



Security Council

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Letter dated 1 August 2019 from the Ombudsperson to the President of the Security Council

I have the honour to transmit herewith to you the seventeenth report of the Office of the Ombudsperson to the Security Council Committee pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, submitted pursuant to paragraph 20 (c) of annex II to Security Council resolution [2368 \(2017\)](#), according to which the Ombudsperson shall submit biannual reports to the Council summarizing the activities of the Ombudsperson. The report provides a description of the activities since the previous report was issued, covering the period from 7 February to 31 July 2019.

I would appreciate it if the present letter, the report and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Daniel **Kipfer Fasciati**

Ombudsperson to the Security Council Committee
pursuant to resolutions [1267 \(1999\)](#), [1989 \(2011\)](#) and [2253 \(2015\)](#)
concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida
and associated individuals, groups, undertakings and entities



Report of the Office of the Ombudsperson, submitted pursuant to Security Council resolution 2368 (2017)

I. Background

1. The present report provides an update on the activities undertaken by the Office of the Ombudsperson since the issuance of the sixteenth report of the Office to the Security Council on 6 February 2019 (S/2019/112).

II. Activities related to delisting cases

A. General

2. The primary activities of the Office during the reporting period related to delisting requests submitted by individuals and entities. The Office also notified newly listed individuals about the status of their listing, pursuant to paragraph 20 (b) of annex II to resolution 2368 (2017).

3. The Ombudsperson also spent significant time discussing his mandate and approach to cases with representatives from the various branches of government of a number of relevant Member States. In the context of his casework, the Ombudsperson also met with representatives from international organizations, research institutes, universities, the Analytical Support and Sanctions Monitoring Team and other United Nations bodies.

B. Delisting requests

4. During the reporting period, four new cases were submitted to the Office, all of which were accepted. The total number of delisting petitions submitted to the Office since its establishment is 88 as at 1 August 2019. Unless the petitioner requests otherwise, all names remain confidential while under consideration and in the case of denial or withdrawal of a petition.

5. In total, the Ombudsperson has submitted 80 comprehensive reports¹ to the Committee since the Office was established. During the reporting period, two reports were submitted to the Committee, one of which remains under consideration.

6. Since the issuance of the sixteenth biannual report, two listings have been retained and one name has been removed from the Committee's sanctions list through the Ombudsperson process.

7. Cumulatively, since the Office was established, 81 cases involving requests from an individual, an entity or a combination of both have been resolved through the Ombudsperson process or through a separate decision of the Committee. In the 77 cases fully completed through the Ombudsperson process, 58 delisting requests have been granted and 19 have been refused. As a result of the 58 petitions that have been

¹ This number includes one case concluded in 2011, in which the delisting request was withdrawn by the petitioner after the Ombudsperson had submitted and presented the comprehensive report to the Committee. It also includes one case concluded in 2013, in which the Committee decided to delist the petitioner after the Ombudsperson had submitted the comprehensive report to the Committee but before the Ombudsperson had presented it to the same. This number does not include three additional cases in which the Ombudsperson case became moot following a decision by the Committee to delist the petitioners before the Ombudsperson had submitted the comprehensive report.

granted, 53 individuals and 28 entities have been delisted and 1 entity has been removed as an alias of a listed entity. In addition, four individuals were delisted by the Committee before the Ombudsperson process was completed and one petition was withdrawn following the submission of the comprehensive report. A description of the status of all of the cases, as at 1 August 2019, is given on the website of the Office of the Ombudsperson.² An update to the status of cases since the previous report is contained in the annex to the present report.

8. There are currently six cases pending. Four cases are in the information-gathering phase, one case is in the dialogue phase, and in one case the Ombudsperson has submitted the comprehensive report for the Committee's consideration.

9. The six pending cases were each filed by an individual. To date, in total, 80 of the 88 cases have been brought by individuals alone, 2 by an individual together with one or more entities, and 6 by entities alone. In 48 of the 88 cases, the petitioner is or was assisted by legal counsel.

C. Gathering information from States

10. In the context of the four individual cases received during the reporting period, the Office sent requests for information to 4, 8, 11 and 15 Member States. The Ombudsperson met in New York with the representatives of several States to discuss the information-gathering phase in these cases.

11. During the reporting period, in addition to meetings in New York, the Ombudsperson met on four occasions with officials in their respective capitals to gather information on specific cases. He also met with a wide variety of government representatives, both in New York and abroad, to discuss broader issues relating to pending cases and the Ombudsperson process.

12. In the reporting period, none of the designating States whom the Ombudsperson consulted during the information-gathering phase responded that they did not object to delisting. Therefore, the Ombudsperson did not have recourse to annex II, paragraph 3, of resolution 2368 (2017) to shorten the information-gathering phase in any of the new cases.

13. In one case submitted prior to the reporting period, the designating State initiated a delisting request with the Committee directly (see paragraph 69 of resolution 2368 (2017)). As a result, the Ombudsperson suspended the information-gathering period in that proceeding. The case before the Ombudsperson became moot following the Committee's decision to delist the individual on 21 May 2019.

