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Libyan fuel smuggling: a Swiss trader sailing through troubled waters

Libyan fuel smuggling: a Swiss trader sailing through troubled waters | A Public Eye and TRIAL International Report, March 2020, 20 pages.
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COVER PICTURE Entrance of the Grand Harbour of Valletta. © TRIAL International/Montse Ferrer

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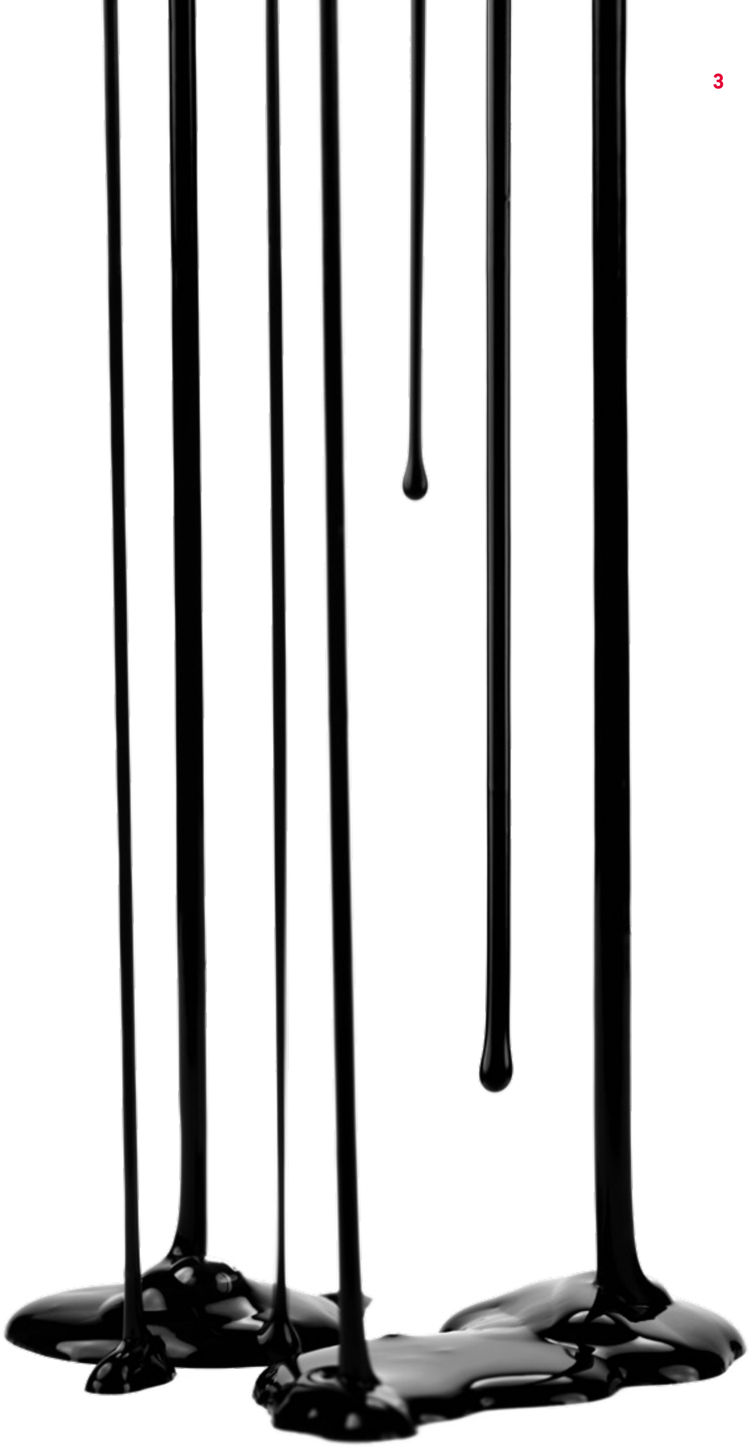


In Libya, a country that has been torn apart and bled dry since the fall of Colonel Gaddafi, international criminal networks with connections to Europe and Switzerland make big profits through fuel smuggling. Public Eye and TRIAL International uncovered business transactions in 2014 and 2015 between the Swiss trader Kolmar Group AG and a network accused of smuggling whose main players are now facing trial. This is the story of a long-running investigation in Switzerland, Malta and Sicily.

A Libyan hell in a smuggler's paradise

Imagine a giant supermarket filled with illicit goods, where militia armed to the teeth and backed by transnational criminal groups and corrupt politicians go shopping. There is the sinister migrant smuggling 'aisle', as well as other aisles for traffic of weapons, vehicles or foodstuffs. Everyone is rushing to get their slice of the cake in one of the most booming sectors: the traffic of subsidised petroleum products, primarily gasoil imported into Libya and then diverted from local refineries.

Since the fall of Colonel Muammar Gaddafi in 2011, Libya has not had a moment's rest. The country is divided: in the west, Fayez al-Sarraj's Tripoli-based Government of National Accord (GNA) is the only executive body recognised by the international community. In the east, based out of Benghazi, General Khalifa Haftar's forces control the Libyan National Army (LNA). They are openly backed by Saudi Arabia, Egypt, the United Arab Emirates, and covertly supported by Russia and France.

> Due to the illicit export of gasoil, the Libyan population faces fuel shortages on a regular basis.

In April 2019, Haftar launched an offensive on Tripoli, sending the peace accords signed in late 2015 up in flames. Since then, his men now occupy the south of the capital and have seized control over Sirte. Military clashes and drone strikes happen on a daily basis. On 8 January the two parties accepted what appears to be a very fragile truce[1] under pressure from Russia and Turkey, who openly supply weapons to the GNA. However, an international summit[2] held in Berlin on 19 January resulted only in declarations of intent. Negotiations are ongoing in Geneva. To date, the civil war has claimed 11,000 victims and more than 400,000 people have been internally displaced.

