

# Confidentiality Restrictions

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## Abstract

*Confidentiality restrictions on the disclosure of evidence in international criminal proceedings is an issue that comes up frequently and leads to interesting debates in trial proceedings. The International Criminal Tribunal for the former Yugoslavia (ICTY) has paved the way for the rules currently applicable at the International Criminal Court (ICC), in particular, with the decisions rendered in the Blaškić case. This article analyses the origins of confidentiality restrictions and their evolution in the jurisprudence of the ICTY. Overall, it will be seen that proceedings before the ICTY led states to take precautionary measures to protect national security interests during negotiations leading to the Rome Statute. The question, however, remains whether the current confidentiality regime before the ICC hinders the accused's right to a fair trial.*

## 1. Introduction

Writing on a confidential topic is a difficult task. By definition, confidentiality restrictions on the disclosure of evidence in international criminal proceedings deal with issues that are unknown to the wider public. What is confidential remains secret. That means the exact impact of confidentiality restrictions cannot ever be analysed. However, the fact that such restrictions exist frequently comes to the fore and leads to interesting debates in trial proceedings. In essence, the International Criminal Tribunal for the former Yugoslavia (ICTY) paved the way for the rules currently applicable at the International Criminal Court (ICC) and shaped the relevant provisions of the ICC Statute, which were being negotiated at the time the ICTY was handing down decisions in the *Blaškić* case.<sup>1</sup> Without the ICTY, the ICC would not have had the discussions it had in the *Lubanga* case about whether the prosecution should and

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1 G. Hafner, 'Limits to the Procedural Powers of the International Tribunal for the former Yugoslavia', in K. Wellens (ed.), *International Law: Theory and Practice, Essays in Honour of Eric Suy* (Martinus Nijhoff Publishers, 1998) 651.