



19 October 2017

PUBLIC REDACTED VERSION OF 11 October 2017

**Re: Reconsideration of my decision on your complaint concerning the Acting Commanding Officer's decision to deny your request to allow the use of Skype or an equivalent means of communication**

Dear Mr. Karadžić,

I refer to the President's "Decision on Request for Review of Registrar's Decision" ("Decision of the President"),<sup>1</sup> remitting your request for the use of Skype or a similar video platform to communicate with your family for "the reconsideration of the Registrar (...), consistent with the terms of the [Decision of the President]."

In accordance with the Decision of the President, and pursuant to Rule 82 of the Rules of Detention<sup>2</sup> and Regulation 2(H) of the Complaints Procedure,<sup>3</sup> I have reconsidered your "Complaint Pursuant to Rule 82 ICTY Rules of Detention" of 26 April 2017 ("Complaint").<sup>4</sup>

**Background**

The background and procedural history of this matter are detailed in the Decision of the President,<sup>5</sup> which also summarises the actions undertaken by the Registry to date, in order to provide secure video communication for detainees at the UNDU, consisting of: (i) consultations with the Dutch Custodial Institutions Agency of the Ministry of Security and Justice ("DJI"); (ii) consultations with the International Committee of the Red Cross ("ICRC") regarding standard operating procedures for secure video communication in other countries; (iii) consultations with the Norwegian authorities running the Norgerhaven prison on the use of "Skype for Business"; and (iv) investigation into secure video teleconferencing, using dedicated video teleconferencing ("VTC") equipment or software.<sup>6</sup>

<sup>1</sup> *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A ("Karadžić"), Decision on Request for Review of Registrar's Decision, public, 29 August 2017.

<sup>2</sup> Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev.10, 15 November 2016 ("Rules of Detention"). The Rules of Detention apply *mutatis mutandis* to persons under the authority of the Mechanism for International Criminal Tribunals ("Mechanism") who are being detained at the United Nations Detention Unit ("UNDU").

<sup>3</sup> United Nations Detention Unit Complaints Procedure for Detainees of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), IT/96/Rev.1, 14 December 2016 ("Complaints Procedure"), which applies *mutatis mutandis* to persons under the authority of the Mechanism who are being detained at the UNDU.

<sup>4</sup> This submission is filed on the judicial record, in accordance with the guidance received from the President. See, *Karadžić*, Decision on Request for Review of Registrar's Decision, public redacted, 1 August 2017, para. 20.

<sup>5</sup> Decision of the President, paras 2-7.

<sup>6</sup> Decision of the President, pp. 2-3. See also *Karadžić*, Registrar's Submission in Relation to the Order of 12 June 2017, 14 August 2017, public with confidential annex ("Registrar's Submission").



The Decision of the President set out the following terms with which I am to reconsider my decision:

- (i) Awaiting the potential establishment of a Dutch nation-wide secure platform for video communications of detainees [REDACTED];
- (ii) “Skype for Business” is not a viable solution to providing video communication since it is not compatible with the operating system used by the Mechanism;
- (iii) Video teleconferencing (“VTC”) may present a possible option to provide secure video communication for detainees in the UNDU;
- (iv) Necessary changes to the UNDU policy and regulatory changes should not be a barrier to introducing video communication, but require consultation with the ICTY and within the Mechanism.

### Decision

In my decision of 8 May 2017, I found that your Complaint – alleging that the UNDU Acting Commanding Officer erred in his decision of 19 April 2017 not to allow you to use Skype or another video communication platform – was not justified at that point in time. My finding was based on the fact that the Registry was at the time exploring the possibility of offering secure video communication for detainees at the UNDU. Further, the current regulatory framework does not allow for video communication and therefore requires amendment in consultation with the ICTY in order to properly regulate the usage of video communication by all detainees at the UNDU.

I have reconsidered this decision consistent with the terms of the Decision of the President, as summarised above.

With regard to point (i) of the Decision of the President, the Registry’s regular consultations with the DJI have indicated that [REDACTED] the Registry is taking its own steps to explore the provision of secure video communication for the UNDU detainees. This means that the Mechanism will be responsible for ensuring that the video communication platform provided to detainees is secure, able to be properly regulated within the resource constraints of the UNDU, and consistent with the good order and security of the UNDU.

