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CASE/AFFAIRE NO. IT-06-90-PT DATE 23 February 2007

FROM/DE RAM DORAISWAMY, COURT OFFICER

TO/A

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0 Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	MR. L. MISETIC / MR. G. KEHOE / MR. P. AKHAVAN MR. Č. PRODANOVIĆ / MS. J. SLOKOVIĆ MR. M. ŠEPAROVIĆ / MR. G. MIKULIČIĆ	
<input checked="" type="checkbox"/> Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes		
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Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/  
Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le 25/02/07

0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le \_\_\_\_/\_\_\_\_/\_\_\_\_

0 Motion/Request/Application submitted by Prosecution/Defence Counsel on/  
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le \_\_\_\_/\_\_\_\_/\_\_\_\_

0 Response/reply/brief submitted by Prosecution/Defence Counsel on/  
Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le \_\_\_\_/\_\_\_\_/\_\_\_\_

0 Decision of the Registrar on/Décision du Greffier le \_\_\_\_/\_\_\_\_/\_\_\_\_

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Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.  
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International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-06-90-PT

Date: 23 February 2007

Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr. Hans Holthuis

**Order of:** 23 February 2007

**PROSECUTOR**

**v.**

**ANTE GOTOVINA  
IVAN ČERMAK  
MLADEN MARKAČ**

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**ORDER ON SEVERAL DEFENCE MOTIONS,  
INCORPORATING SCHEDULING ORDER  
FOR ORAL ARGUMENTS**

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**The Office of the Prosecutor:**

Mr. Alan Tieger  
Ms. Laurie Sartorio

**Counsel for the Accused:**

Mr. Luka S. Mišetić, Mr. Gregory Kehoe and Mr. Payam Akhavan for Ante Gotovina  
Mr. Čedo Prodanović and Ms. Jadranka Sloković for Ivan Čermak  
Mr. Miroslav Šeparović and Mr. Goran Mikuličić for Mladen Markač

**TRIAL CHAMBER I** (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

**BEING SEISED** of “Defendant Ante Gotovina’s Motion for Leave to File a Reply to Prosecution’s Responses to Preliminary Motions Challenging Jurisdiction and the Form of the Joinder Indictment”, filed on 8 February 2007 (“Motion Requesting Leave to Reply”), whereby the Defence for the Accused Gotovina requests leave pursuant to Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”) to file replies to the “Prosecution’s Response to Gotovina’s Second Motion Challenging Jurisdiction”, filed on 1 Feb 2007, and to the “Prosecution’s Response to Gotovina’s Second Motion Alleging Defects in the Form of the Joinder Indictment”, filed on 1 February 2007;

**NOTING** the “Defendant Ante Gotovina’s Reply to Prosecution’s Response to Preliminary Motion Challenging Jurisdiction pursuant to Rule 72(A)(i) of the Rules of Procedure and Evidence”, filed on 8 February 2007 (“First Reply”), and the “Defendant Ante Gotovina’s Reply to Prosecution’s Response to Preliminary Motion Alleging Defects in the Form of the Joinder Indictment pursuant to Rule 72(A)(ii) of the Rules of Procedure and Evidence”, filed on 8 February 2007 (“Second Reply”);

**BEING ALSO SEISED** of “Defendant Ante Gotovina’s Supplementary Motion on the Preliminary Motion Challenging Jurisdiction pursuant to Rule 72(A)(i) of the Rules of Procedure and Evidence”, filed on 9 February 2007 (“Supplementary Motion”), whereby the Defence for the Accused Gotovina requests:

- a) an extension of the limit of 3,000 words with respect to the First Reply, and
- b) to supplement the “Defendant Ante Gotovina’s Preliminary Motion Challenging Jurisdiction pursuant to Rule 72A(A)(i) of the Rules of Procedure and Evidence”, filed on 18 January 2007, by adding a seventh ground which “could not be reasonably anticipated at the time the Motion on Jurisdiction was filed when the Prosecution’s legal theory was not entirely clear”;<sup>1</sup>

**BEING ALSO SEISED** of the “Defendant Ante Gotovina’s Motion Requesting Oral Argument on the Preliminary Motion Challenging Jurisdiction pursuant to Rule 72(A)(i) of the Rules of Procedure and Evidence”, filed on 12 February 2007 (“Motion for Oral Arguments”), whereby the Defence for the Accused Gotovina requests oral arguments on several submissions challenging

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<sup>1</sup> Supplementary Motion, para. 3.

jurisdiction;<sup>2</sup> and **ALSO BEING SEISED** of the “Defendant Mladen Markač’s Joinder to Defendant Ante Gotovina’s Motion Requesting Oral Argument on the Preliminary Motion Challenging Jurisdiction pursuant to Rule 72(A)(i) of the Rules of Procedure and Evidence”, filed on 13 February 2007, whereby the Defence for the Accused Markač joins in the Defence for the Accused Gotovina’s request for oral arguments;

**NOTING** the Prosecution’s “Consolidated Response to Gotovina’s Motion Seeking Leave to Reply, to Exceed Word Count, to File Additional Submissions, and for Oral Argument”, filed on 14 February 2007, whereby the Prosecution objects:

- 1) to the filing of the First Reply on the ground that the challenges to jurisdiction of the Defence for the Accused Gotovina “have already been more than fully litigated before this Trial Chamber”, and submits that if the First Reply is allowed the Prosecution would seek leave to respond to the Defence’s allegations that the Prosecution has conceded the challenges to jurisdiction;<sup>3</sup>
- 2) to the request for an extension of the word limit on the grounds that the Practice Direction on the Length of Briefs and Motions (“Practice Direction”) requires parties to “seek authorisation in advance from the Chamber to exceed the word limits”, and also that the requisite “exceptional circumstances” for an extension have not been shown by the Defence for the Accused Gotovina;<sup>4</sup>
- 3) to the Supplementary Motion and the addition of a seventh challenge to jurisdiction on the ground that the Defence should have been able to anticipate the Prosecution’s legal theory in the “Defendant Ante Gotovina’s Preliminary Motion Challenging Jurisdiction pursuant to Rule 72A(A)(i) of the Rules of Procedure and Evidence”, filed on 18 January 2007 (“Gotovina Jurisdiction Motion”), or in the First Reply, and not in “a further substantive response filed the following day”;<sup>5</sup>

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<sup>2</sup> Motion, para. 1, referring to 1) the Defendant Ante Gotovina’s Preliminary Motion Challenging Jurisdiction pursuant to Rule 72A(A)(i) of the Rules of Procedure and Evidence, filed on 18 January 2007, 2) the Prosecution’s Response to Gotovina’s Second Motion Challenging Jurisdiction, filed on 1 Feb 2007, 3) the Defendant Ante Gotovina’s Reply to Prosecution’s Response to Preliminary Motion Challenging Jurisdiction pursuant to Rule 72(A)(i) of the Rules of Procedure and Evidence, filed on 8 Feb 2007, and 4) the Defendant Ante Gotovina’s Supplementary Motion on the Preliminary Motion Challenging Jurisdiction pursuant to Rule 72(A)(i) of the Rules of Procedure and Evidence, filed on 9 Feb 2007.

<sup>3</sup> Response, paras 2 and 10.

<sup>4</sup> Response, paras 5 and 6.

<sup>5</sup> Response, paras 13 and 16.

- 4) to the requests for oral arguments submitting that oral arguments are unnecessary as “[t]he issues before the Trial Chamber have been more than fully briefed in writing”;<sup>6</sup>

**CONSIDERING** that the Motion Requesting Leave to Reply, the First Reply and the Second Reply were filed within the time limit set by Rule 126 *bis* of the Rules and that the First Reply and the Second Reply concern issues relating to the jurisdiction of the Tribunal;

**CONSIDERING** that while the First Reply appears to exceed significantly the word limit of 3,000 words set by the Practice Direction, the Trial Chamber, while stressing that strict compliance with the Practice Direction is fundamental to a fair and expeditious procedure before the Tribunal, will *exceptionally* allow the First Reply in light of the representation of the Defence for the Accused Gotovina that the error not to include footnotes in the word count was made in good faith;<sup>7</sup>

**CONSIDERING** that in paragraphs 16, 22 27, 31, and 33 of the First Reply the Defence for the Accused Gotovina alleges that the Prosecution has made several concessions and that the Prosecution, as a matter of fairness, should be given an opportunity to respond, concisely, in writing to these allegations;

**CONSIDERING** that the Defence for the Accused Gotovina ought to have been able to address the “new issues raised by the Prosecution’s Response”<sup>8</sup> in the First Reply rather than in a supplementary filing filed one day subsequent to the First Reply;

**CONSIDERING** that it is in the interest of an expeditious resolution of the challenges to jurisdiction raised by the Defences of the Accused pursuant to Rule 72(A)(i) of the Rules that the Trial Chamber be able to put specific questions to the Parties for the purposes of clarifying their written submissions on the matter;

**NOTING** that following the Trial Chamber’s query by e-mail to the Parties on 15 February 2007, all Parties, except for the Defence for the Accused Čermak, confirmed their availability on 28 February 2007, and that the Defence for the Accused Gotovina informed the Trial Chamber by telephone on 16 February 2007 that the Defence for the Accused Čermak is willing to stand on its written submissions and to rely on the Defence for the Accused Gotovina at oral arguments;

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<sup>6</sup> Response, para. 18.

<sup>7</sup> Supplementary Motion, para. 2.

<sup>8</sup> Supplementary Motion, para. 1.

**PURSUANT TO** Rules 54 and 126 *bis* of the Rules;

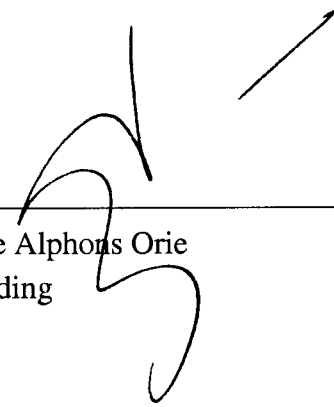
**GRANTS** the Motion Requesting Leave to Reply and **ALLOWS** the First Reply and the Second Reply;

**GRANTS** the Prosecution an opportunity, should it so wish, to reply concisely in writing on or before Monday 26 February 2007 at 1700 hours to the allegations made by the Defence for the Accused Gotovina in paragraphs 16, 22, 27, 31, and 33 of the First Reply;

**GRANTS** the Supplementary Motion, in so far as it requests an extension of the limit of 3,000 words with respect to the First Reply, but **DENIES** the Supplementary Motion in all other respects;

**ORDERS** that oral arguments concerning the challenges to jurisdiction be held on Wednesday 28 February 2007 at 1415 hours in Courtroom 1, and that the hearing be organised in such a way that each Party will have a maximum of ten (10) minutes to address the Trial Chamber on its written submissions concerning jurisdiction, following which the Trial Chamber will ask questions for the purposes of clarifying the Parties' submissions.

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



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Judge Alphons Orie  
Presiding

Dated this twenty-third day of February 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**