

FINAL

OA ASSESSMENT REPORT

Regarding concerns in relation to OPIC Political Risk Insurance
for the Noble Energy Leviathan Project in Israel

(April 22, 2020)

Office of Accountability

For

The U.S. International Development Finance Corporation

www.dfc.gov.

About the OA

The Office of Accountability is the independent accountability mechanism for the U.S International Development Finance Corporation (DFC). It (1) reports annually to the DFC Board of Directors and the US Congress regarding compliance with environmental, social, labor, human rights, and transparency standards consistent with Corporation statutory mandates; (2) provides a forum for resolving concerns regarding the impacts of specific Corporation-supported projects with respect to such standards; and (3) provides advice regarding Corporation projects, policies and practices.

Table of Contents

1. List of Acronyms
2. OVERVIEW
3. BACKGROUND
 - 3.1. The Project
 - 3.2. The Complaint
4. ASSESSMENT SUMMARY
 - 4.1. 3.1. Methodology
 - 4.2. 3.2. Summary of Views
5. NEXT STEPS

LIST OF ACRONYMS (in order of appearance):

OA – Office of Accountability

OPIC – U.S. Overseas Private Investment Corporation

DFC --- U.S. International Development Finance Corporation

BAST - Best Available and Safest Technology

FPSO - Floating Production Storage and Offloading

FLNG - Floating Liquefied Natural Gas

LPP - Leviathan Production Platform

LNG - Liquefied Natural Gas

INGL - Israel Natural Gas Lines

FOIA - Freedom of Information Act

1. OVERVIEW

The U.S. Overseas Private Investment Corporation's (OPIC) Office of Accountability ("OA") was established in 2005, with a mandate from the US Congress to (a) evaluate and report on OPIC compliance with environmental, social, labor, and human rights standards; (b) provide a forum for addressing the concerns of locally affected communities regarding specific OPIC projects; and (c) provide advice regarding OPIC policies and procedures.

In June 2019 three complaints were received by the OA regarding the Noble Energy Leviathan Offshore Gas Field Project in Israel (hereinafter, respectively, "the Complaints", "the Project"). At the heart of the complaints was DFC's (then OPIC's¹) decision to approve a political risk insurance contract with Noble Energy (hereinafter "Noble Energy" or "the Company"), a US registered company which is part of a consortium of companies that had received license from the Government of Israel to operate the Leviathan Project. At the time the complaints were received, the project had been approved by OPIC's Board of Directors and was listed as an "active project" on OPIC's website.

The complaints were filed by Prof. Rick Steiner of Anchorage, Alaska and by two Israeli NGOs: Zalul and Israel's Homeland Guards. In October 2019 the Director of the OA ("the Director") made the decision to register the complaints as being eligible and to conduct an assessment thereof. The aim of the assessment was to decide whether the problem-solving function or the compliance review function should be applied, by meeting and communicating with the complainants, the company and other key stakeholders. The Director hired Dr. David Shimoni, Academic Director of the Goshrim Mediation Center in Israel, to assist him in assessing the complaints. Dr. Shimoni hired as a co-facilitator Anat Cabili, an Israeli mediator and attorney Dr. Shimoni and Adv. Cabili planned the assessment under the guidance of the Director (Dr. Shimoni and Adv. Cabili will also be referred hereinafter as "the Israeli Team" or "the facilitators").

The company was informed on 10 December 2019 of the complaints in a teleconference meeting with the Director. The company was advised that although the political risk insurance policy had never been executed the project was still subject to DFC's (then OPIC's) complaints process, even though the company had no intention of pursuing the political risk insurance.

The company stated on 11 December that it supported the DFC process and asked about next steps.

The assessment was planned to take place between February 23rd through February 28th in Israel. Meetings with representatives of stakeholders were scheduled. The Director was supposed

¹ The Overseas Private Investment Corporation (OPIC) was the United States government's development finance institution until it merged with the Development Credit Authority (DCA) of the United States Agency for International Development to form the U.S. International Development Finance Corporation (DFC).

to meet with the complainants, the project sponsors, local and regional authorities, civil networks, government ministries, and academics.