BLACK GOLD – THE HEART OF THE CONFLICT

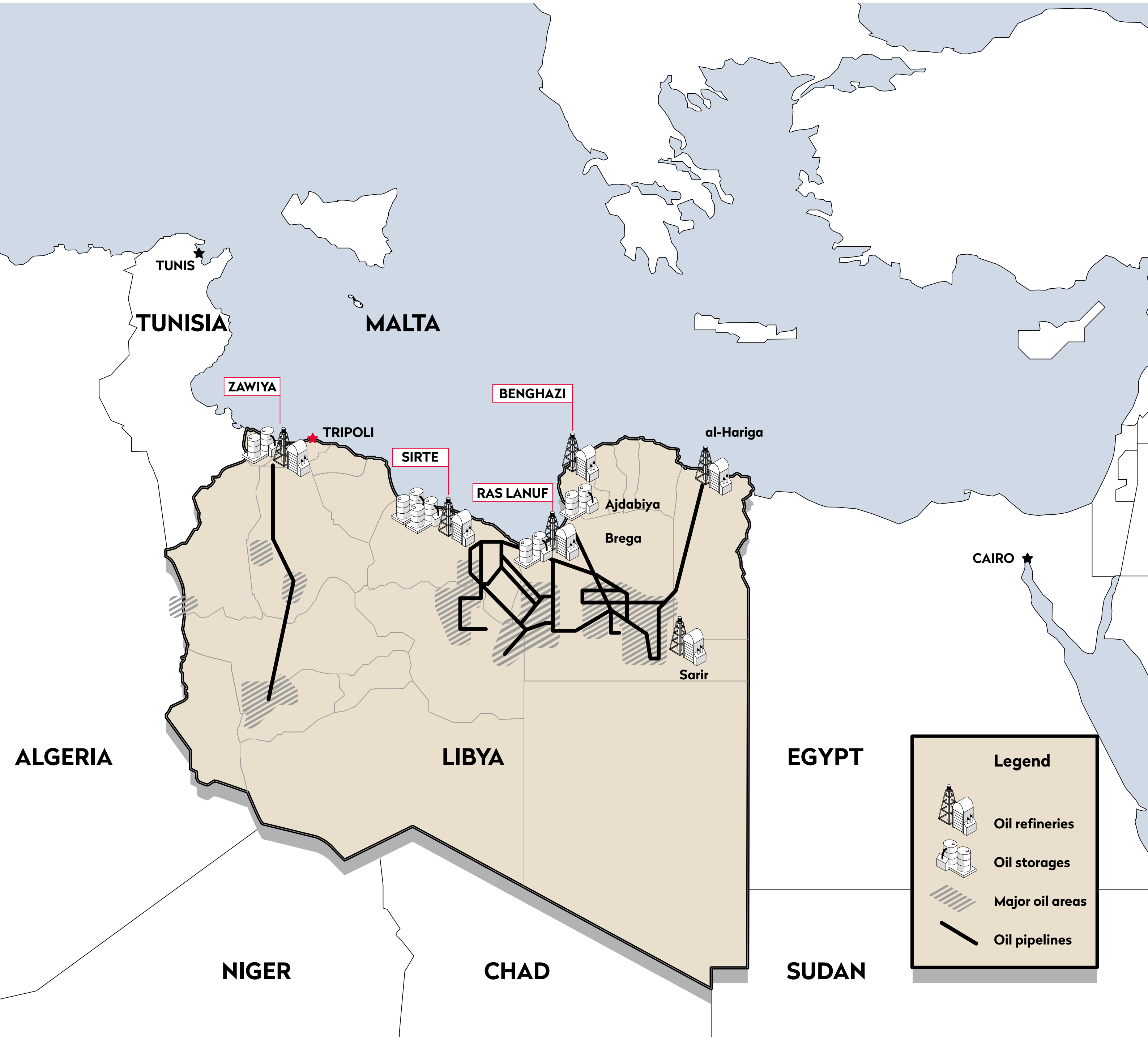
The fratricidal conflict ultimately boils down to control over the country's oil resources. Libya has the largest oil reserves in Africa, with current production levels at over a million barrels per day, down from 1.7 million barrels under the Gaddafi regime.

The National Oil Corporation (NOC), Libya's national oil company and once a single entity, has suffered serious territorial challenges[3]. Today, two rival entities oppose each other. First is the Tripoli-based 'western' NOC, which is supported by the UN and the international community and is the only institution authorised to sign export contracts of Libyan crude oil. It also has a monopoly on the import and export of petroleum products. Secondly, the 'eastern' NOC is based in Benghazi, the region where 80% of Libya's oil fields are located. It regularly attempts to export crude oil without authorisation from Tripoli in order to fund arms purchases for General Haftar's troops.

Since 2014, the UN Security Council has done everything in its power to prevent illegal sales of crude oil – yet the smuggling of refined petroleum products has continued to thrive. Since 2011, as the conflict has significantly reduced the country's refining capacity, Libya has been forced to import fuel every year. Between 2013 and 2017, the state spent the colossal sum of USD 23.5 billion on imported petroleum products. To provide the population with fuel at affordable prices, it is massively subsidised by the central bank[4]. According to the Libyan Audit Bureau, the central bank spent USD 30 billion in subsidies between 2012 and 2017. The situation has been a boon for smugglers who are able to make generous margins by reselling very cheap products abroad.

HARD HIT ON THE POPULATION

Smuggling has disastrous consequences for the population. Every day, long queues form at petrol stations. In hospitals, the lack of fuel to run generators has led to the death of patients and new-born babies. And in the cold months of winter, the use of defective charcoal stoves has led to the suffocation of families[5]. Electricity cuts are constant.



At the time, armed groups were fighting over control of the country's important oil infrastructure. | © opak – grafik & illustration

An ‘international buyer’ based in Zug

It is 18 April 2018. An international summit on combatting the theft of oil and refined products is held at a large hotel in Geneva. A small man with a trimmed beard addresses the conference from a stage – it is Mustafa Sanalla, the chair of the Tripoli-based NOC. Since his appointment in 2014, the straight-talking, high-level, Libyan civil servant has taken every opportunity to denounce the scourge of fuel smuggling, which, in his words, ‘is bleeding the Libyan economy and prolonging the armed conflict’.

In the course of their investigation, Public Eye and TRIAL international discovered that among the ‘international buyers’ was Kolmar Group AG, a Swiss company trading in raw materials.

