

To the President of the Security Council  
for the month of June 2021  
H.E. Mr. Sven Jürgenson  
Permanent Representative of Estonia  
to the United Nations  
Security Council Secretariat  
United Nations Head Quarters  
New York, NY 10017

New York, 11 June 2021

Mr. President,

We, the undersigned representatives of Austria, Belgium, Chile, Costa Rica, Denmark, Finland, Germany, Ireland, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland (the Group of Like-Minded States on Targeted Sanctions), are submitting this letter for the attention of the Security Council on the important issue of UN Security Council sanctions.

Our Group is strongly committed to the effective implementation of UN Security Council sanctions regimes. The effectiveness of UN sanctions goes hand in hand with respect for international due process standards. The Security Council has previously responded to concerns by establishing the Office of the Ombudsperson to the 1267 ISIL (Da'esh) and Al Qaida sanctions committee. However, due process issues continue to be raised in relation to the UN's other sanctions regimes. The most recent example is the Court of Justice of the European Union judgment of 21 April 2021, in the case of El-Qaddafi v Council, T-322/19, where the General Court ordered the lifting of sanctions against one individual. This follows a number of other cases against UN sanctions implementation in courts around the world. The United Nations University study "[Fairly Clear Risks: Protecting UN sanctions' legitimacy and effectiveness through fair and clear procedures](#)" provides an overview of a number of cases relating to UN sanctions.

In the absence of effective, independent review at UN level of Security Council listings, other than by the Ombudsperson, it is to be expected that courts will review national implementation measures of listing decisions by the Security Council, potentially leading to more situations where UN Member States and other authorities implementing UN sanctions can no longer give effect to these sanctions listings. To safeguard the integrity of UN Security Council decisions, ensuring certain minimum due process standards, including safeguards for individual fundamental rights, is therefore critical.

Fair and clear procedures in all sanctions regimes, including the possibility for a listed individual to petition for a comprehensive review of their listing, is an integral element in the effective implementation of UN sanctions.

The Group of Like-Minded States on Targeted Sanctions recalls its previous letters to the Council, as well as previous statements at the [UN Security Council open debate on working methods of the Security Council on 6 June 2019](#) and the [UN Security Council Open VTC Meeting “Ensuring transparency, efficiency and effectiveness in the work of the Security Council”](#) of 15 May 2020. The Group would like to reiterate that there are a number of options available for improving due process standards within the UN sanctions system, including the expansion of the mandate of the Ombudsperson to all sanctions regimes and the enhancement of the mandate of the Focal Point for De-listing. In addition to these possibilities, which the Group has already called for, the Council could also consider the option of enhancing due process in a context sensitive manner, individually for each sanctions regime.

In this regard, the Group would like to draw the Council’s attention to the enclosed annex, which elaborates on some of the key features that could be included in a context sensitive review mechanism. The annex also reiterates the essential elements that should be included in an effective due-process mechanism.

We hope that Council Members will take these ideas into consideration, in particular in view of the upcoming renewal of sanctions regimes. We look forward to continuing and deepening the dialogue on this important matter with all stakeholders.

We would be grateful if you could circulate this letter and its annex as a document of the Security Council.

Please accept, Mr. President, the assurances of our highest consideration.



H.E. Ambassador Alexander Marschik  
Permanent Representative of Austria  
to the United Nations



H.E. Ambassador Philippe Kridelka  
Permanent Representative of Belgium  
to the United Nations



H.E. Ambassador Milenko Skoknic Tapia  
Permanent Representative of Chile  
to the United Nations



H.E. Ambassador Rodrigo Alberto Carazo  
Zeledón  
Permanent Representative of Costa Rica  
to the United Nations



H.E. Ambassador Martin Bille Hermann  
Permanent Representative of Denmark  
to the United Nations



H.E. Ambassador Jukka Salovaara  
Permanent Representative of Finland  
to the United Nations



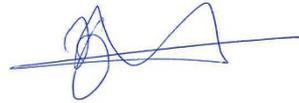
H.E. Ambassador Christoph Heusgen  
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H.E. Ambassador Geraldine Byrne Nason  
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H.E. Ambassador Christian Wenaweser  
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H.E. Ambassador Yoka Brandt  
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H.E. Ambassador Mona Juul  
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H.E. Ambassador Anna Karin Eneström  
Permanent Representative of Sweden to the  
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H.E. Ambassador Pascale Baeriswyl  
Permanent Representative of Switzerland  
to the United Nations

Enclosure

**Annex to the letter dated 11 June 2021 from the Permanent Representatives of Austria, Belgium, Chile, Costa Rica, Denmark, Finland, Germany, Ireland, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland to the United Nations addressed to the President of the Security Council**

**Input Paper by the Group of Like-Minded States on Targeted Sanctions for Enhancing Due Process in UN Security Council Targeted Sanctions Regimes**

Fair and clear procedures are essential for any individual whose rights are directly affected by the imposition of targeted sanctions and, therefore, essential for maintaining the effectiveness of UN sanctions.

