

# Riigikogu Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994

## FINAL REPORT

### I Introduction

The basis for forming the Riigikogu Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994 (hereinafter “Committee” and “Committee of Investigation”) was the allegation made by former Swedish customs officer **Lennart Henriksson** in the 30 November 2004 STV1 transmission *Uppdrag granskning*, to the effect that in 1994, immediately prior to the sinking of the ferry Estonia, he had witnessed the Swedish Armed Forces use the ferry Estonia for exporting equipment from Tallinn to Stockholm. Customs officer Lennart Henriksson claimed that he and his immediate superior were called to the Customs Board on 14 September, where he was given direct orders to let pass unchecked the contents of vehicles with certain registration numbers. Another vehicle with a larger cargo passed through the Stockholm harbour unchecked on 20 September of the same year, as agreed. Obligated to “fake” the customs check, Lennart Henriksson cast an eye on the vehicles in September 1994 and found that the cargo, in all likelihood, consisted of electronic equipment for the military industry.

After this interview the Swedish Armed Forces confirmed that there “was and still is an agreement between the Armed Forces and the customs, but its contents are classified” and “Armed Forces cannot specify why the Swedish Armed Forces were interested in military equipment from Estonia, however the Armed Forces are always interested in the equipment of neighbouring countries”<sup>1</sup>.

After these facts were published, the Government of the Kingdom of Sweden decided, on 3 December 2004, to give the Chairman of the Royal Court, Judge Johan Hirschfeldt the task of investigating the circumstances and compile a report to the Government on the export of military equipment by 21 January 2005 at the latest. It was the responsibility of the Judge to investigate whether military equipment was indeed exported on the ferry Estonia on 14 and 20 September 1994, and if so, could the cargo have included explosives.

At the same Government sitting, it was decided to commission a report from the Armed Forces and its Supply Agency on the deployment of civil vessels for shipping military materials by the Swedish Armed Forces<sup>2</sup>.

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<sup>1</sup> Press Secretary of the Swedish Armed Forces in the 2 December 2004 programme *Ekof* of the Swedish Radio.

<sup>2</sup> 3 December 2004 Decision No 2 of the Government of the Kingdom of Sweden on setting the Defence Forces and the Supply Agency of the Defence Forces the task of submitting by 21 January 2005 a report to the Swedish Government on the deployment of civilian vessels for shipping military materials by the Swedish Armed Forces.

The investigation carried out in Sweden confirmed that military equipment was shipped on board of the ferry Estonia on 14 and 20 September 1994. The cargo consisted of military electronic equipment which „had no connection with weapons systems”, according to the report of Johan Hirschfeldt, and which was meant for the Swedish Defence Forces. The investigation revealed no information showing that the Swedish Armed Forces had shipped similar equipment on the ferry Estonia.<sup>3</sup>

The purpose of the founding of the Riigikogu Committee of Investigation was to determine, in the light of circumstances arisen in Sweden, whether Estonian agencies or officials knew about the shipping of military equipment or were connected with this, as the equipment must have been loaded on the ferry Estonia in the Tallinn harbour on at least the two dates mentioned.

Many Estonian high military officials (incl. former Commander of the Estonian Defence Forces) had previously claimed in the press that the ferry Estonia was used for shipping greatly varying military equipment, from machine guns and missiles to radioactive materials. At the same time there was no documented proof for these allegations and the public considered possible shipping of military equipment on the ferry Estonia as an unfounded conspiracy theory.

The Constitutional Committee approached the authorities of the Republic of Estonia directly or via the State Chancellery, in order to establish whether Estonia was aware of the shipping of military equipment which had been confirmed. The responses forwarded to the Constitutional Committee showed that Estonian authorities had no information of any kind of secret shipments of military equipment on the ferry Estonia in 1994.

## **II The objective of forming a Committee of Investigation**

The Committee of Investigation was in charge of „analysing in an objective and unbiased manner the factual and legal aspects” of the export of military equipment from Estonia or through Estonia to the Kingdom of Sweden. The Committee was to determine „the officials and authorities of the Republic of Estonia who were informed of the export of military equipment to the Kingdom of Sweden or abetted this personally or officially”. The Committee also had to „give its assessment to the events and make proposals to the Government of the Republic on the basis of the evidence”. According to the Resolution of the Riigikogu adopted in order to form the Committee, “proposals must be made on the basis of conclusions for the prevention of security risks deriving from civilian shipping”.<sup>4</sup>

According to the Estonian press (cf. e.g. *Estonia Has No Documents of Smuggling by Ferry Estonia and West Discovered Unforeseen Military Equipment in Soviet Union*, Postimees 4 February 2005), senior officials of the Information Board, responsible for foreign intelligence, Security Police Board, responsible for counter-intelligence, and military intelligence said that in the beginning of the 1990s local special services often helped the

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<sup>3</sup> “Investigation of Export of Military Equipment on M/S Estonia”, translation of the public part of the report by Johan Hirschfeldt to the Government of the Kingdom of Sweden.

<sup>4</sup> Resolution of the Riigikogu On the Formation of the Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994, clause 2. – RT I 2005, 29, 218.

Western special services to operate here and obtain diverse military equipment from military units of the withdrawing Russian armed forces, which was regarded as positive cooperation.

Estonian special services were not officially involved in exporting military equipment to the West and the cooperation has not been documented.

The Committee of Investigation thus had the task of reconstructing the circumstances of the year 1994, in order to provide a state level evaluation of the export of military equipment in that year. Providing evaluations and clarifying the situation at the time is also necessary, among other things, for avoiding the future feasibility of such activities for the benefit of any other country.

#### Proceeding of draft legislation leading to the formation of the Committee and the tasks of the Committee of Investigation

On 6 December 2004 The Estonian Centre Party Faction initiated the Draft Resolution on the Formation of the Committee of Investigation.<sup>5</sup> The discussion of the first reading of the Draft Resolution of the Riigikogu (533 OE) took place in the Constitutional Committee on 17 and 27 January and 8 February 2005. The Constitutional Committee invited to its 17 January 2005 sitting Prime Minister Andrus Ansip, Chairman of the then International Committee of Investigation Uno Laur, and Chairman of the Tax and Customs Board Aivar Rehe. The Constitutional Committee addressed inquiries to special services of the Republic of Estonia and military related authorities, in order to proceed the Draft Resolution. All mentioned authorities responded that they have no information concerning export of military equipment during the relevant time period from the Republic of Estonia to the Kingdom of Sweden. The Constitutional Committee met during the proceeding, on 27 January 2005, the Head of the Security Department of the Ministry of Defence Herman Simm, Director General of the Security Police Board Aldis Alus and representative of the Police Board Priit Männik. The Committee discussed first and foremost whether the Ministry of Defence or the Security Police Board had information or possible connection with the export of military equipment, and in which legal key should the export of military equipment in 1994 be analysed. The Constitutional Committee drew attention to the fact that the annexes to the report of Judge Hirschfeldt concerning export of military equipment have been classified in Sweden for 70 years.

On 8 February 2005 the Constitutional Committee notified of the end of the first reading of the Draft Resolution. The first reading of the Draft Resolution in the Riigikogu Plenary Assembly took place on 17 February 2005. The first reading of the Bill was concluded.

