

# SECTION 11.1

## DE-BA'ATHIFICATION

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## Introduction

1. This Section addresses:

- the decision to remove some members of the Ba’ath Party from public office after May 2003, a process known as de-Ba’athification;
- the implementation of that decision; and
- the impact it had on Iraq.

2. This Section does not address:

- pre-invasion analysis of, and planning for, de-Ba’athification, which is addressed in Sections 6.4 and 6.5;
- the decision to disband the Iraqi Army, which is described in Section 12.1; and
- the creation of the Coalition Provisional Authority, which is covered in Section 9.1.

3. The Inquiry’s conclusions in relation to the events described in this Section can be read in Section 11.2.

### The Ba’ath Party

The Arab Socialist Party or Ba’ath Party was founded in Damascus in 1947 by Michael Aflaq and Salah al-Din al-Bitar.<sup>1</sup> Its core objective was the creation of a single, united Arab State.

Having established itself in Syria, the Ba’ath Party then spread to other Arab countries. The Iraqi Ba’ath Party was formally established in 1952.

The Ba’ath Party took power in Syria through a coup in 1963, where it was enshrined in the Constitution as “the leading party of society and state”. The party seized power in Iraq after a revolution in the same year but was manoeuvred out by the military a few months later.

The Ba’ath Party returned to power in Iraq in 1968 in a coup led by Ahmad Hasan al-Bakr, supported by Saddam Hussein. Ba’ath members and party organisations were imposed on the Iraqi military shortly after.

Saddam Hussein succeeded President al-Bakr in 1979, after which point the party was increasingly dominated by individuals linked to him by family or tribal ties.

An ideological split in 1966 led to the Syrian and Iraqi parties becoming estranged and bitterly antagonistic toward each other. The Syrian Ba’ath Party maintained a focus on Arab unity while Iraqi Ba’athists focused on Iraqi nationalism.

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<sup>1</sup> Paper DIS, 1 February 2002, ‘The Iraq Ba’ath Party – Its History, Ideology and Role in Regime Security’.

In early 2002, the Defence Intelligence Staff estimated Ba'ath Party membership within Iraq at between 600,000 and 700,000 individuals, which represented 4 percent of the population. There were several tiers of membership, reflecting individual members' roles within the party hierarchy. Membership was essential to reach senior positions in the military, the government or in professional life.

## The development of de-Ba'athification policy

4. As described in Section 6.5, although it was widely assumed that a process for removing senior members of the Ba'ath Party from positions of power would be required after the invasion, no clear plan for the de-Ba'athification of Iraq's public sector had been agreed between the US and UK at the point the invasion was launched.
5. Because of the extent to which the Ba'ath Party was intertwined with Iraq's bureaucracy, the failure of the US and UK to agree an approach to de-Ba'athification compounded uncertainty about how the bureaucracy might perform after Saddam Hussein's departure.

## Post-invasion

6. As Coalition Forces entered Iraq in March 2003, Ministers were supplied with a 'script' to use in media and Parliamentary discussion which set out the UK vision for "Phase IV", the reconstruction of Iraq.<sup>2</sup> The script said:

"When conditions in Iraq permit, the US Office of Reconstruction and Humanitarian Affairs (ORHA) will move to Baghdad and take on the supervision of the civil administration of Iraq ... We hope that the vast majority of the Iraqi public sector will remain in place and be able to carry on its work ..."

7. On 4 April, a Private Secretary to Mr Jack Straw, the Foreign Secretary, supplied Mr Matthew Rycroft, Mr Blair's Private Secretary for Foreign Affairs, with six papers on post-conflict Iraq.<sup>3</sup> One covered the Iraqi civil service, and stated:

"We do not have any deep knowledge about which levels of the administration are so highly politicised as to need immediate reform, nor which individuals might have to be retired or stood down. This in any case cannot realistically be assessed until after liberation."

8. The question of what future strength and support the Ba'ath Party would command within Iraq was raised by Mr Colin Burgon in a House of Commons debate on 7 April.<sup>4</sup>

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<sup>2</sup> [Letter Owen to Rycroft, 20 March 2003, 'Iraq: Phase IV: Core Script'](#).

<sup>3</sup> [Letter Owen to Rycroft, 4 April 2003, 'Post-conflict Iraq: UK/US' attaching Paper, 4 April 2003, 'The state of the Iraqi civil service and bureaucracy'](#).

<sup>4</sup> House of Commons, *Official Report*, 7 April 2003, columns 29-30.

**9.** In reply Mr Geoff Hoon, the Defence Secretary, explained:

“It is a very difficult question to answer at this stage, not least because the only way of assuring success in Saddam Hussein’s Iraq was to be a member of the Ba’ath party and to operate under his rule. On the other hand, there may well be decent people who had no part in the excesses of the regime and who will, in turn, return to rebuild their country. I suspect that it will depend on their ability to persuade people in their own areas that they have not been involved with the regime and that they can therefore be relied on and trusted.”

**10.** Mr Hoon’s reply was consistent with a briefing produced on the same date by the Defence Intelligence Service (DIS) Red Team on Iraq.<sup>5</sup> The Red Team judged:

“To be a Ba’athist does not necessarily mean an individual is a hard core supporter of the regime. Most joined to advance their careers or under duress (mostly government employees). In every government department there is a hard core who have been responsible for security. They are responsible for the ‘disappeared’; are known by everybody and will be nervous.

“It will require detailed inside knowledge to identify the ‘bad apples’ in any organisation ...”

**11.** Similar points were made by Ms Clare Short, the International Development Secretary, on 10 April.<sup>6</sup> In response to a Parliamentary Question from Ms Helen Southworth, Ms Short said:

“... Iraq is like the former Soviet Union, where people had to join the Communist party if they wanted to be a teacher. Many members of the Ba’ath Party are not the real leaders of the regime, and they will need to remain in their jobs so as to continue to run their country.”

**12.** The first formal public statement by the Coalition about the treatment of the Ba’ath Party was made when General Tommy Franks, Commander in Chief US Central Command (CENTCOM), issued his Freedom Message to the Iraqi People on 16 April (see Section 9.1).

**13.** As described in Section 9.1, Mr Huw Llewellyn from FCO Legal Advisers provided advice to the Iraq Policy Unit (IPU) on the draft text of the Message on 28 March.<sup>7</sup>

**14.** In relation to de-Ba’athification, Mr Llewellyn was concerned that the practical effect of disestablishing the Ba’ath Party was not implemented in the Directive to the Civilian Population that Gen Franks intended to issue in parallel. He also suggested

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<sup>5</sup> [Briefing DIS Red Team, 7 April 2003, ‘What Will Happen in Baghdad?’](#)

<sup>6</sup> House of Commons, *Official Report*, 10 April 2003, column 444.

<sup>7</sup> Minute Llewellyn to Chilcott, 28 March 2003, ‘Proposed US “Freedom Message” to the People of Iraq’.

that the word “disestablished” should be replaced with “dissolved” or something with the same meaning.

