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ANY OTHER BUSINESS

LEGAL ACTION TAKEN IN RESPECT OF THE AMAZZONE INCIDENT

Note by the Director

1 The Incident

1.1 During the night of 30 to 31 January 1988, the Italian tanker AMAZZONE (18 325 GRT) was damaged in a severe storm off the west coast of Brittany (France). The vessel was on a voyage from Libya to Antwerp (Belgium), carrying about 30 000 tonnes of heavy fuel oil. Several covers were lost from the holes which formed the access points for tank washing of two cargo tanks and, as a result, approximately 2 100 tonnes of the cargo escaped, displaced by seawater entering the open holes. Over the following three to four weeks, oil came ashore in patches along 450 – 500 kilometres of coast, affecting four different Departments in France (Finistère, Côtes-d'Armor, Manche and Calvados) and the Channel Islands (Jersey and Guernsey).

1.2 It was not possible to combat the oil at sea due to severe weather conditions and the nature of the oil, which was not amenable to dispersants. After the weather had moderated, the Navy attempted to recover oil off the coast of Finistère, but these attempts were later abandoned as they proved to be ineffective.

1.3 In order to cope with the widespread pollution on shore, the French national oil spill contingency plan, "PLAN POLMAR", was activated in Finistère, in Côtes-d'Armor and on the Cherbourg Peninsula. In the Calvados area of Normandy, the level of pollution was not considered sufficiently severe to merit activating PLAN POLMAR, and the clean-up was handled on a local basis. The clean-up operations were carried out by personnel drawn from the local fire brigades, the Army, the Civil Defence and the Ministry of Public Works supported by the local authorities.

1.4 As for the island of Guernsey, five to ten kilometres of coast were contaminated. About 500m³ of oily debris were collected. In Jersey approximately 15 kilometres of coast were contaminated with weed mixed with oil. A total of 65m³ of oily waste was collected.

2 Constitution of Limitation Fund

2.1 The limitation amount of the shipowner's liability was provisionally fixed by the Court in Brest at FFr13 612 749 (£1 386 230). The limitation fund was constituted in February 1988 by the shipowner's insurer (the Standard Steamship Owners' Protection and Indemnity Association Ltd,

"Standard Club") by payment of the above-mentioned amount into Court. After the instruments on the tonnage measurement had been examined, it was established that the limitation amount should be increased to FF13 860 369 (£1 411 440). A request by the Standard Club for an adjustment of the limitation amount was rejected by the Court on formal grounds. The French Government appealed against this decision. In July 1990, the Court adjusted the limitation amount as requested.

2.2 In the Italian registration document the vessel was registered in the name of two persons, indicated as the "proprietario" (Spei Leasing of Rome, Italy, hereinafter referred to as the "owner") and the "armatore" (Intersea of Ravenna, Italy, operating the vessel as a bareboat charterer). The limitation fund was therefore constituted on behalf of these two persons. The IOPC Fund objected to this procedure, and after discussions with the Standard Club and the French lawyer representing the Club, it was agreed that the limitation fund should be established on behalf of only the person indicated in the registration document as "proprietario". A request by the Standard Club to the Court that the decision relating to the setting up of the limitation fund should be amended to this effect was rejected by the Court on formal grounds. The French Government appealed also against this decision. The appeal was allowed in July 1990.

2.3 In October 1990, at its 24th session, the Executive Committee took the position that only one person, ie the registered owner, could benefit from the right of limitation under the Civil Liability Convention (document FUND/EXC.24/6, paragraph 3.4.4).

3 The Claims

3.1 In 1990, the French Government submitted a claim in an aggregate amount of FF22 255 375 (£2.3 million), covering the operations carried out by the Ministries concerned. The claimed amount was later reduced to FF20 960 056 (£2.1 million). Discussions are being held concerning this claim.

3.2 A claim was submitted by the Department of Côtes-d'Armor for an amount of FF141 326 (£14 390) plus interest. This claim was accepted in full in December 1990. In addition, 25 communes in Côtes-d'Armor claimed a total amount of FF914 464 (£93 120) plus interest. These claims were settled in December 1990 at an aggregate amount of FF814 964 (£82 990) plus interest. Most of these claims have been paid by the IOPC Fund.

3.3 The Department of Calvados has claimed compensation in respect of clean-up operations, in the amount of FF74 250 (£7 500). This claim is being examined by the IOPC Fund and the Standard Club. It is possible that the Department will, in addition, present a claim relating to the cost of the disposal of collected oily waste.

3.4 15 communes in Calvados have claimed compensation for clean-up costs, totalling FF146 138 (£14 880). After an examination of the claim documents, the IOPC Fund has requested further information on a number of points.