The Constitutional Committee decided to send the Draft Resolution to its second reading in the Riigikogu Plenary Assembly on the 10 March 2005. However, the initiator withdrew the Draft Resolution from its second reading on 17 March 2005, as the enforcement of the proposed amendments to the Draft would have meant that the Committee of Investigation was not only to investigate the circumstances of shipping activities carried out on the ferry Estonia in September, but also all circumstances related to the export of military equipment from the Estonian territory in 1994, which would have unreasonably extended its field of investigation.<sup>6</sup>

<sup>5</sup> Cf. <http://web.riigikogu.ee/ems/plsql/motions.show?assembly=10&id=533&t=E>

<sup>6</sup> Cf. [http://web.riigikogu.ee/ems/stenograms/2005/03/t05031708-03.html#P108\\_13923](http://web.riigikogu.ee/ems/stenograms/2005/03/t05031708-03.html#P108_13923)

The Estonian Centre Party Faction reinitiated the Draft Resolution On the Formation of the Committee of Investigation on 21 March 2005. On 2 May the Constitutional Committee decided to propose to the Plenary Assembly of the Riigikogu to conclude the first reading of the Draft Resolution 608 OE during the 10 May 2005 plenary sitting of the Riigikogu. The second reading of the Draft Resolution was discussed in the Committee on 2 May 2005, and the Committee decided by consensus to support the formation of the Committee of Investigation.<sup>7</sup>

The Plenary Assembly of the Riigikogu supported the formation of the Committee of Investigation and adopted the Draft Resolution as Resolution of the Riigikogu on its 19 May 2005 sitting. Proceeding from the Resolution, the tasks of the Riigikogu Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994 are as follows<sup>8</sup>:

- 1) analysing in an objective and unbiased manner the factual and legal aspects of the export of military equipment from Estonia or through Estonia to the Kingdom of Sweden;
- 2) determining the officials and authorities of the Republic of Estonia who were informed of the export of military equipment to the Kingdom of Sweden or abetted this personally or officially;
- 3) giving its assessment to the events and making proposals to the Government of the Republic on the basis of the collected facts and evidence;
- 4) making proposals on the basis of determined facts and conclusions for the prevention of security risks resulting from civilian shipping.

#### Composition and activities of the Committee

The composition of the Riigikogu Committee of Investigation was the following: member of the Estonian People's Union Faction Margus Leivo (substitute member Rein Randver), member of the Estonian Centre Party Faction Evelyn Sepp (substitute member Ain Seppik), member of the Social Democratic Party Faction Jarno Laur (substitute member Jüri Tamm), member of the Union for the Republic – Res Publica Faction Ken-Marti Vaher (substitute member Urmas Reinsalu), member of the Estonian Reform Party Faction Ülle Rajasalu and Member of the *Isamaaliit* Faction Trivimi Velliste.<sup>9</sup>

At the first sitting of the Committee on 26 May 2005 two candidates were submitted for the Chairman of the Committee: Margus Leivo and Evelyn Sepp. At the competing ballot, Margus Leivo was elected the Chairman of the Committee and Evelyn Sepp its Deputy Chairperson.

<sup>7</sup> Cf. <http://web.riigikogu.ee/ems/plsql/motions.show?assembly=10&id=533&t=E>

<sup>8</sup> Resolution of the Riigikogu On the Formation of the Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994, clause 2. – RT I 2005, 29, 218.

<sup>9</sup> *Ibid.*, clause 1.

Pursuant to clause 6 of the Resolution On the Formation of the Committee, a pertinent number of staff and experts were involved in the work of the Committee. Consultant of the Constitutional Committee Martti Lutsar assumed the responsibilities of consultant to the Committee, becoming adviser to the Committee as of 1 May 2006. Information Adviser Helin Noor is fulfilling the responsibilities of adviser to the Committee from the same date.

The Riigikogu extended the authority of the Committee with its 15 December 2005 Resolution<sup>10</sup> until 1 July 2006, because the investigation revealed that the field of work of the Committee was much wider than anticipated at its foundation. The workload had mainly increased due to the expanding of the list of persons interviewed during the investigation. The present Draft Resolution was presented to the Riigikogu by the Estonian Centre Faction, Estonian People's Union Faction and the *Isamaaliit* Faction.

On 17 May 2006 the Committee submitted to the Riigikogu an interim report pursuant to paragraph 20(3) of the Riigikogu Rules of Procedure Act, which stipulates the submission of an interim report to the Riigikogu at least once a year.

After submitting the interim report, the Committee assumed the position that by 1 July 2006, when the authority of the Committee terminates and the final report is due, there is no time to interview all relevant persons and carry out all necessary expert analyses.

The Riigikogu extended the authority of the Committee of Investigation until 15 November 2006 with its 14 June 2006 Resolution on the same grounds.<sup>11</sup>

The Committee of Investigation has held 56 sittings. Chairman of the Committee Margus Leivo has participated in forty three, Deputy Chairperson Evelyn Sepp in forty one, Ülle Rajasalu in thirty seven, Trivimi Velliste in thirty one, Ken-Marti Vaher in nineteen and Jarno Laur in seventeen.

The Committee has met a total of 56 persons during its sittings. Chairman of the Expert Committee of the Government of the Republic Prosecutor Margus Kurm has been present five times and Minister of Justice Rein Lang once.

The Committee has met with the following officials (as of 1994, *if not stated otherwise*) and other persons considered important from the point of view of the investigation, and has questioned them:

Aksel, Kristo – National Defence League, Chief of Communications;  
 Allvee, Raul – Second Mate of ferry Estonia;  
 Alus, Aldis – Director General of the Security Police Board (in 2006);  
 Bõstrov, Sergei – Head of the 2<sup>nd</sup> Department or Intelligence Department of the National Defence League;  
 Einseln, Aleksander – Commander of the Defence Forces;  
 Frosch, Ants – Director General of the Information Board (in 2006);  
 Johanson, Johannes – CEO of Estline;  
 Kadak, Jüri – Head of the 3rd Department or Operations Department of the General Staff of the Defence Forces;  
 Kert, Johannes – Commander of the National Defence League;

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<sup>10</sup> RT I 2005, 69, 537

<sup>11</sup> RT I 2006, 29, 226

Krjutskov, Vassili – survivor of the shipwreck;  
 Kross, Erik Niiles – advisor to the Estonian Embassy in the USA (Head of Coordinations of the State Chancellery since March 1995);  
 Kuks, Jaak – Adviser to the Minister of Defence;  
 Kõuts, Tarmo – Director General of the Border Guard Administration;  
 Laaneots, Ants – Head of the General Staff of the Defence Forces (in 2006 became the Commander of the Defence Forces);  
 Laar, Mart – Prime Minister (until 8 October 1994);  
 Laigna, Einar – Head of the 4th Department or Rear Area Department of the General Staff of the Defence Forces;  
 Lang, Rein – Minister of Justice (in 2006);  
 Lippmaa, Jaak – Director of the Government Communication Office;  
 Laur, Uno – Chairman of the JAIC;  
 Lauringson, Janno – Senior Specialist in the Procurements and Logistics Department of the Ministry of Defence;  
 Liim, Jüri – Special Representative of the Government of the Republic in Paldiski;  
 Meister, Andi – Minister of Transport and Communications and Chairman of the JAIC;  
 Miller, Inno – Adjutant of the Minister of Defence;  
 Männik, Priit – Deputy Director of the Police Central Investigation Bureau;  
 Mälksoo, Lauri – Associate Professor of the Chair of International Law in the University of Tartu (in 2006);  
 Noorkõiv, Tiit – Senior Consultant in the Security Section of the Defence Policy and Planning Department of the Ministry of Defence;  
 Nõmm, Toe – Senior Specialist of the Armament Section of the Ministry of Defence;  
 Pihl, Jüri – Director General of the Security Police Board;  
 Rahumägi, Jaanus – CEO of security company ESC;  
 Roosimägi Urmas – Head of the Hiiumaa National Defence Department;  
 Sarv, Laur – Adviser to the Prime Minister;  
 Simm, Herman – Director General of the Police Board;  
 Talvik, Rein – Director General of the Customs Board;  
 Tarand, Andres – Prime Minister (from 8 October 1994);  
 Timberg, Kalev – Deputy Director General of the Rescue Board ;  
 Toomingas, Toivo – Deputy Head of the Customs Inspectorate of the Customs Board;  
 Toots, Jaan – Acting Director General of the Police Board;  
 Tross, Jaan – Adviser to the Prime Minister;  
 Tupp, Enn – Minister of Defence;  
 Türkson, Tarmo – Director General of the Information Board (in 2006);  
 Valgma, Arne – Head of the Ship Supervision Department of the Maritime Administration;  
 Valm, Vello – Head of the Supervisory Department of the Customs Board;  
 Veskimets, Arvo – Deputy Director General of the Maritime Administration;  
 Vihmar, Andres – Purser of the ferry Estonia;  
 Voronin, Vassili – survivor of the shipwreck;  
 Väli, Neeme – Head of the General Staff of the National Defence League;  
 Väli, Riho – Chief of the Tõstamaa Regional Unit of the National Defence League.