**15.** Commenting on a subsequent draft of the text on 10 April, Mr Llewellyn explained:

“The paragraph dissolving the Ba’ath party is clearly important. But the word ‘disestablished’ does not really do the trick. That word is something to do with removing an institution from the structure of the state, as I understand it. We should say ‘dissolved’.”<sup>8</sup>

**16.** On 11 April, during a video conference between UK, US and Australian legal advisers, the US lawyers explained that they saw a need to disestablish the Ba’ath Party and deprive it of all authority “in order for other things to happen as a result from the legal and policy point of view”.<sup>9</sup>

**17.** On 11 April, Mr Llewellyn circulated a first draft of guidelines for UK personnel, in particular those seconded to ORHA, on the relevant provisions of International Humanitarian Law (IHL).<sup>10</sup> Under the heading “Removal of Officials”, it stated:

“Officials may be removed, although this should not be done arbitrarily. Clearly, the Coalition will remove from office those who were members of Saddam Hussein’s regime, and senior members of the Ba’ath Party if any remain. Other officials may be removed where they represent an obstacle to administration by the Coalition, for example because they pose a threat to security, are corrupt, unwilling to act under Coalition administration, or will be intimidating for the population.”

**18.** A senior MOD legal adviser to whom the draft guidelines were sent for comment suggested that the guidelines should be more precise about what was meant by “members of Saddam Hussein’s regime” and “senior members of the Ba’ath Party”.<sup>11</sup> She asked whether it was likely there would be anyone who would fall into the first category who did not also fall within the second.

**19.** The Inquiry has not seen evidence that any discussion of the degree to which former members of the Ba’ath Party might be entitled to participate in the Iraqi Interim Authority (IIA) took place at the conference held in Nasiriyah on 15 April and attended for the UK by Mr Edward Chaplin, FCO Director Middle East and North Africa.<sup>12</sup>

**20.** There is a mention in one of the supporting papers, produced by the FCO’s Research Analysts, of the need to establish whether members of Iraq’s popular councils could be used in the selection of members for the IIA given that they had previously

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<sup>8</sup> Minute Llewellyn to Bristow, 10 April 2003, ‘Freedom Message to the Iraqi People’.

<sup>9</sup> Minute [unattributed], [undated], ‘American Summary Points, Video Link: Friday 11 April’.

<sup>10</sup> Minute Llewellyn to Rose, 11 April 2003, ‘Iraq: Guidelines on the Application of Laws of Occupation’.

<sup>11</sup> Minute Rose to Llewellyn, 22 April 2003, ‘Iraq: Guidelines on the Application of Laws of Occupation’.

<sup>12</sup> Letter Chaplin to Crocker, 17 April 2003, ‘Setting up the Iraqi Interim Authority: Issues for Discussion’ attaching Paper FCO, 2 April, ‘Post-conflict Iraq: a “Baghdad Conference”’.

been “approved” by the Ba’ath Party which might mean they were considered to be “tainted”.

**21.** In his memoir, Mr Douglas Feith, US Under Secretary of Defense for Policy, describes re-writing the first draft of Gen Franks’ message produced by CENTCOM.<sup>13</sup> Mr Feith’s re-written version included the reference to the disestablishment of the Ba’ath Party. His view was that disestablishing the Ba’ath Party was a separate issue from the fate of individual members, which was still under discussion at the time of Gen Franks’ statement.

**22.** In a paper for the Pentagon Public Affairs Office on 16 April, Mr Feith’s Office suggested that the answer to questions about what would happen to members of the Ba’ath Party should be:

“... its [the Ba’ath Party’s] property and records will be considered by the CPA as the property of the Iraqi people. Absent exceptional circumstances, top-tier members of the Ba’ath Party will not be eligible to hold any positions of responsibility under the CPA. Lower ranking members of the Ba’ath Party will not necessarily be barred from such employment. No one will be punished merely for membership in the Ba’ath Party.”

**23.** Gen Franks’ Freedom Message was issued on 16 April.<sup>14</sup> It said:

“The Arab Socialist Renaissance Party of Iraq (Hiz al-Ba’ath al-Arabi al-Istiraki al-Iraqi) is hereby disestablished. Property of the Ba’ath Party should be turned over to the Coalition Provisional Authority. The records of the Ba’ath Party are an important part of the records of the Government of Iraq and should be preserved ... and turn[ed] ... over to the Coalition Provisional Authority.”

**24.** On 17 April, a discussion between Sir David Manning, Mr Blair’s Foreign Policy Adviser, and Dr Condoleezza Rice, US National Security Advisor, suggested that the announcement about the Ba’ath Party had come as a surprise to her.<sup>15</sup>

**25.** Mr Straw told the Inquiry that he had discussed the question of de-Ba’athification with Gen Franks in Kuwait in mid-April:

“... and he had said to me that his view was you should take anybody apart from those who were obviously bad into the system, and then vet them subsequently, and if they – and I remember him saying – if they didn’t pass muster, didn’t pass the vetting, then you’d kick them out. But what you didn’t do was wholly to degrade the administration in advance, and I thought, not least because he was the senior

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<sup>13</sup> Feith DJ. *War and Decision: Inside the Pentagon at the Dawn of the War on Terrorism*. HarperCollins, 2008.

<sup>14</sup> Statement General Tommy Franks, 16 April 2003, ‘Freedom Message to the Iraqi People’.

<sup>15</sup> Letter Manning to McDonald, 17 April 2003, ‘Iraq: Conversation with Condi Rice’.

army officer on the American side, that that's what would happen but, in the event, it wasn't."<sup>16</sup>

**26.** At Foreign Office Oral Questions on 6 May, Dr Vincent Cable asked about the Coalition's plans for elections in Iraq.<sup>17</sup> He asked the Government to:

"... explain the status of important political groups such as the Ba'ath party, the Communist party and the Islamic fundamentalists? Will they be allowed to compete freely and democratically in those elections and if they won would they be allowed to win?"

**27.** In reply, Mr Mike O'Brien, FCO Parliamentary Under Secretary of State, explained:

"We hope that the Ba'ath Party will not be able to involve itself in that election, and certainly not in the form that it took under Saddam Hussein. It is not envisaged, therefore, that it would be allowed to operate."

## The CPA approach

**28.** The creation of the Coalition Provisional Authority (CPA), led by Ambassador L Paul Bremer, and the appointment in early May of Mr John Sawers as the Prime Minister's Special Representative to Iraq are described in Section 9.1.

