

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-14-63-ES  
Date: 25 November 2022  
Original: English

**THE PRESIDENT OF THE MECHANISM**

**Before:** Judge Graciela Gatti Santana, President  
**Registrar:** Mr. Abubacarr M. Tambaou  
**Order of:** 25 November 2022

**PROSECUTOR**

v.

**GORAN JELISIĆ**

***CONFIDENTIAL***

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**ORDER FOR THE TRANSFER OF GORAN JELISIĆ  
TO THE UNITED NATIONS DETENTION UNIT  
ON A TEMPORARY BASIS**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz

**Mr. Goran Jelisić**

**Italian Republic**

**I, GRACIELA GATTI SANTANA**, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

**NOTING** that, on 22 January 1998, Mr. Goran Jelisić (“Jelisić”) was arrested and immediately transferred to the United Nations Detention Unit (“UNDU”) in The Hague, Kingdom of the Netherlands (“Netherlands”);<sup>1</sup>

**NOTING** that, on 14 December 1999, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) sentenced Jelisić to 40 years of imprisonment for violations of the laws or customs of war, comprising murder, cruel treatment, and plunder, as well as crimes against humanity, comprising murder and other inhumane acts,<sup>2</sup> and that, on 5 July 2001, the Appeals Chamber of the ICTY affirmed Jelisić’s sentence;<sup>3</sup>

**NOTING** that, on 29 May 2003, Jelisić was transferred to the Italian Republic (“Italy”) to serve the remainder of his sentence;<sup>4</sup>

**NOTING** that, on 8 September 2022, I received from the Registrar of the Mechanism (“Registrar”) a confidential memorandum, in which he, *inter alia*: (i) refers to an official and recent communication from the Italian authorities, notifying the Mechanism that, pursuant to Italian law, Italy cannot enforce Jelisić’s sentence as of 3 January 2023; and (ii) indicates that the Registry of the Mechanism is proceeding urgently with requests to other States to determine their willingness and readiness to enforce the remainder of Jelisić’s sentence;<sup>5</sup>

**NOTING** further the strictly confidential memorandum dated 22 November 2022, in which the Registrar recommends that Jelisić be returned to the UNDU temporarily;<sup>6</sup>

**RECALLING** that, pursuant to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism shall have the power to supervise, *inter alia*, the enforcement of sentences pronounced

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<sup>1</sup> Decision on Sentence Remission and Early Release of Goran Jelisić, 11 March 2021 (“Decision of 11 March 2021”), para. 2; *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-T, *Jugement*, 14 December 1999 (original filed in French; English translation filed on 14 January 2000) (“Trial Judgement”), paras. 5, 123, 135.

<sup>2</sup> Trial Judgement, paras. 16, 58, 109, 138-139.

<sup>3</sup> *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, *Jugement*, 5 July 2001, p. 41.

<sup>4</sup> See ICTY Press Release, Goran Jelisić Transferred to Italy to Serve Prison Sentence, 29 May 2003, <https://www.icty.org/en/press/goran-jelistic-transferred-italy-serve-prison-sentence>. See also Decision of 11 March 2021, para. 4; Public Redacted Version of 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 11 August 2017, para. 3.

<sup>5</sup> Internal Memorandum from the Registrar to the President, dated 8 September 2022 (confidential) (“Memorandum of 8 September 2022”), paras. 6-7, *transmitting* an email communication from the Embassy of Italy to the Netherlands to the Registry of the Mechanism, dated 1 September 2022 (“Notification”), p. 1. See Internal Memorandum from the President to the Registrar, dated 19 September 2022 (strictly confidential).

<sup>6</sup> Internal Memorandum from the Registrar to the President, dated 22 November 2022 (strictly confidential), paras. 5, 7.

by the ICTY, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

**RECALLING** that Article 3(1) of the enforcement agreement between the United Nations and Italy<sup>7</sup> provides that “[i]n enforcing the sentence pronounced by the [ICTY], the competent national authorities of the requested State shall be bound by the duration of the sentence”;

**RECALLING** that Article 10 of the Enforcement Agreement states, *inter alia*, that if further enforcement of the sentence has become impossible “for any legal or practical reasons”, Italy shall promptly inform the Registrar, who “shall make the appropriate arrangements for the transfer of the convicted person”;

**CONSIDERING** that the Memorandum of 8 September 2022 transmitted Italy’s Notification that Jelisić’s sentence cannot be enforced as of 3 January 2023, given that: (i) Italian law “sets 30 years of imprisonment as the maximum [enforceable] sentence”; and (ii) an Italian court has granted “periods of early release” to Jelisić, in “strict application of the domestic law”;<sup>8</sup>

**CONSIDERING**, therefore, that the Registrar is to make the appropriate arrangements for the transfer of Jelisić in accordance with Article 10 of the Enforcement Agreement;

**CONSIDERING** further the Registrar’s recommendation that Jelisić be returned to the UNDU temporarily;

**PURSUANT TO** Article 25(2) of the Statute and Rules 23(A), 127(C), and 128 of the Rules of Procedure and Evidence of the Mechanism;

**HEREBY INSTRUCT** the Registrar to take all necessary measures and make the appropriate arrangements for Jelisić to be returned to the UNDU on a temporary basis;

**ORDER** that, following his transfer to the UNDU, Jelisić shall remain in the custody of the Mechanism pending the finalisation of arrangements for his transfer to a State where he will serve the remainder of his sentence;

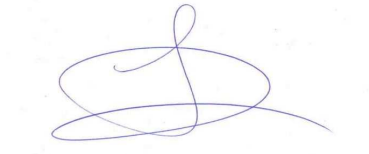
**INSTRUCT** the Registrar to transmit a copy of the present order to the Government of the Netherlands; and

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<sup>7</sup> Agreement between the Government of the Italian Republic and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 6 February 1997 (“Enforcement

**INSTRUCT** the Registrar to lift the confidential status of the present order once Jelisić's transfer to the UNDU has been completed.

Done in English and French, the English version being authoritative.



Done this 25th day of November 2022,  
At The Hague,  
The Netherlands.

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Judge Graciela Gatti Santana  
President

**[Seal of the Mechanism]**

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Agreement"). The Enforcement Agreement applies *mutatis mutandis* to the Mechanism. See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

<sup>8</sup> Notification, p. 1.



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