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INCIDENTS INVOLVING THE IOPC FUND

AGIP ABRUZZO

Note by the Director

1 The Incident

1.1 Whilst lying at anchor two miles off the port of Livorno (Italy) on 10 April 1991, the Italian tanker AGIP ABRUZZO (98 544 GRT) was struck at night by the Italian ro-ro ferry MOBY PRINCE. Both vessels caught fire. All passengers and all crew members but one on board the ferry (143 persons in all) died, and the ferry was totally burned out. There were no fatalities on board the tanker, although some crew members were injured.

1.2 The AGIP ABRUZZO was carrying about 80 000 tonnes of Iranian light crude oil. As a result of the collision, the n°7 starboard cargo tank was damaged and about 2 000 tonnes of cargo oil were lost, part of which was consumed by fire. The fire on board the tanker lasted seven days and destroyed the accommodation area and engine room. Explosions in the starboard bunker tank three days after the incident caused extensive structural damage to the ship and a subsequent loss of an unknown quantity of bunker fuel oil.

2 Clean-up Operations and Salvage

2.1 Initially it was envisaged that the water from the flooded engine room and other spaces of the AGIP ABRUZZO would be pumped so as to reduce her draught sufficiently to make it possible to bring her into the port of Livorno to discharge the remainder of her cargo. However, due to difficulties that arose in preventing the engine room from flooding again, it was decided to conduct a ship-to-ship transfer of the cargo at the anchorage. The cargo transfer was carried out from 12 to 17 May, with several interruptions due to bad weather and operating difficulties. The AGIP ABRUZZO remained at the anchorage until 22 October 1991 when she was towed away, having been sold for scrap.

2.2 As a result of bad weather and the operations on board, further small releases of oil occurred some two weeks after the initial incident. The Italian Government then insisted that the number of vessels available for containment of oil at sea and recovery of floating oil be increased, and that these vessels should remain in place while the transfer of the cargo was being carried out.

2.3 Attempts to recover the oil at sea were partially successful, but difficulties were experienced due to the high viscosity of the burnt oil residue and because the spilt fuel oil was distributed over a wide area. The spilt oil eventually stranded over some 130 kilometres of shoreline, mostly north of Livorno, although the pollution was intermittent and for the most part consisted of a light scattering of tar balls.

2.4 Shoreline cleaning in the Livorno area was undertaken by local contractors. While most of these operations were completed by early June 1991, before the beginning of the main tourist season, two areas required work to be continued through the summer. In addition, some localised re-oiling occurred, apparently as a result of heavy weather in June and again in August 1991. A limited area of coastline may require further cleaning.

3 Limitation Proceedings

The owner of the AGIP ABRUZZO (SNAM, a company belonging to the state owned ENI group) has not yet initiated limitation proceedings. It is estimated that the limitation amount applicable to the AGIP ABRUZZO under the Civil Liability Convention is approximately Lit 15 400 million (£7.2 million) (calculated on the basis of the rates of exchange as at 4 September 1992).

4 Claims for Compensation which have been Settled

Labromare and Neri

4.1 Claims were submitted by two Italian contractors, Labromare and Neri. The claim of Labromare, in the amount of Lit 6 825 861 365 (£3.1 million), related mainly to shoreline clean-up, the storage and treatment of collected waste and the provision of small oil recovery craft. This contractor also carried out work on board the AGIP ABRUZZO to prevent oil leaking from the damaged hull. The Neri claim amounted to Lit 13 446 833 500 (£6.1 million). Neri supplied tugs and other craft which provided a range of services to the AGIP ABRUZZO, including fire fighting, pollution prevention, the pumping of the engine room and the disposal of solid and liquid waste. Of the claimed amount, however, only Lit 5 160 171 500 (£2.4 million) related to pollution prevention.

4.2 At its 30th session the Executive Committee approved the claims of Labromare and Neri for Lit 4 799 million (£2.2 million) and Lit 2 500 million (£1.1 million) respectively (document FUND/EXC.30/5 paragraph 4.2.4). These claims were paid by the shipowner.

4.3 Labromare presented an additional claim in respect of the costs for disposal of collected oily waste in the amount of Lit 459 647 000 (£210 100). At its 30th session, the Executive Committee authorised the Director to settle this claim (document FUND/EXC.30/5, paragraph 4.2.6). After negotiations, this claim was settled in July 1992 in the amount of Lit 359 million (£164 100). This claim was paid by the shipowner.

