Open Briefing 2024 to Member States

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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 third briefing since assuming office in 2022. The period since my last briefing has been marked by several important developments, including the renewal of the Office's mandate in June 2024. My experience as the Ombudsperson 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 14 years ago.

Cases Update:

In 2023, 6 cases were completed, with 2 recommendations made for delisting and the others for retention. In 2024 so far, 2 cases have been completed, with 1 recommendation for delisting and one for retention. This

makes a total of one hundred and seven (107) 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 August 2024, the ISIL (Da'esh) and Al-Qaida Sanctions regime ('the 1267 sanctions regime') contains the names of two hundred fifty-five (255) 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 four (4) active cases. I expect more cases to be submitted before the year ends.

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 Member States. In other words, the Office enhances the legitimacy of the sanctions regime from the international law perspective.

Observations:

The mandate of the Office was renewed in June 2024 by SC Resolution 2734 (2024). The new resolution contains several improvements to the Ombudsperson process – some reflecting already-existing practices.

For example, the new Resolution provides for the provision of a redacted Comprehensive Report, rather than a summary of information, to the petitioner in both delisting and retention cases. This means that the petitioner receives a nearly complete overview of information, including the reasons for making the recommendation, a sine qua non of due process, as it was submitted to the Committee, with redactions of information only addressing security concerns.

Further, the Resolution provides that, upon submission of the Comprehensive Report to the Committee, the Office now also shares it immediately with Member States which provided substantive information to me during the review process, as well as with the Designating State and the State of nationality and residence. Both developments constitute improvements to the transparency of the Ombudsperson procedure as those States are kept abreast on how the information they shared has been utilised.

The Resolution also calls for the Secretariat to “further” strengthen the Office and its independence. The issue of the independence of the Office was also the subject of the Committee’s meeting in November 2023,

during which the Secretariat briefed the Committee on the actions it had taken to enhance the independence of the Office. While recognizing the steps that have been taken by the Secretariat, I observe that they do not truly resolve the underlying structural problems, which lead to the longstanding concerns about the lack of institutional autonomy – and the perception of independence – of the Office. My remarks at that meeting have been published on the Ombudsperson website.

Another observation I wish to make and indeed a perennial issue, is regarding the importance of information-sharing with the Office during the delisting process. I have noted that the Office does not necessarily receive responses from all Member States to the Ombudsperson's requests for information and must continuously engage with Member States to obtain information. A lack of information cannot, by default, be held against a petitioner. A petitioner should not be negatively affected solely because Member States did not submit information. In fact, the lack of information can be interpreted to mean that no information exists which would justify the retention of a name on the list. It would be helpful if Member States which provided information at the listing stage would update that information at the time of the delisting request procedure, and state the reasons why this information remains valid despite the passage of time for the continuation of the listing of the petitioner.

I encourage Designating States in particular to provide relevant information to defend the listing initiated by them, should their position be that the listing should remain. In some cases, Designating States have taken a “hands-off” approach and often provide very little substantive information in relation to the delisting request.

It is also important for States to provide to the Ombudsperson any information they may possess demonstrating both association as well as disassociation in relation to specific cases.

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 14 years since its establishment.

The Office has therefore increased its outreach efforts in several regions, including in ASEAN countries, especially Malaysia, Singapore, Indonesia and the Philippines, as well as with the EU and the GCC.

One such effort is the publication of an informational booklet on the work and mandate of the Office, which has been published online and in hard copy and distributed widely.

Workshops and talks were organised and will be organised with the cooperation of local Non-Governmental Organisations such as human rights bodies and the legal fraternity. These outreach efforts are aimed at

increasing the awareness of those listed about the process, which I have found to be lacking and one reason for the low number of applications for delisting.

In addition, I have also increased outreach to lawyers who might wish to serve as pro bono legal representation for petitioners. While submitting petitions does not require strict compliance with rules, having legal representation helps ensure that the reasons relied upon by the petitioner are clearly expressed and not contradictory. The Office is also preparing an online workshop for pro bono lawyers to explain the Office's mandate, the value of pro bono legal assistance and the expectations of the Office for pro bono lawyers.

Conclusion:

While sanctions are an essential preventive tool in the fight against terrorism, they must be implemented fairly and justly. Otherwise, resentment would likely appear in the form of more terrorism. When international sanctions, which could be tantamount to an economic death sentence, directly affect the fundamental human rights of individuals, those listed individuals should at least be allowed to be heard or seek some remedy to address any injustice or unfairness they are experiencing. Therefore, 'due process' and a procedure which meets the criteria of fairness, including a review by an independent body apart from

the listing entity itself, is crucial in order for sanctions to achieve their intended goals.

Thank you for your attention.