

**Written evidence submitted by [REDACTED], on the Consultation on the renewal of the European Union Internal Security Strategy for 2015-2020**

- [REDACTED]
- [REDACTED]
1. Which specific challenges need to be tackled by EU action in the coming five years regarding international crime, radicalization and terrorism, cybercrime and cyber-attacks, natural and man-made disasters? What role should the border security have in addressing those challenges?

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, better known as **FRONTEX** has a huge role in the undocumented migration.

It is a shame for the European Union that hundreds of persons, much of them children and women drown in the Spanish and Italian coast trying to reach the European dream that they watch clearly through the television channels. 40.000 illegal borders crossing in 2013 were detected at the external EU borders of the Western Balkans, 27 per cent more than the previous year.

All the international borders all over the world struggle with humanitarian crisis in various levels. In the long border of 3000 kilometers between Mexico and USA some awful crimes are routinely committed by the border patrol. In 2014 four Mexican men were killed by gunfire from USA soil. A stone against a bullet. A border patrol not trained enough to avoid lethal force against bad words and stones from Mexico. Fortunately the United States Court of Appeals for the Fifth Circuit ruled in June 2014 that a border patrol agent could be sued by the family of a 15 years old Mexican boy he shot and killed through a barbed wire fence even though the boy was physically in Mexico. Notwithstanding in this case constitutional protection did not apply because he was not in USA, the three judge panel stated the agents conduct was obviously unlawful so he did not qualify for immunity.

In the summer of 2014 a humanitarian crisis has been declared at the Mexican USA border with an estimated of almost 90.000 minors caught crossing undocumented. When there are kids involved all the alarms rise with the principle of the best interest of the minor ruling above the rest and doing things slowly to do them well which usually means finding a temporary solution with relatives inside USA until the deportation process finished, all but Mexican children thanks to a George W Bush law. The border police want to put them in a bus or an airplane and expelled them right away without process. But among them, asylum seekers with good grounds need a chance for a humanitarian visa. The same conduct should be observed with the sub-Saharan persons who tried to set foot in Spain sovereign territory or Italy.

Even though since Amsterdam Treaty, migratory policy is common policy, an important aim to reach is transforming the migration policy in a real common police like fisheries or agricultural. Borders are a concern to the whole EU not only the Border States so the whole EU must decide the policy to follow and must pay for it. No need to ask for help to Brussels. Everything must be decided by the majority of the 28 member states with some margin of appreciation to the Border States because they know better how to deal with the problem. The troika (European Commission, president of the European Council, member state who holds the six months presidency) should reach (social, economic, democratic and environmental) **agreements with each and every one of the countries origin of the migration** as the best way to deal with the phenomenon.

In the 1980's, a new concept emerged. It has been known as the **principle of universal jurisdiction** which allows states to examine and prosecute persons who committed a serious crime under international law, regardless of the perpetrator's nationality, either of the victims or even where the crime was committed.

In the case of the genocide, the International Court of Justice (ICJ), the highest judicial body of the United Nations, has recognized since 1951 that the 1948 Convention against Genocide codified relevant customary law. The principles of the Convention "were principles recognized by all nations which obligate all states outside of any conventional relationships, possessing a universal character". Consequently the crime of genocide can be (and should be) pursued through the courts of any nation, without regard to the fact that such State has not signed up to the 1948 Convention against Genocide. Therefore it is easy to conclude that for certain crimes the ICJ has recognized the universal jurisdiction of any national court.

Universal jurisdiction will apply in any case of genocide, crimes against humanity, war crimes, torture, extrajudicial execution and forced disappearances, which are considered the most serious crimes under international law. This universal jurisdiction may be even referred in cases of ordinary crimes under domestic laws such as murder, kidnapping, assault and abuse.

**The European Union should embrace the universal jurisdiction principle as a democratic and rule of law land symbol. Transforming us in a human rights hub and giving the invisible victims of human rights all over the world with a stage (a judge, a tribunal and a map route) where they can tell their experience and justice could be served even if the author of violations never goes to jail.**

A very good practice is the USA treatment (at least before Supreme Court Kiobel ruling) of the principle **universal civil jurisdiction prosecuting the author of human rights violations**. USA uses two civil laws to hold perpetrators of international human rights abuses accountable in the United States: the Alien Tort Statute and the Torture Victim Protection Act. In the United States, you could file civil lawsuits against human rights abusers who reside in or visit the country. Under the Alien Tort Statute and the Torture Victim Protection Act, victims of human rights violations from anywhere in the world can seek justice in U.S. courts. The Alien Tort Statute is a U.S. federal law first adopted in 1789 that gives the federal courts jurisdiction to hear lawsuits filed by non-U.S. citizens for torts committed in violation of international law. When the ATS was drafted in the 18th century, international law dealt primarily with regulating diplomatic relations between States and outlawing crimes such as piracy. Today and since 1980, the Alien

Tort Statute gives survivors of egregious human rights abuses, wherever committed, the right to sue the perpetrators in the United States in cases involving torture, state-sponsored sexual violence, extrajudicial killing, and crimes against humanity, war crimes and arbitrary detention. The Torture Victim Protection Act signed into law in 1992, gives similar rights to U.S. citizens and non-citizens alike to bring claims for torture and extrajudicial killing committed in foreign countries. The European Union should have the same type of community law.

