

# SUMMARY REPORT

## **Commission of Inquiry into the Deployment of Weapons in Hawija**



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## 1. Cause

The Dutch House of Representatives passed the Belhaj motion on 14 May 2020, requesting the government to commission further investigations into the 2015 attack by Dutch F-16 fighter jets on a target in the northern Iraqi city of Hawija.

Since October 2014, the Netherlands had actively participated in the war against ISIS in Iraq and Syria in an international coalition called *Operation Inherent Resolve* (OIR), led by the United States. ISIS is the Salafist jihadist group that calls itself Islamic State in Iraq and al-Sham and is known for using extreme violence and gross human-rights violations. The Netherlands contributed to the government's air campaign twice using F-16 fighter jets: from October 2014 to June 2016 (the first deployment period) and from January 2018 to December 2018 (the second deployment period). A total of 3,000 missions were conducted with weapons deployed 2,100 times.

Civilians were killed in the Dutch attack on a target in Hawija in the night of 2 to 3 June 2015. The estimated number was at least 70. An ISIS facility for the assembly of armoured suicide vehicles had been the target of the attack. Due to the explosives contained in those vehicles, a secondary explosion occurred, causing civilian casualties and also destroying or damaging a large number of buildings and houses in the area. Local and international media and NGOs reported between 70 and 150 civilian casualties, both civilians and ISIS fighters, in the immediate aftermath of the attack. The fact that the Netherlands had executed this attack was not disclosed by the government for a long time.

By mid-2017, the Commander of the Armed Forces (Dutch: CDS) confidentially briefed the House of Representatives in a technical briefing about investigations by the Dutch Public Prosecution Service (Dutch: OM) into suspected civilian casualties in four different cases of deployment of weapons, however, without reporting a location, date or numbers of civilian casualties. Members of Parliament regularly urged the defence and foreign ministers to provide more transparency about this OIR mission. This debate came to a head after media reports by NOS (Netherlands Broadcasting Authority) and NRC Handelsblad (Dutch newspaper) on 18 October 2019 regarding 70 civilian deaths due to a Dutch bombing of the target in the Iraqi town of Hawija.

## 2. Accountability

In order to properly address the House of Representatives' criticism of the process of establishing the truth and the lack of transparency in the Hawija case, the Minister of Defence Ms Bijleveld set up an independent commission of inquiry headed by Minister of State Ms W. Sorgdrager. The terms of reference for the inquiry in the 19 November 2020 Decree establishing the Commission of Inquiry into the Deployment of Weapons in Hawija read:

- a. *investigate the circumstances leading to the occurrence of civilian casualties during the deployment of weapons in Hawija;*
- b. *explore the respective lessons for the future.*

In order to provide an appropriate response to the main questions, the Commission conducted a meticulous reconstruction based on a broad perspective. For the determination of the lessons to be learned, the Commission needed to examine how the Ministry of Defence itself had collected information about the attack's implications after the deployment of weapons and what subsequently happened with this information, also in respect of the House of Representatives and the Senate.

In addition to examining the timing of the 2015 deployment of weapons at the Hawija target, the Commission allowed itself the discretion to examine the initiation of the international coalition against ISIS in 2014 and the years following the attack. In order to respond to the questions posed in the Decree on the establishment of the Commission, the Commission investigated the decision-making process on

participation in the international coalition, the context in which participation took place, how decision-making on the deployments of weapons took place during OIR, what happened around the attack, how it was analysed and how it was communicated. The Commission repeatedly kept asking itself who did what, where, when and why. In this way, the Commission intends to clarify how the deployment of weapons came about, what measures the Ministry of Defence had taken to prevent civilian casualties and how accountability was rendered with regard to the implications of the deployment of weapons. In addition to the two investigation questions from the Decree establishing the Commission, the Commission posed 15 further investigation questions, included in chapter 2 of the inquiry.

With regard to this inquiry, the Commission had access to several archives and conducted 31 formally recorded and 26 background interviews in the Netherlands, Denmark, Iraq and the United States. The Commission was given access to Dutch classified state-secret information. At the start of the investigation, the Ministry of Defence explicitly pointed out to the Commission its commitment *'to ensure that all relevant information is carefully considered and should end up in the final report, and that the final report will as much as possible be public'*. The Commission did treat this information with due care, with a view to the personal safety of the military personnel involved and the Dutch armed forces in general, and pursuant to the operational interests that provide insights into the methods of the Ministry of Defence. Establishment of the truth has been the keynote for the Commission.

Not all requested information was provided to the Commission for several reasons; archives were incomplete or poorly laid out, or relevant material had not been preserved or the requested information was not provided, despite urging the Ministry of Defence.

The Commission's guiding principle has always been: diligence comes before speed. This means that the Commission opted for the guiding interest of a reliable, careful and high-quality investigation in this substantively complex and multifaceted inquiry. This explains the time taken for the inquiry, which took up four years. In addition, a number of practical factors can be identified with regard to this long period: the screening of all the staff; obtaining a secure investigation location; working with classified information; the covid period; accessing archives and making sources accessible.

### **Report structure**

The report on the attack on the Hawija target comprises six sections. The chronology of the events has, where possible, been maintained, however, sometimes the past is reverted to in order to understand or explain certain developments.

All sections of the report have been summarised below. In Section VI of the report, the Commission has drawn conclusions and made a number of recommendations, which have been included in full in this summary.







# Section I Context

## 3. Scene of action in Iraq

The attack by the Dutch air force at issue happened during the international coalition's war against ISIS in Iraq. The Humanitarian Law of War (HLoW) in conjunction with the National *Rules of Engagement* (ROE) apply in that war: the national instructions on the use of force of each country that participates in the coalition.

On 25 June 2014, the Iraqi government asked the United Nations for military support in the fight against ISIS. ISIS occupied large parts of both countries in Syria and Iraq and declared the caliphate on these areas in late June. The United States rushed to Iraq's aid in August 2014 and made an appeal to other (including NATO) countries around the world. Soon, over 80 countries joined OIR. At the start, 12 countries participated in air operations, including the Netherlands. Ground forces were excluded.

Hawija is located in a traditionally Sunni area. ISIS occupied this region in 2014, which remained under ISIS control between June 2014 and October 2017.

Weapons in Hawija were deployed in what is called an 'industrial zone' in Iraq. An industrial zone in the Iraqi context is not comparable to a western industrial area or business park, which is deserted at night. Hawija and other cities in this area are built through zoning principles. Each zone has a particular function. An industrial zone is designated for factories and/or shops. Also owners and their employees can partly live there. An industrial zone is labelled as mixed-use, where residential, commercial and small industry exist interchangeably. Government institutions may moreover be housed in the industrial zone. During the war against ISIS, refugees also find shelter at that location. Those refugees were noted by the *International Organisation for Migration* (IOM), a UN-affiliated organisation, which published this in February 2015. The organisation tries to offer help for shelter in coordination with the Iraqi government.

The industrial zone in Hawija is surrounded by the residential areas: Awan, Yarmouk and Hittin. Yarmouk and Hittin are about 150 to 250 metres from the target that was attacked by the international anti-ISIS coalition on the night of 2 to 3 June 2015.

## 4. War Law

Following the Iraqi government's request to the United Nations pursuant to the HLoW, the international coalition has a legal basis for its operations in Iraq. In addition to the (international) HLoW, the participating countries of the coalition must observe both the Geneva Conventions and their own (national) *Rules of Engagement* (ROE) during all elements of military intervention.

The HLoW adheres to the fundamental principles of military necessity and humanity, which is reflected in the principles of distinction and proportionality. Pursuant to the principle of proportionality, the HLoW prohibits attacks which side effects are excessive in relation to the specific military advantage expected from the attack at the time of execution. These include death and injury to civilians and damage to civilian objects. Targets must only be attacked if they have a military function and human suffering is avoided where possible. The principle of proportionality in the HLoW does, however, recognise that it is inevitable that civilians or, for example, buildings worthy of protection can and will be hit when attacking military targets.

The international coalition mainly conducts air strikes in Iraq and Syria. The deployments of weapons are preceded by a 6-step targeting process. The HLoW and ROE apply in each step, and the steps are

based on the principles of distinction and proportionality. Non-discriminatory attacks are prohibited under the HLoW.

For intended targets, only effects that could reasonably be anticipated are included in the proportionality considerations. Such considerations are based on the available information and military personnel's expectations when planning and executing the attack. The 'reasonable commander or combatant' is the recognised standard in this. This means that the commander makes a decision once he has been informed, as much as possible, of the likely effects and expected proceeds of the attack.

The HLoW requires that precautions be taken under proportionality. One of the ways this takes place is through the creation of a *Collateral Damage Estimate* (CDE). A CDE is a computer-based calculation system to help predict collateral damage from a deployment of weapons in order to draw up a better proportionality analysis.

During the OIR targeting process, a *Red Card Holder* (RCH) of a country within the coalition must verify that the deployment of weapons coheres with the HLoW, the Geneva Conventions and its own national ROE, before accepting the deployment of weapons. This RCH is assisted by a legal advisor, a LEGAD.

Each country moreover has its own supervisory system. For example, an obligation applies to the Netherlands to draw up an *After Action Report* (AAR) after every deployment of weapons, which the squad commander must discuss with an assistant public prosecutor of the Dutch Royal Military Police, which, in turn, reports to the Dutch Public Prosecution Service. The Dutch Public Prosecution Service can review afterwards, if warranted, whether the ROE and the HLoW were properly applied.





## Section II Dutch participation

### 5. Decision for participation

In the Article-100 letter of 24 September 2014, the government explained the decision to join the international coalition by elaborating on previous peacekeeping missions in terms of terminology. In addition to diplomatic and humanitarian support, the Netherlands provided the deployment of military personnel, in this case mainly from the Royal Air Force. With a squad of up to 250 troops, the Netherlands was to participate for one year in air strikes using six F-16s and 130 military personnel for the purpose of training Iraqi and Kurdish colleagues. The Netherlands were to participate under US command structures.

The commission notes that the Article-100 letter in question does not mention anything specific about the risks of civilian casualties during the air strikes. The letter moreover fails to mention that this participation is related to a war against ISIS. The Article-100 letter only mentions risks to the personal safety of Dutch personnel, both in the air and on the ground, and not the risk of civilian casualties as a result of coalition actions.

Members of the House of Representatives did immediately raise the issue of 'risk of civilian casualties' with the military top brass during the technical briefing regarding the Article-100 letter on 29 September 2014 and also at the General Consultation on the subject on 2 October 2014 in the House of Representatives. Both times, both the military summit and the defence minister stressed that a targeting process of a deployment of weapons involves precision deployment and precision bombing, yet, that this is no guarantee that there will be no civilian casualties.

#### **Intelligence position**

The contents of the Article-100 letter are brief on the method of deployment of the F-16 fighter jets and the intelligence position. The letter does not address the implications of operating under US command either. The Americans did notify the Ministry of Defence of the relevance of bringing in their own experts and stationing them in Qatar where the *Coalition Target Development Working Group* was preparing for deployments of weapons. Specifically, the Americans mentioned bringing in the Netherlands' own intelligence and posting Intel experts as well as experts who may or may not be able to pull a red card in a deployment of weapons in a timely manner. This requires an Intel expert, an RCH and a LEGAD. The Commission finds that the Netherlands did send an RCH to Qatar, however, neither an Intel expert from the MIVD nor a LEGAD.