In addition to aforementioned persons, the Committee met with officials of the 2<sup>nd</sup> Department of the General Staff of the Defence Forces, the 2<sup>nd</sup> Department or Military Intelligence of the National Defence League, as well as with officials of the information

Board. Pursuant to paragraph 6(10) of the State Secrets Act, these interviews are state secrets of classified level. Therefore the Committee is unable to name the interviewed officials.

On 16 March 2006 the Committee received members of the Estonia Parliamentary Group of the Swedish *Riksdag* Lars Ångström (*Miljöpartiet de gröna* / Green Party), Kent Härstedt (SDP) and Björn von der Esch (*Kristdemokraterna* / Christian Democrats) and on 1-2 July 2006 the delegation of the Committee, composed of its Deputy Chairperson Evelyn Sepp (head of the delegation), Ken-Marti Vaher, Trivimi Velliste, adviser of the Committee Martti Lutsar and interpreter Toomas Lapp made a return visit to Stockholm, where they met not only the members of the Estonia Parliamentary Group, but also the Swedish Minister for Sustainable Development Mona Sahlin, former Chief of Military Intelligence Erik Roslander, customs officer Lennart Henriksson who reported the shipping of military equipment, former Chief of Customs Ulf Larsson and representatives of the Independent Fact Group.

### III Method

#### The methods chosen by the Committee of Investigation for solving the set tasks

Proceeding from the tasks set for the Riigikogu Committee of Investigation, the principal form of work was conducting interviews. In cooperation with the adviser, a list of persons to be summoned was drawn up and constantly amended, whenever necessary. It was the objective of the Committee to interview officials connected with special services and other state authorities in 1994, in order to collect additional information to fulfil the tasks proceeding from the Resolution of the Riigikogu. The investigation tactics required interviewing lower ranking officials first, and then the board members and Directors General. The persons interviewed also included the political leaders of 1994, such as Prime Minister Mart Laar (until 8 October 1994)<sup>12</sup>, Prime Minister Andres Tarand (from 8 October 1994), Minister of Transport and Communications and the Chairman of the Joint Accident Investigation Commission of Estonia, Finland and Sweden (hereinafter "JAIC") until July 1996 Andi Meister, as well as Minister of Defence Enn Tupp.

Pursuant to paragraph 22(2) of the Riigikogu Rules of Procedure Act, the Committee of Investigation has the right to summon persons to a hearing by the Committee and request data and documents necessary for fulfilling its tasks. A summoned person is required to appear, provide explanations and reply to questions. Summoned persons had to present the data and documents requested by the Committee by the determined date.

Failure to appear without good reason, when summoned by a committee of investigation, failure to submit information or documents, or refusal to provide a statement or reply to questions is punishable by a fine of up to 300 fine units pursuant to § 23 of the Riigikogu Rules of Procedure Act and the Court would have applied provisions of the Penal Code and the Code of Misdemeanour Procedure to this misdemeanour. It was not necessary to apply these provisions to any of the summoned persons as everyone appeared to the Committee meetings for their interview. The Committee met by 13 November all persons whom it deemed necessary to interview. Some persons who were not in Estonia were interviewed via conference call system.

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<sup>12</sup> Because of the resignation of the Government of the Republic on 26 September 1994.

The Committee asked all the summoned personas to sign an extract of the Riigikogu Rules of Procedure Act which was read to them before the beginning of the sitting, as a confirmation that they are aware of the rights of the Committee and the duties of the persons summoned to appear before it.

#### Questions posed to the summoned persons

Proceeding from the stipulations of the Resolution of the Riigikogu and the above mentioned tasks, the Committee focused its questions on the following subjects, which are the basis for the analytical part of this report:

- What kind of vehicles with a strategic content could be procured on the territory of the Republic of Estonia in 1994?
- How did the shipping of military goods take place on 14 and 20 September 1994 by the ferry Estonia from the territory of the Republic of Estonia to the Kingdom of Sweden, as has been established?
- Who knew or might have known in Estonia about these shipping activities?
- How can the results of criminal investigation by the Joint Accident Investigation Committee (JAIC) or any other study be evaluated?
- How should the shipping of strategic merchandise take place pursuant to the valid legal order?

Proceeding from the interaction of various aspects, the Committee also paid attention to whether the Committee can deny any unofficial allegations concerning the ferry Estonia, and which allegations can it deny in connection with information received from investigating the facts of the shipping of military equipment.

## **IV Work of the Committee of Investigation**

What kind of vehicles with a strategic content could be procured on the territory of the Republic of Estonia in 1994?

Situation in Estonia in 1994 must be taken into account when analysing this. In the context of export of military equipment, which has been confirmed by Sweden, one of the most important actors is Russia's occupation army (hereinafter Russian army) who had to withdraw from the territory of the Republic of Estonia by 31 August 1994 pursuant to the so-called July Agreements signed by President Lennart Meri and the President of the Russian Federation Boris Yeltsin in Moscow on 26 July 1994<sup>13</sup>.

According to certain evaluations, Estonia was then – and is now – a country of high interest to various intelligence services. In the course of the investigation launched on 3 December 2004 by the Swedish Government after the statement of the former customs agent Lennart Henriksson, the Press Secretary of the Swedish Armed Forces has stated, among other things, that „...the Armed Forces are always interested in the military equipment of neighbouring

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<sup>13</sup> Agreement between the Republic of Estonia and the Russian Federation in the Matters of Withdrawing the Armed Forces of the Russian Federation from the Territory of the Republic of Estonia and the Conditions of Their Temporary Presence. – RT II 1995, 46, 203.



countries”<sup>14</sup>. The interest was prompted by the presence of the Russian army in 1994 and the confusion caused by its withdrawal, which gave foreign intelligence services the possibility to acquire Soviet army technology by various means. Russian equipment was of potential interest to foreign intelligence authorities of various foreign countries and other special services and representatives of private capital military industry companies, possibly for the purpose of industrial espionage.

The Committee reached the conclusion that Estonia might have procured – if not until 1994, at least until 1991-1992 – special equipment or high technology of the Russian army, which was of great interest to the intelligence services of various countries.

According to the Committee, such equipment and technology were part of space electronics, high technology directing and surveillance devices (like underwater radio buoys, radars), as well as anti-aircraft complexes (with marking S300) and electronic control systems, although for example in strategic missile systems Western electronic equipment was used to a certain extent.

In the opinion of the specialists with Soviet Army military background and/or contacts who met with the Committee, the Soviet Union dispatched, among others, to the territory of Estonia several achievements of air surveillance top technology after German pilot Mathias Rust's uninterrupted flight from Finland to Moscow in 1987. Another aspect of location of top technology in Estonia was geopolitical – the geographic and strategic position of Estonia because in the case of possible war situation German Democratic Republic, Poland, Czechoslovakia and Hungary had to hold out against military attack as buffer zone only for a couple of weeks and the Soviet Union would then have offered its main resistance from the Estonia–Belarus–Ukraine line. Also, at least until the beginning of the 1990s, Estonia had the scientific potential necessary for space technology research.

