




The project is co-financed with the support of the European Union's Justice programme

TRALIM ITALY

Online training event for presenting the Italian legal system regulating immigration and asylum



 **03 February 2021**
14:30 CET

 **Online**
Zoom Platform

14
30

WELCOME ADDRESS

Francesco CAIA
Member of the Italian National Bar Association

15
00

ASYLUM POLICY: OBJECTIVES AND RESULTS OF THE APPLICATION OF THE ITALIAN LEGISLATION

Alessio SANGIORGI, Lawyer, Member of the Unione Forense per la Tutela dei Diritti Umani - UFTDU

THE ROLE OF LAWYERS IN IMMIGRATION CASES

Hilarry SEDU
Lawyer, Member of the CNF's Human Rights Committee and of the CCBE's Migration Committee

15
45



16
30

PRESENTATION FROM A REPRESENTATIVE OF A SEARCH AND RESCUE ORGANISATION

Gianluca D'AGOSTINO
Naval Captain, Head of the Italian Maritime Rescue Coordination Center - IMRCC



17
15

PRESENTATION FROM A UNHCR REPRESENTATIVE

Antonio DI MURO
Protection Associate UNHCR



Funding programme



The project is co-funded by the Justice Programme of the European Union



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THE ITALIAN ASYLUM SYSTEM

Characteristics and Current Challenges

- a) UNHCR's Role in the Italian Context
- b) The Italian asylum system: how does it work in practice?
 - a) Access to the territory
 - b) Access to the asylum procedure
 - c) National reception system
 - d) Refugee status determination (RSD)
 - e) Specialized Divisions and Court of Cassation
- c) The crucial role of Italian lawyers
- d) Current and future challenges

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UNHCR's Role in the Italian Context

- Access to the Italian territory, incl. presence at sea arrivals
- Resettlement and humanitarian corridors
- Active role in first-instance refugee status determination (RSD). See art. 4 co. 3 D.Lgs. 25/2008
- Integration



UNHCR's Role in the Italian Context

- Support national authorities with the aim of protecting refugees and asylum-seekers:
 - Ministry of Interior, incl. the National Commission for the Right of Asylum
 - Ministry of Justice, incl. Specialized Divisions on Migration and Asylum
 - CNF
 - CSM and SSM
- Active engagement with the Italian legal community
- Direct dialogue and support to the refugee population in Italy, incl. refugee-led organizations
- Cooperation with civil society organizations on asylum issues



The Italian asylum system: how does it work in practice?



Access to territory

- What does this mean? And why is this particularly relevant?

CASE LAW

- European Court of Human Rights [GC], [Hirsi and Others v Italy](#), 23 Feb 2012
- Court of Appeal Rome, Judgment, 11 Jan 2021
- S.S. and Others v Italy, [App. No. 21660/18](#)
- First-Instance Court of Rome, [Interim Decision](#), 18 Jan 2021
- CCPR Views in the case of [A.S., D.I., O.I. and G.D. v Italy](#), 27 January 2021

Access to Procedure

- What does this mean? And why is this particularly relevant?

PROBLEMATIC ISSUES

- Difficulties in timely registration if outside national reception system
- Restrictive interpretation in the registration of subsequent applications (BUT reform of Art. 29 *bis* D.Lgs. 25/2008)

CASE LAW

- First-instance Court of Turin, Judgment, 06 April 2020 on access to procedure in a pre-removal detention center
- First-instance Court of Rome, Judgment, 07 April 2020 on access to procedure in the context of COVID-19 lockdown

National Reception System

- How does it work in practice?

PROBLEMATIC ISSUES

- Mixed reception conditions
- Sometimes lack of expertise in relation to specific needs, incl. physical and mental illness

CASE LAW

- Council of State, [Judgment n. 1271](#), 9 luglio 2020 on the withdrawal of reception measures and the importance of respecting human dignity (see CJEU Grand Chamber [judgment](#) in the Haqbin case)

Refugee Status Determination (RSD)

- What are the Territorial Commissions for International Protection?

