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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-06-90-PT

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van Den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Date filed: 17 May 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

**CONFIDENTIAL
CLARIFICATION OF INDICTMENT**

The Office of the Prosecutor:

Alan Tieger
Marks Moore

Counsel for the Accused:

Mr. Luka S. Mišetić, Mr. Gregory Kehoe, Mr. Payam Akhavan for Ante Gotovina

Mr. Čedo Prodanović and Ms. Jadranka Sloković for Ivan Čermak

Mr. Goran Mikuličić for Mladen Markač

THE INTERNATIONAL CRIMINAL TRIBUNAL
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1. The Trial Chamber previously ordered the Prosecution to “widen the circle of named participants to include key military or political figures, to the extent they are known by the Prosecution”.¹ Although this was in the context of a JCE that embraced all persons whose conduct led to the commission of crimes, the Prosecution hereby complies with the order in the context of the Proposed Indictment by providing additional particulars concerning key military or political figures among the many persons who were members of the JCE. Alternatively, these persons were used by or cooperated with JCE members and their conduct is thereby imputable to the members of the JCE. These additional key military or political figures include the following people, identified by reference to their position at the time of the events:

- Mirko Norac (former Commander of Gospic Military District)
- Rahim Ademi (former Deputy Commander of the Split Military District)
- Miljenko Crnjac (former Commander of Karlovac Military District)
- Mate Laušić (former Head of the Military Police Administration)
- Ivan Jarnjak (former Minister of the Interior)
- Markica Rebić (former Assistant Minister of Defence for Security)
- Jure Radić (former Minister of Reconstruction).

¹ Decision on Ante Gotovina’s Preliminary Motions Alleging Defects in the Form of the Joinder Indictment, 19 March 2007 (“Decision”), para. 16.

A. Reasons for Confidentiality

2. The Trial Chamber ordered the clarification in order to provide the Defence with more accurate and thorough information to assist the preparation of the defence.² The Prosecution has filed this clarification confidentially out of caution and so as not to pre-empt the Trial Chamber's consideration of whether this objective is satisfied without need of a public allegation against those named. The Prosecution is aware of a cautious approach adopted in certain jurisdictions in the United States that un-indicted co-conspirators should not generally be named publicly in a formal indictment, reasoning that the objective of identifying those whose acts may be attributed to the accused could be achieved through the admission of evidence at trial or a bill of particulars.³ This approach has been adopted by the United States Department of Justice in a practice manual.⁴

3. The Prosecution does not suggest that the same interests necessarily apply in the international context, and it has been the practice in the ICTY, as the Trial Chamber is aware, that un-indicted persons have been named as members of a JCE in indictments. At the same time, the Prosecution is aware that this practice overlapped with a time when the Tribunal was empowered to pursue indictments against all those responsible for serious violations of international humanitarian law. In light of the fact that no more indictments will be issued by the ICTY, the Trial Chamber may consider that the interests of notice to the accused can be satisfied through a clarification that does not simultaneously make public allegations against those who are not subject to indictment by the ICTY. This does not in any way inhibit the public presentation of evidence at trial concerning the involvement of such persons in the events at issue or arguments concerning their involvement based on such evidence.

4. Because the overall interests of justice appear to be served in these circumstances through a confidential filing which provides the ordered notice to the accused, the Prosecution has filed accordingly.

Word Count: 627

² Id., para. 14.

³ See, e.g., *U.S. v. Briggs*, 514 F.2d 794 (1975) (Fifth Circuit).

⁴ US Attorney's Manual, 9-11.



Alan Tieger
Senior Trial Attorney

Dated this 17th Day of May 2007
In The Hague
The Netherlands