

**Annex to the letter dated 7 December 2018 from the Permanent Representatives of
Austria, Belgium, Chile, Costa Rica, Denmark, Finland, Germany, Liechtenstein, the
Netherlands, Norway, Sweden and Switzerland to the United Nations
addressed to the President of the Security Council**

**Proposal by the Group of Like-Minded States on Targeted Sanctions for
fair and clear procedures for a more effective UN sanctions system**

The Group of Like-Minded States on Targeted Sanctions reiterates that as long as national and regional courts consider that United Nations sanctions imposed on individuals fall short of minimum standards of due process, national authorities may find themselves legally unable to implement those sanctions fully at the national level. In the light of that, the Group would like to recall its letter to the Security Council of 12 November 2015 (S/2015/867), whose propositions remain valid to the extent they have not yet been integrated in the Security Council sanctions regimes. In addition, the Group herewith submits the following proposals to further improve the independence and effectiveness of the Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee.

I. Ensure the independence of the Office of the Ombudsperson

A. *Appointment of the Ombudsperson and continuity of the work of the Office*

There was a de-facto vacancy of the position of the Ombudsperson for 11 months from 8 August 2017 to 17 July 2018. While the former Ombudsperson left detailed instructions for the staff members supporting the Office of the Ombudsperson, the Office continued to operate informally until the current Ombudsperson took office on 18 July 2018.

An “informal” operation of the Office of the Ombudsperson cannot mitigate formal actions by the Ombudsperson and it impacts due process negatively:

- The delay hinders the right of a petitioner to an independent and impartial review within the time frame prescribed by resolution 2368 (2017).
- An informal gathering of information during the absence of an Ombudsperson necessarily delays the information-gathering period until the formal acceptance of a case by the Ombudsperson. Extensions of the information-gathering period by three months serve the purpose of achieving a comprehensive analysis by the Ombudsperson of the case before submitting recommendations to the Committee and not to delay cases due to absence of an Ombudsperson.

The Security Council or its Committee should thus **create an optional acting Ombudsperson mechanism**, which could be activated temporarily in the case of unforeseen absence of an Ombudsperson.

The Security Council should set a timeframe for the selection process of an Ombudsperson. Thus, upon announcement of a vacancy (in the event that the Ombudsperson has to leave before the end of his/her year term), 1 week should be dedicated to issue the call for applications, 3 weeks for submission of applications, 1 month for review and interview and 1 month for the appointment and taking up of office. A 3-months selection procedure corresponds to a two weeks’ notice that applies to an Ombudsperson leaving office.

B. *Independence of the Ombudsperson and access to petitioners*

While Resolution 2368 (2017) requested the Secretary-General to continue to “*strengthen the capacity of the Office of the Ombudsperson by providing necessary resources, including for translation services, as appropriate, and to make the necessary arrangements to ensure its continued ability to carry out its mandate in an independent, effective and timely manner[...]*”, the current contractual arrangements as a consultant and institutional links with the Department of Political Affairs fails to fully implement the

Security Council resolutions and significantly impairs the ability of the Ombudsperson to fulfil the mandate, particularly in terms of independence.

The Ombudsperson should be able to decide independently on his/her travel needs to meet with petitioners and other relevant persons and State authorities in order to fulfil his/her mandate and should be able to organise his work independently without reporting to DPA.

C. *Ensure the independence of the Office of the Ombudsperson and make it a permanent structure*

The Office of the Ombudsperson should be made permanent and the contractual arrangements for the position of the Ombudsperson should be modified and improved.

This could be done in several ways:

- The Security Council could enable the transformation of the Office of the Ombudsperson into a Permanent Office of the Ombudsperson within the Secretariat, but independent in the exercise of his/her mandate, and call on the Secretary General and Member States to undertake the necessary steps.
- Alternatively, the Security Council could enable the transformation of the Office of the Ombudsperson into a Special Political Mission within the Secretariat, but independent in the exercise of his/her mandate, and call on the Secretary General and Member States to undertake the necessary steps.
- Alternatively, the Security Council should consider appointing the Ombudsperson as an “Official other than Secretariat Official”, which corresponds to the appointment that UN Judges have.