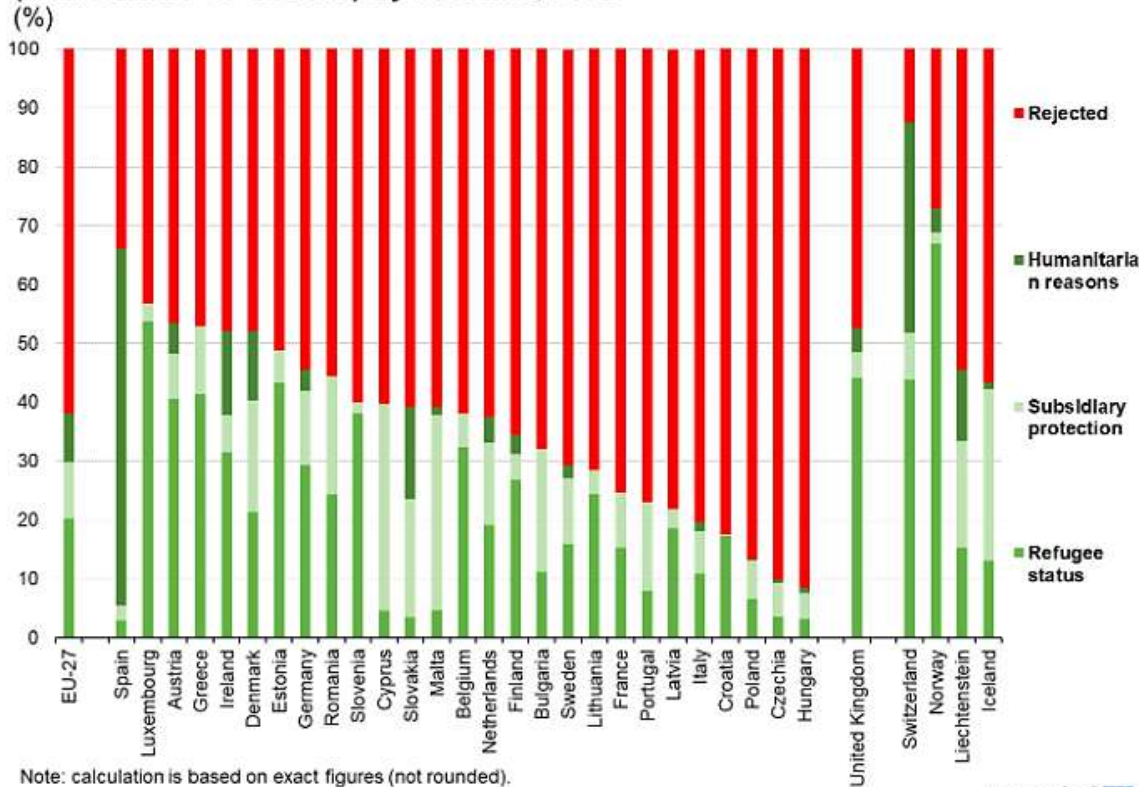
ASYLUM DECISION-MAKING PROCESS

- RSD interview: conducted by Mol caseworker at the presence of an interpreter
- RSD decision: possible outcomes of the plenary decision
 - Refugee status
 - Subsidiary protection
 - Special protection
 - Rejection
 - Manifestly unfounded

ACHIEVEMENT: Significant reduction of the backlog down to 33,808 compared to more than 140,000 in 2018

RSD First Instance Recognition Trends: Italy v EU

Distribution of first instance decisions on asylum applications (from non-EU-27 citizens) by outcome, 2019 (%)



Note: calculation is based on exact figures (not rounded).

In [2019](#), stable first instance recognition rates (40%) within the EU. Yet, wide variations for some nationalities:

- Afghanistan: in Italy 910 positive decisions out of 970; in Germany 4,605 out of 10,365
- Somalia: in Italy 655 positive decisions out of 710; in Sweden 245 out of 780
- Venezuela: in Italy 1,425 positive decisions out of 1,560; in France 275 out of 550

Specialized Divisions and Court of Cassation

- A short overview of the appeal procedure in the Italian RSD system

PROBLEMATIC ISSUES

- Significant backlog: 95,000 pending cases before Specialized Divisions and 13,101 pending cases before the Court of Cassation (+153% compared to 2018)
- Ongoing specialization. Particular challenges concerning the Court of Cassation
- No professional interpreters available

CASE LAW

- The Court of Cassation regularly publishes a repository of the most relevant decisions on international protection: the latest is available [here](#).

The Italian RSD System: First Instance & Appeal

RECOGNITION RATES: all in all, the system provides fair recognition rates

SUBSIDIARY PROTECTION: progressive interpretation of Art. 15(b) and (c) QD

IFA/IPA: not only limited application of the IFA/IPA concept in practice but also mostly in line with [UNHCR Guidelines N. 4](#)

CASE LAW: even though mixed quality in judicial decision-making, interesting (and under-researched) asylum case-law:

- First-Instance Court of Milan, [Decree 6781/2019](#), 23 August 2019 on risk of persecution related to serious mental health conditions
- First-Instance Court of Turin, [Decree 741/2020](#), 03 February 2020 on witchcraft allegations as gender-based persecution


The crucial role of Italian lawyers



The crucial role of Italian lawyers

- Why are lawyers a crucial component of the national asylum system?

CHALLENGES

- Lack of specialization  DM 163/2020
- Difficulties in handling specific needs, incl. victims of trafficking, victims of torture, traumatized individuals
- Contrasting interpretations on legal aid
- Specific ethical issues, which are not currently addressed by the professional code of conduct

OPPORTUNITIES

- Active cooperation between UNHCR and CNF, as well as local bar associations

Current and Future Challenges



Identification and protection of vulnerable individuals

- Who are vulnerable individuals?
- Lack of systematic identification of and referral for specific needs
- Advanced child protection regime but there are gaps between the law and practice
- Women and girls who have experienced sexual gender-based violence



Integration beneficiaries of international protection

- Why is integration a priority?
- Poor integration encourages onward movement and threatens to undo Italy's good practice in terms of access and asylum
- Municipalities are crucial actors on integration issues
- Cooperation with refugee communities and refugee-led organizations to include their perspectives



Protecting refugees and asylum-seekers in the COVID-19 pandemic

- Access to the asylum procedure notwithstanding lockdowns and significant restrictions to the freedom of movement
- Difficulties in identifying vulnerable individuals
- Ensuring continuity in the assessment of asylum claims at both first-instance and appeal level
- Protecting the fundamental rights of vulnerable individuals, incl. minors and their right to education or access to healthcare
- Facilitating integration in times of crisis



Thank you



MINISTRY OF INFRASTRUCTURE AND
TRANSPORT
ITALIAN COAST GUARD HEADQUARTERS

Training of Lawyers
on EU Asylum and Immigration Law (TRALIM II)
FEBRUARY 2021



The project is co-financed with the support of the European Union's Justice programme

