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## **Salem Chalabi: Judging Saddam**

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*On May 8, 2004, the Iraqi Governing Council named Salem Chalabi as head of the Iraq Special Tribunal, which is to try former Iraqi president Saddam Hussein and his top aides. Born in Baghdad in 1963, Chalabi did his early schooling in Lebanon and England. He received a bachelor's degree in economics from Yale University in 1985, followed by a master's degree in international relations at Columbia University and a juris doctor degree from Northwestern University School of Law. After passing the New York bar, Chalabi practiced law at Morgan, Lewis, and Bockius, at the time the fourth largest firm in the United States. He then moved to the London office of Clifford Chance, currently the largest law firm in the world.*

*In the months before the war in Iraq, Chalabi participated in the State Department's Future of Iraq program. He was coordinator of the Democracy Working Group, responsible for drafting the "Transition to Democracy in Iraq"<sup>[1]</sup> report. He also served as rapporteur of the Transition Justice Working Group.*

*Following the July 13, 2003 inauguration of Iraq's Interim Governing Council (IGC), Chalabi became a deputy to his uncle, Ahmad Chalabi, and served on the legal and finance committees of the governing council. He played a key role in drafting Iraq's interim constitution, the Transitional Administrative Law, before dedicating himself full-time to the Iraq Special Tribunal.*

*Salem Chalabi's future on the court was thrown into some doubt when, on August 8, 2004, Zuhair Maliki, appointed chief judge of the Central Criminal Court of Iraq by Coalition Provisional Authority (CPA) administrator L. Paul Bremer, <sup>[2]</sup> leveled murder charges against Salem Chalabi. The charges, which led to calls for Chalabi's resignation,<sup>[3]</sup> were later dismissed.<sup>[4]</sup> However, confusion still reigns. On September 22, 2004, Chalabi issued a statement accusing the Interim Iraqi Government of trying "to take control of the Iraqi Special Tribunal for political purposes."<sup>[5]</sup>*

*Regardless of who leads it, the trial of Saddam Hussein and his top deputies is perhaps the most important event looming on Iraq's political horizon after elections. The international community will use the trial to determine Iraq's political maturity. Acceptance of the verdicts throughout the Arab world may depend upon the perceived fairness of the proceedings. Michael Rubin interviewed Salem Chalabi by e-mail on August 15, 2004.*

### **The Iraq Special Tribunal**

*Middle East Quarterly*: Does an Iraqi tribunal have the experience to manage the trial of Saddam?

*Salem Chalabi*: This is a difficult question. The simple answer is that the Iraqi judiciary does not have experience in adjudicating complicated war crimes cases. But the Iraqi judiciary does have extensive experience in criminal cases and, with appropriate training, can gain experience in these complicated war crimes cases.

*MEQ*: What about the issue of neutrality? Can the court be fair?

*Chalabi*: This issue is important, and we have tried to address it in several ways.

First, we are attempting to ensure that the judges were not directly or indirectly victims of the regime. For example, Judge Dara Nureddin, one of the nominees to become a member of the appellate division, recused himself because he had previously been imprisoned.

Second, it may be difficult for Iraqi judges to ensure that the trials and hearings appear fair in light of a public opinion in Iraq that demands that he be found guilty. We have addressed this by ensuring that the procedures are as fair as we can make them; they are somewhat loosely based on the rules of procedure of the International Criminal Tribunal for the former Yugoslavia.<sup>[6]</sup> We also have international experts and monitors to ensure that all the procedures are being fairly administered.

Third, the Iraqi Special Tribunal is providing training for the judges in international criminal law.

*MEQ*: What role should the U.S. government play?

*Chalabi*: A supporting role, as it is.

*MEQ*: And the United Nations?

*Chalabi*: Prior to the [August 19, 2003] bombing of the United Nations headquarters, U.N. officials in Iraq were engaged in the transitional justice process. But since the U.N. left Iraq following the bombing, the U.N. has not played any role. U.N. involvement also raises other issues. Most Iraqis want the death penalty for Saddam, and yet the international community—as represented by the U.N.—cannot participate directly in a tribunal that has the death penalty because of their own internal regulations. The other tribunals, in which the U.N. is directly involved, including the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, and even the mixed tribunals in Sierra Leone and East Timor, do not have the death sentence. So, if the U.N. is going to make their involvement contingent on no consideration of the death penalty, then there will be a need for a political compromise of some sort.

*MEQ:* Will Saddam and his associates face the death penalty?

*Chalabi:* Yes. Under Iraqi criminal law, the penalties for murder and rape include the death penalty. The statute of the tribunal links penalties for crimes of which Saddam and his associates are accused to murder and rape penalties.

*MEQ:* How would Iraqis react if Saddam is found guilty and does not face the death penalty?

*Chalabi:* There will be a tremendous uproar. Both the tribunal and the government would be delegitimized and, perhaps, destabilized. This pressure to find the accused guilty is one of the weaknesses of the Iraq Special Tribunal. We've already seen Iraqi politicians making prejudicial statements. On a number of occasions before the trial, for example, the defense minister, Hazem Shaalan, publicly said that Saddam Hussein is guilty and should be executed as soon as possible.

## **Procedures**

*MEQ:* Zuhair al-Maliky, the chief investigative judge of the Central Criminal Court of Iraq, has said, "In defense of Saddam and the others, the lawyers will say that the court was established by the Governing Council, which was appointed by the Americans; and that the judges were appointed by Mr. Salem Chalabi, who has lived outside of Iraq almost all of his life." [\[7\]](#) How do you address Maliky's concern about your legitimacy?

