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RIO ORINOCO INCIDENT

Note by the Director

1 The Incident

1.1 The asphalt carrier RIO ORINOCO (5 999 GRT), registered in the Cayman Islands, experienced problems with her main engine whilst en route from Curacao to Montreal with about 9 000 tonnes of heated asphalt cargo and about 300 tonnes of intermediate fuel oil and heavy diesel oil on board. When effecting repairs in the Gulf of St Lawrence, the ship dragged anchor in bad weather and grounded on the south coast of Anticosti Island on 16 October 1990. An estimated 185 tonnes of the intermediate fuel oil was spilled and came ashore east of the grounding position. About ten kilometres of the coastline were heavily polluted, and small patches were spread over a further 30 kilometres. Changing weather conditions redistributed some of the beached oil westwards, small quantities reaching Baie d'Ellis, off Port Menier, eight kilometres west of the grounding position. No asphalt cargo was spilled. Over subsequent weeks the cargo cooled and a significant part has become solid.

1.2 Anticosti Island is a licensed hunting reservation and nature reserve supporting some 135 000 deer and large numbers of seabirds. The shores are grazed by the deer, and birds feed and roost there. Oil thus constitutes a threat to both. The island also supports small salmon and lobster fisheries.

1.3 The Canadian Coast Guard made attempts to collect oil at sea but with little success in the difficult sea conditions. The operations onshore, which were undertaken by contractors on behalf of the shipowner, focused on the cobble and bedrock shorelines typical of this coast. Access to the beaches was difficult as there are no coastal roads, but a team of about 80 contracted personnel, supported by vessels, helicopters and a hovercraft, were able to clean the most heavily oiled areas manually, reaching the beaches from the sea. Intermittent periods of bad weather and ice formation made clean-up difficult, and the operations were terminated for the winter on 10 November, due to deteriorating conditions. By that time most of the beaches had been cleaned, and the environmental impact is believed to have been minimal. It was agreed between the Canadian authorities and the Director that the state of the beaches and the need for additional cleaning would be assessed in the spring of 1991 once weather conditions permitted.

1.4 About 300 tonnes of oily waste (mainly oiled stones and seaweed) has been collected so far. Arrangements are being made to dispose of the waste by a combination of landfilling and biodegradation.

1.5 A salvage team arrived at the site of the incident on 16 October. Tugs and equipment were mobilised and a salvage contract based on the principle "no cure no pay" (Lloyds Open Form 90) was signed on 18 October. The weather then deteriorated and the grounded ship moved again, finishing wedged between two rock shelves. The salvage master cancelled the salvage contract on 22 October. Members of the salvage team remained on site and preparations for tugs to tow off the ship continued. Three attempts were made by the shipowner between 1 and 5 November to pull the ship free, but with no success.

1.6 The RIO ORINOCO was entered with Sveriges Ångfartygs Assurans Förening ("the Swedish Club") both in respect of hull insurance and in respect of P & I insurance.

1.7 The RIO ORINOCO was declared a constructive total loss ^{<1>} by the hull insurer on 18 November, and the Canadian Coast Guard then assumed control of the ship. On 23 November, the shipowner informed the Coast Guard that he was financially incapable of removing the ship and her cargo.

1.8 Under Canadian law, the Government may take the necessary measures to minimise or prevent pollution from a ship, including the removal and destruction of the ship, when it has reasonable cause to believe that the ship is likely to cause pollution. The Coast Guard maintained that the RIO ORINOCO, her asphalt cargo and remaining bunker oil represented a threat of pollution, as there was a serious risk that the ship would break if left over the winter. Once in the water, the solid but brittle asphalt could break into pieces which would contaminate the shoreline the following summer. In view of the approaching winter, the Coast Guard considered that all options to prevent the ship from losing her cargo should be explored and carried out. The various options available were discussed between the Coast Guard, the shipowner, the Swedish Club and the IOPC Fund.

1.9 It was decided by the Coast Guard that the remaining bunker oil should be removed to the extent possible. During December 1990 most of the remaining fuel oil and diesel oil was transferred to another vessel.

1.10 Preparations were made for further attempts to tow the ship from its wedged position, should the tide and the lightening operation give the ship sufficient buoyancy. In addition, preparations were made for an operation which would aim at lifting the RIO ORINOCO by using barges alongside the grounded vessel. These operations were carried out by private companies under contract with the Coast Guard. However, due to unusually bad weather it was decided on 21 December to call off any attempt to remove the vessel before winter. Renewed attempts to eliminate the threat of pollution from the cargo will have to be made in the spring of 1991.