CAPTAIN (ITCG) GIANLUCA D'AGOSTINO
HEAD OF IT-MRCC

SUMMARY



**ITALIAN COAST GUARD:
ROLE AND FUNCTIONS**



LEGAL FRAMEWORK

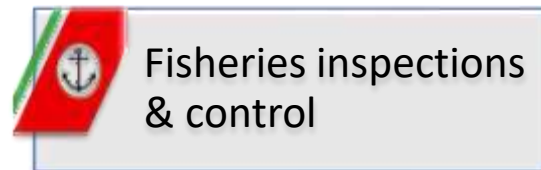
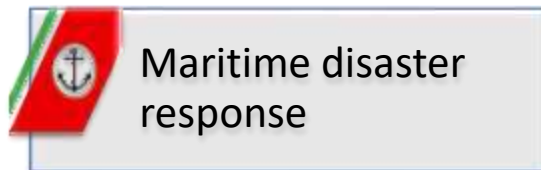
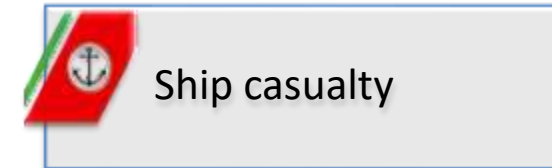
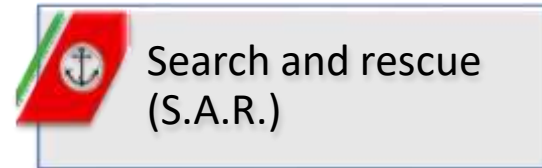
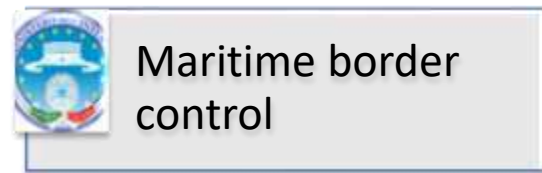
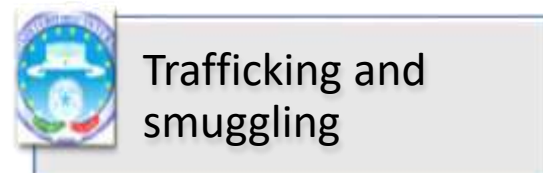
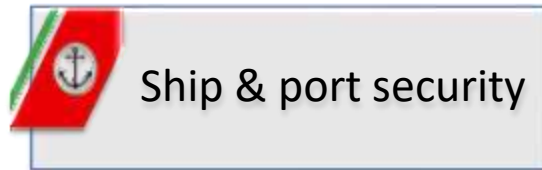
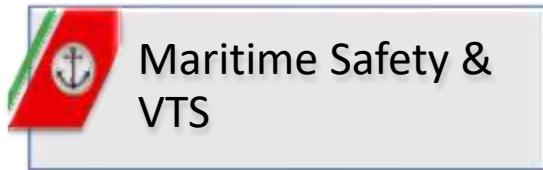
STATISTICAL REPORTING

FOCUS ON THE ACTUAL SCENARIO

ITCG ROLE AND FUNCTIONS

Coast Guard Functions

The Italian Coast Guard is **National Competent Authority**, at **operational level**, for 8 out of the 11 Coast Guard Functions as defined by the ECGFF + 2 functions shared with other Administrations / Bodies



NOWADAYS CRIMINAL NETWORK INVOLVEMENT

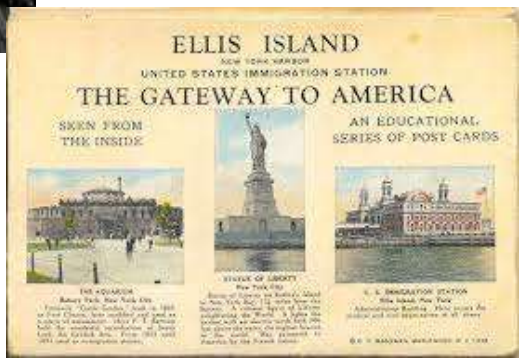


1900

ECONOMIC MIGRANTS
LEGAL WAYS OF MIGRATION



TODAY:
MIXED MIGRATION by sea and **FEW LEGAL WAYS** = **FLOW** often **MANAGED BY CRIMINAL ORGANIZATIONS**



Without an effective S.A.R. service, many of them die.
We don't know exactly how many died at sea: **missing migrants at sea can be only estimated.**

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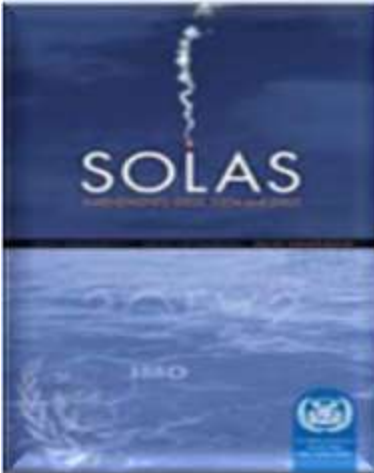
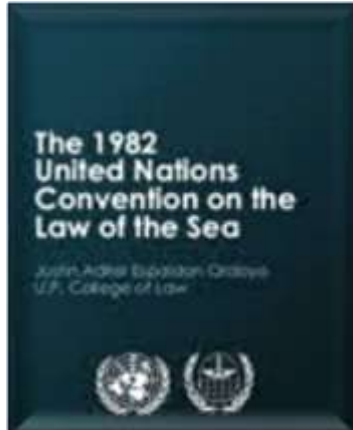
FOCUS ON THE ACTUAL SCENARIO



SCENARIO



MIGRATION LEGAL IMPLICATIONS



INTERNATIONAL LEGISLATION

- **UNCLOS - U.N. CONVENTION ON THE LAW OF THE SEA 1982;**
- **INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE (HAMBURG '79);**
- **INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA (SOLAS), 1974;**
- **REGULATION EU 656/2014; REGULATION UE 1896/2019**
- **IAMSAR MANUAL.**

NATIONAL LEGISLATION

- **NAVIGATION CODE;**
- **PRESIDENTIAL DECREE 662/1994;**
- **LAW 147/1989;**
- **INTERMINISTERIAL DECREE 14/07/2003;**
- **TECHNICAL AND OPERATIONAL AGREEMENT ON PROCEDURES AND COORDINATION FOR COMBATING ILLEGAL IMMIGRATION BY SEA.**