Mustafa Sanalla is heated: ‘It gives me no pleasure to be here as the representative of a country where fuel smuggling is so prevalent, and where fuel smugglers are able to grow fabulously rich at the expense of ordinary law-abiding Libyan citizens’[6], he says to a sea of suited-and-booted experts, listing figures designed to prey on people’s consciences. He estimates that between 30 and 40 percent of the annual fuel imported or refined in Libya every year is either stolen or re-sold as contraband in Libya’s neighbouring countries or Europe. According to Sanalla, this represents an annual revenue loss of USD 750 million from state coffers. ‘Imagine what could be achieved to improve the lives of ordinary Libyans with such a huge sum – hospitals, medication, schools, housing’[7], urges Sanalla. He stresses a crucial point: ‘Remember, if there is no international buyer for Libyan fuel, there can be no smuggling.’[8]

A LENGTHY INVESTIGATION

Public Eye and TRIAL International spent over a year investigating in Switzerland, Malta and Sicily. We discovered that one of these ‘international buyers’ is in fact a Swiss company – Kolmar Group AG– a large fuel and biofuels trader incorporated in Zug in 1997, where it has its headquarters (more information on Kolmar here). According to our findings, Kolmar received over 20 shipments of marine gasoil from Libya between the spring of 2014 and the summer of 2015. The company was supplied by a network of questionable individuals: Fahmi Ben Khalifa – alias ‘Fahmi Slim’ – previously condemned of drug trafficking in Libya and his partners Darren and Gordon Debono, two Maltese businessmen. The gasoil was delivered to storage units rented in Malta by the Swiss company.

In March 2016, the UN panel of experts on Libya identified Fahmi Ben Khalifa as the head of one of the most active fuel smuggling network in Libya. In the autumn of 2017, Catania’s Guardia di Finanza – a Sicilian police branch under Italy’s Ministry of Economy and Finance – managed to dismantle the network in its entirety. Libyan, Maltese and Italian nationals stand accused: Fahmi Ben Khalifa, Darren and Gordon Debono and seven other individuals have been charged with ‘transnational conspiracy to launder gasoil of illicit origin and fraud’. Their trial, which started in autumn 2018, is still ongoing in Syracuse, Sicily; the verdict is due to be announced in 2020. The accused face sentences of up to 20 years in prison. To date, Kolmar has not been brought into the case, despite the information brought to light by the Sicilian police.

The Italian investigation is undoubtedly the most ambitious police operation carried out in the Mediterranean in recent years. It could easily be turned into a new James Bond film…

Operation 'Dirty Oil'

In January 2015, Catania's Guardia di Finanza launched a vast, covert operation in Sicily, code-named 'Dirty Oil'. By tapping phone lines and tailing boats in the high seas, the police managed to identify suspected smugglers of Libyan fuel.

The legal documents that we were able to consult reveal that the Italians first took an interest in Fahmi Ben Khalifa, who was also involved in human trafficking. While investigating his entourage, the Italian investigators came across a former Maltese football star – Darren Debono. Officially, the former Valletta Football Club player had gone into the fishing business, opening the successful seafood restaurant the Scoglitti. Now known as the Porticello, the restaurant located in the Maltese capital of La Valetta was recommended by all the guidebooks at the time.

The police discovered that Darren Debono had purchased highly sophisticated satellite phones in Sicily using his company card, a rather bizarre purchase for an alleged fishing businessman. He controlled several companies, two of which are registered in Malta: Oceano Blu Trading Ltd and ADJ Trading Ltd. In the latter he associated himself with Fahmi Ben Khalifa, whose two petroleum tankers – the Basbosa Star and the Amazigh F – regularly travelled along the Libyan coast.

While the investigators were taking a closer look at the two men's business activities, they were alerted to possible irregularities in the movement of gasoil to Italy by the Italian petrol giant ENI, which had operated in Libya for several decades. In the midst of this, they identified another Maltese national: Gordon Debono[9], the football player's namesake, a Ferrari-driving businessman who boasts owning one in every colour available. His small trading company, Petroplus Ltd, chartered two ships: the Ruta and the Selay, which travel to Libya regularly. The trio have accomplices in Sicily.

> The Italian police investigated an alleged fishing businessman and found that he was in business with the owner of two petroleum tankers.

A WELL-OILED MACHINE

The Italian investigators laid out the network's modus operandi. The chain starts in Zawiya, a coastal town situated 45 km west of Tripoli, where the country's main refinery – run by Azzawiya Oil Refining Company, an affiliate of the NOC – is located. Fahmi Ben Khalifa, nicknamed 'the king of Zawiya', had struck gold. There, he cooperates with the Shuhada al Nasr

During its investigation, Guardia di Finanza followed smugglers' ships and was able to witness ship to ship transfers happening out of territorial waters. The second picture shows the Amazigh F (at the time the Sea Master X), which was owned by the smuggling network. | ©Stills from a video by Guardia di Finanza brigade, which is supposed to guard the facility but in reality takes a cut of the profits from smuggling activities. The armed group's reign of terror also involves in human trafficking[10]. In June 2018, the UN Security Council and the US Office of Foreign Assets Control imposed sanctions[11] on the brigade's leader Mohammed Kachlaf and five other heads of migrant smuggling rings in Libya.

The gasoil, imported from Europe and then subsidised to make the product affordable for the local population, is diverted from the refinery tanks and transported in trucks to the ports of Zuwara and Abu Kammash, where Fahmi Ben Khalifa has built a makeshift oil terminal. Small fishing boats loaded with the product then set sail and unload their shipments onto Darren and Gordon Debono's oil tankers, which are waiting along the Libyan coast. These ships then sail to Malta or Sicily, with some transferring their cargo to larger oil tankers. The Guardia di Finanza filmed some of these ship-to-ship transfers, which were posted to their Twitter account.

In March 2016, the UN Panel estimated that fuel smuggling was one of the country's armed groups' main sources of funding, alongside human trafficking and arms smuggling. They estimate that it employs some 500 people through approximately 20 networks.

DIRTY FUEL IN PETROL PUMPS

While tracking Debono's four ships from June 2015 to June 2016, the Italian investigators discovered that Maxcom Bunkers SA, a company based in Augusta, Sicily, was the main recipient of the 82,000 tonnes of smuggled fuel. The fuel was bought for EUR 27 million, although the same volume would be worth EUR 51 million at market price. According to our estimates, the product was sold for EUR 0.28 per litre instead of the 53 cents in the official market.

In Libya, this type of 0.1 % gasoil – i.e. gasoil with a sulphur content of 1,000 ppm max. – can be used to power cars. But in Europe, applicable standards only allow this type of fuel for maritime use. According to the Italian investigators, this fuel, mixed with other components, was sold in petrol stations in Italy, France and Spain, even though it is unfit for automobile consumption in Europev[12].

The Dirty Oil investigation stopped at the Italian borders and only covered a short period of time, from June 2015 to June 2016. As a result, a chapter of the story was left in the dark: Kolmar's adventures in Malta and the Zug-based company's collaboration with Ben Khalifa's network starting in the spring of 2014.