Castalia

4.4 A claim was submitted by RTI Castalia, another Italian contractor, in the amount of Lit 11 352 880 984 (£5.2 million). This claim related to clean-up operations at sea and the supply of vessels, booms and skimmers in response to the requirements laid down by the Livorno Harbour Master. The claim was settled by the Director in April 1992 in the amount of Lit 8 730 million (£3 990 000), in accordance with the authority given to him by the Executive Committee at its 30th session (document FUND/EXC.30/5, paragraph 4.2.5).

4.5 The settlement agreement was signed during May 1992 and the settlement amount was paid by the shipowner.

AAMPS

4.6 A claim was submitted by Azienda Autonoma Municipalizzata Pubblici Servizi (AAMPS), a wholly owned subsidiary of the Municipality of Livorno, in the amount of Lit 230 359 720 (£105 300). AAMPS sells its services of waste disposal and removal to private companies and public bodies at tariffs approved by the Municipality.

4.7 This claim was settled in February 1992 by the Director in the amount of Lit 180 million (£82 300) in accordance with the authority given to him by the Executive Committee at its 30th session (document FUND/EXC.30/5, paragraph 4.2.5). The agreed amount was paid by the shipowner.

Owner of Fishing Boat

4.8 The owner of a fishing boat submitted a claim in the amount of Lit 1 487 500 (£700) in respect of the costs associated with the cleaning and repainting of the hull after it had been contaminated by oil following this incident. This claim was settled at Lit 500 000 (£230) and was paid by the shipowner. The Director approved this settlement pursuant to Internal Regulation 8.4.2 (document FUND/A.14/23, paragraph 11.3).

Total Amount of Claims Settled to Date

4.9 Claims settled to date amount to Lit 16 568 500 000 (£7.6 million). As mentioned above, the limitation amount is estimated at Lit 15 400 million (£7.2 million).

5 Pending Claims

SNAM

5.1 The shipowner (SNAM) presented a claim in respect of services rendered in connection with this incident for an amount of Lit 10 303 035 703 (£4.7 million). These services were partly rendered by SNAM and partly by 55 subcontractors which were paid by SNAM. It is likely, however, that a significant part of this amount relates to operations that do not fall within the scope of application of the Civil Liability Convention and the Fund Convention.

5.2 At its 31st session, the Executive Committee authorised the Director to settle the claim submitted by SNAM (document FUND/EXC.31/7, paragraph 4.2.2), pursuant to Internal Regulation 8.4.2.

5.3 In June 1992 SNAM submitted extensive documents in support of this claim. Experts appointed by the IOPC Fund analyzed the documents to establish which items could be considered as falling within the definition of "pollution damage" and which expenses related to salvage of the ship or cargo and to other activities not associated with the combat of pollution. As a result of the analysis, the Director sent a detailed questionnaire to SNAM requesting further information relating to specific items of the claim.

5.4 It is anticipated that a meeting between the parties will take place in September 1992 to discuss this claim.

Bagni Roma

5.5 A claim has been received from a person operating a sea-bathing amenity in Livorno, Bagni Roma, in the amount of Lit 31 904 107 (£14 600). This claim relates to beach cleaning and restoration. The documents submitted in support of this claim have been examined by the IOPC Fund Secretariat with the assistance of technical experts. The examination gave rise to a number of questions as to whether the work carried out and the amount claimed were reasonable.

5.6 Further information has been requested from the claimant.

Italian Government

5.7 At the 31st session of the Executive Committee, the Italian delegation explained that the Italian Government had not so far presented any claim in respect of costs incurred in connection with this incident since most operations had been carried out by private companies; it was possible, however, that the Italian Government might submit a claim relating to certain costs, in particular in relation to the use of military aircraft and ships. The delegation added that the Italian Government was investigating whether this incident had caused any damage to the marine environment; once this study had been completed, the Government would decide whether a claim for such damage would be submitted (document FUND/EXC.31/7, paragraph 4.2.3).

Other Claims

5.8 It is possible that there will be some further claims from private individuals and small businesses.

5.9 A claim is expected from a Municipality in respect of the clean-up of local beaches which were recontaminated in June and August 1991. The claim amount is estimated at Lit 20 million (£9 100).

