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**SYMPOSIUM:  
“LESSONS FROM THE SADDAM TRIAL”**

**TRANSCRIPT:  
TRYING SADDAM: AN INSIDER'S PERSPECTIVE**

*Ambassador Samir Sumaida'ie\**

*The Frederick K. Cox International Law Center sponsored the symposium, “Lessons from the Saddam Trial,” a conference drawing renowned international law scholars and practitioners to Case Western Reserve University School of Law in Cleveland, Ohio on October 6, 2006 to share their expert analysis of the historic first case before the Iraqi High Tribunal. The speakers' remarks have been edited for length.*

**TRANSCRIPT:**

It is an honor to stand here among such distinguished guests to talk about the tribunal in Iraq. In fact, I was surprised to be invited because this is a panel of experts at the law school. I am not a lawyer, and I am not an expert. So to start with, I was daunted by this challenge. The best I can do is to try and give a perspective from an Iraqi point of view, how Iraqis regard this process, how they perceive this tribunal, how they feel about it, and whether they recognize it as justice for the tyrant that dominated their lives for decades.

To put this in context properly, I would like to take a historical perspective of Iraq. Many people think Iraq is a backward country, lawless, and totally without any sense of legal propriety. Let us remember the first written law was actually promulgated in Iraq, and—let us also remember that for many, many years the rest of the world learned about how laws can be

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\* Since April of 2006, Mr. Samir Shakir Mahmood Sumaida'ie has served as the Iraqi Ambassador to the United States. He was appointed Iraq's Permanent Representative to the United Nations in July 2004. Prior to his appointment to the U.N., Ambassador Sumaida'ie served as the Minister of Interior in Baghdad. In this capacity he managed a domestic security force of over 120,000 and made considerable progress in reorganizing and modernizing the Ministry's operations. In addition, Ambassador Sumaida'ie served as a member of Governing Council (GC) in Iraq. In the GC, he was Chairman of the Media Committee. He played an integral role in the founding of the Iraqi Telecoms and Media Commission and the Public Broadcasting Institution. He has also held positions on the security, finance, and foreign relations committees.

written because in Iraq writing itself was born. To go into this a little further, into more recent times, when the Ottoman Empire was crumbling in its last death throws, there was a movement called the constitutional movement. It was an attempt to give legitimacy to the sultans by creating a constitution, and by binding the sultan to that constitution. It was "too little, too late" but not before it inspired a group of Iraqis in Bagdad to demand that their first government to be installed by the British, should be bound by a constitution. And there was a constitutional movement in Bagdad, which petitioned many people outside Iraq, including President Wilson of the United States who was considered by Iraqis to be a supporter of democracy worldwide.

In Iraq, the first woman lawyer graduated in 1935 ahead of all our neighbors. It was at a time when some of our neighbors did not even have primary schooling for girls. And in Iraq, the first judge was appointed in the region. In 1948, when the Bill of Human Rights was being debated at the United Nations, it was the Iraqi delegate who held out for gender equality to be enshrined in the Bill of Human Rights. So we have a tradition of respect for law and a respect for the rule of law and a tradition for binding the ruler by a constitution and a law.

However, we allowed Saddam to reverse all that, and during Saddam's time, there was a regression in Iraq on all levels. What we witnessed throughout the region and possibly internationally was a monumental, not entirely unfamiliar struggle between the concept of rule of law and the concept of absolute power, and this struggle takes many forms. And obviously, it is not resolved.

In Iraq, Saddam took us violently and determinedly backward as he established absolute power, and the country moved back socially, politically, economically, and culturally. On every front, the country went backwards. He drove Iraq back into the days of darkness of the Middle Ages. People who were educated, who did not ascribe to his ways, were either murdered or they left the country. Many Iraqis have lived outside of Iraq for decades now because of that. So now is the time of reckoning. When Saddam was removed, there were greater relations. In fact, even the people who were most active in opposition during Saddam's regime, including myself, never realized how terrible the crimes [were that he committed]. They were scared of atrocities to the extent of which have begun to be revealed only after Saddam was removed. Although we all knew about Halabja; we knew about Anfal; we knew about mass killings; we never imagined the gigantic scale of these crimes.

Now, we have plenty of evidence. We have mountains of evidence, and we have hundreds of thousands of victims yearning for justice. The regime, however, having been removed, was not entirely defeated. You can see that in the violence that takes place today—that is really the regime

fighting back because of all that happened underground and with a determination to seize power again. They have kept fighting.

This situation [led to the formation of] alliances with outside powers such as al Qaeda and extremists in Iraq, spawning a new war, and we are fighting this war. In the midst of war, we need to bring justice. This is the particularly daunting challenge that we face. Yet, we have to be judged by the international community on aspects of etiquette [and] propriety that prevail perhaps in the most stable nations of the world. There is a need for justice, that is clear. There is natural justice, and people feel in their bones that these wrongs must be remedied, and somebody must be accountable for them. But we have to avoid mob justice. Justice has to be seen to be done properly and by people who are looking at the law dispassionately. We also have to avoid political expediency. The real politique that Dr. Bassiouni referred to is everywhere, even after we start a tribunal like Saddam, even inside Iraq.