During a debate of 2 October 2014, MPs wanted more information on the Netherlands' intelligence position in the fight against ISIS. Since the fall of Srebrenica and the Davids Commission report, there had been widespread support for a solid and independent intelligence position during participation in international coalitions. The Commission notes that Minister of Defence Ms Hennis made the statement on this in the House of Representatives that the Netherlands had access to information: *'All doors are open because we are participating.'* However, she did not mention that the Netherlands had limited access to the Intel of countries such as the United States, Britain, Canada, New Zealand and Australia, the so-called *Five-Eyes* Intel community. There was no independent intelligence position. There was a discussion about this between the top brass of the MIVD and the military leadership at the start of the mission, because the Netherlands could not independently assess the targeting process. The Commission did not receive any cooperation from the Ministry of Defence and the MIVD to consult the requested sources on this matter.

## 6. Dutch Instructions on the Use of Force

During OIR, in addition to the HLoW, the Netherlands applied the Dutch ROE, i.e. instructions on the use of force, partly based on those of the international anti-ISIS coalition. Following advice from the international law advisor, the government imposed on itself for the time being not to conduct air strikes on Syria at the start of OIR, due to the lack of an international mandate. The Dutch ROE and the *Targeting Guidelines*, which together contain the main elements of the HLoW, also met the Iraqi government's request to spare inhabited areas where possible when bombing.

The Netherlands applied the principle of zero civilian casualties in air strikes during OIR. Those involved in the Ministry of Defence were unable to clarify to the Commission how the instruction of zero civilian casualties came about during the operation in Iraq. The fact that the Americans also used this instruction from the beginning of OIR is an established fact, although this was not stated in the HLoW. For the Netherlands, this instruction was definitely first given verbally to the squad commander. The number of zero civilian casualties was put in writing in the classified appendix on targeting to the Procedure for Minimising/Reporting Civilian Casualties, completed 19 December 2014 and officially signed on 22 January 2015 by the Minister of Defence. The minister also consistently reported the deployment of zero civilian casualties to the House of Representatives.

## 7. Minimising civilian casualties

The Commission has established that from the start of OIR, the House of Representatives had consistently put the issue of civilian casualty prevention on the agenda. So did the NGO PAX, which in October 2014 urged the Ministry of Foreign Affairs to set up a *Civilian Harm Tracking Cell* for Iraq to gain insights into civilian casualties caused by coalition deployments of weapons.

Partly under pressure from MPs and PAX, the Ministry of Defence, together with the Ministry of Foreign Affairs, set up the above-mentioned Procedure for Minimising/Reporting Civilian Casualties.

When preparing the Procedure for Minimising/Reporting Civilian Casualties, the initial idea was to inform the House of Representatives immediately - confidentially or otherwise - in case of civilian casualties, but this was abandoned in the final version. The ministers concerned opted for a passive line of communication. If there were to be civilian casualties, it was to be considered on a case-by-case basis whether the House of Representatives would be informed confidentially.

For reports on civilian casualties, the Procedure stated that coalition countries conduct their own investigations. At the same time, CENTCOM not only registered reports of *civilian casualties* (CIVCAS) but also conducted its own investigation into that case. Consequently, there were two analogous ongoing reporting procedures. If the Americans would (also) be conducting a CIVCAS investigation, the arrangement was that the Americans would continuously keep the country that also was conducting an investigation officially informed.

The Procedure further stated that every deployment of weapons must be reported to the Dutch Public Prosecution Service through an AAR, including unintentional collateral damage and/or civilian casualties. The Procedure moreover included a classified appendix on the targeting process. This lists the main aspects of the targeting process and the agreement of zero civilian casualties in the deployments of weapons, which had therefore not been in writing previously.

The classified appendix also mentioned a rudimentary compensation scheme in case the Netherlands would suffer civilian casualties. That arrangement referred to agreements such as those used during the Dutch operation in Afghanistan. The appendix reported that the Dutch State had no standard procedures or amounts of money.

## 8. Ministry of Defence, the Dutch Public Prosecution Service and civilian-casualty reporting

The Dutch Public Prosecution Service followed the principle that the assessment of the legitimacy of a deployment of weapons under the HLoW is primarily the responsibility of the Ministry of Defence in the person of the commander of the relevant unit. This is in line with the Instruction issued by the Board of Procurators General in 2006. Subsequently, if the situation gives rise to this, the Public Prosecution reviews the Defence's compliance with the HLoW subsequently. In accordance with CDS (Commander of the Armed Forces) Instruction 301 'Provision of information and reporting in Peacekeeping Operations' from 2014 that applies during OIR, the executive commander must assess the use of force for its legitimacy before, during and after.

In the appendix to the Procedure for minimising/reporting civilian casualties, confusion had arisen regarding the roles of the Ministry of Defence and the Dutch Public Prosecution Agency and who ultimately reviews compliance of the use of force with the HLoW. The Ministry of Defence reported in the appendix that the *After Action Report* (AAR) must be submitted to the prosecution for approval. However, this is an inappropriate interpretation of both its own CDS Instruction 301 and the 2006 Instruction of the Board of Procurators General.

According to the rules of the Dutch Public Prosecution Agency and the Ministry of Defence, a commander of an involved unit must make an AAR that contains a proper and complete factual report regarding the use of force and also state whether he considers it legitimate. That AAR is provided to the Royal Marechaussee (Dutch Military Police), who is present at a mission as an auxiliary officer. The latter subsequently forwards his report on a deployment of weapons including the AAR to the public prosecution in the Netherlands. The AAR must also include any suspicions of civilian casualties because, since the 2014 ruling of the European Court of Human Rights in the Jaloud case, the Dutch Public Prosecution Agency has had an additional obligation to conduct so-called fact-finding on civilian casualties.

The Commission notes that the CDS's own CDS Instruction 301 and the method of how an AAR is specified were partly unknown, which the military personnel involved was not fully aware of. The Commission has moreover stated that during the period under investigation, the civil servants and military top brass of the Ministry of Defence assumed that the Dutch Public Prosecution Service would conduct the legitimacy review, whereas this is the responsibility of the Ministry of Defence. The Dutch Public Prosecution Service only checks in retrospect whether or not it acted in accordance with the law. The Commission concludes that there was no shared protocol on legitimacy and on reporting suspected civilian casualties between the Dutch Public Prosecution Agency and the Ministry of Defence, i.e. not at the start of the OIR operation.





## Section III Operation Inherent Resolve

### 9. OIR: intelligence sharing

*Operation Inherent Resolve* is a global coalition, which is coordinated from multiple locations around the world. Besides the CENTCOM headquarters in Tampa US, where the Netherlands has its own *Senior National Representative* (SNR), the *Combined Air Operations Center* (CAOC) in Qatar is particularly relevant to the deployments of weapons. Baghdad is also home to a *Joint Operations Centre* that collaborates with the Iraqi government, both in relation to the required air-strike authorisation and obtaining Iraqi intelligence. The Netherlands has representatives in all the abovementioned locations.

The Dutch squad including the F-16s is stationed in Jordan. The headquarters of each coalition partner are located in their own country. For the Netherlands, this is the Defence Ministry's Directorate of Operations in The Hague (DOPS).

In addition, OIR is supplied with information from the (military) security services in the countries concerned. For the Netherlands, this is the MIVD. Before the OIR, the US intelligence agencies must first approve the targets, known as vetting, prior to the implementation and completion of a targeting process. US targeting doctrines apply during air strikes. The entire OIR operation relies heavily on intelligence from the so-called *Five-Eyes* community, which the allies use on a trust basis. The Americans are ultimately the leading provider of intelligence. The Commission's investigation shows that a lack of means of observation during the war against ISIS, left the Americans with far fewer opportunities to observe certain types of targets, such as the target in Hawija, over long periods of time.

The Commission has established that, based on its source research and interviews, the MIVD played no part in the targeting process of the air strikes at the beginning of OIR, including the attack in Hawija. Although at the outset, the Americans asked for Intel people to be posted at the CAOC, the Netherlands did not comply with this request at the time because of those *Five-Eyes* restrictions, and consequently, the quality and assessment of intelligence used in the targeting process were not weighed by the MIVD; not even at Hawija. In practice, the Netherlands relied on intelligence from the US and the other *Five-Eyes* countries. When in early 2015 the *Five-Eyes* restrictions occasionally relaxed slightly, allowing an RCH to sometimes keep a close eye, the staffing at the CAOC had changed, however, as yet without an intelligence expert. The MIVD would not have a tactical intelligence position in Erbil in Iraq until in the course of 2015. From the start of OIR, the MIVD only had a position in Syria. Official agreements on sharing tactical intelligence during OIR were made by the Council of Ministers in July 2015. The MIVD only began to be actively involved in the targeting process at the CAOC in Qatar in mid-2016, i.e. well after the attack in Hawija.

Based on the source research and interviews with those involved, the Commission has established that prior to the mission, no analysis had been made of the Netherlands' own intelligence needs during the mission. The Commission states in addition that the military personnel involved at the CAOC were not sufficiently instructed on how intelligence from the *Five-Eyes* community should be weighed and what criteria must be met for the Netherlands to properly weigh and assess the legitimacy and proportionality of a deployment of weapons based on information from foreign intelligence services.

## 10. The targeting procedures within OIR

The entire process within OIR is set up on a 6-step targeting cycle. During all 6 steps, a review against the HLoW and ROE is conducted.

When gathering intelligence around a potential target in steps 1 and 2, the *Pattern of Life (PoL)* and *Pattern of Activity (PoA)* should be observed with due allowance for local standards and values, according to this precept. This may include using census data (population data) to determine the population density in an area.

Despite several interrogations, the Commission did not find any unambiguous and clear guidelines on what and how long observations should be carried out for the PoL and PoA activities nor how the mandated RCHs should review this information later on during the cycle in step 4. However, the Commission did note that the PoL can also be established partly on the basis of public sources such as, for example, the presence of refugees in certain parts of the city.

The US intelligence agencies' task is to comment on the accuracy of the intelligence in step 2, and each (US) agency must separately agree with the target. The information gathered by the intelligence agencies is subsequently used in the targeting process and in determining the type of deployment of weapons in step 3.

In step 3, the collateral damage for each deployment of weapons must also be calculated using the CDE; a computer calculation that quantifies various risks of collateral damage from low to severe, indicated by numbers from 1 (low) to 5 (severe). Also the distinction of *Low or High* is indicated for each level. For example, *CDE-5 High* is collateral damage with civilian casualties. *CDE-5 Low* is collateral damage without civilian casualties.

Those calculations are essential to the US Army OIR command because ISIS is known to increasingly deploy its military objects in urbanised areas to use the population as human shields. According to US doctrines, a target involving *human shields* is automatically classified in the CDE calculation as a *CDE-5 High* object.