3.5 Claims for clean-up costs were submitted by the authorities in Jersey and in Guernsey in the amounts of £11 380 and £13 396, respectively. These claims were accepted in full and were paid by the IOPC Fund in July and November 1990.

3.6 Claims submitted by five French fishermen for a total amount of FF249 102 (£25 370) were settled at an aggregate amount of FF145 850 (£14 870). The claims were paid by the Standard Club during the period October 1988 - September 1990. A private organisation submitted a claim relating to the cost of cleaning oiled sea-birds in the amount of FF50 949 (£5 190). This claim, which was accepted in full, was paid by the Club in May 1990.

4 Investigation into the Cause of the Incident

4.1 In Antwerp (Belgium), where the vessel called after the incident, the Commercial Court appointed a legal expert with the task of establishing the cause of the incident. This expert issued a

preliminary report stating that the excessive diameter of the holes forming the access points to the tanks was the main cause of the incident.

4.2 In the context of a criminal investigation, an investigating judge ("juge d'instruction") in Paris appointed two technical experts to investigate the cause of the incident. The French Government and the IOPC Fund employed their own experts for the same purpose and the findings of these experts were presented to the investigating judge. On 22 January 1991, the judge decided that, in spite of the fact that investigations had shown that the vessel was not properly maintained, there were no legal grounds for criminal proceedings against anyone, as the relevant provisions of French criminal law apply to a foreign vessel only if the incident occurs within French territorial waters. Following this decision, the public prosecutor authorised the release of the findings of the judge and the report of the court experts for use in civil proceedings.

4.3 As mentioned above, the AMAZZONE was equipped with deck openings which made it possible to clean the cargo tanks by using pressurised water (the so-called "Butterworth" system). Many tankers had this system before it was gradually replaced, from the 1980s, by cleaning facilities integrated in the tanks themselves which use the cargo as a cleaning fluid (crude oil washing).

4.4 The AMAZZONE (owned by the EXXON Group before being acquired by its present owner in 1987) was equipped with 126 "Butterworth" openings with a diameter of approximately 33 centimetres. Under the Butterworth system, each opening is closed by a removable deck cover. This cover is characterised by its angular closing technique using three camlocks, with the advantage of being much quicker to operate than the traditional system using nuts for tightening. In exchange for this advantage, it is imperative to take precautions so as to ensure that the deck covers are properly tightened.

4.5 During the storm on 30 and 31 January, probably on the evening of 31 January, the Butterworth deck covers on several tanks became unfastened, perhaps under the effect of shocks caused by broken power cables, and fell in the sea. Heavy waves washing the deck then penetrated into the tanks through the Butterworth openings and ejected the oil.

4.6 The experts appointed by the investigating judge noted that the diameters of the deck openings had widened due to successive cuttings in the course of the ship's lifetime, and that the thickness of the steel plates around their perimeter varied greatly as a result of considerable corrosion. These factors made it impossible to tighten the deck covers properly. The experts also pointed out that a slight stress (a weak kick) moved the deck covers from their closed position if one of the three fastening bolts was insufficiently tightened.

4.7 Immediately after the incident, during the night in the port of Antwerp, the charterer of the AMAZZONE cut the edges of certain Butterworth openings, disregarding the most elementary safety rules. He then replaced the system for tightening the deck covers which had vanished in the storm with covers tightened by a conventional mechanism, ie using nuts for tightening. The experts interpreted this act as a clumsy attempt to "eliminate the trace of the most flagrant corrosion".

4.8 In the context of the court investigation, an enquiry was made with a major shipping company which owned two oil tankers equipped with the Butterworth system. The enquiry showed that this company had, since 1983, been fully aware of the risks of pollution due to the unfastening of deck covers of this sort in bad weather. The company had given guidance to its crew and maintenance services as to the correct tightening procedure and had issued very strict instructions to ensure that the deck covers were well fastened, for example by regular measurement of the thickness of the deck, removal of any trace of rust, and numbering openings and deck covers so that each cover was always put back on the same opening.

4.9 The experts appointed by the judge noted that neither the registered owner nor the charterer of the AMAZZONE had carried out or ordered checks to be conducted, not even by random checks, either when the ship was acquired in 1987 or during its operation up to the date of the incident, so as to verify the thickness of the steel plates where the deck covers were attached. Nevertheless, the charterer's strange behaviour during the hours following the incident - replacing of 30 deck covers

by conventional deck covers (whereas only 14 deck covers were missing) and hastily cutting the edges around the most corroded openings – led the experts to question whether the charterer had decided against repairs for financial reasons, although he was fully aware of the poor condition of the system.