RESPONSIBLE RCC, FIRST RCC AND SRR

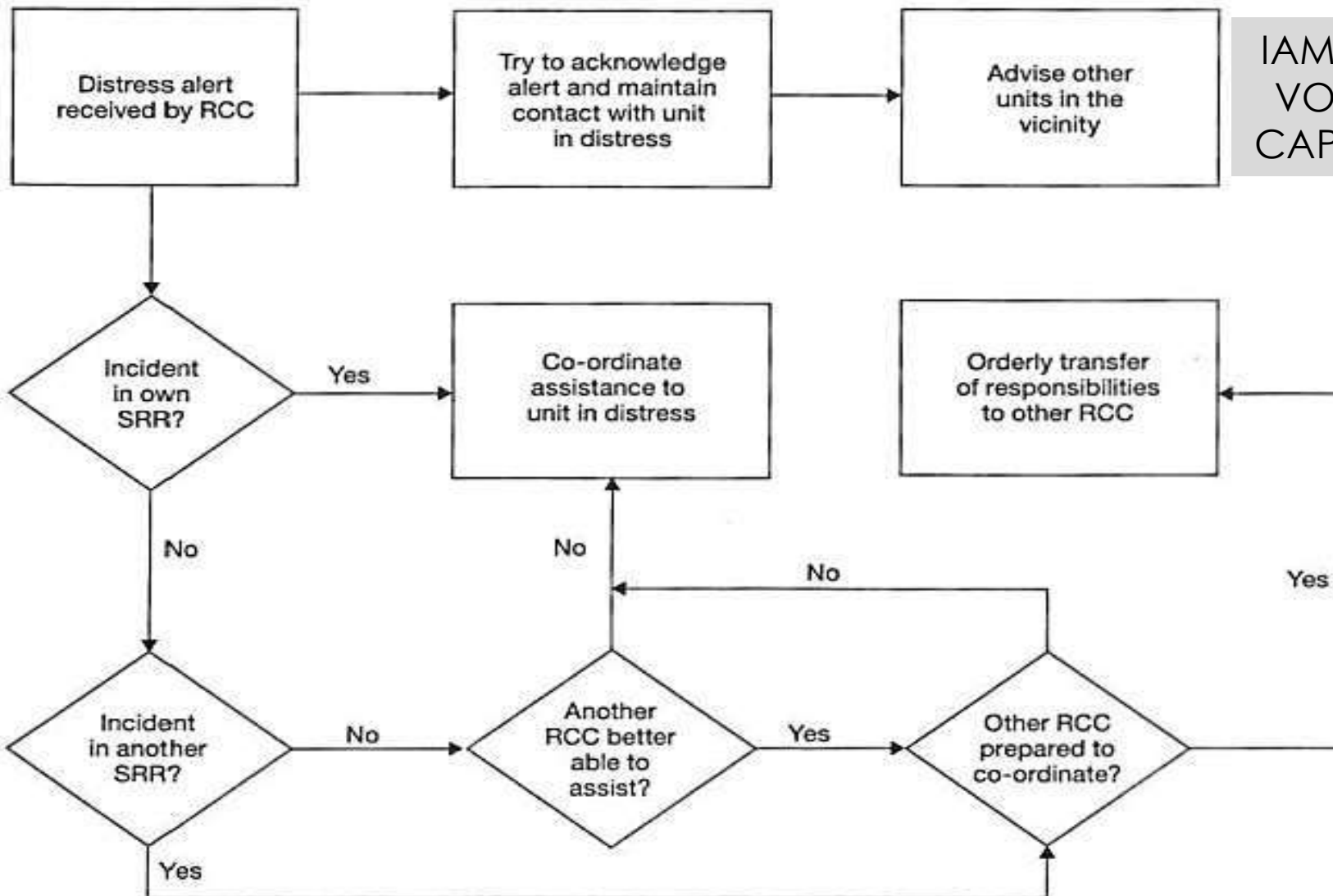
RCC (Rescue Coordination Centre): A UNIT RESPONSIBLE FOR PROMOTING EFFICIENT ORGANIZATION OF SEARCH AND RESCUE SERVICES AND FOR COORDINATING THE CONDUCT OF SEARCH AND RESCUE OPERATIONS WITHIN A SEARCH AND RESCUE REGION.

“FIRST” RCC (Rescue Coordination Centre): RCC AFFILIATED WITH THE SHORE STATION THAT FIRST ACKNOWLEDGES A DISTRESS ALERT, AND WHICH SHOULD ASSUME RESPONSIBILITY FOR ALL SUBSEQUENT SAR CO-ORDINATION UNLESS AND UNTIL RESPONSIBILITY IS ACCEPTED BY ANOTHER RCC BETTER ABLE TO TAKE ACTION.

SRR (Search and Rescue Region): AN AREA OF DEFINED DIMENSIONS, ASSOCIATED WITH A RESCUE CO-ORDINATION CENTRE, WITHIN WHICH SEARCH AND RESCUE SERVICES ARE PROVIDED.

