



## Security Council

Distr.: General  
7 February 2020

Original: English

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### Letter dated 7 February 2020 from the Ombudsperson addressed to the President of the Security Council

I have the honour to transmit herewith to you the eighteenth 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 1 August 2019 to 7 February 2020.

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

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\* Circulated in the language of submission only.



## **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 seventeenth report of the Office to the Security Council on 1 August 2019 (S/2019/621).

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

#### **B. Delisting requests**

3. During the reporting period, two new petitions were submitted to the Office, of which one was accepted. The second petitioner has been asked to address the designation criteria applicable to the ISIL (Da'esh) and Al-Qaida sanctions list before resubmitting his petition. As at 7 February 2020, a total of 89 delisting petitions had been accepted by the Office since its establishment. Unless the petitioner requests otherwise, all names remain confidential while a petition is under consideration as well as in the case of denial or withdrawal of a petition.

4. In total, the Ombudsperson has submitted 85 comprehensive reports<sup>1</sup> to the Committee since the Office was established. During the reporting period, five reports were submitted to the Committee, four of which remain under the Committee's consideration at the time of writing.

5. Since the issuance of the seventeenth biannual report, one listing has been retained and one name has been removed from the Committee's sanctions list through the Ombudsperson process.

6. Cumulatively, since the Office was established, 83 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 79 cases fully completed through the Ombudsperson process, 59 delisting requests have been granted and 20 have been refused. As a result of the 59 petitions that have

<sup>1</sup> 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.

been granted, 54 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 is given on the website of the Office.<sup>2</sup> An update to the status of cases since the previous report is contained in the annex to the present report.

7. There are currently five cases pending. One case is in the information-gathering phase, and in four cases the Ombudsperson has submitted the comprehensive report for the Committee's consideration.

8. The five pending cases were each filed by an individual. To date, in total, 81 of the 89 cases have been brought by individuals alone, 2 by an individual together with one or more entities, and 6 by entities alone. In 49 of the 89 cases, the petitioner is being or was assisted by legal counsel.

9. In addition to the five pending cases, during the reporting period the Office engaged in dialogue with a further four designated individuals who have expressed interest in filing a petition for delisting but have not yet done so.

### **C. Gathering information from States**

10. With regard to the case accepted during the reporting period, the Office sent requests for information to 15 Member States. The Ombudsperson also met in New York with the representatives of several Member States to discuss the information-gathering phase in the case.

11. In addition to meetings in New York, the Ombudsperson met on three occasions with officials in their respective capitals to gather information on specific cases.

12. During the reporting period, the opportunity did not arise for the Ombudsperson to shorten the information-gathering period pursuant to annex II, paragraph 3, of resolution [2368 \(2017\)](#).

13. During the reporting period, the Member States that put forward petitioners' names for designation responded to the Ombudsperson's requests for information around 50 per cent of the time. In six cases, the Ombudsperson asked a total of 15 designating States to express their position on the delisting request and provide relevant information. Of these 15 States, 7 did not express their position regarding the delisting request, nor did they provide information. One State provided relevant information but declined to express an opinion on the delisting request.

### **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, videoconferences and face-to-face interviews.

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

<sup>2</sup> [www.un.org/securitycouncil/sc/ombudsperson/status-of-cases](http://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases).

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

#### **A. General**

16. The Ombudsperson gave a lecture on 15 October 2019 at the Faculty of Law of the University of Basel, Switzerland, and participated at a workshop on sanctions on 21 and 22 November 2019 in New York. He also gave a presentation on 3 December 2019 at a seminar held by the European Union in Luxembourg. In addition, he gave a presentation at a sanctions workshop hosted by the German Institute for International and Security Affairs in Berlin on 6 December 2019.

17. On several occasions, the Ombudsperson participated in discussions with various representatives of the 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**

18. 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 and assistance in accordance with paragraph 4 of annex II to Security Council resolution [2368 \(2017\)](#).

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

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

20. The Office also liaised with representatives of law enforcement agencies, legal practitioners, United Nations special rapporteurs and international and human rights law professionals.

21. 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 exchanges with these 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. At the time of writing, a new information-sharing arrangement with a Member State was ready for signature.

#### **D. Working methods and research**

22. Casework during the reporting period involved extensive open-source research and liaison with various interlocutors and experts to collect and analyse information relevant to delisting requests.

## **E. Website**

23. The Office continued to revise and update its website during the reporting period.<sup>3</sup>

## **IV. Observations and conclusions**

24. At the time of writing, the Ombudsperson had fulfilled a year and a half of his mandate. The present report therefore provides an opportunity for reporting his observations to the Security Council from a broader, first-principles perspective.

