

# CONFLICT RISK NETWORK

## THE NEED FOR A UN-AUTHORIZED JOINT ESCROW ACCOUNT TO HOLD ONGOING PAYMENTS RELATED TO LIBYA'S OIL INDUSTRY

### Summary

Conflict Risk Network (CRN), a project of Genocide Intervention Network / Save Darfur Coalition (GINET/SDC), is calling on the United Nations to authorize the creation of a joint escrow account to hold ongoing payments related to Libya's oil industry. Until such funds are escrowed, they will remain accessible to Muammar Qaddafi and serve as a significant resource that he may use to fund violence against Libyan civilians and domestic opponents.

### Current sanctions fail to block the Qaddafi regime's access to a substantial source of funds

Shortly after the crisis in Libya began, the international community took steps to freeze the assets of Libyan leader Muammar Qaddafi and senior members of his government. On February 26, the United Nations Security Council imposed an arms embargo on Libya, froze the Qaddafi family's assets, and established a travel ban on senior members of the Libyan government.<sup>1</sup> The European Union passed sanctions with similar measures, and has recently introduced additional restrictions.<sup>2</sup> Despite their restrictions on transactions with the Qaddafi family, neither United Nations nor European Union sanctions prohibit payments to the Libyan National Oil Corporation (NOC). Measures implemented by the United States are more robust, blocking transactions with the Libyan government and entities under its control.<sup>3</sup> In response, several U.S. companies have halted business with Libya.<sup>4</sup>

These sanctions are a positive starting point towards restricting Muammar Qaddafi's access to funds, but do not go far enough in cutting his access to substantial resources. It is clear that the Qaddafi family, even if not legally in control of NOC, is linked closely to it and could access the considerable payments made to it by oil firms.<sup>5</sup> Even amid the current crisis, Libya is producing an estimated 400,000 barrels of oil per day – worth approximately U.S. \$40 million.<sup>6</sup>

### Payments to NOC should be prohibited, but business and contracts should be allowed to continue through a common escrow account

Given the significant funds still available to the Qaddafi regime through the NOC, regional and international bodies should expand their restrictions to prevent payments to the NOC, the Central Bank of Libya and other major government controlled institutions.

While the United Nations could halt Qaddafi's access to oil funds by prohibiting the trade of Libyan oil, blanket sanctions would likely exacerbate the recent spike in oil prices, which have risen dramatically since mid-February.<sup>7</sup> According to UN Food and Agriculture Organization official, David Hallam, an increase in oil prices could also "...further exacerbate an already precarious situation in food markets."<sup>8</sup>

In order to avoid these effects while restricting Qaddafi's access to significant resources, CRN is calling on the United Nations to authorize the creation of a single escrow account to which payments to the

NOC, Central Bank and similar entities can be diverted. Until such an account is created, CRN is calling on companies to place all funds normally paid to such entities into individual escrow accounts. This appears to be what the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is advising, and some companies seem to be taking such steps already.

While company-specific escrow accounts could immediately stop further oil-related funding to the Qaddafi regime, they would create several problems that should be addressed through the creation of a central escrow fund:

- (1) An ad hoc constellation of individual escrow accounts would not compel the participation of firms from countries – including India, China and EU nations – that are still purchasing Libyan oil.<sup>9</sup> This would mean an ongoing flow of millions to Qaddafi, and a competitive disadvantage for companies that either choose to or are required by their home governments to halt payments to the NOC.
- (2) The existence of numerous escrow accounts dispersed across different countries and companies would be prohibitive to the independent monitoring required to ensure and confirm that funds do not flow to entities accessible to Qaddafi and his regime.
- (3) Without clear, unified and internationally agreed-upon parameters regarding when and to whom oil-related payments are acceptable, decisions about when to discontinue individual escrow accounts would fall to individual companies and governments. Uncoordinated decisions create the potential for others' measures to be undermined and diluted, and also expose companies to reputational risks.