A CDE calculation is an estimate as not everything can be taken into account. For example, US targeting doctrine excludes secondary explosions from the CDE calculation. Only if intelligence information is available on the amount of explosive material can it be taken into account. In any case, the doctrine states that the commander should not rely solely on calculations, and if secondary explosions are involved, he should also use his knowledge, experience and common sense.

The Commission's investigation shows that Dutch RCH only became involved in the targeting process at a late stage, i.e. step 4, when also the approval process was underway. At this time, the RCH must accept or reject a deployment of weapons. The *Senior National Representative* at CENTCOM headquarters in the US has knowledge of the first three steps of the targeting process, but has no knowledge of the Five-Eyes information. In turn, the Dutch parties involved in the CAOC have no knowledge of the Intel of the first three phases of the targeting process either. In step 4, they gain knowledge - albeit limited.

The Dutch RCHs at the CAOC were mandated to positively confirm a request for the deployment of weapons if the CDE calculation arrives at *CDE-5 Low*. This is an attack with collateral damage without civilian casualties.

## 11. Dutch deployment of OIR

The squad in Jordan where the F-16s were based comprised about 250 military personnel and was being relieved every three months. The squads *Air Task Force Middle East* were given the abbreviation ATF-ME, starting with one, and then a successive number every three months.

At the start of the Dutch mission in October 2014, the commander of the squad stationed in Jordan assumed the RCH's task to approve a deployments of weapons. Since secure links to the CAOC in Qatar are lacking for him, the Americans would consistently deliver the information to him in *hard copy*. That task was transferred to a mandated RCH at the CAOC by the end of December 2014. The Netherlands initially stationed one mandated RCH at that location without a *Legal Advisor* (LEGAD). The choice to post the LEGAD in Jordan and not at the CAOC is because of the Five-Eyes restrictions on Intel information at that location. While this LEGAD played no part in the targeting process up to and including the attack in Hawija, it did play a part in preparing the *After Action Report* after deployments of weapons. A LEGAD arrived at the CAOC only by the end of June 2015, following the relaxation of the ability to access *Five-Eyes* intelligence. A second mandated RCH was sent to the CAOC in spring 2015.

The Netherlands would fly both AI and CAS missions; a *Close Air Support mission involves air support to ground units*. An *Air Interdiction mission* comprises static targets such as command centres, logistics storage, weapons storage and so on, where weapons are dropped at very high altitudes. In a CAS mission, the pilot also has an RCH task; he can abandon the deployment of weapons at the last moment and, in some situations, direct a dropped weapon away from the target should he see civilians on the ground. In an AI mission, the pilot does not have this possibility as an RCH; all considerations take place in the planning phase. The deployment of weapons on the target in Hawija was an AI mission.

During OIR, the Netherlands was the only country besides the United States to have *Small Diameter Bombs* (SDB) at its disposal, which due to the nature of the weapon were deployed more frequently in urban or populated areas. The SDB are precision bombs that should result in less collateral damage. OIR often uses these types of bombs for a certain type of targets in urban areas, for example arms depots and factories where *vehicle-borne improvised explosive device* (VBIED), or bomb cars, are made. In the letters sent to the House of Representatives in 2014 and 2015, the relevant ministers did not explicitly mention participation in war. In the House of Representatives, the government emphasised that the targeting process was very precise and accurate with minimising unintended collateral damage, including civilians and civilian objects, being the top priority for all coalition partners. The government also reported that the pilot, as an RCH, was also tasked with the prevention of civilian casualties. The Commission notes that this, however, applies only to so-called CAS missions, not to AI missions such as Hawija.



## Section IV Hawija

### 12. The attack in Hawija

The Commission's investigation shows that the intended target in Hawija had been localised at and had been observed from Langley in the United States from December 2014. At that time, the 6-step targeting cycle started. To the US targeteers it was clear that the target was located in an urban area, in an industrial zone surrounded by three residential areas in a semi-circle. The Commission has not been able to determine how long and how often intelligence observations were made in order to obtain a good impression of *Pattern of Life and Pattern of Activity* and what exactly had been identified. However, the CIA had pointed out the *residential neighbourhood*. This intelligence agency, as all other US intelligence agencies, agreed to the deployment of weapons to attack the target in Hawija. The Commission found through interviews and research literature that the industrial zone had been partially inhabited and that refugees were also housed at that location.

The Commission stated that 5 heavy 500-pounder bombs were initially planned for the target. Due to the *Collateral Damage Estimate* calculation of *CDE-5 High* (a deployment of weapons with collateral damage as well as civilian casualties), these bombs were replaced by one 500-pound bomb and 5 lighter 250-pound *Small Diameter Bombs*, and consequently the computer calculation showed a *CDE-5 Low*; a deployment of weapons with collateral damage without civilian casualties.

According to intelligence, the target in question was being used for the manufacture of VBIEDs and as a weapons storage and collection point for vehicles to redistribute them from that location. (Remnants of) HME, *home-made explosives*, were detected six times between December 2014 and May 2015. No information was available on the number of explosives present in the target's buildings. According to information, the target was only being used as a military object. According to the *Joint Target Coordination Board*, a key decision-making body within OIR, there are no legal obstacles to attacking the target. The US commander of OIR gives his approval after an assessment of the CDE with the application of the doctrine for weighing secondary explosions, which means that he weighed this risk based on his experience and common sense. The former Iraqi defence minister, in his role as sector commander, told the Commission he had co-approved this attack, and the Baghdad headquarters subsequently confirmed it. The Commission has not been able to ascertain the date of the approval.

The Commission notes that the intended deployment of *Small Diameter Bombs* means that only the US or the Netherlands were eligible for the deployment of weapons. Since the US was engaged with deployments of weapons in Syria, the Netherlands had been asked to execute the attack. Although the pilots involved and the RCHs were aware of the target in populated areas, the pilots said they did not know exactly where the residential nuclei were located. The RCHs did know about the residential areas a few hundred metres from their target and one of them stated there was a mosque in the area. The Netherlands effectively requested that the attack be moved from 9pm in the evening to midnight, anticipating that no civilians would be walking through the industrial zone at such time.

The squad commander said he relied entirely on the information supplied by the Americans. None of the Dutch involved in the attack at the time had received any knowledge about the CIA's information about the *residential neighbourhood*. It is not mentioned in the instructions given to the pilots, the so-called TARPAC. This, however, does contain information that the target is a VBIED facility where *home-made explosives* had been sighted.

The pilots of the two F-16s released the weapons on the night of 2 to 3 June 2015. As soon as the bombs hit the target, the pilots and military personnel, watching through an unmanned aircraft at CAOC, observed a primary and a mega secondary explosion. Pilots and attendants at the CAOC had

never before observed such a mega secondary explosion in VBIED attacks. In view of the magnitude of the explosions, everyone at the CAOC immediately had possible civilian casualties in mind. The pilots as well. When civilian casualties are suspected, the practice within OIR is that the country conducting the attack initiates its own investigation and that the CAOC also initiates an investigation. The CAOC director or one of his US counterparts, offered the Dutch mandated RCHs to conduct the CIVCAS investigation for them. A CIVCAS investigation was no longer a national matter for a coalition partner. It was the Americans who conducted it in the case of Hawija.

### 13. Actions after the attack

The squad commander stated in respect of the Commission that after he had seen the images of the attack, he immediately considered the possibility that the mega secondary explosion had caused civilian casualties. The Defence Operations Centre was informed of the deployment of weapons on the night of 2 to 3 June 2015. The daily Internal Memorandum of the Directorate of Operations mentioned the attack, but without the suspicion of civilian casualties. The information was deliberately kept brief. The squad commander informed the deputy director of the Directorate of Operations by phone in the early morning of 3 June about the suspected civilian casualties.

The military personnel involved testified to the Commission with regard to the secondary explosions that secondary explosions had occasionally occurred during deployments of weapons on VBIEDs and weapon-ammunition depots from the start of OIR up to the attack on the target in Hawija, but those had been limited in magnitude and had not caused additional collateral damage either until then. The collateral damage from the Hawija deployment of weapons had exceeded expectations.

From the Mission Report that the pilots have to draw up after a weapons deployment, the Commission established that the pilots did note that *'due to large secondary explosions damage was observed around the target area'*, but when answering the question about collateral damage or civilian casualties, they systematically entered a categorical 'NO' (for each weapon) instead of - what would have made more sense given the existing suspicions - 'UNK' (*'Unknown'*). The squad commander did mention the damage to buildings by *'2 large secondary explosions'* in the *After Action Report*, but did not note his suspicion of civilian casualties because, according to him, hard evidence on this was lacking.

The Dutch squad had another F-16 make a *Battle Damage Assessment* (BDA) on the morning of 3 June 2015 to record aspects including the collateral damage. Despite heavy suspicions of civilian casualties, the images of this Dutch BDA had not been kept by the Ministry of Defence. The Ministry of Defence stated that these had been 'overwritten' the next day. On 4 June 2015, however, the images were still available. This BDA shows more collateral damage than expected. The BDA drawn up by the Americans and the analysis with images from the video, also taken on the morning of 3 June, had, however, survived.

Immediately after the attack, local and international media reported on 3 and on 4 June 2015 that between 70 and 150 people had been killed in the event, civilians and ISIS members. CENTCOM itself issued a summary press release on 3 June and refrained from more publicity due to suspicions of civilian casualties.

The Commission has established that in the early morning of 3 June 2015, the squad commander contacted the PD-DOPS (Acting Director of the Operations Directorate) by phone reporting that it was likely that there had been civilian casualties. The P-CDS then received this news at 08:00 am. This is the first time the suspected civilian casualties were reported to the military leadership. However, the report of civilian casualties was omitted in the daily Directorate of Operations' briefing that morning, because this was *'sensitive'* information. At the 'morning meeting with the minister' at 10:00 am (the minister was not present this time due to a plenary debate in the House of Representatives), the P-CDS did report the attack and the unexpectedly large secondary explosion, however, the word civilian casualties was

not mentioned. The foreign minister was briefed by his own staff on the evening of 3 June. On 4 June, both ministers were briefed more extensively on the attack and the suspicion of civilian casualties by their staff. The Mission and Operations Steering Group of 4 June 2015 also discussed the attack. The ministries of General Affairs, Defence and Foreign Affairs, as well as Justice and Security, and Foreign Trade and Development Cooperation attended this meeting.

The foreign minister received another special emergency bulletin from his own officials with information about the deployment of weapons and possible civilian casualties, partly with regard to his consultation on the evening of 4 June with the defence minister. This bulletin already mentioned that, based on post-attack calculations, the Americans suspected that 18,000 kilogrammes of explosives had been located there. It also mentioned that the target had not been in populated areas. The Commission notes that this was not the case, because the targeteers at the CAOC, the mandated RCHs as well as the Dutch pilots were aware that the attack was to take place in an inhabited area.

