



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/JUL21/3/1	
<b>Date</b>	7 June 2021	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES25	
<b>1992 Fund Executive Committee</b>	92EC76	●
<b>Supplementary Fund Assembly</b>	SAES9	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### INCIDENT IN ISRAEL

#### Note by the Secretariat

**Objective of document:**

To decide whether the 1992 Civil Liability and Fund Conventions apply to this incident.

**Summary:**

In February 2021, the Government of Israel contacted the 1992 Fund requesting assistance with oil found along the Israeli coastline believed to be caused by a mystery spill. The Israeli Government reported that tar balls had begun to wash up along its coastline and that it believed a spill had occurred in the waters of the exclusive economic zone (EEZ) of Israel. However, the source of the spill had not been identified.

Tar balls affected the entire Mediterranean coastline of Israel to various degrees. Clean-up operations were commenced under the direction of the Marine Environment Protection Division of the Israeli Ministry of Environmental Protection following their National Contingency Plan, with local authorities organising the response on the beaches.

Initial efforts to identify the cause of the spill centred on identifying vessels within the vicinity of the spill location. Analyses of the polluting oil carried out by two laboratories in Israel indicated that the oil found along the coastline was crude oil, and the authorities believed that the oil was released from a tanker, i.e., a ship as defined by the 1992 Civil Liability Convention (1992 CLC).

Following the information received from the Israeli authorities, the 1992 Fund engaged experts specialising in the analysis and fingerprinting of petroleum oil and requested that they travel to Israel to collect samples of the tar balls from different sites for analysis. The experts were asked to examine the nature of the oil and to advise on the possible sources of that oil.

**Recent developments:**

The experts engaged by the 1992 Fund took many samples of oil along the coastline of Israel and had them analysed in their laboratory in the United Kingdom. The result of the analysis showed that the samples collected were of crude oil which had originated from a single source. In their report, the experts explored possible sources for the oil and concluded that, as there are no crude oil platforms or pipelines in the area, the only possible source was a tanker carrying crude oil.

The composition of the sampled oil was consistent with crude oil washing, which would therefore indicate that the source was a recent illegal dumping from an unknown tanker and not a historical incident.

Whilst it was not possible to determine the quantities involved in this case, they concluded that a relatively small amount of tank washing pumped overboard could cause a pollution of the magnitude of this incident if it had spread over a large area.

Initial estimates of the cost of the response to the oil spill so far are in the region of ILS 55 million (GBP 12.1 million)<sup><1></sup>. Further costs and claims for economic losses are expected. Bulk clean-up operations were completed by mid-April 2021.

The Israeli authorities also carried out an analysis of the oil found along the Israeli coastline and also concluded that the pollution was caused by crude oil.

In October 2002, the Executive Committee decided that the 1992 Fund Convention also applied to spills of persistent oil even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 CLC.

According to the investigations carried out by the 1992 Fund experts, the pollution was caused by crude oil and it could not have originated from any other source but a passing oil tanker.

Based on the advice received from the 1992 Fund experts, the Director considers that the pollution which has affected the coastline of Israel could be considered as a spill from an unknown source (so called 'mystery spill') and that for this reason, the 1992 Civil Liability and Fund Conventions apply.

**Action to be taken:** 1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to:

- (a) take note of the information contained in this document;
- (b) decide whether the 1992 Civil Liability and Fund Conventions applies to this incident; and
- (c) decide whether to authorise the Director to pay compensation in respect of this incident.

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<1> The exchange rate used in this document is based on the exchange rate as at 18 June 2021 of GBP 1 = ILS 4.5269 and GBP 1 = SDR 0.9687.

**1 Summary of incident**

Ship	Unknown
Date of incident	01.02.21/02.02.21 (presumed)
Place of incident	Israeli EEZ (presumed)
Cause of incident	Unknown (presumed to be a ship carrying crude oil)
Quantity of oil spilled	Unknown
Area affected	Israeli coastline (approximately 170 km) with tar balls
Flag State of ship	Unknown
Gross tonnage	Unknown
P&I insurer	Unknown
CLC limit	Unknown
CLC + Fund limit	SDR 203 million (GBP 209.5 million)
Legal proceedings	No legal proceedings commenced to date

**2 Background information as provided by the Israeli authorities**

- 2.1 According to the information provided by the Israeli Government, sometime between the 1 and 2 February 2021, an oil spill incident occurred within the offshore waters of the Israeli exclusive economic zone (EEZ). The incident is believed to have taken place in the EEZ of Israel, to the west-northwest of the coastline.
- 2.2 On 17 February, tar balls of a substance reported to be crude oil<sup><2></sup>, began to wash up along the Israeli coastline, ranging in severity from medium-heavy pollution to very light, dispersed tar balls. The pollution affected the entire coastline to varying degrees.
- 2.3 The Israeli Marine Environment Protection Division responded under their National Contingency Plan and took control of the overall response to the spill, utilising the local authorities who were in charge of organising the response on the beaches. A company was tasked to remove the oil waste for disposal.
- 2.4 Clean-up operations were carried out with the deployment of personnel from municipal authorities, nature and parks authorities and government departments as well as volunteers. The total number of people involved was between 7 000 and 12 000 per day. They were organised and monitored by an Israeli non-governmental organisation (NGO) and the local authorities.
- 2.5 Clean up operations were largely finished by mid-April 2021, although removal of tar from different locations, mainly the centre and northern part of the country as far as the northern border, are still ongoing. By the end of April 2021, some 1 360 tons of debris and oil waste had been collected and taken away from the beaches to the treatment facility.
- 2.6 Bans on fishing and on bathing were imposed immediately after the tar balls first washed ashore. The fisheries restrictions were lifted in early March 2021. The bathing prohibitions were removed in mid-March 2021.