**29.** Ambassador Bremer, in his account of leading the CPA, describes being given his instructions:

"On May 9, my last day of preparation at the Pentagon, Don Rumsfeld had given me my marching orders in a memo. Among all my other instructions, Rumsfeld's memo emphasized: 'The Coalition will actively oppose Saddam Hussein's old enforcers – the Ba'ath Party, the Fedayeen Saddam ... We will make clear that the Coalition will eliminate the remnants of Saddam's regime.'"<sup>18</sup>

**30.** In his memoir, Mr Feith wrote that Ambassador Bremer "wanted his arrival in Baghdad to have a theme: The Ba'athists are not coming back."<sup>19</sup> Mr Feith wrote:

"Bremer had considered his point carefully. Our forces had not yet captured Saddam, and many Iraqis remained fearful of the Ba'athists – and therefore unwilling to cooperate with U.S. officials – on security, political reconstruction, and other matters. Bremer saw it as his first task to offer assurance ... I thought Bremer had selected his "arrival theme" wisely, and I told him so."

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<sup>16</sup> Public hearing, 8 February 2010, pages 117-118.

<sup>17</sup> House of Commons, *Official Report*, 6 May 2003, columns 522-523.

<sup>18</sup> Bremer LP III & McConnell M. *My Year in Iraq: The Struggle to Build a Future of Hope*. Threshold, 2006.

<sup>19</sup> Feith DJ. *War and Decision: Inside the Pentagon at the Dawn of the War on Terrorism*. HarperCollins, 2008.

**31.** Mr Feith recorded that a draft de-Ba'athification policy had been considered by the US National Security Council on 10 March. At Ambassador Bremer's request, implementation of the policy, which would "rid the Iraqi Government of the small group of true believers at the top of the party and those who had committed crimes in its name", was delayed until his arrival in Iraq.<sup>20</sup>

**32.** Ambassador Bremer wrote:

"Our concern was only the top four levels of the party membership, which the [draft] order officially excluded from public life. These were the Ba'athist loyalists who, by virtue of their positions of power in the regime, had been active instruments of Saddam's repression. Our intelligence community estimated that they amounted to only about 1 percent of all party members or approximately 20,000 people, overwhelmingly Sunni Arabs."

**33.** Four days after arriving in Iraq, Mr Sawers reported that there was a fear among "ordinary people in Baghdad" that the Ba'athists could return.<sup>21</sup> He assessed:

"ORHA have made mistakes here, appointing quite senior party figures as their main partners in the trade and health ministries, at Baghdad University and so on. Several political leaders I have seen say a line should be drawn at the 'firqa' level of the Ba'ath Party and all those at that level and the three above should be excluded, about 30,000 in all. This would represent between five and ten per cent of total party membership. But it is still a lot of people and may be one level too many, at least for now."

**34.** In one of his earliest reports to London, on 12 May Mr Sawers reported that Dr Ahmed Chalabi's "strong message on de-Ba'athification strikes a chord" with the Shia population "and will become even more potent if we don't deal with re-emerging Ba'athists".<sup>22</sup> Dr Chalabi was a founding member of the Iraqi National Congress Party who had formed strong links with several US Administrations.

**35.** After his first meeting with Ambassador Bremer, Mr Sawers reported: "Bremer, rightly, plans to move quickly to set out a policy on 'de-Ba'athification' or 'De-Saddam-isation' as it may now be called."<sup>23</sup>

**36.** Mr Sawers judged:

"... the issue needs addressing quickly. The question is how to define the scope of those excluded. All agree that the top three levels of the Ba'ath ... should be banned. Our rough estimate suggests that should cover up to 5,000 people. Added

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<sup>20</sup> Bremer LP III & McConnell M. *My Year in Iraq: The Struggle to Build a Future of Hope*. Threshold, 2006.

<sup>21</sup> [Telegram 2 IraqRep to FCO London, 11 May 2003, 'Iraq: What's Going Wrong?'](#)

<sup>22</sup> [Telegram 3 IraqRep to FCO London, 12 May 2003, 'Iraq: Political Process'](#).

<sup>23</sup> [Telegram 3 IraqRep to FCO London, 12 May 2003, 'Iraq: de-Ba'athification'](#).

to that will have to be the top levels of the instruments of repression – the security, intelligence organisations etc.

“Some politicians ... are arguing that the fourth level of the party ... should also be included. This would extend the numbers to some 30,000 possibly more. The argument in favour is that this is the level where party officials began to receive privileges such as free housing and thus were identified popularly as beneficiaries of the regime. Against that is the danger that too wide a list will be hard to administer; that we should not exclude too large a group from the new system; and it would increase the risk of false accusations against innocent people ...

“Grateful for early views on this issue. My own instinct is we should not throw the net wider than necessary, and that for now we could settle on the top three tiers ... But I frankly don't have sufficient feel for the Iraqi Ba'ath Party to know the level at which real evil began.”

**37.** The following day, Mr Sawers reported that Ambassador Bremer's staff in the CPA had a “similar [approach to de-Ba'athification] to ours, and they share our uncertainty over how wide to cast the net”.<sup>24</sup> In particular, “banning all party members from any of the top three tiers in ministries” could inadvertently exclude “many of the technocrats we will want to re-employ”. Ambassador Bremer had explained that the steer he was getting from Mr Donald Rumsfeld, US Defense Secretary, and President Bush was to “spread the net widely initially, and then to allow exceptions without too many obstacles”.

**38.** On 13 May, Sir David Manning met Dr Rice and other National Security Council staff in Washington.<sup>25</sup> A report of the meeting by Mr Rycroft said that Sir David had gone through the points raised by Mr Sawers on de-Ba'athification, and the NSC team had agreed with them. They told Sir David that the US had agreed a de-Ba'athification strategy the previous week.

**39.** The following day, the FCO in London sent Mr Sawers the instructions he had requested.<sup>26</sup> The FCO wrote:

“... there should be a [de-Ba'athification] process, but its scope should be limited, and there needs to be room for discretion.

“We agree that the net should not be cast too wide. Excluding the top three ranks from public service ... is probably the most practical approach ... In certain cases, particularly in the security services, Ba'ath members may have to be moved aside in order to provide ... reassurance, whatever their position in the party. But we do not want to create a large underground of disaffected Ba'athists who see no possible future for themselves in post-Saddam Iraq ... So the short answer to the question

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<sup>24</sup> Telegram 6 IraqRep to FCO London, 13 May 2003, 'Iraq: Putting Things Right'.

<sup>25</sup> Telegram 643 Washington to FCO London, 13 May 2003, 'Iraq: Meetings with Rice and Cheney, 13 May'.

<sup>26</sup> [Telegram 2 FCO London to IraqRep, 14 May 2003, 'Iraq: de-Ba'athification'](#).

about the fourth level of the Ba'ath is that there will be a vetting process ... to ensure no rotten apples are kept on ... One of the leading academic Iraq-watchers, Toby Dodge, has remarked to us that membership of the Ba'ath was less significant latterly than less formal networks of control and influence. There is a danger, in focusing on the Ba'ath, of overlooking potentially more malign elements."

**40.** The message from the FCO also re-stated the legal position that Occupying Powers could remove public officials from their posts but that "for both policy and legal reasons, we should stick to what is necessary". Occupying Powers could not "regulate or prohibit political expression or activity except to the extent that is necessary on grounds of security or public order".

**41.** The message ended:

"The longer-term process of de-Ba'athification is for a future government of Iraq to take forward, in parallel with the wider transitional justice dossier."

