

**UNITED  
NATIONS**



International Residual Mechanism for  
Criminal Tribunals

Case No: MICT-13-56-A

Date: 26 June 2018

Original: English

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**THE PRESIDENT OF THE MECHANISM**

**Before: Judge Theodor Meron, President**

**Registrar: Mr. Olufemi Elias**

**THE PROSECUTOR**

**v.**

**RATKO MLADIĆ**

**PUBLIC**

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**PROSECUTION RESPONSE TO  
DEFENCE MOTION SEEKING WAIVER OF IMMUNITY**

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**The Office of the Prosecutor:**

Ms. Laurel Baig  
Ms. Barbara Goy  
Ms. Katrina Gustafson

**Counsel for Ratko Mladić:**

Mr. Branko Lukić  
Mr. Dragan Ivetić

1. Mladić’s request to the President of the Mechanism to waive the immunity of certain United Nations officials<sup>1</sup> should be dismissed because it requests relief that lies outside the jurisdiction of the President and is, in any event, without merit.

2. The authority to waive immunity of United Nations officials falls within the competence of the Secretary-General of the United Nations, not the President.<sup>2</sup> Mladić incorrectly claims that the Appeals Chamber stated that a request for waiver should be made before the President.<sup>3</sup> The Appeals Chamber simply noted that Mladić had addressed his (alternative) request for waiver of immunity of United Nations Detention Unit (“UNDU”) staff to the President, and that consequently this request was not before the Appeals Chamber.<sup>4</sup>

3. Moreover, Mladić’s request that the Motion “should be decided upon by the next ranking Judge in order of precedence” is without merit.<sup>5</sup> A pending motion for disqualification does not exclude the President of the Mechanism, or any other judge of the Appeals Chamber, from deciding motions.<sup>6</sup>

4. Finally, Mladić’s claim that he has exhausted all the legal remedies available at the Mechanism is misconceived.<sup>7</sup> Mladić seeks waiver of immunity so as to advance his allegations against UNDU staff relating to Mladić’s medical treatment. However, he ignores that these allegations have been extensively litigated, including in a motion that remains pending in relation to alleged contempt by UNDU officials.<sup>8</sup> Mladić’s contention that the Appeals Chamber has failed to “address or consider serious medical issues”<sup>9</sup> is contradicted by the Appeals Chamber’s consideration of his allegations on these very issues.<sup>10</sup> Moreover, as the Appeals Chamber has noted, “Mladić may use the procedures provided under the Detention Rules and the Complaints Procedure with respect to complaints or requests related

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<sup>1</sup> Defence Motion Seeking Waiver of Immunity as to Impugned Officials (UNDU Medical Officer; UNDU Deputy Medical Officer; and UNDU Commanding Officer), 18 June 2018 (“Motion”).

<sup>2</sup> See Article 25 of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals, 23 February 2015; Article V (Section 20) of the Convention on the Privileges and Immunities of the United Nations, adopted by General Assembly Resolution A/RES/22(I)(A), 13 February 1946.

<sup>3</sup> Motion, para.8.

<sup>4</sup> Decision on Renewed Motion for Contempt, 15 May 2018 (“Decision”), p.4.

<sup>5</sup> Motion, para.15.

<sup>6</sup> *Contra* Motion, para.15.

<sup>7</sup> Motion, para.21.

<sup>8</sup> See Motion to Reconsider Decision on Renewed Motion for Contempt, 22 May 2018 (public with confidential Annex A) *relied on at* Motion, para.9.

<sup>9</sup> Motion, para.22.

<sup>10</sup> Decision, pp.3-4.

to the conditions of his detention, including the provision of medical documentation and medical services.”<sup>11</sup> Mladić’s assertion—based on his own allegations currently pending before the Appeals Chamber—that he “cannot receive the appropriate relief for his complaints within the UN MICT administrative disciplinary regime”<sup>12</sup> does not establish that these procedures are unavailable or ineffective.

5. The Motion should be dismissed.

Word Count: 478



Katrina Gustafson  
Senior Appeals Counsel

Dated this 26<sup>th</sup> day of June 2018  
At The Hague, The Netherlands

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<sup>11</sup> Decision, p.4.

<sup>12</sup> Motion, para.22.



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