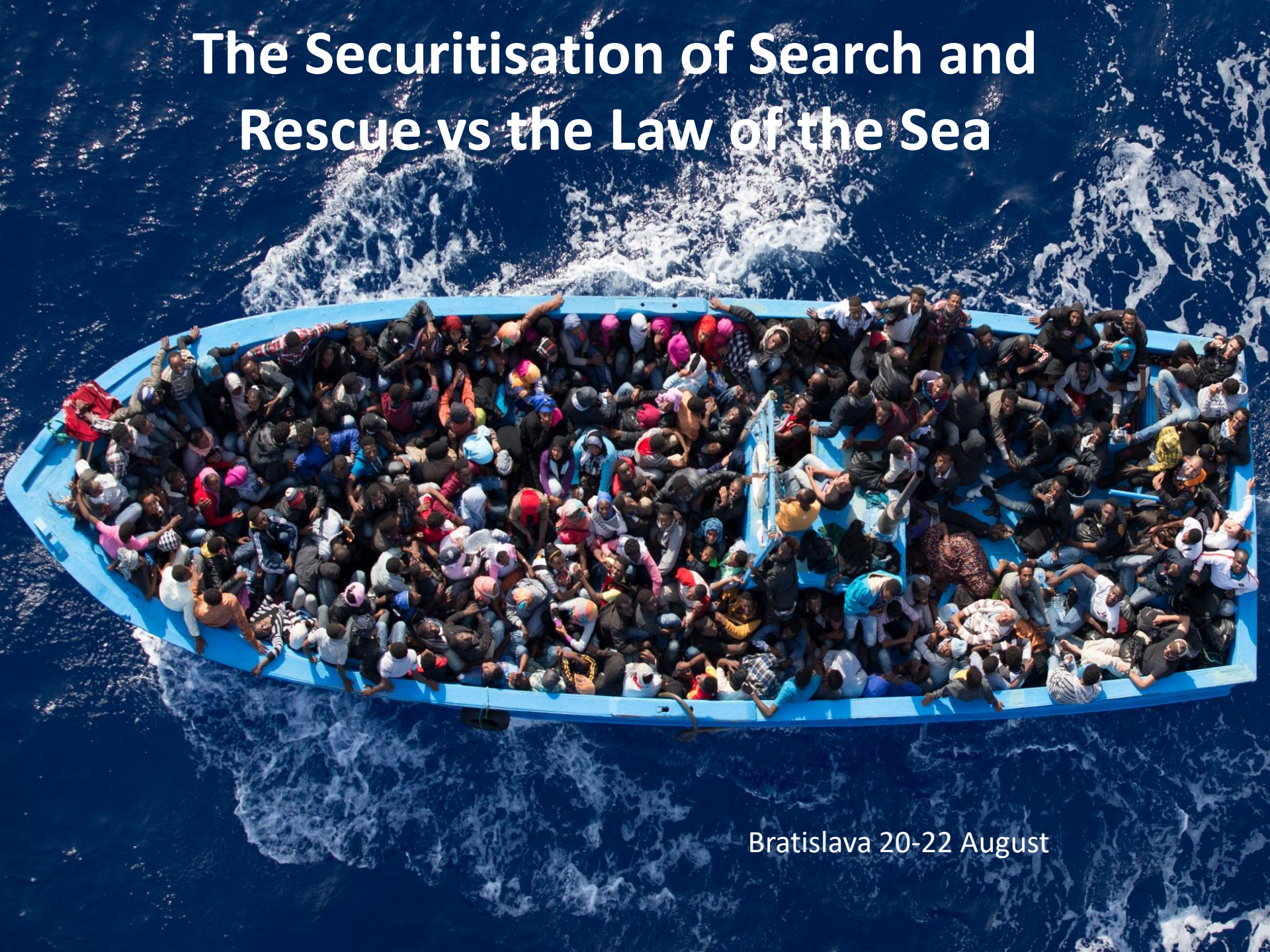


The Securitisation of Search and Rescue vs the Law of the Sea



Bratislava 20-22 August

« RESUE AND THE LAW OF THE SEA»

THE DUTY TO RESCUE PERSONS IN DISTRESS AT SEA IS A FUNDAMENTAL
RULE OF INTERNATIONAL LAW.

IT HAS BEEN INCORPORATED IN INTERNATIONAL TREATIES AND FORMS
THE CONTENT OF A NORM OF CUSTOMARY INTERNATIONAL LAW.

IT APPLIES BOTH IN PEACE AND IN WAR.



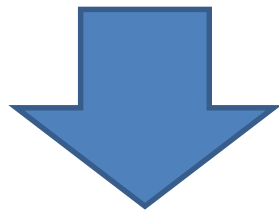
THE DUTY TO RESCUE

ART. 98 UNCLOS

EVERY STATE SHALL REQUIRE THE MASTER OF A SHIP..... :

(a) TO RENDER ASSISTANCE TO ANY PERSON FOUND AT SEA IN DANGER OF BEING LOST;

(B) TO PROCEED WITH ALL POSSIBLE SPEED TO THE RESCUE OF PERSONS IN DISTRESS, IF INFORMED OF THEIR NEED OF ASSISTANCE, IN SO FAR AS SUCH ACTION MAY REASONABLY BE EXPECTED OF HIM;



GRANT A HUMANITARIAN TREATMENT TO THE SURVIVORS;

DELIVER THE SURVICORS TO A PLACE OF SAFETY.

PLACE OF SAFETY

The SAR Convention does not define “place of safety”

6.12 A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) is a location where:

- rescue operations are considered to terminate;
- the survivors' safety of life is no longer threatened;
- their basic human needs (such as food, shelter and medical needs) can be met;
- ANDit is a place from which transportation arrangements can be made for the survivors' next or final destination.

DESEMBARKATION – WHERE?

A SHIP IS A PLACE OF SAFETY, IF PROPERLY EQUIPPED, BUT FOR A LIMITED TIME

NEXT PORT OF CALL –MINIMUM DEVIATION FROM THE PLANNED COURSE (WHAT IS THE NEXT PORT OF CALL FOR A SHIP OF AN ONG? VS FISHING VESSEL)

NEAREST LAND TO THE POSTION WHERE THE RESCUE OCCURRED;

DESTINATION INDICATED BY THE PEOPLE RESCUED (APPLIABLE FOR SMALL NUMBER OF PEOPLE WITH PROPER DOCUMENTS?)

ANY PLACE WHERE THE PEOPLE RESCUED COULD RECEIVE ASSISTANCE WILLING TO ACCEPT THEM

SOVEREIGNTY (RIGHT OF A STATE TO CONTROL ITS BORDERS)

NO FIRM OBLIGATION RESTS ON THE STATE COORDINATING SAR OPS TO ALLOW DISEMBARCATION IN ITS TERRITORY

VS

THE NON REFOULMENT PRINCIPLE (DOES NOT AUTOMATICALLY APPLY TO ECONOMIC MIGRANTS)

Nearest ? Place of Safety

The norms/guidelines etc. specify only that there is :

- an obligation to co-ordinate and co-operate **to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage.**
- that a ship should **not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable**
- Parties shall arrange for such disembarkation to be effective as soon as reasonably practicable

Even if the intent is clearly to **ensure that in every case a place of safety is provided within a reasonable time, there is no requirement for the «nearest» or «closest» POS, as a binding criteria, nor we can find a specific time limit**

RESPONSIBILITY TO PROVIDE A PLACE OF SAFETY?