The gasoil was diverted from the oil refinery in Zawiya, which was under the control of the Shuhada al Nasr brigade. | @ Google Earth

Kolmar's suspicious payments

The name Kolmar does not appear in the indictment submitted to the court in Catania, a 284-page document of which we obtained a copy. Yet, the Italian investigators did uncover some concerning facts. Colonel Francesco Ruis, head of the Guardia di Finanza, confirmed that at one point in time he had been interested in the Zug-based company because it had an office in Milan. 'Kolmar was a close partner of Gordon and Darren Debono through its bunkering activities [i.e. supplying fuel for ships] in Malta' he told us, while refusing to comment further on the matter. Another source close to the case explained that the links with Italy had ultimately been considered too tenuous to warrant a case being opened there. 'At the time, we were not able to prove that the Libyan products bought by Kolmar had been sold in Italy,' he added.

> In 2018, three journalists published a investigative report mentioning the name of the swiss company Kolmar in connection with gasoil smuggling.

In spring 2018, the name Kolmar was however mentioned by the media in connection with the smuggling. Three journalists of the Investigative Reporting Project Italy (IRPI) published an investigative report[13] on the smuggling of Libyan fuel through Malta, providing details of operation Dirty Oil, which was ramped up in the wake of the death of Maltese journalist Daphne Caruana Galizia. The investigation sought to pay tribute to Galizia, who was assassinated by a car bomb on 16 October 2017 and who was, at the time, investigating a number of issues including gasoil smuggling through Malta.

In the middle of a paragraph of IRPI's article and with no further clarification, we learn that Kolmar was renting an oil storage unit in Malta in which 'at least one of the Debono Group's tankers offloaded a shipment of smuggled fuel.' The journalists reported on 'substantial payments' made by Kolmar to 'one of Darren Debono's companies' and wrote that these payments were analysed by the Italian police. At the time, the Zug-based company did not respond to a request for comment.

FOLLOWING KOLMAR'S TRACKS

We managed to dig up the 'substantial payments' noted by the Italian journalists. A well-informed Maltese source provided us with a copy of a bank statement from Oceano Blu Trading Ltd, one of the companies linked to Darren Debono, which had accounts at the Banif Bank in Malta. It shows that from 18 June to 22 July 2015, Kolmar made 11 transfers totalling over USD 11 million to the small company registered in the town of San Gwann, in the outskirts of the Maltese capital. No information is given regarding the reason for these transfers or the identity of the bank from which they originated.

Oceano Blu Trading Ltd was run by Darren Debono until May 2014. It was then administered by Nicola Orazio Romeo, an Italian national suspected of having links to the Sicilian mafia and who is also accused in the Catania legal case. According to an Italian legal source, if the two men were indeed working together, there is no doubt that the former Maltese footballer was the one dealing with the Libyan side of the business. During their investigation, the Italian police identified Oceano Blu Trading Ltd as one of the main companies used by the Ben Khalifa network, which strengthens the hypothesis that the USD 11 million paid by Kolmar corresponds to the purchase of Libyan fuel from this network.

KOLMAR AND ITS MALTESE STORAGE TANKS

Malta has always been a strategic location for companies involved in the trade of petroleum products in the Mediterranean. The small island is located at the crossroads of several maritime routes and its oil terminals are in high demand. Kolmar set up shop there in 2012, thereby launching, according to its own LinkedIn page, a new business in the 'gasoil blending, breakbulk cargoes, cargo supply in Med' sector.

The Zug-based firm offered bunkering services, providing marine gasoil to barges that operated as floating petrol stations shuttling between Malta's port and the coast where vessels stopped to refuel. It also blended products onshore, a practice that consists of mixing fuels to alter their quality, but which can also enable those with fewer scruples to hide the origin of their products.

Several Maltese sources who work in the sector witnessed the rise of the Zug-based company in the island. The issue is so sensitive that these people were only willing to testify anonymously. One of them told us that 'Kolmar was supplying fuel to ships, but this business was not sufficiently profitable due to a high number of competitors. Therefore, their tanks in Malta also became a place where smuggled Libyan petroleum products were stored and blended,' says one of the sources. The purpose of blending: 'to conceal the Libyan origin of the product.'

'The smuggling of fuel from Libya via Malta picked up around late 2013 and early 2014, peaking in 2016,' says another observer. He added that 'there were two phases: petroleum products are first delivered to terminals in Malta, after which the ships move along the coast of Malta to the edge of Maltese territorial waters – to an area called Hurd's Bank [a more shallow area where passing ships can lay anchor to resupply or transfer goods] to make ship-to-ship transfers'. It was during the first phase, starting in the spring of 2014, that Kolmar made a name for itself.

We travelled to Malta, where the Zug-based company was able to operate under the radar for over a year, while neither the Italian nor the UN investigators noticed the Ben Khalifa network.

KOLMAR: A FLAGSHIP FROM ZUG IN MARC RICH'S EMPIRE

To date, Kolmar Group AG has attracted very little attention. The private company was set up in Zug in 1997 under the name Kolmar Petrochemicals AG and was initially active in the petrochemicals trade. According to its incorporation documents, one of its founders is the renown Marc Rich – Marc Rich & Co Holding GmbH – founder of Glencore, which at the time was represented by Moshe Michael Glass. Its two other shareholders are ChemCore SA, owned by Ruth Sandelowsky, a former Phibro employee (the company where Marc Rich started his career), and the Swiss fertilizer giant Ameropa, which is owned by Andreas Zivy[14].

Kolmar has since grown and been restructured. It entered the petroleum products trade in the early 2010s. Ruth Sandelowsky, currently CEO, and her partner, Rafael Aviner – domiciled in the United States – run the show, though the current shareholders are not publicly disclosed. We do however know that the corporate lawyer Josef Bollag, Ukraine's honorary consul in Zug, was on the company's board until July 2019.

Kolmar gained a foothold as one of the small flagships of the Canton of Zug. This image is confirmed by visiting the canton's business promotion website, which prominently features a nice quote from Ruth Sandelowsky, promoting the authorities of the Canton of Zug as 'by far the most professional that I have experienced during my long career.' She adds that Kolmar was 'welcomed with open arms'.

The company is not quite on par with large traders like Glencore or Trafigura, but it is an important player in the biofuel market. It has 250 employees and, according to the most recent figures, in 2013 its annual turnover was nearly USD 8 billion. A member of the Swiss Trading and Shipping Association (STSA), Kolmar is present in some 20 countries, including Singapore and the United States, where it opened a branch and purchased a biofuels plant in Connecticut in 2016[15].