**42.** On 13 May, Mr Walt Slocombe, CPA Senior Adviser on National Security and Defense, met Mr Hoon in London.<sup>27</sup> In his record of the meeting, Mr Hoon's Assistant Private Secretary wrote that Mr Slocombe had said "a visible and functioning police force ... might require some compromise on de-Ba'athification".

**43.** Mr Simon Webb, MOD Policy Director, was also present at Mr Hoon's meeting with Mr Slocombe. Mr Webb told the Inquiry:

"We had certainly accepted ... the need for de-Ba'athification ... So we had bought that by that stage ... I don't recall having a specific conversation about how far that was going to go. But ... I think we were probably content for this to be decided by those in Baghdad. If the policy is partial de-Ba'athification, and everybody seems to understand the issues ... I wouldn't have tried to press a particular level in the command structure on Walt. ... There was a judgement which you couldn't really make until you got on the ground about what level you went down to ... at some stage, you hit the school teacher who just joined the party because they wanted a job. But where in that spectrum you cut it off, recognising that you, implicitly at least ... wanted to remove the possibility of an early reassertion of power by Ba'ath Party ..."<sup>28</sup>

**44.** Ambassador Bremer told the Inquiry that "Slocombe reported that the British officials agreed with the need for vigorous de-Ba'athification, especially in the security sector".<sup>29</sup>

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<sup>27</sup> [Minute Williams to Webb, 13 May 2003, 'Call on Defence Secretary by Walt Slocombe: 13 May 2003'](#).

<sup>28</sup> Private hearing, 23 June 2010, pages 66-68.

<sup>29</sup> Statement Bremer, 18 May 2010, page 3.

**45.** On 14 May, Mr Tony Brenton, Chargé d’Affaires at the British Embassy Washington, was shown a draft diplomatic cable setting out Washington’s guidance to Ambassador Bremer on the implementation of the de-Ba’athification policy.<sup>30</sup>

**46.** Mr Brenton reported to the FCO that the cable proposed that full Ba’ath Party members (group, section and branch members) would be banned from public office, including teaching positions. They would also be interviewed and an evaluation made of whether they may have committed criminal acts or continued to pose a risk to the security of the Coalition.

**47.** To implement this, all individuals in the top three layers of management in each government Ministry would be evaluated to establish the extent of their Ba’ath Party involvement. Those proven to be members would be removed. For junior employees below the top three layers, evaluation would not be automatic but the discovery of any “adverse information” would lead to their investigation.

**48.** The Annotated Agenda prepared by the Cabinet Office for a meeting of the Ad Hoc Ministerial Group on Iraq Rehabilitation (AHMGIR) the following day asked Ministers to:

“... agree that we press in principle for the removal from public service and politics [of] only the top three tiers of the Ba’ath Party.”<sup>31</sup>

**49.** The Annotated Agenda stated that extending the ban to the fourth tier of the Ba’ath Party (and so to 30,000 people) would be “excessive and detrimental to public service provision”.

**50.** At the meeting of the AHMGIR on 15 May, Mr Straw stated that the Coalition should be “flexible” in its approach to de-Ba’athification, “for example excluding many who had been part of Saddam Hussein’s security apparatus, but fewer from more technical positions”.<sup>32</sup>

**51.** The Group amended the objective proposed by officials to:

“... press for the removal from public service and politics of those members of the Ba’ath Party judged to have played a malign role.”

**52.** On 15 May, Mr Sawers reported that the de-Ba’athification policy had been agreed along the lines reported earlier by Mr Brenton.<sup>33</sup>

**53.** On the question of whether the bar should extend to the fourth level of party membership, Mr Sawers reported that he had “warned of the danger of overkill” but, like

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<sup>30</sup> [Telegram 655 Washington to FCO London, 14 May 2003, ‘Iraq: US Views’.](#)

<sup>31</sup> Annotated Agenda, 15 May 2003, Ad Hoc Group on Iraq Rehabilitation meeting.

<sup>32</sup> Minutes, 15 May 2003, Ad Hoc Group on Iraq Rehabilitation meeting.

<sup>33</sup> [Telegram 10 IraqRep to FCO London, 15 May 2003, ‘Iraq: De-Ba’athification’.](#)

Ambassador Bremer, had been persuaded by those arguing that “the recommended policy of covering all four levels was pitched right”. Mr Sawers commented:

“This new policy is tougher than your advice preferred ... But I advise against any action in Washington. The new policy is badly needed, and it corresponds with the preferences of all the members of the Leadership Group bar Allawi.”

**54.** On the same day, Mr Llewellyn provided advice to IPU on a draft Order removing the Ba’ath Party leadership.<sup>34</sup> It is clear from his comments that this was the final draft of what became CPA Order No.1 and he noted that it was probably on the point of being issued.

**55.** In Mr Llewellyn’s view, the main question was whether the UK was satisfied that displaying images or likenesses of Saddam Hussein (or other readily identifiable members of the former regime or symbols of the Ba’ath Party) was of sufficient concern that it necessitated prohibition on the grounds of security and/or public order, the only grounds that would be permitted under international humanitarian law.

### CPA Order No.1

**56.** CPA Order No.1, “De-Ba’athification of Iraqi Society”, was issued on 16 May 2003.<sup>35</sup> It was Ambassador Bremer’s first formal act as head of the CPA.

**57.** The Order stated that it was implementing General Franks’ disestablishment of the Ba’ath Party in his 16 April message:

“... by eliminating the party’s structures and removing its leadership from positions of authority and responsibility in Iraqi society. By this means, the Coalition Provisional Authority will ensure that representative government in Iraq is not threatened by Ba’athist elements returning to power and that those in positions of authority in the future are acceptable to the people of Iraq.”<sup>36</sup>

**58.** The Order stated that disestablishment was to be achieved by removing “full” members of the Ba’ath party (defined as the top four ranks of party membership)<sup>37</sup> from public sector jobs and banning them from future employment in the public sector.

**59.** Individuals holding senior management positions (the top three layers of management) in all public sector organisations would be interviewed and assessed for their possible affiliation with the Ba’ath Party, criminal conduct and risk to security. Any who were found to be full members of the Ba’ath Party would be removed from employment.

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<sup>34</sup> Minute Llewellyn to [Bristow], 15 May 2003, ‘Draft Order on Removing Ba’ath Party Leadership’.

<sup>35</sup> Bremer LP III & McConnell M. *My Year in Iraq: The Struggle to Build a Future of Hope*. Threshold, 2006.

<sup>36</sup> Coalition Provisional Authority Order Number 1, 16 May 2003, Section 1(1).

<sup>37</sup> Regional Command Member, Branch Member, Section Member and Group Member. Collectively referred to as “Senior Party Members”.

**60.** Ambassador Bremer wrote in his account of leading the CPA that he had recognised from the outset that the de-Ba'athification Order “wasn't perfect, but contained a degree of flexibility” in the provision that allowed for exemptions to the ban to be made on a case-by-case basis.<sup>38</sup> Both he and Ambassador Ryan Crocker, a US State Department official seconded to the CPA, had agreed that this flexibility was “critical”.