D. Dialogue with the petitioner

14. During the reporting period, the Ombudsperson and the Office interacted with all current petitioners and their legal counsel, including through written exchanges, telephone discussions, videoconferences and face-to-face interviews.

15. During the reporting period, the Ombudsperson travelled to interview two petitioners in person.

² www.un.org/securitycouncil/sc/ombudsperson/status-of-cases.

E. Access to classified or confidential information

16. The Office continues to liaise with Member States as part of its sustained efforts to establish formal agreements and arrangements for access to confidential, classified or sensitive information.

III. Summary of activities relating to the development of the Office of the Ombudsperson

A. General

17. The Ombudsperson gave presentations in Bern on 20 March 2019 at a meeting of the Group of Like-Minded States on Targeted Sanctions and on 22 March 2019 at the Swiss Federal Department of Foreign Affairs; and in Paris on 6 June 2019 at a conference organized by the French Ministry of Defence.

18. On several occasions, the Ombudsperson participated in discussions with various representatives of the United Nations Secretariat regarding efforts to improve the conditions for carrying out the Ombudsperson's mandate.

B. Interaction with the Committee and the Analytical Support and Sanctions Monitoring Team

19. During the reporting period, the Office continued to engage with the Chair of the Committee and with the coordinator and members of the Monitoring Team. The Monitoring Team has continued to provide relevant information in every case in accordance with paragraph 4 of annex II to Security Council resolution [2368 \(2017\)](#). At the conclusion of his cases, regardless of whether a petitioner's name was delisted or retained, the Ombudsperson also interacted with the Monitoring Team to ascertain whether amendments to any narrative summaries of reasons for listing were appropriate.

C. Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations

20. During the reporting period, the Office continued to interact with United Nations bodies and agencies and Member States, and in particular with members of the Committee and States of relevance to pending delisting petitions.

21. The Office also liaised with representatives of law enforcement agencies, financial intelligence units, legal practitioners and international and human rights law professionals.

22. During the reporting period, the Ombudsperson made a concerted effort to engage with Member States (in particular, designating States and States of residence and nationality) with a view to explaining the Ombudsperson's mandate, procedures and approach to cases. In particular, the Ombudsperson had fruitful exchanges with those Member States regarding arrangements for information-sharing and the type of information that is most useful to the Ombudsperson. The discussions were held in New York and also in capitals during the Ombudsperson's travels.

D. Working methods and research

23. Casework during the reporting period involved extensive open-source research to collect information relevant to delisting requests.

E. Website

24. The Office continued to revise and update its website during the reporting period.³

25. The Office continued to issue the “Historical guide of the Ombudsperson process through Security Council resolutions and reports of the Office of the Ombudsperson to the Security Council”, a compilation of the contents of the analytical sections of the biannual reports presented by the Office to the Council to date, together with relevant excerpts of the applicable Council resolutions.

IV. Observations and conclusions

A. Legal assistance for petitioners

26. Legal representation or assistance is not a requirement for submitting a petition to the Office. Moreover, when petitioners do benefit from legal assistance, the role of a lawyer in Ombudsperson proceedings is not the same as that of a defence counsel in a criminal case. Nevertheless, in certain cases legal assistance may be appropriate, particularly if a petitioner requires support to understand the technical aspects of the proceedings or if communication with the petitioner is impeded. The Ombudsperson supports the call by the President of the Association of Defence Counsel practising before the International Courts and Tribunals, to which several lawyers practising before the International Courts and Tribunals, to which several lawyers responded indicating that they are willing to provide legal assistance to petitioners in the proceedings before the Ombudsperson on a pro bono basis, should the petitioner wish to be assisted by a lawyer.

27. Resolution [2368 \(2017\)](#) is not entirely clear as to whether the Ombudsperson should actively guide the petitioner through the proceedings. If this were the case, an active guidance role could potentially conflict with the Ombudsperson’s impartiality. For this reason, the participation of a lawyer who looks after the interests of the petitioner in the proceedings would also strengthen the impartiality of the Ombudsperson vis-à-vis the Committee.

28. Making the assistance of lawyers available in all cases strengthens the credibility of the mechanism and bolsters confidence in the fairness and clarity of the Ombudsperson’s procedures. This is especially true from the petitioner’s perspective.

B. Confidentiality of the proceedings; leaking of comprehensive reports

29. In one case during the reporting period, portions of the confidential comprehensive report were leaked to the media. This fact is problematic in several respects.

30. First, because the complete report was not publicly accessible, the resulting media coverage was incomplete, inaccurate and biased. The leak distorted the truth

³ www.un.org/securitycouncil/ombudsperson.

and was consequently detrimental to the credibility and the appearance of impartiality of the Ombudsperson.

