

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 20 May 2020

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Prisca Matimba Nyambe, Pre-Appeal Judge

**Registrar:** Mr. Olufemi Elias

**Order of:** 20 May 2020

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

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**ORDER RELATING TO THE STATUS CONFERENCE**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy

**Counsel for Mr. Ratko Mladić:**

Mr. Branko Lukić  
Mr. Dragan Ivetić

**I, PRISCA MATIMBA NYAMBE**, Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) and Pre-Appeal Judge in this case;<sup>1</sup>

**RECALLING** that, on 11 May 2020, I ordered a status conference to be held on 29 May 2020 in The Hague (“Status Conference”), pursuant to Rule 69(B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), by means of a videoconference and with the participation of Mr. Ratko Mladić and/or his counsel via teleconference or videoconference in accordance with Rules 69(C)(ii) of the Rules, due to the current coronavirus pandemic-related restrictions;<sup>2</sup>

**RECALLING FURTHER** that the Scheduling Order also requested: (i) the Registrar to file submissions detailing the means available to Mr. Mladić for privileged communication with his counsel prior to and during the Status Conference; and (ii) Mr. Mladić to file any submissions on the issue of privileged communication related to the Status Conference following the filing of the Registrar’s submissions;<sup>3</sup>

**NOTING** the submission, filed on 13 May 2020,<sup>4</sup> in which the Registrar stated, *inter alia*, that: (i) in view of the coronavirus pandemic and particularly the advanced age and medical histories of detainees at the United Nations Detention Unit (“UNDU”), all social and functional visits, including of counsel, have been suspended until further notice;<sup>5</sup> (ii) while not currently possible for detainees to meet with counsel in person, privileged communications are possible via telephone, and that the UNDU has also installed a hands-free telephone set and a desk in one of its visit rooms to facilitate working meetings;<sup>6</sup> and (iii) arrangements can be made for Mr. Mladić to participate in the Status Conference via video link from the UNDU, with counsel present in the courtroom, and that Mr. Mladić and his counsel will have access to a “direct and dedicated telephone line for privileged communications between them during the status conference”;<sup>7</sup>

**NOTING** Mr. Mladić’s submission, filed on 15 May 2020,<sup>8</sup> wherein the Defence states, *inter alia*, that it “exceptionally would accommodate and be flexible to allow only this status conference to

<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017, p. 1; Order Assigning Three Judges Pursuant to Rule 18 of the Rules, 4 September 2018 (originally filed in French, English translation filed on 5 September 2018), p. 1; Order Assigning a Pre-Appeal Judge, 12 September 2018, p. 1.

<sup>2</sup> Order Scheduling a Status Conference, 11 May 2020 (“Scheduling Order”), pp. 1, 2.

<sup>3</sup> Scheduling Order, p. 2.

<sup>4</sup> Registrar’s Submission in Response to “Order Scheduling a Status Conference”, 13 May 2020 (“Registrar’s Submission of 13 May 2020”).

<sup>5</sup> Registrar’s Submission of 13 May 2020, paras. 2, 3.

<sup>6</sup> Registrar’s Submission of 13 May 2020, para. 4.

<sup>7</sup> Registrar’s Submission of 13 May 2020, para. 5.

<sup>8</sup> Defence Submission in Compliance with the “Order Scheduling a Status Conference,” Issued 11 May 2020, 15 May 2020 (public with confidential annex) (“Defence Submission of 15 May 2020”).

take place with the Presiding Judge participating [by] video-conference”, and with the preference that Mr. Mladić appear in court with counsel or, pursuant to Rule 69(C)(ii) of the Rules, that he participate remotely with counsel present at the same location;<sup>9</sup>