In all cases the Office should be provided with all resources necessary to fulfil the mandate of the Ombudsperson, while maintaining at least the operational strength of the Office. Institutional safeguards should be incorporated and implemented to ensure the independence and autonomy of the Office.

II. Enhance the transparency of the Ombudsperson process – Reasoning of decisions

Reasoning of decisions is a key due process instrument to exclude arbitrariness in decision-making.

Resolution 2368 (2017) in paragraph 16 of annex II provides for improved language regarding the reasoning of decisions to delist or to maintain a listing. Paragraph 16 recognizes that the summary must accurately describe the principal reasons for the recommendation of the Ombudsperson, as reflected in his or her analysis and specifies that the summary, in cases of delisting, must include key points of the analysis of the Ombudsperson.

While the Ombudsperson reported some progress made (S/2018/120, paragraphs 25-26) it also notes that a summary was transmitted to a petitioner, which no longer reflected the principal reasons for the recommendation of the Ombudsperson. As resolution 2368 (2017) requires an accurate description of the principal reasons for the recommendation of the Ombudsperson, and recognizes that the Committee’s review serves the purpose of addressing the disclosure of confidential information, the reasons underlying the listing / delisting must be clear, understandable and substantiated.

Where the recommendation of the Ombudsperson is followed, both in de-listing and retention cases, the Ombudsperson is in the most advantageous position to prepare and provide the reasons to the petitioner. Therefore, the Ombudsperson should be empowered to provide the reasons based on the comprehensive report directly to the petitioner. This would enhance transparency and credibility as well as ensure coherence between the comprehensive report and the reasons.

Where the recommendation of the Ombudsperson is not followed, the Ombudsperson should also be made aware – in addition to the petitioner – of the actual and specific reasons of a decision by the Committee, since these reasons may have a bearing in the assessment of other cases. Otherwise there is a risk of inconsistency between the practices of the Ombudsperson.

Since the petitioner is provided with the reasons for a de-listing or the maintaining of a listing and is free to pass those reasons on, they may as well be made publicly available. This would further enhance the transparency and credibility of the Ombudsperson process.

All decisions regardless of whether they maintain a listing or delist an individual or entity should contain adequate and substantial factual reasons.

Where a listing is maintained or a petitioner is delisted on the basis of the recommendation by the Ombudsperson, the **Ombudsperson should be granted the responsibility to provide the reasons for that determination to the petitioner** without undue delay and in compliance with any confidentiality restrictions that are placed on confidential or classified information by Member States.

The Security Council should instruct the Committee to provide the actual and specific reasons to the petitioner via the Ombudsperson without undue delay and with appropriate safeguards regarding confidential material in case it decides not to follow the recommendation by the Ombudsperson. The Ombudsperson should also be made aware of these reasons by the Committee.

Lastly, provisions should be foreseen for the Ombudsperson to make the reasons publicly available or to disseminate them to interested individuals, States or other bodies, with appropriate safeguards regarding confidential material.

In all communications with the petitioner, interested individuals, States or other bodies, the Ombudsperson shall respect the confidentiality of Committee deliberations and confidential communications between the Ombudsperson and Member States.

III. Improve information sharing From Member States to the Ombudsperson

The Security Council should further encourage Member States to provide all the information available to the Ombudsperson and enter into confidentiality agreements or arrangements with the Office of the Ombudsperson.

The standard developed by the Ombudsperson for her or his analysis, observations and conclusions is to make an assessment of whether there is sufficient information to provide a reasonable and credible basis for the listing at the time of the review. Based on all the information available at such time, the Ombudsperson determines whether a continued listing is justified. Member States' cooperation with the Ombudsperson in terms of information sharing and provision of confidential/classified material is critical to the effective operation of the Office and must be further improved. The level of detail and supporting information should be enhanced. Further progress should be made with regard to access to confidential information. Resolution 2368 (2017) explicitly encourages Member States to cooperate with the Office of the Ombudsperson and specifies that the cooperation includes concluding arrangements with the Office of the Ombudsperson for the sharing of confidential information.

Member states who have not yet done so, shall be encouraged to enter into agreements/arrangements on the sharing of confidential/classified information with the Office of the Ombudsperson, in advance of a specific case. Concluding such agreements/arrangement would evidence support on the part of the States in question for the work of the Office and the implementation of the sanctions regime adopted by the Security Council.