



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

Case No. IT-09-92-T
Date: 2 October 2017
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flüge

Registrar: Mr John Hocking

Decision of: 2 October 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE REQUEST REGARDING THE
FILING OF PUBLIC REDACTED BRIEFS**

Office of the Prosecutor
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Dragan Ivetić

TRIAL CHAMBER I 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 (“Chamber”);

BEING SEISED of a Defence request dated 27 July 2017, seeking additional redactions and review of the proposed redacted version of the Prosecution final brief (“Motion”);¹

RECALLING that the parties filed confidential final briefs on 25 October 2016;²

RECALLING that on 25 May 2017, the Prosecution filed a public redacted version of its final brief (“Public Prosecution Brief”);³

RECALLING that on 1 June 2017, the Defence filed a motion requesting the Chamber to strike the Public Prosecution Brief and order further redactions;⁴

RECALLING that on 29 June 2017, the Chamber issued a Decision in which it held that it is primarily the Prosecution’s responsibility to ensure that its filings do not breach confidentiality orders but granted the Defence additional time to review the Public Prosecution Brief and suggest any additional redactions (“Decision”);⁵

NOTING the Prosecution’s response to the Motion filed on 10 August 2017 opposing the Motion (“Response”);⁶

NOTING that the Prosecution confidentially filed an updated redacted version of its final brief on 11 August 2017 which included approximately 40 of the 1,100 redactions suggested by the Defence in the Motion (“Updated Prosecution Final Brief”);⁷

NOTING that the Prosecution did not concede that these 40 instances were violations of protective measure orders, but agreed to make these further redactions “out of an abundance of caution”;⁸

¹ Defence Submissions Pursuant to 29 June 2017 Decision on Defence Motion to Strike Public Redacted Version of Prosecution Final Brief, 27 July 2017 (with Confidential Annexes A-H), section IV. The Trial Chamber notes that the Defence submitted four specific requests in its Motion but understands these to amount to or be derivatives of the above-mentioned relief.

² Final Trial Brief of Ratko Mladić, 25 October 2016 (Confidential); Prosecution’s Submission of Final Trial Brief, 25 October 2016 (Confidential with confidential annexes).

³ Notice of Filing Public Redacted Version of Prosecution Final Trial Brief, 25 May 2017.

⁴ Urgent Notice of Objection and Motion to Strike Prosecution Filing of the Final Brief as in Contravention of Trial Chamber Order, 1 June 2017 (Public with confidential annexes), section IV. The Chamber subsequently ordered that the Public Prosecution Brief be reclassified until further order.

⁵ Decision on Defence Motion to Strike Public Redacted Version of Prosecution Final Brief, 29 June 2017, para. 7.

⁶ Prosecution Response to Defence Submissions on Public Redacted Brief, 10 August 2017 (Confidential with Confidential Annexes A and B), para. 9.

⁷ Notice of Filing Updated Redacted Version of Prosecution Final Trial Brief, 11 August 2017 (Confidential); Response, para. 1.

⁸ Response, para. 1.

NOTING the Defence's request for leave to file a reply to the Response, attaching its reply;⁹

REITERATING that it is primarily the Prosecution's responsibility to ensure that its filings do not breach confidentiality orders;

NOTING that the Defence bases many of its suggestions for redactions on the mere fact that the evidence in question is confidential;¹⁰

RECALLING that in its Decision the Chamber reiterated the well-established practice in this case that parties can refer publicly to confidential documents in a way that does not reveal protected information;¹¹

CONSIDERING the Prosecution's submission that it carefully reviewed each of the Defence's suggested redactions and determined that the vast majority were unwarranted and unnecessary;¹²

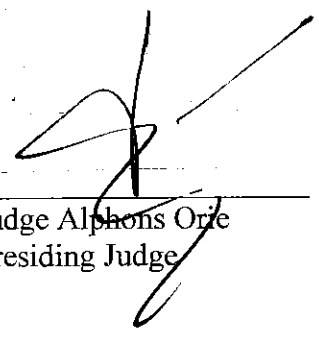
CONSIDERING that the Defence has failed to adequately substantiate its claim that the Updated Prosecution Final Brief reveals information that undermines the confidentiality of evidence or that the Prosecution has inadequately responded to the Defence's confidentiality concerns;

GRANTS the Defence leave to reply;

DENIES the Motion; and

INSTRUCTS the Registry to reclassify the Updated Prosecution Final Brief as public.

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



Judge Alphons Orie
Presiding Judge

Dated this second day of October 2017
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ Motion For Leave to File a Reply and Proposed Reply in Support of "Defence Submission Pursuant to 29 June 2017 Decision on Defence Motion to Strike Public Redacted Version of Prosecution Final Brief", 18 August 2017. The Trial Chamber considers the relief sought-after in the reply by the Defence to be supplementary to its Motion and thus encompassed in its original requested relief.

¹⁰ Motion, Annex A.

¹¹ Decision, para. 6.

¹² Response, para. 1.