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<2> According to the testing conducted by The Hebrew University of Jerusalem.

### **3 Claims for compensation**

3.1 The Israeli authorities have not yet established their claim for the clean-up operation costs, but have initially estimated that the total clean-up costs for the spill so far would be in the region of ILS 55 million (GBP 12.1 million) as follows:

- ILS 30 million (GBP 6.6 million) for costs incurred by local coastal authorities;
- ILS 10 million (GBP 2.2 million) for waste treatment and disposal;
- ILS 5 million (GBP 1.1 million) for monitoring and marine research;
- ILS 5 million (GBP 1.1 million) for surveillance, investigation, inspection and control operations; and
- ILS 5 million (GBP 1.1 million) for running volunteering campaigns (operations and equipment).

3.2 It is expected that further claims will be submitted for economic damage suffered by fisherfolk, diving clubs and other beach amenity providers and businesses.

### **4 Applicability of the Conventions**

4.1 Israel is a party to the 1992 Civil Liability and Fund Conventions.

4.2 Article I(1) of the 1992 CLC defines 'ship' as: 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard'.

4.3 Article I(5) of the 1992 CLC defines 'oil' as: 'any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship'.

4.4 Under Article 4.1 of the 1992 Fund Convention:

'the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,

(b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him'.

4.5 At its October 2002 session, the Executive Committee endorsed the interpretation of the 1992 Fund Convention made by the Director on that point that the 1992 Fund Convention also applied to spills of persistent oil even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 CLC (92FUND/EXC.18/14, para 3.12.13).

4.6 For the 1992 Civil Liability and Fund Conventions to apply to this incident, the authorities have to establish that the oil spilled was crude oil and not fuel oil, because crude oil is carried in ships as defined in the 1992 CLC, but fuel oil is carried on many types of vessels and used as bunker fuel. In addition, the authorities would have to establish that the origin of the crude oil found on the coastline could not have originated from any other source such as a pipeline, refinery or oil tank, and that its origin must have been a passing oil tanker.

4.7 Investigation into the cause of the incident by the Israeli Authorities

4.7.1 The Israeli authorities began their search to identify the source of the oil spill and initially narrowed the search down to ten vessels, by discounting those vessels which were clearly not in the vicinity of the location of the spill origin. Subsequently, when it seemed that the spill occurred before 11 February and probably around 5 February (after reviewing satellite images and running an oil spill model), the circle of suspected vessels was broadened to 39 vessels, and then narrowed down to only tankers because of the laboratory results of the tar balls, indicating it was crude oil.

4.7.2 The Israeli authorities examined Automatic Identification System (AIS) data and satellite imagery which indicated that the only vessel which was identified to be sailing in the area of the spill around the estimated time of the incident was the *MT Emerald* (62 247 GT), a Panamanian-flagged tanker, registered in the Marshall Islands.

4.7.3 The Israeli authorities stated that there was no other source of crude oil in the Israeli EEZ nor any land pipeline which could be a possible source of crude oil, in the location indicated above.

4.7.4 The Israeli authorities collected samples of the oil spilled. These samples were analysed by the Israeli Institute for Energy and Environment and by The Hebrew University of Jerusalem. The result of the analysis indicated that the oil spilled was crude oil.

4.8 Investigations into the incident of the incident conducted by the 1992 Fund

4.8.1 In March 2021, the 1992 Fund engaged experts specialising in the analysis and fingerprinting of petroleum oil, to send an expert to Israel to collect samples of the tar balls for analysis. The collected samples were brought to the laboratory in the United Kingdom and subjected to analysis. In the absence of a reference sample of the source oil, further samples collected some three weeks prior to the expert's visit were also provided by the Israeli authorities for comparison purposes.

4.8.2 Following a range of analytical procedures and extensive literature review, the conclusions of the investigation were as follows:

- Both the samples collected by the Fund's experts and those sent for comparison by the Israeli Government were found to come from the same single source material. This shows that despite the wide geographic spread of the pollutant and the time period between samplings of the material, the pollutant oil originated solely from a single specific oil.
- The analytical evidence showed that the source oil for the pollution incident was a crude oil which, based on its chemical composition, most likely originated from washings of the cargo tanks of a crude oil tanker<sup><3></sup>.

