

# **The Estonia Debate Continues**

## **LOOKING BACK TO MOVE FORWARD**

**International Workshop**  
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**PRESENTATION on behalf of the Committee of Experts formed for the investigation of circumstances related to the transport of equipment for military use on the passenger ferry *Estonia* in September 1994**

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### **Introduction**

I would like to explain at first what kind of a committee it is: who it was formed by; what it investigates and how.

The committee was formed by a resolution of the Government of the Republic of Estonia of the 7th of March 2005. The reason behind it was the investigation by the Swedish Judge Johan Hirschfeldt, which confirmed the information disclosed in Swedish TV programme that equipment for military use was transported onboard the *Estonia* on the 14th and 20th of September 1994. The committee was requested to investigate the involvement of Estonian authorities in such transport and additionally, whether there could be any military equipment onboard the *Estonia* on the night of the accident.

The committee presented its first report on the 1st of September 2005. The committee was unable to give an answer to the latter question. We could only recognise that the circumstances related to the cargo had not been investigated thoroughly enough after the accident; and now, 12 years later, it was almost impossible to do that.

After studying the report, the government decided on to extend the term of authorities of the committee, posing also a new question to the committee. The government asked to investigate additionally whether there were any substantial circumstances related to the causes of the sinking of the *Estonia* that had not been investigated thoroughly enough. It was namely this question that provided grounds and defined the limits for the investigation and evaluation of the work of Joint Accident Investigation Commission (later on JAIC).

The committee presented its second report on the 10th of March 2006. Several critical statements were made in the report about the Final Report of JAIC. I will talk about these in more detail later on.

After studying the report, the government extended the term of authorities of the committee again. This time it was aimed at asking for explanations of JAIC members about the statements presented in the committee's report. Respective questions were posed to Captain

Uno Laur, who had been the Chairman of JAIC; and Captain Laur answered the questions with a memorandum in July last year.

The committee's third report that we presented on the 15th of March 2007 provides a summary of JAIC's explanations and reflects the positions of the government committee on whether the explanations were adequate to drop the issues raised in the committee's second report or not. With some exception, we are on the position that the problems we raised a year ago are still current.

Before moving to the conclusions of our second report, I would like to emphasise that the committee's area of activities is limited in many ways:

1) First powers. It is not in the competence of the committee to investigate the accident. The committee can only investigate its investigation. It is an investigation of an investigation. What does it mean? It means primarily that we can only operate with the statements presented in the Final Report and the evidence gathered by JAIC. We have not gathered any further evidence and we have not analysed whether the studies and calculations by JAIC are correct. We have only looked whether the different conclusions presented by JAIC are in conformity with one another and to what extent the conclusions are supported by the evidence.

2) Second rights. Although this committee is headed by a public prosecutor, it is not a criminal investigation, it is just an *ad hoc* special assignment given by the government. It means that the committee has no right to question anyone under oath or use other special rights that are characteristic of a criminal investigation. Also, we have no concrete basis under international law to cooperate with foreign countries. In this respect, it all depends on agreements on the political level.

3) Third resources. The committee has done this job in addition to other work assignments. All the committee members have also had their principal job to do. Therefore we have been forced to limit the area of investigated topics and we have not been able to verify all the conclusions in the Final Report and all the hints.

So much about the framework of the work of the committee. Now I would like to continue with some main conclusions we drew in our second report last year.

### **Main conclusions**

I am not going to read out the report. I will try to confine myself to things that might be of interest in the context of the consortium investigation. The topics are:

- statements by witnesses;
- opening of the bow ramp;
- water inflow to decks below the car deck.

### Statements of witnesses

In almost all the works written about the accident, the authors have expressed their doubts about the truth of key-witnesses' statements. There has been talk about the influencing of witnesses, their threatening or that they are lying just in their own interests. Therefore, the committee decided to work through all the records again and, if necessary, interview the people again. As a result of this work, I can confirm two things today:

- 1) there is no reason to doubt about the survivors' statements; and
- 2) there are no contradictions of principle in the statements of key-witnesses.