The Commission has established that the defence and foreign ministries, following the example of the Americans, used western word choices, i.e. 'industrial zone' or 'industrial complex', when referring to the industrial zone where the target was located. This created the suggestion that it was an uninhabited area. The cultural context of urban planning zones in Iraq has been overlooked. The Commission stated, as mentioned above, that people both live and work in industrial zones.

Following Dutch publicity about the attack on the Hawija target, the foreign minister said in 2019 that he had no recollection of the suspicions about civilian casualties in Hawija. Based on the Foreign Affairs sources and on international publicity, the Commission believes it implausible that the foreign minister had no recollection of the suspicions of civilian casualties in Hawija four years later. The numbers of casualties were partly still uncertain though in June 2015.

The Commission has established that both the Ministry of Defence and the Ministry of Foreign Affairs chose not to inform parliament about the deployment of weapons, not even confidentially, as long as it had not been established with certainty that there had been civilian casualties. For this reason, no publicity was made about the attack. The media coverage from local and international media was partly described as ISIS propaganda.

## 14. The After Action Report

After each attack, the squad commander must prepare an *After Action Report* (AAR). The Commission has established that the AAR on Hawija has been kept very brief, even when comparing the AAR with the CDS Instruction 301. The Commission notices that the section on the actual occurrence (*Execution*) of the weapon deployment in the AAR of ATF-ME was not broken down according to the points of attention in the format of that Instruction. For example, the squad commander had not included the suspicion of civilian casualties in the AAR of the attack on the target in Hawija. The squad commander made the statement in respect of the Commission that he had not included this in the AAR because of the lack of hard evidence; by this he was referring to no visible deaths. He believed that only matters of fact should be reported in the AAR. This was not how it was stated in the CDS Instruction. The squad commander discussed the AAR with his LEGAD and shared with him the extensive damage and suspicion of civilian casualties. The Commission has established that neither the squad commander nor the LEGAD of the squad in Jordan had been aware of the Procedure for Minimising/Reporting Civilian Casualties. This Procedure does state that the AAR should also describe '*whether there is any risk of unintended collateral damage and/or CIVCAS.*'

The squad commander must discuss his AAR with the KMar/hovj (Royal Dutch Military Police/assistant public prosecutor) present. The Commission finds that the readings of the squad commander and the KMar/hovj about their consultation are divergent. The squad commander said he reported the

suspicion of civilian casualties to the KMar/hovj and that the KMar/hovj were to have made a phone call with the Dutch Public Prosecution Service in Arnhem about this. The KMar/hovj denied to the Commission that the suspicion of civilian casualties was mentioned and that he had made a phone call to the Dutch Public Prosecution Service in Arnhem about this. The representatives of the Dutch Public Prosecution Service denied in respect of the Commission any telephone contact with the KMar/hovj from Jordan in June 2015 about possible civilian casualties.

The Dutch Public Prosecution Service took no further actions after receiving the AAR on Hawija, because the AAR of this ATF-ME mission had not provided any leads with respect to this.

## 15. US BDA

It is customary for the Americans, as leader of the coalition, to also make a *Battle Damage Assessment* of every deployment of weapons themselves to assess whether the deployment of weapons has had the desired military effect. After all, they are the only ones who can overview the entire targeting process.

The US BDA was conducted on the morning of 3 June 2015. Its analysis was available on 5 June 2015. The BDA showed that the military object was destroyed, yet, there was also damage in a wider perimeter of the target, including affected civilian objects, including in the Hittin residential area. Based on their initial calculations, 18,000 kilograms of explosives were said to have been located at the object. Several maps, made from video recordings, show how many buildings had been destroyed and how many had been damaged from light to heavy. Around the target itself: '111 x BLDGS confirmed destroyed, 75 x BLDGS confirmed severe damage, 86 x BLDGS confirmed moderate damage, and 160 x BLDGS confirmed light damage, and 9 x BLDGS confirmed no damage.' It reports about one of the nearby residential areas located about 150 metres from the target: '25 x BLDGS confirmed destroyed, 52 x BLDGS confirmed severe damage, 68 x BLDGS confirmed moderate damage, and 103 x BLDGS confirmed light damage.'

The US BDA in conjunction with media reports on 3 and 4 June 2015 prompted the CAOC and CENTCOM leadership to initiate what is known as a CIVCAS *Credibility Assessment Report* (CCAR), an investigation to verify suspicions of civilian casualties. The Americans took media reports of civilian casualties seriously, although the senior US general at CAOC, at that time, had not seen any evidence of civilian casualties.

Through the Dutch *Senior National Representative* at CENTCOM headquarters in Tampa, the US BDA was immediately entirely provided to the Ministry of Defence on 5 June 2015 including the notice of initiating a CCAR investigation.

## 16. Ministry of Defence in search of facts

Based on its investigation, the Commission found that, even in the night of 3 June 2015, the squad commander raised suspicions of civilian casualties with the Ministry of Defence immediately after the deployment of weapons on the target in Hawija. According to the Procedure for Minimising/Reporting Civilian Casualties, an investigation must start immediately after a report of civilian casualties. The leadership of the Directorate of Operations decided that the so-called DOPS/J3A (Operations Directorate/Department of Operations of the Operations Directorate, Ministry of Defence), a staff officer who himself was a highly experienced F16 pilot and the daily contact at the Directorate of Operations for the OIR mission, was to go to the CAOC. He should seek as much further information as possible on the course of the weapons deployment. The persons involved told the Commission that this is a *fact-finding mission* and not an official investigation. Before his departure, the Ministry of Defence was already aware of the outcome of the said US BDA on 5 June 2015. The DOPS/J3A was unofficially shown the



draft CCAR a few days later during his visit to the CAOC, which concluded that civilian casualties were credible (“credible”).

After the *fact-finding mission* at the CAOC, the findings were shared on 9 June 2015 in an additional briefing with the defence minister. The US BDA with the figures of all destruction and damage were shown, including those of the Hittin residential area, as well as the draft findings of the CCAR investigation. During this briefing, the MIVD (Dutch Military Intelligence and Security Department) was also joined for the first time. At the request of the Directorate of Operations, the MIVD was given access to the Dutch and US BDA after the attack, and the Service was asked to calculate how many explosives may have been located there, based on the crater that was struck. Whereas the Americans on the CAOC initially still assumed 18,000 kilos of explosives, the MIVD arrived at a much higher estimate based on the crater, i.e. 50,000 to 100,000 kilos of explosives.

The Commission has established that during the extra briefing on 9 June, the minister asked several times whether suspicions about civilian casualties had been confirmed. Official and military top brass answered that more research would have to demonstrate this, although senior military officials did say that based on the damage observed, it was unlikely that there had been no civilian casualties. Based on the investigation, the Commission finds that the Ministry of Defence continued to adopt a wait-and-see attitude about civilian casualties, while it only conducted a *fact-finding mission* into the attack, i.e. no official investigation, and let itself be guided by US initiative. This passive attitude would from then on continue in respect of the Dutch Parliament as well.

## 17. The CIVCAS Credibility Assessment Inquiry

The CAOC initiates an investigation whenever civilian casualties are suspected, culminating in a CIVCAS *Credibility Assessment Report*.

The final CCAR report on civilian casualties in Hawija was released on 15 June 2015, concluding that civilian casualties were credible. The drafter of the report recommended further investigation into the targeting process and to scrutinise the target development, intelligence and approval phase. Although the CCAR investigation, based on public sources, cited the number of 74 killed - both civilians and ISIS fighters - the number 70 was recorded in a military statistic as the CCAR investigation prompted the adoption of the number 70 to the *Combined Information Data Network Exchange* database CIDNE on 17 June 2015 with respect to ‘assessment killed’. The number of 70 civilian casualties was not released by CENTCOM at that time. It was two years later, on 30 April 2017, and from then, the number of 70 civilian casualties was included in OIR’s statistics.

The Commission has established that the Directorate of Operations of the Ministry of Defence received the entire, non-sanitised and signed version of the CCAR on both 15 and 18 June 2015. Based on the Commission’s investigation, it appears that neither the P-CDS and the CDS nor the Minister of Defence saw the CCAR investigation after its entry, but the CDS states to the Commission to have informed about the investigation. The legal top of the Ministry Defence also received the CCAR, but is not inclined to take any actions to the outcome of this investigation. The Minister of Foreign Affairs was confidentially informed of the conclusion by an official two weeks after receiving the CCAR. The Commission finds that both ministries were taking a wait-and-see position, a passive stance here.

The US Pentagon did draw a conclusion following the CCAR investigation. On 24 June 2015, the Pentagon announced a comprehensive investigation into the targeting attack in Hawija and initiated a so-called *Army Regulation 15-6* investigation into the targeting process and deployment of weapons in Hawija. That investigation was concluded on 20 August 2015.

According to a US lawyer at CENTCOM, it is common for an AR 15-6 investigation to be conducted in close coordination and alignment if a second nation is involved in a deployment of weapons. The

Commission's investigation shows that the Ministry of Defence had no involvement in the AR 15-6 investigation and did not want to be involved either.

## 18. Information to the House of Representatives from June 2015

In 2015, the House of Representatives asked the relevant ministers many questions with regard to the various letters and reports on the fight against ISIS. Parliamentary questions following the 'Progress Report on the Dutch contribution in the fight against ISIS' of early April 2015 were not answered until 23 June 2015. Parliament wanted to know whether the Netherlands was involved in air strikes with possible civilian casualties. The minister answered inappropriately that air strikes *'As far as currently known'* do not involve Dutch involvement in civilian casualties from air strikes in Iraq. The Ministry of Defence was at that time already aware of the outcome of the US BDA of 5 June 2015, which contains figures on how many buildings were destroyed and how many were severely or slightly damaged, including in the residential areas around them. The CCAR investigation's outcome stating that civilian casualties in the attack on the Hawija target were credible, was also known by that time.

In the private technical briefing of 25 June 2015 of the army command and top civil servants of Defence and Foreign Affairs with the House of Representatives, the subject of civilian casualties in a Dutch deployment of weapons was not raised. However, the Ministry of Defence claimed that the assessment of the legitimacy of the deployment of weapons was vested with the Public Prosecution Service, which, as previously noted by the Commission, is not the case.

During the 30 June 2015 General Consultation with the House of Representatives, the Defence Minister pointed out again that the deployment of weapons was taking place with precision. When it comes to collateral damage - in this case civilian casualties - the minister said that it *'actually [should] result in zero'* and that the Ministry of Defence had so far *'effectively'* not caused any civilian casualties. Moreover, the minister said: *'It is not like an entire neighbourhood or region will be flattened. That's due to those smart weapons I was talking about.'* After an interjection from a member of parliament, she retracted the statement of "zero civilian casualties", because the minister said: *'It's true, you cannot state such a thing with such abundance of certainty.'*

In the month of June 2015, the Ministry of Foreign Affairs received an offer from the *International Committee of the Red Cross* (ICRC) through the embassy in Baghdad to help monitor civilian casualties after attacks. On 11 June 2015, the ICRC shared a confidential list with the Dutch embassy in Baghdad that included (unconfirmed) numbers of Hawija civilian casualties. Based on its investigation, the Commission finds that the Ministry of Foreign Affairs did have a meeting with the ICRC on this issue, among others, at the embassy in Baghdad on 7 September 2015, but it is unclear how the issues were followed up. Despite a request from the Commission, the ICRC itself also failed to provide any additional information on the subject.