**NOTING FURTHER** the Defence submissions that, *inter alia*: (i) the Registrar’s statements regarding entry and exit from the UNDU are unsupported;<sup>10</sup> (ii) telephonic consultations in the designated visit room at the UNDU are not suitable for meaningful preparation of a status conference as there may be unknown persons in the room, conversations may be overheard from outside, counsel is unable to discuss and review documents jointly with Mr. Mladić, and there can be misunderstanding due to issues with quality of the connection;<sup>11</sup> and (iii) “virtual hearings in criminal cases risk incompatibility with the rights of the accused to a public trial”, and the proposed telephone line during the Status Conference has never been tested and its use is problematic as counsel present in court cannot simultaneously follow proceedings while speaking on the telephone to explain, intervene, or seek clarifications from Mr. Mladić;<sup>12</sup>

**NOTING** the Registrar’s submission, filed on 18 May 2020,<sup>13</sup> stating, *inter alia*, that: (i) the restrictions at the UNDU were implemented by the Commanding Officer, who under the authority of the Registrar is responsible for the health and safety of all persons present at the UNDU and, through the Medical Officer, is responsible for managing the health of detainees;<sup>14</sup> (ii) in relation to the designated visit room at the UNDU, the quality of the telephone connection is regularly tested with no issues identified, including by Mr. Mladić,<sup>15</sup> and alleged incidents of others present in the room with Mr. Mladić were either at his request or to ensure at the start of the call that the communication equipment operated correctly;<sup>16</sup> and (iii) both the video teleconferencing system between the UNDU and the courtroom, which had been established and utilized by detainees who were unable to attend court proceedings, and the direct telephone line, which was established for

<sup>9</sup> Defence Submission of 15 May 2020, paras. 6, 9. According to the Defence’s submission, Mr. Mladić does not consent to the Status Conference being held “where he is not permitted a meaningful in-person interaction and privileged preparation with counsel for the same, nor does he consent to counsel appearing remotely unless counsel is appearing remotely in the same location as” Mr. Mladić. See Defence Submission of 15 May 2020, paras. 7, 8.

<sup>10</sup> Defence Submission of 15 May 2020, paras. 11-14, 26.

<sup>11</sup> Defence Submission of 15 May 2020, paras. 15, 20, 26. See also Defence Submission of 15 May 2020, paras. 16-19, 21.

<sup>12</sup> Defence Submission of 15 May 2020, paras. 24-26. See also Defence Submission of 15 May 2020, paras. 22, 23.

<sup>13</sup> Registrar’s Submission in Relation to “Defence Submission in Compliance with the ‘Order Scheduling a Status Conference’ Issued 11 May 2020”, 18 May 2020 (“Registrar’s Submission of 18 May 2020”).

<sup>14</sup> Registrar’s Submission of 18 May 2020, para. 2.

<sup>15</sup> Registrar’s Submission of 18 May 2020, para. 4.

<sup>16</sup> Registrar’s Submission of 18 May 2020, paras. 5-7. According to the Registrar, on one occasion, the Medical Officer was present in the room and approached Mr. Mladić at his request to speak with Defence counsel about the coronavirus pandemic measures intended to keep him safe, and, on the other occasion, an administrative assistant and a detention officer were present at the start to assist Mr. Mladić with ensuring the equipment was operating correctly. See Registrar’s Submission of 18 May 2020, paras. 6, 7.

privileged communication with legal advisers and counsel, were tested on 13 May 2020 and confirmed to be fully operational;<sup>17</sup>

**NOTING** that, according to the Registrar, given the availability of a reliable video teleconferencing system between the UNDU and the courtroom and the privileged telephone facilities at the UNDU, the usual short duration of status conferences, and medical advice, “it is not advisable to expose Mr. Mladić to the risks of an in-person meeting with [c]ounsel or attending a court session in the courtroom”;<sup>18</sup>

**CONSIDERING** that neither Rule 69(B) of the Rules nor any other applicable provision prescribes the means by which a Judge shall participate in a status conference;