The much talked about contradictions arise on the one hand due to inaccurate quoting and on the other hand due to the non-professionalism of interviewers. When out of three men in the engine room, one saw water on the floor of the car deck and two others did not, it would be logical to ask who looked at what and when. For some reason or another, this has not been done. Instead people began to speculate who was lying and who was not.

Now I will try to explain two widely talked about contradictions. Both of these relate to the three crew members who were in the engine room.

#### *Treu looking at the clock*

Most of the survivors define the beginning of the accident by two or three successive blows (hits, thrusts, bangs), after which the ship remained in the list. Most of the survivors remember that it happened at about one o'clock or a little bit after that. In the Final Report, the list started to develop at 1:15, after the visor had fallen into the sea. The time has been determined largely relying on the statements of Margus Treu, who had looked at the clock on the wall of the engine room, when it showed 1:15. And many people have asked who to believe: whether the seaman who was looking at the clock or other survivors who remember that everything began earlier.

Apparently, the reality is that everything started earlier, also for Treu. Treu has said:

- He was sitting on a bench in the engine room.
- He felt three thrusts with an interval of less than a minute.
- After some time he felt that the ship remained in the list.
- He stood up and went to the control board.
- He looked at the monitor and saw water coming in.
- Then he looked at the clock, which showed 1:13 or 1:14.
- It was a wall clock, which he saw at an angle.

Thus, Treu did not look at the clock when he felt the first thrust, but some time later on. How much later on, we will never know exactly, because no-one can estimate afterwards the exact interval between the events. Neither will we ever know whether the clock in the engine room was on time and whether looking at the clock at an angle could affect what he saw. However, the important thing here is that the events began for Treu earlier than the looking at the clock, which he remembers precisely.

#### *Kadak seeing water on the car deck*

Another widely talked about contradiction related to the three key-witnesses in the engine room is the seeing of water on the floor of the car deck. All three men have said that they saw on the monitor how water was pressing in from the sides of the ramp. One of them, Hannes Kadak, had said that he had seen water also on the floor of the car deck: "He saw that there were big waves on the car deck and that the water surface was level with the cars," as it is referred to in the Final Report. Treu and Sillaste have confirmed that they did not see any water on the car deck. Someone must be lying or not telling the truth, was also my first reaction, when I read it. And therefore I decided to talk to all three of them separately. What came out?

First, Kadak did not see water in the camera viewing the ramp, but in the camera, which was looking over the starboard from the centre of the ship. It was a camera below the ceiling directed at the pilot door; and the floor could only be seen in the narrow passage that had been left between the cars so that the pilot could pass through. It was not possible to see the floor in the camera looking at the ramp, which Treu and Sillaste were looking at. All three men confirmed this.

Second, Kadak has never talked about the waves of water reaching up to the cars. He saw that "water had gathered at the side of the deck, reaching up to the lights of cars in the outermost row ... and as the ship was rolling, it was flowing from one end to another." Thus, there was about 40 to 50 cm of water on the starboard side. But the ship was already in the list; he remembers that; and how else water could have gathered on the starboard side of the ship.

Why this is not recorded anywhere? Whether the question was not precise enough or whether the answer was not precisely quoted or whether it was translated incorrectly – in any case it is not the fault of witness.

#### *In summary*

So I would like to repeat that there are no contradictions in the statements of these men. On the contrary, they have told repeatedly and to different interviewers something which in my opinion is very important and cannot be just cast aside:

1) First, when they saw on the monitor that water was pressing in from the sides of the ramp, the ramp was in the closed position. Treu looked at this monitor picture once. Sillaste did several times. Kadak was watching and clicking the monitor practically all the time when he was in the engine room. Not once did anyone see that the ramp had opened.

2) Secondly, when they saw on the monitor that water was pressing in from the sides of the ramp, the ship was in the list. The ship was in the list already when Treu was alone and looking at the monitor. Because the list was the reason why he stood up and went to the control board. The list was also the reason why Sillaste left the sewage room and Kadak left the workshop. And the list was gradually increasing. When Sillaste and Kadak left, the list was about 30 degrees; when Treu left, it was more than that.

