Safer Ships and Cleaner Seas: A Review Article on the Report of Lord Donaldson’s Inquiry into the Prevention of Pollution from Merchant Shipping

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The Origins and Scope of the Inquiry

In the early hours of 5 January 1993, the M.V. Braer, an 89,730 dead weight ton (d.w.t.) oil tanker, en route from Mongstad in Norway to Quebec City via the normal route through the Fair Isle Channel, lost propulsion in heavy seas about 10 miles off and roughly south of Sumburgh Head, Shetland. Later that morning she stranded, despite efforts to prevent this, at Garth’s Ness, South Shetland, and broke up over the ensuing days, losing her entire cargo of 85,000 tons of North Sea light crude oil, as well as some 1,825 tons of bunker fuel and diesel oil, when continuing bad weather put paid to continued salvage efforts. She was a single engine, single hull, 17-year-old vessel, ‘flagged out’ to Liberia, and crewed by two Greek officers and some 22 Filipino crew. When she lost propulsion she was close to the outer limit of, but outside, one of the two voluntary Areas to be Avoided approved by the IMO and adopted by the UK around much of the Shetland coast, in respect of tankers over 5,000 gross registered tons.

1 Cm. 2560 (the Report).
2 Which lies between Orkney and Shetland.
3 This is quite significant in the sense that it may have led to one of the Report’s major themes, the need to extend most protective measures to other types of vessel besides tankers, in view of the potential polluting effects of bunker fuel, lubricants and other oils carried on board ships other than as cargo.
4 See e.g. The Guardian, 15 January 1993, p. 5.
5 This routing measure was designed to permit adequate response-time for tugs operating at Sullom Voe Terminal to go to the assistance of a stricken tanker; in the event such aid was fruitless. The ATBAs have since been extended: see text below, n. 120.
The Braer incident came close on the heels of another major oil pollution disaster off northern Spain and was closely followed by a serious collision off Sumatra.

The incidents, particularly the Braer incident, aroused a great deal of public concern, especially in the UK and Western Europe. The UK, as coastal state, and Liberia, as flag state, held the normal inquiries concerning the causes of the loss of the Braer. Unusually, however, the UK Department of Transport was also asked to set up a more far-reaching Inquiry with very broad terms of reference; these were: "To advise whether further measures are appropriate and feasible to protect the UK coastline from pollution from merchant shipping. Due consideration should be given to the international and economic aspects of any action." It is the report of this Inquiry that is examined in this article.

Lord Donaldson of Lymington, Master of the Rolls from 1982 to 1992 was appointed to head the Inquiry. He was assisted by two technical Assessors: Professor Alisadair McIntyre, Emeritus Professor of Fisheries and Oceanography at Aberdeen University, and John Rendle CBE, formerly with Shell Tankers (UK).

A preliminary meeting was held on 29 January 1993 and evidence was taken from a host of organizations in hearings held in London, Shetland and elsewhere, from 20 April until near the end of 1993. They made one interim recommendation, concerning the need for the UK to ratify certain treaty instruments, requested a study to be conducted on traffic patterns in the Fair Isle Channel to aid their inquiries, and published their final report, including an "Overview", in May 1994. This impressive and comprehensive document runs to 522 pages, divided into 23 chapters, and makes 103 recommendations, addressed mostly to the UK Government, but also to other members of the maritime community, including the IMO, and to the public.

It is primarily a document about protection of the UK's coast from

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6 The 19-year-old, laden 114,000 d.w.t. oil tanker, Aegean Sea, stranded and caught fire during an unsuccessful attempt to enter the port of La Coruña on the night of 3 December 1992. 55-60,000 tonnes of crude oil were lost: US Coast Guard, Oil Pollution Act of 1990 News Update, No. 13, 15 December 1992. p. 5.

7 The laden 250,000 d.w.t. Danish tanker, Maersk Navigator, collided with an empty Japanese tanker near the Western entrance to the Straits of Malacca on 21 January 1993 and lost tens of tonnes per hour of oil while she drifted on fire for 6 days: ENDS REPORT 216, January 1993, p. 15.

8 Their recommendations are reproduced in Appendix Q to the Report.

9 The nearest last equivalent is, perhaps, the House of Common's inquiry following the Amoco Cadiz disaster in 1978.

10 The reviewer submitted evidence to it on international legal matters on 20 April 1993, as part of a team acting for the Advisory Committee on Pollution of the Sea. See now Plant, "Legal Environmental Restraints on Navigation post-Braer", (1992-3) 10 Oil and Gas Law and Taxation Review 245-268.

11 Letter dated 10 June 1993, reproduced in Appendix P to the Report. See also text below n. 150.

12 Letter dated 27 May 1993, reproduced in Appendix O.