RESPONSIBLE RCC, FIRST RCC AND SRR

IAMSAR
VOL. II
CAP. 3.6



INFORMATION FLOW ABOUT MIGRATION



INTERNATIONAL INFORMATION FLOW



SEARCH AND RESCUE

SAR Obligations

Obligations for the Ship Master at sea



Immediate information and co-operation with MRCC

Obligations for Coastal States - MRCCs



Management of the case and co-ordination



effective SAR services within their SRRs

Co-operation between States

Delivery to a Place of Safety

immediate assistance



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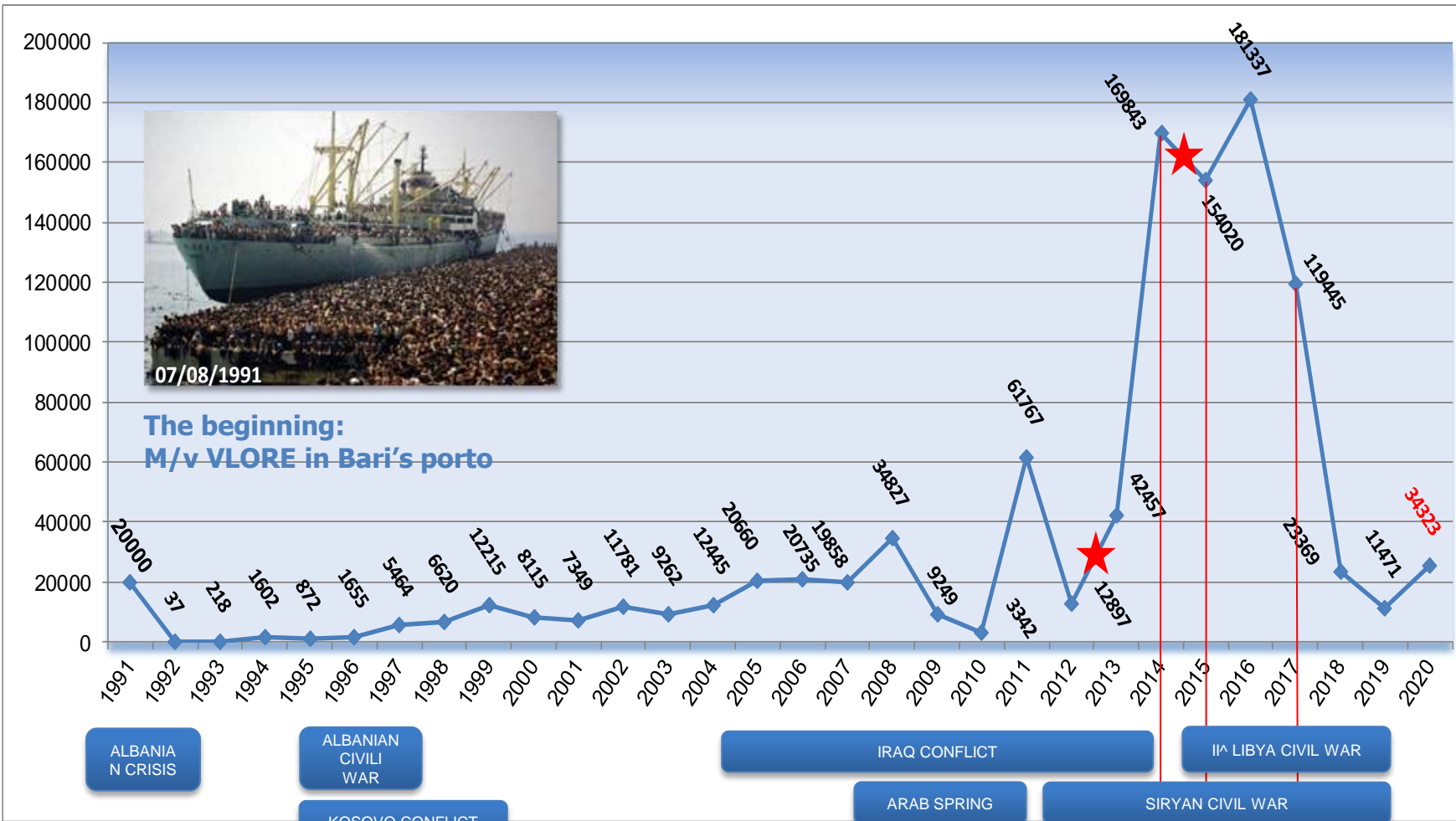
STATISTICAL REPORTING

FOCUS ON THE ACTUAL SCENARIO



HISTORY OF IMMIGRATION FLOWS TOWARD ITALY AND SOCIO-POLITICAL CONNECTION

*(UPDATE 31.12.2020)