**61.** Ambassador Bremer told the Inquiry that the Order was “narrowly drawn” so as to affect only the top 1 percent of party members, and to deny them public sector positions but not the ability to work in the private sector.<sup>39</sup>

**62.** On the same day that Order No.1 was issued, Mr Blair and President Bush spoke on the telephone.<sup>40</sup> The record of their conversation, taken by Mr Blair's Assistant Private Secretary, indicates that they did not discuss de-Ba'athification.

### The UK role in relation to Order No.1

*Hard Lessons*, an account of the US reconstruction experience in Iraq, characterised Order No.1 as “conceived in Washington and promulgated with little Iraqi involvement”.<sup>41</sup>

Secretary Rumsfeld, in his memoir, observed:

“Though the policy later found few defenders at the top level of the administration, de-Ba'athification initially had broad support among the relevant departments and agencies.”<sup>42</sup>

The policy was discussed by the NSC two weeks before the invasion and there were “no objections from any of the principals present” although President Bush had questioned who would carry out the vetting needed.

Sir Suma Chakrabarti, DFID Permanent Secretary from 2002 to 2007, told the Inquiry that the de-Ba'athification decision was one of a number on which his department had not been consulted.<sup>43</sup>

Lord Jay, FCO Permanent Under Secretary from 2002 to 2006, described the de-Ba'athification decision as one example of “difficulties in relation to the United States”.<sup>44</sup>

Mr Blair told the Inquiry:

“You know, there's a lot of debate about de-Ba'athification and so on ... but he [Bremer] was someone who knew his own mind, but I have to say I did not get the impression he was refusing to discuss it with the British. On the contrary, we had Brits working alongside in very senior positions.”<sup>45</sup>

<sup>38</sup> Bremer LP III & McConnell M. *My Year in Iraq: The Struggle to Build a Future of Hope*. Threshold, 2006.

<sup>39</sup> Statement Bremer, 18 May 2010, page 3.

<sup>40</sup> Letter Cannon to MacDonald, 16 May 2003, 'Iraq: Prime Minister's Conversation with Bush, 16 May'.

<sup>41</sup> Bowen SW Jr. *Hard Lessons: The Iraq Reconstruction Experience*. U.S. Government Printing Office, 2009.

<sup>42</sup> Rumsfeld D. *Known and Unknown: A Memoir*. Sentinel, 2011.

<sup>43</sup> Public hearing, 8 December 2009, page 64.

<sup>44</sup> Public hearing, 30 June 2010, page 41.

<sup>45</sup> Public hearing, 21 January 2011, page 144.

Mr Sawers reported just before the Order was issued that it was being finalised by the Department of Defense in Washington and that Ambassador Bremer had been given guidance on de-Ba'athification by both Secretary Rumsfeld and President Bush.<sup>46</sup>

Mr Sawers told the Inquiry that he did not think that his views were entirely ignored, and cited examples of where he believed he had been able to influence Ambassador Bremer's thinking.<sup>47</sup> He made a similar point in May 2003, when he reported that Ambassador Bremer was keen to work with him:

“... in public and private, and has picked up on many UK suggestions, big and small. He allowed us to re-balance the decree on removing the Ba'athists, over-ruling the wilder strictures of Wolfowitz and Feith in the process.”<sup>48</sup>

## Implementation of de-Ba'athification policy

**63.** Mr Sawers reported on 17 May that the members of the Iraqi Leadership Group<sup>49</sup> “widely supported” the de-Ba'athification process and that:

“... all the leaders welcomed the clarity and toughness of the proclamation ... I recalled the exchanges I had had with each of the Group on the issue, and told them their views had been taken into account in the detailed terms of the final decree – a good example of co-operation and consultation with the political groupings.”<sup>50</sup>

**64.** A few days later, Mr Sawers reported that de-Ba'athification had “gone down well”.<sup>51</sup> He judged that, before the policy, many Iraqis believed there was still a chance the Ba'athists might return, which “in turn contributed to the security problem”. The policy was “a huge hit with the political parties we are working with” and, although there would need to be some exemptions, “Bremer will keep these to a minimum”.

**65.** A few days after Order No.1 was issued, Sir David Manning met Ambassador Bremer in Baghdad.<sup>52</sup> In discussion, they observed:

“De-Ba'athification and the dissolution of security ministries would create a new reservoir of angry men. So there was a need to step up patrols and tighten up security.”

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<sup>46</sup> Telegram 6 IraqRep to FCO London, 13 May 2003, 'Iraq: Putting Things Right'.

<sup>47</sup> Public hearing, 10 December 2009, page 71.

<sup>48</sup> [Telegram 18 IraqRep to FCO London, 20 May 2003, 'Iraq: Bremer's Impact'](#).

<sup>49</sup> The Leadership Group was comprised of Iraqi politicians drawn from identifiable political and regional groups and had been established by General Jay Garner, Head of the Office of Reconstruction and Humanitarian Assistance (ORHA). It included both former exiles who had returned to Iraq after the fall of Saddam Hussein, and those who had remained in Iraq.

<sup>50</sup> Telegram 13 UKRep Iraq to FCO London, 17 May 2003, 'Iraq: Bremer meets Leadership Group'.

<sup>51</sup> [Telegram 18 IraqRep to FCO London, 20 May 2003, 'Iraq: Bremer's Impact'](#).

<sup>52</sup> [Letter Cannon to Owen, 23 May 2003, 'Iraq: Meeting with Gerry Bremer'](#).

**66.** On 22 May the AHMGIR met, chaired by Mr Straw.<sup>53</sup>

**67.** Briefing for the discussion stated that, although the eventual policy was more wide-ranging than the UK had advocated, in practice Ambassador Bremer expected to “allow those judged ‘clean’ to be re-employed”.<sup>54</sup> The Cabinet Office author of the briefing wrote that the Order would mean that 33,000 people would be banned from public office in Iraq, and observed:

“... this is more wide-ranging than the senior level only policy (covering 5,000) officials we had advocated, and risks removing many essential but less culpable technocrats from their jobs.”

**68.** The AHMGIR concluded that the UK should “encourage the US to implement its policy on de-Ba'athification pragmatically to avoid needlessly removing less culpable technocrats from key positions”.<sup>55</sup>

**69.** In a paper for Mr Blair dated 22 May, Major General Tim Cross, the most senior UK secondee to ORHA, the organisation which pre-dated the CPA, referred to the recent de-Ba'athification announcement as having “created some inevitable difficulties”, and counselled pragmatic application of the exemptions for “individuals who are engaged in crucial reconstruction areas, such as power generation/distribution, water/sanitation etc”.<sup>56</sup>

**70.** On 27 May, Mr Sawers reported that a new Iraqi de-Ba'athification Council was “designed to give Iraqis a role in the de-Ba'athification process, and advise Bremer on how to apply it in specific cases”.<sup>57</sup> The Council was to be made up of 20 Iraqis, appointed by the Coalition.