**RECALLING** that, given the current coronavirus pandemic-related restrictions, including restrictions on travel, I ordered that I shall conduct the Status Conference with my participation via videoconference;<sup>19</sup>

**EMPHASIZING** that selecting the means by which I participate in a status conference is a matter within my discretion as Pre-Appeal Judge in light of the circumstances, and that it is not a matter requiring consent of any party;

**RECALLING** that, pursuant to Rule 69(C) of the Rules, with the written consent of the person in custody, given after receiving advice from his counsel, a status conference may be conducted: (i) in the presence of that person but with counsel participating either via teleconference or videoconference; or (ii) in the absence of the person in custody, but with his participation via teleconference if he so wishes and/or participation of his counsel via teleconference or videoconference;

**CONSIDERING** that Rule 69(C)(ii) of the Rules does not mandate that the person in custody and his counsel participate in a status conference from the same location;

**RECALLING** that, according to the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism

<sup>17</sup> Registrar’s Submission of 18 May 2020, para. 8.

<sup>18</sup> Registrar’s Submission of 18 May 2020, para. 3.

<sup>19</sup> Scheduling Order, pp. 1, 2, n. 5, referring to “Coronavirus Disease (COVID-19) Pandemic”, World Health Organization: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> (accessed on: 11 May 2020); “Dutch measures against coronavirus”, Government of the Netherlands: <https://www.government.nl/topics/coronavirus-covid-19/tackling-new-coronavirus-in-the-netherlands> (accessed on: 11 May 2020); “Travel and transportation during the coronavirus pandemic”, European Commission, [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic\\_en](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic_en) (accessed on: 11 May 2020).

(“Detention Rules”), the management of the UNDU, such as the health and safety of all persons present, including detainees, and the contact of detainees with counsel, is “[u]nder the authority of the Registrar”;<sup>20</sup>

**CONSIDERING** that it is therefore the responsibility of the Registrar, and the UNDU Commanding Officer under his authority, to provide for the safety of detainees during the coronavirus pandemic,<sup>21</sup> and that the Appeals Chamber relies on the Registrar’s submissions in this respect;<sup>22</sup>

**CONSIDERING** that, pursuant to Rule 73 of the Detention Rules, detainees have the right to receive visits from and to communicate with their legal representatives, that all such visits and communications shall be privileged, and that detainees may request the President to review any decision made by the Registrar under this rule in accordance with Rule 94(1)(b) of the Detention Rules;

**RECALLING** that detainees are to utilize procedures under the Detention Rules for any complaints related to conditions of detention, including contact with counsel,<sup>23</sup> but that the Appeals Chamber may have jurisdiction to review the Registrar’s or the President’s decision under the Detention Rules if the issue in question is closely related to the fairness of the proceedings on appeal;<sup>24</sup>

**CONSIDERING** that the Scheduling Order requested submissions from the Registrar detailing the means available to Mr. Mladić for privileged communication with his counsel prior to and during the Status Conference;<sup>25</sup>

**FINDING** that the issue of privileged communication between Mr. Mladić and his counsel in this instance relates to the fairness of proceedings pertinent to the Status Conference,<sup>26</sup> and that the Appeals Chamber therefore has jurisdiction to address this matter;

**OBSERVING** that the Registrar has outlined the means of communication between Mr. Mladić and his counsel via telephone in a designated visit room prior to the Status Conference, and that

<sup>20</sup> See, e.g., Rules 13(2), 46, 73 of the Detention Rules. See also Order on Defence Submissions of 30 March 2020, 3 April 2020 (“Order of 3 April 2020”), p. 4; Order on Defence Submissions of 25 and 27 March 2020, 31 March 2020 (public with confidential annex), p. 2.

<sup>21</sup> See, e.g., Rules 13(2), 46 of the Detention Rules.

<sup>22</sup> See Registrar’s Submission of 18 May 2020, paras. 2, 3; Registrar’s Submission of 13 May 2020, paras. 2, 3. See also Defence Submission of 15 May 2020, paras. 11-14.