### **Creating a common escrow account for oil-related payments**

CRN's call for the establishment of a UN-authorized escrow account has been raised by members of the Libyan opposition, British Foreign Secretary William Hague, and Canadian Parliamentarian Bob Rae, among others.<sup>10</sup>

Chapter VII of the United Nations Charter authorizes the United Nations Security Council to take non-force measures to provide for international peace and security.<sup>11</sup> As an adjunct measure to the existing UN sanctions regime, it is well within the powers of the United Nations to create such a fund. The United Nations may also use powers granted under Chapter VIII of the United Nations Charter to authorize regional organizations,<sup>12</sup> such as the Arab League, African Union, or the Organization of the Islamic Conference, to create a fund.<sup>13</sup>

A unified international escrow account for oil-related payments would do the following:

- (1) Close a gap which undermines the impacts of currently disparate sanctions regimes. The international reach of a common escrow account would extend to the millions in payments that Chinese, Indian and EU companies are still making to the NOC, thereby meaningfully restricting Qaddafi's access to oil-related funds.
- (2) By holding payments in a common, one-stop location, a single escrow account would allow for transparency and monitoring that would ensure payments are not made to groups who may be committing abuses against civilians and would guard against the misappropriation of oil revenues.
- (3) Create a unified account that could be managed and accessed by an internationally recognized post-Qaddafi government in Libya.

- (4) Provide clear boundaries that would relieve individual companies from having to make unilateral decisions (for which their reputations will likely be held accountable) about when and to whom it is acceptable to make oil-related payments.
- (5) Prevent further unnecessary disruption in the international oil market by legitimizing Libya's ongoing output, which until recently constituted 2% of the world's total production.<sup>14</sup>

In authorizing a fund, the UN Security Council should do the following:

- 1) State that the fund will function to hold payments destined for the NOC and similar governmental entities, and that it will last only until an internationally recognized post-Qaddafi government in Libya.
- 2) Require that the fund continue to honor and not renegotiate existing contracts with foreign firms. The experience of the Iraq Oil-for-Food Program, where much corruption related to the Iraqi government's ability to dictate to whom it would sell oil,<sup>15</sup> demonstrates the need to honor existing term contracts with international oil majors and verify sales made during the fund's duration.
- 3) Require that credits and debits to the fund be monitored by an independent third-party (or third-parties), which would prevent funds from being transferred illicitly to improper parties.
- 4) Require that the fund not be used as a source for immediate humanitarian assistance. Some of the corruption seen in the Iraq Oil-for-Food Program related to the purchase of food and medical stocks in addition to the sale of oil. To protect against similar fraud, the United Nations and other international agencies, not the escrow fund, should ensure that the humanitarian needs of the Libyan people are provided for.

## Background

The crisis in Libya remains fluid, with fighting currently reported around major oil producing centers such as Ras Lanuf and the town of Zawiyah.<sup>16</sup> The ongoing cycle of attack and counter-attack suggests that the situation is moving towards a more protracted civil war between forces aligned with Qaddafi and a group of anti-Qaddafi rebels. The fighting has forced more than 250,000 people into the neighboring countries of Tunisia and Egypt.<sup>17</sup>

While this ongoing fighting near oil terminals has reduced the overall output of the Libyan oil industry, the country is still producing an estimated 400,000 barrels per day, down from an average production of 1.8 million barrels in 2010.<sup>18</sup> While most Libyan oil exports have ceased, there is still some production directed towards the domestic Libyan market,<sup>19</sup> and Sinopec subsidiary Unipecc and Austria's OMV AG appear to be continuing their purchases of Libyan oil.<sup>20</sup>

Petroleum exports provide the Libyan government with 80% of its revenues and 95% of its export earnings.<sup>21</sup> The bulk of the country's oil is exported to Europe, with Italy, Germany, and France representing the largest buyers, and exports to China and the United States representing approximately 15% of the total.<sup>22</sup> The 400,000 barrels of Libyan oil produced per day represents a potential value of U.S. \$40 million.<sup>23</sup>

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<sup>1</sup> "Security Council Resolution 1970 (2011)," United Nations Security Council, February 26, 2011, at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf>.

<sup>2</sup> "Council Regulation (EU) No 204/2011," L 58/1- 158-13, Official Journal of the European Union, March 3, 2011, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:058:0001:0013:EN:PDF>.