1.11 The IOPC Fund was represented by experts during the onshore clean-up as well as during the pumping of the bunker oil and the operations aimed at removing the vessel.

1.12 The limitation amount applicable to the RIO ORINOCO has been fixed by the Canadian Court at Can\$1 182 617 (£530 000). The limitation fund was constituted by the P & I insurer by means of letter of guarantee.

2 The Claims

General

2.1 The aggregate amount of the claims already submitted to the IOPC Fund exceeds the limitation amount applicable to the RIO ORINOCO. Further claims will be presented for substantial amounts. The Director is convinced that the total cost to the IOPC Fund of satisfying the claims for compensation

<1> From an insurance point of view, a constructive total loss arises when the insured object is not in fact totally lost, but it is likely to become so, in view of the improbability, impracticability or expense of repair or recovery (cf the United Kingdom Marine Insurance Act 1906, Section 60(1)).

arising out of this incident will exceed the limit of the Director's authority to make binding settlements on behalf of the IOPC Fund, as laid down in Internal Regulation 8.4.1, viz 25 million (gold) francs or 1.67 million SDR (Can\$2 752 750). However, under Internal Regulation 8.4.2, the Executive Committee may, after an incident has occurred, authorise the Director to settle claims in respect of that incident beyond this limit. In addition, some claims have given or will give rise to important questions of principle as to the admissibility of claims. For this reason, the Director has considered it appropriate to submit certain questions to the Executive Committee for consideration at this stage.

Onshore Clean-up

2.2 As mentioned above, the onshore clean-up operations were carried out during the period up to 10 November 1990 by contractors on behalf of the shipowner. The Swedish Club has paid the bills submitted by the contractors, which totalled Can\$1 227 255 (£548 000). In January 1991, the Club presented a claim for this amount to the IOPC Fund in subrogation.

2.3 The claim submitted by the Club relates to clean-up of the shore, transport of the collected waste to a temporary storage site, storage in containers at that site and cleaning of polluted birds. A major item, Can\$255 229 (£115 000), relates to the replacement of damaged booms. The IOPC Fund's experts have made a preliminary examination of the claims documents. On the basis of this examination, and subject to supplementary information on a number of points, the Director is of the view that the operations were generally carried out in a reasonable way and that the costs incurred, with certain exceptions, are reasonable. He expects that the examination will be completed during April 1991.

2.4 In view of what is stated in paragraph 2.3 above, the Executive Committee may wish to consider whether to authorise the Director to settle the claim submitted by the Swedish Club in respect of the onshore clean-up, pursuant to Internal Regulation 8.4.2.

2.5 The onshore clean-up was monitored by the Coast Guard, which also provided transport for the personnel involved in the operations. It is expected that the Canadian Government will claim compensation for the costs incurred therefor.

Removal of Bunker Oil

2.6 As already indicated, the major part of the remaining bunker oil was removed in December 1990. The bunker oil was pumped from the ship's tanks into vacuum lorries placed on another vessel, and the oil was then transferred to storage tanks stowed in the hold of that vessel. Some bunker tanks of the RIO ORINOCO had been damaged and contained considerable quantities of sea water. The oil in these tanks was separated from the sea water before being transferred to the other vessel. On completion of the oil removal operation, only unpumpable residues (approximately 10-15 tonnes) remained on board the RIO ORINOCO. It is estimated that 100 tonnes of bunker oil was removed. These operations also were carried out by contractors on behalf of the shipowner. The Swedish Club has paid the bills pertaining to these operations which totalled Can\$257 462 (£115 000). In February 1991, the Club submitted a claim covering these bills to the IOPC Fund in subrogation.

2.7 In view of the location of the vessel and the approaching winter, the Director considers that there was a considerable risk that the bunker oil remaining on board the RIO ORINOCO would escape, causing further pollution to the coast around the grounding site. For this reason, he is of the view that the pumping operations should be considered as falling within the definition of "preventive measures" laid down in Article 1.7 of the Civil Liability Convention, viz measures taken after an incident has occurred to prevent or minimise pollution damage. The Executive Committee may wish to express its opinion on this question.