THE RESPONSIBILITY TO PROVIDE A PLACE OF SAFETY, OR TO ENSURE THAT A PLACE OF SAFETY IS PROVIDED, FALLS ON THE GOVERNMENT RESPONSIBLE FOR THE SAR REGION IN WHICH THE SURVIVORS WERE RECOVERED

THERE IS NO AUTOMATIC OBLIGATION ON THE STATE COORDINATING THE SAR TO OFFER ITS PORTS FOR DISEMBARKATION.

SOVEREIGNTY VS SAR GUIDELINES

- A STATE HAS THE RIGHT TO.
 - CONTROL ITS BORDERS
 - EXCLUDE ALIENS
 - REGULATE HOW ALIENS ENTER ITS TERRITORY
 - REGULATE INNOCENT PASSAGE TO PREVENT INFRINGEMENTS OF IMMIGRATION LAWS.

VS

- PROHIBITION OF EXPULSION/RETURNING REFUGEES TO (Libya?!)

INTERPRETATION OF THE LAW
CHANGES WITH THE
POPULAR SENTIMENT

BEFORE MARE NOSTRUM

Since 1959

ONE NAVY SHIP CONTINUOUSLY ON
TASK FOR FISHERY PATROL IN THE
SICILY STRAIT

Since 2004

OPERATION "CONSTANT VIGILANCE"
(1 ship DAILY at sea Sicilian channel)

Since 2004

FRONTEX - EUROPEAN AGENCY FOR THE
MANAGEMENT OF OPERATIONAL COOPERATION
AT THE EXTERNAL BORDERS OF THE MEMBER
STATES OF THE EUROPEAN UNION





