

# MH17 investigation



Conducting an independent investigation  
under exceptional circumstances

Annemarie Schuite  
Legal officer Dutch Safety Board

**Organised by:**



**Supported by:**





# Content of the presentation

- Short introduction Dutch Safety Board
- Start of the DSB investigation
- Exceptional circumstances
- Legal Framework
- Protection of information
- Independence and international cooperation
- Recovery and transport of wreckage
- Investigation of wreckage
- Reconstruction
- Reports on the investigation
- Conclusions and recommendations
- Informing next of kin
- Publication
- Follow up of recommendations



# Dutch Safety Board established 2 February 2005



Total staff = 70 fte    Aviation section = 7 fte



# MH 17 investigation

- **17 July 2014** flight MH17 crashes in the eastern part of Ukraine
- **23 July 2014** – Dutch Safety Board leads international investigation according **ICAO Annex 13**
- Initially 3 parts:
  - **Cause**
  - **Flight Routes**
  - **Passenger information**

# MH17 - Exceptional circumstances

- 298 victims from 10 different countries
- Crash site in conflict zone
- (Geo)political dimensions
- Recovery of the wreckage
- Criminal investigation and identification

# Legal basis of MH17 investigation



- **Article 26 Chicago Convention**
- **ICAO Annex 13**
- **Kingdom Act Dutch Safety Board**

# Legal basis of MH17 investigation

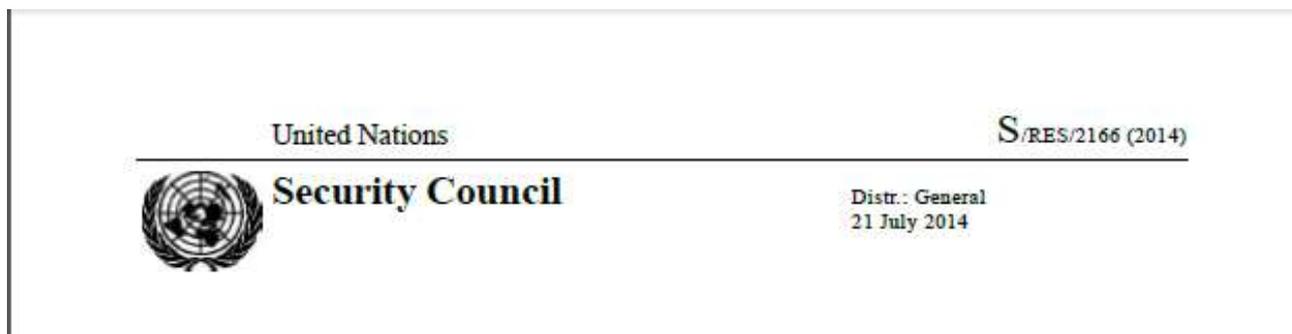
## Annex 13, Standard 5.1: **delegation of the investigation**

AGREEMENT  
BETWEEN  
the National Bureau of Air Accident and Incidents  
Investigation with Civil Aircraft (NBAAI)  
of  
*Ukraine*  
AND  
the Dutch Safety Board  
of  
*the Netherlands*  
on  
DELEGATION OF INVESTIGATION  
IN RESPECT OF  
AIRCRAFT ACCIDENT INVOLVING  
BOEING 777-200, REGISTRATION: 9M-MRD  
"MALAYSIA AIRLINES"  
FLIGHT MH17

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE MINISTER FOR FOREIGN AFFAIRS OF UKRAINE  
AND  
THE MINISTER OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS  
CONCERNING THE INVESTIGATIONS REGARDING THE ACCIDENT OF THE DOWNING OF CIVILIAN  
AIRCRAFT, MALAYSIAN AIRLINES FLIGHT MH 17 ON JULY 17, 2014.  
THE MINISTER FOR FOREIGN AFFAIRS OF UKRAINE  
AND  
THE MINISTER OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS  
Hereinafter referred to as "Participants",  
In their common aim to ensure that the investigations regarding the accident of the downing of civilian  
aircraft, Malaysian airlines, flight MH 17 on July 17 2014 will be conducted with the maximum  
impartiality and objectivity that will meet the expectations of the international community.  
Have decided that the following arrangements will apply:  