Some people want to speed things up; some people want to slow things down, and for political reasons, we want to avoid that. We have to demonstrate to the world that this new justice is based on the new era. We do not want to use the values of Saddam Hussein to try him. He would have been long gone had we done that. And we also, in order to be credible, have to incorporate the international principles, which are accepted throughout the world. The tribunal to try Saddam is extremely significant. It is the first in the Middle East setting a precedent, telling the world that a dictator, a ruler, ultimately has to account for his actions and decisions; that no one is beyond the law. This is a very new idea in the region. In fact, it is an idea that frightens many people perhaps unsurprisingly. But I believe that it is an idea whose time has come. As I said, there is a struggle between the two cultures, the culture of despotism, of authoritarianism, and on the other side, the culture of the rule of law.

The rule of law and the idea that people have to be held accountable no matter how high an authority they are, has yet to take root. And we hope that this trial will help create this mindset. In putting this tribunal together, we had really in the beginning quite a tough time. We had a first draft in front of us. I was a member of the Governing Council when the draft was presented, and, in fact, I can assure you that I, for one, did read it. And we wondered . . . we are not experts. We wanted something to look good, to be really good, and we all thought maybe this is not perfect, but it is a step. We thought let us move on this. We took that step.

Immediately people raised questions about legitimacy, how a tribunal like this can be legitimate when it is set up under the umbrella of an occupier. I reject that. Time proved that everybody on the Governing Council whose legitimacy was questioned at the time was actually voted in by the people and formed the Iraqi government that subsequently took over power. And the people in power now are more or less the same people as those who

were sitting on the Governing Council—name all of them, they were there. So the question of legitimacy was in my opinion bogus.

International control—some people wanted us to have a tribunal in the United Nations. We did not want that. We wanted to have our own tribunal. We have enough traditions in the country to create a system of justice capable of handling this. We wanted, of course, help from the international community, and there was a third stick used against us, which was the death penalty. The death sentence is still on the Iraqi statutes as it is in Texas or some other country. And the debate goes on as to whether it should be abolished, where it should be abolished. Iraq is not yet at the point of abolishing it, and it is our choice, the sovereign choice of the people of Iraq as it is the sovereign choice of the people of many nations. Maybe the time will come when it is [abolished], but as of now, Iraqi people feel that that is the law of the land and that has to be respected.

So we do not accept any challenges to the legitimacy or proprietary of this tribunal, and people continue to nitpick. This makes Iraqis, frankly, frustrated and angry. We must not mistake the trappings of justice for justice itself. Justice has to be served. The trappings of justice are nice—we have to observe some of them, but we have to always be seeking redress, seeking justice as a high value because of so many reasons, primarily the victims and ultimately, as Dr. Bassiouni mentioned, prevention for the future, the “never again” idea.

What we have started in Iraq is a process. Maybe it is not perfect, but it moves on, and as we move on, we learn, and as we learn, we get better at this. We have really achieved—by going through these reiterations—a road map for repairing the legal system in Europe. The tribunal will set up separately from the rest of the judicial system in Europe. It has to be integrated with it. We have to go from the international court, and, in fact, a lot of the ICC language has been incorporated into the Iraqi tribunal. We have to adhere to our own legal system and the division of crimes in our own statutes, and it will take awhile by the time parliament works through all these laws, rationalizes them, integrates them, makes them whole, and makes them consistent. This is a process that cannot be completed overnight. Just because Saddam was removed does not mean that suddenly the next morning we have a perfect system of justice. We—as well as the world community—have to realize that this is a process on which we are moving forward and with which we need help.

We have to reverse the traditions that were set up by Saddam. The judiciary, which was gaining momentum prior to Saddam, was brought under the thumb of the Ba’ath Party during his rule. And many of our judges got used to the idea that they received instructions on the sentence from high above. We have to retrain our judges, although many of them are of a high caliber and are well trained, but nevertheless, it takes time to get rid of this culture of linkage between the executives and the judiciary.

I think, as a positive step toward reestablishing our link with the international system of justice, especially on war crimes, it is my personal opinion that Iraq should ratify the ICC. That would give the right message externally and internally. We should upgrade and make consistent the division of crimes, particularly torture and rape. Women were mistreated under Saddam. For the first time ever in Iraq, rape was used as a political tool of intimidation. There were people whose job titles were “rapist.” On their ID card, it would say “Security Rapist.” That is under Saddam. It is absolutely imperative that new Iraq never again sees this.

We want a system of justice that dignifies and honors victims, that recognizes the suffering, and that puts their lives, at least, at an equal level to the rights of the perpetrators. We sense from Iraq that people outside Iraq are concerned all the time with the rights of Saddam Hussein and his henchmen. Of course, we do not want to deny them any of their rights, but it offends us when the victims are forgotten or when the victims are relegated to a secondary level of attention. It is important for us, in order to heal our country, to demonstrate to the world that the justice that we bring is not a justice of vengeance; it is the justice of putting right what was wrong. That is really what we want.

We appreciate help, guidance, and support from the international community and, indeed, we need it. At the end of the day, it is right that we do it our own way.

Thank you very much.