Certain parts or structure of military technology equipment might also have been of interest to the special services or military industry companies of foreign states because even if a device of Russian military equipment was not technologically innovative, when the details of its operation were known, it was possible to take into use or build up additional counteractive measures (like parts of radar system). An opinion has been expressed to the Committee that certain secret military technology or a principle of the functioning of its system could essentially remain into use unchanged for up to 20–25 years. In the opinion of the Committee, the special services of foreign countries in 1994 in Estonia were among other military equipment of the Soviet Union first of all interested in top technology with military purpose.

In one concrete case, Estonian military intelligence was officially offered for sale a device of Russian space electronics that enabled military reconnaissance with infra-red cameras. Representatives of military intelligence were given the possibility to study the manual and photos of the device. In the beginning of the 1990s also other military technology was available in Estonia, like night vision devices for military use. In the opinion of a specialist of Estonian special services it could have been possible that in the first half of the 1990s also the so-called nuclear briefcases were taken out of Russia but as far as it is known, the Russian side has never confirmed that in any way.

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<sup>14</sup> Press Secretary of the Swedish Armed Forces in the 2 December 2004 programme *Ekof* of the Swedish Radio.

The Committee has been informed of several cases of illegal profiteering with Russian military equipment. For example, in 1994 the Lithuanian army received from Russians 15 pontoon bridges, probably none of the Baltic states could afford to acquire them at state level at that time. At the same time, according to one source, a Lithuanian general, this military equipment was gotten for "many cases of vodka".

In addition to that, let it be mentioned that besides profiteering of military equipment and exporting it, according to specialists precious nonferrous metals and different rare earth metals were also exported.<sup>15</sup> Several such shipments were radioactive and their export was uncontrolled by the state of Estonia so that Swedish or Finnish customs repeatedly discovered such contraband.

In the opinion of the specialists who met with the Committee, the special services of foreign states could have been very interested in the so-called friend-or-foe system (*Kremni-2*), on which the air defence system of a state is essentially based and which existed in Estonia until the withdrawal of Russian troops. In air defence this system guarantees the identification of your and another country's aircraft. The system is based on a transmitter and a receiver that are located in a radar or a missile base and on board of the plane. Besides that there is an encrypting device on board of the plane in which the chip cards with codes are located. Digital encrypting device is continuously changing codes; during peacetime they were changed every 12 hours, in wartime every 4 hours. According to experts the whole *Kremni-2* system had to be changed in the Soviet Union after a MIG 25 type plane with the above-mentioned transponder, and with it, the details of the system, in 1976 flew to Japan and was examined by the Western countries. As far as it is known to the Committee, the changing of the system at that time cost about 6 billion roubles. According to the experts interviewed by the Committee, the special services of different foreign states tried to acquire the so-called friend-or-foe system when the Russian troops left the German Democratic Republic; they were ready to pay up to 5 billion USD for it. According to the experts who have had contacts with the military of the former Soviet Union, Russia has not changed this system any more and thus it may be assumed that the so-called friend-or-foe system has not fallen into the hands of the special services of other countries for the second time.

In the case of profiteering of Russian military equipment by the Russian military personnel themselves several circumstances that created favourable grounds for all kinds of illegal activity should be taken into account. Because of the collapse of the Soviet Union, Moscow's control over the forces of the Russian Federation and the equipment at their disposal in the states that had regained their independence diminished considerably. As a psychological aspect, the low morale of the military personnel of the former Soviet Union which was caused both by the shortage of resources and the loss of former privileged position could be regarded as a factor favouring all kinds of business activities. The defence force specialists interviewed by the Committee have said that until the beginning of 1992 the Russian troops located in Estonia were essentially in the vacuum, when the order of the state changed they did not know to whom they were subordinated. According to the experts who met with the Committee, the business deals that were regarded anti-state by Russia took place either by way of utilisation or "losing" the equipment in the confusion during the process of the withdrawal of Russian troops. According to experts, the "writing off" of equipment "because of war losses" took place especially actively after the armed conflict in Chechnya that had started in November 1994.

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<sup>15</sup> For example, allegedly cobalt, osmium (was used in the energy systems of manned space stations) and scandium (the price at that time was at least 60–70 thousand USD for the amount that would fill a suitcase) were profiteered at that time.

The fact that there was legal and illegal business in the materials of this sphere has been acknowledged to the Committee by several interviewed persons. As in the beginning of the 1990s legal regulations were unclear in several issues, it was difficult to prove in Estonia that certain goods are strategic goods that should not be freely exported from the country.<sup>16</sup> Also there were cases where on border crossings the state was for the same reasons unable to prove that the export of certain goods, including military equipment, was in fact smuggling.

The Committee has reasons to conclude that shipping of such goods in 1994 took place mostly only through Estonia. It should be kept in mind that it was contraband and there were only a few cases when Estonia as a transit country of those shipments received information about their content. In the opinion of most of the experts interviewed by the Committee, by 1994 Russian troops had shipped top technology from the territories of newly independent Estonia and other former occupied states back to Russia after the withdrawal of Russian troops from the territories that had regained independence became a topical issue. Therefore it is quite possible that if the special services of foreign countries in 1994 used the ferry Estonia for organising the military cargo shipment operations, Estonia was used as a transport corridor and sensitive military equipment had arrived here either by land or before 31 August 1994 via Paldiski seaport or Ämari airport.

### Relations with the Swedish side

#### *Visit of the Estonia Parliamentary Group of Riksdag to Tallinn*

Meeting with the Estonia Parliamentary Group of the Swedish Parliament *Riksdag* took place on 9 March 2006. Ferry Estonia group was represented in the *Riksdag*'s parliamentary delegation by Chairman Lars Ångström (*Miljöpartiet de gröna* / Green Party), members Kent Härstedt (SDP) and Björn von der Esch (*Kristdemokraterna* / Christian Democrats). As the objectives of the Riigikogu Committee and *Riksdag* Parliamentary Group did not coincide and the mandate of the Committee of Investigation concerned only ascertaining the circumstances of shipment of military cargo, the aim of the meeting was exchange of information.

#### *Return visit of the Committee of Investigation to Stockholm*

Return visit to the Kingdom of Sweden took place on 1–5 June 2006. Deputy chairperson of the Committee Evelin Sepp was the head of the Riigikogu Committee of Investigation. Members of the Committee Ken-Marti Vaher and Trivimi Velliste, adviser of the Committee Martti Lutsar and interpreter Toomas Lapp also belonged to the delegation. During two days in Stockholm the delegation met their hosts and Ambassador of the Republic of Estonia to Sweden Jüri Kahn.

Delegation of the Committee met with customs official Lennart Henriksson who gave the statement that was the basis for initiating Johan Hirschfeldt's report, Ulf Larsson who was the Director General of the Swedish Customs Board in 1994, Minister for Sustainable

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<sup>16</sup> According to an official from the Ministry of Defence, one such case was the export of ten amphibious vehicles for transporting military equipment in 1994. In that concrete case the state was unable to prove legally that it was military equipment because the Strategic Goods Export and Transit Act was implemented by a Government of the Republic Regulation of 5 October 1994.

Development Mona Sahlin who was responsible for the issues concerning ferry Estonia at the Swedish government, head of the legal department of the Ministry of Defence Helena Lindberg, Major General Erik Rosander who was head of the Swedish Military Intelligence MUST in 1994 and representatives of the Independent Fact Group. The meetings were substantial and constructive and gave important information the Committee could use to fulfil its tasks.