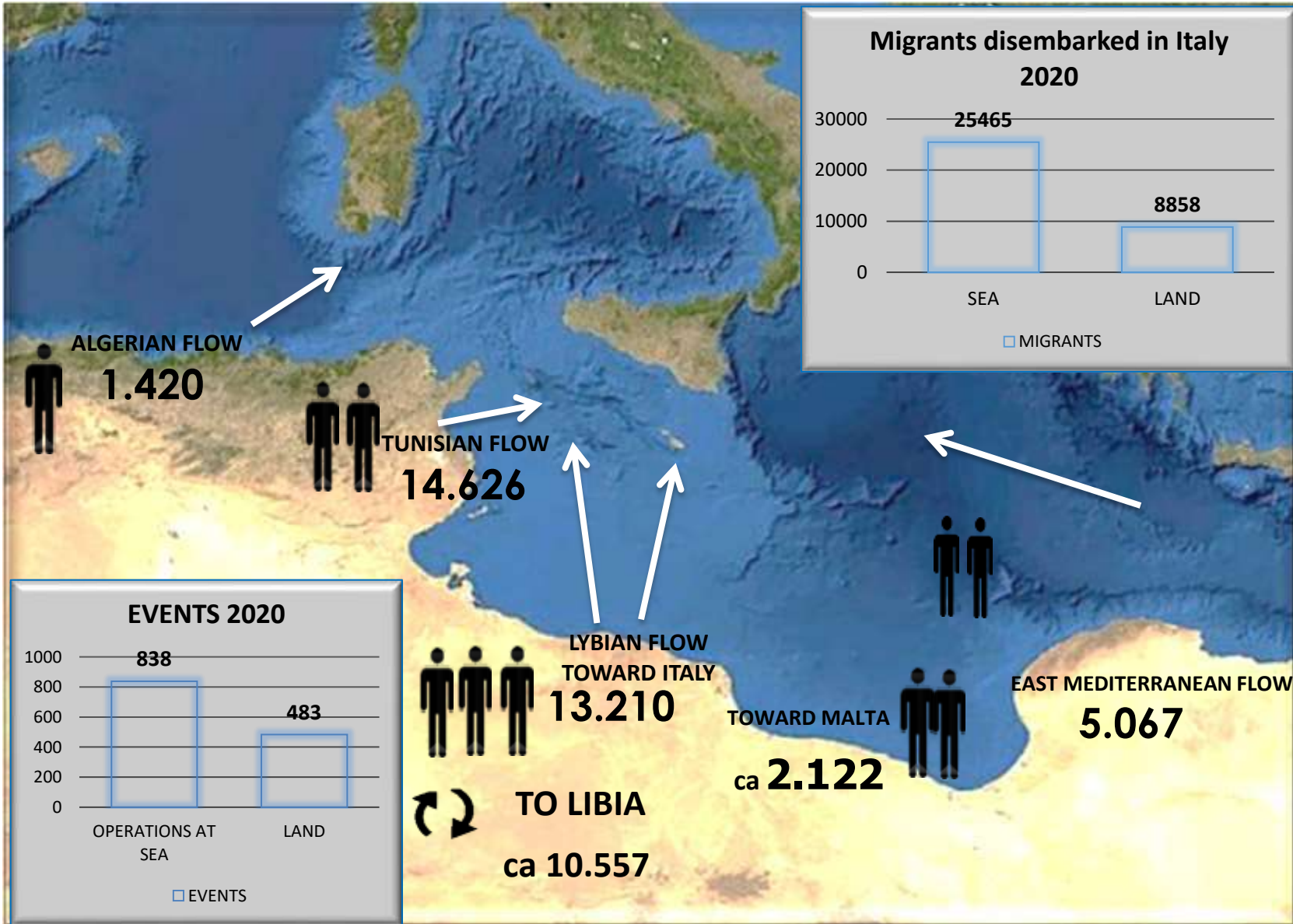


Mare Nostrum SAR with Merchant ships

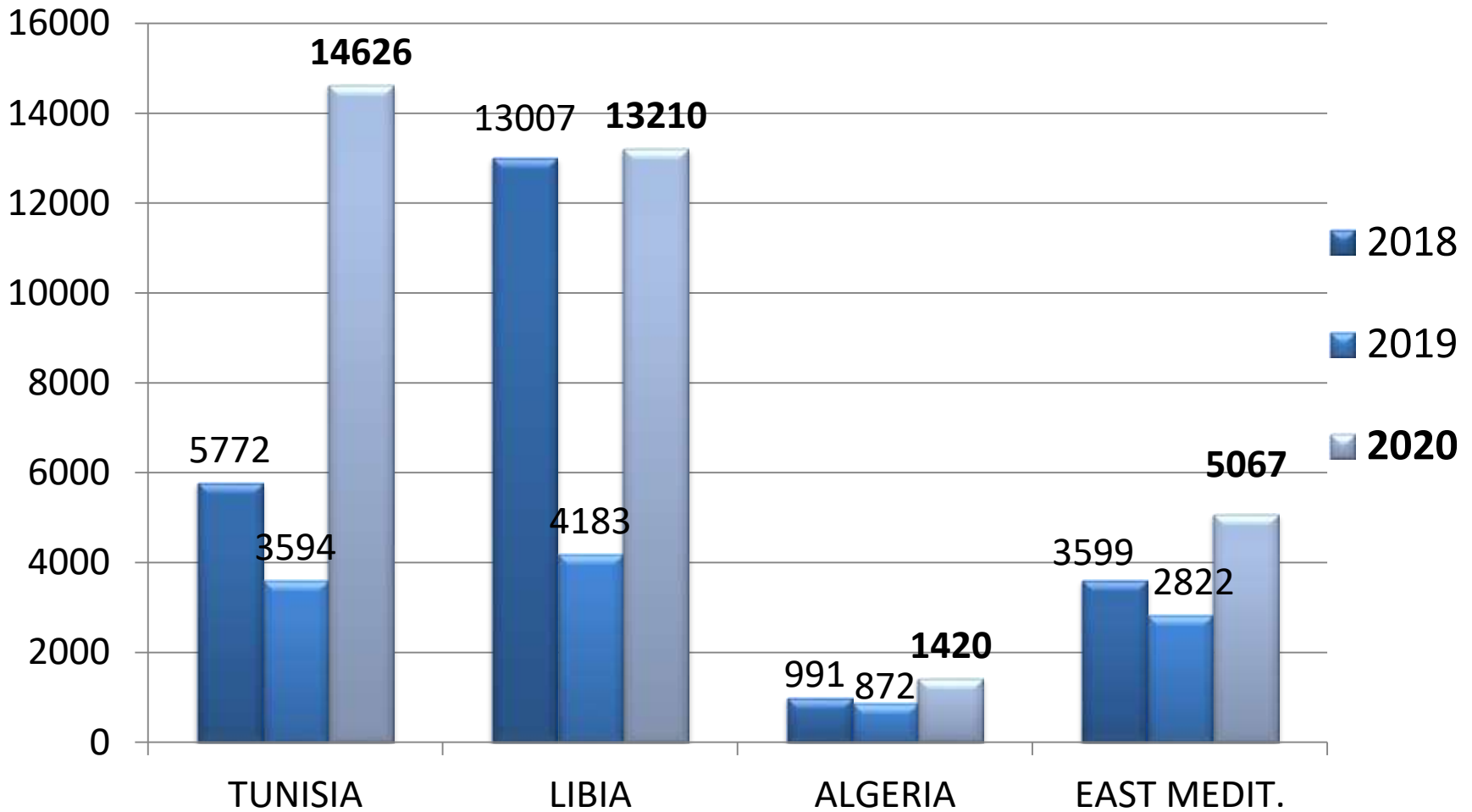
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Libyan SAR Area Code of conduct