2.8 The IOPC Fund's experts have made a preliminary examination of the claim submitted by the Swedish Club in respect of the pumping operations. Although there remain some questions as to the admissibility of certain items of the claim and as to the reasonableness of certain amounts, the Director is of the opinion that negotiations concerning this claim should be commenced in the near future, probably in April 1991.

2.9 If the Executive Committee were to share the Director's view that the operations taken for the purpose of removing the bunker oil from the RIO ORINOCO should be considered as falling within the definition of "preventive measures", the Committee may wish to consider whether to authorise the Director to settle the claim relating to these operations, pursuant to Internal Regulation 8.4.2.

Attempts to Remove Ship and Cargo

2.10 The Canadian Government has informed the IOPC Fund that it intends to submit, at the end of February 1991, a claim for the costs incurred by the Coast Guard as a result of the attempts made before 21 December 1990 to remove the RIO ORINOCO and her cargo, and for certain costs for maintaining the ship during the period ending 31 January 1991. The aggregate amount of the claim has been provisionally indicated at about Can\$9 million (£4 million). It is understood that the claim will relate to the operations carried out by various private companies under contract with the Coast Guard, eg inspection of the vessel by divers, inspection and repair of the ship's boilers, services of a naval architect and a salvage master, hire of two barges, services connected with the attempts to remove the ship and supervision of the ship during the winter. The IOPC Fund has been advised that the claim will also include costs for the Coast Guard's monitoring of these operations, eg in respect of personnel, equipment, ships and aircraft.

2.11 The Director engaged an independent expert to follow closely the operations taken for the purpose of removing the RIO ORINOCO and her cargo. This expert was present at the site of the wreck during a large part of the operations and took part in numerous discussions with the Canadian authorities concerning the various options available. In November 1990 the Director and the Legal Officer participated in discussions in Ottawa with representatives of the Coast Guard.

2.12 The operations carried out so far can be summarised as follows. The ship had been damaged to such an extent that, even after all the intact bunker tanks had been emptied and the damaged bunker tanks had been pressurised with air as far as possible, there was insufficient residual buoyancy for the ship to float. It was not possible to remove the cargo by pumping because it had become solid. After various options to deal with the situation had been considered, the Coast Guard decided to try to eliminate the pollution threat by using two barges, one connected to each side of the RIO ORINOCO, to provide additional buoyancy. Two barges were chartered and prepared for the operation in a nearby shipyard. Naval architects and salvage experts were contracted to assess the feasibility of this method. The barges were brought alongside the ship in a ballasted condition and should have been connected to the ship at low water. The barges should then have been de-ballasted on a rising tide to provide sufficient lift to allow the ship to be pulled clear of the ground, and the ship should thereafter have been towed to a suitable location where the cargo should have been removed. The preparations were completed in early December. However, as previously mentioned, unusually bad weather in December made it impractical to use this method, and the project was abandoned.

2.13 Consideration was also given to an alternative solution, ie that of heating the asphalt cargo by using the ship's boilers to re-liquify it, so as to make it possible to remove the cargo by pumping. In order to keep this option open, a small crew stayed on board with the task of keeping the ship's boilers functioning. However, after a thorough investigation into the feasibility of this method, it was considered too risky. Due to the presence of sea water in a number of cargo tanks, there was a considerable risk that the heating would cause eruptions or explosions, leading to serious pollution. This method has therefore not yet been pursued.

2.14 The question arises whether the operations referred to in paragraphs 2.12 and 2.13 should be considered as falling within the definitions of "pollution damage" and "preventive measures" (Articles 1.6 and 1.7 of the Civil Liability Convention). As these operations were taken for the purpose of removing the vessel and her cargo, they could be considered as salvage operations or "wreck removal".

2.15 In the PATMOS case (Italy, 1985), the IOPC Fund examined the question of whether and to what extent salvage operations fell within the definition of "pollution damage" laid down in the Civil Liability Convention, ie whether such operations could be considered as "preventive measures" as defined in that Convention. The Executive Committee took the position that operations could be considered as falling within the definition of "preventive measures" only if the primary purpose was to prevent pollution damage; if the operations primarily had another purpose, such as rescuing hull or cargo, the operations would not be covered by this definition (document FUND/EXC.16/8, paragraph 3.3.2). The position taken by the Executive Committee was endorsed by the Italian Court of first instance which was seized with that case. The plaintiffs whose claims had been rejected by the Court on these grounds lodged appeals against the judgement, but the appeals were later withdrawn.