1. Taking into consideration that the overwhelming majority of the victims of the accident are  
citizens of the Kingdom of the Netherlands, Ukraine, as the State of Occurrence, will delegate  
investigation into the accident to the Netherlands through a legally binding agreement  
between the Ukrainian National Bureau for Accidents and Incidents investigation with Civil  
aircraft and the Dutch Safety Board on delegation of investigation in respect of aircraft  
accident involving Boeing 777-200, "Malaysia Airlines" flight MH17.
2. The Participants will cooperate to the fullest extent possible in returning the victims of the  
accident to the Netherlands. Ukraine will facilitate the transfer of the remains of the deceased  
and where possible of their personal effects. The Netherlands, as the Investigating State, will  
arrange for complete examination of the fatally injured passengers and crew on evidence  
related to the causes of the crash by experts experienced in accident investigation. The  
examinations will be expeditious and complete.
3. The Netherlands will coordinate the investigation into the circumstances of the accident and  
will be responsible for the conduct of the investigation in line with the provisions of Chapter 5  
of Annex 13 to the Chicago Convention. The Netherlands will ensure the participation of other  
parties concerned, in particular Ukraine as the State of Occurrence, Malaysia as the State of  
Registry, the United States of America as State of Manufacture and the International Civil  
Aviation Organization (ICAO). The Netherlands will communicate the report and findings to the  
concerned states. Ukraine will use every means available to facilitate the investigation.

# UN Security Council Resolution 2166 – 21 July 2014



***“..need for a full, thorough and independent international investigation..”***

---

## Resolution 2166 (2014)

Adopted by the Security Council at its 7221st meeting, on  
21 July 2014

*The Security Council,*

*Deploing the downing of a civilian aircraft on an international flight, Malaysia Airlines flight MH17, on 17 July in Donetsk Oblast, Ukraine, with the loss of all 298 passengers and crew on board,*

***“..calls on all States to provide any requested assistance to civil and criminal investigations..”***

investigation into the incident in accordance with international civil aviation guidelines, *noting* in this regard the crucial role played by the International Civil Aviation Organization (ICAO) in aircraft accident and incident investigations, and *welcoming* the decision by ICAO to send a team to work in coordination with the Ukrainian National Bureau of Incidents and Accidents Investigation of Civil Aircraft in this investigation, following a request for assistance by Ukraine to ICAO and others,

*Expressing* serious concern that armed groups in Ukraine have impeded immediate, safe, secure and unrestricted access to the crash site and the surrounding area for the appropriate investigating authorities, the Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission in Ukraine and representatives of other relevant international organizations assisting the investigation in accordance with ICAO and other established procedures,

# Legal basis of MH17 investigation

## 1 Causes



## 2 Flight route



## 3 Occupants



## 4 Passenger information



### Kingdom Act, 2 December 2004, instituting a Safety Investigation Board (Kingdom Act concerning Safety Investigation Board)

We Beatin, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

Greetings to all those who shall see or hear these presents! Be it known: Having taken into consideration that it is desirable to institute an independent board for the investigation of calamities, accidents and incidents, as well as to ascertain the causes or probable causes of the occurrence or the category of occurrences and of the extent of their consequences and to make recommendations accordingly;

After hearing the advice of the Council of State of the Kingdom of the Netherlands and in consultation with the States-General and having complied with the provisions of the Charter for the Kingdom of the Netherlands, We have therefore approved and decreed, as We hereby approve and decree:

#### CHAPTER 1 DEFINITIONS

##### Article 1

1. In this Kingdom Act and the provisions based on it the following words shall have the following meanings:
  - a. Our Minister: Our Minister of the Interior and Kingdom Relations;
  - b. Our Minister of Justice: Our Minister of Justice of the Netherlands, unless otherwise provided;
  - c. the Board: the Safety Investigation Board, referred to in Article 2, first paragraph;
  - d. the members of the Board: both the members of the Board referred to in Article 3, first paragraph, and the associate members of the Board referred to in Article 6, second paragraph;
  - e. the Office: the Office referred to in Article 11, second paragraph;
  - f. occurrence: event causing a person's death or injury, or causing damage to an object or to the environment, as well as an event giving rise to the risk of such a consequence;
  - g. ship: an object, not being an aircraft, by its construction evidently intended to float and floating or having floated;
  - h. sea-going vessel: ship, by its construction evidently exclusively or chiefly intended to float in the sea;

# Recorders – 22 July 2014



Flight Data Recorder



Cockpit Voice Recorder

# Protection of information

- The final DSB report is public, all other collected information is NOT.  
(art. 59 Kingdom Act DSB)
- Investigation information can:
  - **Not** be used as **evidence** in criminal, disciplinary or civil proceedings; *(including final report!!)*
  - **Not** be used as **basis** for disciplinary or administrative **measure** or **sanction**; *(including final report!!)*
  - **Not** be demanded for **inspection** or be **seized** for the purpose of a criminal or disciplinary investigation or for proceedings for imposing a disciplinary or administrative measure
- **EXCEPT: data recordings in case of a criminal investigation into hostage taking, murder, manslaughter or terrorism.**  
(art. 69 Kingdom Act DSB)

# Independence – International Cooperation

- DSB independent SIA
- ICAO Annex 13 – progress meetings
  - 16-25 February 2015
  - 6-7 May 2015
  - 11-12 August 2015
- Participating Member States (accreps):

– The Netherlands



– Ukraine



– Malaysia



– United Kingdom



– United States



– Australia



– Russian Federation





### DECISION CONCERNING THE GRANTING OF MANDATE

Hereby I grant Mr. R. Smits BSc, coordinator operations MH17, the mandate to sign any agreement regarding the salvage of the wreckage concerning the aircraft accident involving the Boeing 777-200, registration 9M-MRD, Malaysia Airlines, Flight MH17}

The Hague

5 November 2014

CHAIRMAN OF THE DUTCH SAFETY BOARD

Mr. Tjibbe Joustra LL.M.



Start recovery

17/05/2019



Transport by train from Torez to Kharkov



Arrival of first convoy in the Netherlands - 9 December 2014

# Investigation of the wreckage



# Reconstruction



**CIVIL AVIATION  
LEGAL ADVISORS FORUM**

# MH17 Investigations Dutch Safety Board

## 1 Causes



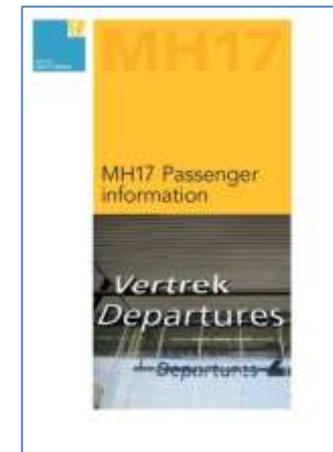
## 2 Flight route



## 3 Occupants



## 4 Passenger information



# Main conclusions

## Causes of the crash

- The crash of the Malaysia Airlines Boeing 777-200 was caused by the detonation of a model 9N314M warhead, fitted to a 9M38-series missile that was fired from a Buk surface-to-air missile system.

## Flying zones

- None of the parties involved adequately identified the risks to civil aviation brought about by the armed conflict in the eastern part of Ukraine.

