

Summary report of a technical briefing

On 21 July 2014 a **technical briefing** took place in which the standing committee on Foreign Affairs, the standing committee on Security and Justice and the standing committee on the Interior of the Dutch House of Representatives were informed by Prime Minister Mark Rutte, Minister of Security and Justice Ivo Opstelten, and Minister of the Interior and Kingdom Relations Ronald Plasterk about **the state of affairs concerning the Flight MH17 disaster**.

Start of briefing 10:00

The chair of the standing committee for Foreign Affairs, Ms **Angelien Eijsink**, took a few moments to consider the tragic circumstances that gave rise to the briefing. "The senseless deaths of so many totally innocent people, including a large number of our compatriots, have deeply shocked our country: 193 Dutch victims, one of whom was a colleague from the Dutch Senate, Willem Witteveen who lost his life during the disaster together with his wife and daughter. On behalf of all Members of Parliament gathered here I would like to express my deepest sympathy to the next of kin, further family and friends of the victims. Both the House of Representatives and the Senate will hold a suitable remembrance for the victims at a later date."

Briefing by cabinet members

Prime Minister **Mark Rutte** said that this terrible event had deeply affected the Netherlands: "The thoughts of all of us go out to the next of kin, the family and friends of the passengers." The prime minister also said that people have many questions. From the moment that the dreadful news of the crash reached the Dutch government, the cabinet crisis coordination team was activated in order to answer these questions and to provide further action as well and as quickly as possible.

According to the prime minister, the cabinet's first responsibility is the repatriation of the bodies of the victims. Besides this, immediate access to the crash site needs to be given to allow an independent investigation in order to discover the exact cause and details of the disaster. Following this, the perpetrators must be suitably penalised for their actions. At the same time it is important that appropriate care is provided for the next of kin in the Netherlands.

The minister of Foreign Affairs, Frans Timmermans, travelled to New York to urge the members of the UN Security Council to adopt a strong UN Security Council resolution reiterating the importance of unhindered aid and independent international investigation. In part through these active Dutch efforts, both the UN Security Council and the OSCE have called for unobstructed and safe access to the crash site and the initiation of an independent investigation.

The prime minister went on to talk about access to the site, the recovery and identification of the victims and the investigation into the cause of the tragedy.

The Dutch forensic team has now arrived in Torez, where the trains containing the physical remains of the victims are standing, and is in contact with the OSCE observers concerning access to the disaster area. Their first goal is to ensure the trains travel to an area under Ukrainian control, preferably Kharkiv.

A large number of physical remains have been transported in individual body bags to refrigerated train carriages in Torez, around 15 kilometres from the disaster site. According to information from the OSCE, this concerns 196 bodies, although unconfirmed reports suggest there might be 251 bodies. It is as yet unclear which bodies have been transported to the train and which are still to be recovered. The Dutch government is doing all it can to ensure that the bodies of all the victims are recovered. A Hercules aircraft dispatched from the Netherlands has now arrived in Kharkiv carrying materials for the coordination team and people to help with identification.

The prime minister stated that he was as yet unable to say when the bodies of the Dutch victims would be transported to the Netherlands. The cabinet is keen for the formal identification to take place in the Netherlands and talks concerning this are currently taking place.

The investigation of the disaster has barely begun. Wreckage from the aircraft which is vital to the investigation must be secured as quickly as possible. The location of the black boxes is unknown. If they are in the hands of the separatists it is important for the investigation by the International Civil Aviation Organization (ICAO) that they are made available as soon as possible. The prime minister stated that he had reinforced this point to the Russian president yesterday. The Russian president promised to help recover the black boxes.

An independent international investigation into the cause of the disaster is essential to determine the true facts. We must ensure that premature assignment of blame does not lead to restricted access to the crash site and thus to a reduced chance of recovering all the bodies and the carrying out of the independent investigation, according to the prime minister. An international team of investigators coordinated by the ICAO will investigate the cause of the disaster. This team includes investigators from the Dutch Safety Board.

The cabinet is clear in its opinion that Russia should exert its influence on the separatists to improve the situation at the scene of the disaster. The prime minister said that he had discussed this with the Russian president in no uncertain terms. If access to the disaster area remains insufficient in the coming days, every political, economic and financial option will be brought to bear against those who are directly or indirectly responsible for this. The same will apply in the event of confirmation of who is responsible for the shooting down of flight MH17. Measures will be taken. These steps will be taken as a supplement to the existing conditions presented to Russia concerning de-escalation in Eastern Ukraine by the European Council on 27 June 2014. On 16 July the European Council concluded that these conditions had not been sufficiently met, and gave the order to continue with preparations for financial-economic sanctions.

In closing, the prime minister stated that the cabinet is planning to send regular updates (at least every 48 hours) to the House of Representatives to keep them informed of the situation.