**71.** Ambassador Bremer, in his account of leading the CPA, described the Council as an attempt “to engage responsible Iraqis from the start in the de-Ba'athification process ... to be sure we were focused on the right people” since the Coalition did not “know Iraq as well as the Iraqis themselves”.<sup>58</sup>

**72.** On 29 May, Mr Blair met Ambassador Bremer in Basra.<sup>59</sup> Ambassador Bremer raised the need for more qualified staff in the CPA as a result of de-Ba'athification. The record indicates that Mr Blair urged Ambassador Bremer to draw up a list of the staff he required and not to hesitate to ask for additional staff, which he described as “a political priority”.

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<sup>53</sup> Minutes, 22 May 2003, Ad Hoc Group on Iraq Rehabilitation meeting.

<sup>54</sup> Annotated Agenda, 22 May 2003, Ad Hoc Group on Iraq Rehabilitation meeting.

<sup>55</sup> Minutes, 22 May 2003, Ad Hoc Group on Iraq Rehabilitation meeting.

<sup>56</sup> Letter Williams to Rycroft, 23 May 2003, ‘Iraq Reconstruction’ attaching Paper Cross, 22 May 2003, ‘Iraq Reconstruction: Some Thoughts for the PM in his Discussions with President Bush’.

<sup>57</sup> Telegram 22 IraqRep to FCO London, 27 May 2003, ‘Iraq: new ORHA initiatives’.

<sup>58</sup> Bremer LP III & McConnell M. *My Year in Iraq: The Struggle to Build a Future of Hope*. Threshold, 2006.

<sup>59</sup> Letter Cannon to Owen, 29 May 2003, ‘Iraq: Prime Minister’s meeting with Bremer, 29 May’.

**73.** In a telegram to the British Embassy Washington on 30 May, FCO officials wrote:

“De-Ba’athification and dismantling the institutions of the Ba’athist State are clearly necessary if we are to achieve our post-conflict objectives. But so too is maintaining security. We are concerned that some aspects of the first, especially if it includes laying off without pay the regular army, may have an unnecessarily negative impact on the second, rather than the positive effects we need them to have.”<sup>60</sup>

**74.** The telegram continued:

“We understand why Bremer has felt it necessary to take a tough line on de-Ba’athification ...

“But there is a downside ... we are concerned that de-Ba’athification may be proving to be a blunt instrument. Our secondees working alongside the ministries are reporting that the de-Ba’athification Order is catching Iraqi public servants who have shown themselves to be effective and willing to work with us in areas critical to the Coalition’s success – the police, for example.”

**75.** The FCO suggested that the problem should be addressed by the Coalition taking “a vigorously pragmatic approach to implementing the de-Ba’athification Order” so that it provided an incentive to those who were not committed to Ba’athist ideology to work with the Coalition, for example allowing ex-party members to be re-employed on a probationary basis. The FCO noted that work was “in hand” to develop the machinery to implement the order.

**76.** The following day Sir David Manning reported to Mr Straw’s Principal Private Secretary that he had told Dr Rice and Mr Andy Card, President Bush’s Chief of Staff, over dinner that:

“... we had worries about the de-Ba’athification process. I was sure that it was right to signal that we were determined to break the Ba’ath Party and dismantle its structures. But we must be careful not to create a situation in which token Ba’athists were alienated from the Coalition because we denied them jobs, and a chance to contribute to post-Saddam Iraq. If we made this mistake, we would create a large number of disaffected and hostile people who would quickly turn against us. The key was surely to be pragmatic. Now that Bremer had made his strong and necessary commitment to de-Ba’athification, we should implement it pragmatically. We should think about operating a system whereby people stayed in their jobs until it was shown that their track record rather than a Ba’athist label made them a liability.”<sup>61</sup>

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<sup>60</sup> [Telegram 251 FCO London to Washington, 30 May 2003, ‘Iraq: Dismantling the Baathist State’](#).

<sup>61</sup> Letter Manning to McDonald, 1 June 2003, ‘Iraq: Conversation with Condi Rice’.

**77.** On 2 June, Mr Blair met President Bush over breakfast.<sup>62</sup> In his note reporting their discussion Sir David recorded Mr Blair's analysis that the Coalition should be careful not to create a large pool of disaffected people by targeting those who had joined the Ba'ath Party simply to get a job.

**78.** Mr Blair argued that a clear political vision and timetable was needed, together with a media strategy to avoid a "dangerous" information vacuum.

### The Impact of Order No.1

Writing in September 2003, Major General Freddie Viggers, the outgoing Senior British Military Representative - Iraq, commented in his post-tour report that "all but the hardliners are grateful that the Ba'athist regime has been removed".<sup>63</sup>

The RAND assessment of the Occupation of Iraq records that the initial reaction to the de-Ba'athification order was enthusiastic.<sup>64</sup> The authors cite polls in August 2003 reporting over 94 percent of the Iraqi population saying that either all or some Ba'athists should be removed from office<sup>65</sup> and that 92 percent of Iraqis opposed the participation of former Ba'ath Party members in Iraq's political institutions.<sup>66</sup>

According to Mr Ali A Allawi, a Minister in both the Interim Iraqi Government and the Iraqi Transitional Government:

"De-Ba'athification in the early days of the CPA proceeded in a generally straightforward way. The vast majority of individuals caught in the round of dismissals were those who could be clearly identified in the higher levels of the Party ranks, and the case against them was clear cut."<sup>67</sup>

*Hard Lessons* commented:

"Most Iraqis agreed that some de-Ba'athification was necessary, but many believed that the CPA order had gone too far ...

...

"Whatever its reach should have been, the consequences of the de-Ba'athification order quickly became clear: it reduced the ranks of Iraq's capable bureaucrats and thus limited the capacity of Iraqi ministries to contribute to reconstruction."<sup>68</sup>

<sup>62</sup> Letter Manning to McDonald, 2 June 2003, 'Breakfast meeting between the Prime Minister and President Bush: 2 June 2003'.

<sup>63</sup> [Minute Viggers to CDS & CJO, September 2003, 'SBMR \(I\): End of tour report'](#).

<sup>64</sup> Bensahel N, Oliker O, Crane K, Brennan RR Jr, Gregg HS, Sullivan T & Rathmell A. *After Saddam: Prewar Planning and the Occupation of Iraq*. RAND Corporation, 2008.

<sup>65</sup> Iraq Center for Research and Strategic Studies, *Results of the First Public Opinion Poll in Iraq*, 6 August 2003.

<sup>66</sup> US Department of State, *Iraqis Officer Dim Evaluation of Reconstruction Effort Thus Far*.

<sup>67</sup> Allawi AA. *The Occupation of Iraq: winning the war, losing the peace*. Yale University Press, 2007.

<sup>68</sup> Bowen SW Jr. *Hard Lessons: The Iraq Reconstruction Experience*. U.S. Government Printing Office, 2009.