### **A. Independent, impartial and effective review**

25. On 17 December 2019, an event was held at the Secretariat to celebrate the tenth anniversary of the adoption of Security Council resolution 1904 (2009), in which the function of the Ombudsperson was created. It is clear that, through the resolution, the Security Council established, at least de facto, an independent, impartial and effective review mechanism for the ISIL (Da'esh) and Al-Qaida sanctions regime. The fact that over the past decade approximately 70 per cent of delisting requests have been granted is one indicator of its effectiveness. However, the institutional independence of the Office, including the Ombudsperson's contractual arrangement, remains a concern (see para. 34 below).

26. The observations below regarding the implementation of the vision espoused in resolution 1904 (2009) are framed with the intention of improving collaboration and dialogue between Member States and the Ombudsperson under the conditions set out in the relevant resolutions.

### **B. Fairness and due process**

27. Fairness, clarity and due process are requirements that should apply holistically to the ISIL (Da'esh) and Al-Qaida sanctions regime, not only to delisting requests handled by the Office. Annex II to resolution 2368 (2017) is not a panacea; issues related to fairness in the listing process cannot be remedied through a review mechanism. The Ombudsperson considers that the academic and public debate concerning fairness in the context of counter-terrorism sanctions is too narrowly focused on the Ombudsperson's procedures. It is crucial and mandatory under the conditions of fairness for a listed person to have access to an independent and impartial review mechanism. However, fairness and due process equally concern the process by which an individual or entity is listed in the first place.

28. Fairness and due process issues at the listing stage of a designation can have a direct impact on the Ombudsperson's procedure, making the grounds for designation more difficult to deduce and assess. Furthermore, the fact that the Ombudsperson has no mandate to review the original listing decision is one of the most persistent hurdles that the mechanism seems to face before national and regional courts. The legitimacy of the sanctions regime as a whole could therefore be meaningfully bolstered through efforts to strengthen the fairness and transparency of listing procedures. The language of resolution 2368 (2017) allows for enhancements to the standard of information and evidence required for listings, thereby enhancing the content of narrative summaries as one of the primary instruments for ensuring due process rights.

<sup>3</sup> [www.un.org/securitycouncil/ombudsperson](http://www.un.org/securitycouncil/ombudsperson).

### C. Learning and institutional competence: lack of continuity and rational discourse

29. The Ombudsperson's function is quasi-judicial. However, the procedure exists in the context and under the rules of a multilateral political process. These rules are primarily designed for guaranteeing the participation of Member States and safeguarding their interests, not for taking decisions about the legal status of individuals. This duality of purpose can be challenging and can pose difficulties in establishing a culture of sustainable experience and expertise. Specific issues are indicated below.

30. *Lack of continuity.* Since the Ombudsperson was appointed one and a half years ago, 14 of the 15 representatives in the Committee have left; 10 of them left because their country had left the Security Council, and 4 of the 5 representatives of the permanent members left for other reasons. Under these conditions, it is difficult for the Ombudsperson to establish a shared basis of experience and expertise.

31. *Lack of rational, case-specific discourse regarding grounds for delisting.* Quite often, Member States communicate their position on a delisting request without addressing the reasons or rationale for that position in any way. This approach is also followed at Committee meetings at which the Ombudsperson presents his comprehensive reports, and during the no-objection procedure, under which the Committee considers the Ombudsperson's recommendations. There is no obligation upon Member States to substantiate their positions or their objections to the Ombudsperson's recommendations, and many decline to do so. The Council's intent to continue its efforts to ensure that procedures are fair and clear (see resolution 1904 (2009)) is best served when the Ombudsperson is able to engage in a dialogue with Member States on the basis of the detailed facts, merits and reasoning that underpin the Ombudsperson's recommendations. The Ombudsperson will therefore continue his efforts to reach out to Member States to discuss his approach, methods and standard,<sup>4</sup> and would welcome questions and discussion regarding the same on specific cases during Committee meetings.

32. *Lack of a responsible point of contact.* The Ombudsperson is responsible for guaranteeing an independent and impartial review of sanctions upon request, under the conditions set out in the resolution. However, as a consultant, the Ombudsperson's power to engage different stakeholders to take action on or even respond to his concerns or proposals is limited. For example, in the sixteenth report, the Ombudsperson had recommended that the Council establish the function of an acting ombudsperson or other representative to perform the Ombudsperson's duties in the event of the Ombudsperson's absence. This suggestion went unanswered. The Ombudsperson received neither an official nor an unofficial or informal response, despite statements in which individual stakeholders emphasized the importance of the matter.