<sup>3</sup> "International Sanctions Against Libya," Akin Gump Strauss Hauer & Feld LLP, February 28, 2011, at <http://www.akingump.com/communicationcenter/newsalertdetail.aspx?pub=2695>.

- <sup>4</sup> Isabel Ordóñez, "Marathon Ceased Making Tax, Royalty Payments to Libyan Government," Dow Jones, March 4, 2011, posted on Nasdaq, at <http://www.nasdaq.com/asp/stock-market-news-story.aspx?storyid=201103041100dowionesdjonline000441&title=marathon-ceased-making-tax-royalty-payments-to-libyan-government>; Dmitry Zhdannikov, "Exxon stops all Libya oil trade: sources," Reuters, March 7, 2011, at <http://www.reuters.com/article/2011/03/07/us-libya-exxon-idUSTRE7264MU20110307>; "Canada imposes additional Libyan sanctions," CBC News, February 27, 2011, at <http://www.cbc.ca/news/politics/story/2011/02/27/harper-libya.html>.
- <sup>5</sup> Vivienne Walt, "Gaddafi's Son: Last Gasp of Libya's Dying Regime," Time, February 21, 2011, at <http://www.time.com/time/world/article/0,8599,2052842,00.html>; David Gunn, "Wikileaks exposes corruption of Gaddafi off-spring," The Scotsman, February 23, 2011, at <http://news.scotsman.com/news/Wikileaks-exposes-corruption-of-Gaddafi.6723191.jp>; Tom Bawden and John Hooper, "Gaddafi's hidden billions: Dubai banks, plush London pads and Italian water," Guardian, February 22, 2011, at <http://www.guardian.co.uk/world/2011/feb/22/gaddafi-libya-oil-wealth-portfolio>; "Gaddafi's son used Libya oil profits for personal gain, Wikileaks reveals," Reuters, March 10, 2011, posted on Haaretz, at <http://www.haaretz.com/news/international/gadhafi-s-son-used-libya-oil-profits-for-personal-gain-wikileaks-reveals-1.348349>.
- <sup>6</sup> James Risen and Eric Lichtblau, "Hoard of Cash Lets Qaddafi Extend Fight Against Rebels," New York Times, March 9, 2011, at <http://www.nytimes.com/2011/03/10/world/africa/10qaddafi.html>; <http://www.google.com/hostednews/afp/article/ALeqM5ifEwHawNe9AoQ3iv8YAyBJ9FP3A?docId=CNG.5a4c8cec946c1d67ba07611801ac90e4.671>; "Libya Country Analysis Brief," U.S. Energy Information Administration, February 2011, at <http://www.eia.doe.gov/countries/cab.cfm?fips=LY>.
- <sup>7</sup> "Short-Term Energy Outlook," U.S. Energy Information Administration, March 8, 2011, at <http://www.eia.doe.gov/emeu/pub/contents.html>.
- <sup>8</sup> Alessandra Rizzo, "UN: Food prices hit record high in February," Associated Press, March 3, 2011, posted on the Washington Post, at <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/03/AR2011030301322.html>.
- <sup>9</sup> Javier Blas, "Oil Millions still flow for Gaddafi," Financial Times, March 4, 2011, at <http://www.ft.com/cms/s/0/1d72af02-46a5-11e0-967a-00144feab49a.html#axzz1G19Qxfbw>; Alaric Nightingale, "Libya Oil Cargoes Still Moving From Ports, World's Biggest Shipbroker Says," Bloomberg, February 28, 2011, at <http://www.bloomberg.com/news/2011-02-28/libya-oil-cargoes-still-moving-from-ports-world-s-biggest-shipbroker-says.html>.
- <sup>10</sup> Adrian Blomfield, "Libya rebels resume oil exports," The Telegraph, March 1, 2011, at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8353667/Libya-rebels-resume-oil-exports.html>; Simon Tisdall, Patrick Wintour and Richard Norton-Taylor, "Barack Obama raises pressure on Qaddafi as no-fly zone gains support," Guardian, March 7, 2011, at <http://www.guardian.co.uk/world/2011/mar/07/obama-raises-pressure-on-gaddafi>; "Canada could contact Libyan rebels: Cannon," CBC News, March 7, 2011, at <http://www.cbc.ca/news/canada/story/2011/03/07/pol-pressure-libya.html>.