#### Opening of the ramp

Another significant problem pointed out by the committee in its report of 2006 dealt with the question: what was the basis for the statement of JAIC that the ramp had opened completely.

As we know, according to the Final Report, the cause that brought about the shipwreck was that the bow visor locks broke, the visor fell into water and the ramp opened completely. Water started to come in through the ramp opening at a speed of 300 to 600 tons per minute. This caused the ship quickly to heel. When about 2000 tons of water had entered the ship, a list of 40 degrees had developed. From that moment the waves started to break the windows and doors on deck four and five, creating new openings for water inflow. Later on waves forced the ramp into the closed position again, and therefore it is in the closed position on the bottom of the sea.

This scenario can only be valid if we consider the above testimony of the three crew members to be wrong. I claim that the contradiction between the JAIC scenario and the witnesses' statements cannot be eliminated otherwise.

In Uno Laur's memorandum last year the members of JAIC have explained that in their opinion the men in the engine room could have been looking on the monitor at the time when the visor attachments were about to break, but before the visor fell off. This period can be estimated to have lasted for 5 minutes. At that time the ship could develop a small list and the crew members could also have overestimated the list due to rolling, the waves and the wind.

In the opinion of our committee, this explanation is not satisfactory, because:

1) First, Sillaste was looking at the monitor several times and Kadak was standing in front of the monitor all the time when he was in the engine room.

2) Second, the reason why Treu stood up and others gathered in the engine room was that they felt the list. Sillaste felt it in the sewage room and Kadak in the workshop.

3) Third, the crew members did not estimate the list, but Treu was standing in front of the control board and was reading the figures on the control board.

4) Fourth, the extent of the list and the time they spent in the engine room can be estimated by other events. Sillaste and Kadak left the room after the engines had stopped, because oil had flown out of them. It means that the list must have been 30 degrees or more. When Sillaste and Kadak were in the chimney passage, power failed. Everybody remembers it and it happened in the middle of the commotion of escaping from the ship. The list at that moment has been estimated to be 45 degrees or more. In addition, they remember that someone on the bridge asked how water could be pumped to the portside ballast tank and they remember that Sillaste fell with the table in the middle of the room, which broke loose as the welds of the table failed. It could not have happened with a small list, which was overestimated by the seamen.

Thus, the scenario of JAIC is possible only if we consider the testimony of the three crew members to be wrong. I do not say that we cannot do that. We can – but in that case there should be other evidence, stronger evidence that outweigh their statements.

My question is, do we have such evidence? The only explanation given for the immediate opening of the ramp is the fact that the upper part of the ramp extended into the visor. Consequently, when the visor fell right down, it had to pull the ramp open. It is not evidence, it is argumentation. The argumentation is logical in itself. Yet another argumentation, which is as logical, is that the visor, which had broken free of locks, was so to say "raised" over the edge of the ramp by the effect of waves and the rocking ship. The protruding edge of the ramp was not attached to the visor in any way. And the fact that the waves had moved the loose visor up and down has been stated by JAIC, too.

In my profession, in a court trial, evidence cannot be refuted by argumentation, especially in a situation where additional evidence could have been gathered to establish the truth.

Here we might discuss which evidence there could be to refute the stories of the three men.

1) First, a witness who saw that the ramp was fully open or swaying between the open and closed position due to waves? But nobody has seen anything like that. On the contrary, there are two witnesses who saw closely and even touched the ramp in the closed position when the ship was fully on her side and the stern was about to sink under the water. These witnesses have not been contacted and interviewed additionally.

2) Second, the behaviour of the visor and the ramp could have been tested by experiments. As far as I know, no such tests have been made.

3) Third, of course, it could have, and should have been established that the hull was intact. To show that there were simply no other possibilities for the water to come in. But, there is no film, log or other source of information that indicates that the bottom part of the hull has been investigated and filmed in the full possible extent. Neither has anybody confirmed to me that this has been done. Consequently, the hull is never thoroughly investigated, which is a problem, a great problem.

