

Detlev Mehlis

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Justice for Lebanon

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Detlev Mehlis speaks slowly. So when he says, "I haven't seen a word in his reports during the past two years confirming that he has moved forward," there is time for the meaning to sink in.

The person Mr. Mehlis is referring to is Serge Brammertz, a Belgian prosecutor who, until a few weeks ago, headed the United Nations investigation looking into the February 2005 assassination of former Lebanese Prime Minister Rafiq Hariri. In December of that year, Mr. Brammertz succeeded Mr. Mehlis as commissioner of the investigating team, known as the International Independent Investigation Commission (UNIIC). Now, Mr. Mehlis is making the rather serious charge that Mr. Brammertz may not have done much while working on the Hariri case.

On Feb. 14 it will be exactly three years since Hariri was killed in a massive bomb explosion, with 21 others, in Beirut. The event sparked weeks of protests directed against Syria -- which most Lebanese blamed for the killing -- demanding an end to its 29-year military presence in Lebanon.

The so-called "Cedar Revolution" led to a transformation of the political system when Syria withdrew its army, and its adversaries won a majority of seats in Parliament in subsequent elections. Since then, Damascus has tried to reassert its power in Lebanon -- but the Hariri investigation, if it points an accusatory finger at Syria, is its Achilles heel.

The Security Council has established a Lebanese-international tribunal under Chapter VII of the U.N. Charter to try the suspects. The tribunal, now being set up in The Hague, is an exceptional creation, much like UNIIC was. This week a U.N. official revealed that judges had been selected. Never before has the Security Council overseen a political murder investigation.

With Mr. Brammertz having recently left Lebanon to take charge of a special tribunal for the former Yugoslavia, Mr. Mehlis has decided to speak up. It is a rare occasion that he has agreed to do so on the record -- and one of the last, he insists. As a senior prosecutor at the Superior Prosecutor's Office in Berlin, he is keen to close his own personal file on the UNIIC years, but also to warn that the vitality of the Hariri inquiry may be disappearing. "A new commissioner has been installed. So it's a good time for a very last summing up on my part," Mr. Mehlis says.

Whether UNIIC was exceptional or not, Mr. Mehlis made it a point of appearing an unexceptional man while commissioner -- but one with pit-bull persistence. He'd shown that persistence before. It took him nine years to bring convictions for the 1986 bombing of the LaBelle discotheque in Berlin. He accused Libyan officials of being behind the attack. That experience, he says, left him with the view "that justice prevails, but you have to have patience."

But Mr. Mehlis is plainly worried that justice might not prevail in the Hariri investigation. It "appears to have lost the momentum it had until January 2006," he says. "When I left we were ready to name suspects, but it seems not to have progressed from that stage."

Indeed, Mr. Brammertz never named new suspects in his investigation, though he did mention he'd identified "persons of interest." Mr. Mehlis is dismissive: "If you have suspects you don't allow them to roam free for years to tamper with evidence."

Particularly odd to Mr. Mehlis is that his successor reopened analysis of the crime scene upon arriving in Lebanon. That not only cast doubt on the German's methods, it wasted valuable time. Mr. Brammertz's conclusions ended up confirming those of Mr. Mehlis, namely that Hariri had been killed by an above-ground explosion.

But Mr. Mehlis sees such behavior as emblematic of a broader problem -- namely that UNIIC has told us little we didn't already know before Mr. Brammertz became its commissioner: that Hariri was killed for political reasons and that there were several layers of participation in the conspiracy. "We needed two years of investigative endeavor to discover this?" he laughs.

When Mr. Mehlis first arrived in Beirut, he visited the families of three of the victims in the Hariri blast and frequently talked to the media. Mr. Brammertz, in contrast, gave no interviews and never once addressed the Lebanese on what the case personally meant to him.

But what if Mr. Brammertz did not reveal his cards for tactical reasons? After all, he asked to maintain the secrecy of his investigation. Mr. Mehlis responds that to him, as a German, the notion of a secret investigation sounds ominous. "The Lebanese public has to be informed, even if there are setbacks in the investigation. In a democracy people have the right to know, particularly when a prime minister was murdered and people don't trust the authorities. This was an opportunity to restore credibility to the justice system."

Mr. Mehlis also sees a practical rationale for more openness by an investigator: "To have the support of the public, to encourage witnesses to come forward with information, and for governments to send specialized investigators, you need to give them an idea of what you are doing."

