

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 23 May 2017

Original: English

BEFORE THE PRESIDENT

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Submission of: 23 May 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**REGISTRAR'S SUBMISSION REGARDING MR. KARADŽIĆ'S
APPEAL OF THE REGISTRAR'S DECISION ON SKYPE**

Counsel for Mr. Karadžić:

Mr. Peter Robinson

Ms. Kate Gibson

1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the Mechanism for International Criminal Tribunals (“Mechanism”), I respectfully file this submission in relation to the Appeal of Registrar’s Decision on Skype of 8 May 2017 (“Complaint”) filed by Mr. Radovan Karadžić (“Accused”).¹ In accordance with the Registrar’s obligation to “transmit to the President all relevant information obtained in the course of the investigation of the complaint,”² and in view of the fact that the Accused has chosen to submit the Complaint by filing his appeal of the Registrar’s decision on the judicial record rather than utilising the regular procedure set out in Regulation 3(B) of the Complaints Procedure, I would like to bring the following information to the President’s attention.
2. As a preliminary matter, I note that the introduction of secure video communication at the United Nations Detention Unit (“UNDU”) is a policy matter, subject to complex legal, technical and security-related issues that are currently being considered by the Registry.
3. As reported in my 2 March 2017 submission pursuant to the President’s Order of 14 December 2016, the Registry has consulted with the Dutch Custodial Institutions Agency (Dienst Justitiële Inrichtingen – “DJI”) of the Ministry of Security and Justice as to whether secure video communication could be used by detainees at the UNDU.³ The DJI is exploring the possibility of establishing a nationwide secure platform for detainees in Dutch prisons. However, the DJI has indicated that, if accepted, such a platform would not be operational until 2020. Therefore, should the Mechanism wish to provide secure video communication to the detainees in the UNDU before that, it would need to do so on its own, outside the Dutch system. The Mechanism would therefore carry all costs and liability, as well as be responsible for technical feasibility studies, monitoring and maintenance systems, and security-related matters.
4. Since my 2 March 2017 submission, the Registry has sought information about, and undertaken an analysis of, the following relevant matters that need to be considered in any policy decision to provide a secure video communication system to detainees in the UNDU:

¹ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55 (“*Karadžić*”), Appeal of the Registrar’s Decision on Skype, public, 12 May 2017.

- a) *Legal and regulatory framework*: As noted in my decision of 8 May 2017, the Rules of Detention⁴ and Regulations⁵ do not allow for video communications. Rules 58(A), 61(A), 63 and 64bis of the Rules of Detention as well as Regulations 7 to 24 of the Regulations provide for the possibility of correspondence by letter and by telephone as well as visits from family, friends and others, subject to any restrictions set out therein.⁶ The Rules of Detention and Regulations do not provide for the possibility of video communication. Therefore, in order to introduce the possibility of communication through a secure video platform, the Rules and Regulations will need to be amended and new procedures or conditions may need to be instituted.
- b) *Procedural requirements to adopt a new policy*: The introduction of video communication would entail a policy change, as well as regulatory amendments, which would affect all detainees in the UNDU, both those under the authority of the Mechanism and those under the authority of the International Criminal Tribunal for the former Yugoslavia (“ICTY”). I suggest that any such amendments must be considered and agreed to by the UNDU management and the Registries of both the Mechanism and the ICTY, in consultation with the President’s Office of both institutions, as well as the DJI.
- c) *Possible platforms for secure video communication*: Any internet connection outside the secure Mechanism network carries security risks, including the possibility of illicit access to the Mechanism’s systems, data or to the actual video conversation of the detainees. Accordingly, any platform for video communication needs to offer a secure connection. Commonly used applications such as Skype and Face Time do not offer these secure

² Regulation 3(C), United Nations Detention Unit Complaints Procedure for Detainees (IT/96/Rev.1), November 2016 (“Complaints Procedure”). The Complaints Procedure applies *mutatis mutandis* to the Mechanism.

³ Karadžić, Registrar’s Submission Pursuant to the Order of 14 December 2016, public, 2 March 2017, para. 2.

⁴ 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 the Mechanism.

⁵ United Nations Detention Unit Regulations to Govern the Supervision of Visits to and Communications With Detainees (IT/98/Rev.7), June 28 (“Regulations”). The Regulations apply *mutatis mutandis* to the Mechanism.