THE NIGHT BETWEEN THE 3rd AND
THE 4th of October 2013

366 VICTIMES

2 MILES OFF LAMPEDUSA

MORNING OF THE 4th ITALY IN MOURNING

sky TG24



ITALIA IN LUTTO



MARE NOSTRUM MISSION

**INCREASE THE OVERALL MARITIME SAFETY AND SECURITY IN THE
CENTRAL MEDITERRANEAN SEA IN ORDER TO:**

- PROVIDE HUMANITARIAN ASSISTANCE;**
- COUNTER HUMAN TRAFFICKING.**

NAVAL ASSETTS DEPLOYED

NR 1 P180



2 AW 101



NR 1 ATLANTIC



AOR



FREGATE



3 AB 212



CORVETTE



PATTUGLIATORI



PATTUGLIATORI



PATTUGLIATORI



AMPHIBIOUS SHIP

FLAG SHIP AND LOGISTIC HUB

5 SHIPS

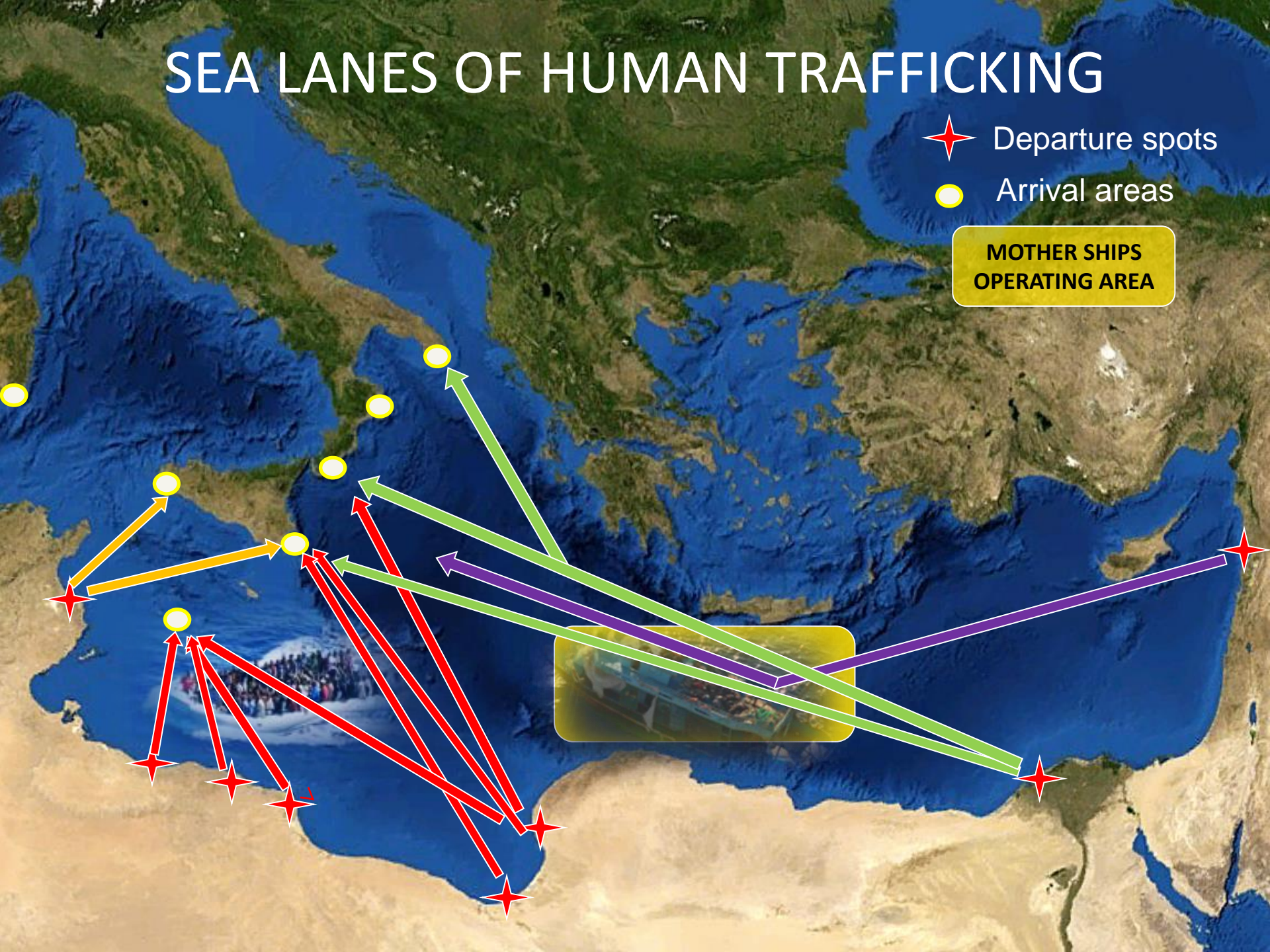
1000 MEN DAILY AT SEA ON AVG

SEA LANES OF HUMAN TRAFFICKING

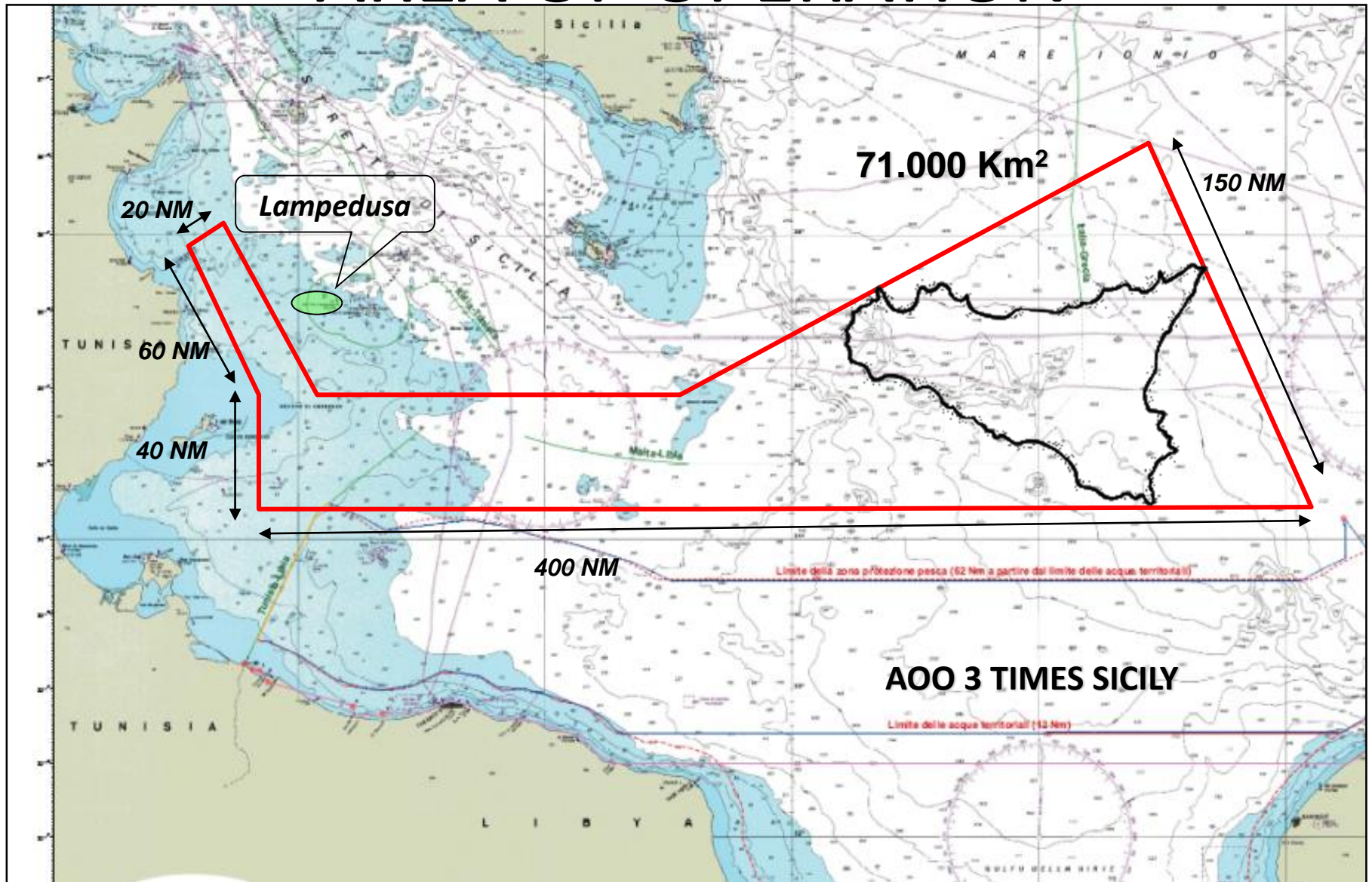
★ Departure spots

● Arrival areas

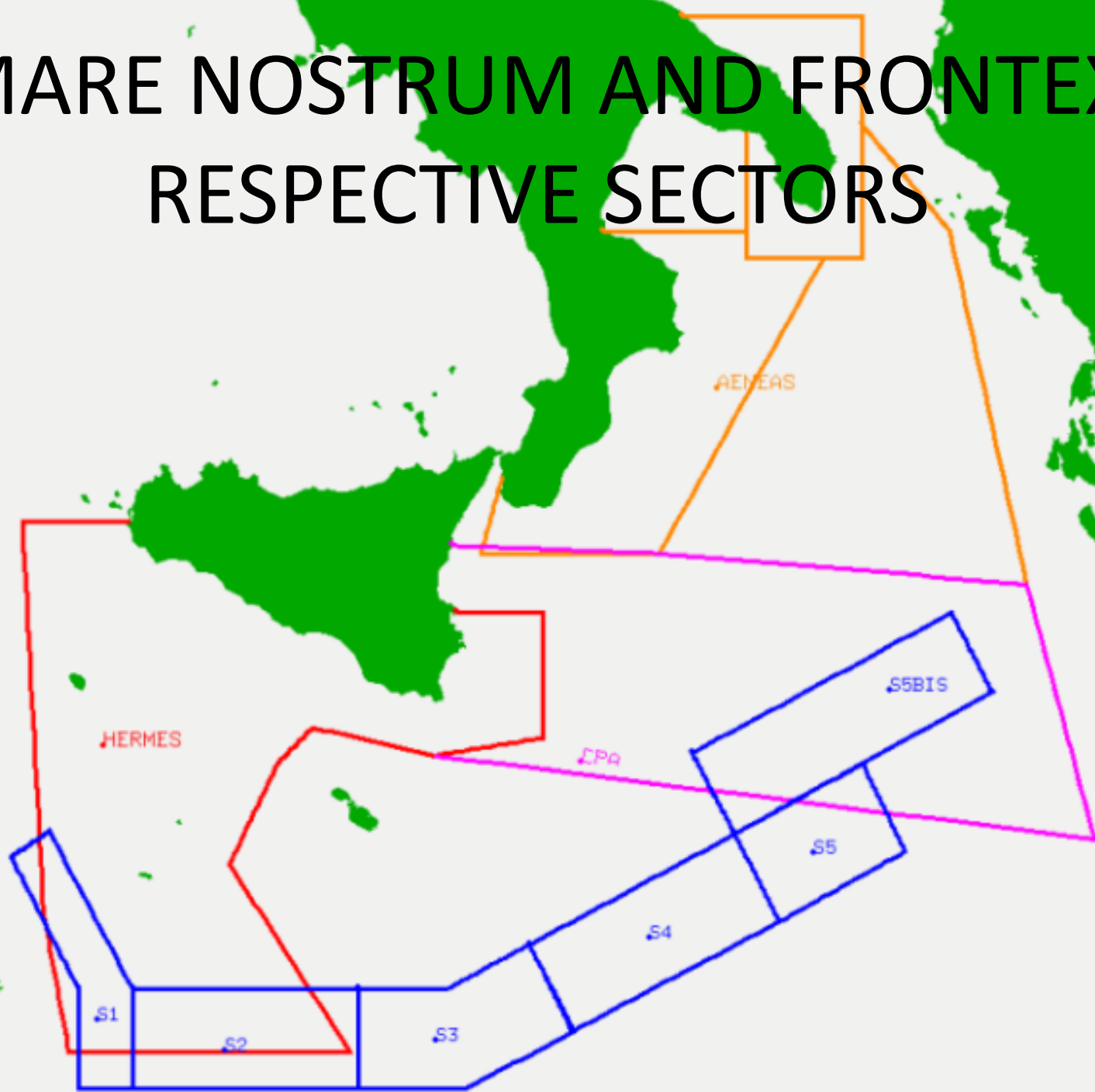
**MOTHER SHIPS
OPERATING AREA**



AREA OF OPERATION



MARE NOSTRUM AND FRONTEX RESPECTIVE SECTORS



A photograph of a person lying down, wrapped in a crinkled gold thermal blanket. Several hands are visible, some wearing white gloves, resting on the person's forehead and head. The person's face is visible, looking upwards with a wide-eyed expression. The background is dark and indistinct.

