

REMARKS BY THE OMBUDSPERSON, Mr. Richard Malanjum

Due Process in UN Sanctions: 15 Years of Impact and Effectiveness

Celebrating the 15th Anniversary of the Office of the Ombudsperson to the ISIL (Da'esh) and Al- Qaida Sanctions Committee

Permanent Mission of Switzerland

Date: 10 June 2025

1. Excellencies, dear colleagues, ladies and gentlemen.
2. It is a great pleasure and an honour to be invited here as the current Ombudsperson to participate in this event and to celebrate the Office of the Ombudsperson's fifteenth anniversary. In particular, I would like to thank Switzerland and the Like-Minded Group on Targeted Sanctions for organising this event and for their longstanding support for the Office.
3. This gathering also serves as a testament to our collective commitment to the rule of law, fairness, and justice in the global fight against terrorism. This event is not merely ceremonial; it holds deep meaning for all of us who believe that due process is not a luxury or an optional consideration, but a necessity. If the rule of law is to endure, it must be upheld even in the most challenging circumstances.
4. I would also like to recall my predecessors, Kimberly Prost, Catharine Marchi-Uhel, and Daniel Kipfer-Fasciati, and express my deep gratitude and appreciation for their significant work and contributions to the establishment and evolution of the Office of the Ombudsperson. I would also like to recognise the contributions of my current staff, as well as the former staff members of this

Office, some of whom may be participating in this event online. Finally, I would like to thank the numerous supporters of this Office, including my good friend Professor Thomas Biersteker, who is appearing on this panel, for their continued engagement on issues relating to the Office, as well as on due process and sanctions more broadly.

5. In these brief remarks, I wish to share a few reflections on the critical role this Office plays in the 1267 sanctions regime, as well as on my tenure in this Office over the last three years. Much has changed in the sanctions regime and the world since the Office became operational in June 2010.
6. When I first took on this role, I confess that I was not fully aware of the significance of the Office's position within the sanctions regime and in counter-terrorism efforts more broadly. Now, after more than three years in this role, I am convinced of the critical importance of this Office in bringing due process to the 1267 Sanctions Regime. I also firmly believe that the Office has fulfilled its mandate well, despite the many constraints it faces.
7. The Ombudsperson mechanism guarantees an independent and impartial review of delisting requests, thereby ensuring due process, which includes fairness, transparency, and the right to be heard. This mechanism enhances the legitimacy and effectiveness of the 1267 sanctions regime. Without the due process provided through the Ombudsperson procedures, individuals and entities recommended for delisting may still remain on the list. Further, of course, also those whose names were retained were given the opportunity to be heard. One petitioner whose delisting request was denied wrote to my Office that it was not the outcome he had hoped for, but he was nevertheless appreciative that he had been given the chance to provide his side of the story. And based on all the interviews I conducted I can assure you: there is always another side of the story.
8. While sanctions are intended to be preventive rather than punitive, they can have far-reaching effects. Sanctions impact not only the individuals listed but

also their family members who suffer as a result. I refer to this as the 'collective impact' of sanctions, which can be disproportionate to the intended purpose of these measures. In the absence of due process, there may be a backlash; due to the suffering and sense of injustice and unfairness, younger family members of the listed individuals could end up becoming terrorists or supporters. Hence, the purpose of the sanctions regime would not be fulfilled and could, in fact, be undermined. The 'collective impact' and the experienced injustice and unfairness may create conditions capable of pushing those affected towards terrorism. This is a straightforward reason why due process is essential, irrespective of the activities that the sanctions regime seeks to address.