It could be said that the most noteworthy piece of information was the statement by the former head of MUST Major General Erik Rosander that the shipment of military equipment to Sweden, that had been confirmed by Hirschfeldt report, took place at the request of a representative of Estonia in order to analyse what it was. Erik Rosander claimed that according to the above-mentioned Estonian there was not enough competence in Estonia to assess the military equipment left by Russian troops and its strategic value. Former chief of the Swedish Military Intelligence MUST asserted that there were only two shipments because on 14 September 1994 there was not enough room for all goods on one vehicle and additional journey to fetch the rest of the equipment was made on 20 September 1994. According to the Major General, the analysis of the Swedish Military Intelligence showed that most of the shipment was of little interest to Sweden, but there were also electronic devices in the shipment that were "of great interest" to Sweden.

Major General Rosander called his contact in Estonia his "Estonian colleague" but he did not remember exactly who was the Estonian that had contacted their office for the analysis and shipment of electronics to Sweden. At the meeting with the delegation of the Committee on 2 June 2006 the Major General said that after analysing the electronics, the Swedish Military Intelligence sent to the "Estonian side" a detailed summary and analysis of materials.

As the members of the Committee were unable to identify the addressee of this memo and in the course of the work of the Committee it has turned out that the above-mentioned letter is not in possession of any special service or some other state agency, the Committee of Investigation on 15 September 2006 appealed to the Ambassador of the Kingdom of Sweden to the Republic of Estonia H. E. Mr. Dag Hartelius to organise from the Swedish side the forwarding of the above-mentioned memo and copy of the report to the Committee of Investigation of the Riigikogu.

23. In his reply of 23 October 2006 the Ambassador of Sweden told that he had been in touch with relevant Swedish agencies but according to the information forwarded to him the Swedish Military Intelligence had never sent a letter with such content to Estonia. In his letter to the Committee the Ambassador expresses his regret that he was unable to comply with the request of the Committee because the Swedish Military Intelligence MUST had never sent such a letter to Estonia and most probably there was a misunderstanding concerning the above-mentioned letter at the Committee's meeting with the former chief of Military Intelligence Major General Rosander.

Minutes were taken of the Committee's meeting with the former chief of Swedish Military Intelligence Major General Rosander. The Committee cannot agree that this could be a misunderstanding that arose due to the mediation of an interpreter because the conversation about the memo and "Estonian colleague" at the one-hour meeting lasted for around ten minutes. Also the Committee has no grounds for thinking that the retired chief of Swedish Military Intelligence did not present adequate information to the Committee.

How did the shipping of military equipment that has been confirmed by the Government of Sweden take place on 14 and 20 September 1994 by the ferry Estonia from the territory of the Republic of Estonia to the Kingdom of Sweden?

At the meeting with the former chief of Swedish Military Intelligence MUST Major General Erik Rosander on 2 June 2006 the Committee delegation was given a more detailed overview of the transporting of military equipment from Estonia to Sweden that took place on 14 and 20 September 1994. According to Major General, the Swedish side took care of the logistic plan and the whole transport after the "Estonian side" had informed them of the existence of military technology. According to Erik Rosander a Volvo pickup vehicle was sent to Estonia that transported the goods to Stockholm on ferry Estonia in 14 September 1994. During the operation it turned out in Estonia that it was not possible to transport the electronics and the documents to Sweden in one shipment, therefore a week later, on the ferry Estonia that departed from Tallinn on 19 September another shipment with a Volkswagen van took place which according to Erik Rosander brought all materials to Sweden.

In the case of the two shipments of military cargo the Swedish customs at that time applied the secret agreement between customs and defence forces to enable the Swedish defence forces to import cargo to the country without customs formalities when necessary. It is said in Judge Johan Hirschfeldt's report that between the Swedish customs and defence forces there was "an agreement on simplified customs procedures when the Defence Forces imported materials with special protection of secrecy to Sweden" and "the agreement was made between the then commander-in-chief and director of customs board". Besides that it can be seen from the report that the State Chancellery and Ministry of Defence of Estonia were also aware of the agreement in force in 1994. "The agreement /.../ contained simplified customs procedures for the import of military technology" and "in both agencies only a very small circle of persons was aware of the agreement and took part in its special procedures"<sup>17</sup>

According to the former head of Swedish Customs Board Ulf Larsson this agreement was repeatedly applied since 1992 when it had been signed. The agreement has been extended several times. Ulf Larsson did not see any problems in the existence of the agreement because it helped to direct the resources of Swedish customs to preventing serious crimes, like trafficking in drugs and smuggling. According to him the purpose of the agreement was to give the defence forces the right to import military technology without declaring it because checking the goods would have been interfering with the security issues of Sweden.

The officials of special services of Estonia who have met with the Committee have expressed doubt whether intelligence services would have shipped military technology in this way: routine customs control could have disclosed such operations. It is doubtful whether an intelligence service would risk acting on the territory of another, independent state and export a secret shipment knowing that, as the specialists who met with the Committee told, in 1994 routine customs check was made to 3–5 per cent of all goods that passed the customs and in the whole world the customs check is concentrated mainly on checking the incoming goods.

According to experts, professional intelligence service would not have transported sensitive technology with military purpose on a civil vessel and undeclared. Of course it is possible that some corrupt customs officials were bribed. Questions have arisen about the issue why, for

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<sup>17</sup> Johan Hirschfeldt's report, p. 6.

example, powerboats or diplomatic mail were not used during the operation. Erik Rosander told the Committee that in principle the Swedish MUST has sometimes used powerboats on its operations, but not in the case of such distances because the fuel capacity and driving range of powerboats is limited. The procedure of reloading the cargo in international waters would also have constituted a problem.

At the five meetings with the chairman of the Government of the Republic Expert Committee Margus Kurm, the Public Prosecutor told the Committee that the Swedish officials have informed him of the composition of the above-mentioned military cargo. The Riigikogu Committee of Investigation does not know what the cargo consisted of because such knowledge would have bound the Committee with the obligation to protect the classified information of foreign states in the sense of §12<sup>1</sup> of State Secrets Act and potentially endangered the objectiveness of investigation.

#### Who in Estonia knew or might have known about these shipping activities?

The Committee has not identified any private persons or officials of Estonia who might have been aware of the military technology shipment operations organised by the Defence Forces of Sweden on 14 and 20 September 1994. The Committee has also not identified any other persons who would admit that they have information about the shipments of military technology. Neither does the state of Estonia possess a memo on the composition of these military technology shipments or any other documented proof.

The Committee has asked from the persons connected with Estonian special services and customs explanations about the institute of possible oath because the State Secrets Act entered into force only on 9 July 1994.<sup>18</sup> The Committee has come to the conclusion that the institute of oath the way it is used in Sweden has never been applied in Estonia. The Committee ascertained that in 1994, before the entry into force of State Secrets Act, the officials of the 2nd Department of the General Staff of the Defence Forces signed a document obliging them not to spread details connected with the work of military intelligence. Although keeping secrets was not legally regulated before the entry into force of State Secrets Act in 1994, the Committee has no reason to think that the officials of the 2nd Department of the General Staff of the Defence Forces have withheld relevant information from the Committee.

The Committee makes the same conclusion about the words of the adviser to the Prime Minister dealing with domestic and security issues, according to which the documents with sensitive content in Prime Minister's Office and State Chancellery were marked with red stamp "salajane" ("confidential").

During the interviews the Committee has checked whether in 1994 in Estonian customs there could have been any so-called telephone justice, according to which after the phone call of customs board or other persons the rank and file customs officials would have performed the customs check in the influenced way. The officials connected with customs have declared that there was no such practice in the Estonian Customs Board. However, according to several leading customs officials who met with the Committee they have in some cases been phoned from customs offices and asked if they have promised certain persons who claim so simplified customs check.

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<sup>18</sup> State Secrets Act – RT I 1994, 45, 720.