- <sup>11</sup> "Charter of the United Nations: Chapter VII," United Nations, 2011 at <http://www.un.org/en/documents/charter/chapter7.shtml>.
- <sup>12</sup> "Charter of the United Nations: Chapter VIII," United Nations, 2011, at <http://www.un.org/en/documents/charter/chapter8.shtml>.
- <sup>13</sup> These organizations are authorized to take all actions necessary to achieve peace and security by the Statute of the Arab League Peace and Security Council (Article VI), the Constitutive Act of the African Union (Article 4), and the Charter of the Organization of the Islamic Conference (Chapter XV, Article 28) respectively. See "Statute of the Arab Peace and Security Council (Unofficial Translation)," League of Arab States, 2011, at [http://www.arableagueonline.org/las/picture\\_gallery/PeaceSecurity2.pdf](http://www.arableagueonline.org/las/picture_gallery/PeaceSecurity2.pdf); "The Constitutive Act," African Union, 2000, at [http://www.africa-union.org/about\\_au/constitutive\\_act.htm](http://www.africa-union.org/about_au/constitutive_act.htm), and "Charter of the Organization of the Islamic Conference," p. 12, Organization of the Islamic Conference, 2008 at <http://www.oic-oci.org/is11/english/Charter-en.pdf>.
- <sup>14</sup> "Libya Country Analysis Brief," U.S. Energy Information Administration, February 2011, at <http://www.eia.doe.gov/countries/cab.cfm?fips=LY>.
- <sup>15</sup> Sharon Otterman, "IRAQ: Oil for Food Scandal," Council on Foreign Relations, October 28, 2005, at <http://www.cfr.org/iraq-oil-food-scandal/p7631>.
- <sup>16</sup> "New air raids hit Libyan oil city," Al Jazeera, March 9, 2011, at <http://english.aljazeera.net/news/africa/2011/03/201139138156335.html>.
- <sup>17</sup> "Libyan Arab Jamahiriya: Unrest Situation Report No. 10," OCHA, March 10, 2011, posted on Reliefweb, at [http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-8EU2RN/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-8EU2RN/$File/full_report.pdf).
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- <sup>19</sup> Blanche Gatt, "Eni Is Still Serving Libya 'Domestic' Market, Scaroni Tells FT," Bloomberg, March 8, 2011, at <http://www.bloomberg.com/news/2011-03-09/eni-is-still-serving-libya-domestic-market-scaroni-tells-ft.html>.
- <sup>20</sup> Humeyra Pamuk, "Libya sanctions to hit shipping - tanker owner - Interview - Update 2," Reuters, March 9, 2011, posted on Forexyard.com, at <http://www.forexyard.com/en/news/Libya-sanctions-to-hit-shipping-tanker-owner-2011-03-09T155239Z-INTERVIEW-UPDATE-2>; Sylvia Westall, "Update 2 - Austria's OMV buying small amounts of Libyan crude," Reuters, March 9, 2011, at <http://www.reuters.com/article/2011/03/09/libya-omv-idUSLDE7281O220110309>.
- <sup>21</sup> James Kirkup, "Libya: British plans to strip Gaddafi of oil revenue," The Telegraph, March 8, 2011, at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8369240/Libya-British-plans-to-strip-Gaddafi-of-oil-revenue.html>.
- <sup>22</sup> "Libya Country Analysis Brief," U.S. Energy Information Administration, February 2011, at <http://www.eia.doe.gov/countries/cab.cfm?fips=LY>.
- <sup>23</sup> James Risen and Eric Lichtblau, "Hoard of Cash Lets Qaddafi Extend Fight Against Rebels," New York Times, March 9, 2011, at <http://www.nytimes.com/2011/03/10/world/africa/10qaddafi.html>; <http://www.google.com/hostednews/afp/article/ALeqM5ifEwHawNe9AoQ3iv8YAyBJ9FP3A?docId=CNG.5a4c8cec946c1d67ba07611801ac90e4.671>; "Libya Country Analysis Brief," U.S. Energy Information Administration, February 2011, at <http://www.eia.doe.gov/countries/cab.cfm?fips=LY>.