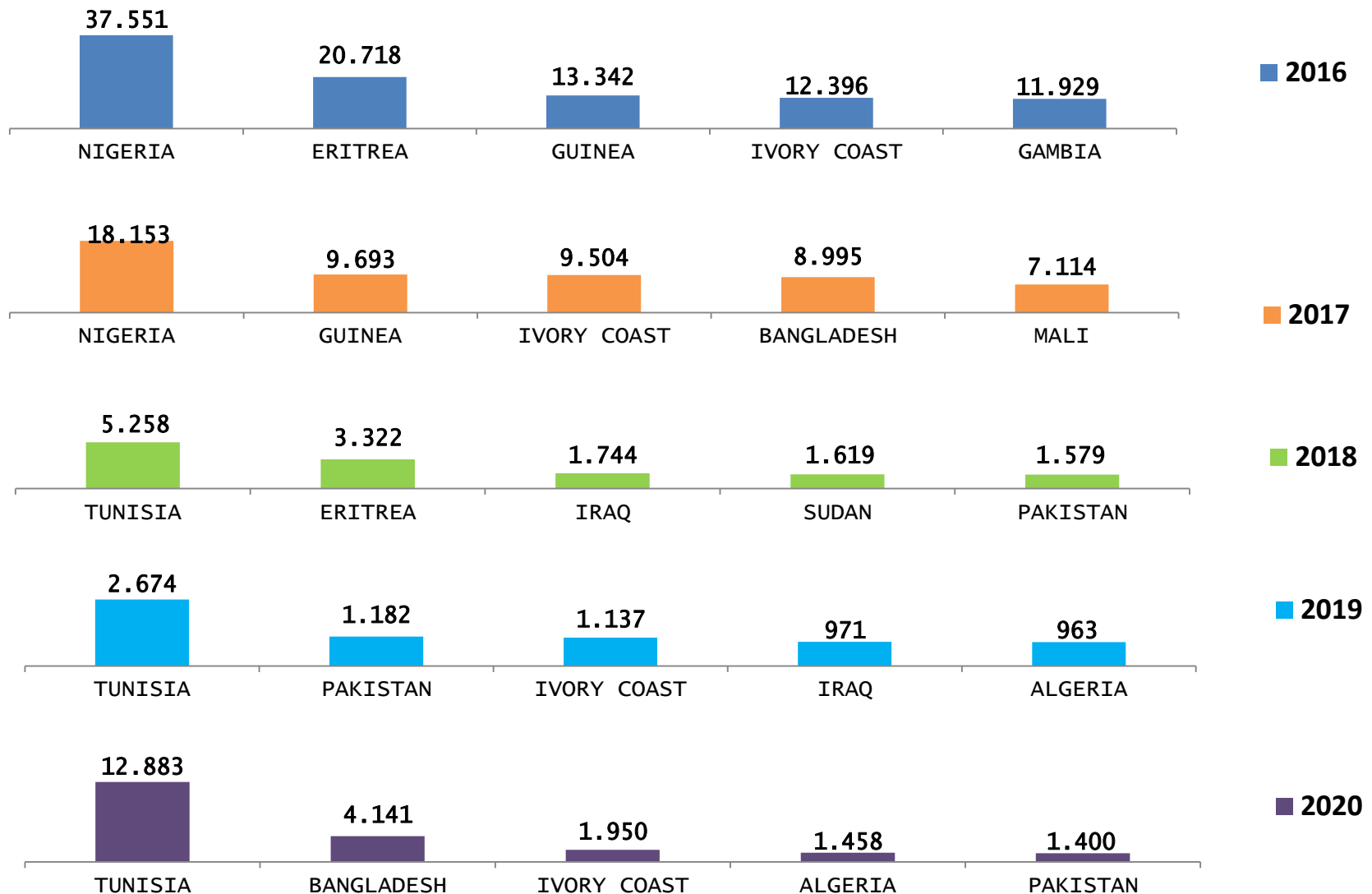
MIGRATION FLOW YEAR 2020



NUMBER OF PEOPLE ARRIVED IN ITALY



MAIN NATIONALITIES OF MIGRANTS



DATA PROVIDED BY MINISTRY OF THE INTERIOR

SUMMARY



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MIGRANT SMUGGLERS BOAT TYPES



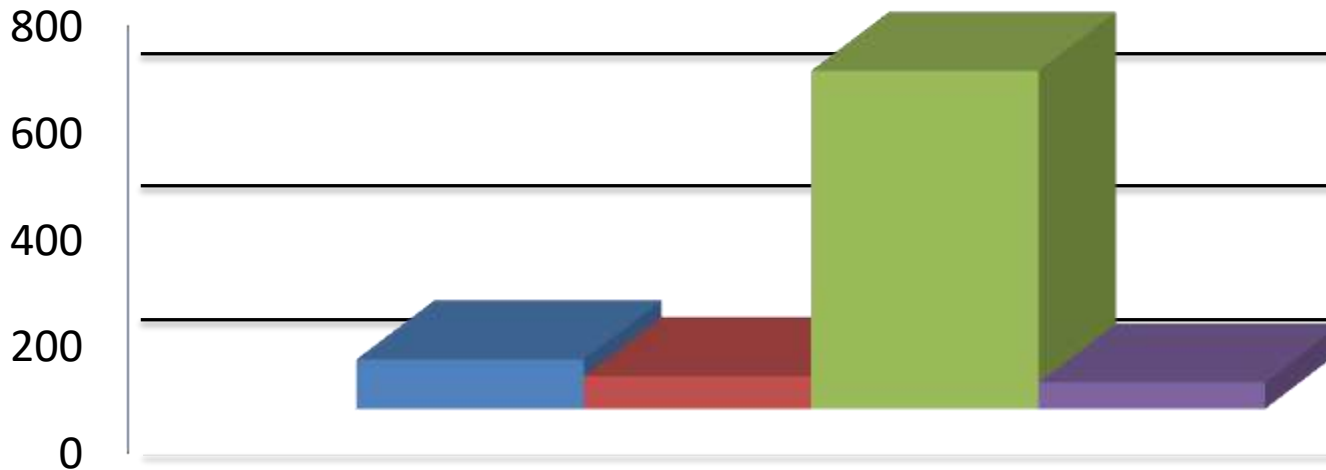
	2016	2017	2018	2019	2020
Rubber boats	1.094	640	102	44	93
Wooden boats	241	471	211	149	694
Merchant ships	0	0	0	0	0
Others	89	48	51	31	49
Total	1.424	1.159	364	223	836



USED BOATS PER TYPE - FOCUS ON 2020 -

In 2020, as well as today, more performing boats with fewer people on board were used - an increasing number of small boats, BUT...