As noted by the President (point (ii)), Skype for Business is not a viable solution to providing video communication since it is not compatible with the operating system used by the Mechanism.<sup>7</sup> In view of this, the Registry has explored further options for the provision of secure video communication.

As per the Decision of the President (point (iii)), video teleconferencing may present a possible option to provide secure video communication for detainees in the UNDU. As detailed in the Registrar’s Submission,<sup>8</sup> the Registry has investigated two feasible options for a video communication platform at the UNDU, involving VTC equipment and software, in consultation with ICTY Registry representatives, the Information Technology Services Section of the ICTY/Mechanism and UNDU management.

<sup>7</sup> See Decision of the President, pp. 3-4; Registrar’s Submission, Confidential Annex, para. 5(b).

<sup>8</sup> See Registrar’s Submission, Confidential Annex, paras. 6-10. See also Decision of the President, pp. 3-4.



As a result of these discussions, the Registry is about to begin the initial phase of a pilot project on video communication at the UNDU. This pilot project will <sup>9</sup>[REDACTED]. Following a thorough assessment of the pilot programme, a final decision will be made on whether the VTC option of video communication can be provided to all detainees at the UNDU.

As acknowledged in the Decision of the President (point (iv)), in order to allow video communication to be used by detainees at the UNDU, certain amendments will need to be made to the UNDU policy and regulatory framework, which requires consultation with the ICTY and within the Mechanism. As explained in the Acting Commanding Officer's decision,<sup>10</sup> the provision of video communication facilities to detainees is not supported by the rules and regulations pertaining to detention, which currently only give the detainees the right to send and receive postal mail, make outgoing telephone calls and receive incoming calls in case of an emergency, and receive visits. As rightly noted in the Decision of the President, necessary changes to the UNDU policy and regulatory frameworks should not be a barrier to the introduction of video communication to detainees. However, before any changes to the rules and regulations are introduced, a technical solution for video communication, compatible with the Mechanism infrastructure, needs to be put in place and tested. [REDACTED] As and when a decision is made on the provision of VTC for detainees following the assessment of the pilot programme, the regulatory framework will be amended as necessary, in accordance with relevant rules and procedures.

In order to facilitate this task, the Registry has requested and recently been provided with [REDACTED]. In addition, the Registry has consulted with the ICRC [REDACTED]. [REDACTED] such material will help to facilitate the drafting and review process for a regulatory framework for video communications at the UNDU.

Information about the upcoming pilot project for VTC for detainees at the UNDU will be communicated to all detainees in the near future, with updates as necessary on its progress.

In light of the above, and taking into account the ongoing efforts of the Registry to establish a secure platform for video communication for detainees at the UNDU, as summarised above, I maintain the position that your Complaint is not justified at this time, and dismiss it without prejudice.<sup>11</sup>

In accordance with Rule 83(A) of the Rules of Detention and Regulation 3 of the Complaints Procedure you have the right to appeal this decision to the President of the Mechanism within 14 days of the notification thereof.

Yours sincerely,

A handwritten signature in blue ink, which reads 'Olufemi Elias'.

Olufemi Elias  
Registrar

To: Mr. Radovan Karadžić, UNDU

Copy: Mr. Peter Robinson, Counsel for Mr. Karadžić, per-email  
Mr. Fraser Gilmour, Acting Commanding Officer, UNDU

<sup>9</sup> [REDACTED]

<sup>10</sup> Acting Commanding Officer's Decision, 19 April 2017.

<sup>11</sup> I note that the President did not find that my decision of 8 May 2017 was unreasonable. *See* Decision of the President, p. 5.



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE  
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<b>Case Name/ Affaire :</b>	Prosecutor v. Karadzic		<b>Case Number/ Affaire n° :</b>	MICT-13-55-A	
<b>Date Created/ Daté du :</b>	19 October 2017	<b>Date transmitted/ Transmis le :</b>	19 October 2017	<b>No. of Pages/ Nombre de pages :</b>	3
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