

## Frequently Asked Questions

### Victims of Hawija Air Strike Vs Dutch State

19 October, 2023

#### Air Warfare: It's Legal Implications Determined at the Dutch Court

*'We were sleeping in the yard of the house, my family and me. It was like an atomic bomb. The sound of the explosion reached Kirkuk. On the second morning, we saw the streets consisting of rubble from doors, windows, glass, and iron. The families who lived in the industrial area did not come out from under the rubble. Seven days after the bombing, their smell came out from under the rubble. Everything was destroyed including stores, car dealerships, and the industrial area'* (interview 8 April 2021, Hawija, Iraq)<sup>1</sup>

On the night of 2-3 June 2015, a factory for explosive devices located in the town of Hawija, Iraq, was subjected to aerial bombardment by Dutch F-16 aircrafts. The resultant blast triggered secondary explosions, registering at 4.3 on the Richter scale, and created a crater eleven meters deep. This incident generated a shock wave with a diameter exceeding 5 kilometers, felt as far away as Kirkuk, approximately 50 kilometers from Hawija. The impact of this bombing led to subsequent secondary explosions, reportedly causing extensive damage to 6000 residences, 1200 commercial establishments in the vicinity, and the destruction of vital governmental structures and community infrastructure, such as schools. Tragically, this event claimed the lives of at least 85 civilians, with indications pointing towards a potentially higher number of casualties that have yet to be fully investigated.<sup>2</sup>

Eleven claimants, each of whom suffered various forms of harm, have filed a claim against the Dutch Ministry of Defense in connection with this bombing incident. The harm endured by these individuals ranged from physical injuries sustained by themselves and their family members to the profound loss of multiple family members, reaching six in one instance. Additionally, they incurred extensive property damage, including the destruction of homes, vehicles, savings, and crucial official documents. Moreover, several claimants experienced severe disruptions to their businesses or ability to work. In certain cases, the primary breadwinner of the family lost their life, resulting in a significant loss of family income.

To provide clarity and address potential inquiries, we have compiled a list of frequently asked questions below for your reference.

<sup>1</sup> PAX, IRW and Al-Ghad League for Woman and Child Care, 'After the Strike. Exposing the Civilian Harm Effects of the 2015 Airstrike on Hawija.', 2022, p. 14.

<sup>2</sup> PAX, IRW and Al-Ghad League for Woman and Child Care, 'After the Strike. Exposing the Civilian Harm Effects of the 2015 Airstrike on Hawija.', 2022, p. 10.

- **Why is the Dutch government being sued?**

*In this case, the claimants are seeking the court's determination that the State of the Netherlands is liable for not carrying out a thorough assessment, taking full account of, and minimizing to the extent possible, the risk of damage to civilians before the attack.*

In a letter dated June 2015, the then-serving Dutch Minister of Defense provided assurance to the parliament that there would be no collateral damage resulting from an airstrike. However, it has come to light that the Minister was aware of the high probability of severe harm to civilians. Due to security and operational considerations, details of the bombing were kept confidential for four years.<sup>3</sup> During this period, the victims remained unaware of who was involved in the strike.

It was only in 2019 that Dutch media outlets publicly revealed the airstrike, a significant four years after its occurrence. Subsequently, the Netherlands officially confirmed that the bombings had been executed by two Dutch F-16s. The claimants are asserting the liability of the Dutch state for the attack, contending that it was disproportionate to the anticipated concrete military gain. This disproportionality, they argue, is contrary to the standards set by national and international humanitarian laws, which mandate that military attacks should only be conducted after a thorough consideration of, and minimization to the extent possible, the risk of damage to civilians.

The Nuhanovic Foundation has provided guidance and financial support to the civilian victims in this case, enabling them to seek justice in the Netherlands, with the aim of obtaining recognition and compensation for the harm inflicted upon them as a result of the airstrike.

To provide clarity and address potential inquiries, we have compiled a list of frequently asked questions below for your reference.

- **Who exactly is being sued?**

*The State of the Netherlands*

The civil lawsuit is directed at the Netherlands as a state, represented by its government and institutions, and not at the head of state as an individual, or any other persons. This civil claim specifically addresses the liability and damages arising from the bombardment in Hawija. It is important to note that this case does not involve determining the criminal responsibility of any individual; rather, it focuses solely on civil liability and damages related to the incident.

- **Who are the claimants?**

*There are eleven claimants, all are individuals from Hawija who have endured diverse forms of harm arising from the bombing incident.*

*'I saw children, the elderly, young men, and women, all of them injured. I saw them in the hospital, some of them had their feet cut off, some had amputated hands, some had their eyes come out, some had severe head injuries. Whereas some were burned because of shrapnel, and some had*

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<sup>3</sup> PAX, IRW and Al-Ghad League for Woman and Child Care, 'After the Strike. Exposing the Civilian Harm Effects of the 2015 Airstrike on Hawija.', 2022, p. 17 and Chapter 4.