On 19 February DFC advised Noble Energy that because no insurance had issued or was sought, withdrawal or cancellation of the commitment letter would conclude the process. On 21 February the company cancelled its commitment.. Thus, the Director's trip to Israel was cancelled and the Assessment aborted. This report aims to summarize the key issues raised in the complaints and in the outreach conversations conducted by the facilitators.

2. BACKGROUND

2.1 The Project

According to the Noble Energy website², Noble Energy made the first natural gas discovery offshore Israel in 1999 and has discovered 40 trillion cubic feet (Tcf) of recoverable natural gas resources in the Eastern Mediterranean. Mari-B delivered first domestic gas in 2004, and, between the Tamar and Leviathan platforms, Noble Energy and its partners currently fuel nearly 70 percent of the country's electricity generation. The Leviathan field, which holds 33 Tcf of natural gas resources in place (22 Tcf recoverable) and was discovered in December 2010, 125 kilometers west of Haifa, was one of the largest natural gas finds in the world in the last decade. The Leviathan Partnership invested U.S. \$3.6 billion in development of the Leviathan field. With a total production capacity of 1.2 billion cubic feet of natural gas per day (Bcf/d), Leviathan more than doubled the quantity of natural gas flowing to the Israeli economy today.

The Leviathan project was (and still is) opposed by some local activists in Israel, who filed a number of lawsuits and made other attempts, sometimes joined by environmental NGOs and local and regional authorities to halt its development. All the judgements in the court cases have dismissed the petitioners' claims, and the Ministry of Environmental Protection confirmed that all professional environmental criteria had been met by the project prior to start-up. (see attached document).

It became fully operational in December 2019.

The project was screened as Category A and a full ESIA was carried out. The availability of the project's ESIA was posted on OPIC's website on September 22, 2016 and the posting period ended on November 21, 2016. No comments were received during the OPIC's posting period.

Although OPIC's Board of Directors approved the Project (a request for Political Risk Assurance of up to US\$250,000,000) in 2017 and a Commitment made to the company, an insurance contract was never signed.

² <https://www.nblenergy.com/operations/leviathan-progress-update>, accessed March 10, 2020

2.2 The Complaints

Professor Richard Steiner's Complaint ("the Steiner complaint") was received on June 3rd, 2019. The key objections raised by Professor Steiner were the following matters that Complainants have also raised and adjudicated before Israeli courts and government agencies:

(a) Risk to the marine and coastal environment - the complainant claimed that "the project poses significant risk to the marine and coastal environment of the eastern Mediterranean, both through alleged unmitigated chronic emissions of toxic substances to air and marine waters near shore", as well as an alleged "very real risk of catastrophic failure, blowout, and a large release of natural gas and/or condensate, both of which are highly toxic". The complainant further argued that "as designed, the project is not Best Available and Safest Technology (BAST) and should be redesigned to be such".

(b) Risk of terrorism and intentional third party damage - the complainant argued that "the decision to abandon the option of offshore processing" (via a floating production storage and offloading unit ("FPSO") or Floating liquefied natural gas ("FLNG") facility) over the gas field 75 miles offshore, "in favor of a near shore processing platform only 6 miles offshore, in proximity to known hostile forces, poses grave risk of terrorism and intentional third party damage to the facilities, and thus to the people and environment in the region". The complainant also claimed that OPIC's (now DFC's) decision to provide the company with a political risk insurance has been made without sufficient assessment and that the project does not comply with OPIC's environmental standards.

(c) Partial transparency - the complainant argued that "many systems-critical technical details are not reported, redacted, or not adequately detailed in the Leviathan documents".

The complainant presented several recommendations derived from the aforementioned:

(a) Recommendation to DFC (then OPIC) - the complainant recommended that DFC withdraw its consideration of providing political risk insurance from the project.