RESULTS

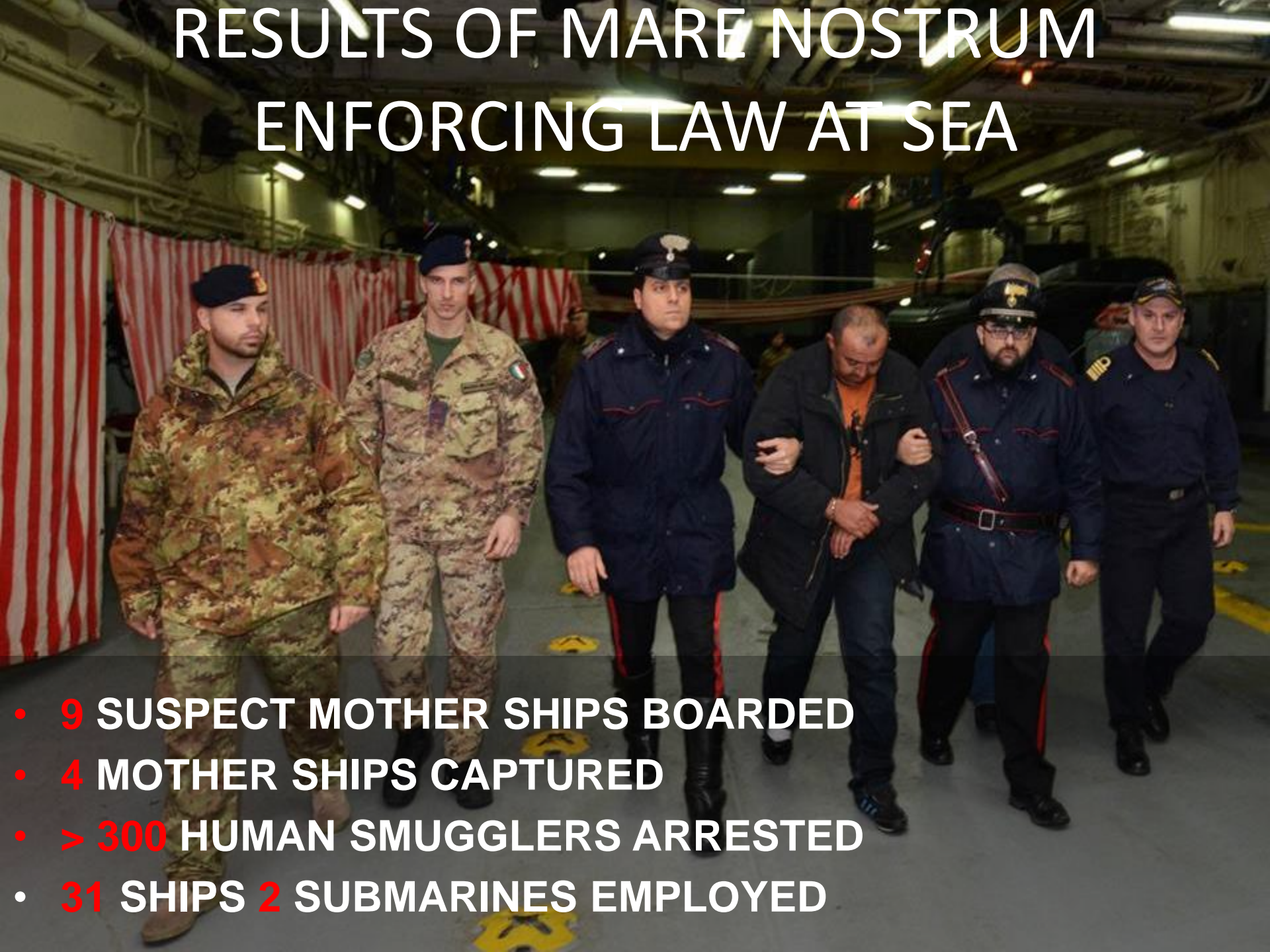
- **Ca 400** SAR EVENTS
- **150.000** ASSISTED MIGRANTS
- **887** MIGRANTS ASSISTED DURING A SINGLE SAR EVENT (4TH MAY 2014)
- **99%** OF MIGRANTS INTERCEPTED BEFORE ARRIVING IN ITALY

SHADOWING BY SUBS

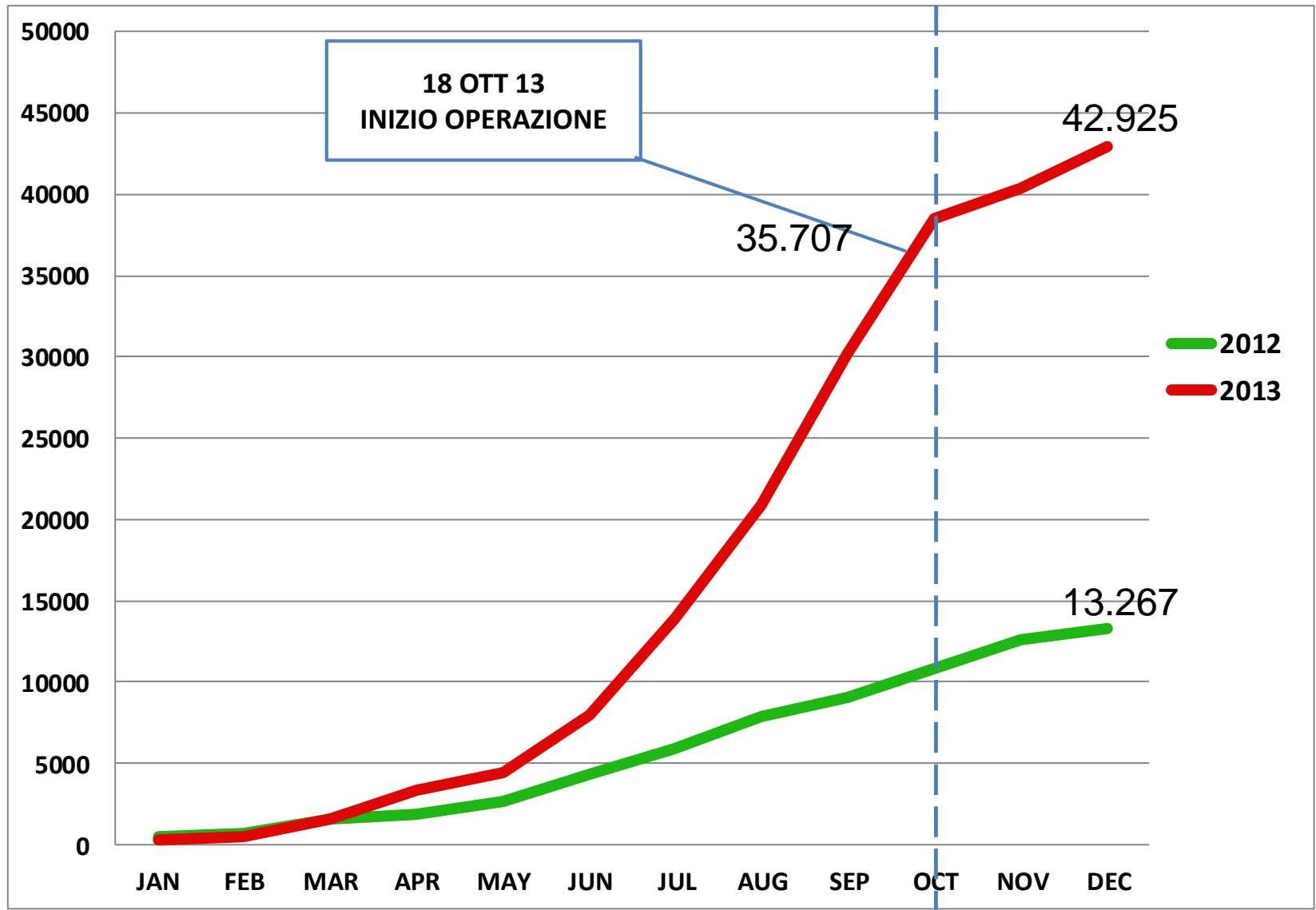


- SUBMARINES WERE INVALUABLE SHADOWING COVERTLY THE MOTHERSHIPS TOWING THE BOATS DESTINED TO DRIFT TOWARD ITALY, PROVIDING DOCUMENTATION AND EVIDENCE FOR THE ARRESTS OF THE DELINQUENT CREW MEMBERS