Mr Ivo Opstelten, minister of Security and Justice, also took a few moments to consider the dramatic consequences of the disaster for the victims and their next of kin.

He stated that it was first and foremost the responsibility of the airline Malaysia Airlines to draw up a list of victims. This list took a long time to be made available, but the airline authorities had to act with due care and diligence.

The minister stated that the government had started to inform next of kin on the second day following the disaster, via family detectives and mayors.

In closing, minister Opstelten said that the cabinet is considering a memorial service. This will take place later, as the current priority is the recovery, identification and repatriation of the victims.

Mr Ronald Plasterk, minister of the Interior and Kingdom Affairs shared that he had spoken to the mayors of the communities most affected. In many places the mayors have organised meetings and helped to support those in this terrible situation in their hour of grief.

Questions from Members of the House

This briefing by cabinet members was followed by the opportunity for questions from Members of the House. Members Baay-Timmerman, Van Bommel, Bontes, Ten Broeke, De Graaf, Heerma, Van Ojik, Segers, Servaes, Sjoerdsma en Van der Staij spoke on behalf of the House of Representatives, expressing the horror felt by every member concerning the

disaster of Flight MH17 and their sympathy for the victims' next of kin. They also confirmed their broad support for the approach taken by the cabinet.

- Has the government, following the phone calls with world leaders and President Putin of Russia in particular, received any clarity about when the bodies that have been recovered can be transferred and finally brought home?
- Can the House see the pledge made by the Russian president as a personal commitment?
- Can the government say anything about the division of responsibilities at the scene of the disaster? How does the OSCE operate and what is its role?
- What is the role of the various teams and how is the security of the crash site being organised?
- Is the cabinet considering ways in which feelings of national mourning could be expressed, for example by declaring a day of national mourning?
- Negotiations are taking place concerning bringing the bodies to the Netherlands for identification. On what grounds could the separatists set conditions concerning access to the area? How should we respond to this?
- People are very concerned about the attitude of armed groups. Are there different groups involved? What is the position of the Ukrainian authorities in this region?
- The OSCE is assuming a neutral position in order to monitor the investigation. This gives it a very important role. In recent times OSCE observers have been threatened and abducted. Does the government plan to pay extra attention to this matter?
- What measures will be taken to ensure that in the coming days the independent investigation – which is also aimed at a suitable punishment for the perpetrators – will continue to receive a high profile and that no agreements are made that could stand in the way of bringing the perpetrators to justice in the future?
- Has Poroshenko stated any willingness to the Dutch government for a cease fire to allow the speedy recovery of the bodies of the victims?
- Are reports correct saying that aircraft continue to fly over the disaster area?
- Is it possible for the Ukrainian authorities to, despite the conflict, work with the Russian authorities to hermetically seal the area in order to aid the speedy recovery of the bodies of the victims?
- What action is being taken in the background to directly or indirectly identify those responsible for this disaster?

- The American Secretary of State John Kerry claims to have clear evidence concerning what happened and who is responsible. Has the cabinet been able to verify this information from the American government?
- How is it possible that so many people had access to the crash site – journalists and OSCE staff, while Dutch teams had to wait so long to be admitted?
- Who will take the lead in tracking down the perpetrators and pronouncing a sentence? Will this be the International Court of Justice, or is this a role that should be played by the UN?
- The longer it takes to gain access to the area, the smaller the chance of finding the identity of the guilty party. How are talks concerning this question of guilt progressing between the prime minister and his international colleagues?
- According to the prime minister, Russia in particular has the power to influence the separatists and so to guarantee access to the site. How does the international community regard this, and how large is the chance that the international community will continue to act clearly and in unison in the coming days?
- What actual information is available right now about the circumstances of the disaster? A lot of investigation still needs to be carried out, but what can the cabinet already tell us about the information from American satellites in particular?
- Is it an option to deploy Dutch special forces in the area, not to enter into combat, but to bring home the bodies of the victims?

Cabinet answers to questions from the House

Prime Minister **Mark Rutte** first addressed the division of roles at the site and the role of the separatists. The aeroplane crashed on Ukrainian territory, which gives Ukraine overall responsibility, but the separatists are in fact in control of the area. The OSCE has access to the crash area. A Special Monitoring Mission has been in Ukraine for some time, but the OSCE carries no mandate for recovery and identification. Intensive negotiations are currently taking place with the separatists regarding access. The fact that Dutch forensic experts are now in the area is partly the result of the fact that these negotiations are heading in the right direction. However, it is not easy. The negotiations are also required because the Dutch experts are part of the OSCE mission.

The Dutch National Forensic Investigations Team is coordinating the international forensic effort and an advanced team has started work. The ICAO is leading the investigation into the cause of the crash. The Dutch Safety Board is the special expert in this area and very

closely involved in this investigation. This investigation has not yet started, but the embassy in Kiev is working all hours to ensure that it can.

