



**Gery Ferrara**  
**European Delegated  
Prosecutor**

**Practical experiences concerning cross-border cooperation in  
combating aggravated forms of smuggling of migrants – criminal justice perspective**

# 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.
- \* 368 persons died, mostly Eritreans and Somalis, 155 survived.
- \* The captain of the boat, a Tunisian man (Ben El Salam), was immediately arrested because indicated as the “skipper” by some survivors (convicted to 18 years)



# After Lampedusa: the Italian Job the national response

**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



# 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

# After Lampedusa: the Italian Job the international approach

## - 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 the international approach

## - 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 THALASSA EU countries / ICC / African countries : JT under art. 19 UNTOC
- “Attempted Cooperation” with Origin/transit countries through “reserved” channels
- UNODC Liaison Magistrate (Nigeri / Ethiopia/ Eritrea)
- Intelligence exchange



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

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

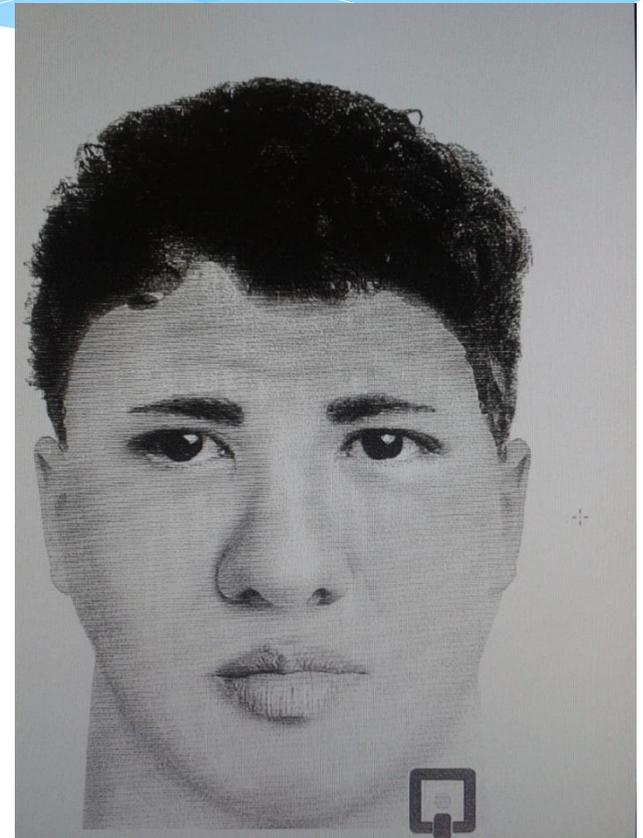
*John: when you organize a trip to Italy you must respect a number of factors because as an organizer you are the person responsible for the fate of «what» you are transporting and your bad behaviour can affect the business of other persons:*

- 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....*



# Main routes for irregular migration in the mediterranean



Source: IMap

# «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» 3

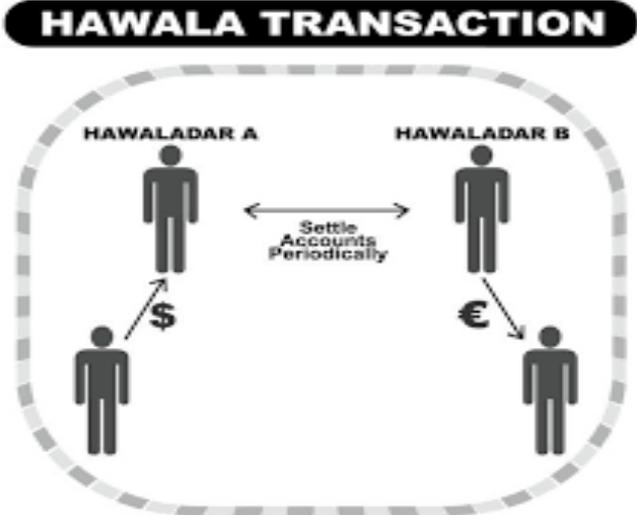
## SEIZURE OF ALMOST 800.000 EURO IN CASH DURING THE INVESTIGATIONS + 3 SHOPS



## Operation GLAUCO IV - HAWALANET

The survey is based on the monitoring of people involved in the smuggling of migrants and in the circulation of money through the method called Hawala: some of the sums that they have moved would do Reference to fugitive

**Hawala**, in Arabic, simply means "transfer" and is a system that developed in the Middle East during the Middle Ages and then spread to South Asia and parts of Africa.



Hawala is therefore an **informal money transfer system**, based on **trust**, in which private individuals agree with other private individuals. The surcharge on the transaction - i.e. the money that is retained by the hawaladar - is generally higher than that required by the companies legally involved in such cash transfer activities. But in these cases, of course, the interest of the traffickers and migrants themselves to keep the movement of money hidden, so as not to be attacked by the high taxes imposed by the governments of their countries of origin, prevails.

For these reasons hawala has been for years the system used by African migrants to send money to their countries of origin and the system that has recently become more and more important to finance the migrants' journey.

In fact, **hawala is a perfect system to finance illegal activities such as human trafficking**: it is informal, leaves no traces and is therefore almost impossible for the authorities to control.

## The Hawala System

The so-called hawala method is divided into several phases that follow one another over time.

**In the initial phase**, the person interested in moving money between two distant places hands over the money to a first hawaladar, who provides a code to the client who, in turn, reports it to the final recipient of the money.

The first hawaladar then contacts a **second hawaladar**, his partner, who is at the place where the money will be collected.

At that point, at any time, **the recipient of the transfer can reach the second hawaladar**, show him/her the code and withdraw the corresponding money. Or, the initial customer can call the second hawaladar directly and unlock the transaction in favour of a third person such as, for example, a human trafficker.