RESULTS OF MARE NOSTRUM ENFORCING LAW AT SEA

- 
- A group of six men are walking in a large, dimly lit ship's hangar. On the left, two men in camouflage military uniforms and berets walk. In the center, a man in a dark jacket and jeans is being escorted by two men in dark blue police uniforms. On the right, another man in a dark blue uniform with a cap and a man in a dark blue uniform with a beret walk. The background shows the interior of a ship's hangar with red and white striped curtains and various equipment.
- **9** SUSPECT MOTHER SHIPS BOARDED
 - **4** MOTHER SHIPS CAPTURED
 - **> 300** HUMAN SMUGGLERS ARRESTED
 - **31** SHIPS **2** SUBMARINES EMPLOYED

RATE OF ARRIVALS BEFORE AND AFTER THE START OF MARE NOSTRUM



MARE NOSTRUM ITALY'S PRIDE (AT THE TIME)



**MARE NOSTRUM WAS THE ANSWER TO AN HUMANITARIAN AND MARITIME
SECURITY EMERGENCY - A MORAL OBLIGATION**



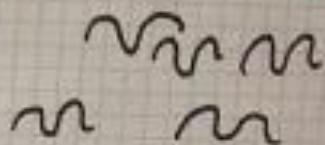






Laith IRAQ

Com
her





Thank
you

ITALYA



Mare Nostrum

«With *Mare Nostrum* Italy did not look the other way»

Giorgio NAPOLITANO

MARINA MILITARE

and so it ended

WHY MARE NOSTRUM ENDED

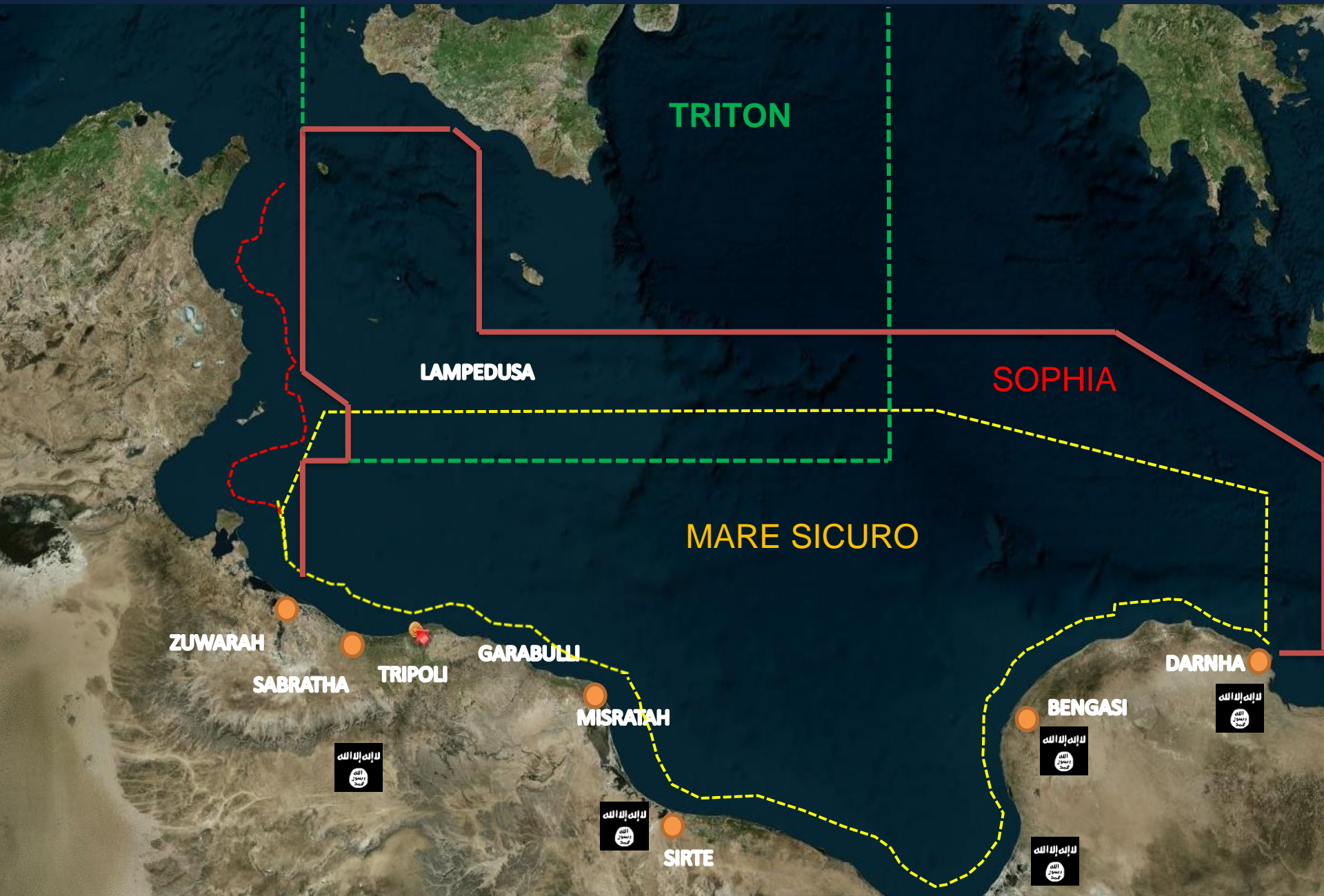
- **CHANGING OF THE THREAT AT SEA (ATTACKS ON UNHARMED COAST GUARD UNITS)**
- **TERRORIST ATTACKS AGAINST MAJOR CITIES IN EUROPE (POSSIBLE TERRORIST ATTACKS AT/FROM THE SEA)**
- **EMERGING ISIS PRESENCE IN LYBIA**
- **CHANGE OF THE PUBLIC MOOD AND PERCEPTION OF THE SECURITY ISSUES RELATED TO IMMIGRATION**
- **UNWILLINGNESS OF EU TO SUPPORT MARE NOSTRUM – FAVORING FRONTEX INSTEAD**