In August 2015, NGO Airwars published a report on the Hawija attack, calling it the most serious incident up to that point in the international fight against ISIS. According to Airwars, it was believed to have resulted in 70 civilian casualties. The House of Representatives asked questions about this and the Foreign Minister replied in late August that CENTCOM always conducted investigations if civilian casualties were suspected and that five investigations had been completed. One of those investigations concluded that two civilian casualties had occurred and that CENTCOM had published about it. The minister furthermore reported seven ongoing investigations by CENTCOM, which he could not say anything about at that moment.

OIR General MacFarland, on duty at the time, provided an opinion on the AR 15-6 investigation regarding the targeting process of the deployment of weapons in Hawija on 25 September 2015. The report with its conclusions and his judgment was not immediately released to the Netherlands. The *Senior National Representative* at CENTCOM in the United States did make several attempts to obtain those conclusions in the autumn, but in vain. As a non-Five-Eyes country, the Netherlands did not receive the AR 15-6 investigation until almost four months later, on 22 January 2016. The Commission has established that no priority was given to obtaining the AR 15-6 investigation report in The Hague either. Moreover, the Commission is surprised that no unambiguous agreements were made on this on an international coalition level, while coordination and alignment on such investigations could definitely have taken place.

Unlike the CCAR investigation which the Ministry of Defence had received non-sanitised, the AR 15-6 investigation on the targeting process by the Five-Eyes constraints had been partially sanitised and did not contain the corresponding 24 appendices either.

## 19. US Army 15-6 Regulation investigation

Based on its archival research, the Commission has established that the Ministry of Defence received two different versions of the AR 15-6 investigation report, each with a different degree of classification. The first version received by the Ministry of Defence on 22 January 2016 only contains the *Investigating Officer's* summary without 24 appendices, and the CIA's passage on the information about the *residential neighbourhood* near the target has been sanitised. These and other passages only became visible through an appeal to the *Freedom of Information Act* (FOIA). With this appeal to the FOIA, US and Dutch journalists released the AR 15-6 investigation with all 24 attachments in 2020. This is the second version of the AR 15-6 investigation report received by the Ministry of Defence. The Commission refers to this version in the investigation as the FOIA version. The Ministry of Defence version and FOIA version AR 15-6 were both included in the Commission's investigation.

The AR 15-6 *Investigating Officer* concluded that civilian casualties were plausible following a large secondary explosion. He concluded that the possibility of secondary explosions had been weighed during the targeting process by the US commander. The Commission is unable to verify how he reached this conclusion, partly because of sanitised passages. Inquiries by the Commission with the Americans did not yield anything either. How the (materials for) explosives present at the target were included in the weighting to attack the target remains unclear. The investigation's conclusions about the *Pattern of Life and Pattern of Activity* observations are not clear to the Commission either, both in terms of the length of the observations and the observations on the ground effectively made. Again, passages had been sanitised. The *Investigating Officer* concluded that the HLoW and ROE were applied during the targeting process and that there is abundant evidence of civilian casualties. He notes that he does not need any video footage of human remains to establish that conclusion. Even only in view of the magnitude of the explosion near civilian objects and the BDA's damage assessment, the logical conclusion must be that there had been civilian casualties caused by the secondary explosion.

The *Investigating Officer* recommended a different procedure for VBIED targets in populated areas, where the quantity and type of explosives present were difficult to determine. He noted the reasonable possibility of secondary explosions with these types of targets. To reduce the number of civilian casualties, he recommended that (VB)IED targets in populated areas should from then on be labelled as a *CDE High* sensitive target. Such targets should be given a so-called STAR procedure. This is a targeting procedure with even more caution where the commander must ask for permission at higher levels. A second recommendation from the *Investigating Officer* was to adapt the targeting process for targets in populated areas with a risk of secondary explosions. There should be better control on this, for instance by presenting a certain type of intelligence to the commander, when it comes to the

necessity and proportionality of the attack. OIR General MacFarland, on duty at the time, adopted this latest finding of the AR 15-6 inquiry. On the recommendation of the STAR procedure for VBIED targets in populated areas, he took further advice from his staff.

The Commission finds that the Netherlands, as the executor of the attack, had not been given proper and sufficient insight into the AR 15-6 investigation by the Americans. The Commission's concern is that, despite agreements on coordination regarding an AR 15-6 investigation, the United States did not involve an ally in this investigation and withheld certain information. The Ministry of Defence itself deliberately did not seek such coordination either. The Ministry of Defence did make attempts to get its hands on the investigation, but did not politically escalate this from the Netherlands towards the United States.

After the AR 15-6 investigation report had been received by the Ministry of Defence on 22 January 2016, the director of DOPS ordered an internal investigation into the deployment of weapons and the Ministry of Defence decided to make an appointment with the prosecution to present the AR 15-6 investigation report. The Commission examined whether this was an official investigation in accordance with the *Defence Department's Instruction in respect of the Parliament A/989 Protocol regarding Internal Investigations* of April 2013. The Instruction in respect of the Parliament describes what requirements such an internal (also called: domestic) investigation is subject to.

The Commission has established that the terms of reference of the investigation were not defined, the scope of the investigation was limited, the military personnel involved were not heard, and no interpretation was given of the considerations to be made by the top US commander in accordance with doctrine regarding any secondary explosions. The investigation was set down in a memorandum and not as a report as required. The investigator mainly relied on available US sources. The Commission assesses that it is an unofficial and internal investigation. The deputy director of Legal Affairs Directorate (DJZ) also stated in respect of the Commission that the investigation by the director of the Operational Directorate (DOPS) had not been an official investigation in accordance with the Instruction in respect of the Parliament. According to him, there had been no official assignment, yet an ad-hoc decision with no procedures or guidelines.





## Section V Research and communication

### 20. Actions and reactions in 2016 about Hawija

None of the relevant ministers thought it necessary to inform the House of Representatives about the AR 15-6 investigation. Following an attack in September 2015, also a CCAR investigation was being conducted into a deployment of weapons at 2 villas in Mosul involving the Netherlands and resulting in civilian casualties. Even though the Ministry of Defence already held that CCAR investigation, the House of Representatives was not informed about this investigation either. The CCAR investigation into Mosul concluded that the existence of civilian casualties was credible.

With the April 2016 Progress Report, the House of Representatives was told by the ministers that there were two ongoing investigations into attacks with possible civilian casualties, but not the sort of attacks. However, the ministers did promise that the House of Representatives would be informed of the results once those investigations were complete. These referred to the investigations into Hawija and Mosul where, in the Commission's view, sufficient information was already known by the Ministry of Defence at that time in order to share it with the House of Representatives, confidentially or otherwise. After receiving the AR 15-6 investigation, the Ministry of Defence initiated an internal investigation based on its conclusions. The House of Representatives was not informed (confidentially) about this either. The Commission has already concluded that this is not an official investigation in accordance with the Instruction in respect of the Parliament A/989 Protocol regarding Internal Defence Investigations. The Commission has established that the investigator mainly relied on available US sources. The conclusion of the internal investigation was partly in line with that of the AR 15-6 investigation; civilian casualties were plausible.

In the summer of 2016, the House of Representatives was promised a confidential technical briefing by the defence minister, on deployments of weapons in relation to civilian casualties, which, however, would not take place until a year later.

### 21. Public Prosecution investigates the attack in Hawija

On 1 March 2016, the Ministry of Defence handed over the AR 15-6 investigation to the public prosecution, which was unpleasantly surprised. After all, only now - far too late - could the KMar (Dutch Royal Military Police) start a fact-finding investigation. The KMar interrogated all those involved in the attack. The Commission thinks it is odd that the statements made in respect of the KMar and in respect of the Committee, it is again suggested - as in the 30 June 2016 memorandum to the CDS - that the risk of *secondary explosions* had been included in the planning phase of the attack on the Hawija target, by comparing this situation to attacks on similar targets in the past.

That statement is not consistent with the conclusion drawn by the Commission from all the documentation on the attack on the Hawija target, nor is it evident from the statements of most of the Dutch persons directly involved. also It is moreover inconsistent with US targeting doctrines. That consideration is vested with the supreme commander. In the case of attacks on VBIED sites, the persons involved in the KMar claim to have acted partly on the basis of four previous experiences, however, the Commission has found no evidence that such experiences are systematically being analysed, transferred to new squads and then involved in subsequent deployments of weapons. The KMar completed the Dutch Public Prosecution Service investigation in February 2017.

The Dutch Public Prosecution Service did not announce its conclusions until early 2018. On 13 February 2018, the Dutch Public Prosecution Service conveyed the results of four investigations into civilian casualties to the Ministry of Defence by letter from the chief public prosecutor of the East Netherlands

district court. The conclusion on Hawija was that it was plausible that there had been civilian casualties and that weapons had been deployed in accordance with the ROE and the HLoW.

## **22. Provision of information to the House of Representatives in 2017**

In 2017, pressure was mounting on the government to provide more transparency about the consequences of deployments of weapons by the Netherlands during OIR and to provide more information about any civilian casualties caused by those deployments of weapons. The promised confidential technical briefing to the House of Representatives, eventually took place on 1 June 2017.

The topic of the briefing was “possible casualties resulting from the Dutch deployment in the fight against ISIS. In addition to the two investigations already reported to the House of Representatives, the CDS informed the MPs present about a third investigation into a situation where the Netherlands may have caused civilian casualties and pointed out two more cases with suspected civilian casualties that the prosecution had picked up. The CDS said nothing about any numbers of civilian casualties, and reported only the type of target; a VBIED site and an alleged headquarters. According to him, the increase in civilian casualties during OIR resulted from fighting in urbanised areas and ISIS’ tactics of using civilians as human shields.

The confidential information from the technical briefing leaked to the media and during the General Consultation of 13 June 2017, information from the briefing became public. The House of Representatives again called for transparency, following which the defence minister referred to the monthly reports CENTCOM published on the numbers of ‘civilian deaths’ during those days. She stressed that the government weighed up what is or is not made fully public. In doing so, the national security of the Netherlands and the safety of people on the ground in Jordan and Iraq were paramount to the government.

## **23. Provision of information to the House of Representatives from 2018**

The Commission has established in this chapter that, from 2018, the government and specifically the Ministry of Defence had great difficulty in fulfilling the promise to the House of Representatives to be more transparent about civilian casualties. On 13 April 2018, the three ministers involved in OIR (Defence, Foreign Affairs and Foreign Trade and Development Cooperation), informed the House of Representatives through the ‘Progress Report on the Dutch contribution in the fight against ISIS’ about the outcomes of the four fact-finding missions conducted by the Public Prosecution. When and where is not included, though it does state that three of the four deployments of weapons probably resulted in civilian casualties. The Progress Report also reported that the Netherlands had made a proposal to the international coalition for a central coalition hotline for possible civilian casualties or their next of kin. In any case, CENTCOM would start publishing (investigations of) reports on civilian casualties on a monthly basis in collaboration with parties including the NGO Airwars.