**without a real transfer of money between the two hawaladars**

Everything happens, who then settle their debts.

## Operations GLAUCO

**GLAUCO I** - Shipwreck occurred on 3.10.2013 in Lampedusa: Operation GLAUCO launched.

366 migrants lost their lives sailing on a boat.

The captain of the boat responsible for the disaster and some of the traffickers active in Libya in organizing migrants journeys to the Italian coasts were identified and arrested.

Further investigations: 12 people under arrest, considered contacts in Italy of the Libyan criminal association.

**GLAUCO II** - Investigations launched in May 2014: reconstruction of the organizational structure of a dangerous transnational criminal network, composed of 24 subjects, mainly Eritreans and Ethiopians, facilitators of the illegal immigration of several hundred migrants, drawing huge economic profits.

**GLAUCO III** - The outcome of the investigation, led to the execution, in the provinces of Rome, Viterbo, Agrigento, Palermo, Catania, Trapani, Milan, Lecco, Macerata and Genoa, of 23 arrests of suspects of crime held responsible, in various capacities, of offences of conspiracy to commit crimes, aiding illegal immigration, illegal financial intermediation, money laundering, fraud against the State, as well as conspiracy aimed at international drug trafficking and drug dealing, aggravated by the transnational nature of the criminal association

**GLAUCO IV “HAWALANET”** - The investigation starts from the monitoring of people involved in the smuggling of migrants and in the circulation of money through the method called Hawala: some of the sums that they have moved would do Reference to fugitive

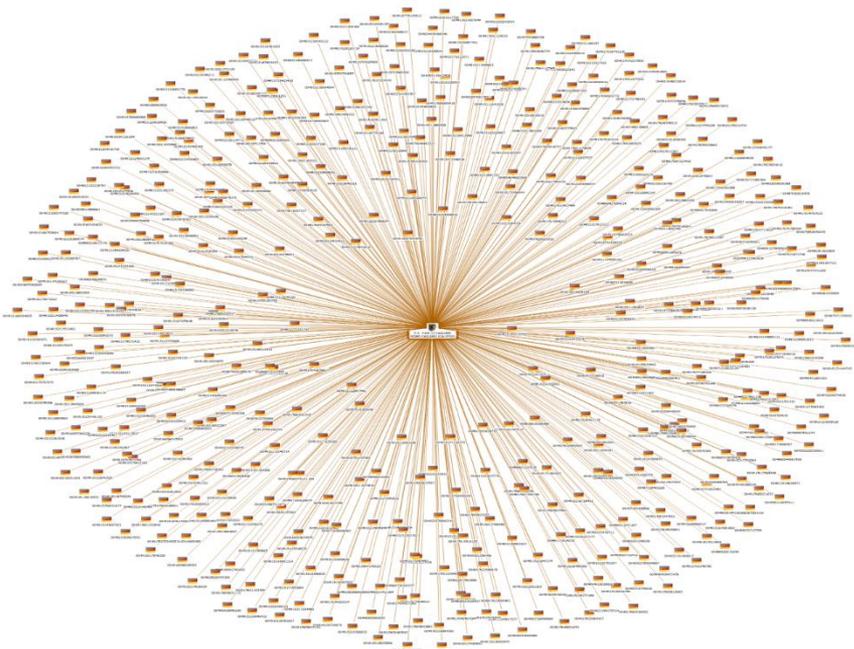
From the interceptions existence of a **Hawaladar network** operating on the Italian territory (in particular Udine, Milan and Rome), which, besides violating the T.U.B. rules for illegal financial intermediation, were connected with the smuggling of migrants coming from Africa.

# «Thalassa Project» under art. 19 UNTOC

## A new investigative approach for international cooperation

**focus:** bring the key players to justice

**Philosophy:** proactive, modern and generous cooperation in order to identify and tackle the concrete day-to-day obstacles to international cooperation and investigations - increase the understanding of the *modus operandi* of the criminal network's infrastructure as well as knowledge on the main actors.



- Meetings between Prosecutors and investigators;
  - guidelines drafted and procedures adjusted;
- numerous discussions to identify expectations;
- obstacles of all sorts have thus been identified;
  - information exchanges;
  - interviews, vlogs, intercepts;
- reports, profiles and analyses.

## ***Threats – difficulties***

- **full identification of key players for the purpose of international arrest warrants;**
- **identification of witnesses willing and able to testify against the main smugglers;**
- **sufficient, concrete, real-time picture of the perpetrators to track them and create opportunities to get them arrested and extradited;**
- **developing working relations with countries where the main smugglers reside and invest in order to be able to collaborate in a fruitful way to make arrests, find evidence and seize assets;**
- **preventing unnecessary overlap & gaps in activities, including issues that complicate a real common analysis of data;**
- **obtaining a sufficient clear picture of the ‘international crime’ aspects of the criminal activities (nexus to armed conflict, state policy etc.).**

# THB/SoM: an international perspective?

Might human trafficking be considered a crime 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: could 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 a state or organizational policy to commit such an attack;

- “Enslavement” does not really capture what trafficking and smuggling entail.

- ICTY Trial Chamber accepted, in relation to the trafficking of women in wartime, that enslavement may occur **even when the victims still enjoy *de jure* a certain freedom of movement but the situation in which they find themselves leaves them with no real choice of escape with the prospect of conducting an independent life.**

- Although the judgment of the ICTY was rendered in relation to wartime, for the ICTY has jurisdiction over crimes against humanity only if occurred during times of war in the territory of the former Yugoslavia, the view expressed by the ICTY on enslavement should serve as a **precedent for similar cases brought in a peacetime context.**

