protect their property. A number of displaced persons are already starting to return to areas that have been recaptured from the separatists and are relatively safe. At this point, there is still no good registration system in place to keep track of displaced persons and refugees. UNHCR is working with the Ukrainian authorities to set up such a system.



### International contacts and efforts

On 19 September the Minister of Foreign Affairs addressed the UN Security Council, which was holding a debate, at the request of Russia, on the investigation of the MH17 disaster. The minister once again set out the Netherlands' priorities, making clear that this country would not rest until all the facts of the case had emerged and the perpetrators had been punished. During the debate, Australia, the UK, the US, France, Luxembourg and Lithuania expressed support for the Dutch position. Ukraine also emphatically reiterated its commitment to continued cooperation. The provisional report by the Dutch Safety Board was welcomed by all Security Council members. Russia suggested a number of possible shortcomings in the report, but it was alone in its criticism.

At the meeting of the UN General Assembly that followed, both the Prime Minister and the Minister of Foreign Affairs spoke about MH17 and, in bilateral consultations, requested and received support for the Netherlands' priorities and a pledge to keep MH17 high on the international agenda.

In his speech before the General Assembly the Prime Minister stressed that both the Netherlands and the other countries involved would do their utmost to finish repatriating the victims' remains and personal belongings, find out the cause of the disaster and prosecute the guilty parties. Access to the crash site remains essential to all these objectives. With that in mind, we have been in close consultation with the Australian and Malaysian Prime Ministers about the efforts to obtain access to the site. The Netherlands also spoke with the President of Indonesia and the Prime Minister of Canada, both of whom expressed their condolences and support.

In addition to these political contacts, there have been intensive daily consultations with Australia, Malaysia and other partner countries and relevant organisations at civil service level. A central role in this process is played by the OSCE, which has shown a willingness since the disaster to support the international efforts led by the Netherlands. Both the Swiss Chairmanship and the Special Monitoring Mission in Ukraine have shown an unwavering commitment to working with the Netherlands in order to secure access to the crash site. The government is particularly grateful to the OSCE for this and has expressed our gratitude.

The Minsk Protocol of 5 September on a cease-fire and the start of a political process provides explicitly for a role for the OSCE over and above the tasks that had already been

assigned to the mission last March. These supplemental tasks involve monitoring and verifying the cease-fire, monitoring the border between Ukraine and the Russian Federation, and verifying the (pending) security zone along this international border.

To implement the above-mentioned tasks, the Chairperson-in-Office of the OSCE, Swiss President and Head of the Department of Foreign Affairs Didier Burkhalter, has asked the organisation's member states to increase the number of SMM monitors from 240 to 500, 350 of whom will be responsible for overseeing the situation in eastern Ukraine and the security zone in the border region between Ukraine and Russia. The OSCE has also asked its member states to make planning capabilities available. In response, the Netherlands will provide additional monitors in addition to the five Dutch nationals who are already working in that capacity, with expertise in monitoring cease-fire agreements. The Ministry of Defence will also make available an operational planner for a period of three months.

Furthermore, the Netherlands will make a supplemental financial contribution to the mission of €1.88 million, bringing the total Dutch contribution to €2.83 million.

The European Union has expressed its continued solidarity with the Dutch effort, emphasising the importance of gaining access to the crash site and an adequate investigation that leads to the prosecution of the guilty parties. The government will continue to do its utmost to keep MH17 high on the international agenda.