The administrative capacity and efficiency of the authorities of the Republic of Estonia in 1994

In the framework of the investigative tasks proceeding from the draft resolution of the Riigikogu, the Committee has thoroughly studied the work of special services and other state agencies in 1994 to identify the officials and agencies who were informed of or privately assisted in transporting military technology to the Kingdom of Sweden with ferry Estonia. The possibilities of the Committee to give a detailed evaluation and analysis regarding different state agencies in a public report may not be justified from the standpoint of guaranteeing the state and national security of Estonia, and detailed analysis would contradict the provisions and spirit of the State Secrets Act.

In analysing this period, it has to be kept in mind that the newly independent Republic of Estonia was still being built up in 1994 and the Russian troops left it only in August 1994. At that time Estonia had four special services: Information Service (now Information Board), Government Department of Communications (liquidated in 2000) and Defence Police Board were dealing with civil investigation and the 2nd Department of the General Staff of the Defence Forces was dealing with military investigation. The 2nd Department of the Defence League was also dealing with military investigation. The present Office of the Director of Co-ordination of the State Chancellery was formed only in March 1995. Before the establishment of the post of director of co-ordination such functions were performed by the adviser of the Prime Minister in domestic and security issues.

The Riigikogu Committee of Investigation has interviewed the leaders, leading workers and officials of all special services of that time. If we compare the current situation of the above-mentioned agencies (except the liquidated Department of Communications) with their situation at that time, it can be said that they have developed remarkably.

1994. In 1994 the Defence Police Board was the most developed special service agency for guaranteeing the internal security of the state. In the opinion of several persons interviewed by the Committee, the development of Information Service mainly took place in the second half of the 1990s and military intelligence developed according to the same lines with the defence forces. The capacity of the Government Department of Communications was limited.

When evaluating the special services of Estonia of that period, the shortage of know-how and financial resources can be brought out as a general problem. But it is important that the officials and military personnel were highly motivated, which is a precondition for carrying out successful operations and development. On the basis of the opinions presented to the Committee it may be said that the special services and other state agencies of that period were under government control.

After analysing the statements of all interviewed persons, the Riigikogu Committee of Investigation has reasons to declare that the state agencies of the Republic of Estonia were not aware of the transport of military technology from Estonia to Sweden in 1994 by ferry Estonia. Therefore the Estonian agencies could not assist Sweden in shipping this military technology. The Committee does not preclude that some Estonian official privately assisted the Swedish special services. The Committee has not identified the person the former chief of Swedish Military Intelligence referred to.

How should the shipping of strategic merchandise take place pursuant to the valid legal order?

Taking into account that the shipments confirmed by Sweden consisted of military technology, the export of such cargo, regardless of its dangerousness, from a country or transit to third states takes place according to the list of strategic goods and requires a permit of the strategic goods committee issued according to the legal order in force.

The act regulating the export of strategic goods – Strategic Goods Export and Transit Act<sup>19</sup> – had entered into force in Estonia by the time of the shipments of military cargo confirmed by Sweden and the committee monitoring the export of strategic goods formed at the Ministry of Foreign Affairs<sup>20</sup> had convened by September 1994.

The Government of the Republic has not yet enforced all the legal acts required for the complete implementation of the Act<sup>21</sup>. However, the Strategic Goods Export and Transit Act enforced in May 1994 *inter alia* included under strategic goods technologies and equipment posing a threat to national and international security that can be used for military or military and civilian purposes.<sup>22</sup> Section 5(1) of the Strategic Goods Export and Transit Act stipulates that “no information relevant for monitoring the implementation of the provisions of the current Act is to be concealed from appropriate national authorities”. The Kingdom of Sweden had to apply for a special export permit from the committee monitoring the export of strategic goods under the Ministry of Foreign Affairs.

The Committee did not confirm that an application for such permit had been submitted. In 1994 the Kingdom of Sweden signed international conventions on maritime safety.

The Customs Act<sup>23</sup> equally requires the declarant to declare all exported goods. This allows to conclude that while arranging the export of military equipment Sweden as the side responsible for transport operation failed to complete statutory declarations and violated the existing rules of procedure.

Committee finds it crucial to note that on 18 February 1993 Estonia and Sweden concluded and signed an inter-governmental customs cooperation agreement which is still valid at the time of compiling the current report. The reason underlying the conclusion of the agreement was *inter alia* the necessity to „ensure correct implementation of regulations related to prohibition, restriction and control of the import and export of goods”<sup>24</sup>, which according to the agreement should be achieved by means of cooperation and information exchange between the customs boards of Estonia and Sweden. The Agreement stipulates that “the customs authority of one Party shall provide the customs authority of the other Party, on its own initiative or upon request of the other Party, with all the information concerning the

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<sup>19</sup> Strategic Goods Export and Transit Act (entered into force on 7 May 1994) – RT I 1994, 30, 466.

<sup>20</sup> Pursuant to the Order of the Government of the Republic No. 246-k (of 15 June 1994) – RT I 1994, 45, 748.

<sup>21</sup> The Implementation of the Strategic Goods Export and Transit Act, Regulation No 356 of the Government of the Republic (05.10.1994). – RT I 1994, 70, 1220.

<sup>22</sup> Strategic Goods Export and Transit Act, 2(1)1 and 2(1)2).

<sup>23</sup> Customs Act. – RT I 1993, 62, 891 and 76, 1129.

<sup>24</sup> Agreement between the Government of the Republic of Estonia and the Government of the Kingdom of Sweden regarding mutual assistance in customs matters (entered into force on 30.10.1993). – RT II 1994, 27, 107.



goods that are assumed to be related to smuggling that could be of use in case of a violation of customs regulations<sup>25</sup>.

Pursuant to Article 9 of the agreement „upon submission of such request the requested customs authority” can conduct “an official investigation with respect to actions that are or appear to be in breach of the customs regulations in force on the territory of the requesting Party”. In addition, the requested „customs authority has to provide the results of such investigation to the requesting customs authority”. Having said this, Article 15 of the agreement provides for the right of the requested customs authority to refuse to provide assistance on the grounds of security or any other interest.

Are there grounds to believe that military equipment was equally shipped on board the ferry Estonia which departed Tallinn on 27 September 1994?

In the course of the investigation the Committee attempted to establish whether equipment of strategic use could be on board the ferry Estonia when it departed Tallinn on 27 September 1994.

Following the statement concerning the shipment of military equipment of the Swedish Defence Forces made by Lennart Henriksson, a Swedish customs officer on the Swedish STV 1 show *Uppdrag granskning* on 30 November 2004 the Customs Board of Sweden confirmed that the customs had concluded an agreement with the Swedish Defence Forces, the details of which are classified and which grants the Swedish Defence Forces the right to import military equipment into Sweden solely making an oral declaration. Nevertheless, a press release contained the claim that „with regards to the data presented in *Uppdrag granskning* the Defence Forces guarantee that the agency had no military equipment on board the ferry Estonia on the night of the accident”. The Customs Board in its turn provided confirmation that “in this particular case no notice concerning the import of goods was received from the Defence Forces”<sup>26</sup>.

However, the Committee considers it noteworthy that in the report presented to the government of Sweden Judge Johan Hirschfeldt clearly focused on confirming what had been stated with regards to the military equipment shipments that arrived in Stockholm on 14 and 20 September 1994 solely claiming that „the investigation did not reveal any information which would give grounds to suppose that the Defence Forces transported military equipment on board the ferry Estonia on any other occasion in September 1994 apart from 14 and 20”<sup>27</sup>. Judge Johan Hirschfeldt confirmed in the public part of the report addressed to the Government of Sweden that he „has no reason to assume that the Defence Forces or the Supply Agency of the Defence Forces attempted to transport military equipment on board the ferry Estonia when the ship sank”<sup>28</sup>. However, Johan Hirschfeldt’s report does not allow to clearly ascertain whether the information he had at his disposal regarding the transport of military equipment emanated from some third party that could be indirectly related to the Defence Forces or the Supply Agency of the Defence Forces, for instance a private enterprise acting on the basis of a contract. Considering Johan Hirschfeldt’s report from this point of

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<sup>25</sup> *Ibid.*, article 5 (b).