⁶ See Complaint, Annex H, fn. 6 (Letter from the Registrar to the Accused, 8 May 2017). It appears that footnote 6 is not visible in the letter the Accused attached as Annex H. Accordingly, it is attached as Annex A to this submission.

connections. One option would be the use of the Skype for Business application. The Registry understands that while the application offers a more secure connection in comparison to regular Skype, this relatively secure connection is maintained only if the call is made from a Skype for Business account to another Skype for Business account. The secure connection is lost when a call is made to a regular Skype account. In view of the need – for security and privacy reasons – to control the environment at both ends of the call, the most secure method is to allow inmates to make video calls to persons located at designated and specially equipped locations. Therefore, the Skype for Business platform may potentially offer a possible technical solution (although see point (e)), so long as a facility is set up by which the persons with whom UNDU detainees wish to communicate are able to receive or make calls from a designated and specially equipped location set up for Skype for Business, which can be controlled or monitored.

The Registry has scheduled additional consultations with the Norwegian authorities which run Norgerhaven prison in the Netherlands to discuss their experiences with their trial video communication programme and to clarify whether the Norwegian inmates are only able to make video calls to persons located at designated and specially equipped police stations.

The Registry is also in dialogue with the International Committee of the Red Cross (“ICRC”) regarding the possibility of secure video communication for detainees at the UNDU. The ICRC, which is experienced in this area, will provide the Registry with its relevant standard operating procedures to assist in the further exploration of this issue.

- d) *Supervision and monitoring requirements:* Since video communication presents issues that are different from those presented by both telephone calls (which carry no visual image or audible noise for those outside the call) and visits (which are subject to specific conditions related to physical security within the UNDU), the use of video communication needs to be supervised and monitored in a manner that is specific to the risks accompanying this modality of communication. This need is supported by our findings and preliminary consultations on the issue. Because of the nature of this form of

communication, measures of supervision and monitoring need to manage a range of other risks, including:

- i. Ensuring the identity of the person receiving the call outside the UNDU to verify that they are authorised by the UNDU to receive a call;
- ii. Ensuring that there are no unauthorised persons on the receiving end of the call out of view of the camera;
- iii. Ensuring that the video call is not being recorded either through the computer itself or through an alternative recording device.

e) *Budgetary and resource implications:* The purchase, installation and maintenance of a secure video communication application could have budgetary and operational implications for the Mechanism, which could be significant depending on the application in question. In addition, Skype for Business is incompatible with the Mechanism's current operating system, and the Information Technology Services Section does not at present have a licence for Skype for Business. IT solutions that would allow the Mechanism to utilise Skype for Business within the Mechanism operating system will need to be further investigated in terms of feasibility and cost.

5. The Registry is addressing these various legal, technical and security-related issues that would allow it to provide secure video communication to the detainees in the UNDU, taking full account of the potentially significant resource implications. In addition, the UNDU management is in regular contact with its Liaison Officer at the Host Prison to keep abreast of the developments regarding the DJI's proposed nationwide secure platform for video communications.⁷

⁷See also *Karadžić*, Registrar's Submission in Relation to Matters Raised at the Status Conference Held on 15 November 2016, public, 24 November 2016; *Karadžić*, Registrar's Submission Pursuant to the Order of 14 December 2016, public, 2 March 2017.

6. The Registry remains available to provide any further information required.

Respectfully submitted,



 Office of the
 Registrar

Done this 23rd day of May 2017
 At The Hague,
 The Netherlands.

PUBLIC

ANNEX A

UNITED NATIONS
Mechanism for
International Criminal Tribunals



NATIONS UNIES
Mécanisme pour les
Tribunaux Pénaux Internationaux

MICT • MTPI

OFFICE OF THE REGISTRAR / BUREAU DU GREFFIER

11 May 2017

Regarding: Reclassification of decision on 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 your Appeal, submitted for public filing on 10 May 2017, of my 8 May 2017 decision on your complaint concerning the decision of the Acting Commanding Officer of the United Nations Detention Unit not to allow you to use Skype or an equivalent means of communication ("Decision"). The letter conveying my Decision was classified and labelled as confidential. However, you included this confidential document as Annex H to your public filing. I would like to emphasise that documents classified as confidential by the Registry cannot be annexed to public filings, which is why your filing has not been processed.

You have chosen to submit for public filing the Appeal in the judicial records system rather than use the regular procedure set out in Regulation 3 of the Complaints Procedure for Detainees (IT/96/REV.1) for the filing of appeals of the Registrar's decisions on complaints. I believe that in this particular situation it would be in the interests of transparency, clarity of the facts, and justice for the Decision under appeal to be made public. This will also ensure an accurate representation of my Decision and the reasons on which it is based.

