Newsletter from the board October 2018.

Dear relatives,
In September you received our last newsletter. Meanwhile, a number of developments have occurred that we would like to inform you about through this newsletter.

1. Memorial 2019

Every memorial is a special moment for us. The commemoration in 2019 will be 5 years after flight MH17 was shot down and is an extraordinarily special moment, which we do not want to go by unnoticed. We are considering organising a memorial in the afternoon on 17 July 2019 with the familiar elements such as reading names out loud, a minute silence and a parade along the monument.
In addition, we consider organising an (international) symposium around 17 July, in which we look back on what has happened over the past five years and in which we also want to look towards the future. Discussions are currently taking place on this subject with our regular discussion partners about the content and the financing. We hope to be able to tell you more in our next newsletter.

2. Repatriation of human remains and personal property

In our last newsletter we indicated that we have sent letters to the ambassadors of the Russian federation and of the United Kingdom in the Netherlands about the trifling with human remains on and around the crash site in Ukraine. We have not yet received a response and we will appeal to those involved.

3. Future criminal case

On 19 September, we spoke with the Public Prosecution Service about the criminal investigation. The investigation is still in full swing and the Public Prosecution Service / Joint Investigation Team (JIT) cannot yet indicate when a decision to prosecute will be taken.
It had previously been decided that the case would be filed with the District Court of The Hague and it has now been decided to designate the Schiphol Legal Complex as a hearing location.
In the meantime, the necessary preparations for a trial have been made. An important point is the option of relatives to attend or otherwise follow the process. Naturally, this also applies to non-Dutch next of kin. The capacity of seats in the complex is limited. Because not only next of kin, but also media, interested parties (it is a public session) and other stakeholders or representatives of governments and grieving nations must be able to get a place. Therefore, seats are not just available for next of kin. Ultimately, the court determines how things will be organised.
Because we closely monitor the position of the next of kin, we are in communication with the Public Prosecution Service / JIT and the Dutch Ministry of Justice. In the meantime, the Dutch relatives have received a letter from us about these discussions with the Dutch Ministry of Justice with a number of questions about your expectations about following or attending the trial. We will come back to this in a subsequent newsletter.

The JIT/Public Prosecution Service will shortly publish a new E-magazine to inform surviving relatives about the JIT's research. However, no new research findings will be presented here. As the research progresses, it becomes more difficult to share information without harming the research. In addition, an interview with Fred Westerbeke (probably in November) will appear in the OM relational magazine Opportuun. As soon as the article is published, it will be made available to you.

4. Right to speak and victim interviews

The text below also appeared in our previous newsletter, but we thought it useful to include it again. In Dutch law, victims/next of kin have many rights before, during and after a criminal case against suspects of a crime. Examples include information provided by the Public Prosecution Service, victim interviews with the Public Prosecutor, possibly joining as an aggrieved party, right to speak, etc. Next of kin have a right to speak in the following categories (information from website Slachtofferhulp NL / Victim Support NL): parents, grandparents, children, grandchildren, brothers sisters, cousins, uncles and aunts (maximum 3 people per victim), legal representatives of a minor victim, life partner and 1 other family member: if the victim/the relative is mentally and/or physically unable to speak for themselves or an authorised representative speaking on behalf of the victim. For example, a family member or an employee of Slachtofferhulp Nederland (Victim Support NL).
Consequently, a very large group of next of kin has the right to speak or is entitled to a victim interview. The OM/Justice is working on information brochures for the next of kin. As a foundation, we keep a close eye on the fact that your rights are guaranteed. We will soon be holding talks with experts in this field, including Slachtofferhulp NL (Victim Support NL), Langsz Foundation and other experts.

5. Proceedings before the European Court of Human Rights

A number of relatives decided some time ago to start a complaint procedure at the European Court of Human Rights (ECHR) against the Russian Federation. To this end, these surviving relatives have concluded no-cure no pay agreements with their lawyers (affiliated with the so-called Core team) on the basis of a pilot scheme.
Relatives who are clients of Beer Advocaten were more cautious on the advice of their lawyer, because there were serious doubts about whether a complaint would be declared admissible by the ECHR. Meanwhile, the JIT indicated at the end of May that the Russian State had been involved in shooting down flight MH17 (the BUK missile came from a Russian army base according to the JIT). Subsequently, Dutch and Australian governments have decided to hold Russia accountable for their role in the MH17 drama.
It is now the case that a citizen can submit a complaint to the ECHR within 6 months after he/she has taken note of it, that there is liability of a State. This term expires at the end of November this year and to prevent that surviving relatives can lose their rights if the term expires, Beer Advocation has now also proposed to their clients that they start a procedure at the ECHR.

6. Additions by the Council for Legal Aid in proceedings ECHR

As mentioned above, a number of relatives conduct a procedure with the ECHR on the basis of no cure no pay agreements. This means that should the case be won, and financial compensation is awarded by the ECHR, the surviving relatives should pay an amount to their lawyers of 25-35% of the granted compensation amount.

Beer Lawyers does not use this scheme and has asked the Dutch Legal Aid Council to provide additions to Dutch relatives for the proceedings before the ECHR. And that means that legal aid (with the exception of extra costs) will be financed by the Legal Aid Council. Initially it was the intention of the Council to reject the request. Beer Lawyers protested against the proposed rejection at the Council and the board of the foundation, in an interview with Minister Blok and the Director General of Law Enforcement and Justice, among others, insisted that additions would still be made. To our delight, this has happened, so that free legal assistance (except for any extra costs) is guaranteed for the Dutch relatives concerned.
That brings us to the question of how it is now possible, that roughly one half of the Dutch relatives can litigate with legal aid funded by the government (clients of Beer Lawyers) and the other half (if the case is won and compensation awarded) are faced with a bill of 25% of the awarded compensation amounts (clients who are members of the Core Team). We will question the Core Team about this.