In September 2018, the House of Representatives received a letter from the ministers concerned on ‘Combating international terrorism’. The Netherlands continued to participate with military presence in the international coalition until the end of 2019, but only as a training mission. The F-16s were to be withdrawn on 31 December 2018.

In 2019, when a new ministerial team had taken office, the newly-appointed Defence Minister Ms Bijleveld promised to send the House of Representatives a letter on a transparency policy after the



summer recess. However, the minister reported in September 2019 that the Minister of Defence would need more time.

In a joint research project, NRC and NOS published on 18 October 2019 about 70 deaths caused by a Dutch air strike on the target in Hawija in Iraq. That same afternoon, a large part of the House of Representatives demanded openness from the Minister of Defence about this bombing, also because MPs suspected that this attack was one of the four mentioned investigations that had been completed by the Dutch Public Prosecution Service.

On 4 November 2019, the defence minister set out in 10 pages on what had happened in Hawija. For the first time, the minister publicly mentioned that the deployment of weapons at the target in Hawija had caused around 70 casualties, both ISIS fighters and civilians she added. In the letter she also acknowledged that the House of Representatives had been misinformed in 2015 about the notion that there had been no civilian casualties up to that moment. The letter moreover reported the four civilian deaths from the 2 villas in Mosul. Minister Ms Bijleveld also stated that the Netherlands acted lawfully in Hawija and Mosul and that victims and relatives should turn to Iraqi authorities for compensation claims. This was followed by an account of facts on Hawija a day later, and on 25 November 2020, the Minister of Defence announced by a letter to the House of Representatives that there would be a new standard on informing the House of Representatives in the event of civilian casualties.

The account of facts, the letters and debates in the month of November 2019 plus the persistent media coverage again gave rise to new questions. At first mainly about the number of 70, which the minister had stated comprised both ISIS fighters and civilian casualties and that CENTCOM had never confirmed the number. This is not true. Eventually, the House of Representatives was told that the number of 70 civilian casualties had already been adopted in the statistics used by CENTCOM on 30 April 2017 and later, from 5 December 2019, the number was actually linked to the dates of the deployment of weapons in Hawija.

The list of questions and topics only increased as MPs were being sent the US investigations, the CCAR and AR 15-6, partly sanitised, through the Ministry of Defence on 21 April 2020. The questions were related to the targeting process, the role of the CIA during the targeting process, secondary explosions, the type of explosives allegedly in the storage sheds, the *Collateral Damage Estimate*, the intelligence position of the Netherlands during OIR and the role of the RCH and LEGAD, the alleged refusal of the attack by one of the allies, the US investigations CCAR and AR 15-6 itself, the role of CENTCOM, the role of the Ministry of Defence and the Public Prosecution, transparency on reporting civilian casualties during OIR, contacts with the ICRC and the presence of refugees in Hawija.

## 24. Communication on the attack in Hawija

Based on all the answers provided to parliament by the Ministry of Defence, including with the help of the Ministry of Foreign Affairs, the Commission has established pursuant to its investigation that some of the information provided was true, yet again regularly incomplete and inaccurate. Hypotheses have also been raised by MPs, journalists and NGOs as to where it went wrong in the Hawija attack; these have also resulted in questions for the ministers. The Commission pursued those hypotheses as well. Besides the misinformation about 70 civilian casualties, a number of aspects stand out.

For example, as regards to whether the Ministry of Defence itself conducted investigations (and what type of investigations) into the deployment of weapons at the Hawija target. The minister reported to the House of Representatives that investigations had been conducted '*immediately*' after the deployment of weapons. This had not been immediately, according to the Commission, because the Ministry of Defence had not conducted an internal investigation until 2016 after receiving the AR 15-6 investigation report. Only an initial *fact-finding mission* was conducted in June 2015. The Ministry of Defence

took a wait-and-see position and consistently hid behind the US investigations. The Ministry of Defence has never conducted an investigation in line with its own Instruction in respect of the Parliament A/989.

Parliament also wanted to know whether another ally had refused the mission in Hawija; this was suggested by NGO Airwars in March 2020. The minister replied that she was not aware of any other country having refused the attack. Based on the pre-selected deployment of *Small Diameter Bombs* for the deployment of weapons at the target in Hawija, the Commission does not consider an alleged refusal by another ally plausible. Only the United States and the Netherlands had *Small Diameter Bombs* at their disposal during OIR.

The House of Representatives had asked questions about secondary explosions, about the *Collateral Damage Estimate* mainly because of the qualification CDE-5. The House also wanted to know why it had not been known what type of explosives were located there. The Commission finds that the Ministry of Defence gave inaccurate information to the House of Representatives about the risk assessment of secondary explosions. The ministry claims that a risk assessment was made by 'experts' prior to the attack, based on the quantity of explosives estimated at the time and previous experience with attacks on this type of factories. The investigation shows that no experts were involved in the calculation. According to CENTCOM representatives, there was no need to consult experts in the case of Hawija because, according to them, there had been no information stating the tremendous amounts of explosive material at that location. According to them, Hawija was an outlier. During the meeting with the Commission, CENTCOM representatives explained that no information had been available beforehand stating that such a large explosion was to take place. According to them, a lot of time and energy was put into finding out as much as possible about the target, although they did point out to the Commission that during the war against ISIS, there were far fewer means of observation in order to observe certain targets for long periods of time.

The Commission points to a number of other issues with respect to this. According to the sources and stakeholders consulted in the Netherlands and the United States, intelligence was not gathered until the very last moment in the targeting process. Moreover, it was not known beforehand how much and what type of explosives were in the sheds, except that during the intelligence process, remnants were detected for the production of *home-made explosives*. The quantity was only calculated afterwards based on the US BDA's analysis and the MIVD's calculation. It points out that CENTCOM representatives admitted that during this war, there had been fewer opportunities to observe certain targets for long periods and there had been no uniform standard for PoL observation. It is true, however, that the targeting process relied heavily on intelligence gathered by the Americans, which was used by the Dutch military on the basis of trust.

The minister appropriately answered questions on intelligence and intelligence collection. The Netherlands was entirely dependent on the *Five-Eyes* community and therefore was unable to assess all classified information itself, although little text and explanation was given, whether or not confidential, as to what this entailed for RCH practice. The Commission did note that the intelligence position at the CAOC had not been filled with sufficient experts by the Netherlands at the start of OIR.

According to NGOs, the CIA's information about the proximity of '*residential neighbourhood*' were to have caused hesitation among the targeteers about the target in Hawija. The Commission comes to a different conclusion. Firstly, because the CIA itself agreed to bomb the target. Secondly, because the information about the *residential neighbourhood* had in fact been factored into the attack method for the target: the initial deployment of weapons with heavy bombs had been changed to a weapon deployment with *Small Diameter Bombs*.

During a Commission visit in Iraq, it was explained with regard to Iraq's own intelligence position that the intelligence position in Hawija of Iraqi services at that location had not been strong either. According to one interviewee, there has never been a '*smooth flow of information*' from Hawija to the capital of

Baghdad. Suggestions that intelligence had been withheld or not passed on are therefore difficult to ascertain or prove.

The Minister of Defence informed the House of Representatives by a letter of 30 June 2020 to improve the Netherlands' intelligence position. The CDS's instruction and guidance on Intel information and the risk of civilian casualties were to be tightened. For example, the RCH was to actively interrogate Intel information. The Ministry of Defence was also investing in improving the target-development process and improving the capabilities of the Dutch *Target Support Cell* at Volkel, and competences including learning modules were being developed for this purpose.

The House of Representatives was not properly informed about the role of the LEGAD in relation to the mandated RCH at the time of the targeting process of the target in Hawija. The same applies to the role of the pilot during an AI mission. The Ministry of Defence had consistently argued that the pilot can act as RCH until the last moment. This is the case in a CAS mission but not in an AI mission such as Hawija. Many of the Commission's interviews with those persons from the Ministry of Defence who were involved revealed that the perception of OIR was too rosy and that the Ministry of Defence was paying insufficient attention to the risks. The situation was related to participation in a war and that was not defined as such in respect of the parliament.

The Commission has established that, based on information from the Ministry of Defence, the House of Representatives assumed that the task and allocation of roles between the Dutch Public Prosecution Service and the Ministry of Defence were based on a formal procedure. There was no such procedure. The Ministry of Defence operated as if the legitimacy of a deployment of weapons was consistently assessed retrospectively by the Dutch Public Prosecution Service. That was not the case.

## 25. Compensation and transparency

Under pressure from the House of Representatives, the defence minister agreed in October 2020 to provide voluntary compensation to the community of Hawija for the suffering and material damage caused by the bombing. Individual compensation was rejected by the defence minister. In May and July 2021, the Netherlands started two projects in Hawija to restore infrastructure, basic services and employment. EUR 4.5 million had been allocated and spent for this compensation. The projects were completed in October 2022 and February 2023.

After two visits in Iraq, one of which was in Hawija, the Commission states that those projects were perceived as a drop in the ocean by the persons involved in Hawija.

The Commission notes that when participating in international military missions, proper arrangements for financial compensation should be made (in advance) in the future in case civilian casualties and/or collateral damage have been caused unintentionally.

On 9 October 2020, the defence minister finally sent her transparency plan to the House of Representatives and in 2022, the then incoming defence minister Ms Ollongren built on it using a five-step plan:

- Greater focus on civilian casualties in an Article-100 letter;
- Communication in advance on the mission and the level of transparency in the deployment of weapons;
- Periodic review of the level of transparency;
- The subject of civilian casualties will be given a more prominent role in evaluations of missions; and
- The Ministry of Defence will show better involvement in policy-making on civilian protection in armed conflict.



# Section VI Conclusions and recommendations

In the sixth and final section, the Commission has drawn conclusions and has listed a number of recommendations.

## 26. CONCLUSIONS

The Commission was asked to investigate the Hawija civilian casualties and whether any lessons or recommendations could be drawn from them.

The main questions to the Commission of this inquiry from the Decree of the Establishment read:

*'Investigate the circumstances leading to the occurrence of civilian casualties during the deployment of weapons in Hawija.'*

and

*'Explore the respective lessons for the future.'*

In order to be able to respond to both questions, the Commission asked itself 15 additional questions to better answer the two main questions. The Commission reached the following main conclusion and six sub-conclusions.

### Main conclusion

The Commission concludes that during the attack on the ISIS target (sheds with (suicide) bomb cars) in Hawija, the intelligence services failed to detect the presence of a large quantity of explosives. This lack of intelligence resulted in at least 70 civilian casualties. This high number is due to the fact that the bombing took place in populated areas and because the large amount of explosives present in the bombed sheds caused a secondary explosion far beyond the intended target.

The target had been observed from December 2014 until just before the deployment of weapons in June 2015, but the US military told the Commission that observations during OIR had not been sustained or systematic, partly due to the lack of sufficient observation resources and capabilities. This resulted in a lack of intelligence on the quantity of explosives at the VBIED site, for example. The targeteers were aware that the Hawija target was located in a populated area. They also have to take the *Pattern of life* and *Pattern of activity* into account in a deployment of weapons.