AFTER MARE NOSTRUM

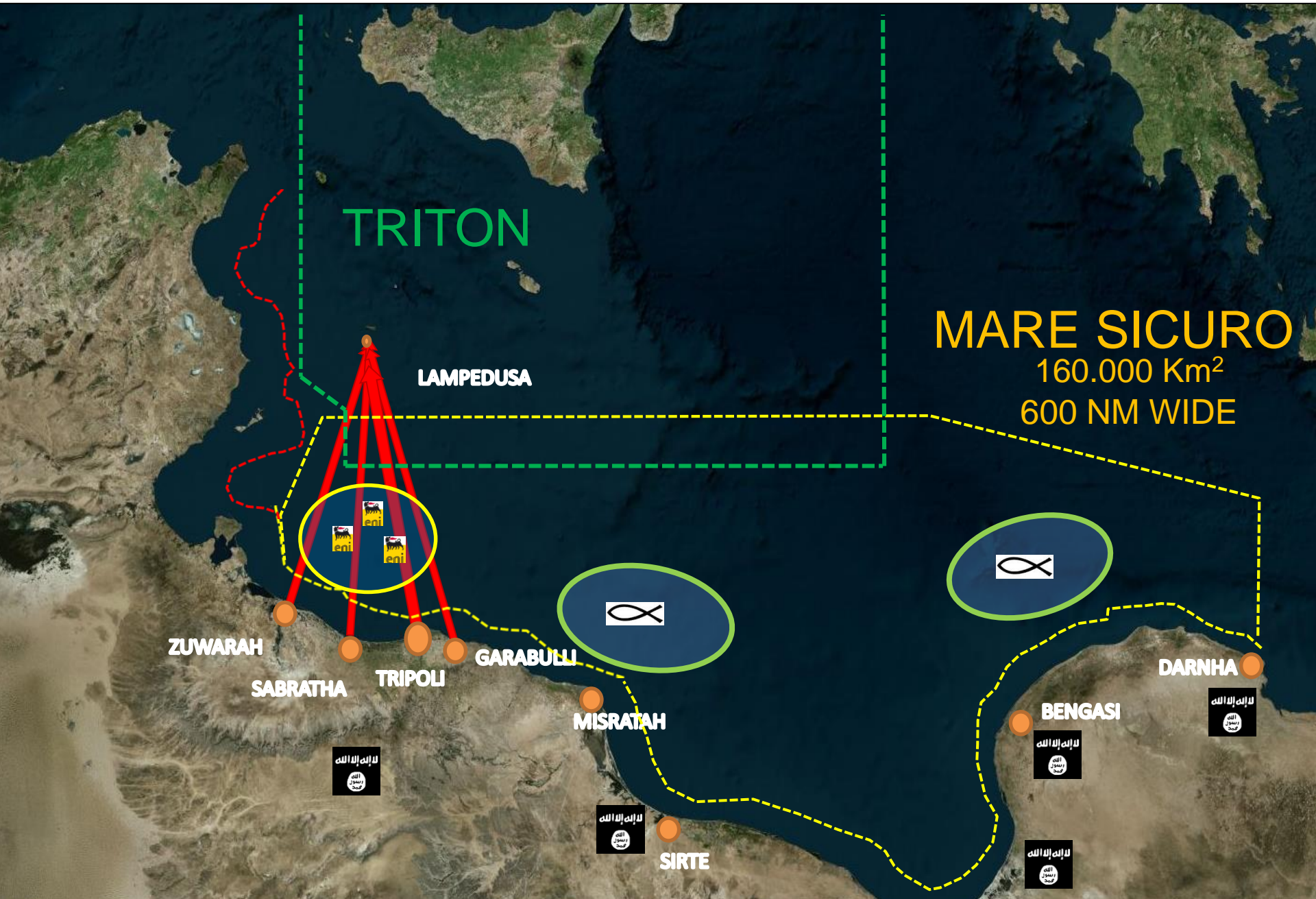
- MARE SICURO (SECURE SEA)
- EU MARITIME OPERATION SOPHIA
- EU TRITON



POST MARE NOSTRUM AREA OF OPERATIONS



MARE SICURO – AREA OF OPERATION





OPERATION SOPHIA

SUMMER 2015 - OPERATION SOPHIA - MISSION

TO IDENTIFY, CAPTURE AND DISPOSE OF VESSELS AND ENABLING ASSETS USED OR SUSPECTED OF BEING USED BY MIGRANT SMUGGLERS OR TRAFFICKERS, IN ORDER TO CONTRIBUTE TO WIDER EU EFFORTS TO DISRUPT THE BUSINESS MODEL OF HUMAN SMUGGLING AND TRAFFICKING NETWORKS IN THE SOUTHERN CENTRAL MEDITERRANEAN AND PREVENT THE FURTHER LOSS OF LIFE AT SEA.

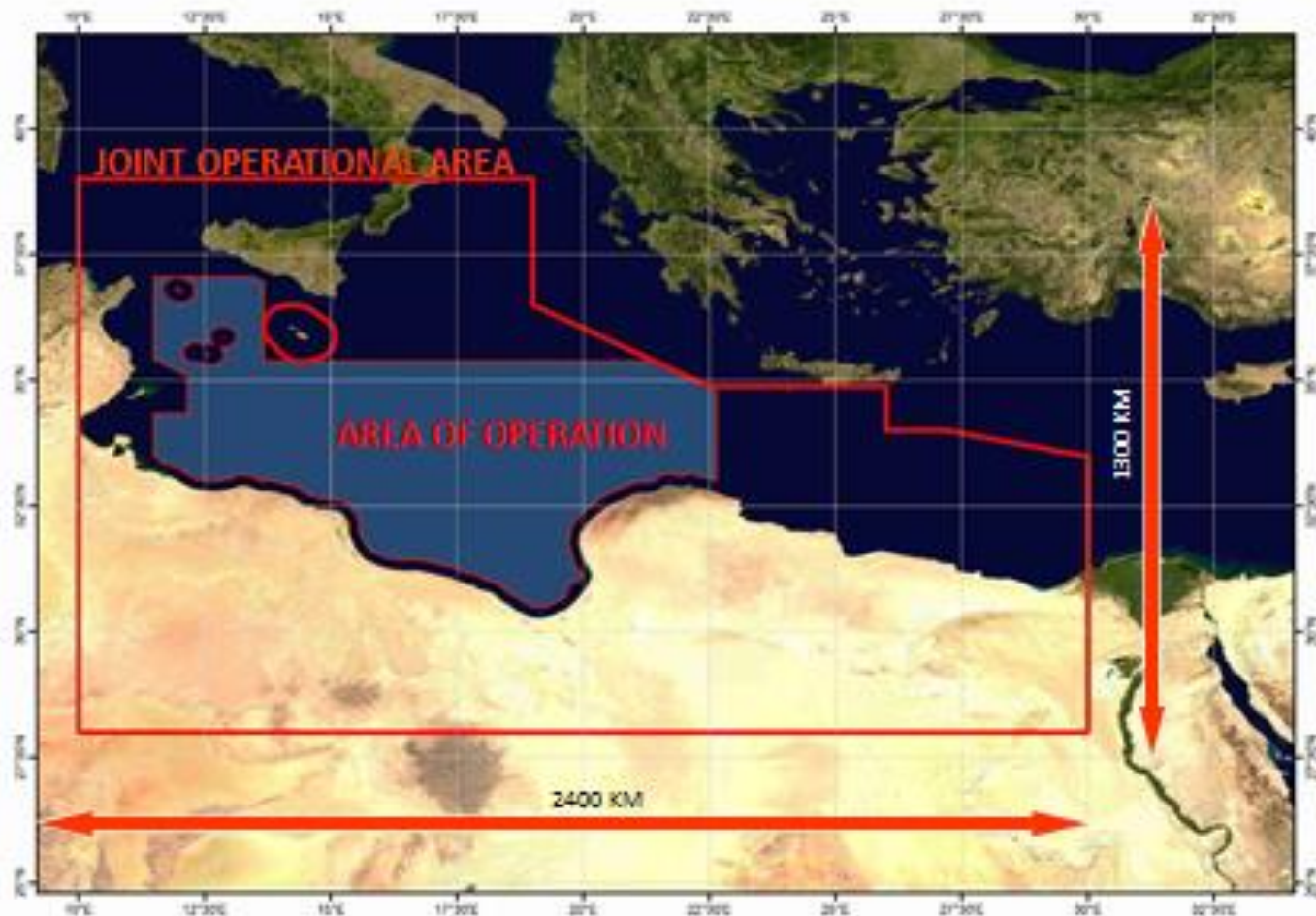
LATER THE INITIAL MISSION WAS EXPANDED TO INCLUDE:

- TRAINING OF THE LIBYAN COASTGUARDS AND NAVY;
- CONTRIBUTING TO THE IMPLEMENTATION OF THE UN ARMS EMBARGO ON THE HIGH SEAS OFF THE COAST OF LIBYA