2.16 In this context reference should be made to the TANIO incident (France, 1980). In that case the bow section of the TANIO, with about 5 000 tonnes of heavy fuel oil on board, sank to a depth of 90 metres. The oil from the sunken bow section had to be pumped out in order to prevent further pollution from the wreck. The pumping operations lasted 16 months. The French Government presented a claim relating to the costs of the pumping operations. This claim was accepted by the IOPC Fund, although at an amount considerably lower than that claimed (document FUND/EXC.9/3, Annex, paragraph 3.5.1).

2.17 On the basis of the advice given by the IOPC Fund's experts and his own discussions with the Canadian authorities, the Director makes the following assessment of the situation. In view of her location, wedged between two rock shelves, there was a serious risk that the RIO ORINOCO would break if left over the winter. Although the asphalt cargo had turned solid after the ship's boilers had ceased functioning, the solid but brittle asphalt would break into pieces if it were to enter the water. These pieces could cause contamination to the shoreline the following spring and summer, when the sun would make the asphalt soft and sticky. As already mentioned, Anticosti Island is a nature reserve of great environmental interest. In addition, pieces of asphalt could enter the cooling water system of passing ships, damaging their machinery, and lumps of asphalt could enter the cooling water system of industrial installations located on the shores of the Gulf of St Lawrence. It should also be noted that the RIO ORINOCO had been declared a constructive total loss and that the shipowner had stated that he was financially incapable of removing the vessel and her cargo. For these reasons, the Director is of the view that the measures taken by the Coast Guard to remove the vessel and her cargo had the prevention of pollution as their primary purpose and that these measures therefore fall in principle within the definition of "preventive measures", as interpreted by the Executive Committee in the PATMOS case. In addition, the Director considers that the various operations carried out for this purpose up to 21 December 1990 were generally reasonable in the circumstances, particularly in view of the approaching winter, although the operations were not ultimately successful. Likewise, he is of the opinion that it was reasonable to keep a small crew on board the RIO ORINOCO up to 31 January 1991.

2.18 The Executive Committee may wish to express an opinion as to whether the operations referred to in paragraphs 2.12 and 2.13 should be considered, in principle, as falling within the definition of "preventive measures".

2.19 The Director expects that the Canadian Government will provide, before the 26th session of the Executive Committee, details of the operations carried out up to 31 January 1991. If appropriate, the Director will include the relevant information in an addendum to the present document.

Further Claims

2.20 The Swedish Club will incur costs for disposing of the oily waste collected on the beaches and the bunker oil removed from the RIO ORINOCO. The Club will claim reimbursement from the IOPC Fund of these costs, which are estimated at Can\$270 000 (£120 000).

2.21 As the attempts made in November and December 1990 to remove the vessel and her cargo failed, the operations will have to be resumed in the spring of 1991. The Coast Guard is at present considering the various options available, and discussions are being held between the Coast Guard and the IOPC Fund in this regard. It is impossible to make any estimate at this stage of the costs to be incurred, but it is reasonable to believe that they will be substantial.

2.22 As mentioned above, it may be necessary to carry out further onshore clean-up operations in the spring of 1991. Firstly, there may be some areas polluted in October 1990 which were not properly cleaned. In addition, some oil was released during the pumping operations and this may necessitate further clean-up. Finally, it cannot be ruled out that some bunker oil and some asphalt cargo will escape into the water during the renewed attempts to remove the vessel and her cargo which will be carried out during the spring of 1991, and that this will lead to further pollution of the coast.

2.23 So far there are no indications that any individuals have suffered pollution damage as a result of this incident. However, claims from fishermen and other individuals cannot be ruled out.

3 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
 - (b) consider whether to authorise the Director to settle the claim submitted by the Swedish Club in respect of the onshore clean-up operations (paragraphs 2.2-2.4 above);
 - (c) consider whether it agrees with the Director that the removal of the remaining bunker oil from the RIO ORINOCO falls within the definition of "preventive measures" laid down in Article 1.7 of the Civil Liability Convention and, if so, whether it wishes to authorise the Director to settle the claim presented by the Swedish Club in respect of these operations (paragraphs 2.6-2.9 above);
 - (d) consider whether it agrees with the Director that the operations carried out so far to remove the RIO ORINOCO and her cargo fall, in principle, within the definition of "preventive measures" (paragraphs 2.10-2.18 above); and
 - (e) give the Director such other instructions relating to this incident as the Committee finds appropriate.
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