Follow the ships

It's not a very impressive place. A small motorboat drops us off at a slightly dilapidated quay where fishermen have thrown their rods into the water. Tourists usually take a water taxi to admire the beautiful landscape and visit the port of the Grand Harbour, the natural harbour that borders the Xiberra peninsula, home to Malta's capital of La Valetta. We asked to veer off towards the port and industrial facilities – the area is full of cranes and rusty, old ships are docked. We want to locate the Ras Hanzir installation and above all understand where its contents come from.

We get there. Under the curious gaze of fishermen, we take several pictures of stilts that allow ships to dock and unload their shipments into the Ras Hanzir tanks, or to replenish their supplies. In English, this structure is called a 'dolphin'.

Between 2012 and 2015, the Zug-based company Kolmar AG rented eight fuel tanks in Ras Hanzir.

From October 2012 to December 2015, Kolmar was the exclusive leaser. Having won several calls for bids, the Zug-based company rented Ras Hanzir's eight fuel tanks. This fact was officially confirmed by Enemed Co Ltd, the Maltese state-run petroleum company that owns them. From July to December 2015, Kolmar also occupied all five of the fuel tanks belonging to the Has Saptan underground storage facility, which is located by the airport. We obtained this information from a Maltese journalist who relied on Malta's Freedom of Information Act (FOIA), the country's transparency law.

Alongside activities seeming perfectly legal, we documented a strange pattern of tankers that left Libya near Zawiya, where the Ben Khalifa network operated, and offloaded 22 times at two dolphins where the Kolmar tanks were replenished.

FOLLOWING THE SHIPS' TRACKS

During his speech in Geneva in October 2018, Chairman of the Tripoli NOC Mustafa Sanalla insisted that there are effective technical means to collect data on ships used by smugglers. 'There is more information available from AIS systems, satellite imagery, automated ship registries and shipborne radars', he suggested, encouraging the international community to make use of them.

We did just that, aggregating data provided by vessels' Automatic Identification System (AIS). This system for the exchange of automated messages between ships by high-frequency radio makes it possible to discover the identity, status, position and course of ships. It is considered a reliable tool and frequently used by law enforcement agencies in the United States and Europe to track smugglers.

The American NGO C4ADS, which specialises in analysing complex data, helped us analyze the comings and goings of three tankers between Malta and Libya: the ships Amazigh F, Ruta and Selay, all chartered by Darren and Gordon Debono. Their movements from the Libyan coast between June 2015 and June 2016 had already been pinpointed by the UN and analysed by the Guardia di Finanza investigators.

We were interested in an earlier period: from spring 2014 to December 2015 (the date when Kolmar apparently ceased its activities in Malta). The result is shocking: from 27 May 2014 to 18 July 2015 we discovered that Ruta, Amazigh F and Selay offloaded marine gasoil 22 times at the dolphins of Ras Hanzir (19 times) and Has Saptan (3 times) at a time when Kolmar was leasing these storage units. The Maltese state-owned Enemed confirmed that a total of 50,911 MT were offloaded on these occasions. In most cases, the tankers were returning from the

Date	From	To	Amount (USD)
18.06.2015	Kolmar Group AG	Oceano Blu Trading	993600
22.05.2015	Kolmar Group AG	Oceano Blu Trading	489927,95
24.06.2015	Kolmar Group AG	Oceano Blu Trading	1074450
25.06.2015	Kolmar Group AG	Oceano Blu Trading	386085,15
06.07.2015	Kolmar Group AG	Oceano Blu Trading	2138256,5
06.07.2015	Kolmar Group AG	Oceano Blu Trading	329089,71
08.07.2015	Kolmar Group AG	Oceano Blu Trading	489093,5
08.07.2015	Kolmar Group AG	Oceano Blu Trading	722778,63
15.07.2015	Kolmar Group AG	Oceano Blu Trading	1295961,34
22.07.2015	Kolmar Group AG	Oceano Blu Trading	1213363,27
22.07.2015	Kolmar Group AG	Oceano Blu Trading	2010658,85
		TOTAL	**11143264,9**

Details of payments from Kolmar Group AG to Oceano Blu Trading Ltd. | @Public Eye

The ships that offloaded Libyan gasoil for Kolmar Group AG docked 19 times in the Ras Hanzir dolphin.

Libyan coast where, interestingly enough, they had taken care to switch off their AIS system for several hours or even days, thereby enabling the smugglers to temporarily fall off the radar.

We checked this data against the bank transfers made by Kolmar to Oceano Blu Trading Ltd. The overlap between the dates is striking. From 15 June to 17 July 2015, the Amazigh F and the Selay moored at the Ras Hanzir and Has Saptan dolphins nine times. On nearly the same dates, i.e. from 18 June to 22 July 2015, the Zug-based company transferred over USD 11 million to Darren Debono's company.

ARE THE PAPERS IN ORDER?

As we learned, in order to import fuel from Libya, the Swiss trader provided the Maltese customs authorities with seemingly complete documentation. The documents provided included the certificates of origin by Tiuboda Oil Refining Company, the company belonging to Fahmi Ben Khalifa, who is identified by the UN panel as one of the most important smugglers in Zuwara. The Dirty Oil investigators came across these same certificates of origin. They were able to determine that they were fraudulent and created using the scanner of a Maltese company,


شركة تيبودا لتكرير النفط
Tiuboda Oil Refining Company
شهادة المنشأ

شركة تيبودا لتكرير النفط
TIUBODA OIL REFINING COMPANY
شهادة المنشأ
CERTIFICATE OF ORIGIN

Date: 20.03.2015 التاريخ:

The undersigned TIUBODA OIL REFINING COMPANY — نقر نحن شركة تيبودا لتكرير النفط
That the entire quantity of: GASOIL 0.1% S MAX — بان كامل الشحنة من :
Loaded on the M/T: AMAZIGH F. (7332488) — المنقولة على ظهر الناقلة:
Under Shipment GO/2015/OB-TB/GEN01 — تحت رقم"
Current quantity originating from oil production fields — هى من انتاج الحقول فى دولة ليبيا
OF LIBYA. Which has been at TIUBODA OIL REFINING COMPANY — و نواتج تكريرها فى شركة تيبودا لتكرير النفط

TOTAL QUANTITY الكمية الاجمالية

Metric tons	2978.25	طن مترى
Long tons	2931.21	طن طولى
Barrels	22050	برميل
Liters (G.S.V.)	3447.724	لتر

Fraudulent certificates of origin were provided by the smugglers to Kolmar for each shipment | © Public Eye

World Water Fisheries, which was run by Darren Debono. While Kolmar was active in Malta, the Maltese authorities accepted them without batting an eyelid.