#### Water getting below the car deck

The third circle of problems pointed out by the committee in its report of 2006 is related to the coming of water to the decks below the car deck. As I presume that this topic will be discussed in more length today, I will not dwell on it long. I would just like to point out why this attracted our attention.

It is stated in section 12.6.1 of the Final Report that:

“Even though the list developed rapidly, the water on the car deck would not alone be sufficient to make the ship capsize and lose its survivability. As long as the hull was intact and watertight below and above the car deck, the residual stability with water on the car deck would not have been significantly changed at large heel angles (figure 12.12). Capsize could only have been completed through water entering other areas of the vessel.”

Thus, JAIC itself has stated that the filling of lower decks with water is of decisive importance from the point of view of the sinking. Considering this, we hoped to find in the Final Report or its annexes analyses and calculations on how water exactly flew, when the flooding of a certain compartment began, which amount of water was necessary to sink the ship etc. In the similar manner as there are calculations about water inflow through the ramp opening as well as about other important circumstances like the stability of the ship, the strength of visor locks etc.

We are not competent to estimate whether these calculations are right or wrong but they exist. Yet, the Final Report does not contain any analysis of the flooding of lower decks with water. In section 13.6, it is only stated that the watertight compartments below the car deck were flooded from above, as there were connections between different decks via staircases and other openings.

As a lawyer, I am not competent to argue on the topic of what happens with a ship when water cannot get into the compartments of the ship below the waterline. But when the investigators themselves write that in such case a ship would not sink, I can conclude that it is a very important issue. And if a very important issue has not been investigated, analysed or calculated, the report is not convincing.

This is a problem that has been brought out by our committee.

### **In conclusion**

The committee and its chairman have never stated that the cause and the scenario of the accident as provided in the Final Report of JAIC are wrong. The committee has stated that the Final Report cannot be defended in all respects, because it contains contradictions and unanswered questions.

It is not just an issue of contradictions and shortcomings; it is an issue of contradictions and shortcomings in matters of decisive importance.

But actually I did not come here only to criticise, but to learn. Learn things about ship-building.

Generally speaking, in every science all statements can be divided into three categories:

- 1) Statements which are consensual. I would call them facts.
- 2) Statements which are arguable. I would call them opinions.
- 3) Statements which are mostly unaccepted. I would call them new hypotheses.

So, I would like to learn here today whether certain frequently used statements in this debate are facts, opinions or new hypotheses. These statements are:

- 1) First statement. A vessel cannot float on her side with the list of 40 degrees without capsizing in a couple of minutes. Is it a fact, opinion or hypothesis?
- 2) Second statement. If the hull is intact and there is no water below waterline, a capsized vessel would turn upright in seconds. Is it a fact, opinion or hypothesis?
- 3) Third statement. If a vessel capsizes, she cannot sink as quickly as in 10 minutes due to the air inside the bottom decks. Is it a fact, opinion or hypothesis?

For the work of our committee it is very important to find out what the best scientific knowledge says about these statements.

I can consider the work of the consortium to be scientific research about the *Estonia* only if these statements are opinions. Opinions, on which there is heated debate among ship-builders.

If these statements are just new hypotheses, which are not accepted by the majority of scientists, the work of the consortium can also be considered to be scientific work in principle, only in that case there is no reason to associate it with the *Estonia*. Because to my mind it is not a good idea to heat up the expectations of victims, governments and other involved people just to test new brilliant ideas.

But if the three statements I mentioned are scientific facts, I would not consider the work of the consortium to be a scientific research; I would call it an intellectual exercise. Because how can generally recognised truths be refuted with unverified and unclear circumstances?

Or in other words, if these are really scientific facts, thus based on today's best knowledge, the *Estonia* could not have sunk in the way JAIC describes it in the Final Report. And if we want to know how the ship sank, we should start from determining whether the bottom of the ship is intact or not.

Or to put it in a third way, if it is really so that a vessel cannot float on her side with the list of 40 degrees without capsizing and then sink in 10 minutes, please say it out, clearly, and ask for the evidence ... from the bottom of the sea.

I would like to wish you strength and courage for that.