

Open Briefing 2023 to Member States

Ombudsperson: Richard Malanjum

Date of briefing: 03.08.2023

Introduction:

Honourable Chair, honourable delegates, colleagues, ladies and gentlemen, thank you for the opportunity to brief you about the function of the Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee ('the Office'). I am the current Ombudsperson, and this is my second briefing since assuming office early last year. It has been an exciting period for me as a former judge in a national court, overseeing the application of due process and the Rule of Law from an international perspective for the past 18 months. So far, my experience in this Office has led me to make some observations, which I would like to share in a moment.

But first, allow me to highlight the achievements of the Office since its establishment over 12 years ago.

Cases Update:

In 2022, nine (9) cases were completed, with two (2) recommendations made for delisting and the others for retention, making a total of one hundred (100) cases dealt with by the Office since its inception. Five (5) other cases submitted to the Office were settled before any recommendations were made. While the number of cases may appear small, one case takes much time to complete, with an average of eight (8) to sixteen (16) months per case. As of July 2023, the ISIL (Da'esh) and Al-Qaida Sanctions regime ('the 1267 sanctions regime') has listed two hundred fifty-six (256) individuals and eighty-nine (89) entities and groups. I will share my views on why only a few individuals/groups seek redress. Currently, we have two (2) active cases, with another in the process of starting. I expect more cases to be submitted before the year ends. For more information on the delisting process, one can visit our website at:

<https://www.un.org/securitycouncil/ombudsperson/procedure>

Relevance of the Office:

The existence of the Office is crucial for the effective and productive continuation of the 1267 sanctions regime in the fight against terrorism. The Office provides an independent and impartial 'due process' mechanism, minimizing the probability of legal challenges on the grounds

of being unfair and unjust in national and regional courts when enforcing 1267 sanctions by the Member States.

One main reason for the few petitions submitted to the Office is a need for more awareness among those listed about the process. I have heard testimonies from some petitioners stating this. Additionally, the need for legal representation is another reason. While submitting petitions does not require strict compliance with rules, having legal representation helps ensure that the reasons relied upon are clearly expressed and not contradictory. This is an aspect of the sanctions regime that should be seriously considered.

Observations:

As I mentioned earlier, one observation I make here is the issue of trust and confidence by some Member States in the Office's ability to protect the confidentiality of information received for delisting purposes. Despite assurances and execution of confidentiality agreements, there are reservations, mainly based on national security, about disclosing information that may be crucial in coming to a recommendation. This hinders the Office's ability to fulfil its mandate and may lead to recommendations without complete information. This lack of transparency can also undermine the legitimacy of the sanctions regime and may result in challenges in national or regional courts.

This brings me to another observation. Under resolution 2610, Member States are urged, among others, to submit 'delisting requests when appropriate, and by identifying and nominating for listing additional individuals, groups, undertakings, and entities which should be listed'. However, the resolution also requires such nominations to be '**evidence-based**'. The current Guidelines of the Sanctions Committee for the conduct of its work are also replete with the need for '**supporting evidence**' and '**evidence of association**' when considering listing and delisting requests. Thus, bare information alone is no longer adequate. This requirement should be given serious attention as the same condition can be expected and required in a delisting process by the Ombudsperson.

Another observation I wish to make is regarding the enforcement of the 1267 sanctions regime. During my dialogues with several petitioners, I learned that some Member States might be over-zealous in enforcing the sanctions to the extent of depriving the family members of the listed persons of their fundamental human rights such as medical care and education. This 'collective impact' of the sanctions should be monitored to ensure that the intended goals of the sanctions regime are achieved without negatively affecting innocent family members, which in turn may generate grievances and anger among the new generation.

Awareness:

In my interactions with Member States, I realised that some need to be made aware of the Office's existence and work, even after over 12 years since its establishment. To address this, the Office has decided to publish a booklet about its work and procedures for distribution to all the UN Missions of Member States. This initiative aims to increase awareness and understanding of the Office's role.

Expansion:

There have been discussions about expanding the mandate of the Office to other sanctions regimes, such as the Haiti sanctions regime. However, to date, no further developments have occurred in this regard.

Conclusion:

While sanctions are an essential preventive tool in the fight against terrorism, they must be implemented fairly and justly. Sanctions should not be seen as an 'economic death penalty'. 'Due process' is crucial for sanctions to achieve their intended goals.

Thank you for your attention.