'Despite their illicit Libyan origin, the customs authorities and the Libyan-Maltese chamber of commerce gave the green light to the re-export of the gasoil, either because they were incompetent or because they were also involved in the fraud', affirmed a connoisseur of these practices in Malta.

'NATIONALISING' GASOIL

The product was partly sold on the local bunkering market, where Kolmar supplied barges that came to fill up their tanks, as we were able to reconstruct based on AIS data. The smuggled fuel was also sold in Europe.

> Paying custom duties and other taxes allows anyone to blend smuggled fuel with european products, thus erasing the Libyan origin of the product.

'Our theory is that, like Maxcom Bunker SA [the Sicilian company charged by the Italian authorities as purchasing the smuggled Libyan gasoil], Kolmar was 'nationalising' the fuel in Malta in order to remove all traceability and resell it in Europe' explained an Italian legal source.

'When the fuel arrives to a European port, the importing company pays customs duties and other consumption taxes. It is then free to blend the fuel with European products and sell it in Europe as an EU product with a EUR1 certificate. The Libyan origin is no longer discernable on paper', he explains.

To whom was Kolmar reselling this gasoil? Our investigation did not get us all the way up the chain. The Swiss company left the island in early 2016. A few months later, Maltese customs finally decided to ban the import of Libyan gasoil into Malta, 'forcing Darren Debono to transfer his business to Sicily, where he was eventually caught by the Italian authorities,' according to one source.

Kolmar or the art of navigating troubled waters

At the time when the transfers were made by Kolmar to Oceano Blu Trading Ltd, from June to July 2015, neither the UN experts nor the Italian investigators had Fahmi Ben Khalifa and his Maltese partners on their radars. Could it be that the Zug-based company was unaware that it was doing business with a band of smugglers? Several facts lead us to believe it could not have been so – starting with the situation in Libya at the time.

By the summer of 2014, civil war had broken out between western and eastern Libya. For several months, oil infrastructure (terminals, pipelines and wells) had been regularly taken hostage by armed groups[16]. Crude oil production plummeted to 230,000 barrels per day. The country was forced to import more and more refined petroleum products and drastically reduce its exports[17], which could only be authorized by the Tripoli NOC. The ten or so testimonies we gathered from within the oil trading sector confirm that trading with Libya was – and continues to be – an extremely high-risk activity.

As explained by one Geneva-based trader, 'Since the fall of Gaddafi, purchasing Libyan fuel became a real headache. The risk is too high, and not just in terms of smuggling. If you send a tanker to Libya, you have no guarantee that it will be able to load its shipment on the set date due to the fighting. Having a ship standing still is very expensive. That's why the small and medium-sized enterprises cannot afford to work in Libya. Only the large trading houses can take on the risk'. He added that 'the large traders bought the official quotas of petroleum products sold by the NOC; the rest came from smuggling'.

MALTA: A DUBIOUS DESTINATION

The profession has a habit of staying abreast of even the smallest rumours. By the summer of 2013 onwards, it was known that Malta had become one of the main bases for smuggled fuel from Libya.

In July 2013, the daily newspaper Malta Today revealed that one ship, the MV Santa Maria – which is not connected to the Ben Khalifa network – was requisitioned as part of a Maltese investigation, which led to arrests[18]. Gordon Debono was cited as the owner of another tanker which was also implicated. The investigation, about which very little information has been made available, seems to have gone nowhere.

A year later, on 18 June 2014, then prime minister of Libya Abdullah al-Thinni met the Maltese ambassador in Tripoli[19] to complain about the fact that large quantities of smuggled fuel were being diverted to the island. 'This phenomenon is a threat to Libya and affects national security' he added, calling on his interlocutor to act swiftly. The information was picked up by numerous media outlets, including Reuters[20]. One month earlier, Kolmar had started to receive shipments of fuel from the Ben Khalifa network.

A CLEAR RED FLAG

Other elements should have also dissuaded the Zug-based company. During the Dirty Oil operation, the Guardia di Finanza discovered that the Ben Khalifa network was selling products at prices significantly below the market rate, which is one of the first warning signs in the trading sector. 'In our industry, any significant discount is automatically a red flag. A low price always means a high risk', says a former trader.

> At the time, Libya was importing petroleum products and its refineries were barely functionning. Purchasing fuel from the country 'should have been a clear red flag'.

'Libya was in flames. It was the time when Libyan refineries were barely functioning or were damaged. The country was importing petroleum products – not the other way around – so purchasing fuel from Libya should have been a clear red flag', stated a banker specialised in trading. 'I struggle to imagine that a bank would be able to fund that kind of transaction, especially when it comes to fuel from Libya' we were told by the former employee of a trading company who worked in the Mediterranean petroleum products market.

What about the bank that approved the transfer of over USD 11 million from Kolmar to Oceano Blu Trading Ltd? Even though the documents we have do not allow us to identify this institution, two sources informed us that the Zug-based company had – and allegedly still has – accounts at Credit Agricole Indosuez in Geneva, where it was given a credit line of CHF 100 million in recent years.

When contacted, Credit Agricole Indosuez (Switzerland) SA declined to confirm or deny its relationship with Kolmar, citing professional secrecy. The bank indicated that all of its financing activities 'are carried out in strict compliance with the laws and regulations of the countries where it operates'. It explained that it relies on a robust compliance framework, which enables it to fulfil all obligations related to combatting the funding of illicit activities.

The BNF Bank plc (formerly the Banif Bank [Malta]), which held Oceano Blu Trading Ltd's accounts, responded to us stating that 'due to confidentiality obligations, BNF Bank plc is not in a position to reply'.

RADIO SILENCE

Despite numerous requests for comment, Kolmar did not answer our questions. Darren and Gordon Debono and Fahmi Ben Khalifa, all three of whom we contacted through their respective lawyer, also did not respond to our requests.

For their part, the Maltese customs officers refused to comment, stating that there is an ongoing case. They did however highlight that whenever the Customs Department has a suspicion of any illicit activity and/or false documents being presented, the case is always referred to the police or other relevant competent authority.

The ships that offloaded Libyan gasoil for Kolmar Group AG docked 3 times in the Has Saptan dolphin.
© TRIAL International/Montse Ferrer

Epilogue for the smugglers

From 2015 onwards, the other shoe begins to drop. Outside Malta, several lights turned yellow. In a UN panel report published in February 2015[21], UN experts invited the Security Council to address the issue of fuel smuggling, as it was deemed 'of great importance to the resolution of the conflict'.