<sup>26</sup> Press release of Swedish Customs Board, 02.12.2004, Swedish news agency TT.

<sup>27</sup> Johan Hirschfeldt’s report, p. 6.

<sup>28</sup> Johan Hirschfeldt’s report, p. 6.

view it is unclear whether setting a broader question would have produced different results of investigation.

Uno Laur, the then Chairman of the Committee confirmed that the JAIC investigation concentrated on the sinking, the events immediately preceding it and the questions: why did the accident take place? how did it happen? what should be done to avoid such accidents in the future? Nonetheless, Uno Laur claims that the JAIC followed up the rumours around the ferry Estonia having left on 27 September according to which the delay of the ferry was caused by the presence in the customs area and the port of military staff and freight trucks which aroused suspicion and were the last ones to drive on board the vessel. Uno Laur confirmed that these media-based claims were checked and the rumours were found to have had no grounds. According to Uno Laur the JAIC investigation made clear that there was no link between the cause of the accident and the possible shipment of military equipment. Uno Laur could not recall at what stage of the investigation it became evident since more than ten years have passed since. Uno Laur confirmed that to his knowledge the JAIC had no information concerning the shipment of military equipment. The then chairman of the JAIC equally confirmed to the Investigation Committee that the divers of the JAIC who participated in the diving operations reported to the JAIC that they had never explored the vehicle deck of the vessel and to his knowledge no-one has explored the vehicle deck of the ferry Estonia. Captain Laur claims that the JAIC had no interest towards the contents of the cargo. They were rather interested in whether it was fixed in the correct manner<sup>29</sup>. -{ }-

The Committee interviewed Captain Arne Valgma who was the JAIC Estonian observer on board a Dutch research vessel during the above-mentioned diving operation. According to Arne Valgma the video imagery provided by several divers was recorded on only one videorecorder. It should be noted that according to Arne Valgma's confirmation the divers equally explored the vehicle deck. As regards this operation one should also draw attention to the fact that the diving session was made two days shorter with no prior notice given and the information about the exploration by the divers of the bridge deck only reached the JAIC Estonian observer at a later time. According to Captain Arne Valgma while carrying out these explorations those responsible believed that the hulk was to be lifted to the surface. In the opinion of the Committee the Estonian observer was not provided with the details of the investigation during the diving operations and he lacked a research task clearly defined by the Estonian side. It was impossible to do a thorough job since the explorations were conducted throughout the day for many days and there was only one observer representing the Estonian side at the diving operations.

Having equally met the persons who ran the criminal procedure at the time and the two previous chairmen of the JAIC the Committee has to claim that to its knowledge the last journey's cargo of the ferry Estonia has never been explored neither during the JAIC investigation nor criminal proceedings. The latter discontinued after the JAIC investigation only a few months past the accident referred to the bad weather conditions resulting in the loss of the bow visor and, as a consequence, water flooding the vehicle deck as the cause of the sinking.

The Committee has not grounds to confirm or refute the statement that military equipment was transported on board the ferry Estonia which departed the Port of Tallinn on 27

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<sup>29</sup> On the basis of the protocol of the Constitutional Committee as of 17.01.2005 and of what was confirmed at the sitting of the Investigation Committee on 09.11.2006.

September 1994. If the issue is to be further clarified one should in all probably consider in greater depth or establish what sort of information regarding the hulk has been compiled since 28 September 1994 and what the divers saw while exploring the hulk. However, the latter are bound by an oath of secrecy sworn in Sweden.

How can the results of criminal investigation by the Joint Accident Investigation Committee (JAIC) or any other study be evaluated?

According to the Committee none of the investigations conducted to date has been sufficiently thorough. There has been no official examination of the cargo transported on board and on the vehicle deck of the ferry Estonia which left the Port of Tallinn on 27 September 1994. According to the expert who met the Committee the criminal investigation launched on 28 September 1994 by the Central Criminal Police was conducted in great secrecy even with respect to the administration of the Police Board. The surveillance activities aimed at establishing the cause of the accident were at the time conducted by the Security Police Board. The surveillance file was closed already in January 1995 insofar as no additional evidence relating to the cause of the accident was obtained. According to the Director General of the Security Police Board the Board had no shipping experts and did not wish to excessively interfere with the criminal proceedings underway.

The above-mentioned criminal proceedings established no violation of transport safety rules and the criminal proceedings were terminated after the final report of the JAIC was presented in December 1997. The circumstances were different at the time when compared to the present situation insofar as no legal assistance agreement in the criminal proceedings had yet been signed with Sweden. It should also be noted that in 1994 Estonia had limited resources and poor technical capacity for exploring an accident of this sort. All the technical research related to the accident was conducted either in Sweden or in Finland.

**V. Observations of the Committee with regards to issues falling beyond the scope of the functions of the Investigation Committee.**

Proceeding from the unsatisfactory investigations of the ferry Estonia accident described earlier on in the report the Committee was compelled to examine several issues which had no direct relation to resolutions of the Riigikogu but have been simultaneously brought up by experts who had met with the Committee and other persons on Sweden's side in connection with the details of the confirmed shipment of military equipment. These issues are partially being analysed by the Expert Committee formed by the Government of the Republic and chaired by the Republic Prosecutor Margus Kurm.

Based on the results of interrogations and analyses and on what was mentioned above the Investigation Committee would like to briefly present an opinion on a few circumstances related to the ferry Estonia accident that according to the Committee have been based on erroneous or inaccurate information or require further examination.

1. The Committee believes that the so-called classified Felix's report which appeared in the press shortly after the final report of the JAIC was made public in December 1997 is an intentionally misleading document based on erroneous data. In all probability this report on organised crime was produced by special services of a state unfriendly to Estonia and the

passages concerning Estonian politicians and high officials were attached by an unidentified person or interest group. According to the Committee the aim of the Felix's report was to damage the reputation of the mentioned persons and the Republic of Estonia.

2. As regards the information exchange between the Estonia Parliamentary Group of Riksdag and the Expert Committee of the Government of the Republic the Committee would like to draw attention to the following: It is not possible for the Committee to answer the question whether other diving or any other underwater operations were conducted in addition to the documented diving operation to the hulk of the ferry conducted by the JAIC. This investigation was launched by the Legal Chancellor of Sweden upon the application of the Member of Parliament Lars Ångström filed on 9 September 2006.

3. The application deals with other issues such as the interview of Judge Johan Hirschfeldt in the Riskdag of Sweden on 6 April 2006 after it was revealed that the latter, on his own initiative, had destroyed materials related to the transport of military equipment collected for an investigation report commissioned by the Government of Sweden. Johan Hirschfeldt claimed before the Riskdag that although the decision to destroy the background information compiled for the investigation was his own he did so in accordance with his understanding of how the task set by the government had to be performed. The interview conducted by parliamentarians equally revealed that Johan Hirschfeldt could not recall secondary facts that had been made known to him during the investigation and which did not directly concern the transport of military equipment on the two dates mentioned in the report. This issue was equally discussed during the visit of the Committee's delegation to Sweden on 1-2 June 2006. The oath of secrecy given by the divers was equally discussed by the Minister Mona Sahlin and the former chief of Military Intelligence Major General Rosander during the visit of the Committee's delegation to Sweden. Mona Sahlin informed the Committee that „apparently the Government of Sweden has no power to remove the oath” and in her opinion this matter requires further clarification. The Committee lacks a thorough overview of the Swedish legislative acts in force regarding the oath of secrecy. However, the meeting with the Major General Erik Rosander allowed to conclude that the operation of the protection of state secrets in Sweden is generally similar to that in Estonia. At the same time there is an institute of oath as an agreement which is not regulated by the law and has no legal basis and solely the government can remove it. There have been incidents of such releases from oath in Sweden by a resolution of the government.