(b) Recommendation to the company - the complainant recommended that the project be suspended, and redesigned "to eliminate the near shore Leviathan Production Platform ("LPP") and extensive seabed pipeline infrastructure, opting instead for either a FLNG facility offshore at the gas/condensate field approximately 125 kms³ offshore", and "use of shuttle tankers to deliver liquefied natural gas ("LNG") and condensate to Israel and other markets". Alternatively, Professor Steiner recommended "a FPSO unit at the offshore gas/condensate field, transporting condensate via shuttle tankers and dry gas via seabed pipeline to shore". The complainant stated that "while FPSO or FLNG options would pose different risks that must be addressed, on balance either would dramatically reduce near shore risks and impacts of the project". According to the complainant, "the most environmentally responsible option for Leviathan development is for Noble Energy to design and construct an FLNG facility. Alternatively, in order to avoid construction delays,

³ 125 kilometers equal 77 miles.

the company should consider leasing an FPSO for initial development, and tie-in to its seabed gas pipeline system (in construction) to transport gas to shore and the INGL⁴ system, and condensate via tanker". The complainant added that "Noble Energy should offer its newly constructed LPP for sale to another offshore gas project elsewhere".

(c) Regarding transparency - the complainant recommended that alleged unreported, not adequately detailed systems-critical technical details in the project's documents should be remedied before the project proceeded.

On June 24th, 2019, Zalul and Israel's Homeland Guards (hereinafter: "Homeland Guards"), two Israeli based NGOs, requested OPIC to include them as applicants in Professor's Steiner's complaint.

In their letter, they highlighted that "the Leviathan gas field is one of the largest ever discovered in the Mediterranean", and that "Current plans include a processing platform only 9.5 kilometers from the Dor Beach Nature Reserve near Zichron Yaakov, 15 kilometers from a desalination plant coastal inlet".

They emphasized that "the plan also calls for the piping and storage of liquid condensate, a volatile and carcinogenic byproduct through densely populated regions and above groundwater sources", and claimed that "leading experts warn that this plan will violate both the Barcelona Convention and Israel's Clean Air Act, increasing risk to Israel's citizens, environment and tourism".

Zalul and Homeland Guards claimed in their letter that "in pushing this plan through, Noble Energy has withheld critical environmental impact data from the Israeli and US governments (including, specifically from OPIC and MIGA) and the public".

The complainants also claimed that "the decision to abandon the option of processing (via FPSO or FLNG facility) over the gas field 125 km offshore, in favor of near shore processing in proximity to known hostile forces, poses grave risk of terrorism and intentional third-party damage to the facilities". The Complainants added that they believed that "neither OPIC nor MIGA have sufficiently assessed and mitigated this risk because critical information was withheld by Noble Energy, specifically relate to the risk and impact of an oil spill".

In addition, the Complainants argued that "no explanation has been made available for the apparent withholding of Political Risk Insurance by both OPIC and MIGA for the Leviathan Project". Furthermore, they added, recently released documents from a FOIA action indicated that "the operator has been less than forthcoming on the duration, magnitude and impact of the Leviathan 2 well blowout between 2010 and 2012".

⁴ Israel Natural Gas Lines Ltd. ("INGL") is an Israeli government owned corporation, established in 2003 for the construction and operation of the national natural gas transmission infrastructure.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the assessment was to obtain a better understanding of the issues and concerns raised by the complainants through gathering information from them as well as other relevant stakeholders, without making a judgement on the merits of the complaints. The assessment also sought to recommend which OA function the complainants and the company would like to pursue – the problem-solving function or the compliance function.

The original plan for the Assessment consisted of four phases:

1. Preparation: Studying the complaints and relevant background documents, identifying the complainants and key stakeholders, letter of introduction to the facilitators;
2. Outreach to key stakeholders: contacting complainants and the company, contacting key relevant stakeholders, providing information about DFC and the OA, setting expectations regarding the assessment, obtaining consent to participate in the assessment, overcoming resistance to participate and building a timetable for the meetings.
3. Meetings (mostly caucuses) with the complainants, the company and representatives of key stakeholders. All were scheduled to take place in Israel between February 23 - 28, 2020.
4. Writing an assessment report and recommendations.