Although it recognised the significance of the impact of de-Ba'athification on the public sector in Iraq, the RAND report *Occupying Iraq* observed that the number of individuals who left office in the first three months of Occupation (10,000) was still less than the number of senior jobs normally vacated following a change of US Administration.<sup>69</sup>

General the Lord Walker, Chief of the Defence Staff from May 2003 to April 2006, told the Inquiry that the removal of “a complete layer of administrative competence” was “not ... a particular help”.<sup>70</sup>

Mr Stephen Pattison, FCO Head of the UN Department until June 2003, told the Inquiry:

“... we should have realised that without those officials we were going to struggle really hard to get this country going again and we should have reached out to those officials in order to bring them back in by offering them assurances about their pensions or their security or their jobs or whatever.”<sup>71</sup>

Ms Emma Sky, Governorate Co-ordinator for Kirkuk province in 2003, told the Inquiry that Major General Raymond Odierno (the US military commander responsible for the province) had given an amnesty to teachers and doctors on his own authority as a way of circumventing the Order.<sup>72</sup>

Mr Andy Bearpark, the CPA's Director of Operations, told the Inquiry:

“... when I observed the effects of the [de-Ba'athification] policy, I don't believe that some of the effects of the policy were quite as severe as some of the critics of the policy point out, but that's a belief or assertion on my part. I have no evidence to support it.”<sup>73</sup>

In Mr Bearpark's opinion, the issues that he encountered within the senior levels of the Iraqi Civil Service had more to do with personal rivalry than real concerns about Ba'athist control.

Mr Chaplin and Mr Asquith, who both served as British Ambassador to Iraq, told the Inquiry that there was a sense of exclusion within the Sunni community as a result of de-Ba'athification, because they felt that it affected their community disproportionately.<sup>74</sup>

Mr Jonathan Powell told the Inquiry:

“... it was a mistake to go so far with de-Ba'athification. It is a similar mistake the Americans made after the Second World War with de-Nazification and they had to reverse it. Once it became clear to us, we argued with the administration to reverse it, and they did reverse it, although with difficulty because the Shia politicians in the government were very reluctant to allow it to be reversed, and at the time we were being criticised for not doing enough de-Ba'athification.”<sup>75</sup>

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<sup>69</sup> Dobbins J, Jones SG, Runkle B & Mohandas S. *Occupying Iraq: A History of the Coalition Provisional Authority*. RAND Corporation, 2009.

<sup>70</sup> Public hearing, 1 February 2010, page 24.

<sup>71</sup> Public hearing, 31 January 2011, pages 22-24.

<sup>72</sup> Private hearing, 14 January 2011, pages 27-29.

<sup>73</sup> Public hearing, 6 July 2010, pages 83-84.

<sup>74</sup> Public hearing, 1 December 2009, page 88; Public hearing, 4 December 2009, page 19.

<sup>75</sup> Public hearing, 18 January 2010, page 128.

## CPA Memorandum No.1

**79.** On 3 June, Ambassador Bremer signed CPA Memorandum No.1, which described the implementation of Order No.1 (de-Ba'athification) and Order No.5 (creation of the Iraqi de-Ba'athification Council).<sup>76</sup>

**80.** The Memorandum described an interim process for identifying Ba'ath Party members using Coalition military investigators. It said:

“As the Administrator determines that the responsibility for identifying Ba'ath Party members effectively can be transferred to Iraqi citizens, the Administrator shall direct the Iraqi de-Ba'athification Council to assume an increasingly significant role in carrying out the de-Ba'athification process.

“Initially, the Council will advise the Coalition on de-Ba'athification policies and procedures ...”

**81.** The Memorandum also established Accreditation Review Committees, to hear appeals and requests for exemption. Relevant factors for consideration would be:

“... whether the individual:

- i. Is willing to denounce the Ba'ath Party and his past association with it;
- ii. Was a senior Ba'ath Party member or simply a ‘full’ party member;
- iii. Has exceptional educational qualifications;
- iv. Left the Ba'ath Party before April 16, 2003;
- v. Continues to command the support of his colleagues and respect of their subordinates;
- vi. Is judged to be indispensable to achieving important Coalition interests; at least in the immediate term;
- vii. Can demonstrate that he joined the party to hold his job or support his family.”

**82.** In early June, Sir Kevin Tebbit, MOD Permanent Under Secretary, reported that he had observed in a recent visit to Iraq that the implementation of the de-Ba'athification policy was posing difficulties for UK personnel in the South but that “General Wall seems to think that he can work quietly to achieve the flexibility he needs without taking US policy head on.”<sup>77</sup>

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<sup>76</sup> Coalition Provisional Authority Memorandum Number 1: Implementation of De-Ba'athification Order No. 1.

<sup>77</sup> Minute Tebbit to Secretary of State, 3 June 2003, ‘Visit to Basrah and Baghdad’.

**83.** Mr Blair and President Bush discussed de-Ba'athification briefly when they spoke by telephone on 6 June.<sup>78</sup> Mr Blair argued that the principle was right, but needed to be applied flexibly: "we should neither undermine public services by sacking key technocrats nor allow a class of resentful and desperate ex Ba'athists to build up."

**84.** In his book *State of Denial* Mr Bob Woodward described General Jay Garner, the former Head of ORHA, telling Secretary Rumsfeld in June 2003 that the extent of de-Ba'athification had been one of three "terrible mistakes" made in Iraq.<sup>79</sup> In Gen Garner's view, those mistakes were still reversible. Secretary Rumsfeld is reported to have responded: "We're not going to go back." Gen Garner did not make the same point in person to President Bush.

**85.** One of the UK's priorities for the first 30 days of the CPA, produced by the IPU and circulated by Mr Straw on 5 June, was the need for:

"... a pragmatic approach to dismantling the Ba'ath Party and the security apparatus. We need to destroy the system, not the people. Need to give people reasons to work with us, not against us: the prospect of work, of a basic income, the chance to find a place in the new Iraq."<sup>80</sup>

**86.** Discussion at a meeting chaired by Mr Blair on 6 June (see Section 9.2) suggested that this was not being achieved.<sup>81</sup> In both Baghdad and Basra de-Ba'athification was listed as one factor in security problems.

**87.** On 9 June, Sir David Manning reported to Mr Straw's Principal Private Secretary that he had told Dr Rice that:

"... she should look again at the de-Ba'athification programme. The draconian way in which it was being applied risked acting as a recruiting sergeant for the opposition. It had been right to take a tough line on the Ba'ath party; but it would be sensible now to impose it flexibly. We should adopt the approach that those who were not against us, were with us; rather than act as though we thought those who were not obviously with us were against us."<sup>82</sup>

**88.** On 17 June, instructions from the IPU to Mr Sawers reflected a mounting concern about the extent of UK influence on decision-making generally within the CPA.<sup>83</sup> The IPU wrote:

"Ministers remain deeply concerned about the lack of effective joint-decision making with the US. With many decisions now being made in Baghdad, the ideal solution

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<sup>78</sup> Letter Cannon to McDonald, 6 June 2003, 'Iraq: Prime Minister's Conversation with Bush, 6 June'.