The Committee believes and suggests that Estonia as the flag country of the ferry Estonia and the country under whose guidance the JAIC operated has the right to gain access to the information being at the disposal of the divers and the entities which commissioned and carried out the diving operations and the Government of the Republic should use all diplomatic opportunities to put pressure on the Government of Sweden in order for the divers to be released from the oath of secrecy thus helping to resolve several questions related to the ferry Estonia that the Republic of Estonia has no answers to.

4. The interviews brought to the fore the issue of seaworthiness of the ferry Estonia. Official investigations carried out to date have not considered whether the ship in fact corresponded to what was stated on the certificate, taking into account that the International Investigation Committee focused its investigation solely on the accident and the events that immediately preceded it. It remains to be seen why the JAIC and the criminal proceedings have not paid attention to issues related to the certification of the ship. These questions *inter alia* include: on what grounds was a certificate confirming seaworthiness of the ferry Estonia issued? did the

vessel actually meet all the technical requirements giving the right to sail in deep waters? how can one assess the expert evaluations of the technical state of the vessel produced at that time? The fact that a vessel possessing a coastal navigation right was at a certain point granted the +I 3/3 E, Deep Sea, Ice IA, Car/Passenger Ferry + (AUT) certificate gives rise to questions.

It is known that the Maritime Safety Administration of Finland granted the ship a passenger ship sea safety certificate which allowed the ship to sail in coastal waters. Until 14 January 1993 the maritime safety of the ship was monitored by the Maritime Administration. Bureau Verita was then authorised to monitor the technical condition of the vessel and its compliance with the international requirements. After the date mentioned above the responsibility for the technical condition of the ship was placed upon the Maritime Agency of Estonia which extended the authorisation of Bureau Veritas to exercise control over the maritime safety of the vessel in accordance with SOLAS and other international maritime safety conventions.

The Committee believes that in the light of the last seaworthiness certificate issued the technical compliance of the ferry Estonia requires further clarification: on what grounds was the ferry Estonia granted seaworthiness certificates? did the ferry Estonia meet all the technical requirements to have the right to navigate in the deep sea? what evaluations did the experts then give to the technical condition of the vessel?

## **VI Conclusion**

To the knowledge of the Committee the export of the military equipment on board the ferry Estonia from the territory of the Republic of Estonia to the Kingdom of Sweden took place on 14 and 20 September 1994. The export was carried out by the Swedish Military Intelligence (MUST). The Committee ascertained that Estonian state agencies and officials were not aware of the export of military equipment on board the ferry Estonia to the Kingdom of Sweden which took place on 14 and 20 September 1994. According to the data available to the Committee Estonian state agencies first received confirmation about the above-mentioned export in January 2005 when the Information Board was so informed by representatives of Swedish special services<sup>30</sup>.

During the visit of the Committee of Investigation to Sweden on 1-2 June 2006 Major General Erik Rosander, the then Head of the Swedish Military Intelligence MUST, confirmed to the delegation that the information about the afore-mentioned military equipment was provided to Swedish special services by „a representative of the Estonian side” whereas logistic and transportation support related to the shipment of the cargo to Sweden was taken care of by the Swedish side. Allegedly, Sweden forwarded the Estonian representative a memorandum describing the contents of the cargo. The Committee has not identified the addressee of the memorandum. The Committee of Investigation has not been able to confirm that any of the currently or previously employed officials or other persons in the Republic of Estonia knew or abetted the export of military equipment or confirmed the information provided by Major General Rosander. These export activities in 1994 did not take place in the framework of a secret intelligence operation carried out in cooperation between the Estonian and Swedish authorities. The Committee finds that where these military equipment export activities are

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<sup>30</sup> Immediately prior to the publication of the report of Johan Hirschfeldt on 21 January 2005.

concerned, the Kingdom of Sweden carried out its intelligence operations on the territory of the Republic of Estonia unbeknownst to the latter.

The Committee ascertained that the representatives of the Kingdom of Sweden did not follow the customs procedures when exporting military equipment from the territory of the Republic of Estonia in September 1994.

The Committee is not able to estimate whether the export of military equipment from the territory of the Republic of Estonia to the Kingdom of Sweden in 1994 on the ferry Estonia was in conflict or in conformity with the interests of the Republic of Estonia.

## **VII Proposals to the Government of the Republic**

1. Propose to the Government of the Republic to ensure the complete involvement of the Republic of Estonia in current and future investigations of the ferry Estonia. The Government of the Republic must find ways to ensure complete cooperation with the Government and agencies of the Kingdom of Sweden, in order to ensure access to all relevant materials and information.
2. Propose to the Government of the Republic to create necessary legal mechanisms for investigating into catastrophes so that a Catastrophe Committee could be founded, whose members would be able to carry out investigation, when necessary, on temporary full-time basis.
3. Proceeding from the fact that several persons who allegedly survived the catastrophe of the ferry Estonia are still missing, and taking into account the fact that they might have important information concerning the ferry Estonia, propose to the Government of the Republic to continue the search for these persons.

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 Margus Leivo  
 Chairman of the Committee:

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 Evelyn Sepp  
 Deputy Chair of the Committee:

Members of the Committee:

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 Jarno Laur

.....  
Ülle Rajasalu

.....  
Ken-Marti Vaher

.....  
Trivimi Velliste

Tallinn, 19 December 2006

Riigikogu Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994

1. Forming documents of the Riigikogu Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994 (Draft legislation, explanatory memoranda);

2. Interim reports of the Riigikogu Committee of Investigation to Ascertain the Circumstances Related to the Export of Military Equipment from the Territory of the Republic of Estonia on the Ferry Estonia in 1994;
3. Invitations to the meetings of the Committee (State secret);
4. The rights and obligations of persons invited to appear before the Committee, original copies (State secret);
5. The list of persons invited to appear before the Committee (State secret);
6. Verbatim records of the meetings of the Estonia Committee (State secret);
7. Records of the meetings of the Estonia Committee (CD – 20 copies) (State secret);
8. Expert opinion on the protection of the place of sinking of the passenger ferry Estonia operating between the Republic of Estonia, the Republic of Finland and the Kingdom of Sweden and its additional protocol;
9. Interim report of the International Investigation Committee (JAIC), April 1995;
10. Materials of the visit to Sweden on 12 June 2006 (verbatim record, press release, mission report);
11. Agreement between the Republic of Estonia and the Kingdom of Sweden regarding mutual assistance in customs matters (prepared on 18.02.1993);
12. General security agreement between the Republic of Estonia and the Kingdom of Sweden on the protection of classified information;
13. Extract from the vehicle register of the Passenger Port of Tallinn as of 27.09.1994. concerning the departure of M/S Estonia;
14. Transport of protection equipment on M/S Estonia in September 1994 (translation of Johan Hirschfeldt's report);
15. Declaration of goods of M/S Estonia as of 27.09.1994, Cargo manifest;
16. Criminal police, lists of documents under the criminal case 94890041;
17. *International smuggling of drugs and the former USSR*, report of the research group Felix, prepared by Ivan Ivanov, Moscow, February 1995;
18. Materials of the Expert Committee of the Government of the Republic (the act establishing the committee, reports as of 31.03.2005 and 10.03.2006);
19. Other documents:
  - a. Interview of Silver Linde given in a Helsinki prison on 21.05.2001;
  - b. Jutta Rabe's fax as of 21.10.2006 (list of video materials from the hulk of M/S Estonia)
  - c. Directives of the Minister of Defence of the Republic of Estonia from the year 1994: Approval of the structure and salary rates of positions in the Ministry of Defence etc (State secret);
  - d. Documents provided by the Investigation Committee of the Riksdag during their visit to Estonia.
20. DVD of the oil removal operation performed in 1996;
21. Newspaper articles and article extracts.



