

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 22 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:** 22 May 2020

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***PUBLIC***

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**ORDER CONCERNING THE STATUS CONFERENCE  
AND MEDICAL REPORTING BY THE REGISTRAR**

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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> and further requested the Registrar and Mr. Mladić to file submissions on the issue of privileged communication prior to and during the Status Conference;<sup>3</sup>

**NOTING** that, pursuant to the Scheduling Order, the Registrar filed submissions on 13 May 2020,<sup>4</sup> the Defence filed its submissions on 15 May 2020,<sup>5</sup> and the Registrar filed further submissions on 18 May 2020;<sup>6</sup>

**RECALLING** the order, issued on 20 May 2020,<sup>7</sup> wherein I, *inter alia*: (i) considered that Rule 69(C)(ii) of the Rules did not mandate that Mr. Mladić and his counsel participate in the Status Conference from the same location;<sup>8</sup> (ii) observed that, according to the Registrar, means of privileged communication between Mr. Mladić and his counsel prior to and during the Status Conference are available and had been recently tested;<sup>9</sup> (iii) noted the Registrar’s submission that given the circumstances “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>10</sup> and (iv) noted Mr. Mladić’s concerns with his ability to effectively communicate with his counsel prior to and

<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> 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”).

<sup>6</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>7</sup> Order Relating to the Status Conference, 20 May 2020 (“Order of 20 May 2020”).

<sup>8</sup> Order of 20 May 2020, p. 3.

<sup>9</sup> Order of 20 May 2020, pp. 1-5, *referring* Registrar’s Submission of 13 May 2020, Registrar’s Submission of 18 May 2020.

<sup>10</sup> Order of 20 May 2020, p. 3, *referring to* Registrar’s Submission of 18 May 2020, para. 3.

during the Status Conference as well as with his participation in the Status Conference from a separate location as his counsel;<sup>11</sup>

**RECALLING FURTHER** that I ordered Mr. Mladić to submit 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 the Order of 20 May 2020, 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>12</sup>

**NOTING** the submissions, filed on 21 May 2020,<sup>13</sup> stating, *inter alia*, that, “[b]ased upon the Registry restrictions and medical advice imposed that prevent prior attorney-client meetings at the [United Nations Detention Unit] and place limitations on the presence and communication of attorney and client during hearings while the coronavirus pandemic is still in place, Mr. Mladić exceptionally gives notice of his preference to postpone the upcoming Status Conference until a time when he can meaningfully meet with counsel in person to prepare for and be present in the courtroom with counsel following the easing of coronavirus pandemic-related restrictions”;<sup>14</sup>

**NOTING FURTHER** that, according to Mr. Mladić’s Defence, Mr. Mladić’s expression of a preference for postponing the Status Conference entails his consent which is conditional upon orders ensuring that: (i) the weekly monitoring and reporting on Mr. Mladić’s health and recovery be continued; and (ii) the next status conference be held at least 21 days prior to the hearing of the appeals “so as to address any issues raised as to Mr. Mladić’s mental and physical conditions that would impact upon the appeal hearings”;<sup>15</sup>

**RECALLING** that Rule 69(B) of the Rules mandates the Appeals Chamber or an Appeals Chamber Judge to convene a status conference within 120 days of the last status conference to allow a person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person;

**CONSIDERING** Mr. Mladić’s preference for postponing the Status Conference in light of the limitations resulting from the coronavirus pandemic as set out in the Defence Submission of 21 May 2020;

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<sup>11</sup> Order of 20 May 2020, pp. 2, 5, *referring to* Defence Submission of 15 May 2020.

<sup>12</sup> Order of 20 May 2020, pp. 5, 6.

<sup>13</sup> Defence Submission in Compliance with the “Order Scheduling a Status Conference,” Issued 20 May 2020, 21 May 2020 (“Defence Submission of 21 May 2020”).

<sup>14</sup> Defence Submission of 21 May 2020, para. 9. *See also* Defence Submission of 21 May 2020, p. 6.

<sup>15</sup> Defence Submission of 21 May 2020, para. 10, p. 6.

**CONSIDERING** that, while it is the responsibility of the Registrar to monitor the health of detainees,<sup>16</sup> Mr. Mladić's recovery from surgery bears on the progress of proceedings in this case and is therefore a matter of which the Appeals Chamber should continue to be apprised until the hearing of the appeals in this case takes place;<sup>17</sup>

**FINDING** therefore that, in the present circumstances, there is no basis for varying the Appeals Chamber's order of 6 March 2020<sup>18</sup> to report on Mr. Mladić's recovery from surgery on a weekly basis;

**OBSERVING** the request of Mr. Mladić's Defence that the next status conference be held at least 21 days prior to the hearing of the appeals so as to address any issues raised regarding his mental and physical condition that would impact upon the hearing of the appeals;<sup>19</sup>

**CONSIDERING** that rather than setting a time limit on when Mr. Mladić could bring issues pertaining to his mental and physical condition that may impact upon the hearing of the appeals, such as by ordering that the next status conference take place 21 days prior to the hearing, it is more appropriate to grant Mr. Mladić leave to bring such issues to the attention of the Appeals Chamber at any time irrespective of when the next status conference will be held in order to apprise the Appeals Chamber of developments as may be necessary;

**FINDING** that, in the present circumstances, it is appropriate to postpone the Status Conference until a time when Mr. Mladić can be present in the courtroom with counsel, unless he will request at any time that the Status Conference be held earlier pursuant to Rule 69(C)(ii) of the Rules as outlined in the Order of 20 May 2020;

**FOR THE FOREGOING REASONS,**

**HEREBY VACATE** the Scheduling Order;

**STAY** the Status Conference until a time when Mr. Mladić can be present in the courtroom with counsel following the easing of coronavirus pandemic-related restrictions, unless Mr. Mladić will request that the Status Conference be held earlier pursuant Rule 69(C)(ii) of the Rules as outlined in the Order of 20 May 2020;

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<sup>16</sup> See Order of 20 May 2020, pp. 3, 4, nn. 20, 21 and references cited therein.

<sup>17</sup> See Registrar's Submission of a Medical Report Prepared by the Medical Officer of the United Nations Detention Unit Concerning Mr. Mladić's Recovery from Surgery, 15 May 2020 (confidential), para. 2 (wherein the Registrar requests guidance from the Appeals Chamber whether to continue filing weekly medical reports or whether to resume the monthly reporting on Mladić's health).

**GRANT** Mr. Mladić leave to bring to the attention of the Appeals Chamber at any time issues in relation to his mental and physical condition that would impact upon the hearing of the appeals; and

**REQUEST** the Registrar to continue reporting on Mr. Mladić's recovery from surgery on a weekly basis as ordered in the Decision of 6 March 2020 until the hearing of the appeals in this case takes place.

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

Done this 22<sup>nd</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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<sup>18</sup> Decision on a Motion to Stay the Appeal Hearing, 6 March 2020 (confidential; public redacted version filed on 11 March 2020) ("Decision of 6 March 2020"), p. 4.

<sup>19</sup> See Defence Submission of 21 May 2020, para. 10. See also Defence Submission of 21 May 2020, p. 6.



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