# Recommendations

- **States** >>> airspace management
- **ICAO**>>> new standards and guidance material on flying over conflict zones (doc 10084)
- **Aviation branche** (IATA and operators)>> risk assessment

# Informing next of kin

- **During the investigation**
  - Next of kin ahead of media
  - Help and advice of third parties
  - MH17 Aviation Disaster Foundation
  
- **Meetings**
  - Presentations
  - Informal part for questions

# Visits to the wreckage




**ONDERZOEKSRaad  
VODA VEILIGHEID**

**Uitleg onderdelen op hangaarvloer**  
*Explanation of parts on hangar floor*



- |                                  |                               |
|----------------------------------|-------------------------------|
| 1. Cockpit                       | 1. Cockpit                    |
| 2. Waaier Motorisat.             | 2. Left Engine                |
| 3. Linker Motor                  | 3. Engine Inlet Guide         |
| 4. Linker Vleugel                | 4. Left Wing                  |
| 5. Linker Horizontaal Staartvlak | 5. Left Horizontal Tail Plane |
| 6. Verticaal Staartvlak          | 6. Vertical Tail Plane        |
| 7. Linker Vleugeltip             | 7. Left Wingtip               |
- Een Boeing 8777 meet ongeveer 40 x 60 meter; de vloer van de hangaar is ongeveer 50 x 35 meter.
- A Boeing 8777 measures approximately 40 x 60 meters; the floor of the hangar is about 50 x 35 meters.