<sup>23</sup> See Rules 92-94 of the Detention Rules. See also Order of 3 April 2020, p. 4, n. 20 and references cited therein.

<sup>24</sup> See Order of 3 April 2020, p. 4, n. 21 and references cited therein.

<sup>25</sup> See Scheduling Order, p. 2.

<sup>26</sup> See also Article 19(4)(b) of the Statute of the Mechanism.

Mr. Mladić may provide additional instructions to his counsel through the “direct and dedicated telephone line for privileged communications between them” during the Status conference;<sup>27</sup>

**OBSERVING FURTHER** Mr. Mladić’s concerns with his ability to effectively communicate with his counsel prior to and during the Status Conference;<sup>28</sup>

**CONSIDERING** the Registrar’s assurances about the functionality of communication equipment, and that the present Order calls on the Registrar to continue to ensure, as relates to the Status Conference, that no other person is present during Mr. Mladić’s privileged communication with his counsel, that Mr. Mladić’s privileged conversations with his counsel cannot be overheard by others, including outside the visit room at the UNDU, and that the communication equipment, including the video teleconferencing system and the direct telephone line, be appropriately functional;<sup>29</sup>

**CONSIDERING FURTHER** that, in order to ensure that Mr. Mladić and his counsel can communicate effectively during the Status Conference, the Status Conference may be paused at any time to allow counsel and Mr. Mladić to consult through the dedicated and direct telephone line as needed;<sup>30</sup>

**CONSIDERING** that the Status Conference is not a trial but an opportunity for Mr. Mladić to raise issues relating his detention, including his mental and physical condition;<sup>31</sup>

**NOTING** Mr. Mladić’s concerns with participating in the Status Conference from the UNDU while his counsel will participate from the courtroom;<sup>32</sup>

**FINDING** that it is therefore appropriate to allow Mr. Mladić the opportunity to state in writing whether he consents to proceed with the Status Conference in accordance with Rule 69(C)(ii) of the Rules as set out in this Order, or whether he prefers that the Status Conference be postponed to a time when he can be present in the courtroom with counsel following the easing of coronavirus pandemic-related restrictions;

<sup>27</sup> See Registrar’s Submission of 13 May 2020, paras. 4, 5. See also Registrar’s Submission of 18 May 2020, paras. 4, 8.

<sup>28</sup> See Defence Submission of 15 May 2020, paras. 15-25.

<sup>29</sup> See Registrar’s Submission of 18 May 2020, paras. 4, 8. See also Defence Submission of 15 May 2020, paras. 20, 25.

<sup>30</sup> See Defence Submission of 15 May 2020, para. 25.

<sup>31</sup> See Rule 69(B) of the Rules.

<sup>32</sup> See, e.g., Defence Submission of 15 May 2020, paras. 6-10, 14, 25.

**FOR THE FOREGOING REASONS,**

**HEREBY ORDER** Mr. Mladić to submit in writing within two days of the filing of the present Order whether he consents to proceed with the Status Conference in accordance with Rule 69(C)(ii) of the Rules as set out in this Order, or whether he prefers that the Status Conference be postponed to a time when he can be present in the courtroom with counsel following the easing of coronavirus pandemic-related restrictions; and

**ORDER** the Registrar to facilitate privileged communication prior to and during the Status Conference as set out herein, including to ensure that no other person is present during Mr. Mladić's privileged communication with his counsel, that Mr. Mladić's privileged conversations with his counsel cannot be overheard by others, including outside the visit room at the UNDU, and that all communication equipment provided by the Mechanism to facilitate privileged communications and the Status Conference be appropriately functional.

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

Done this 20<sup>th</sup> day of May 2020,  
At The Hague,  
The Netherlands



Judge Prisca Matimba Nyambe  
Pre-Appeal Judge

**[Seal of the Mechanism]**



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