

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 18 May 2020

Original: English

**BEFORE THE APPEALS CHAMBER**

**Before:** Judge Prisca Matimba Nyambe, Presiding  
Judge Aminatta Lois Runeni N’gum  
Judge Gberdao Gustave Kam  
Judge Seymour Panton  
Judge Elizabeth Ibanda-Nahamya

**Registrar:** Mr. Olufemi Elias

**Date:** 18 May 2020

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

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**REGISTRAR’S SUBMISSION IN RELATION TO “DEFENCE  
SUBMISSION IN COMPLIANCE WITH THE ‘ORDER SCHEDULING  
A STATUS CONFERENCE’ ISSUED 11 MAY 2020”**

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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

1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals and the “Order Scheduling a Status Conference” of 11 May 2020,<sup>1</sup> I would like to respectfully offer further clarification that would assist the Appeals Chamber in its consideration of the “Defence Submission in Compliance with the ‘Order Scheduling A Status Conference’ issued on 11 May 2020”, filed by Counsel for Mr. Mladić on 15 May 2020 (“Submission”).<sup>2</sup>
2. At the outset, I wish to clarify that, contrary to what is stated by the Defence in its Submission, the restrictions in relation to accessing the United Nations Detention Unit (“UNDU”) were not put in place by the Netherlands’ Custodial Institutions Agency. While the Registry does take into account the guidelines issued by the Custodial Institutions Agency, the COVID-19 related restrictions applicable to the UNDU were implemented by the Commanding Officer, in consultation with the Registrar and pursuant to the advice of the UNDU’s Medical Officer (“MO”). It is recalled in this regard, that as set out in Rule 13(2) of the Rules of Detention,<sup>3</sup> the Commanding Officer is responsible, under the authority of the Registrar, for all aspects of the daily management of the UNDU, including the health and safety of all persons present in the UNDU. Likewise, pursuant to Rule 46 of the Rules of Detention, the MO is responsible for managing the physical and mental health of detainees at the UNDU.<sup>4</sup> The restrictions in place are essential in preventing, to the greatest extent possible, the spread of COVID-19 to the UNDU and its detainees, whose average age, compared to detainees in the Dutch prison system, is much higher. It also is worth noting that in adopting the restrictions or considering any potential easing thereof, the UNDU must also take into consideration the needs of the detention centres of the other international organisations with which it shares the premises, including the International Criminal Court.
3. While the Registry appreciates that Counsel has no deliberate intention in jeopardising the health and safety of his client or others at the UNDU, it appears that Counsel has not fully considered the risks Mr. Mladić would be exposed to if he comes in contact

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<sup>1</sup> *Prosecutor v. Ratko Mladić*, case No. MICT-13-56-A (“*Mladić*”), Order Scheduling a Status Conference, public, 11 May 2020.

<sup>2</sup> *Mladić*, Defence Submission in Compliance with the ‘Order Scheduling A Status Conference’ issued on 11 May 2020, public with confidential annex A and public annex B, 15 May 2020 (“Submission”).

<sup>3</sup> See Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism (“Rules of Detention”), adopted on 5 November 2018.

<sup>4</sup> All detainees and their respective counsel were informed of the applicable restrictions by letter from the Commanding Officer of the UNDU, dated 13 and 16 March 2020, respectively.

with other individuals, either at the UNDU or when being transported. Mr. Mladić is part of a high-risk group due to his advanced age and his medical history; hence, all necessary precautions must be taken to limit Mr. Mladić's contacts and potential exposure to COVID-19. It is noted in this regard that personal protective equipment does not offer 100 percent protection and that the UNDU has no means of testing Counsel immediately prior to a visit. Moreover, the possibility of Counsel coming in contact with persons infected by the COVID-19 virus without his knowledge prior to arriving at the UNDU cannot be excluded particularly as the virus may be in people unknowingly without symptoms. Thus, in view of the availability of reliable video teleconferencing system between the UNDU and the courtroom and privileged phone calls facilities at the UNDU, and taking into account the usual short duration of status conferences, as well as the medical advice obtained, the Registry's position is that it is not advisable to expose Mr. Mladić to the risks of an in-person meeting with Counsel or attending a court session in the courtroom.

4. With respect to attorney-client privileged communications, while it is agreed that communications through the regular telephone are more suitable for short telephone calls, it must be highlighted again that the UNDU has equipped one of its visiting rooms with a desk and a hands-free telephone set which respects the attorney-client privilege and, most importantly, is suitable for lengthy communications in preparation for court sessions. The quality of the connection is regularly tested, including prior to Mr. Mladić's use of it on 5 May 2020. So far, no issues have been identified. It must however be acknowledged that quality issues could exist at the receiver's end. Moreover, Mr. Mladić did not raise any issues about the quality of the equipment or the connection after his recent telephone call with Counsel, or ask for any assistance.<sup>5</sup>
5. Furthermore, I note that the Defence referred in its Submission to some alleged incidents during Mr. Mladić's privileged communications, which warrant further comments.
6. Regarding the first alleged incident which occurred during the phone call of 1 April 2020 at 17:58 hours,<sup>6</sup> I would like to clarify that the MO was present on the wing on that date to seek Mr. Mladić's consent for the release of his medical information in relation to the weekly update on his recovery from surgery. Contrary to the Defence's claim, the MO only approached Mr. Mladić at the explicit request of Mr. Mladić, who

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<sup>5</sup> See Submission, paras. 20-21.

insisted that the MO speak to Counsel. The MO spoke with Counsel about the COVID-19 measures intended to keep his client safe.

7. As regards the second alleged incident reported by the Defence,<sup>7</sup> it should be highlighted that an Administrative Assistant and a Detention Officer were present in the room briefly at the start of the call to assist Mr. Mladić and make sure that the speaker was operating correctly.<sup>8</sup> It is worth noting that all social distancing requirements were respected on both occasions.
8. Finally, contrary to Counsel's contention,<sup>9</sup> this is not the first time that the video teleconferencing system between the UNDU and the courtroom has been used. The system was initially established for self-represented accused and detainees who were unable to attend court proceedings. The direct telephone line was established to allow for privileged contact with legal advisers and counsel. Tests carried out on 13 May 2020 have confirmed that the system, including the direct telephone line, is fully functional. The UNDU will provide Mr. Mladić with an opportunity to familiarize himself with the system prior to the date of the status conference.
9. The Registry remains available should the Appeals Chamber require further information.

Respectfully submitted,

  
Olufemi Elias  
Registrar

Done this 18<sup>th</sup> day of May 2020  
At The Hague,  
The Netherlands

<sup>6</sup> See Submission, paras. 17-18.

<sup>7</sup> See Submission, paras. 20-21.

<sup>8</sup> Neither noted any issue regarding the quality of the connection and Mr. Mladić did not raise any issue after the phone call.

<sup>9</sup> See Submission, para. 25.



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