31. Second, the fact that a breach of confidentiality can occur may have a negative impact on future proceedings. As petitions before the Ombudsperson are processed separately from any national jurisdiction, it is not possible to offer petitioners any protection against self-incrimination. For this reason, a petitioner who is cognizant of a potential breach of confidentiality might decline to comment on the substance of the allegations against him or her when being interviewed by the Ombudsperson. If a petitioner admits to certain allegations in the narrative summary and that admission were made public through a leaked comprehensive report, the petitioner might face criminal prosecution. If, however, petitioners decline to comment on the allegations or even lie to protect themselves, this could harm the positions of the petitioners in the proceedings before the Ombudsperson.

C. Commitment of Member States in the proceedings of the Ombudsperson

32. In the course of the Ombudsperson's proceeding in case 84, the designating State initiated a delisting request with the Committee (see paragraph 69 of resolution [2368 \(2017\)](#)). As a result, the Ombudsperson suspended his proceeding. The Ombudsperson case became moot following the Committee's decision to delist on 21 May 2019. The Ombudsperson welcomes the procedure in cases that, from the perspective of the designating State, should result in a delisting. The procedure is simpler, allows the Office to focus on other cases and expedites the process, in fairness to the petitioner.

33. Member States who are in favour of retaining a petitioner's name on the sanctions list have continued to communicate their view to the Ombudsperson without providing reasons for their views and without submitting any information relevant to the case, aside from the preferred outcome. The Ombudsperson encourages Member States to at least give reasons for their position and, if possible, submit evidentiary documentation. It is important to emphasize in this context that open-source information, not only confidential information, can be helpful for the Ombudsperson.

34. After a year in the role, and after having reviewed various delisting requests, the Ombudsperson notes that the underlying information upon which a listing is based, in some cases appears to derive exclusively from intelligence sources. There are single cases where, as far as can be currently ascertained, all available information can and must be traced back to intelligence sources, for which no piece of evidence is made available to the Ombudsperson. The least problematic cases in this respect are those in which the listing was based on a national criminal investigation with a final conviction and a publicly available judgment.

Annex

Status of recent cases***Case 88, one individual (Status: information-gathering period)**

<i>Date</i>	<i>Description</i>
28 May 2019	Transmission of case 88 to the Committee
28 September 2019	Deadline for completion of the information-gathering period

Case 87, one individual (Status: information-gathering period)

<i>Date</i>	<i>Description</i>
20 May 2019	Transmission of case 87 to the Committee
20 September 2019	Deadline for completion of the information-gathering period

Case 86, one individual (Status: information-gathering period)

<i>Date</i>	<i>Description</i>
7 May 2019	Transmission of case 86 to the Committee
7 September 2019	Deadline for completion of the information-gathering period

Case 85, one individual (Status: information-gathering period)

<i>Date</i>	<i>Description</i>
19 March 2019	Transmission of case 85 to the Committee
19 September 2019	Deadline for completion of the information-gathering period

Case 84, Mazen Salah Mohammed (Status: delisted)

Ombudsperson case became moot following Committee decision

<i>Date</i>	<i>Description</i>
4 February 2019	Transmission of case 84 to the Committee
22 March 2019	Information-gathering period suspended following the submission of a delisting request by the designating State
21 May 2019	Committee decision to delist

* The status of all cases since the establishment of the Office of the Ombudsperson can be accessed on the website of the Office, www.un.org/securitycouncil/sc/ombudsperson/status-of-cases.

Case 83, one individual (Status: Committee phase)

<i>Date</i>	<i>Description</i>
29 January 2019	Transmission of case 83 to the Committee
29 May 2019	Information-gathering period completed
26 July 2019	Comprehensive report submitted to the Committee

Case 82, one individual (Status: dialogue period)

<i>Date</i>	<i>Description</i>
29 November 2018	Transmission of case 82 to the Committee
29 May 2019	Information-gathering period completed
29 September 2019	Deadline for completion of the dialogue period

Case 81, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
19 June 2018	Transmission of case 81 to the Committee
7 December 2018	Information-gathering period completed
5 April 2019	Comprehensive report submitted to the Committee
16 May 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee
16 May 2019	Committee decision to retain listing
30 May 2019	Formal notification to the petitioner with summary of analysis in the comprehensive report

Case 80, Nassim ben Mohamed al-Cherif ben Mohamed Saleh al-Saadi (Status: delisted)

<i>Date</i>	<i>Description</i>
11 December 2017	Transmission of case 80 to the Committee
1 December 2018	Information-gathering period completed
1 February 2019	Comprehensive report submitted to the Committee
14 March 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 May 2019	Committee decision to delist
24 May 2019	Formal notification to the petitioner with summary of analysis in the comprehensive report

Case 79, one individual (Status: denied)

<i>Date</i>	<i>Description</i>
27 March 2017	Transmission of case 79 to the Committee
27 August 2018	Information-gathering period completed
21 December 2018	Comprehensive report submitted to the Committee
20 February 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee
20 February 2019	Committee decision to retain listing
7 March 2019	Formal notification to the petitioner with summary of analysis in the comprehensive report