The OA's assessment of the complaints included phases 1 and 2. Phases 3 and 4 did not take place due to the project's cancellation.

Below is a short description of the how the first two phases were conducted:

1. Preparation:
 - a. The Office of Accountability, through Windsor Group LLC, hired the services of Dr. David Shimoni, an Israeli mediator, and an Independent Contractor Agreement was signed with him on January 13th, 2020. The contract stipulated Dr. Shimoni's assignment as follows:

Mediation / OA Assessment Report

General: The Facilitator/Mediator will assist the Director, Office of Accountability, to:

- organize and confirm the agenda and logistics of a trip and site visit to Israel;
- meet and communicate with the complainants, project sponsors and other key stakeholders in Israel;
- identify, categorize and prioritize the key concerns of the stakeholders;
- identify with stakeholders, potential options for resolving conflict which may include mediation and/or other forms of intervention by the OA; and

- assist in drafting and finalizing the OA assessment report.

The contract stated that following the Assessment phase, should the parties agree to go ahead with an OA-convened dispute resolution process, the contractor shall provide the following services in order to assist DFC:

- ◆ Design a dispute resolution process
 - ◆ Facilitate an agreed process; and
 - ◆ Provide summaries of meetings and reports to the OA for public disclosure as needed and in accordance with Israeli law.
- b. Dr. Shimoni recruited the services of Adv. Anat Cabili, an Israeli mediator, facilitator and lawyer and they formed the Israeli Team.
 - c. The Israeli Team received the Letters of Complaint from Windsor Group and studied them as well as other relevant documents to identify key stakeholders and key issues to be addressed.
 - d. Initial contact details of complainants came with the complaints. The Director of OA provided contact details of the Israeli Manager of Noble Energy.
 - e. The Director of OA prepared a letter of introduction detailing the engagement of Dr. David Shimoni. This letter was sent directly to the complainants and to Noble Energy. The Israeli team used the letter when establishing contact with key stakeholders.

2. Outreach to key stakeholders:

- a. Israeli Team held numerous phone calls, email exchanges and *whatsapp* messages first with the two Israeli complainants and with the local management of the company, and later with other key stakeholders, their representatives and advisors.
- b. These communications provided information about DFC and the OA, the OA's two different functions, the aims of the assessment and expectations setting, obtaining consent to participate and building a timetable for the meetings.
- c. Almost all initial communications were characterized by questions regarding the OA's mandate in this matter, as well as hesitation and at times resistance to partake in the assessment. The Israeli team was able to convince most (but not all) of the key stakeholders to participate in the assessment.
- d. Noble Energy:
 - i. The Israeli Team communicated with Mr. Binyamin ("Bini") Zomer, Noble Energy's Director of Corporate Affairs in Israel.
 - ii. At first, he was curious about the purpose of the Director of OA visit and his mandate. He stated that all the issues raised in the complaints were