For these reasons, I have decided to remove the confidential classification from the Decision.

Accordingly, you may now resubmit your filing with the unclassified version of the Decision as Annex H of the filing, whereupon it will be processed.

To: Mr. Radovan Karadžić
UNDU

Copy: Mr. Peter Robinson, Counsel for Mr. Karadžić
per e-mail
Mr. Fraser Gilmore, Acting Commanding Officer, UNDU



Yours sincerely,

A handwritten signature in black ink that reads "Olufemi Elias".

Olufemi Elias
Registrar

Annex: Decision on Complaint concerning the Acting Commanding Officer's decision to deny your request to allow the use of Skype or an equivalent means of communication, 8 May 2017, unclassified on 11 May 2017.

UNITED NATIONS
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NATIONS UNIES
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OFFICE OF THE REGISTRAR / BUREAU DU GREFFIER

~~CONFIDENTIAL~~

Unclassified, as of
11 May 2017

8 May 2017

Regarding: 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 your complaint dated 25 April 2017, received by the United Nations Detention Unit ("UNDU") on 26 April 2017, concerning the decision of the Acting Commanding Officer of the UNDU of 19 April 2017 not to allow you to use Skype or an equivalent means of communication ("Complaint"). I further recall my letter of 26 April 2017 acknowledging receipt of your Complaint and my letter of 3 May 2017 whereby I provided you with an update on the status of the Complaint.

The Registry supports, in principle, the availability of modern communication technologies at the UNDU, including secure video communication, provided they can be used in a safe manner in accordance with the applicable rules and regulations. As has been previously reported in relation to you raising this matter during two status conferences,¹ the Dutch Custodial Institutions Agency ("DJI") of the Ministry of Security and Justice is exploring the possibility to establish a nationwide secure platform that would allow detainees in Dutch prisons the opportunity to use secure video communications with persons outside detention facilities.² If introduced, such a platform is not expected to be operational before 2020. The UNDU management is in regular contact with the DJI on this matter. The Registry has further reported that it is making efforts to engage in discussions with the Norwegian authorities about video communication facilities offered in Norderhagen prison.³

As you are aware, the Rules of Detention⁴ and the Regulations Governing Visits and Communications⁵ provide for the possibility of correspondence by letter and by telephone as

¹ Status Conference of 15 November 2016; Status Conference of 6 March 2017.

² *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A ("Karadžić"), Registrar's Submission in Relation to Matters Raised at the Status Conference Held on 15 November 2016, public, 24 November 2016; *Karadžić*, Registrar's Submission Pursuant to the Order of 14 December 2016, public, 2 March 2017.

³ *Idem*.

⁴ 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 the Mechanism.

⁵ United Nations Detention Unit Regulations to Govern the Supervision of Visits to and Communications With Detainees (IT/98/Rev.7), June 28 ("Regulations"). The Regulations apply *mutatis mutandis* to the Mechanism.



well as visits from family, friends and others, subject to any restrictions set out therein.⁶ Video communication is currently not included as a mode of communication in either the Rules of Detention or the Regulations. The introduction of secure video communication for detainees in the UNDU would therefore entail a policy change, as well as regulatory amendments, that would affect all detainees.

In order to make such a policy change, the UNDU management and Registry are required to ensure that the provision of this mode of communication would pose no risk to the administration of justice and the security and good order of the UNDU, and to consider the need for regulatory amendments. Further, in terms of procedure, the UNDU management and the Registries of both the Mechanism for International Criminal Tribunals and the International Criminal Tribunal for the former Yugoslavia must consider and agree to the policy change and the regulatory amendments in consultation with the President's Office of both institutions. In addition, the Registry would consult with the DJI on this matter.

In view of the current regulatory framework and since the matter is still under consideration and the Registry is currently exploring the possibility of offering secure video communication for detainees, pursuant to Rule 82 of the Rules of Detention and Regulation 2(H) of the Complaints Procedure, I therefore find your Complaint not to be justified at this point in time.

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

Yours sincerely,

Olufemi Elias
Registrar

To: Mr. Radovan Karadžić
UNDU

Copy: Mr. Peter Robinson, Counsel for Mr. Karadžić
per e-mail
Mr. Fraser Gilmore, Acting Commanding Officer, UNDU

⁶ Rules 58(A), 61(A), 63, 64*bis*, Rules of Detention; Regulation 7-24, Regulations.