



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
4th session
Agenda item 4

92FUND/EXC.4/7
25 August 1999
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

SANTA ANNA

Note by the Director

Summary:	The unladen tanker <i>Santa Anna</i> grounded on rocks and was refloated without any bunkers being spilled. Several legal questions have arisen, in particular whether the <i>Santa Anna</i> was a ship for the purpose of the 1992 Conventions. An Intersessional Working Group has studied the interpretation of the definition of 'ship' in the Conventions.
Action to be taken:	If the Assembly has taken a decision at its 4th session on the Working Group's recommendations, to decide whether the <i>Santa Anna</i> falls within the definition of 'ship'.

1 Sequence of events

1.1 The Panamanian tanker *Santa Anna* (17 134 GRT) dragged her anchor in heavy weather and grounded on rocks on the Devon (United Kingdom) coast. The ship was refloated the same day by an emergency towing vessel under contract with the United Kingdom Government. As a result of the grounding, several of the ship's cargo tanks were punctured.

1.2 The *Santa Anna* was in ballast, but had some 270 tonnes of heavy fuel oil and 10 tonnes of diesel oil in bunker tanks. No oil was spilled as a result of the grounding and the refloating operation.

1.3 The United Kingdom authorities mobilised oil combatting equipment and surveillance aircraft.

2 Claim for compensation

2.1 The United Kingdom Government notified the IOPC Funds of the incident. In its notification the Government stated that it appeared that no claim was possible under the 1969 and 1971 Conventions, since these Conventions did not cover pre-spill preventive measures. The Government also stated that it did not seem possible to present claims for compensation against the shipowner, since the ship was registered in Panama, which was Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention.

2.2 The United Kingdom Government has submitted a claim to the shipowner for £30 000 relating to the cost of mobilising resources to respond to the possible escape of persistent bunker oil.

2.3 It is estimated that the liability limit of the *Santa Anna* under the 1992 Civil Liability Convention, if applicable, would be approximately 10.2 million SDR (£8.6 million).

3 Applicability of the 1992 Conventions

3.1 This incident has given rise to three important questions as to the applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention which were considered by the Executive Committee at its 1st session.

Definition of 'incident'

3.2 The first question was whether the grounding and subsequent refloating constitute an 'incident' as defined in the 1992 Conventions. The Executive Committee took the view that in the *Santa Anna* case there had been a grave and imminent threat of pollution damage and that therefore the 1992 Conventions did in principle apply to this incident. It was noted, however, that the usual criteria for admissibility would apply, ie that the measures were reasonable from an objective technical point of view (document 92FUND/EXC.1/9, paragraph 4.6.5).

Definition of 'ship'

3.3 The second question was whether the *Santa Anna* fell within the definition of 'ship' laid down in Article I.1 of the 1992 Civil Liability Convention. The Executive Committee decided that it would be useful if the interpretation of the definition of 'ship' in the 1992 Civil Liability Convention could be studied by a Working Group. For this reason, the Committee took the view that it was premature to take any decision on this issue in respect of the *Santa Anna* incident (document 92FUND/EXC.1/9 paragraphs 4.6.14 and 4.6.15).

Applicability of the 1992 Civil Liability Convention

3.4 The third question was whether the 1992 Civil Liability Convention could be applied to the *Santa Anna* which was registered in a State Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. The Committee took the view that, since the 1969 Civil Liability Convention dealt only with laden tankers, the United Kingdom could apply the 1992 Civil Liability Convention to an unladen tanker registered in Panama, even though at that time Panama and the United Kingdom were both Parties to the 1969 Civil Liability Convention (document 92FUND/EXC.1/9 paragraph 4.6.16).

4 Intersessional Working Group

4.1 At its 3rd session the Assembly decided to set up an intersessional Working Group to study the applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention to floating storage units (FSUs) and floating production storage and offloading units (FPSOs). The Assembly further decided that the Working Group should study also the interpretation of the definition of 'ship' in view of the question that had arisen in the *Santa Anna* incident (document 92FUND/A.3/27, paragraphs 20.11 and 20.14).

4.2 The Intersessional Working Group met on 26 and 27 April 1999. The report of the Working Group, which is contained in document 92FUND/A.4/21, will be considered by the Assembly at its 4th session.

5 The Executive Committee's consideration

5.1 In the Director's view the Executive Committee should postpone its decision on whether the *Santa Anna* falls within the definition of 'ship' in the 1992 Conventions until the Assembly has taken a position on the recommendations by the Intersessional Working Group. It appears that, if the Assembly were to endorse the Working Group's recommendations, in particular that the proviso in Article I.2 of the 1992 Civil Liability Convention should apply to all tankers, the *Santa Anna* would not fall within that definition (cf document 92FUND/A.4/21, paragraphs 7.3.1 - 7.3.13 and 7.6).

5.2 If the Assembly were to take a position on this issue at its 4th session, the Executive Committee may wish to consider the consequences of the Assembly's decision for the *Santa Anna* incident.

6 Settlement of claims

6.1 The shipowner's P & I insurer, the West of England Ship Owners' Mutual Protection and Indemnity Association Ltd, has informed the Director that part of the United Kingdom Government's claim has been paid and that the balance is the subject of ongoing discussions.

6.2 It should be noted that, since the insurer has given an assurance that it will settle all admissible claims, the 1992 Fund will in any event not be called upon to make any payments for claims arising out of the incident.

7 Action to be taken by the Executive Committee

The Executive Committee is invited

- a) to take note of the information contained in this document;
 - b) if the Assembly has taken a position at its 4th session on the interpretation of the definition of 'ship' in the 1992 Conventions, to decide whether the *Santa Anna* falls within that definition; and
 - c) to give the Director such instructions in respect of this incident as it may deem appropriate.
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