The security situation in the area held by the separatists is unstable, with no effective state authority, and groups of criminals are more or less governing themselves. The self-proclaimed Donetsk People's Republic is organised as a hierarchy, making it possible for the OSCE to contact it, but there is simply no coherent structure between the different groups active in the area.

The OSCE is negotiating with the separatists regarding access to the area for investigators and international experts, which require a safe corridor to be able to work. Prime Minister Rutte said that he has emphasised this point in every conversation with Mr Poroshenko, the president of Ukraine, and with Mr Putin, the president of Russia. The Prime Minister underlined the importance of the teams being able to work safely and unhindered in the area. It is dangerous, so people stay no longer than strictly necessary.

Petro Poroshenko, the president of Ukraine, is prepared to uphold a ceasefire if the separatists do the same. Prime Minister Rutte said that he had given the message to the Russian president yesterday evening. The Cabinet is doing all it can to ensure that the area can be secured. The Russian president expressed his commitment yesterday evening to make a public appeal to the separatists to extend full cooperation. We will see today whether this leads to an improvement in the situation, Mr Rutte said. It is therefore not yet possible to say with any certainty when the transfer will take place. All efforts are focused on getting the train moving as quickly as possible so that the forensic experts can start their specialist work.

International law states that Ukraine has the right to conduct its own forensic investigation as the aeroplane crashed in Ukrainian territory. However, identification is highly specialised work and if it were to take place in Ukraine it would take longer as experts would need to travel from Europe to Ukraine. Identification will therefore take place much more quickly if the forensic work is conducted in the Netherlands. Discussions are taking place between the Netherlands and Ukraine, and a Hercules is already in place at Kharkiv airport. The discussions could still result in the required outcome, but Prime Minister Rutte can give no assurances as the president of Ukraine has the right to conduct the investigation in Ukraine. It is more likely that one of the countries involved will be responsible for legal proceedings, rather than the ICC. This is because the ICC only becomes involved if countries are unable or unwilling to take action themselves. A further complicating factor is that neither Ukraine nor Malaysia, under whose flag the aeroplane was operating, are parties to the ICC Statute. If legal proceedings are to take place within the ICC, one of the countries would have to accept the jurisdiction of the ICC ad hoc, or the UN Security Council would need to refer the case to the ICC, which Russia would need to agree to.

Prime Minister Rutte said that there are strong indications regarding the cause of the disaster, but as yet no confirmation from security services. He wanted to go no further into this, so as not to jeopardise either the chance of recovering the bodies or the investigation into the cause.

Regarding the grieving process and national mourning, the Cabinet would like to discuss this with the relatives of the victims. As far as the Cabinet is concerned, there should be a moment for the Dutch to come together and commemorate this terrible disaster, although there is no concept of a day of national mourning in the Netherlands as it is not part of Dutch tradition. National remembrance is however a tradition in the Netherlands.

It has been confirmed that almost 200 bodies have been placed in the train carriages; according to the latest update there are 251. This means that between 50 and 100 bodies still need to be recovered, and all efforts are focused on this.

Regarding the possible involvement of military forces, Prime Minister Rutte said, "I would like to point out that there are two very large areas separated by several miles, from which many bodies have already been removed and taken to other places. Even putting aside all the international ramifications and consequences of a more military operation, it would be an extremely complex logistical situation. Without going into further details at this time, I would however ask the House of Representatives to consider the international ramifications of a military presence in this area. It is an area that is controlled by separatists and borders with Russia, therefore a tinder box. Aside from the question whether it is militarily possible given the huge logistical complexity that has arisen due to the fact that bodies have been removed, we therefore have to consider the international context."

Finally, the Prime Minister addressed the united action from the international community, referring to the many expressions of sympathy and support, both from European partners and many other countries in the world. The disaster primarily affects the Netherlands because of the huge number of victims, but "the whole world sat in this aeroplane" said Prime Minister Rutte. The international community is most certainly aware that something terrible has happened. Prime Minister Rutte: "I therefore most certainly believe that as we go further, as we take each of the steps required, we can count on this support. Everyone is directly available and directly accessible, and exerting pressure where required."

Minister **Opstelten** addressed the care for the next of kin of the victims, which has absolute priority. The minister referred to the closed meeting between the Cabinet and the relatives, to take place that day. In the future too, care for the next of kin of the victims will continue to receive all the attention it requires, and will take place in consultation with the next of kin. The national victim support organisation (Slachtofferhulp Nederland), as well as local

government, also has an important role to play in this. The minister will keep the House informed of developments in this area.

