

Attachment 7

3. Torrey Canyon - a polar case in accidental oil pollution⁴

Torrey Canyon has two claims (at least) to being a polar case in accidental oil pollution, namely (i) that it **is the most costly** tanker accident to date, though not one suspects for all time, and (ii) that it represents a classic example of an accident in circumstances where property rights were very much on the side of the polluter. A brief review [Beynon (n.d.)] of this important watershed in the international treatment of accidental oil pollution by tankers provides an invaluable insight **into the conceptual** matters raised above and a useful basis for evaluating subsequent actions both at the national and at the international level.

On Saturday March 18th, 1967, at 08.50 hours, the Torrey Canyon, en route to Milford Haven with 119,000 tons of Kuwait crude oil, ran aground on Pollard Rock, part of Seven Stones, approximately 11 miles south-west of Lands End at a speed of 16 knots, rupturing all six starboard tanks, as her Italian master, anxious not to miss high tide at Milford Haven, attempted a short-cut between Seven Stones and the Scilly Isles and misjudged his position. **This** commenced the *most* serious single case of oil pollution ever experienced in European waters. For approximately 30,000 tons of oil spilled out from the Torrey Canyon at the time of the grounding, a further 20,000 tons spilled out during the following seven days of high seas and gale force winds until March 26th when the ship's back was broken on the rocks, releasing a further 50,000 tons. By March 27th, the British Government abandoned all hope of a salvage solution and a bombing exercise was mounted between March 28th and March 30th in a partially successful attempt to burn the remaining 19,000 tons of oil. Torrey Canyon oil proceeded initially to pollute extensively some 100 miles of British coastline until early in April a 'fortuitous' shift in the prevailing wind swept it seawards eventually to pollute the holiday beaches of Guernsey and Brittany. In Britain, France and the Channel Islands, Torrey Canyon oil pollution became overnight a major political and economic issue.

⁴For a detailed cost analysis of the Torrey Canyon affair, see Burrows et al. (1974b).

In a separate study [Burrows et al. (1974b)], we have evaluated in some detail the cost both for Britain and for France, in terms of 1967 prices,⁵ of the Torrey Canyon grounding. The cost data derived are subject to fairly wide" errors bars and are to be viewed as approximations only to the real costs involved. Furthermore, it proved impossible despite careful application to attribute monetary valuations to the ecological damage sustained as a consequence of Torrey Canyon oil. Nevertheless, a number of important policy implications appear to flow from the 'cost of damage' estimates and therefore the cost data are reported in this study as table 1.

Table 1
The cost of Torrey Canyon.

<i>Internal cost</i>	<i>£ million</i>
(a) The hull of Torrey Canyon	5.89
(b) The cargo	0.60
(c) The salvage operations	0.05
	6.54
<i>External cost of prevention and control (U. K.)</i>	
(a) The cost of avoiding coastal pollution	2.00
(b) The cost of clean-up	2.70
	4.70
<i>External cost of control (France and Guernsey)</i>	
Minimum estimate based on compensation claims	3.00
<i>External cost of damage</i>	
Extensive but unquantifiable	
<i>Total quantifiable cost</i>	14.24

The real significance of table 1 is not to be found in the global cost estimate of £14.24 million for the Torrey Canyon grounding, nor even in the minimum estimate for external costs of prevention and control of £7.70 million, though these are startling enough even in terms of the inflated standards of 1973. Rather it lies in the comparison between the insurance value of the Torrey Canyon and its cargo (£6.49 million) and the ex-post cost of preventing and controlling the oil-spill (£4.70 million for the United Kingdom alone and at least £7.70 million for the United Kingdom, France and Guernsey combined). Perhaps for the first time in maritime history, the cost of preventing and controlling an oil-spill (without reference to the ecological damage sustained) substantially exceeded the value of the ship and cargo. The potential public

⁵Wherever possible opportunity cost estimates were obtained. In cases of doubt, conservative estimates were applied.

policy relevance of this comparison for handling tanker accidents in the future is further discussed in a subsequent section of this paper, as are the implications for the mix of control techniques adopted at that time by the British Government in its attempt to minimize coastal pollution. In the meantime, some discussion is necessary of the problems encountered in attempts by the national governments' concerned to negotiate a compensation settlement with tile owners of the Torrey Canyon.

Despite the very considerable costs imposed upon the United Kingdom, Guernsey and French economies by the wrecking of the Torrey Canyon, extreme difficulties *were* envisaged from the outset in obtaining any substantial compensation from the tanker company concerned. For the Terre)' Canyon was owned by the Barracuda Tanker Corporation of Bermuda, a subsidiary of the Union Oil Company of Wilmington, California, was chartered out by the subsidiary to the parent company, was registered in Monrovia and flew the Liberian flag, principally for fiscal considerations. The tanker owners, from the outset, denied all liability for damage and *relied* upon the acknowledged complexity of international law for their protection.

The property right problem was particularly treacherous for the damaged nations in that the Torrey Canyon, owned by a foreign national, had grounded-outside United Kingdom territorial waters. Maritime lawyers agreed that those whose livelihood had been adversely affected could sue the shipowners in the tort of negligence for compensation. But, under an international convention, liability would be limited in British courts to 66 dollars per ton of tanker, i.e., in the Torrey Canyon case to a maximum of 4 million dollars or £1,430,000. Furthermore, there was a *real* problem as to who should act as plaintiff, since for a judgment in tort, it would be necessary to establish a proprietary interest in the threatened coastline. The central Government could establish no such interest, and although the Cornish foreshore was owned by the Duchy of Cornwall, the Prince of Wales was a minor. It might be necessary, therefore, for the Queen to sue to protect the rights of a minor.⁶

In the event, the British and French Governments circumvented the legal process by direct action – the twentieth century counterpart to gunboat diplomacy. The only substantial assets of the Barracuda Tanker Corporation were the Torrey Canyon's sister ships the Lake Palourde and the Sansinena. Writs

⁶The property right situation was further complicated by the defence put forward by the tanker company to the effect that (i) all reasonable precautions had been taken after the grounding to prevent or minimise the discharge of oil and that the flow of oil to the beaches had been the result of wind and tide and therefore was an Act of God for which they were not responsible in law, (ii) that if the Torrey Canyon had not been bombed it was probable that the main bulk of her cargo would have remained sealed in her cargo tanks and as such would have been innocuous, and (iii) that the British Government was not empowered in international law to destroy a ship which was still in the open sea and subject to the freedom of the high seas, in which case the bombing was an Act of State and any claim by Britain should be made against the Republic of Liberia.

against the Corporation were taken out by the British Government naming these ships on May 4th 1967, and an additional writ was issued in Singapore. On July 5th the Lake Palourde was arrested on behalf of the British Government in Singapore harbour and was released on July 19th in exchange for a bond of £3 million as security for the damages and expenses claimed by Britain in its writ against the tanker company. Following suit, the French Government seized the same ship in Rotterdam harbour in April 1968 and successfully requested a security of £3.2 million against her own claim.

Following protracted negotiations, the underwriters to the Barracuda Tanker Corporation on November 11th 1969 settled out of court for a total compensation of £3 million to be divided equally between the United Kingdom (with Guernsey) and France. Although the compensation received by the United Kingdom represented only one-third of the cost of preventing and controlling the oil-spill, without reference to the ecological damage sustained, the British Government expressed satisfaction with the settlement – a sufficient testimony to the parlous state of the property right situation at that time.