*injuries to their stomach and intestines, and some of them had back injuries.'* (interview 6 April 2021, Hawija, Iraq)<sup>4</sup>

The eleven claimants suffered a wide range of harms as a consequence of the bombing incident, including physical injuries to themselves and their family members, the tragic loss of family members (up to six in one instance), destruction of their homes, vehicles, savings, and official documents. Furthermore, several claimants experienced the loss of their businesses or ability to work, leading to a reduction in the family's income or due to the death of the primary breadwinner no income at all.

Crucially, it has been firmly established that none of the claimants had any affiliation with ISIS. The terrorist organization had been in control of the Hawija district since June 2014. Following the bombing incident, civilians were forcibly confined to the area, and leaving came with the risk of corporal punishment or death. Consequently, essential medical care and aid scarcely reached them, and there was a significant shortage of clean water, electricity, and educational resources since the strike.<sup>5</sup>

- **What is the role of the Netherlands in the bombardment of Hawija?**

*The Netherlands participated in the US-led Coalition military operation against ISIS.*

In September 2014, the US-led coalition forces initiated military operations against ISIS in Iraq with the consent of the territorial state. The Dutch military's bombardment in Hawija between 2 and 3 June 2015 was part of this US-led military campaign. The target of this strike was a factory producing vehicle-borne improvised explosive devices for ISIS, constituting a legitimate military target. However, the explosion resulted in damage to 400 buildings in the vicinity, including 248 in the nearby residential area, and led to the unfortunate loss of 70 civilian lives, according to the United States Central Command.

- **Which court is looking into the case?**

*District Court in The Hague.*

This is a civil claim against the Dutch State and the case will be heard by the District Court of the Hague.

- **What were the procedural issues at the pre-trial hearing of 22 September and how did the Court rule?**

*During the pre-trial hearing, numerous practical matters were discussed to facilitate preparations for the subsequent hearing, where it is anticipated that the claimants will be in attendance. These discussions were aimed at ensuring efficient coordination between the Court and the involved parties.*

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<sup>4</sup> PAX, IRW and Al-Ghad League for Woman and Child Care, 'After the Strike. Exposing the Civilian Harm Effects of the 2015 Airstrike on Hawija.', 2022, p. 14.

<sup>5</sup> PAX, IRW and Al-Ghad League for Woman and Child Care, 'After the Strike. Exposing the Civilian Harm Effects of the 2015 Airstrike on Hawija.', 2022, p. 10.

During the pre-trial hearing, extensive discussions occurred between the involved parties regarding various practical and technical aspects. These included matters such as how the claimants would travel to the Netherlands, scheduling the testimonies of claimants during the oral hearing, the potential implementation of a public livestream, the presentation of images, the coordination of translators and translation procedures, the confidentiality of defense officials' identities, and the possibility of changes to the claims by the claimants.

The state expressed concerns about the safety of the defense officials, who had previously received threats. It argued against the need to show images during the proceedings. Furthermore, the claimants' attorneys inquired about the status of the report by Committee Sorgdrager, which contains crucial information for the case. However, the report had not been published, raising concerns given the approaching oral hearing.

In response, the Court ruled on several key points. It mandated the implementation of a livestream, ensured technical support for translators, allocated separate rooms for both parties, and permitted the showing of images during the hearing. The Court also imposed a deadline for the claimants to submit any changes to their claims, set two weeks before the oral hearing, and required them to bring two translators. However, the identities of the defense officials were to remain confidential, and they would not be publicly disclosed.

Furthermore, the Court instructed the claimants to specify the documents they require from the state of the Netherlands in the '843a Rv-request,' particularly concerning facts that have not been made public. The state was directed to promptly consult Committee Sorgdrager about the status of the report. Additionally, the state was mandated to provide precise and specific information in the pleading about what the defense officials, including red card holder(s), knew regarding the assessment of secondary explosions and related concrete data. The state was required to clearly delineate any boundaries of confidentiality in this regard.

- **What are the major substantive issues to be decided by the Court?**

*The court will determine the reasonableness of the Dutch military's decision to bomb the facility in Hawija. It will assess whether this decision complied with the proportionality requirements outlined in national and international humanitarian law standards. Additionally, the court will examine whether the Dutch state is legally liable for the resulting damage.*

The court will examine pertinent evidence to determine the liability of the Dutch state for the attack. It will consider whether the Dutch state adequately considered the risk of damage to civilians and took measures to minimize the extent of harm, in accordance with both national and international humanitarian law standards.

- **What happens next?**

*The hearing is scheduled to take place on 24 October 2023 at 9:30 a.m. at the District Court of The Hague.*

The hearing is open to the public and will be broadcasted via a live stream, accessible universally. This decision was made by the court during the pre-trial hearing.

- **Who will submit evidence to the court?**

*Eight witnesses, including the mayor of Hawija, will travel to the Netherlands to provide testimony in court.*

These witnesses, including two children, who originate from Hawija, will testify in court in Arabic. A professional translator will be present to assist during the hearing. Additionally, information from the report of the Committee Sorgdrager might be utilized, along with images of the affected area resulting from the strike.

- **What will happen if the court rules against the Netherlands?**

*Reparation for the harm suffered from the attack will be granted to the claimants.*

Should the court rule against the Netherlands, the Dutch government will be deemed responsible for the unlawful attack in Hawija and will be obligated to provide compensation to the claimants.