

# A SUNNY SATURDAY IN THE BALTIC

## PERILS OF THE SEA ARE ALWAYS THERE

Some observations on the m/v Fu Shan Hai - m/v Gdynia collision in the Baltic in May 2003 by Gunnar Hjertquist lawyer and partner at Gärde Wesslau Advokatbyrå, Jönköping Sweden

**I**t is Saturday the 31st of May. It is a beautiful day with a blue sky. It is warm and the summer is coming. The Baltic Sea is welcoming for sailing with comfortable wind conditions.

A bit north of the island of Bornholm the 70,000 tons deadweight bulk carrier Fu Shan Hai with a cargo of fertilizer is sailing southbound with a speed of 12.7 knots. She has loaded in Ventspils and is headed for China.

The m/v Gdynia is a modern smaller container vessel carrying the flag of Cyprus with a deadweight of 5,200 tons. The vessel has loaded containers at Gdynia the night before and is now doing 15 knots on her voyage to Hull in England. She is passing the northern peak of Bornholm and sets a southwesterly course.

In spite radar and visual contact, VHF communication and signals, good weather and smooth sea, the two vessels collides at approx. 12.18 hrs some three nautical miles NNW of Hammer Odde on the island of Bornholm. At 20.49 the same evening Fu Shan Hai goes to the bottom of the sea.

### Pollution

When Fu Shan Hai sank to the sea bed 65 metres below she took with her, not only the cargo of 65,000 tons of fertilizer, but also 1,680 tons of heavy bunker oil, 110 tons of fuel oil and 35 tons of lubricant oil. Already on the day after it was discovered approx. 40 m<sup>3</sup> of heavy fuel oil drifting.

Maritime units from the Danish Military Command and from the Environmental Civil Authority came in immediate action together with corresponding units from the Swedish Coast Guard and the Swedish Rescue Services Agency. Also a German rescue vessel came to assistance.

The operation to take up drifting oil from the surface started already on Sunday. Clean up activities were initiated in the area around. The wind was coming from the east and the oil was drifting towards the Swedish coast. In total some 36 km

of the Swedish coast line was hit by the oil. Approx. 3,900 tons of mixed oil and sand was taken away together with 375 m<sup>3</sup> of mixed oil and water. In Sweden some 1500 people were engaged as volunteers.

Finally it has been possible to establish that all together 1,200 tons of oil from the sea could be removed. Although shore lines were polluted in a rather vast area the damages could be reduced to a minimum. Only a limited number of birds was effected and the summer season for people along the shores was not so disastrous as from the beginning could be expected.

### Issues of liability

As is normally the case in international shipping a lot of legal activities immediately started. Court cases were opened in Copenhagen, in Rönne, Bornholm, on Cyprus and also in Lisbon, Portugal.

Keeping the oil pollution issue aside for a moment the main place to deal with issues related to the economical interests of the collision finally became the district court of Rönne. Interests of shipowners and charterers were present together with insurers of both hull and cargo.

The Owners of m/v Gdynia opened a limitation fund in Copenhagen in accordance with the 1976 Global Limitation of Liability Convention. The Owners of m/v Fu Shan Hai were

being sued before the court in Rönne under the allegation that the Chinese vessel should be held liable to the collision.

The Owners of m/v Gdynia were brought to litigation before the court on Cyprus by the Chinese interest with the motion that the m/v Gdynia had been negligent. The Gdynia also was put under arrest when visiting Lisbon during a period of time.

Finally the matter of jurisdiction was resolved and the court in Rönne was given task to hear the full case of the liability issues. On the 12th of December 2005 the court rendered its judgement in favour of the interests of the Chinese vessel. The m/v Gdynia was found solely liable to the collision. The judgement was upheld by the court of appeal on the 31st March 2006.

### Liability for oil pollution

The aggregate amount of the costs related to the pollution of oil has been calculated to approx. 160 million DEK of which 46 million is referred to Danish interests and 34 million to corresponding Swedish. Due to the fact that the oil damage was caused by bunkers from a dry cargo vessel the liability rules in 1969

CLC and 1971 Fund Conventions were not applicable. Because of this the suffering parties did not have access to the International Oil Pollution Fund.

Still, almost three and half year after the accident, the settlement of the oil pollution issues is not ready. As is the case in many of these matters it is difficult to establish which claims should be admissible. Apart from economic losses, damage to property and reinstatement or restoration of impaired environments, it is of importance also to ascertain the preventive measures including the clean-up costs. And these must of course be reasonable.

### Final words

From the official Casualty Report by the Danish Maritime Authorities it was concluded that when the second officer of m/v Gdynia entered the bridge after having taken over the watch from the master at noon he had only a very short period of time to estimate the situation. When the close ship situation was to be avoided he altered the course too slowly and this was not readily apparent for the officer on watch on m/v Fu Shan Hai.

In spite the bright summer day with good sailing conditions the perils are present. In this case they were not duly considered. And the sea was again polluted. This happens all the time. Will we ever learn?



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in November 2006  
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