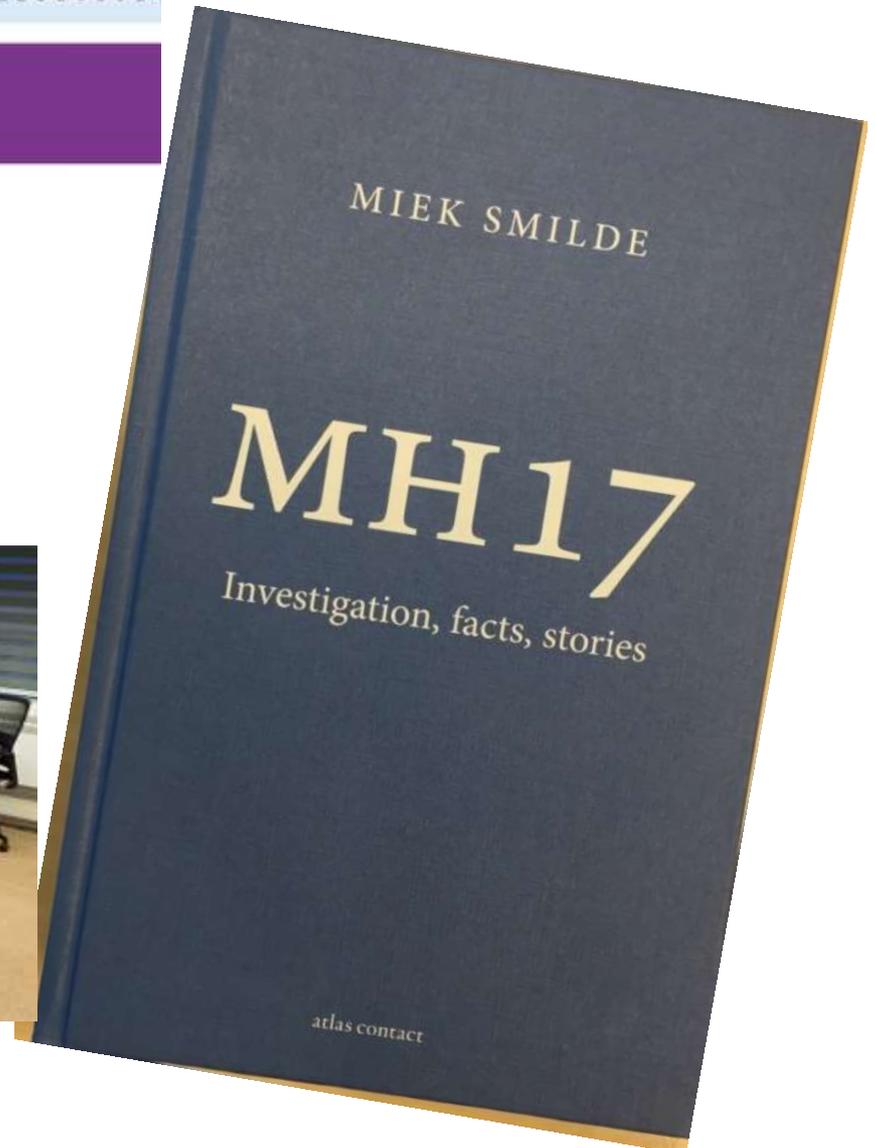
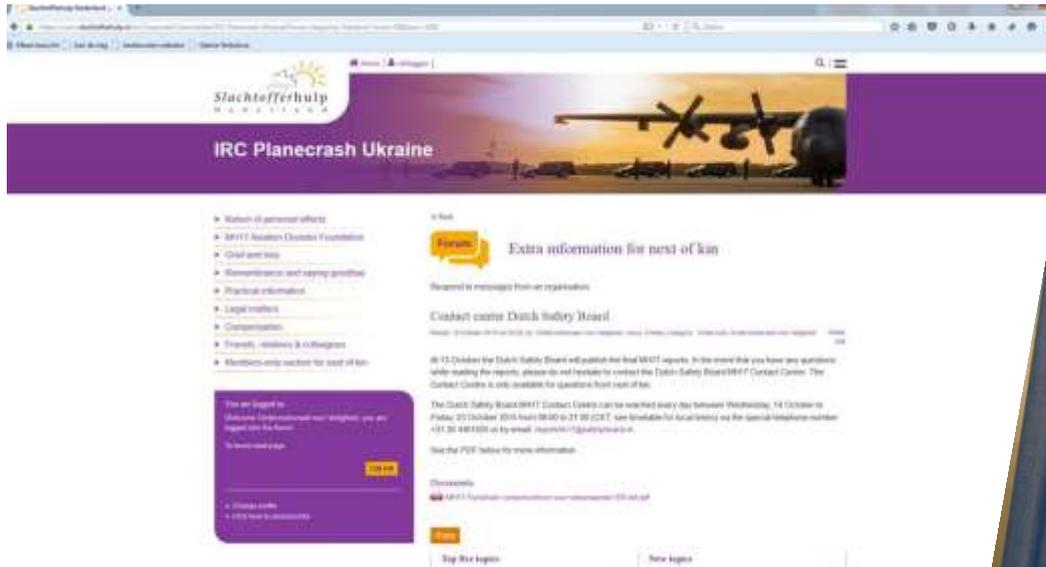
March 2015, visited by 533 next of kin