33. In conclusion, the Ombudsperson is of the view that his operating environment includes significant structural barriers to the establishment of a rational and coherent discourse supported by a culture of learning, sustainable competence and institutional experience and expertise. Furthermore, responsibility for the operation and enhancement of the mechanism in the broadest sense has not been clearly allocated. These deficiencies are compensated only by the strength of the Ombudsperson's mandate. The Ombudsperson stresses that the Security Council is responsible for deciding whether or not the matters outlined above are acceptable in the context of an otherwise well-functioning review mechanism.

<sup>4</sup> See [www.un.org/securitycouncil/ombudsperson/approach-and-standard](http://www.un.org/securitycouncil/ombudsperson/approach-and-standard).

## **D. Institutional independence of the Office and contractual arrangement of the Ombudsperson**

34. On several occasions, the Ombudsperson has participated in discussions with various representatives of the Secretariat and Member States regarding efforts to improve the conditions under which the Ombudsperson's mandate is fulfilled, especially with regard to status and contractual arrangements. This issue has been extensively addressed in previous biannual reports of the Ombudsperson (e.g., [S/2019/112](#), para. 33). Recalling the competence of the Security Council in the matter, the Secretariat has acknowledged the issue but declined to take any initiative specifically related to the Ombudsperson. The Ombudsperson welcomes the ongoing efforts of the Secretariat to enhance the status and conditions of service across the board for experts serving on sanctions groups and panels, as well as the Ombudsperson. From the perspective of the Ombudsperson, it would be imperative, in the interests of transparency, to acknowledge when such institutional improvements become blocked. The Ombudsperson reiterates the point that he and his two predecessors have raised, namely, that the contractual arrangement as a consultant is not appropriate to the function in many different respects.<sup>5</sup>

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<sup>5</sup> United Nations, Office of the Ombudsperson, "Historical guide of the ombudsperson process through Security Council resolutions and reports of the Office of the Ombudsperson to the Security Council", pp. 10–25.

## Annex

**Status of recent cases<sup>1</sup>****Case 89, one individual (status: information gathering period)**

<i>Date</i>	<i>Description</i>
23 September 2019	Transmission of case 89 to the Committee
23 March 2020	Deadline for completion of the information-gathering period

**Case 88, one individual (status: Committee phase)**

<i>Date</i>	<i>Description</i>
28 May 2019	Transmission of case 88 to the Committee
28 September 2019	Information-gathering period completed
28 January 2020	Comprehensive report submitted to the Committee

**Case 87, one individual (status: Committee phase)**

<i>Date</i>	<i>Description</i>
20 May 2019	Transmission of case 87 to the Committee
20 September 2019	Information-gathering period completed
13 December 2019	Comprehensive report submitted to the Committee
24 January 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee

**Case 86, one individual (status: Committee phase)**

<i>Date</i>	<i>Description</i>
7 May 2019	Transmission of case 86 to the Committee
7 September 2019	Information-gathering period completed
7 November 2019	Comprehensive report submitted to the Committee
20 December 2020	Presentation of the comprehensive report by the Ombudsperson to the Committee

<sup>1</sup> The status of all cases since the establishment of the Office of the Ombudsperson can be accessed at the website of the Office, <https://www.un.org/securitycouncil/sc/ombudsperson/status-of-cases>.



**Case 85, one individual (status: Committee phase)**

<i>Date</i>	<i>Description</i>
19 March 2019	Transmission of case 85 to the Committee
19 September 2019	Information-gathering period completed
15 November 2019	Comprehensive report submitted to the Committee
20 December 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee

**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

**Case 83, Mourad Ben Ali Ben al-Basheer al-Trabelsi (status: delisted)**

<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
5 September 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee
5 November 2019	Committee decision to delist
14 November 2019	Formal notification to the petitioner with summary of analysis in the comprehensive report

**Case 82, one individual (status: denied)**

<i>Date</i>	<i>Description</i>
29 November 2018	Transmission of case 82 to the Committee
29 May 2019	Information-gathering period completed
27 September 2019	Comprehensive report submitted to the Committee
7 November 2019	Presentation of the comprehensive report by the Ombudsperson to the Committee
7 November 2019	Committee decision to retain listing
18 November 2019	Formal notification to the petitioner with summary of analysis in the comprehensive report

**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