

Chapter 1

The French Report

"The French Commission was set up almost to exonerate itself."

Auditor General Per Kristian Foss ¹⁰

When the French Expert Commission's report was presented in 1985, we heard the same disrespectful message. This was just a biased report on behalf of the French companies responsible for the Kielland disaster.

Forex Neptune was the constructor and CFEM was the shipyard that built both *Henrik Ibsen* and *Alexander L. Kielland*, and they were responsible for a welding error in bracing D6 when attaching a hydrophone, an instrument to keep the rig in position.

This was the cause of the accident on 27 March 1980. A French welder had a bad day at work, and the result was 123 dead oil workers. 89 workers survived and had to live with the consequences for the rest of their lives.

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The French report was dismissed and neglected in Norway. It was not at all a French Commission that had solved the mystery of the accident. It was a Norwegian Commission that had found the answer. Just a few days after the disaster, the Commission was inspecting the torn D leg (see illustration). The broken bracing D6 pointed up in the air, and Commission member Professor Torgeir Moan was sure of his case as he pointed: *"There, boys, there is the cause of the accident."* ¹¹

The French report was put in the drawer. Without the public spotlight on them, however, both the Norwegian and the French parties were very interested in the report. SINTEF prepared an analysis for the Norwegian parties, which was presented in the court proceedings in Paris. Correspondingly, there is reason to expect heavy activity from the other players in these closed negotiations.

¹⁰ NRK TV broadcast "Dagsnytt 18", March 9th 2021

¹¹ Told by deceased Commission member Aksel Kloster, and later chairman of the Kielland Foundation

The Norwegian Commission had long since terminated and the leader Thor Næsheim saw no reason to call a meeting about this. The Ministry of Justice and the government were not interested. The Police were not interested. Not the State Attorney nor the Attorney General either. The Storting was never summoned to study the report, much less deal with it. They were so uninterested that they didn't even bother to translate the report to Norwegian. This was first done by the National Auditor in 2021, at the request of the Kielland Network.

Some of the few people who reacted when the report in 1985 was dismissed as a French defense document were Odd Sjursen from the Trade Union Iron & Metal ¹², lawyer Pål Mitsem and the Kielland Foundation. I was the manager of the Kielland Foundation and expressed that the Norwegian Commission's report from 1981 could as easily be accused of being commissioned work, a defense of Norwegian interests. *"If one is to suspect the French of such a 'national' attitude, then the same suspicion must be directed at the Norwegian Commission."* ¹³

Was this the case - that the Norwegian Commission defended the Norwegian and American interests, while the French Commission defended the French?

If you put the two reports side by side, I think it is quite clear that the Norwegian

Commission did protect the Norwegian actors in at least two ways:

Firstly, they unilaterally emphasized the breach in the D6 bracing and the welding failure in connection with the hydrophone in this bracing. Thus, responsibility for the accident was also unilaterally placed in France. The Commission writes:

"The report and the assessments are limited to the type of accident that has been encountered here. The report thus does not deal with other accident situations, ..." ¹⁴

Secondly, the Norwegian Commission leaked information to the Norwegian parties, but not to the French. The National Auditor's report from 2021 documents this. Here it says, among other things:

¹² Sjursen was a member of the board of the Kielland Foundation 1981 - 1983

¹³ Tagesen, Dan, Aftenbladet 3.9.1985 s 6

¹⁴ NOU 11:1981, page 11

*"The interested parties were ... informed about and were allowed to give input on what investigations the Commission should carry out of the wreckage of the platform and were allowed to take part in the questioning of witnesses."*¹⁵

Many of the survivors reacted strongly to the fact that Phillips and Stavanger Drilling, which were themselves under investigation, were given the opportunity to monitor their questioning.

In addition, the National Auditor writes:

*"French parties were considered by the Commission to be biased."*¹⁶

Certainly, the French parties were biased, of course they were. The Norwegian parties were of course equally biased. That a party is biased is not exactly surprising. But it is surprising and strongly objectionable that the French parties were not treated equally with the Norwegian and American parties.

Similarities and differences

Was it just as bad with the French report?

Here we must first state that the two reports have very different outfits.

The Norwegian Commission was directly appointed by the Ministry of Justice. Neither members nor mandate were determined by a court, but by the Nordli government (Labour) led by Minister of Justice Andreas Cappelen. It didn't have to be like that. The Attorney General could use the legal instrument called "Maritime Declaration". Maritime declaration was an arrangement for judicial questioning of the master and crew in connection with an accident that has affected the vessel or an accident that has occurred in connection with the vessel's operation.¹⁷ Under such a maritime declaration, it would have been entirely possible for a separate Commission of Inquiry to be appointed, and the inquiry would then have been subject to judicial control. In such a situation, it would not be possible for the Commission to treat the various parties and interests differently. In addition, the Commission's report would not be the last word on the matter. The report would have been processed by the court,

¹⁵ Office of the National Auditor, Dokument 3:6 (2020-2021) Rapport, page 33

¹⁶ Dokument 3:6 (2020-2021) Rapport, page 34

¹⁷ The legal system with maritime declarations ceased in Norway 1 July 2008

where all parties were equally represented. The Court would thus make its decisions based on the Commission's work - and on the equal contributions of the parties.