- RUBBER BOATS
- LARGE WOODEN BOATS
- SMALL BOATS
- OTHERS

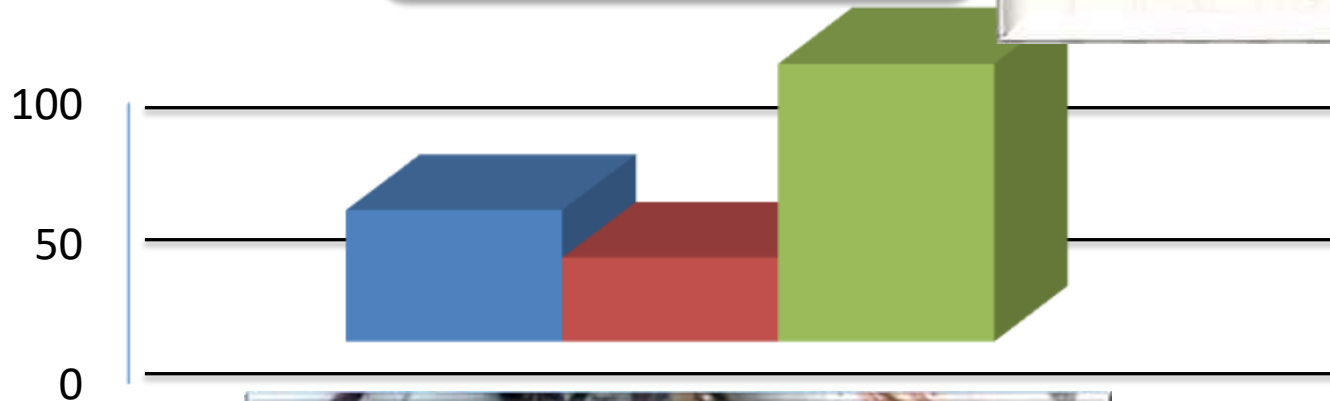


USED BOATS PER TYPE

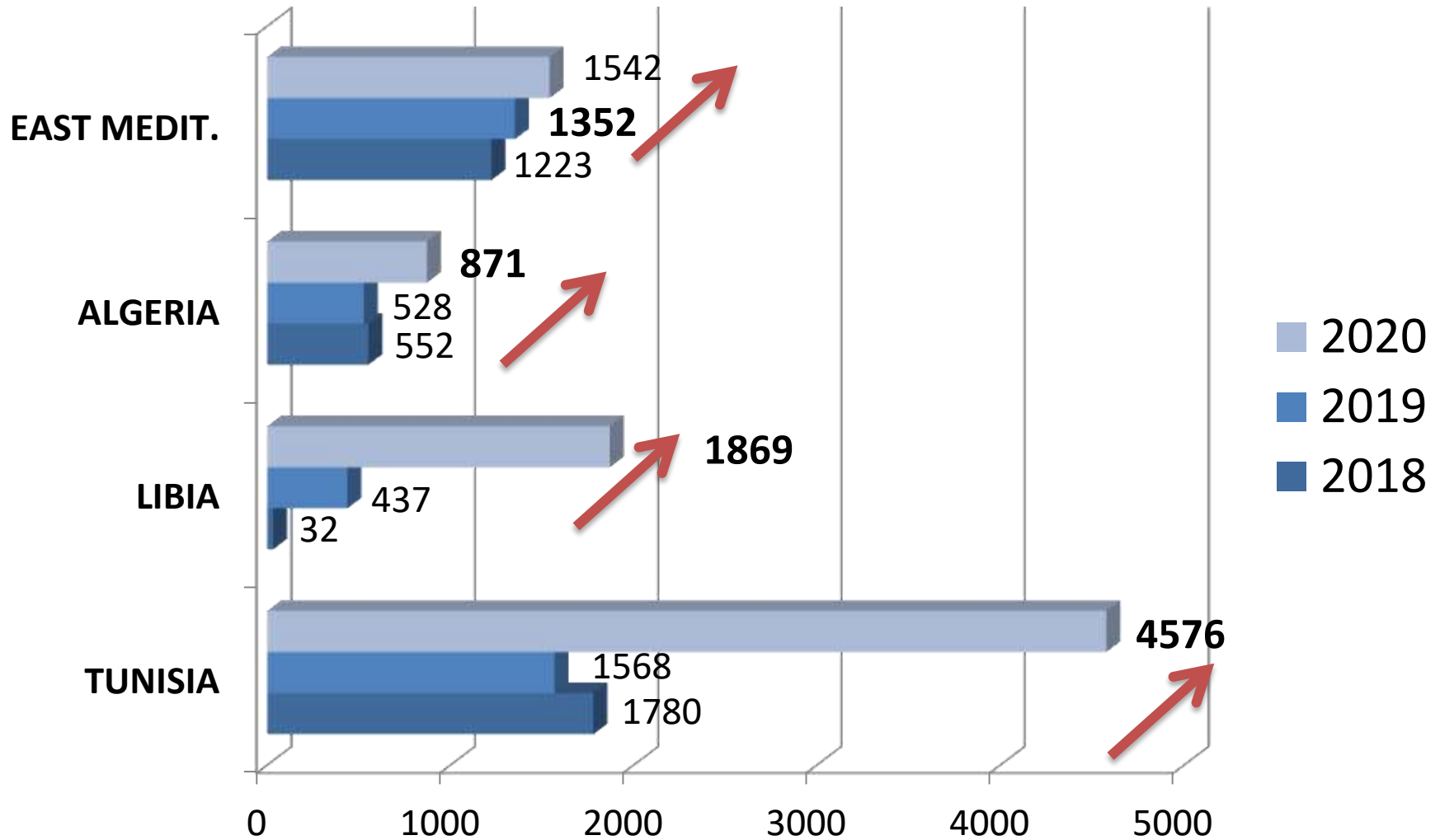
- FOCUS ON LIBYAN FLOW 2020 -

- RUBBER BOATS
- LARGE WOODEN BOATS
- SMALL BOATS

...is noted that the quality of rubber boats is worsening day by day



NUMBER OF UNDETECTED ARRIVAL





CAPTAIN (ITCG) GIANLUCA D'AGOSTINO
HEAD OF IT-MRCC
ITALIAN COAST GUARD
GIANLUCA.DAGOSTINO@MIT.GOV.IT