Due to the lack of sustained or systematic observations, also the *Pattern of Life* and *Pattern of Activity* in and around the Hawija industrial zone have not been set down sufficiently verifiable for the Commission. *Pattern of Life* and *Pattern of Activity* record activities and patterns of daily life allowing for local standards and values. Based on public sources, the Commission concludes that both the Dutch and US military should have known that the so-called industrial zone in Hawija comprised both a working and living environment. At the time of the deployment of weapons, the population in this industrial zone was even higher because of the refugees housed in that area. The refugee influx, triggered by ISIS violence in Iraq in 2014, had mainly been towards Hawija. The refugees who had stranded there had been listed by the UN-affiliated international refugee agency IOM in February 2015. They actively publicised this internationally, seeking help from the Iraqi government for shelter. These facts about partially

inhabited territory and refugees could have been retrieved even without information from intelligence agencies. The international coalition could have known this.

The deployment of weapons for the target in Hawija had in fact been adjusted by the US targeteers by choosing a different composition of bomb types. Initially, the CDE arrived at 5 High, meaning collateral damage with civilian casualties. By adjusting the bombs and attacking in the evening or night, the new US calculation of collateral damage arrived at *CDE-5 Low* with collateral damage that would be limited to two buildings immediately adjacent to the VBIED plant. Because of its location in populated areas, the Netherlands made sure to move the attack from 9pm to midnight. For the US commander, the limited amount of intelligence information, also about the explosives present and the nearby residential area, had apparently been no reason to refrain from the weapons deployment. The Commission concludes that the commander consciously took a risk. The target and consequently the potential impact that ISIS could cause with the VBIEDs in Iraq, which often resulted in many (civilian) deaths and casualties, was of compelling interest for the commander to take out this military target.

The Commission concludes that the Dutch squad that executed the mission entirely relied on US intelligence. The composition of the team at the CAOC involved that it could hardly properly weigh up the US intelligence on its own. The Commission is of the opinion that that the Dutch mandated RCHs, who assessed the deployment of weapons in terms of their mandate and the Dutch ROE had effectively acted with all due care by requesting the Americans to move the time of the attack from 9:00 pm to just before midnight. The chances of civilians walking the streets at such time would be lower in their reasoning; consequently, they had been taking an extra precautionary measure.

The Commission additionally finds that the RCHs could only assess the final stages of the targeting process pursuant to their mandate and the Dutch ROE. They could never review whether the HLoW was being applied by the Americans in all phases of the process. They had to rely on this. The Commission concludes that, from the start up to the deployment of weapons in Hawija, the Dutch manning at the CAOC operations centre had not been sufficiently thought through and implemented. Despite information from the United States on the desired staffing at the CAOC supplied by the *senior national representative*, both an Intel officer from the MIVD and a LEGAD were missing from the CAOC, who could have assessed the Netherlands' deployments of weapons in terms of the quality of intelligence and review against the HLoW and the Netherlands' own military-force instructions (ROE), respectively. With this manning at the CAOC, a conscious risk had been taken. Had the right staffing been initiated at the CAOC, the provided US intelligence and the deployment of weapons opted for could have been assessed with more accuracy.

The US AR 15-6 investigation on the targeting process concluded that the military leadership complied with all statutory obligations of the HLoW. The Commission calls to mind that the HLoW recognises that it is inevitable that civilians can and will be hit by attacks on military targets. However, the military staff does have an obligation to avoid this where possible. The HLoW is not under obligation to completely safeguard the civilian population, individual civilians and objects from the collateral effects of attacks if the expected military advantage in eliminating the chosen target will be substantial. Whether the right balance was made of the various considerations for the deployment of weapons in Hawija in this case is for the court to judge.

## Sub-conclusions

The Commission did not only consider the deployment of weapons, but also how the government participated in the international coalition and what happened after the Hawija bombing.

Based on the investigation, the Commission further concludes:

### **1. The government decided to join a war, but did not notify parliament in those terms.**

The participation in *Operation Inherent Resolve* came about in a pressure cooker at the outset. The government had not sufficiently explained the type of battle against ISIS to the parliament. The Article-100 letter only mentions 'fighting' ISIS, protecting the civilian population and promoting the international rule of law. As with previous international (peace) operations, the government opted for the following line of approach in OIR: deployment of soldiers, diplomats and development cooperation. This promotes a concealing effect as the operation involved participation in a war.

By emphasising the use of precision weapons, consistently mentioning a 'careful' targeting process and the criterion of zero civilian casualties, the government - despite questions from MPs about the risk of civilian casualties - conveyed the image of a 'clean' war. However, the harrowing reality of war is that there will always be civilian casualties; this has been understated.

### **2. The staffing of military personnel at CAOC headquarters in the targeting process was insufficient, as was their preparation.**

Participating in a war situation requires specific knowledge and skills and necessitates staffing at multiple headquarters. The Commission concludes that despite US information on the desired staffing, the consideration of who should be posted where had been insufficient. Staffing at the CAOC operations centre where deployments of weapons were being assessed and distributed among coalition partners was not at the appropriate level at the start. This was not adjusted until mid-2015 and in 2016. From the start, a LEGAD and an Intel officer were missing from the CAOC and only one mandated *Red Card Holder* was available. The Commission's investigation also found that those involved who were deployed both to the CAOC and to the air base in Jordan had not received sufficient preparation and knowledge on how to assess deployments of weapons based on existing or newly developed Guidelines, on *Rules of Engagement*, on humanitarian law of war and on *Five-Eyes* intelligence information.

### **3. The Netherlands entirely relied on US intelligence during the war in Iraq. The Netherlands failed to build up its own intelligence position and therefore was unable to sufficiently make its own assessments.**

The minister and top defence officials consistently reported to MPs that the Ministry of Defence was 'in control' and that the Netherlands was able to 'co-write' the OIR 'campaign' through preparation teams. 'All doors are open because we are participating'. Moreover, the defence minister told the House of Representatives that despite restrictions on the part of the Americans, the Netherlands would have access to intelligence during the mission in Iraq against ISIS. The Netherlands had limited access to Intel from countries such as the United States, Britain, Canada, New Zealand and Australia: the *Five-Eyes* Intel community. In fact, the Netherlands had to use this intelligence on a trust basis. This intelligence was being checked and weighed without LEGAD and Intel officer at the CAOC for the first six months and this was done by mandated *Red Card Holders* only. Parts of US or *Five-Eyes* information from Hawija's targeting process were not shared with the Dutch military personnel involved. Compared to a similar country like Denmark, the Commission concludes that assessments of such intelligence information could have been conducted with appropriate staffing.

At that time, the Netherlands did not have its own *intelligence* on the target in order to assess it independently as well as to make a balanced judgment based on *intelligence* on the (living) environment around the target. Commitments to the Parliament, even before 2014, to build up its own intelligence position, did not materialise at the outset. There was no independent intelligence position.

This dependence on the United States is also evident from the Ministry of Defence's position in the procedure of obtaining the US AR 15-6 investigation into the targeting process at Hawija. Only the CCAR investigation was received by the Ministry of Defence in its entirety, which, however, did nothing with it and left it in a drawer for unclear reasons. Moreover, as a coalition ally and friendly nation, the ministry never received the full official, uncensored, AR 15-6 investigation. The fact that the Ministry of Defence did not make more efforts to go after this is an incomprehensible matter to the Commission. Based on the *Freedom of Information Act*, journalists received more extensive documents from the US government than those initially sent to the Ministry of Defence. The Commission also believes that, based on the applicable cooperation protocols, the Netherlands should have taken the initiative to be involved in the AR 15-6 investigation.

The Commission finds that the Ministry of Defence has ignored its own regulations to find out whether and why such a high number of civilian casualties had occurred in Hawija. It denied itself the opportunity to directly reconstruct what had happened before, during and after the deployment of weapons and render account for it and learn from it quickly. When collateral damage with civilian casualties was suspected, its own official investigation should have been started immediately. The ministry did conduct a *fact-finding mission* at the CAOC and, after receiving the US AR 15-6 investigation a year later, an internal investigation. Both these actions do not have the label of an 'official investigation' as per Instruction in respect of the Parliament A/989. Both the *fact-finding mission* and the internal investigation do not meet the criteria of this Instruction. Moreover, these own regulations on reporting (suspected) civilian casualties in an AAR and conducting official investigations into (suspected) civilian casualties were largely unknown to those involved in the squad. The Commission holds the opinion that that a professional organisation such as the Ministry of Defence would be expected to handle its own regulations in a more careful manner.

The Commission concludes that the Ministry of Defence was negligent in handling source material by overwriting the video footage of the Dutch *Battle Damage Assessment*, which prevented retrospective verification. Moreover, the Ministry of Defence had failed to archive crucial source material.

**4. After the Hawija attack, the government did not sufficiently inform parliament of the fact that the attack had resulted in civilian casualties and, consequently, put off the responsibility of reporting civilian casualties for years.**

The government failed to report to the parliament that civilians had been killed by the Dutch deployment of weapons. This could have been reported confidentially, for example, if the security of both the armed forces and the nation had been at stake. With respect to this, the Commission also brings the lesson to mind, learned by the Balkenende government after the publication of the report of the Davids Commission to inform parliament in confidence about missions more frequently.

The Ministry of Defence has not followed its own guidelines for reporting suspected civilian casualties to the Dutch Public Prosecution Service. The guidelines require that suspicions of civilian casualties be expressed and set down in an *After Action Report*. This had been omitted. From Jordan, the squad commander did verbally report the suspicion of civilian casualties to the department top, but he had not mentioned this suspicion in the AAR which went to the Dutch Public Prosecution Service. This



prevented the Dutch Public Prosecution Service from fulfilling its responsibility to conduct a fact-finding investigation.

The Ministry of Defence has long defended the failure to report casualties as being due to the lack of 'hard' evidence immediately after the attack. However, the Commission is of the opinion that that the devastation shown in photos before and after the attack clearly revealed that the damage extended far beyond the respective target. Not only the industrial zone itself had been hit, but also surrounding residential areas. Senior Dutch military officials admitted to the Commission that civilian casualties were credible even immediately after the attack. The Commission concludes that the Ministry of Defence had not responded sufficiently or not urgently.

Iraqi and international media reported at least 70 civilian deaths as early as on 3 and 4 June 2015. The minister and the department's top brass labelled these reports as unreliable as they were claimed to be ISIS propaganda, despite the fact that reputable media outlets such as Reuters also cited non-ISIS sources, such as soldiers from the Iraqi army. The defence minister and the other government members involved did not take any action until after four years had passed. This happened in October 2019 after Dutch media reports of the 70 civilian deaths and damage in Hawija and also in 2019 after the announcement of a lawsuit by relatives from Hawija against the State of the Netherlands. Not only the Ministry of Defence, also other departments involved, such as Foreign Affairs and General Affairs, had not wanted to report the civilian casualties.