9. Furthermore, a testament to the effectiveness of the Ombudsperson mechanism is that, since its establishment, there have been few challenges to the 1267 sanctions regime before national and regional courts (in contrast to other sanctions regimes lacking such a mechanism, which have faced several recent challenges). The absence of these challenges may suggest a general acceptance of the legitimacy of the sanctions regime. In 2016, in the case of **Mohammed Al-Ghabra v European Commission**, for instance, the Office of the Ombudsperson was acknowledged by the Court of Justice of the European Union as the appropriate forum for delisting under the 1267 Sanctions regime.
10. But confidence and credibility are not static; they must be continuously nurtured. If the Office of the Ombudsperson is to remain a credible guardian of due process, it must be safeguarded and strengthened. Allow me to offer a few suggestions toward that end.
11. Firstly, we must consider automatic referral to the Office after a reasonable period for those who have been listed, particularly in cases where no petition has been filed. This will ensure that individuals are not left indefinitely without recourse to review — something that contradicts the very concept of justice.

12. Second, Member States must demonstrate greater trust in the Office by sharing confidential information in a manner that facilitates a balanced and informed review. Currently, the Office is often simply informed that such information exists but does not receive access to its substance. Expecting the Ombudsperson to base recommendations on such vague assertions as the foundation for continued listing risks turning the Office into a rubber stamp—and ultimately undermines the due process we profess to support.
13. Finally, the perception—and reality—of the Office's independence must be addressed. As long as it remains under the structural umbrella of the Department of Political and Peacebuilding Affairs, which is part of the executive branch, doubts will persist regarding its autonomy. DPPA is responsible for supporting the administration of listings and also for supporting the Office that handles the challenges to those listings. Therefore, a re-evaluation of its institutional placement is essential to reinforce both genuine independence and the public's trust in its impartiality.
14. Now, I would also like to take a moment to reflect on the achievements of the Office. Since its inception, the Ombudsperson has accepted 112 petitions. Of the 106 cases fully completed through the Ombudsperson process, 73 requests for delisting have been granted, and 33 requests have been denied. As a result of the 73 petitions granted, 67 individuals and 28 entities have been delisted, and one entity has been removed as an alias of a listed entity.
15. One particular focus of my time in this Office has been raising awareness about the existence and mandate of the Office. During my tenure, the Office developed an informational booklet on its mandate, explaining its functions and procedures in simple terms. This booklet has been translated into all official languages and widely distributed. I hope that Member States and Petitioners can refer to this booklet for information on the Office's procedures, and that it can serve as a valuable tool for raising awareness. Additionally, I have continued to conduct outreach, both in New York with Member States and

groups such as the GCC, the Like-Minded Group, and the EU, as well as in South-East Asia, to highlight the critical role of the Office. Another important focus for me has been expanding the list of pro bono lawyers from various geographical regions who may be available to represent Petitioners in delisting requests.

16. However, the work of the Office is not without its challenges. The nature of the work, while legal, often clashes with the politicised world of sanctions in which the Office operates. I will not dwell here on the constraints faced by the Office and the ways in which its efficacy and independence could be strengthened and improved, several of which are longstanding and have been the subject of numerous proposals during the most recent mandate renewal in 2024. Some recommendations have been made in the Office's biannual reports, including those I have stated earlier, which I hope will be taken forward by Member States. I count on the continued support of the Like-Minded Group in this regard.
17. Sadly, from my interactions with officials from the capitals of some Member States, I have observed a lack of awareness of the existence and mandate of the Office. Serious consideration should be given to establishing a programme to create a much broader and more continuous awareness among all Member States.
18. I cannot help but acknowledge that this event is taking place amid a growing global climate of hostility toward human rights, the rule of law, and due process. In such times, it is more crucial than ever to safeguard the mechanisms that uphold these principles. As a high judicial authority once said, 'amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace.'¹

¹ Per Lord Atkins in *Liversidge v Anderson* (1942) AC 206

- 19.** For 15 years, the Office has provided a vital pathway for individuals and entities listed under the 1267 Sanctions Regime to have their voices heard by an independent and impartial body. I take pride in having played a modest role in this important process. It is my sincere hope that the Office continues to grow and evolve, and I look to all of you in this room for your support in ensuring it can fulfil its critical mandate despite the challenges ahead.
- 20.** Thank you.