# Presentation final report relatives - 13 october 2015

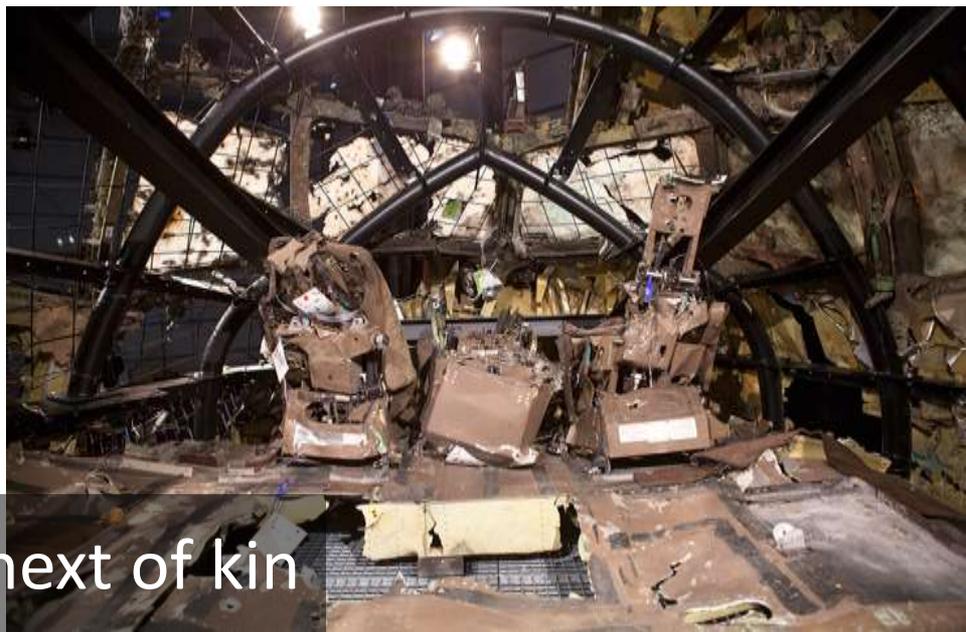
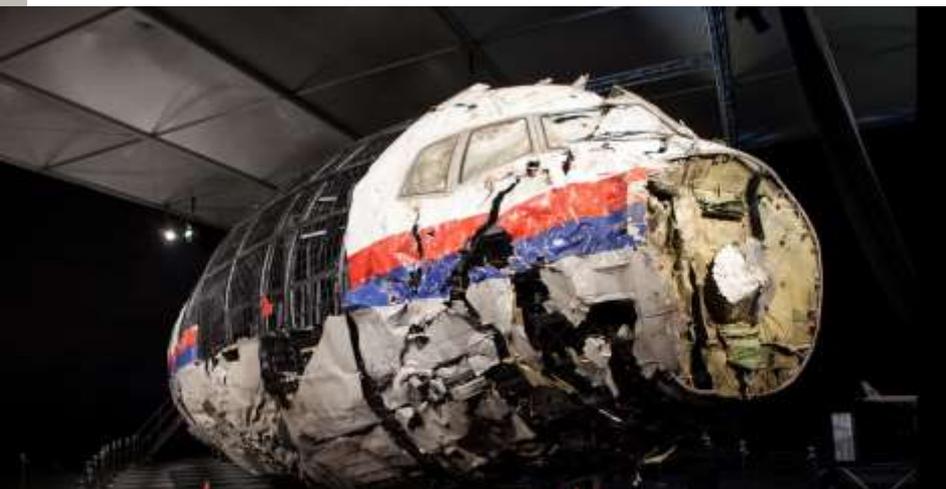