6 Enquiry Into the Cause of the Incident

6.1 At its 28th session, the Executive Committee instructed the Director to follow the investigations into the cause of the incident so as to enable him to submit to the Committee at a later session a proposal as to whether the IOPC Fund should bring recourse action against the owner of the MOBY PRINCE or take any other legal action (document FUND/EXC.28/9, paragraph 3.4.3).

6.2 An administrative enquiry into the cause of the incident has been carried out by a special Board appointed by the Ministry of Merchant Marine. It is expected that the Board will issue a report on its findings in the near future. A criminal investigation has also been carried out by the public prosecutor but this investigation has not been completed.

6.3 As instructed by the Executive Committee, the Director has followed the administrative enquiry and the criminal investigation, through the IOPC Fund's Italian lawyer. The Director will inform the Committee of the results of the enquiry and the investigation when the reports thereof are available.

7 Limitation of Liability and Recourse Action

7.1 At its 27th session, the Executive Committee was informed by the Director that he had been approached by the owners of the AGIP ABRUZZO and the MOBY PRINCE concerning the possibility of concluding an agreement under which the parties involved would undertake to refrain from taking certain actions relating to recourse proceedings. Under the proposed agreement, the IOPC Fund would undertake not to take legal action for the purpose of depriving the owner of the MOBY PRINCE of his right to limit his liability.

7.2 The Executive Committee decided that, in view of the lack of information available at that time concerning the cause of the incident, the IOPC Fund should not become a party to the proposed agreement (document FUND/EXC.27/6, paragraph 3.17). The Director has understood that the agreement was concluded without the IOPC Fund's participation. Since the IOPC Fund did not become party to the agreement, it is not prevented from taking action in order to deprive the owner of the MOBY PRINCE of his right to limit his liability.

7.3 There are no indications that there was any fault or privity on the part of the owner of the AGIP ABRUZZO. For this reason the Director considers that it would not be possible to deprive the owner of the ship of the right to limit his liability.

7.4 From the information available it appears that the collision resulted from the negligence of the crew of the MOBY PRINCE. Subject to the findings of the Board of Enquiry, the Director considers that the IOPC Fund should take recourse action against the owner of the MOBY PRINCE to recover any amount paid by the IOPC Fund as a result of this incident.

7.5 Liability for the collision is governed by Italian law which is based on the 1910 Brussels Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels. In accordance with that Convention, the liability will be distributed between the two vessels in proportion to the degree of their respective fault.

7.6 The owner of the MOBY PRINCE is, under Italian law, entitled to limit his liability unless it can be shown that the incident was a result of the wilful misconduct or the recklessness of the owner himself. It is thus for the claimants to show that the owner himself was guilty of wilful misconduct or recklessness to deprive him of the right of limitation. In order to be able to limit his liability, the owner must establish a limitation fund.

7.7 In view of the jurisprudence of the Italian Constitutional Court relating to the liability of an air carrier in accordance with the 1929 Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention), it is generally considered that a shipowner would not be entitled to limit his liability for loss of life or personal injury. In fact, the owner of the MOBY PRINCE has agreed to settle all claims for loss of life or personal injury without invoking the right of limitation.

7.8 On the basis of the information available at present, it is the view of the Director that it would not be possible for the IOPC Fund to break the limit of liability in respect of the MOBY PRINCE.

7.9 It is estimated that the limitation amount applicable to the MOBY PRINCE in this case will be between Lit 3 200 million (£1.5 million) and Lit 4 000 million (£1.8 million).

7.10 In the agreement referred to in paragraph 7.1 above, the owner of the MOBY PRINCE undertook to pay claims in respect of loss of life or personal injury without making a recourse claim against the AGIP ABRUZZO interests. The owner of the MOBY PRINCE might present subrogated claims against his own limitation fund in respect of claims other than those relating to loss of life or personal injury. It is uncertain, however, whether he would be entitled to do so under Italian law.

7.11 The AGIP ABRUZZO's hull underwriters and cargo interests are expected to make claims against the owner of the MOBY PRINCE. It is not possible to make an estimate at this stage of the total amount of the claims which will be made against this owner.

8 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 instruct the Director to take recourse action against the owner of the MOBY PRINCE (paragraph 7.4 above); and
 - (c) give the Director such other instructions as the Committee considers appropriate in respect of this incident.
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