- dealt with at various Courts of Law and with the appropriate authorities and were dismissed.
- iii. Nevertheless, Mr. Zomer was helpful, took care of Noble Energy's part of the Assessment phase, and organized a day of meetings with senior staff, a boat ride to the offshore platform and a visit to the shore and land installations.
 - iv. Parallel to the work done in Israel, the Director of OA was contacted by Mr. Nick Welch of Noble Energy USA who suggested that the Director will be briefed by him prior to his departure to Israel.
- e. Zalul:
- i. Initial notice was sent to them by an email from the Director of OA, including the Letter of Introduction.
 - ii. In the initial conversations with Dr. Youval Arbel, Marine Campaigns Director in Zalul, Dr. Arbel asked for clarifications regarding the two functions of the OA and the nature of the assessment, and briefly elaborated on the major risks in the Leviathan Platform, from Zalul's standpoint.
 - iii. In answer to the Israeli team's questions, Dr. Arbel suggested to contact several key stakeholders and experts in the subject matters. These were contacted by the Israeli team for background conversations and/or invitations to partake in the assessment meetings.
 - iv. In the scheduled assessment meeting in Zalul's offices Dr. Youval Arbel, Marin Campaigns Director; Sinaia Netanyahu (PhD), Environment and Natural Resources Economist; and Adv. Haya Erez, Legal Advisor for Zalul were supposed to meet the Director of the OA and the Israeli team,
- f. The Homeland Guards:
- i. Initial notice was sent to them by an email from the Director of OA, including the Letter of Introduction.
 - ii. The Israeli Team took over with a series of email messages and lengthy conference calls with Mr. Yoni Sapir, Chairman of Homeland Guards and with Dr. Mike Adel.
 - iii. Both complainants agreed to participate in the Assessment and a meeting was scheduled.
 - iv. Mr. Sapir and Dr. Adel also supplied written material and recommended a list of experts to be consulted with. Most of them were contacted by the Israeli team.
- g. The Israeli Ministry of Environmental Protection:
- i. The Israeli Team sent email messages to the Director General of the Ministry and followed up by phone calls. The Letter of Introduction by the Director of OA was attached to the emails.
 - ii. After several days the Israeli Team established contact with an executive in the Ministry who asked for clarifications about DFC, the OA and the purpose of the assessment.

- iii. After some telephone conversations, as well as email and Whatsapp exchanges, the Ministry agreed to meet and a meeting was scheduled in their offices in Jerusalem.
- h. The Israeli Ministry of Energy:
 - i. The Israeli Team sent email messages to the Director General of the Ministry and followed up by phone calls. The Letter of Introduction by the Director of OA was attached to the emails.
 - ii. Many attempts to contact the Ministry (including other high level officials) failed to produce cooperation. Therefore, the Israeli Team aborted the attempt.
- i. Municipal and Regional authorities:
 - i. Best and fastest cooperation was given to the Israeli Team by two Arab townships located in proximity to the Leviathan Platform: The Mayors of Furedis and of Jisr-a-Zarqa agreed immediately to meet the Director of OA.
 - ii. Consisting of 18 municipalities in the Sharon and Carmel regions (which are located in proximity to the sea platform and the Hagit Condensate facility), the Environment Protection Regional Towns Committee of the Sharon & Carmel Regional Towns (hereinafter: “the Regional Towns Committee”) was identified in the early phases of the assessment planning as a major stakeholder. According to its website⁵ it has been authorized to monitor emissions from the sea platform, and is doing so by operating three monitoring stations (located on the land) which have been added into their array of existing monitoring stations. After some approaches, the Regional Towns Committee agreed to participate in the assessment, and to meet with the Director of the OA in its premises (including a possible tour in the monitoring stations).
 - iii. Zichron Yaakov is one of the municipalities in proximity to the Leviathan Platform. Several years ago, its Mayor, Mr. Ziv Deshe, convened a volunteer residents forum named “The Gas Cabinet” in order to advise the municipality regarding the Leviathan Project. The forum, led by residents who are engineers by their profession, initiates research, publishes opinions and updates the residents on engineering and legal aspects of the project. After several conversations aimed at clarifying the OA’s mandate, the Mayor and the leaders of the Gas Cabinet agreed to meet with the Director of the OA.
 - iv. Academics: Following recommendations of the complainants as well as other background conversations the approached several academics in order to hear the take on the issues and include them in the assessment meetings. One of them was Nir Zarchi, a research fellow at the Haifa Research Center for Maritime Policy and Strategy at the University of Haifa since 2015 and a PhD Candidate in the Department of Marine Geosciences. Mr. Zarchi’s research focuses on Energy Policy and Critical

⁵ <https://www.sviva-sc.org.il/> (a website in Hebrew only, accessed on February 18, 2020).

Infrastructures in the maritime arena. He has conducted a research on the security effects of the Leviathan Project⁶ and agreed to meet with Dr. Kennedy. The meeting with him was not scheduled and the plan was to contact them during the week, if a meeting is needed.

