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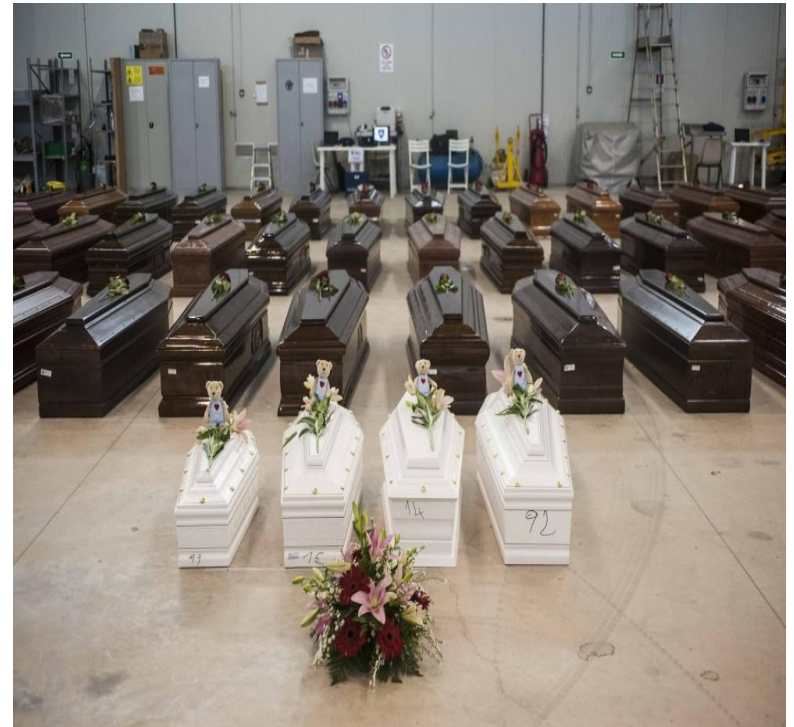
**Special Antimafia
Directorate**

**Procura della
Repubblica di Palermo**

**The clustered networks for Smuggling and Trafficking
of Human beings: an effective approach to tackle them**

The Lampedusa case: a turning point?

- * On 3 October 2013 an overcrowded fishing boat caught fire, capsized and sank near the shore of the tiny rocky Italian island of Lampedusa off the North African coast; 366 people died.



After Lampedusa: the Italian Job

Creation of a specialized group of Prosecutors in Palermo OTP

-Investigations on the criminal networks

-Adoption of investigative protocols with directives for the different LEAs

-Mafia/O.C. cases approach (double track system):

- extensive use of wiretappings / telematics interceptions
- investigative interviews with inmates
- support of central investigation services of Police
- Application of legislation for O.C. “turncoats” (“first smuggling supergrass”)
- protective measures/benefits for witnesses/survivors (art. 18 Immigration act)
- Focus on financial profile – indictment for use of Hawala method



“double track regime”

- Role of centralized services of the various branches of police
- Institution of 26 District Offices of Prosecution (*DDA*)
- Coordination of National Antimafia Prosecutor (*DNA*)
- Extended duration of investigation (maximum 2 years covertly and the 1st year without authorization by judges)
- Special rules for inspections, monitoring, searches, arrest warrants, trials proceedings

“double track regime”

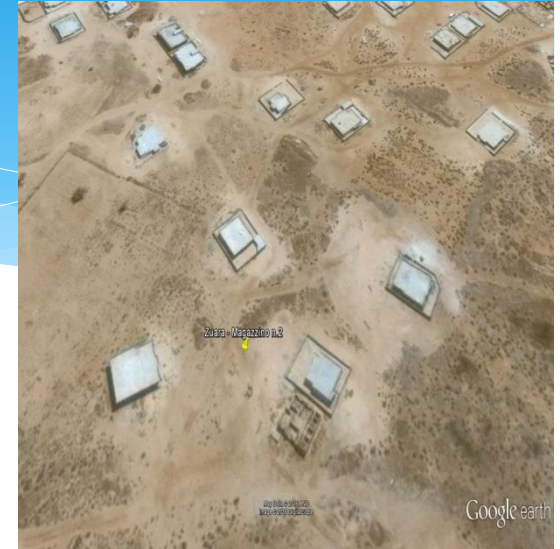
- Wiretapping authorized if necessary (and not indispensable) and with sufficient circumstantial evidence for 40 days
- Undercover operations – delayed seizures/detentions
- Requirements for precautionary custody are in re ipsa - including escape danger – and legal presumption of jail custody
- Special rules for seizure / confiscation (later to be examined)