**CIVIL AVIATION  
LEGAL ADVISORS FORUM**

# Special means for next of kin



# Visits to the reconstruction

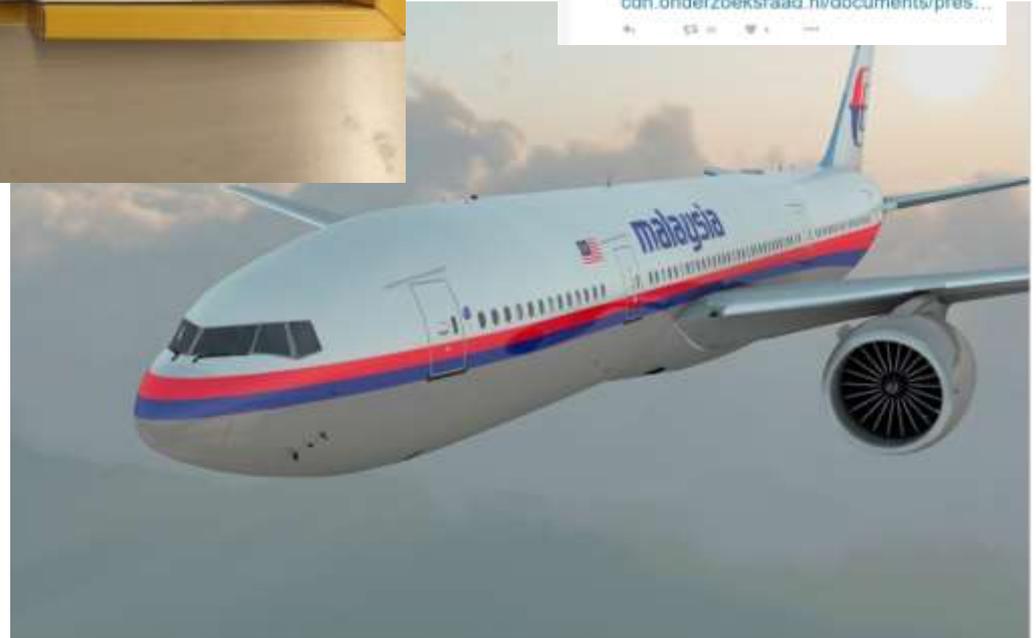
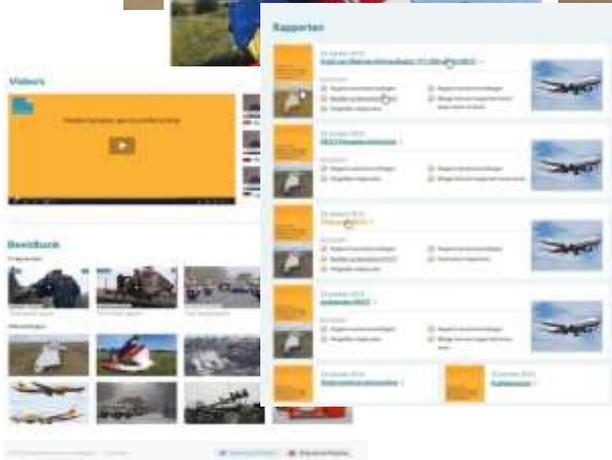
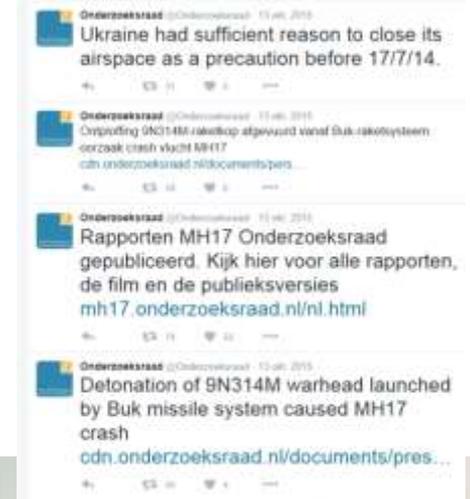


October 2015, visited by 428 next of kin

# Publication

- Informing surviving relatives about the findings
- Press presentation in front of the reconstruction
- Website
- Reports
- Brochures in various languages (incl Russian and Ukr.)
- Video (also with Russian and Ukrainian subtitles)
- Book for next of kin
- Informing the Cabinet, the Dutch House of Representatives and the Embassies
- Television programm about MH17
- Surviving relatives visit the reconstruction
- Contact centre

# Means to communicate to the public



# Publication 13 october 2015



**CIVIL AVIATION  
LEGAL ADVISORS FORUM**



**CIVIL AND LEGAL**

# Follow up on investigation

- Informing Dutch Parliament
- Informing ambassadors
- Presentations IATA and ICAO
- Two public hearings Dutch Parliament
- Questions Dutch Parliament
- **21 February 2019: Report on the follow-up of recommendations**



# Questions, remarks etc.



Annemarie Schuite

legal officer Dutch Safety Board

<https://www.onderzoeksraad.nl/en/>

[j.schuite@safetyboard.nl](mailto:j.schuite@safetyboard.nl)

+31 70 33 370 93

+31 651 13 90 81 (m)