*Chalabi:* First of all, I did not appoint the judges. The tribunal's statute outlines how judges are appointed. It said that the Governing Council, now supplanted by the Iraqi interim government, would appoint judges after consulting with the Council of Judges. Since the Governing Council was Iraq's principal political body at the time the Iraq Special Tribunal was established, it's no big deal that it was the body that issued the law. There was no other body to do so.

I should also add that it would be wrong to label all Governing Council members as political appointees. Frankly, it is an insult to many senior members of the Governing Council, such as Kurdistan Democratic Party president Masoud Barzani and Supreme Council for Islamic Revolution in Iraq leader Abdul Aziz al-Hakim, for example, to be called American appointees. Barzani, al-Hakim, and others have had a tremendous history of political struggle against the previous regime. Their histories led to their natural inclusion on the Governing Council. The fact that Ambassador Bremer signed off on their appointment is just a footnote.

*MEQ:* Specifically, how did the Governing Council choose judges?

*Chalabi:* The Governing Council received many nominations for prosecutors, investigative judges, trial court judges, and appellate court judges. I and other Governing Council members and deputies reviewed their backgrounds and vetted them. We consulted closely with the Council of Judges, which has extensive records on judges and

judicial nominees. In cases where retired judges applied, we reviewed their history with the Council of Judges and also consulted their records in the bar association.

*MEQ:* Iraqi National Congress [INC] leader Ahmad Chalabi is your uncle. Shouldn't this alone be enough for you to remove yourself?

*Chalabi:* Dr. Chalabi is my uncle, but he recused himself from any involvement in deliberations that led to my selection. Also, I am only director of administration for the tribunal, not a judge or prosecutor. I am simply trying to put the tribunal together.

Regardless, I was not selected because of my family. Management of the Iraq Special Tribunal is complicated. It requires knowledge of both Iraqi and international law. During Saddam Hussein's rule, not many Iraqis had knowledge of international law. Fortunately, I did, since I was studying abroad. I have run many conferences about international criminal law and have worked on issues relating to an Iraq tribunal for over a decade.

*MEQ:* Are you a member of the INC?

*Chalabi:* No. I am not an official of the INC.

### **Saddam's Crimes**

*MEQ:* On July 1, 2004, the court informed Saddam Hussein of seven preliminary charges: the 1974 killings of religious figures; political purges going back three decades; the 1983 massacre of Kurds belonging to the Barzani clan; the Anfal ethnic cleansing campaign against the Kurds; the 1988 chemical weapons attack on Kurds in Halabja; the 1990 invasion of Kuwait; and the 1991 suppression of the Kurdish and Shi'ite uprising.<sup>[8]</sup> Has the court decided not to hear charges stemming from Saddam's 1980 decision to invade Iran and the 1991 missile attack on Israel?

*Chalabi:* The tribunal has jurisdiction over war crimes committed during the Iran-Iraq war and the invasion of Kuwait, but not the act of aggression the Iraqi regime committed by invading Iran or Kuwait or, for that matter, in launching missiles at Israel. There is a legal distinction here. Under international law, the missile attacks on Israel are deemed an act of aggression. But, there remain disagreements in the international community about the definition of the crime of aggression. Accordingly, aggression is not within the jurisdiction of the Iraq Special Tribunal.

*MEQ:* In 1984, Donald Rumsfeld traveled to Baghdad as President Ronald Reagan's Middle East envoy allegedly to dampen the bilateral strain in relations caused by U.S. criticism of Iraq's use of chemical weapons.<sup>[9]</sup> Do you expect the tribunal to solicit testimony from Rumsfeld?

*Chalabi:* No, the tribunal itself is not interested in soliciting testimony. But, the defense counsel may want to.

Under the Iraq Special Tribunal's draft rules, the defense has the right to call witnesses. But, we have learned from the International Criminal Tribunal for the former Yugoslavia's trial of Slobodan Milosevic. The tribunal will make sure that defense witnesses can testify directly to a charge. For example: During the Iraqi invasion of Kuwait, there were many accounts of Iraqi soldiers raping Kuwaiti women. Could the Defense call former Secretary of State James Baker as a defense witness? Probably not. After all, the charge is a war crime and had very little to do with the politics and diplomacy in which Baker was engaged. Any defense witness would need to testify exclusively about whether rape did or did not take place.

[1] "Transition to Democracy in Iraq," Conference of the Iraqi Opposition, Nov. 2002,

[http://www.iraqfoundation.org/studies/2002/dec/10\\_draft.html](http://www.iraqfoundation.org/studies/2002/dec/10_draft.html)

[2] *The Washington Post*, Aug. 11, 2004.

[3] *Ibid.*

[4] *The Miami Herald*, Sept. 12, 2004.

[5] *The New York Times*, Sept. 24, 2004,

<http://www.nytimes.com/2004/09/24/international/middleeast/24trials.html>

[6] "Rules of Procedure and Evidence," International Criminal Tribunal for the Former Yugoslavia, United Nations, New York, <http://www.un.org/icty/legaldoc/>

[7] *The New York Times*, Aug. 12, 2004.

[8] *CNN.com*, July 1, 2004, <http://www.cnn.com/2004/WORLD/meast/07/01/iraq.saddam>

[9] *The Washington Post*, Dec. 19, 2003.

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