Ukrainian authorities have closed the air space above the area. As a consequence, EUROCONTROL is no longer approving flight plans that involve flying across the area. The Board of Procurators General of the Dutch Public Prosecution Service has let it be known that, in addition to identifying the victims and providing help for the next of kin, the investigation will also focus from the very beginning on locating and prosecuting the perpetrators and bringing them to trial. The Public Prosecution Service will do all in its power to bring the perpetrators to trial, in the Ukraine or elsewhere, and will make use of its international network to achieve this.

Further questions from members of the House

- Repatriation of the bodies, to enable identification to take place in the Netherlands, would accelerate the process enormously. Can we expect a positive decision from the Ukrainian government concerning repatriation?
- Have steps been taken to extend the mandate of the OSCE in the disaster area?
- The longer the international community waits with identifying the perpetrators, the less pressure there will be to do so. How is the Prime Minister going to ensure that this does not happen?
- Are there plans for other international meetings, at the highest level, from which conclusions can be drawn in the short term to enable the perpetrators to be brought to justice?
- Can the Cabinet ensure that no agreements are being made with regard to current efforts and priorities (in other words the recovery and repatriation of the bodies) that could hinder any further international investigation and the bringing to trial of the perpetrators?
- Who is responsible for identifying and punishing the perpetrators? Would it not make sense for the International Criminal Court to do this, particularly as Ukraine recently accepted the ad hoc jurisdiction of the Criminal Court?
- Does the right of Ukraine to carry out its own identification also apply to the forensic investigation as long as no agreements have been made regarding an international independent investigation, as the area is in Ukrainian territory?
- Are concrete steps expected to be taken towards a ceasefire? Are negotiations currently taking place to achieve this? Are combat operations currently taking place in the region?

- Could the Netherlands have a role to play in negotiations regarding a ceasefire?
- Are sanctions being prepared against those who are hindering the investigation and against those who are, directly or indirectly, responsible for this atrocity?
- What is the Dutch position regarding the Foreign Affairs Council that is to meet tomorrow?
- Which is preferable – national or international legal proceedings?

Cabinet answers to the further questions

Prime Minister Rutte referred to positive signals that Ukraine will cooperate to make identification in the Netherlands possible. The exact ICAO regulations governing this are currently being assessed, although they would not seem to oppose it. If identification is not possible in the Netherlands, the Cabinet will ensure that the best experts are sent and that identification takes place at the highest possible technical level. Contact is ongoing with the Prime Minister and the President of Ukraine. The Cabinet will continue to inform the House of developments.

Prime Minister Rutte repeated that there are strong indications regarding the cause of the disaster, but as yet no confirmation. These are the facts as presented by intelligence reports. The next question could be what these indications are, but the Prime Minister did not want to answer this question. Prime Minister Rutte: "I do not believe that passing on information about this will help us achieve our objectives. I can only emphasise: developments are taking place hour by hour, day by day.' The Cabinet is however constantly weighing up whether its strategy – which aims to help it achieve its objectives – does not reduce the pressure or prevent the perpetrators from being brought to justice." The Cabinet is however faced with a dilemma.

Prime Minister Rutte said that it was not possible for him to make any detailed statements about the input of the Dutch cabinet to the Foreign Affairs Council as this would not help achieve the objectives of the Cabinet.

International legal proceedings are only possible if the countries involved are unable or unwilling to take action. It is therefore possible that the ICC will have a role to play, but Prime Minister Rutte said that he did not expect that this would be the first route followed.

President Poroshenko has said that he will consider a ceasefire if the separatists do the same. This morning's appeal from President Putin to the separatists to cooperate is important in achieving this. The OSCE is responsible for ensuring that this also takes place on the ground.

There are also negative developments taking place. In the town of Donetsk, about 50 km from the crash site, fighting has started up again; it is as yet unclear what the implications of this are for the investigation. The situation is changing continuously.

The Dutch National Forensic Investigations Team is currently with the train, which has now been sealed off. It is not yet clear where the train will be sent to. It could be sent to Kharkiv, or to Marioepol, also on the Ukrainian side of the border. The train has however not yet left.

The Cabinet would prefer Kharkiv as there is a working airport there.

Minister **Opstelten** pointed out that Ukraine has the right to conduct any forensic investigation in its own territory. However, there is no reason to believe that the Dutch forensic team, which has a good international reputation, will be prevented from taking part. Cooperation is good and Ukraine appreciates the help.

As soon as it became clear on Thursday that the aeroplane had crashed above Ukraine, the airspace was closed – in other words within a few hours. The Dutch Safety Board has said it will investigate the exact course.

The preference of the Cabinet is for a national investigation in cooperation with other countries such as Ukraine, the United States and Australia. Cooperation is however not the same as an international investigation and prosecution. This does not mean therefore that the Netherlands gives up the right to prosecute.

Close: 11:50.