Six months earlier, in August 2014, the Libyan authorities had provided the UN with information on an illicit shipment: 2,845,380 tonnes of gasoil loaded along the Libyan coast following a ship-to-ship transfer operation. The UN experts described it as a 'new phenomenon, even a trend'. The ship in question was the Ruta, one of Gordon Debono's tankers. From the end of May to mid-June 2014, the ship offloaded Libyan gasoil at the the Ras Hanzir dolphin five times, where Kolmar was renting all of its gasoil tanks.

In autumn of 2015, Ann Marlowe, an American journalist specialized on Libya, published an exclusive investigation on the smuggler Fahmi Ben Khalifa in the Asia Times[22]. The article named some of his Maltese companies and the Amazigh F tanker. Despite this, Ben Khalifa, who enjoyed strong support, was still in the game. On 23 November 2015 he obtained a letter from Ali al-Gatrani, chair of the Economic and Trade Committee of the House of Representatives (Libya's recognized parliament at the time). Al-Gatrani, who is close to General Haftar, testified that Tiuboda Oil and Gas Services – the new name of the Tiuboda Oil Refining Company – was registered with the relevant authorities in September 2012. Fahmi Ben Khalifa continued his activities for a few more months.

But in the summer of 2016 everything went pear shaped. Ben Khalifa's protector, Ali al-Gatrani, made a full U-turn. In a letter to the Maltese government, he explained that subsidised Libyan petroleum products could not be exported by companies licenced for 'oil services'[23] – a thinly veiled reference to the activities of Tiuboda Oil and Gas Services. Three months later, the Tripoli NOC drove the point home by recalling that it had always been the sole entity authorised by law to import or export crude oil and its derivatives.

The party was over. After years of acquiescence, the Maltese customs authorities had finally decided to put an end to the import of Libyan gasoil into Malta[24], 'forcing Darren Debono to transfer his business to Sicily where he was later caught by the Italian authorities', explains one source.

Kolmar left the small island at the beginning of 2016.

Our conclusions

The smuggling of natural resources fuels wars around the world; Libya is no exception. Companies involved in mining and extracting, shipping and commodity trading play an essential role in creating a profitable market for such conflict resources. But taking part in this supply chain can amount to a war crime. If a company knowingly purchases a commodity that was stolen from a country at war, that company could be guilty of pillaging, a war crime under the International Criminal Court's Rome Statute (Article 8 (2)(e)(v)) and Swiss criminal law (Article 264g (c) of the Swiss criminal code).

WAS KOLMAR COMPLICIT IN PILLAGING?

Public Eye and TRIAL International's investigation shows that the (legitimate) NOC did not authorise the export of any fuel from the Zawiyah refinery, lest of all to the Ben Khalifa network. Rather, it was the Shuhada al Nasr Brigade, an armed group accused by the UN of exploiting and smuggling migrants, which allowed such fuel to be smuggled for its financial gain. The Italian investigators uncovered the network of front companies established by Ben Khalifa and his associates to smuggle Libyan fuel into Europe via Malta and Italy. All of that coupled with the bank statement showing that Kolmar paid over USD 11 million to Maxcom Bunker in just over a month, most likely in exchange for the offloading of fuel into Kolmar's onshore storage units in Malta, which we were able to trace in our investigation.

These findings show that the fuel was (1) stolen from a country at war and (2) was received by Kolmar despite many red flags. Given these facts, it is possible that Kolmar committed (or aided and abetted) the international war crime of pillage.

BINDING RULES FOR TRADERS

Beyond the question of Kolmar's criminal liability, this set of events provides a striking example of Swiss traders' habit of profiting from highly volatile situations. While civil war was raging in Libya and armed groups were fighting for control of the oil sector, the Zug-based company chose to do business with a tiny and obscure Maltese company with no experience in the oil business – even though the trading sector was aware of both the smuggling of Libyan fuel and the role played by Malta in relation to smuggling activities. The Kolmar case also demonstrates that deals between well-established trading companies and criminal networks take place.

BANKING SUPERVISION: A SPURIOUS ARGUMENT

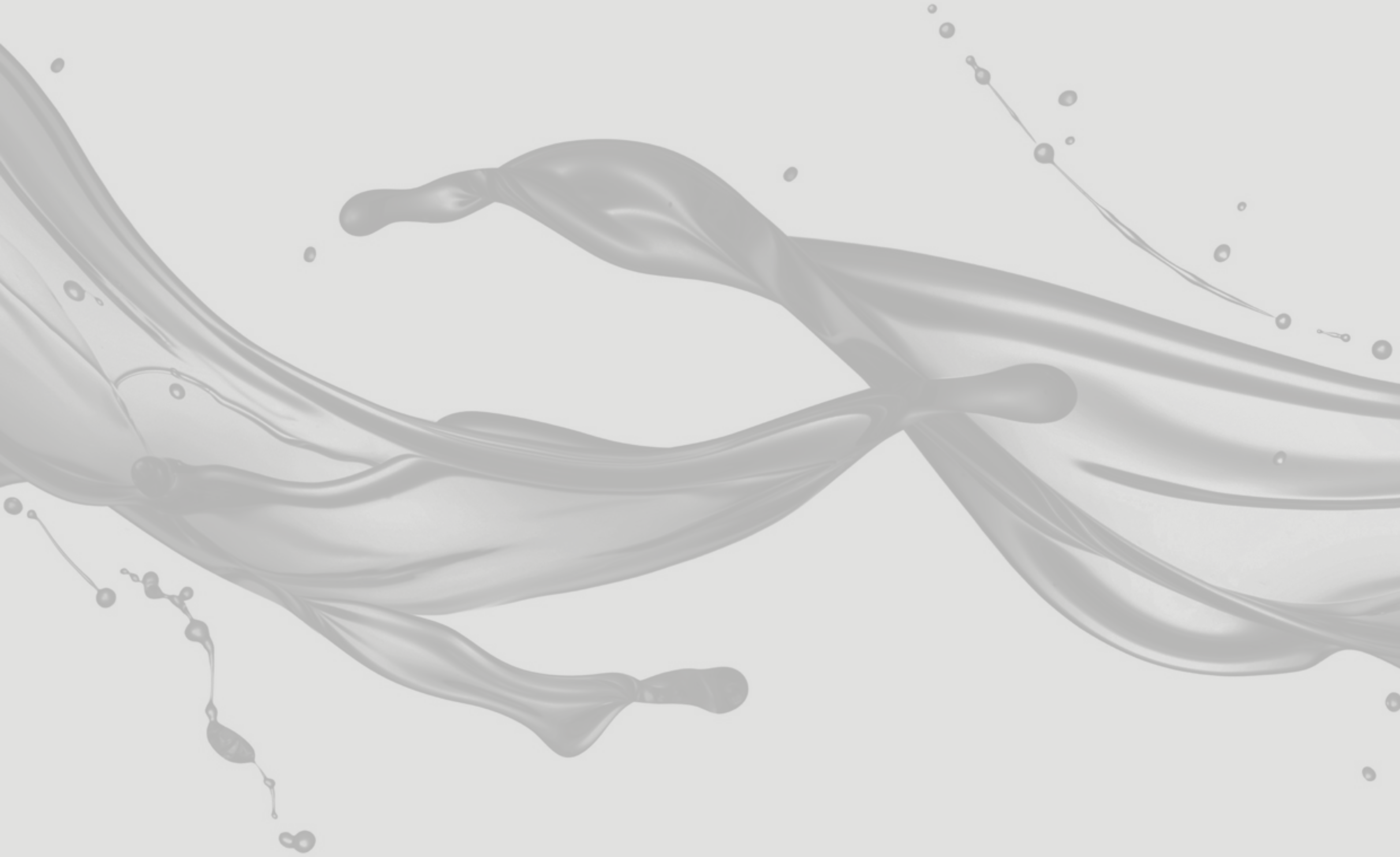
For their part, the banks involved apparently did not conduct sufficient due diligence. This case thus further demonstrates the extent to which it is unrealistic and irresponsible to rely on the banking establishment to exercise 'indirect supervision' over traders, as the Federal Council does. This is all the more so given that in the trading sector illegally sourced commodities can be 'laundered', as in the present case. It is therefore vital to impose heighted due diligence obligations on traders, in particular with regard to their business partners. By proposing the establishment of a dedicated supervisory authority for the commodities sector, ROHMA, Public Eye has exhibited how such an authority could lay down clear rules and sanction companies that fail to comply with them.