The Hariri investigation was always seen by its defenders as a lever to render political assassination in the Middle East more difficult. In Lebanon particularly, where dozens of leading politicians and officials have been killed since the 1970s (the latest a police intelligence officer on Friday, among whose duties was reportedly following the Hariri affair), this was the one crime, people felt, that international attention would not allow to go unpunished.

Lebanese optimism aside, the point was a valid one: Respect for the rule of law, so lacking in Arab societies, could only benefit from a successful legal process to punish the guilty. That rationale remains persuasive today, as more and more people in the West doubt that Arab societies can be democratic. The Hariri investigation was there to say that democracy without law is a chimera.

His actions as UNIIIC commissioner left few doubts as to who Mr. Mehlis thought was behind the crime. He asked the Lebanese authorities to arrest four prominent pro-Syrian generals from Lebanon's security services and Presidential Guard. He took affidavits from Syrian officials, including intelligence officers. He even sought to question Syria's president, Bashar Assad.

Mr. Mehlis departed before this could go through, and he doesn't know what later happened. Media reports suggested that Mr. Brammertz held "a meeting" with the Syrian leader, but that is legally different, Mr. Mehlis explains, than a formal judicial interview, which even Lebanon's former president submitted to.

I remind him that two of his key Syrian witnesses did not seem particularly reliable. One told a press conference in Damascus that his testimony was fraudulent; another, a former intelligence officer, later became a suspect in Hariri's murder at Mr. Mehlis's request, and has made contradictory statements.

Mr. Mehlis responds that in such crimes you cannot be choosy about who to deal with. "What do you expect, white angels? Those two gave us a lot of information, which we could sometimes corroborate with information received elsewhere. In the end, the tribunal will determine their credibility, and ask why they agreed to sign their statements." Mr. Mehlis adds: "Maybe the witnesses were there to discredit the investigation, but that can help us determine who wants to discredit the investigation."

I put it to Mr. Mehlis that, whatever the UNIIIC discovers, there is palpable international reluctance to carry the Hariri case to its conclusion. Few at the U.N., for example, are eager to destabilize Syria's regime, assuming its involvement is proven.

His answer is ambiguous: "As a prosecutor you can't prosecute governments and countries; you prosecute individuals. When I headed UNIIIC, there was a will to get to the bottom of the crime -- shown in all the Security Council resolutions on the matter. Why not now? One of the most helpful [member nations] was Russia, which persuaded Syria to comply with the resolutions. Even with states having different interests, common understandings can be reached."

So what about today? "Traditionally, there is tension between politics and justice and I accepted that [former U.N. Secretary-General Kofi] Annan did not want more problems because of the Hariri case. Yet he was always very supportive of my work and well-being. The U.N. did not interfere in my efforts and had no leverage over me, as I was not after a position in the organization. Even had the U.N. tried, there were investigators from 17 countries who might have thought differently, making this impossible."

Mr. Mehlis doesn't so much fear a cover-up as that the Hariri case will stall. The tribunal, he predicts, will be set up this summer, but "people should not expect a trial within the next two to three years, unless the investigation regains momentum." Otherwise, what might happen? "I fear that suspects will end up in a judicial no-man's land, with Lebanon claiming they are under the U.N.'s jurisdiction, and the U.N. saying that they must remain under Lebanese jurisdiction."

What Mr. Mehlis is saying, in so many words, is that a tribunal does not a trial make. The tribunal will be formed and judges nominated, but unless the prosecutor has something solid to take to court, the process may lead nowhere. Still,

he is mildly optimistic: "Definitely, no one can abolish this tribunal. I may not be happy about the time frame, but am deeply convinced the case can be solved and will be solved."

Mr. Mehlis also cautions that the U.N. would suffer from failure in the Hariri affair. "The U.N.'s image is at stake, particularly in Lebanon, where people put high hopes, perhaps too high, in the Hariri investigation."

So, what is his advice to Daniel Bellemare, Mr. Brammertz's Canadian successor? "Concentrate on the Hariri case itself; don't try to write a history book. Focus on the whos, hows and whys of the crime. Analysis can never replace solid investigative police work."

Most important, Mr. Mehlis says the Hariri case must remain in the public's consciousness. "For years the LaBelle case dragged on with small successes and failures, but it was always kept alive on the prosecution's side by my working to inform the media; and on the victims' side because their families created pressure groups. I feel that in the Lebanese case, the families of the deceased can certainly play a much more active role."

That may be true, but victims or their families rarely have a voice in the Arab world. The fate of the Hariri tribunal will help determine if that changes. Beyond the assassination of a high-profile politician, the question is whether the international community finally agrees that things need to be different in the Middle East, or just goes back to accepting the old ways.

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