MANDATE EXPIRED MARCH 2019 – EXTENDED BUT WITH SHIPS OUT OF THE HOT AREA

OPERATION SOPHIA

AREA OF OPERATION



PHASES

- 1) DEPLOYMENT OF FORCES TO BUILD A COMPREHENSIVE UNDERSTANDING OF SMUGGLING ACTIVITY AND METHODS (PHASE COMPLETED);
- 2) BOARDING, SEARCH, SEIZURE AND DIVERSION OF SMUGGLERS' VESSELS ON THE HIGH SEAS UNDER THE CONDITIONS PROVIDED FOR BY APPLICABLE INTERNATIONAL LAW. **THIS ACTIVITY WILL BE EXTENDED INTO TERRITORIAL WATERS UPON THE RELEASE OF ANY APPLICABLE UNITED NATION SECURITY COUNCIL RESOLUTION (UNSCR) AND THE CONCERNED COASTAL STATE CONSENT;**
- 3) TAKE OPERATIONAL MEASURES AGAINST VESSELS AND RELATED ASSETS SUSPECTED OF BEING USED FOR HUMAN SMUGGLING OR TRAFFICKING INSIDE THE COASTAL STATES TERRITORY. (SUBJECT TO UNSCR AUTHORIZATION AND COASTAL STATE CONSENT;
- 4) WITHDRAWAL OF FORCES AND COMPLETION OF THE OPERATION.

CRITICAL ISSUES

THE EUROPEAN STATES ACTIVELY CONTRIBUTING TO SOPHIA DID SO UNDER ONE CONDITION:

ALL MIGRANTS RESCUED AT SEA MUST BE DESEMBARKED IN ITALY REGARDLESS OF THE FLAG OF THE MILITARY SHIP PERFORMING THE RESCUE.

WITH THE CHANGE OF THE ITALIAN GOVERNMENT THIS CLAUSE HAS BEEN DENOUNCED AS «UNFARE»

ITALY ASKED TO REDISTRIBUTE PART OF THE RESCUED MIGRANTS IN OTHER EUROPEAN NATIONS

NO OTHER STATE ACCEPTED THIS CHANGE FOR THE SAME REASON ITALY PROPOSED IT. CLOSING THE BORDERS TO MIGRANTS BECAME MORE ACCEPTABLE THAN THE PREVIOUS OPEN ARMS APPROACH.

SOPHIA WAS STRONG AND DECISIVE AS THE EU FOREIGN POLICY. THE PROBLEM LAYS IN THE ABSENCE OF A COMMON EU FOREIGN POLICY TOWARD LIBYA. IN FACT ITALY SUPPORTS AL SARRAJI, WHILE FRANCE IS IN FAVOUR OF HAFTAR (AS IS RUSSIA AND EGYPT).

THE MISSION IS IN ANIMETAED SUSPENSION

Today

THE CHANGE OF THE SENTIMENT

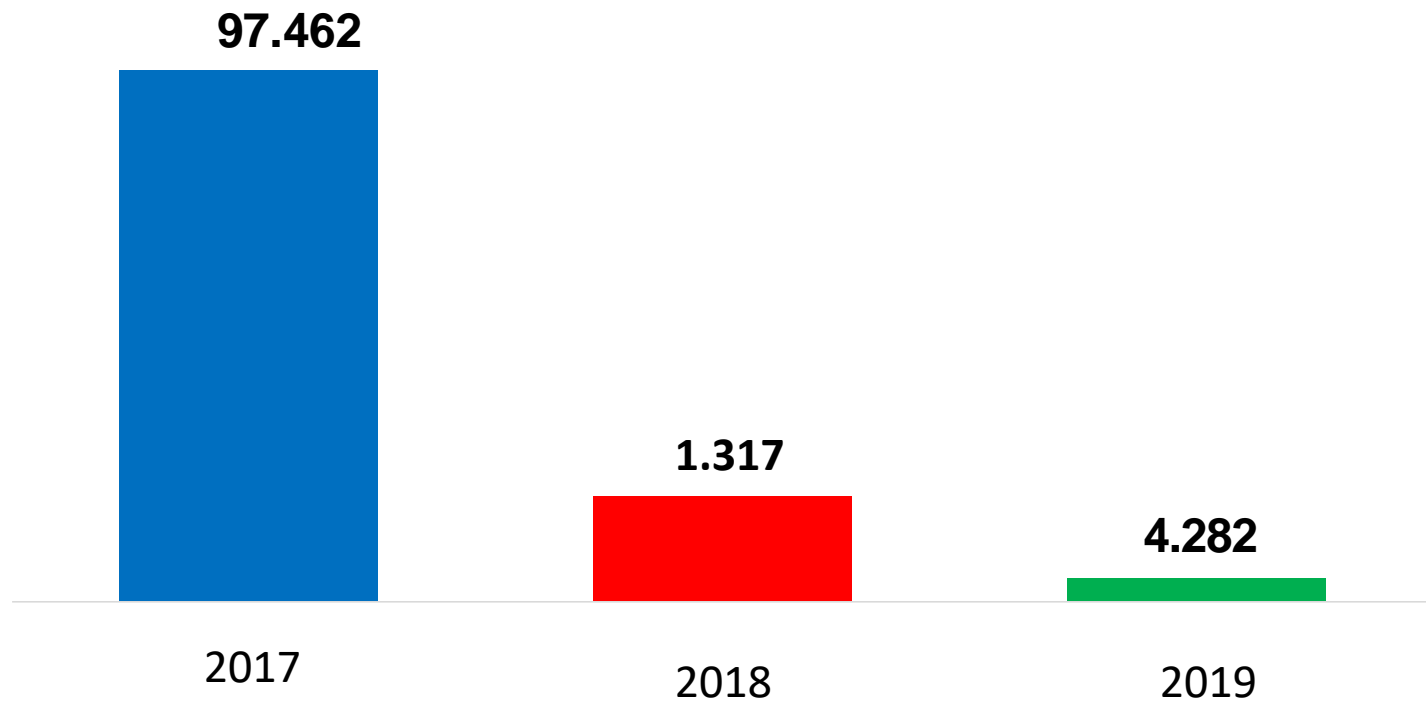
THE OP MARE SICURO IS STILL ACTIVE FOCUSED ON PROTECTION OF THE OIL PLATFORMS AND SURVAILLANCE ANTI TERRORISM

SPORADICLY PERFORMES SAR

OTHER OPS STILL IN PLACE:

- FRONTEX BORDER CONTROL
- SOPHIA – IN ANIMATED SUSPENSION
- MIGRATION FLOW CONTINUES DEPENDING OF THE WILL OF THE LIBYAN MILITIAS, THE WEATHER
- THE AMJORITY OF MIGRANTS ARRIVE DIRECTLY ON THE ITALIAN COASTS