The role of cooperating witnesses (“*SUPERGRASS*”)

Definition : *“whoever, having been part of a criminal association, decides to detach himself from it cooperating with the authorities by giving information on the organization and crimes committed”*

- reduction in punishment and special treatment during custody
- possibility of receiving perquisites and benefits during detention
- special protection of witness and his family: video surveillance - relocation and financial support - changing identity
- special commitments:
 - undergoing interrogations

After Lampedusa: the Italian Job



- STRENGTHEN THE INTERNATIONAL COOPERATION

- Eurojust Coordination meetings
- Delivery of relevant data to Europol
- Bilateral meetings for quick exchange of information in the Eurojust framework and with extra-EU countries too
- Providing evidentiary material to foreign Judicial Authorities
- Start of national investigations and execution of EAWs

After Lampedusa: the Italian Job

- STRENGTHEN THE INTERNATIONAL COOPERATION

- Creation of a template-case (tactical meeting at Eurojust)
- Action day?
- Signature of ad hoc protocols and memorandum of understanding
- Project with EU countries / ICC / African countries : JT under art. 19 UNTOC
- “Attempted Cooperation” with Origin/transit countries through “reserved” channels
- Intelligence exchange



After Lampedusa the follow-up of the investigation

The statements of survivors on their logistic supports in Europe and their contacts in the departure and transit countries

The gathering of relevant information in the material found after the shipwreck (analysis of smartphone, tablets, social networks documents)

The use of traditional investigation tools together with wiretappings (even on international lines)

Use of intelligence information as inputs

Lack of judicial/police cooperation in the departure countries

Initial skepticism for judicial/police cooperation in destination countries

«Operation Glauco»: identification of the two main people smugglers operating in Libia and Sudan

Intercept on 31 October 2013 Ermias (Libia) – John Mahray (Sudan)

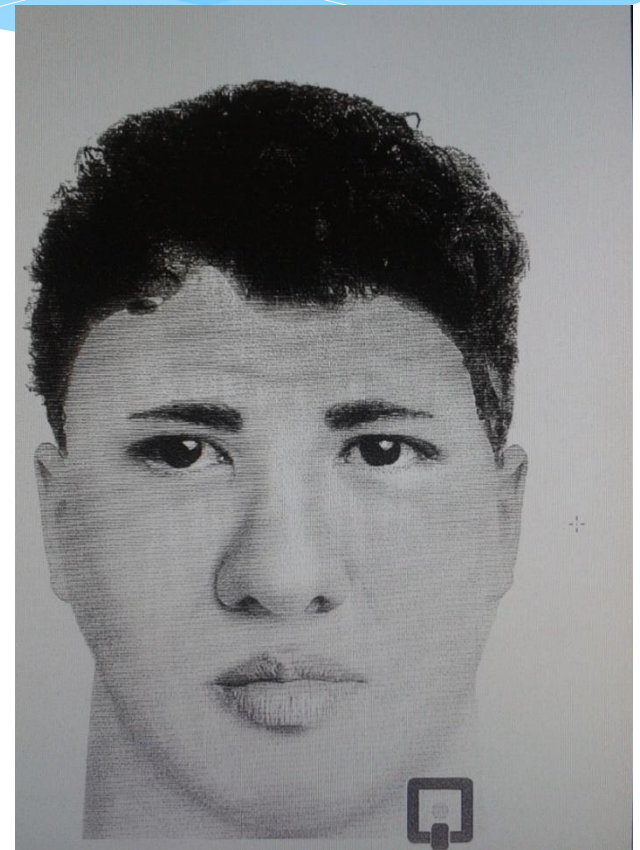
John: when you organize a trip to Italy you must respect a number of factors because as an organizer you are the person responsible for the fate of «what» you are transporting and your bad behaviour can affect the business of other persons:

- The boats should not leave if the sea is not good;*
- You must be able to deal with the complaints of the migrants;*
- If necessary you must beat them when you are hosting them before leaving («it is good for you as well for them»)*
- Explain them all the risks;*
- Put two persons each 50 migrants to transfer the migrants to the small boats to the «mother-boat»;*
- Collect the money in advance*

«If you respect the rules and they die it means it was their fate»

It is important you learn through your mistakes and next time the travel will be luckier.

Ermias: it was their fault; they should have called for help when they were at open sea and not wait last minute burning a blanket and causing the shipwreck....



«Glauco» - Indictment

TRANSNATIONAL CRIMINAL CONSPIRACY AIMED AT AIDING AND ABETTING ILLEGAL IMMIGRATION FROM AFRICA TO EUROPE

*A) for the crime as per Art. 416 paragraphs 1, 2, 3 and 6 of the Penal Code and Art. 4 of Law 146/2006 for having associated together and with other persons in the process of being identified, in order to commit a number of crimes of abetment (assistance) of clandestine (unauthorized) immigration (Art. 12 paragraph 1, paragraph 3 letters a), b), c), d) and e), paragraph 3bis, paragraph 3ter letter b of Leg. Dec. 286/1998) and of trafficking in human beings (art. 601 Penal Code) and against persons, public order and public bona fides

*operating in African territory between Central Africa (Ethiopia, Sudan, Eritrea) and Libya, in the role of heads and promoters of the association, making provision for and organizing first the overland route of the migrants (on some occasions also “acquiring” groups of migrants from other criminal associations operating in Africa who had earlier abducted them) to enable them to reach the Mediterranean coasts where they managed the places for their concentration, also policed by armed guards, in the vicinity of Zwarah and of Tripoli, from where they afterwards organized, for payment, the sea crossings to Sicily and also put the migrants in contact with their agents in Italian territory so as to organize their reception in Sicily or their escape from the reception centres after which they helped them, against further payment, to reach the countries of northern Europe identified as their final target by the migrants

«Glauco» Indictment

SMUGGLING OF PEOPLE

B) for the crime as per Arts. 81 paragraph 2 of the Penal Code, 110 of the Penal Code, 12, paragraph 3 letters a), b), c), d) and e), paragraph 3bis and paragraph 3ter letter b) of Leg. Dec. 286/1998, and Art. 4 of Law 146/2006 for having, in moral and material complicity together and with other persons not as yet identified, with a number of actions at various times, in the execution of a single criminal plan, in order to benefit therefrom, carried out acts aimed at securing the entry into State territory in violation of current legislation regarding immigration, organizing the transport of an unspecified number of foreign migrants, who each paid a figure of between 500 and 2,000 American dollars for said “service”, on vessels leaving from the coasts of North Africa (generally Libya from the coast in the vicinity of Zuwarah, and heading for Sicily) among which were identified with certainty in particular the following journeys for which the criminal group as per count A were responsible:

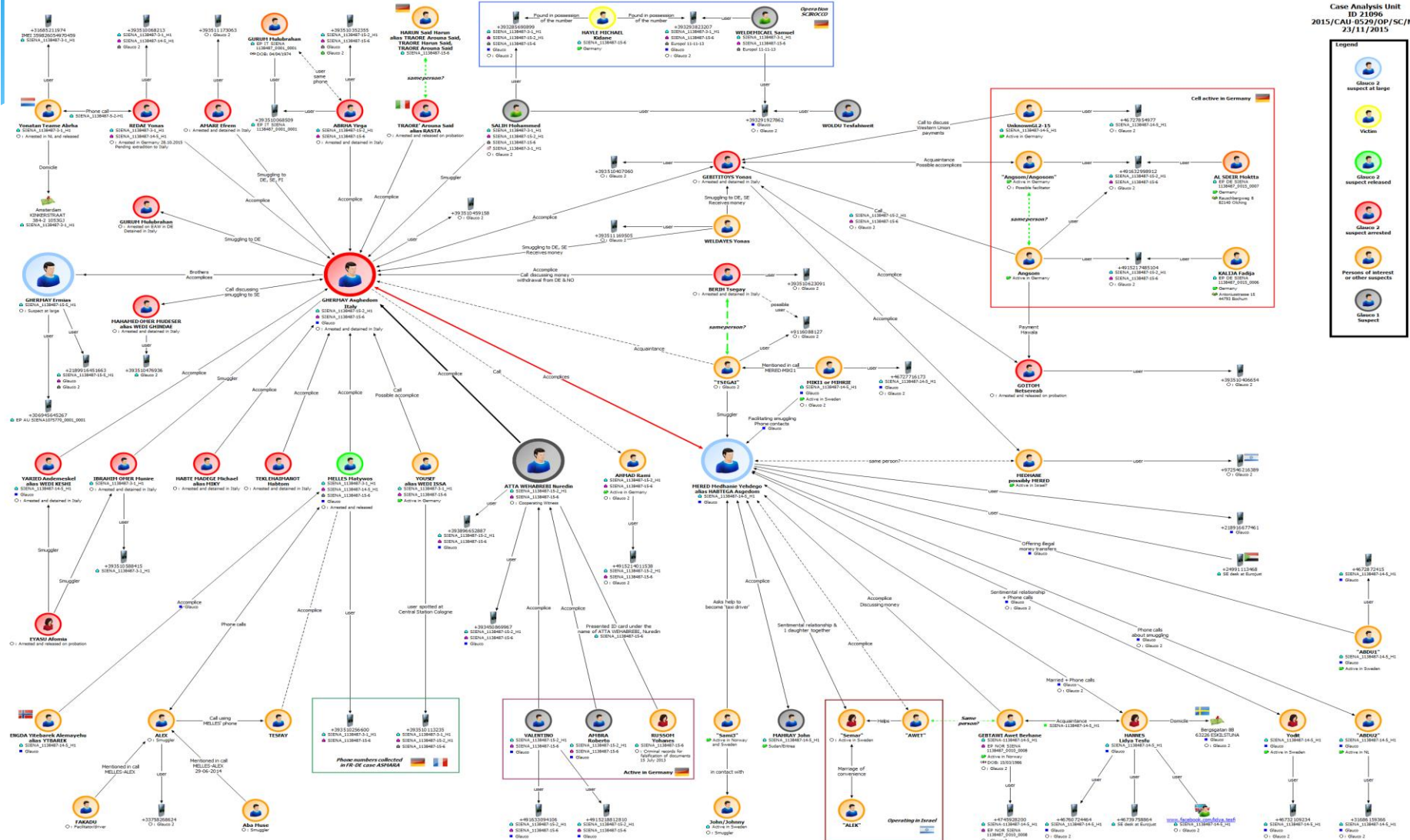
«Glauco» Indictment

ANTI - MONEY LAUNDERING VIOLATIONS (USE OF HAWALA METHOD)