The Israeli team also approached Professor David Broday of the Technion, Israel's Institute of Technology, and emeritus Professor Uri Dayan (Hebrew University). Professor Broday agreed to meet with the Director of the OA, while Professor Dayan was supposed to talk with the facilitators in the beginning of the assessment week in order to hear more about the project and decide whether to partake.

3.2 Summary of Views

Complainants' and key stakeholders' perspectives:

In general, all parties we approached, including two of the complainants, Zalul and Homeland Guards⁷, were curious about the mandate of the Director of OA and his ability to influence the company's policies and activities.

From initial outreach conversations it seems their key concerns were the following. It should be noted,, however, that the actual assessment meetings did not take place. Therefore, the following list of needs and concerns should not be viewed as formal or comprehensive:

Concerns regarding transparency:

- Need to be satisfied that Noble Energy presented full and trustworthy information to the Courts of Law and to Israeli authorities.
- Need to have access to Noble Energy monitoring facilities on the sea platform and in the land installations.
- Need to receive transparent and up to date information from Noble Energy regarding snags in their facilities.

Concerns regarding safety and security:

- Concern regarding the security risks related to the location of the platform in close proximity to the shore.
- Need to be satisfied that Noble Energy prepared and is able to carry out a contingency plan for the event of an ecological disaster and/or a terror attack.

Concerns regarding environmental effects:

- Need to be satisfied about the safety of the condensate pipeline, located in the sea and inland, as well as the condensate storage arrangements.

⁶ See: http://hms.haifa.ac.il/images/reports/EN_Report_2018_19.pdf, p. 198.

⁷ The first complainant, Dr. Richard Steiner (of Alaska) was not supposed to participate in the assessment meetings that were planned to take place in Israel.

- Concerns regarding the ability of the company's systems to handle the formation water.
- Concerns regarding potential air pollution derived from the risks mentioned in this category as well as the in the previous category.

Needs and concerns regarding communications:

- Need to have ongoing communications with Noble Energy. In this regard, it should be noted that there are attempts to establish ongoing platforms of communications (e.g. initiated by the Ministry of Energy), however, stakeholders who were approached claimed they were not effective enough.

Company's perspective:

Noble Energy's position was that all complaints had been dealt with in various Courts of Law and with all relevant authorities and that all cases but one had been dismissed. In addition, it had put in place the appropriate mechanisms to effectively protect and communicate with the public

4. NEXT STEPS

As mentioned above, OPIC's commitment to Noble Energy was cancelled and, therefore, the Director of the OA decided to cancel his assessment trip to Israel. (This decision was taken in line with *Section 6.7* of the OA's Operational Guidelines on *Termination of problem solving* which states that "The OA will terminate the problem-solving process if any Party withdraws from the process at any time for any reason. In addition, the OA reserves the right to terminate problem solving if continuing it is unlikely to produce positive results. The OA may judge, for example, that trust cannot be established or the integrity of the process has been irreparably damaged."

The assessment was initiated in order to inform the OA's decision whether to apply a compliance review function or a problem-solving function regarding the complaints. Since OPIC's commitment was canceled, the process was terminated. Based on the initial outreach conversations with the key stakeholders, it seems that there may have been a shared interest among many of the stakeholders, to apply a problem-solving function. However, since the actual assessment was not conducted, this assumption cannot be verified.

Finally, it should be noted that on March 8th, 2020, the three complainants sent a letter to the Director of the OA. In the letter their disappointment that the "DFC's Problem-Solving process regarding their Leviathan complaint is now terminated due to Noble's withdrawal of its cooperation". The complainants requested that DFC conduct a full Compliance Review, in order "to assess and clearly identify failures in the process used by OPIC in its consideration and approval of the Leviathan project". They added that from supporting documentation provided in their initial complaint, many citizens of Israel believe the process was flawed, and must not be repeated in future project consideration by the U.S. government. Specifically, the complainants' belief is that the Environmental Impact Assessment performed as part of the project "was misleading and systematically omitted available information on the risks of building a gas processing platform in close proximity to the shore".