7. New website

The foundation's current website did not meet expectations and is now no longer online. A new website is in the making. The new website will also include a private section for the relatives in which you receive information that is only intended for you, such as information from the Foundation and information from the government. You will be able to request a username and password to log in. In addition, we will also introduce a so-called poll function in the private section, which enables us to ask your opinion about current developments in a quick way. That helps us to express the opinion of the surviving relatives.

8. Trip to Ukraine

As announced, on 8 October, we spoke with representatives of the Ministry of Foreign Affairs and J&V and consulted with representatives of the Dutch embassy in Kiev on a possible trip to Ukraine. We have been informed by the Ministry of BuZa about the state of affairs and problems surrounding a possible visit. In summary:

- There is still an armed conflict going on in the disaster area; around the dividing line between the area controlled by the Ukrainian government and the separatist area, there are still regular deaths and injuries among the civilian population. There is also still a risk of landmines.
- Neither the Dutch nor the Ukrainian government can provide guarantees for the safety of visitors or adequate action by the police and emergency services in case of incidents on the spot.
- A negative travel advice is still in place.
- The personal safety of visitors cannot be guaranteed.
- Ukrainian permission is required for travel to the disaster area; entry from the Russian Federation is prohibited
- The separatists must be prepared to cooperate with a visit, but the Netherlands does not maintain contact with the separatists.
- Transport to the disaster area must be secured, with armoured cars for example. This would result in a major logistical problem and very high costs.
- Due to the poor accessibility of the disaster area, a visit is a multi-day visit, while there are insufficient accommodation possibilities in the disaster area.

For a visit to take place, a number of minimum preconditions must be met with regard to the security situation in the area:

- There must be long-term and full compliance with the cease-fire by all parties in the area.
- No injuries should have occurred in the area (e.g. through mines) over a longer period of time around the crash site and the road that will be used during a visit to reach the crash site.
- The Special Monitoring Mission of the OSCE must be prepared and able to facilitate a visit to the crash site.
- The Dutch government can, in close consultation with the next of kin, play a facilitating role in establishing contacts for a visit to the crash site, but cannot issue guarantees either.

In conclusion, it must be established that at the moment the situation around the crash site is too dangerous for a visit. The Dutch government understands how painful it is for the relatives to not be able to visit the crash site. The government closely monitors developments regarding security. If the necessary conditions for a visit to the crash site can be met at any time, the government will contact the surviving relatives.

9. Postponement visit of the Foreign Affairs Committee to the Russian Federation

We recently sent our letter of 20 September 2018 the Dutch Permanent Foreign Affairs Committee regarding the planned visit to the Russian Federation. It was intended to discuss the letter with the parliamentary committee, were it not, that the parliamentary committee had decided to postpone the visit before the meeting. This in response to the publications about the hacking attempts of Russian agents in The Hague. On 10 October, a meeting of our board took place with the parliamentary committee. The committee explained once again why they initially wanted to go and that the committee also intended to indicate in particular how parliament thinks about the Russian attitude in the MH17 investigation.

10. Conversation with Minister Blok

3 to 4 times a year there is a meeting with the Dutch Prime Minister, and the Dutch ministers Blok and Grapperhaus. Another interview took place on 17 October. Unfortunately, the Prime Minister and Minister Grapperhaus were prevented from attending due to obligations in parliament. On behalf of the Minister of Justice & Security, Director General of Law Enforcement and Administration of Justice, Ms. Anita Vegter, was present and on behalf of the Prime Minister Mr. Henk Korvinus, Justice and Security advisor for the Prime Minister. In addition to the board of the foundation, the workgroup for truth finding was also present. Short summary of the conversation:

- The foundation asked the minister to explain why the government was of the opinion that the parliament delegation's visit to the RF could have continued (see point 9). The minister explained that the parliament groups decide for themselves about their journey. The Prime Minister has stated the opinion that NL should continue to engage with RF in addition to addressing unacceptable actions such as the hacking attempt.
- The foundation has urged the government to put pressure on the Dutch Legal Aid Council to decide to grant additions to relatives who want to litigate in the ECHR against the Russian Federation (see point 6).

- The foundation has indicated that it wishes to include a post in the context of the subsidy application 2019 for hiring legal expertise for the purpose of interpretation for the surviving relatives. This is partly in response to parliamentary questions on this point and the government's commitment to financial support from the foundation.
- State liability of the Russian Federation: the government’s strategy remains that of a long-term commitment, and continues to appeal to and continue to search for openings. Those seem to exist, but the Netherlands is more in a hurry than the RF. That the RF has declared itself willing to talk if the role of Ukraine is discussed, is regarded as such an opening/step. Currently, they are 'negotiating about negotiating'. (point raised by the workgroup on truth finding)
- Members of the European Union sometimes commit to discussing certain things with the RF, but only at the request of the Netherlands (workgroup on truth finding)
- The workgroup on truth finding has asked, regarding Russian criticism of the independence of the JIT, to explain more clearly that the participation of Ukraine in the JIT directly stems from the fact that flight MH17 in Ukraine has been taken down and that the jurisdiction therefore lies with Ukraine.
- With regard to the possible state liability of Ukraine in connection with the failure to close the airspace, Minister Blok indicated that the legal feasibility of such an action is not great ("legally very thin”)

Lastly, we expressed our thanks for the government's commitment to the MH17 case and for the government’s role at the UN General Assembly in particular.

That’s it for now. We will keep you informed.
Kind regards,
The board