*C) for the crime as per Arts. 81 paragraph 2, and 110 of the Penal Code, Art. 5 paragraph 3 of Leg. Dec. 153/97 (in relation to Art. of Law 52/96 and Art. 3 of Leg. Dec. 374/99) and as per Art. 132 of Leg. Dec. 385/93 and Art. 4 of Law 146/2006 for having, in complicity together and with a number of actions in execution of a single criminal plan, without any authorization and without being entered on the requisite lists, registers and rolls foreseen by law, illegally carried on vis-à-vis the public activities of financial intermediation and in particular performed activities of illegal receipt of savings, and if illegal intermediation of monetary exchange, through the system termed “hawala”, that is enabling third parties, against payment of commissions, to transfer funds abroad and to Italy, by means of fiduciary relations of compensative type with foreign correspondents who made provision to pay to the receiver situated in various African countries – including Eritrea, Sudan and Ethiopia – a sum equivalent to that handed over in Italy, namely for the sender to have an equivalent sum to be paid to the receiver situated in Italy, thus without going through the banking and financial channels and evading the legal provisions regulating such operations; With the aggravating circumstance as per Art. 4 of Law 146 of having committed the fact availing themselves of the contribution of an organized criminal group engaged in criminal activities in more than one State.

Glauco networks

Case Analysis Unit
ID 21096
2015/CAU-0529/OP/SC/MI
23/11/2015



«Glauco» 3

SEIZURE OF ALMOST 800.000 EURO IN CASH DURING THE INVESTIGATIONS + 3 SHOPS



THB investigations main issues

- witnesses or accused of illegal immigration?
- translation
- prosecutability for crimes committed abroad? (Italian Supreme Court 27 march 2014 - *infra*)
- wiretapping for conversation abroad: are they usable?
- presence of witnesses until the celebration of the trial: how to guarantee it without violating migrants rights?
- protection of victims (art. 18 Immigration Act – *infra*)
- balance of public interests/individual rights

Trafficking, slavery, smuggling: when can they be crimes against humanity?

Art. 7 Rome Statute (ICC) includes a list of acts that when committed as part of a **widespread or systematic attack directed against any civilian population**, with knowledge of the attack, will constitute a crime against humanity.

(a) Murder; (b) Extermination; **(c) Enslavement**; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health...”.

Trafficking, slavery, smuggling: when can they be crimes against humanity?

Enslavement: exercise of powers attaching to the right of ownership (including bartering or a similar deprivation of liberty) even in the course of trafficking, especially of women and children (ICC crime as CAH)

ICTY CASE LAW (KURANAC ET AL.)

psychological control, deception or coercion in relation to consent.

- *Widespread or systematic attack against civilians;
- *Pursuant to, or in furtherance of, a state or organizational policy to commit such an attack;
- *“Enslavement” does not really capture what trafficking and smuggling entail.

Icc prosecutor, 8 may 2017:

Interest in situation in libya:

Allegations persist of inhumane conditions and poor treatment of migrants in unregulated detention centres.

Crimes allegedly committed include **killings, rape** and other forms of **sexual violence, torture and forced labour**, as well as **human trafficking**. There are increasing reports of a **slave trade** underway in Libya, with migrants from Africa being sold in slave markets ... **smuggling of migrants and human trafficking** into, through and from the Libyan territory, which could provide support to **other organised crime and terrorist networks** operating in Libya ...



Why involving ICC in this?

- * ICC as a last resort court – very few cases.

BUT:

- * **Shows supranational commitment and cooperation of national authorities**
- * **Creates/reinforces network of actors seriously pursuing conducts (124 states parties) – may be used to gain political/financial leverage**
- * **Makes a strong statement about law and policy/priorities of international community (general deterrence *writ large*)**

Why involving icc in this?/2

More importantly:

- *Trafficking/smuggling is part of a **“supply chain” of human suffering**, which starts much earlier in time and place
- *To **capture the whole criminal conduct and criminal policy**, icc may be necessary where libya and other states are unwilling or unable to pursue cases for acts prior to actual smuggling
- *and, at the same time, **icc may need the evidence** stemming from smuggling cases to prove chain of command and higher levels of organisations involved.

Danke schön

Merci!

¡Gracias!

Bedankt!

Ευχαριστώ!

Obrigado!

Dekuji!

Vala!

Grazie!

Thank you!

Tak!

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