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<3> Crude oil washing is a system whereby the cargo tanks on a tanker are cleaned out (normally) between voyages, not with water but with crude oil – the cargo itself. The solvent action of the crude oil makes the cleaning process far more effective than when water is used.

- Based upon the available data, the laboratory analysis results did not indicate that the source oil was likely to be Iranian crude in origin.
- The pollutant oil was found not to have undergone significant weathering, and evaporative loss calculations suggested the pollutant oil had only weathered for less than 24 hours, which was not consistent with the timeline of the appearance of the oil. However, there was a similar extent of weathering in the samples drawn by the Israeli authorities in the middle of February 2021 and those drawn by the Fund's expert in the middle of March 2021. Such extent of weathering did correlate with the pollutant being crude oil washings and not crude oil cargo.
- As a consequence of the pollutant being 'weathering resistant' crude oil washings, it could not be established when the spill actually occurred, nor whether the spill was due to fresh releases of 'old' oil or oil freshly ejected from a tanker at the time period identified during the Israeli investigation. However, the available data indicated that the oil could potentially relate to crude oil washings entering the Mediterranean in early February 2021.
- There are no crude oil platforms or pipelines in the area of the spill. Whilst there have been historical fuel oil and crude oil spills reported in the eastern Mediterranean, those for which details are publicly available took place many years ago and, therefore, the oil would have been much more weathered than the one collected in the samples. The composition of the sampled oil was consistent with crude oil washings which would, therefore, indicate that the source was a more recent illegal dumping from an unknown vessel and did not originate from a historical incident.
- Whilst it was not possible to determine the quantities involved in this case, a relatively small amount of tank washings pumped overboard could cause a pollution of the magnitude of this incident if it was spread over a large area. Based upon the reported quantity of material removed from the beach, if the pollution did result from crude oil tanker washings as the analysis results suggested, there could be sufficient pollutant oil pumped from a crude oil tanker after tank washing to cause the pollution.
- Crude oil washings are not stored in ballast tanks of tankers but are usually stored in the slop tanks. Therefore, crude oil washings could be carried in the slop tank(s) of a crude oil tanker at the same time as it was carrying a crude oil cargo in its cargo tanks; washings could be illegally ejected from the slop tanks without the cargo being affected.
- The oil phase of tank washings on a small tanker carrying heavy diesels can typically amount to 20 or 30m<sup>3</sup>. However, on a larger crude oil tanker, the oil phase after tank cleaning can typically amount to over 100m<sup>3</sup>. If the pollution resulted from crude oil tanker washings, as the analysis results indicated, there could certainly have been sufficient tank washings present on a crude oil tanker which, when ejected, would cause the level of pollution experienced.
- From an oil composition point of view, the analytical evidence available did not allow a direct link to be made to the oil having originated from the vessel suspected by the Israeli authorities of causing the pollution (the *MT Emerald*) between 1 and 2 February 2021. The experts concluded that, based on the nature of the oil, it could potentially have emanated from an ejection of crude oil washings from a tanker in early February 2021.

## 5 Limitation proceedings

No shipowner or insurer has been identified as liable for this incident under the 1992 CLC and no limitation proceedings have been commenced.

**6 Civil proceedings**

No legal proceedings have been commenced.

**7 Director's considerations**

- 7.1 At its October 2002 session, the 1992 Fund Executive Committee endorsed the Director's interpretation that the 1992 Fund Convention applied to spills of persistent oil, even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 CLC.
- 7.2 On the basis of the chemical analyses of the samples collected from the coast of Israel by the experts engaged by the 1992 Fund and the analysis of the samples obtained from the Israeli authorities, the polluting substance is crude oil.
- 7.3 A review of the existing information regarding possible alternative sources of crude oil in the region determined that the source of the pollution could not be an offshore oil field, subsea pipeline, oil terminal or any known previous oil spill incident which had occurred in the area.
- 7.4 Furthermore, the chemical analyses of the samples indicated that the oil had not undergone significant weathering. On the other hand, there appeared to be a similar extent of weathering in samples drawn in the middle of February 2021 and the middle of March 2021, which correlated with the pollutant being crude oil washings and compatible with a spill occurring in early February 2021, although the analytical evidence obtained could not at this point identify a specific ship as the source of the pollution.
- 7.5 In view of these considerations, the Director is satisfied that the polluting substance is crude oil and that the source of the pollution was a ship carrying oil in bulk as cargo engaged in the transport of crude oil.
- 7.6 The Director considers that the criteria to determine whether this incident could be classed as a spill from an unknown source (so called 'mystery spill') has been met and as a result, the 1992 Civil liability and Fund Conventions apply. The Director further considers that in the absence of the identity of a specific vessel as the source, the 1992 Fund is liable to pay compensation for this incident and, therefore, requests that the 1992 Executive Committee authorise him to pay compensation for admissible claims arising from this incident.

**8 Action to be taken**

The 1992 Fund Executive Committee is invited to:

- (a) take note of the information contained in this document;
  - (b) decide whether this incident is covered by the 1992 Civil Liability and Fund Conventions; and
  - (c) decide whether to authorise the Director to pay compensation in respect of this incident.
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