The Attorney General had hardly arisen from bed on 28 March 1980, before the news that the Ministry of Justice had appointed a Commission was a fact. As is known, the three state powers in a democracy consist of legislative (Parliament), executive (Government) and judicial (Courts) bodies. In retrospect, I believe that it was a big mistake that the executive took the lead, instead of the judiciary.

The French Commission was not appointed by any government. Based on the Norwegian Commission report of April 1981, Phillips, the *Norwegian Oil Insurance Pool* and Stavanger Drilling chose to sue the constructor Forex Neptune and the shipyard CFEM. This was a private lawsuit that was issued at the French Commercial Court in Paris. In January 1982, the court appointed an Expert Commission. The French Expert Commission worked adversarial from the start. The adversarial principle – or contradiction principle - means that all parties must have equal access to all relevant documents and be able to comment on the material available to the court.

Right from the start, we see that the French experts treated both the Norwegian plaintiffs and the French defendants equally. The principle of contradiction is consistently applied in their work. When the parties disagree, the experts enter the discussion. They refer to positions, evaluate them based on the analyzes and expert opinions that have been put on the table, regardless of who has presented the arguments. Sometimes they favor the plaintiffs, other times the defendants. And sometimes they make their own assessments that contradict both the plaintiffs and the defendants.

The Norwegian Commission was thus appointed politically, by the government, while the French Commission was appointed by a court. This is an important difference between the two reports, both in principle and in practice.

The court set out with a number of questions to which they wanted answers, and the parties were given the opportunity to give their answers and comments to all questions raised by the court.

Back to previous Auditor General Per Kristian Foss. "*The French Commission was set up almost to exonerate itself.*"

No, it wasn't like that. Actually it was the other way around. The French Commission adhered faithfully to adversarial principles where all parties were treated equally.

The Norwegian Commission was set up to "*almost to exonerate itself*" - to stick to the Auditor General's formulation. It can be expressed somewhat more nuanced as follows: The Norwegian Commission was disconnected from the courts and protected and favored the Norwegian parties.

About the report

In January 1982, the Commercial Court in Paris appointed the following members in the Commission: Marcel Jourdain, Yves Rocquemont, Gérard Thalheimer and Jacques Cure.

While the Norwegian Commission with assistance from the Police started from scratch, the French Commission had a better starting point: They had the Norwegian Commission report. And they had all the parties' reactions to the Norwegian report, in addition to their own expert opinions and analyses. The French experts built on the Norwegian report, which they took very seriously. They express great recognition and respect for the work the Norwegian Commission had carried out.

A weakness in both the Norwegian and the French Commission reports is that little attention is paid to other possible causal explanations than those that the parties put on the table. We have seen from the debates of recent years that several people are advocating that anchoring patterns and procrastination (moving the rig in and out from the neighboring fixed platform) is a causal explanation. Others refer to concrete indications of an explosion in the D4 bracing. None of these theories is given particular attention, neither in the Norwegian nor the French Commission work. The bracing breakdown order is based on assumptions in both reports. Both take it for granted that the D6 bracing was the first fracture. While the Norwegian report assumes that D3 or D4 were the next to break, the French one assumes that D4 was the last bracing breakdown. They believe this explains the special and violent fracture pattern – as we shall see later in this book. Neither of the two Commissions carried out professional analysis of the order of bracing breakdown.

The one-sidedness in the Norwegian Commission report is described by the National Auditor:

"In the investigation report, the Commission limited itself to explaining and substantiating what the Commission believed had happened, and it did not describe how it had assessed other causal explanations." ¹⁸

"The Commission only described investigations that confirmed the main conclusions of the report." ¹⁹

Structure of the French report

After an introductory chapter on the Norwegian Commission's work, the report provides an overview of other additional documents and investigations. Documents from the parties' archives, interrogations, meetings and inspections are described here. In chapter 3, the questions from the court are presented, and the next chapter addresses other matters that are not covered by the Commercial Court's questions. In the last chapter, the experts summarize and give their conclusions. A large package of appendices accompanies the report.

Although the report is based on the Norwegian Commission's report, the French experts mark clear deviations from the Norwegian conclusions.

Firstly, the French emphasize far more strongly that the rig was operated incorrectly. They point out and document incompetence in the management and lack of adherence to the operating manual.

Secondly, the French experts believe that the fatigue crack in the D6 bracing was not triggered by the welding error in the hydrophone.

"With the exception of one important point, the views expressed in the (Norwegian) Commission's report are justified and balanced... But when it comes to the origin of the accident itself, i.e. the reason for the breach in bracing D-6, the Norwegian Commission of Inquiry has not been able to give a rational and convincing explanation." ²⁰

The French experts believe that the hydrophone and the D6 bracing was at some point exposed to a collision, either during construction or during operation.

¹⁸ Dokument 3:6 (2020-2021) Rapport, page 73

¹⁹ Dokument 3:6 (2020-2021) Rapport, page 49

²⁰ French report page 40

The report's closing sentence sums it up well:

*"If we were to conclude this long report with just one sentence, we would say: It is indisputable that an accident of this magnitude does not have one cause but is due to an unfortunate combination of unfavorable circumstances."*²¹

In the following chapters of this book which review the 89 questions, I will return to the Norwegian and French reports, where they provide interesting and important information related to the different questions.

²¹ French report page 270