From 1 January to 16° August 2017 – 2018 - 2019

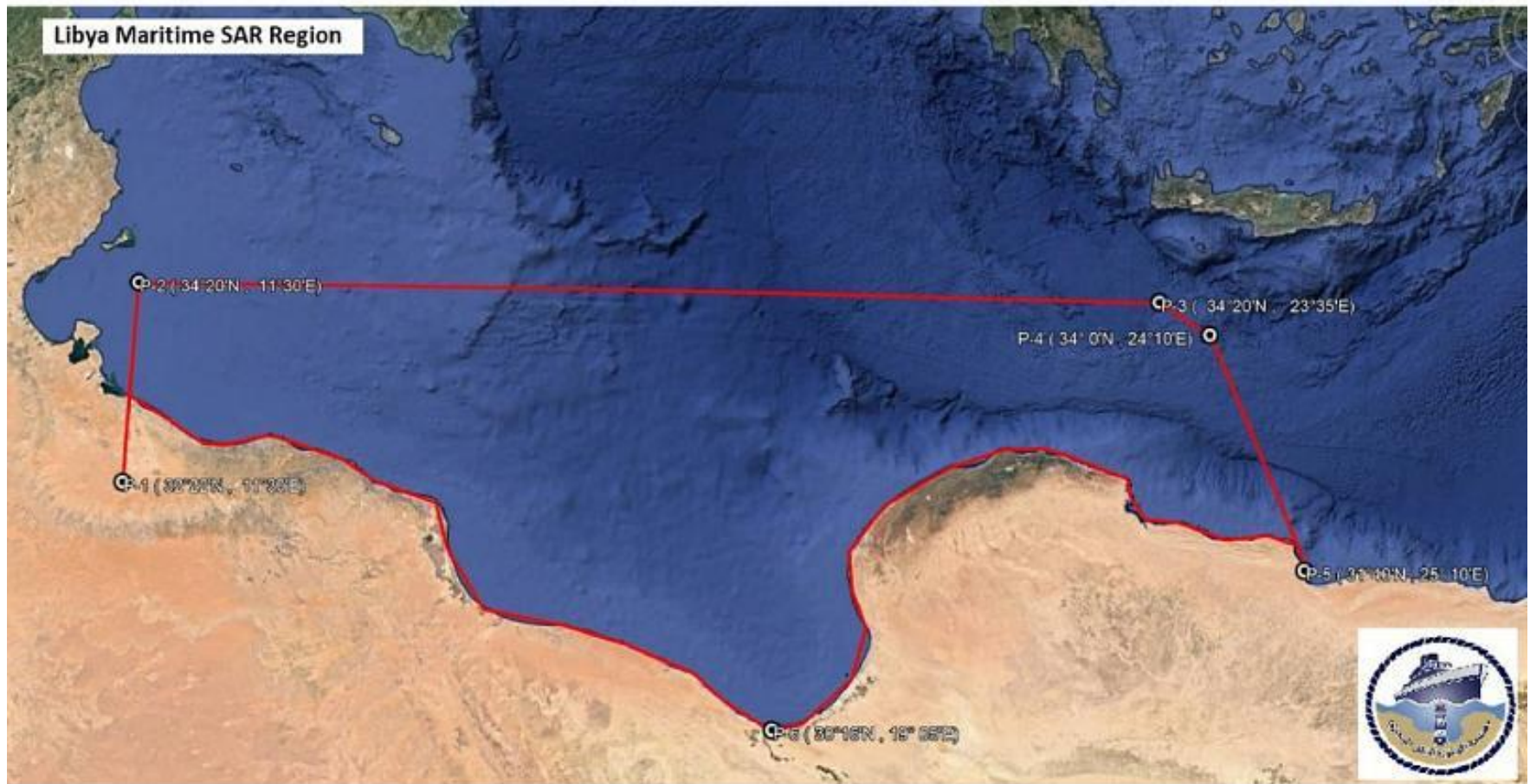


THE EFFECT OF THE FEAR FACTOR

- IMMIGRATION SURGED ON THE LIST OF TOP CONCERNS OF EUROPEAN CITIZENS SINCE 2014, PEAKING AT THE END OF 2015, AT THE HEIGHT OF THE HUMANITARIAN CRISIS, WHEN 58% OF EUROPEANS SAID THAT IMMIGRATION WAS THE MOST IMPORTANT ISSUE FACING THE EU.
- TODAY, IT IS AT THE SAME LEVEL WITH TERRORISM.
- ANTI IMMIGRATION IS IN SOME STATES A POWERFUL SOURCE OF POPULARITY AND SUPPORT FOR THE PARTIES WHO ARE MORE VOCAL AND EXTREME AGAINST THE FOREGNEIRS

LIBYA

- CLASHES BETWEEN THE INTERNATIONALLY RECOGNIZED GOVERNMENT OF LIBYA (AL SERRAJI) AND THE FORCES OF GEN. HAFTAR CONTINUE WITH VIGOR
- EU NATIONS ARE SPLIT – SOME SUPPORT AL SERRAJI, OTHERS ARE PRO HAFTAR
- LIBYAN HELD MIGRANTS ARE USED AS A WEAPON TO INFLUENCE EU (ESPECIALLY ITALY)
- MILITIAS GAINING RESOURCES FROM HUMAN TRAFFICKING BENEFIT FROM GROWING INSTABILITY



- ON THE 28TH JUNE 2018 LYBIA PROCLAIMED ITS SAR AREA OF RESPONSABILITY UNDER THE CONTROL OF A JOINT MARITIME RESCUE COORDINATION CENTER SITUATED IN TRIPOLI
- EU ASSISTING/TRAINING LIBYAN CG

THE LIBYAN CATCH

- LIBYA IS NOT A PLACE OF SAFETY BY INTL STANDARDS
- LIBYAN RCC IS NOT IN A LEGITIMATE POSITION TO OFFER ITS PORTS AS A PLACE OF SAFETY
- THE MRCCs OF ITALY and MALTA ARE SUSPECTED OF REROUTING DISTRESS CALLS RECEIVED FROM THE LIBYAN SAR AREA TO THE RCC IN TRIPOLI WHO CANNOT OPERATE WITHIN THE BOUNDARIES OF THE INTL LAWS/ CONVENTIONS
- ONGs RACE WITH LIBYAN CG TO AVOID «RECAPTURE» OF MIGRANTS AND THEIR RENDITION TO THE DETENTION CAMPS. THEY VIOLATE THE COORDINATION AUTHORITY OF A COASTAL STATE MRCC

THE ONG ARE RESPONSIBLE FOR THE INVASION?

**ONLY 7% OF THE ACCOUNTED MIGRANTS
ARRIVING BY SEA IN ITALY HAS BEEN CARRIED BY
ONGs**

**THE REMAINING 93% LANDED DIRECTLY ON THE
ITALIAN COASTS EITHER UNDETECTED OR WITH
THE ASSISTANCE OF THE CG OR THE GDF.**

EU LACK OF UNITED VISION

SINCE MARE NOSTRUM MOST OF EU GVTs DID NOT OFFER ANY SUPPORT TO SAR FOCUSED OPERATIONS PREFERRING BORDER CONTROL OPS (FRONTEX)

ITALY FELT UNSUPPORTED BY THE OTHER EU NATIONS AND THEREFORE JUSTIFIED IN CLOSING THE PORTS IN DEFIANCE TO OTHER EU GVTs

REDISTRIBUTION OF SURVIVORS HAS BEEN SPORADIC AT BEST

EU COOPERATION WITH LIBYA FOCUSED ESSENTIALLY ON KEEPING THE MIGRANTS IN LIBYA OFTEN TURNING A BLIND EYE TO THE TRAGEDY OF THE DETENTION/EXPLOITATION CAMPS AND OF THE SUFFERING OF THE MIGRANTS

RESCUE VS IMMIGRATION CONTROL

- RESCUE OPERATIONS AND IMMIGRATION CONTROL ACTIVITIES SHOULD BE TREATED ON TWO DIFFERENT LEVELS AND AS SEPARATE MATTERS
- WHEN LIFE AT SEA IS IN DANGER A RESCUE OPERATION HAS TO BE CARRIED OUT
- ONCE THE RESCUED IS COMPLETED THE ASYLUM SEEKERS AND THE REFUGEES MUST BE DEALT WITH ACCORDING TO THE INTL LAWS AND CONVENTIONS WHILE THE ECONOMIC MIGRANTS SHOULD BE PROCESSED BY THE LOCAL AUTHORITIES (REPATRIATION, WORKING PERMITS, ETC.)
- HUMANITARIAN CORRIDORS MUST BE OPEN