The **European extradition order** is a step forward in the good direction but because we must never forget that crimes are not committed by nationalities but people, and like the protection of human rights knows no boundaries, the prosecution of those who violate them so massive and systematic cannot depend on the nationality of the victims or the guilty party.

European Union should ratified all the conventions of human rights as a block, the foreign policy should be a common policy beginning with the launch in April 2014 of the Protocol of the Children Convention thanks to ten states ratification that enables the kid to appeal to its Committee, even pornography and kids role in war.

An interesting and controversial phenomenon that contributes to international justice but at the same time weakens the international community ethics is the possibility that a committee, known as the UN number 1267 since 1999 and at the request of the Security Council, put into a blacklist individuals (there is no women) and institutions allegedly linked to terrorism. In brief, **black lists**. The consequences of being included (currently 212 individuals and 67 companies or organizations) are actually<sup>1</sup> harmful, because it requires all States of the international community, mandatory since been adopted under Chapter VII of the UN Charter, to prevent the entry into or even transit through the country, to freeze all financial and banking resources and finally establishes an arms embargo and everything related to the military field (experts, support, training) to individuals, groups and companies from the list of Al Qaeda.

These lists were created with multiple defects or faults that have been tempering, without actually deleting them, over time. Its most serious defect is no right to a hearing and no possibility of appeal. It is also true that the alleged terrorists suspected of having ties to Al Qaeda and the Taliban would hardly appear voluntarily wherever they are before this New York committee, representative of civilized nations.

Rated as a dangerous and continued erosion of fundamental rights and freedoms and a discrediting of the international fight against terrorism, the EU develops an equally objectionable virtually identical procedure.

Both procedures seriously would violate the European Convention on Human Rights (ECHR), which guarantees, like most constitutions in the world, the right to a fair trial and the right to be heard. Delisting is complicated. No compensation is provided for cases of mistaken listing. Becoming a reliable procedure would require at least the right to a hearing, the opportunity to appeal through an internal UN tribunal. It also requires states to develop some form of national appeal to an international sanction of this type that lacks the minimum guarantees of a fair trial.

---

<sup>1</sup> Checked at the United Nations web page July 13 2014 <http://www.un.org/sc/committees/1267>

In 2009 was established the figure of the Ombudsperson<sup>2</sup>, charge only occupied until now by a Canadian lawyer, Kimberly Prost, judge *ad litem* of the Criminal Court for the former Yugoslavia. Her office establishes contact with the listed who want their case to be reviewed. It is the first time that this happens. If the Ombudsperson recommends the delisting and no opposition for 60 days, the Committee will follow her recommendation.

The most prominent of the judgment<sup>3</sup> of the Court of First Instance of the European Union Yusuf in September 2005, the powers of punishment that has the Security Council in the exercise of the responsibility for the maintenance of peace should be used in respect of international law and, in particular, of the purposes and principles of the United Nations. **International law allows also considering that there is a limit to the principle of the binding effect of the sanctions of the Security Council when it violates human rights. European Union should not follow United Nations black list procedure and should come up with a new and humanitarian one where human being is the center.**

2. Taking into account the developments in the next five years, which are the actions to be launched at the EU level?

The **European Prosecutor of Human Rights** has been on the making at least from 2003 to facilitate the access to the European judge for the victims of human rights violations in armed conflicts areas. The need to exhaust domestic remedies before accessing the European court could be waived in critical areas. It could get closed to people in jeopardy, identify problematic zones and offer his help to appeal to Strasbourg.<sup>4</sup>

---

<sup>2</sup> Ombudsperson Office United Nations Security Council 1267 Committee <http://www.un.org/es/sc/ombudsperson>

<sup>3</sup> CFI Rulings 306/01, 315/01 Cases Yusuf y Al Barakaat International Foundation /Council and Commission. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=67143&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=219801>

<sup>4</sup> Pourgourides Christos “ A human rights Prosecutor could facilitate access to the Court in Strasbourg” [http://www.coe.int/t/e/com/files/interviews/20030623\\_interv\\_Pourgourides.asp#TopOfPage](http://www.coe.int/t/e/com/files/interviews/20030623_interv_Pourgourides.asp#TopOfPage)