

ANALYSIS: Hague Witness Security Concerns

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The war crimes court approves terms to protect the security interests of a country supplying a key witness.

The tribunal last week agreed to strictly control the testimony of a witness representing a country concerned that the evidence might put it in jeopardy.

The trial chamber announced it had agreed to protect the identity of a witness and the government authorising the testimony and to restrict the prosecution and defence cross-examination to non-confidential, relevant matters.

The chamber concluded that states have the right to request "specific measures for the giving of evidence by a witness for the purposes of protecting information the state considers to be prejudicial to its security interests".

The country in question demanded the strict conditions before it agreed to one of its officials testifying at The Hague.

This means that the prosecution will have to ensure that its questioning is limited to themes and issues agreed through discussion with the government that authorised the witness to appear, the supplying government.

The accused, meanwhile, will not be able to ask questions and seek information beyond that in the evidence-in-chief, and his right to challenge the credibility of the witnesses - which he has used abundantly - will be confined to obtaining answers that are not liable to reveal confidential information.

As he is acting as his own defense, the judges have allowed Milosevic a broader scope for cross-examination, which he has made great use of to give political speeches and take up much of the time allotted to the prosecution to outline its evidence.

In spite of the limits on his cross-examination, though, Milosevic will have considerable room for his manoeuvres and questions that are aimed at discrediting the witness.

Last, but not least, the strictly controlled testimony will see a peculiar reversal of roles, for while the accused will be defending himself, the witness will be assisted by two attorneys.

This is because the judges accepted the supplying government's principal condition - that two representatives should be present in court during the witness' testimony, advising him or her as necessary with questions that encroach on the field of national security and reveal confidential information.

They will not be allowed to address the court directly but must state any objections they have through the prosecutor.

The trial chamber's announcement revealed nothing about the identity of the witness or the supplying government.

In the course of the trial against Milosevic, many western officials have given testimonies. They include politicians, diplomats and generals - from Britain, Germany, Austria, Canada, Norway and elsewhere - who represented their governments or international organisations in the period relevant for the Kosovo indictment and who participated in various political, diplomatic and military initiatives in the Balkans.

None has been American, except ambassador William Walker, who was supplied not by the US government but the Organization for Security and Cooperation in Europe, on whose behalf he led the Kosovo Verification Mission at the end of 1998 and beginning of 1999.

Many of these witnesses saw at first hand the disproportionate use of force by Serbian troops in Kosovo in 1998 and 1999. Those who were soldiers possessed direct - and for the court's purposes - invaluable knowledge of how the chain of command functioned and how the army and police forces deployed in the region were coordinated.

Some of witnesses had an opportunity to meet Milosevic in this critical period and acquire direct insight into his knowledge of what was going on, his influence in Serbian and Yugoslav political life and his plans and intentions.

They all confirmed that the former Yugoslav president was well informed of events in Kosovo; had the last word in the political and military decision-making process; that his word was heeded; and that sometimes he said more than he should have done.

This is precisely what happened when he met German general Klaus Naumann, who testified that during their meeting in Belgrade on October 25, 1998, Milosevic - after several drinks - boasted that by the following spring he would solve the Kosovo problem using the "Drenica model of 1945-46" - gathering the Kosovo Albanians in one place and killing them.

Some of the Europeans who testified remarked that in this critical period, the Americans were Milosevic's "privileged collocutors".

This observation primarily pertains to then US ambassadors to the UN and Macedonia Richard Holbrooke and Christopher Hill respectively, as well as the US general Wesley Clark, NATO supreme allied commander in Europe at the time.

None has appeared in The Hague so far. When the case of "missing witnesses" was first publicised at the end of May this year - after prosecutor Jeffrey Nice complained in an open hearing that unidentified supplying governments were demanding protective measures he was not willing to accept - the US administration was at the top of the list of suspect governments.

Soon after, Washington announced a "final decision on certain important legal aspects" pertaining to the testimonies of senior representatives of the former administration had not been made yet.

The State Department later confirmed the administration was insisting on in camera hearings to protect security interests and confidential sources.

The trial chamber's announcement last week has taken into account Washington's concerns.

But to avoid giving the impression of bowing to America's dictates - if the US is indeed the supplying government - the trial chamber said its ruling over confidentiality would not just apply to governments concerned over their security interests, but also, for instance, the protection of sources of information in general.

If the US is indeed the unidentified country, then last week's ruling clears the way for another meeting between Milosevic and Holbrooke, this time in The Hague courtroom.

Such a meeting may not take place before the prosecution finishes its presentation of evidence on Kosovo, which ends in September. It could save Holbrooke for the Bosnia indictment as the US diplomat's knowledge of Milosevic's dealings go back to the final years of this conflict.

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