

Remarks of Ombudsperson, Mr. Richard Malanjum, following Secretariat Briefing to update, pursuant to paragraph 68 of resolution 2610 (2021) (S/RES/2610 (2021), the Committee concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities
(30 November 2023)

Madam Chair, Delegates, Good afternoon.

Thank you very much for allowing me to address this Committee in connection with the briefing by the Secretariat. First, I would like to thank the representative of the Secretariat for the statement, which comprehensively outlined the actions taken to strengthen the capacity of the Office of the Ombudsperson, including the provision of necessary resources for its functioning. As the fourth Ombudsperson, I reiterate my commitment to ensuring that the Office uses these resources effectively in the fulfilment of its mandated responsibilities in managing what can often be a considerable workload, particularly given that the Office consists only of myself with the support of two staff from DPPA.

Second, as outlined by the Secretariat, informal measures have been put in place by the Secretariat to enhance the functional independence of the Office. It is also encouraging to hear the commitment of the Secretariat to explore additional informal modalities to strengthen the institutional independence of the Office. In this context, I wish to raise a few areas of concern.

As noted by the Secretariat, I echo the views of my predecessors and the Group of Like-Minded States on Targeted Sanctions, that despite the measures put in place, the current structural and contractual arrangements do not guarantee the institutional independence of the Office fully. The shortfalls create a negative perception, which in turn could undermine the substantive independence of the Office. Members of academia and the legal fraternity have already raised such a point.¹ However, having said that, regarding substantive independence, I must hasten to emphasize that so far as the Ombudsperson, I have never been approached, directly or indirectly, by any party on how I should carry out my tasks, including making recommendations to this Committee in any given petition for delisting.

Yet, the independence of the Office must be further institutionalized and given a solid basis. The areas of concern mentioned earlier revolve around the administrative status of the Office. First, the Ombudsperson is put under the category of Experts/Consultants. In the document ‘Guidelines for the Recruitment and Administration of Consultants Serving as Experts on Groups and Panels, Including the Office of the Ombudsperson’ it is stated that ‘they (Experts/Consultants including the Ombudsperson) shall come under the overall management of the United Nations administering Department or Office, (that is the DPPA) who shall provide Experts with substantive advice, guidance and

¹ Lang, Andrej. “Alternatives To Adjudication in International Law: A Case Study of The Ombudsperson to The ISIL and Al-Qaida Sanctions Regime of the Un Security Council.” Cambridge University Press for the American Society of International Law, 2023

support; and evaluates their performance for suitability for continued service on Groups and Panels.’ Any reader of this administrative arrangement will most likely form an impression that the Office is, in fact, and law, under the control of the Executive. Indeed, the administrative execution of the contractual status of the Ombudsperson enhances such an impression. While the Ombudsperson, in principle, is appointed for a fixed term, in practice, they are issued a series of contracts, ranging in duration, with no guarantees of subsequent contractual engagement. Any semblance of security of tenure associated with independence in a judicial or quasi-judicial setting is absent. Therefore, I humbly recommend considering other contractual modalities for the Ombudsperson, which would be consistent with the quasi-judicial functions of this very specific role.

In addition, as an Expert on Mission rather than a staff member, the Ombudsperson is not entitled to a United Nations laissez-passer. Since several Member states do not recognise UN privileges and immunities without this document, this can have security implications. Thus, this may impede the independence to function by the Ombudsperson, considering the sensitive nature of the delisting requests, and the risks associated with the travel, including to interview petitioners, required under the mandate.

Further, the Ombudsperson also has no managerial functions over the staff of DPPA supporting the Office. This anomaly and its implications on the

independence of the Office have been highlighted in the 25th Bi-Annual Report of the Office, published this September.

There are similar structural problems concerning budget and resource management more generally, including expenses, which also impact any perception of the Office's independence. My predecessor opined that despite the decision in 2019 to grant the Office of the Ombudsperson a stand-alone budget, all travel for my office must be pre-approved using DPPA procedures. Although travel has not been blocked or impeded to date, such a set-up poses the appearance of and potential for conflict. This in, turn, raises the potential for infringement on the Ombudsperson's independence.

These issues also underline the fragility of the informal arrangements currently in place, which have been established and maintained largely due to the goodwill and understanding of the issues of the current officials of the Secretariat, but have no institutional basis and thus could easily be overridden or dismantled.

As indicated by the High-Level Review of sanctions in 2015, I would therefore propose that options be considered “for ensuring that the administrative, contract and other support arrangements for the Ombudsperson are specific to the distinct role and include institutional protections to actually meet the definition of an “independent office””². The Office has gained recognition from such institutions as the European Court of Justice as a mechanism which enhances the

2 Compendium - High Level Review of United Nations Sanctions, November 2015, p. 45.

legitimacy of the sanctions regime, as well as the appropriate mechanism to deal with delisting requests under the sanctions regime instead of the national and regional courts.³ It would be a shame if this recognition was lost as a result of these anomalies.

Madam Chair, Delegates,

I thank the Representative of the Secretariat again for his statement today and for supporting the Office. I would also like to thank the Chair for enabling this opportunity to consider these longstanding issues critical to exercising the Ombudsperson's mandate.

In conclusion, I would like to underscore the importance of due process standards that safeguard individual human rights, including fair and transparent procedures for listed individuals and entities to be heard and to have access to an independent and impartial review of their listings, in enhancing the effective implementation of UN sanction regimes. Guarantees of and respect for the requirements of independence and fairness on the part of the Ombudsperson mechanism are therefore critical for the integrity and credibility of the Office. The Office remains committed to working with Member States and the Secretariat to finally resolve these pressing issues and ensure the institutional independence of the Office.

Thank you, Madam Chair.

³ Mohamed Al-Ghabra v. European Commission, Case No. T-248/13, European Court of Justice (13 December 2016).