A UNIQUE OPPORTUNITY TO TAKE ACTION

A reasonable due diligence requirement with regard to human rights, as envisioned by the Responsible Business Initiative (and to a lesser extent by the counter-proposal put forward by the National Council), is crucial to put an end to these kinds of practices. Companies would be required to assess the risks posed by their activities abroad and take measures to mitigate these risks. The Organisation for Economic Co-operation and Development (OECD)'s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas details such a procedure. In their initial 2010 version, the guiding principles focused solely on certain conflict minerals. Five years later, the OECD Investment Committee decided to expand its guidance to all minerals, including petroleum.

If such non-binding provisions ('soft law') were transposed into Swiss national law, leaders would no longer be able to turn a blind eye, and would be obliged to prevent their businesses from contributing to serious human rights violations, such as those committed in the context of the civil war in Libya.

Malta offered a safe haven to Kolmar's shipments of illicit Libyan gasoil. | © Francesco Bellina



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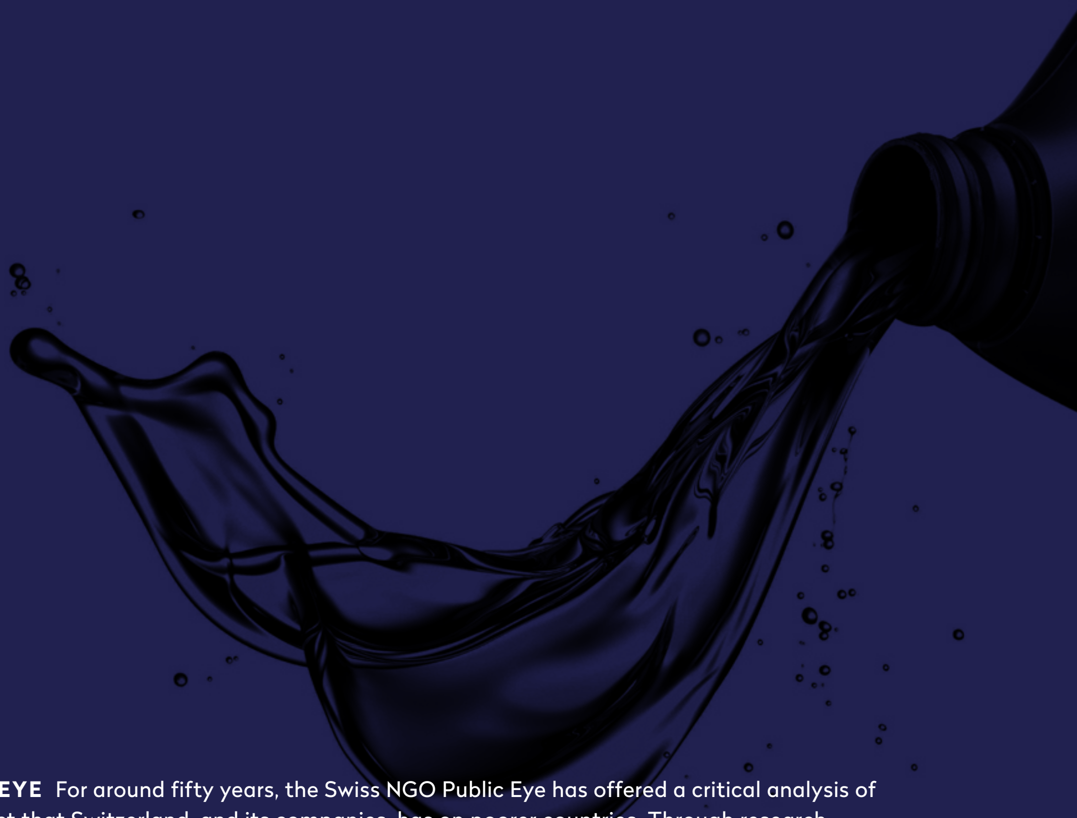
In Libya, a country that has been torn apart and bled dry since the fall of Colonel Gaddafi, international criminal networks with connections to Europe and Switzerland make big profits through fuel smuggling. Public Eye and TRIAL International uncovered business transactions in 2014 and 2015 between the Swiss trader Kolmar Group AG and a network accused of smuggling whose main players are now facing trial. This is the story of a long-running investigation in Switzerland, Malta and Sicily.



PUBLIC EYE For around fifty years, the Swiss NGO Public Eye has offered a critical analysis of the impact that Switzerland, and its companies, has on poorer countries. Through research, advocacy and campaigning, Public Eye also demands the respect of human rights throughout the world. With a strong support of some 25,000 members, Public Eye focuses on global justice.

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