4.10 The opinion of the experts is particularly severe in respect of the two persons, viz the owner and the charterer, who were responsible for preventing risks resulting from the operation of the vessel:

"With a minimum degree of care (checks by random testing of the thickness of deck plates around the Butterworth holes) during work carried out in Piraeus in April and May, the shipowners could easily have detected this corrosion and could have remedied it so as to restore the AMAZZONE to a seaworthy condition."

4.11 The report of the experts contains the following conclusions:

"The escape of the oil was due to the unfastening in bad weather of eight Butterworth deck covers on the cargo tanks. This unfastening was caused by impacts, which must have been slight, on the cam bolt heads of these deck covers which were no longer properly attached since the deck openings had become widened, and especially as a result of considerable corrosion of the deck plates around these openings: this latter factor is fundamental since, for certain deck covers, the tightening of at least one bolt could be practically nil and the loosening of a single bolt leads to the Butterworth deck cover becoming unfastened."

5 Legal Action taken by the French Government and the IOPC Fund

5.1 After having examined the results of the various investigations, the French Government and the Director came to the following conclusions. The AMAZZONE was not seaworthy at the time of the incident, as a result of inadequate maintenance of the Butterworth system. As emphasised by the experts appointed by the investigating judge, the shipowner and the charterer had not taken any measures to examine the condition of the Butterworth holes, neither when the ship was acquired in 1987 nor thereafter, not even by taking samples of the thickness of the steel plates. The action taken by the charterer in the port of Antwerp shortly after the incident shows that he must have been aware of the bad condition of the ship in this regard. In addition, they had not given their personnel the necessary training and proper instructions so as to ensure that the Butterworth deck covers remained fastened in bad weather. The shipowner was responsible for the proper maintenance of the vessel and the training of the crew, and he could not escape this responsibility by chartering out the vessel.

5.2 For the reasons given above, the French Government and the Director considered that the incident occurred as a result of the actual fault or privity of the shipowner, and that the owner therefore was not entitled to limit his liability, as provided in Article V.2 of the Civil Liability Convention:

"If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph 1 of this Article."

5.3 In addition, the French Government and the Director were of the opinion that the charterer was also liable for the oil pollution damage, as he was guilty of negligence in the maintenance of the vessel and the training of the crew. It should be noted that the charterer's right of limitation is not governed by the Civil Liability Convention but by the 1976 Convention on the Limitation of Liability for Maritime Claims. The French Government and the Director considered that the charterer's lack of care would deprive him of the right to limit his liability under Article 4 of the 1976 Convention which reads:

"A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

5.4 Under Article VIII of the Civil Liability Convention, rights of compensation are extinguished unless legal action is brought within three years of the date when the damage occurred. As the AMAZZONE incident occurred during the night of 30 to 31 January 1988, the major part of the claims would have become time-barred on or shortly after 31 January 1991. It was therefore necessary that any action against the shipowner by the French Government and the IOPC Fund be brought by 31 January 1991. As regards claims against the charterer, the time bar period is ten years. It was nevertheless considered appropriate to bring legal actions against the shipowner and the charterer at the same time.

5.5 In view of these considerations, the Director, on behalf of the IOPC Fund, and the French Government decided to take legal action against the owner of the AMAZZONE (Spei Leasing) and the charterer of the vessel (Intersea), as well as against the Standard Club, in its capacity as third party liability insurer of the charterer. The actions were brought at the Court of Cherbourg (France) on 30 January 1991.

5.6 In respect of the action against the shipowner, the French Government and the IOPC Fund have invoked the strict liability laid down in the Civil Liability Convention and have maintained that the owner is not entitled to limit his liability. The action against the charterer is based on his fault as regards the lack of maintenance of the Butterworth system, and it has been argued that the charterer is not entitled to limit his liability under the 1976 Convention on Limitation of Liability for Maritime Claims. The arguments put forward by the French Government and the IOPC Fund in support of their actions are based mainly on the findings of the experts appointed by the investigating judge, as summarised in this document.

5.7 As the French Government's claim for compensation against the shipowner and the IOPC Fund has not yet been settled, the French Government has claimed compensation from the three defendants for pollution damage for a total amount of FFfr20 960 056 (£2.1 million) plus interest. The IOPC Fund has claimed to be indemnified in respect of any amounts already paid or to be paid by it to claimants as a result of the incident; the claims already settled and paid by the Fund (those in respect of the Department of Côtes-d'Armor and the Channel Islands) have been specifically referred to.

6 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 it agrees with the Director's decision to take legal action against the shipowner, the charterer and the Standard Club; and
 - (c) give the Director such instructions in respect of the legal proceedings as the Committee finds appropriate.
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