

UNITED
NATIONS



International Residual Mechanism for
Criminal Tribunals

Case No.: MICT-13-56-A

Date: 5 July 2018

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Decision of: 5 July 2018

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION SEEKING WAIVER OF IMMUNITY AS TO
IMPUGNED OFFICIALS (UNDU MEDICAL OFFICER; UNDU DEPUTY MEDICAL
OFFICER; AND UNDU COMMANDING OFFICER)**

Office of the Prosecutor

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

Counsel for Mr. Ratko Mladić

Mr. Branko Lukić
Mr. Dragan Ivetić

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“President” and Mechanism”, respectively);

BEING SEISED OF the “Defence Motion Seeking Waiver Of Immunity As To Impugned Officials (UNDU Medical Officer; UNDU Deputy Medical Officer; And UNDU Commanding Officer)”, filed on 18 June 2018 (“Motion”), Mr. Ratko Mladić (“Mladić”) submits that, *inter alia*: (i) I should recuse myself from the consideration of this Motion; and (ii) I should “issue a waiver of immunity as to impugned UN officials and their proxies, including, but not limited to: a) the UNDU Medical Officer; b) the UNDU Deputy Medical Officer; and c) the UNDU Commanding Officer”;¹

NOTING the “Prosecution Response to Defence Motion Seeking Waiver of Immunity”, filed on 26 June 2018 (“Response”), wherein the Office of the Prosecutor of the Mechanism (“Prosecution”) argues that the Motion “should be dismissed because it requests relief that lies outside the jurisdiction of the President and is, in any event, without merit”;²

NOTING the “Reply in Support of Defence Motion Seeking Waiver Of Immunity As To Impugned Officials (UNDU Medical Officer; UNDU Deputy Medical Officer; And UNDU Commanding Officer)”, filed on 2 July 2018 (“Reply”), wherein Mladić argues, *inter alia*, that: (i) the direct correspondence from the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel (“Legal Counsel”), attached to the Reply as Public Annex B (“Legal Counsel Correspondence”), advises that the Secretary-General of the United Nations (“UNSG”) could not waive immunity and that “[t]hese issues and any additional concerns that you [Mladić] may have should be addressed through the appropriate administrative and judicial procedures within the Mechanism”;³ and (ii) the Prosecution fails to provide any support to its proposition “that a pending motion for disqualification of the President for actual or apparent bias does not exclude [the] same from deciding motions”;⁴

NOTING the “Registrar’s Submission in Relation to Defence Motion Seeking Waiver of Immunity”, filed on 4 July 2018 (“Registry Submission”), wherein the Registrar of the Mechanism argues, *inter alia*, that: (i) the Legal Counsel Correspondence does not support Mladić’s position that the President has the authority to make determinations regarding

¹ Motion, paras. 15, 24 (footnotes omitted).

² Response, para. 1.

³ Reply, para. 8.

⁴ Reply, para. 9.

immunity; (ii) that the Legal Counsel Correspondence instead explains that since the issues addressed by Mladić to the Legal Counsel had been raised in judicial proceedings before the International Criminal Tribunal for the former Yugoslavia and the Mechanism, the UNSG was not in a position to intervene; and (iii) that Mladić fails to demonstrate that there are no suitable avenues of adjudication at the Mechanism to address his claims;⁵

RECALLING that (i) the “Defence Motion Respectfully Seeking the Disqualification of Judge Theodor Meron for Actual or Apparent Bias”, filed by Mladić on 18 June 2018; (ii) the “Defence Motion Respectfully Seeking the Disqualification of Judge Liu Daqun for Actual or Apparent Bias”, filed by Mladić on 18 June 2018; and (iii) the “Defence Motion Respectfully Seeking the Disqualification of Judge Carmel Agius for Actual or Apparent Bias”, filed by Mladić on 18 June 2018, were referred to Judge Jean-Claude Antonetti on 20 June 2018, and are currently pending determination;⁶

RECALLING that a pending motion for disqualification of the President or a Judge does not exclude the President or a Judge from deciding ancillary motions in the case to which his disqualification is sought;⁷

CONSIDERING that Mladić has not put forth any arguments in the Motion to rebut the presumption of impartiality that attaches to me as the President and which would compel my recusal from its adjudication;

CONSIDERING FURTHER that the Motion concerns matters that are unrelated to the determination of Mladić’s appeal against his conviction;⁸

RECALLING that where a detainee is not satisfied with the conditions of his detention, including the provision and administration of medical services at the United Nations Detention Unit, he or she is entitled to make a complaint in accordance with the procedures set out in Rules 81 to 83 of the Rules Governing the Detention of Persons Awaiting Trial or

⁵ Registry Submission, paras. 3, 5-6.

⁶ Decision on Mladić’s Motions for Disqualification of Judges, 20 June 2018.

⁷ See *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6 & IT-09-92-AR73.7, Decision on Ratko Mladić’s Motion for Disqualification of Judge Carmel Agius, 26 October 2016, paras. 19-25 (“Disqualification Decision”).

⁸ Disqualification Decision, paras. 23-25.

Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal,⁹ and the United Nations Detention Unit Complaints Procedure for Detainees;¹⁰

CONSIDERING that Mladić has not submitted any such complaint or request related to the conditions of his detention before me, as President, pursuant to the Rules of Detention and the Complaints Procedure, and therefore he has not addressed his complaints through the appropriate administrative and judicial procedures within the Mechanism;¹¹

RECALLING that it is the UNSG, not the President of the Mechanism, who under the Host State Agreement has the right and duty to waive the immunity of staff of the Mechanism “where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Mechanism”;¹²

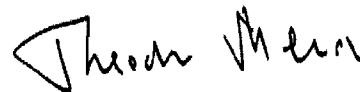
FINDING that as the authority to waive the immunity of staff of the Mechanism is solely within the competence of the UNSG, I have no jurisdiction to consider the merits of the Motion;

FOR THE FOREGOING REASONS,

HEREBY DENY the Motion in its entirety.

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

Done this 5th day of July 2018,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]

⁹ IT/38/Rev.10, 15 November 2016 (“Rules of Detention”). The Rules of Detention apply *mutatis mutandis* to the Mechanism.

¹⁰ IT/96/Rev.1, 14 December 2016 (“Complaints Procedure”). The Complaints Procedure applies *mutatis mutandis* to the Mechanism. *See also* Decision on Renewed Motion for Contempt, 15 May 2018 (“Decision on Renewed Motion”).

¹¹ Rules of Detention; Complaints Procedure; Registry Submission, paras. 3, 5-6. *See also* Decision on Renewed Motion. *Contra* Reply, para. 8, Public Annex B.

¹² 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 25. *See also* Convention on the Privileges and Immunities of the United Nations, adopted by General Assembly Resolution A/RES/22(I)(A), 13 February 1946, Article V (Section 20); Statute of the Mechanism, Articles 29(1)-(3); Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 I.C.J. 62, paras. 51, 60 (April 29).



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