Key elements of fair and clear procedures in relation to delisting includes:

- Access to a review mechanism
- Hearing
- Access to counsel
- Impartial review of evidentiary base on which designations are made and maintained
- Independent review
- Binding decisions

The Office of the Ombudsperson to the 1267 ISIL (Da'esh) and Al-Qaida sanctions committee presents important features of due process. As reiterated before, extending the mandate of the Ombudsperson would improve the overall efficiency of UN sanctions regimes. In addition, the role of the Focal Point for De-listing could be strengthened to provide these elements of fair and clear procedures.

The purpose of this annex is to propose a further option on how to enhance due process in a context-sensitive manner.

Context sensitive review mechanism

Different UN sanctions regimes serve different strategic objectives and rely on different sources of information to establish the fact-bases upon which the Security Council makes its listing and delisting decisions. The following points outline a mechanism to review listings that is context-sensitive and takes into account the specificities and aims of the regime that it reviews, in particular UN sanctions regimes relating to armed conflict.

**1. Activities**

A context-sensitive review mechanism would consist of an independent reviewer or a panel of independent reviewers. The mechanism would operate according to tailored responsibilities aimed at providing, when requested, a comprehensive review of a listing. The Mechanism would engage in the following activities:

1. Information gathering
  - a. In contrast to the Office of the Ombudsperson, it is envisaged that this would entail a close working relationship with the relevant Panel/Group of Experts, political offices in country, and in the UN Secretariat in New York.

2. Dialogue
  - a. Research on the case.
  - b. Dialogue with the petitioner.
  - c. Report on the case, along with a recommendation.
  
3. Liaison with the Sanctions Committee and engagement in its decision-making.
  - a. There should be an opportunity for Member States to engage with the Review Mechanism in order to provide further information relevant to the case, along with an opportunity for the Review Mechanism to revise the recommendation report.
  - b. If the recommendation is to retain, the listing would continue.
  - c. If the recommendation is to delist, the individual or entity would be delisted, unless all 15 members of the Sanctions Committee decide to retain the listing.
  
4. Communication of the Decision.
  - a. The Review Mechanism should convey the information to the petitioner and all relevant member States who are not Sanctions Committee members.

## 2. Institutional set up

Two options could be considered with regard to the institutional design for an independent, context-sensitive review mechanism.

- An **Independent Reviewer**, appointed by the Secretary-General, who operates according to tailored responsibilities and procedures aimed at ensuring that there is and continues to be a proper evidence-base for the listings of the sanctions regimes that they review, thereby generating and enhancing the political leverage that the particular sanctions regime(s) aim(s) to achieve. The Independent Reviewer could be located within the Office of the Ombudsperson so as to avoid institutional fragmentation and to increase cost-efficiencies and effectiveness.
- A **Panel of Independent Reviewers**, appointed by the Secretary-General, who operate according to tailored responsibilities and procedures aimed at ensuring that there is and continues to be a proper evidence base for the listings of different regimes (as above). A panel of up to three could be constituted to represent judicial and also, if possible, field experience.

The aim of the review is not to dispute the correctness of the decision to list. The political discretion of the UN Security Council and its subsidiary bodies, the Sanctions Committees, is respected. Rather, the Independent Reviewer or Panel of Independent Reviewers will ensure that there is accurate information on which to base the listing of the individual/entity. The mechanism would assess whether the basis of the designation remains valid and whether the person listed continues to meet the criteria for listing. This would ensure that the sanctions regimes remain current and responsive to the constantly changing contexts in which they operate.

## 3. Profile of Reviewer

The profile of the Independent Reviewer or Panel of Independent Reviewers should be a former judge, or someone with substantial judicial experience, combined, if possible, with field research experience.

Given that the goals of Office of the Ombudsperson and the proposed Independent Reviewer or Panel of Reviewers are fundamentally the same – to provide fair process for designated individuals and entities – there are many similarities between the two. Both entail impartial review, both must be independent, both require a meaningful hearing and engagement with petitioners, and both are intended to improve the accuracy, effectiveness, and legitimacy of sanctions regimes. There are, however, three ways in which the proposed Independent Review mechanism could differ from the Ombudsperson: profile, process, and potential placement.

#### *Profile*

The profile of the Independent Reviewer would have judicial experience. Field experience would be an additional benefit. The field experience could come, for example, from an individual who had previously served as a special envoy, a former panel member, or an independent investigator of armed conflict situations, perhaps from the vantage point of a nongovernmental organization or a regional or international organization. Alternatively, a Panel of Independent Reviewers could be constituted to represent both judicial and field experience including country-based expertise.

#### *Process*

The process of the Independent Reviewer or Panel of Independent Reviewers would differ in that the work would entail close coordination with relevant Panels/Groups of Experts, including access to their confidential material. It would also entail independent investigation of material from other sources, including UN offices in the field, nongovernmental organizations, and Member States.

#### *Placement*

Given its close working relationship with the 1267 Monitoring Team, it is important that the Ombudsperson be located in New York. The placement of the Independent Reviewer or Panel of Independent Reviewers could be more flexible.