The Commission is of the opinion that that the government has pushed away the responsibility to report civilian casualties. This does not befit the professional conduct of departments such as the Ministries of Defence, Foreign Affairs and General Affairs. None of them wanted to face the facts. Participating in a war requires from the military leaders, civil servants and the government to be able to act on bad news.

#### **5. Before and after the Hawija attack, the government consistently provided incomplete and inaccurate information to the House of Representatives.**

The minister and top defence officials provided incomplete and inaccurate information to the House of Representatives about the type of F-16 missions, the procedure of deployment of weapons and about civilian casualties. For instance, the Ministry of Defence has, with regard to the bombing of the target in Hawija, consistently maintained that LEGAD (the legal advisor) played a role in the decision-making process on the attack. This was not the case. No LEGAD was operational at the CAOC operations centre until the attack on the target in Hawija. LEGAD was posted in Jordan and was never involved in this decision-making process.

Two mandated *Red Card Holders* were posted at the CAOC who, with the help of a liaison officer, were able to do limited testing to find out if an attack would fit within the Dutch ROE. They never had full access to intelligence information.

The defence minister and top brass presented the story to the House of Representatives that the pilot can also act as a *Red Card Holder* as a last resort. This is not true for *Air Interdiction missions*. The mission to the target in Hawija was an *Air Interdiction mission* involving long-range weapons. The pilot cannot make an additional assessment because he has no visibility, and particularly not at night, of what is happening on the ground.

Also, following the secondary explosion in the Hawija bombing, the minister and top defence officials reported that in addition to the CDE calculation, expert analysis had been conducted on possible

secondary explosions. This was not true. No such analyses had been conducted by the mandated RCHs nor by any other experts, including from the US side. The Ministry of Defence later reported to the House of Representatives that the agreement to deploy weapons to the target in Hawija was partly based on experience from four previous Dutch VBIED missions in which no secondary explosions had taken place. However, the Commission concluded that those missions had never substantively and systematically been mapped.

Even ten days after the attack, on 15 June 2015, the Ministry of Defence had been aware that civilian casualties were “credible” according to an initial US investigation and “plausible” in January 2016, which was after the US AR 15 investigation had been received. The Ministry of Defence never communicated this to the House of Representatives and left it unmentioned in progress reports on the OIR mission, citing the safety of both the squad’s pilots and the Netherlands itself.

Naming the number of 70 civilian casualties was anxiously avoided by the Ministry of Defence. Although the Americans did officially record this in a database on 30 April 2017 and in OIR’s public statistics on 5 December 2019, the defence minister and the prime minister maintained that CENTCOM had never confirmed the number of 70 civilian casualties. Only in January 2020, the minister acknowledged that the 70 civilian casualties were actually adopted in the CENTCOM statistics.

The defence minister told the House of Representatives that, following the Hawija arms deployment, an immediate official investigation had been conducted by her own ministry. This was not true and the 2016 internal investigation was not an official investigation in line with Instruction in respect of the Parliament A/989.

#### **6. Compensation for Hawija: too late and too little**

Due to the relevant ministers’ failure to name the civilian casualties resulting from the attack in Hawija executed by the Netherlands, no serious assessment was made of whether and how (surviving relatives of) civilian casualties and/or damage in Hawija should be compensated. A rudimentary compensation scheme had been set up at the start of the mission in Iraq. This did not allow for the scenario of a large number of civilian casualties. The tasks of the claims centre at the Ministry of Defence had not been specified in advance. Intended and established agreements on damage recovery have not been taken to hand.

Only in 2021, an amount of over four million euros was spent for the partial repair of the damage caused by the bombing, partly due to pressure from the House of Representatives. This is related to the restoration of parts of the destroyed physical infrastructure. The Commission believes that this compensation by the Netherlands, more than six years after the attack, has been too little and too late.

## 27. Recommendations

### **1. Clarity must be provided about the type of involvement in international missions.**

A more realistic image needs to be conveyed about an upcoming mission in the Article-100 letter as such situations are often related to conflicts and/or wars. Provide all the details and make sure that the risks of civilian casualties are explicitly mentioned in the Assessment Framework of the Article-100 letter.

### **2. Transparency and honesty about (suspected) civilian casualties before, during and after a mission.**

In January 2021, the Ministry of Defence initiated discussions with a number of NGOs and other organisations to improve the transparency policy on civilian casualties within missions and operations. The House of Representatives was informed on 7 April 2022 about a roadmap resulting from the above discussions. In mid-July 2024, the civilian-casualties theme page was launched on the Ministry of Defence's website where the steps in the roadmap are further developed.

The Commission endorses the roadmap and recognises that the Ministry of Defence has now made progress. However, the Commission calls for a number of steps to be made more specific and solidified. These specifically include the following items:

- The Ministry of Defence must make a publication after each deployment of weapons, taking into account security considerations, specifying the date/time, location and type of target and any collateral damage and or (suspected) civilian casualties.
- A procedure within the Ministry of Defence should be laid down specifying how the House of Representatives and the Senate will be informed in the event of (suspected) civilian casualties, in line with the parliamentary letter of 23 June 2020. Suspicions of civilian casualties must be reported to the parliament within one month (confidentially)
- The parts of the US *Civilian Harm Mitigation and Response Action Plan* that are relevant to the Netherlands for joining or implementing independently should be examined.
- The civilian-casualty hotline must be established not only for registration, monitoring and evaluation of victims. Also make sure that it is clear to victims whether and how suffering and collateral damage will be dealt with.

### **3. A well-prepared mission must be organised with appropriate experts in the right positions, who must be amply briefed and prepared.**

Requests to post staff with specific expertise in certain locations must be taken seriously from the start when it comes to an assessment of targeting processes. Intel expertise and legal expertise must be secured in addition to flight expertise. They should all know the ROE and additional mission-made instructions before departure, including, for example, procedures for reporting (suspected) civilian casualties.

### **4. The Netherlands' intelligence position must be reinforced.**

Reliance on intelligence from the United States and other *Five-Eyes* countries must be reduced when the Netherlands participates in deployments of weapons in an international coalition. Parliament has urged for this for years. Even the Davids Commission found that the government at the time was heavily relying on intelligence services from the United States and the United Kingdom. The promise was made at the time that the government would no longer make decisions merely on information from foreign intelligence services and by having its own intelligence services balance the weighting. During OIR, the Netherlands had to rely entirely on intelligence from the United States and other *Five-Eyes* countries for deployments of weapons. The Commission considers this an undesirable situation. In

future missions, the Netherlands will need to be better able to value and assess the intelligence provided. The Netherlands needs to be better linked up with the targeting process of the deployments of weapons. The Commission proposes the following items:

- The MIVD must solidify its intelligence position in international missions and is also able to contribute to the assessment of proposals for the deployment of weapons.
- In addition to the LEGAD (legal advisor), an Intel expert from the MIVD must be added to the RCH. The intelligence expert can advise the RCH on the quality and sufficiency of intelligence received.
- The Netherlands has had a *Target Support Cell* since 2017. They must have a role in future Dutch air operations in order to conduct a *collateral damage estimate* for intended weapon deployments with intelligence provided. The *Target Support Cell* is a valuable contribution within the targeting process and potentially contributes to a more open exchange of intelligence and can support the RCH in the decision-making on the deployment of weapons.
- If investigations into the plausibility of civilian casualties are to take place and the Netherlands is involved, the Netherlands will need to be a co-investigator and at least a senior military officer must be on the investigation team. Agreements must also be made on access to sources and publications. If the exchange of information, for example the sharing of investigation reports between coalition allies, is an arduous task, those involved should escalate more quickly to a ministerial level.

#### **5. Secure the obligation to investigate (suspected) civilian casualties at the Ministry of Defence and the Dutch Public Prosecution Service.**

The Ministry of Defence's own regulations must be applied in case of (suspected) civilian casualties and a formal investigation therefore needs to take place. The Ministry of Defence must be required to immediately report such own investigations to the Dutch Public Prosecution Service.

A requirement must be in place for the Ministry of Defence to contact the Dutch Public Prosecution Service as soon as possible when civilian casualties are suspected, even before an AAR is established if necessary.

A coordination protocol between the Ministry of Defence and the Dutch Public Prosecution Service must be in place if both are investigating the same incident. The Dutch Public Prosecution Service's investigation has priority over the Ministry of Defence's own investigation.

The Dutch Public Prosecution Service should be in a good information position for investigations. Prior agreements must be made in an international coalition on how to handle classified Intel from coalition partners if civilian casualties occur. Despite all past agreements between the Ministry of Defence and the Dutch Public Prosecution Service being laid down in the 'Instruction on the conduct of use of force by the military' of 1 March 2023, the Dutch Public Prosecution Service cannot carry out its task properly with the current state of affairs. One way or another, all relevant classified sources from coalition partners must become accessible to the Dutch Public Prosecution Service when investigating civilian casualties.

The fact-finding investigations into acts of violence conducted by the Dutch Public Prosecution Service in recent years were conducted under non-large-scale international missions such as OIR. A proposal on how the Dutch Public Prosecution Service should conduct fact-finding on potential civilian casualties in a simple and practical way when participating in a large-scale protracted war, should be explored and developed.

**6. A database on the deployment of weapons should be developed.**

Future deployments of weapons must be based in part on analysed facts from previous weapon deployments and experiences. CDE calculations and risk considerations, based on analysed and documented experience, increase the accuracy of expected collateral damage. The Commission recommends the development of a database containing the decision to deploy weapons, the choice of weapons, the CDE calculation, the proportionality consideration and the effects of the deployment of weapons, possible collateral damage and civilian casualties.

**7. Clear arrangements for compensation must be made for each mission.**

Compensation policies must be developed and drawn up prior to participation in international missions. This must have provisions for the items to be compensated and how next-of-kin or victims get in touch with the Netherlands. A careful but short handling period must be maintained to make sure that good time is made after the calamity. The Commission recommends using the civilian victims hotline for this purpose.

**8. Archiving must be improved and declassification must be provided for.**

In a democracy, parliament checks the government and the public authorities. In serious cases where parliament wants to uncover the truth, not only an accessible archive is indispensable but also handling classified information. Now that the bill modernising the 2021 Archives Act is before the House of Representatives for its consideration, the Commission is calling for it to be tightened. This Commission too, like other commissions that had been commissioned to investigate the process of establishing the truth about calamities, has come across problems such as the failure to preserve essential source material; sloppy archiving or even no archiving at all. Since the end of the analogue era, digital archiving is still not up to scratch. Policies around classified state secrets are also lacking.

This committee calls on the cabinet and the House of Representatives to:

- Make better provisions for the classification of state secrets with respect to parliamentary checks by law and work towards a system of periodic review of the need for declassification. The Davids Committee, for example, proposed as early as in 2009 that the task of declassification be given to the Keeper of the General Records in cooperation with the Ministry of Education, Culture and Sciences.
- Prioritise the need for professional archiving within the state, which has been advocated for many years.

Disclaimer: This English version of the summary is a translation of the original in Dutch and for information purposes only. In case of a discrepancy, the Dutch original will prevail.