<sup>79</sup> Woodward B. *State of Denial*. Simon & Schuster UK Ltd, 2006.

<sup>80</sup> [Minute Straw to Blair, 5 June 2003, 'Iraq: Winning the Peace', attaching 'Iraq Reconstruction: 30 Day priorities, 5 July 2003'](#).

<sup>81</sup> [Letter Cannon to McDonald, 6 June 2003, 'Iraq: Prime Minister's Meeting, 6 June'](#).

<sup>82</sup> Letter Manning to McDonald, 9 June 2003, 'Iraq: Conversation with Condi Rice'.

<sup>83</sup> Telegram 13 FCO London to IraqRep, 17 June 2003, 'Iraq: Priorities'.

would be your agreeing a mechanism with Bremer whereby we become a joint signatory on any CPA decisions ...

“At the very least, we must be properly consulted on decisions. This may involve advocating the creation of a small policy body in which we are represented, to ensure that we have a say when you are not in town.”

**89.** Following a message from Baghdad reporting progress against the IPU's list of priorities, the IPU wrote to Mr Sawers on 20 June:

“While we agree on the need to act decisively to dismantle the Ba'athist state, we need to keep plugging away that it is the system, not the people forced to live in it, that we want to destroy.”<sup>84</sup>

**90.** On 24 June, Baroness Amos, the International Development Secretary, was asked about the policy of de-Ba'athification in the House of Lords.<sup>85</sup> Lord Wright asked whether it was true that the:

“... apparent decision to exclude all former members of the Iraqi Ba'ath party, however junior, from working is not only causing unemployment to a very serious extent in Iraq but is excluding from the reconstruction process a number of highly qualified people who would be very ready to undertake those tasks?”

**91.** Baroness Amos replied:

“... the de-Ba'athification process is under constant discussion. No decisions have yet been taken. There was a concern that the first three levels should perhaps be excluded. The implications of that in terms of the administration in Iraq is being looked at. What we want to see is Iraqis working to reconstruct the country.”

**92.** On 25 June, in a telephone conversation with Mr Colin Powell, US Secretary of State, Mr Straw said that “de-Ba'athification had gone too far” and the UK was concerned.<sup>86</sup> He suggested that if the same approach had been taken in Germany after the Second World War, it would have taken a lot longer to establish a working democracy in West Germany. Secretary Powell agreed.

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<sup>84</sup> Telegram 16 FCO London to IraqRep, 20 June 2003, 'Iraq: Priorities'.

<sup>85</sup> House of Lords, *Official Report*, 24 June 2003, columns 132-133.

<sup>86</sup> Letter Straw to Manning, 26 June 2003, 'Conversation with Colin Powell, 25 June'.

**93.** Baroness Amos raised de-Ba'athification when she met Ambassador Bremer at the end of June (see Section 9.2).<sup>87</sup> A note of the meeting by her Private Secretary recorded that Baroness Amos had told Ambassador Bremer that she had:

“... heard some say that this [the de-Ba'athification process] was biting too deep in Ministries where large numbers of more senior public servants ... might have been in the top 3 percent of the Ba'ath party, and so removed from post.”<sup>88</sup>

**94.** Mr Sawers' telegram reporting his impressions of the visit said that Baroness Amos had told Ambassador Bremer that “the Iraqi women she had met all had horrific stories of family losses, and had mentioned to her the importance of the [de-Ba'athification] policy”.<sup>89</sup>

**95.** Both accounts record Ambassador Bremer's explanation that the policy was:

“... the most popular decision the Coalition had taken. It had not cut deeply into ministries ... it only applied in effect to Directors General. Virtually all the DGs for Administration had been given exemptions as they were necessary to administer public sector pay. There had been others where it was essential to the ministry and there was an important coalition interest. Bremer felt that the main problem was that lower level members of the Baath party feared that the policy embraced them too and that they would be unable to return to public sector jobs. This was not the case ...”<sup>90</sup>

**96.** On 3 July, policy on de-Ba'athification was raised again in the House of Commons.<sup>91</sup> In a debate following an Oral Statement on the humanitarian situation in Iraq, Ms Lynne Jones asked Mr Hilary Benn, Minister for International Development:

“What action is being taken to distinguish between those Ba'athists who are loyal to Saddam Hussein and those who joined the Ba'ath party only from expediency, who do not have a record of corruption and abuse and can, therefore, contribute to the reconstruction of Iraq?”

**97.** Mr Benn replied:

“It is vital that those who played a leading role in the old regime, and all that flowed from that, should be removed from their positions but, at the same time, the de-Ba'athification policy should be sensibly applied because we need to ensure that services can continue to function. The CPA is extremely conscious of the position and needs to reflect on it as it takes the process forward.”

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<sup>87</sup> Telegram IraqRep 56 to FCO London, 26 June 2003, 'Iraq; Baroness Amos Visit'; Minute Bewes to Malik, 29 June 2003, 'Meeting with Paul Bremer'.

<sup>88</sup> Minute Bewes to Malik, 29 June 2003, 'Meeting with Paul Bremer'.

<sup>89</sup> Telegram 56 IraqRep to FCO London, 26 June 2003, 'Iraq; Baroness Amos Visit'.

<sup>90</sup> Telegram 56 IraqRep to FCO London, 26 June 2003, 'Iraq; Baroness Amos Visit'.

<sup>91</sup> House of Commons, *Official Report*, 3 July 2003, column 562.

## The role of the Governing Council

**98.** The Governing Council (GC) (also referred to as the Iraqi Governing Council (IGC)) met for the first time on 13 July. Its creation is described in Section 9.2.

**99.** At the first meeting of the GC, Mr Sawers reported that Dr Chalabi specifically thanked Ambassador Bremer for his decision on de-Ba'athification.<sup>92</sup>

**100.** In his account of the appointment of members of the Council, Mr Sawers reported:

“Everyone on the Council was adamant that Ba’athists were totally unacceptable, and there is great praise here that we managed to exclude people who had compromised unacceptably with the Saddam regime. To have included them would have been like welcoming Nazis back into the German Government after WWII.”<sup>93</sup>

**101.** The CPA and GC had agreed the authorities of the Governing Council, which described its initial powers.<sup>94</sup> They enabled the GC to make policy in all areas, including on de-Ba'athification.

**102.** At the end of July, a junior UK official working in Baghdad reported to the FCO on plans to put an accelerated vetting process in place for the first set of senior appointees to public positions.<sup>95</sup>

**103.** The official wrote that, although substantive work on vetting was to be left until there was a new Iraqi Government in place, the Coalition had done some preparatory work. In that initial phase, the intention was that the criteria:

“... will seek to disqualify from key posts only those guilty of crimes against the Iraqi people. They will be defined with care, taking account of the culture and methodology of Saddam Hussein’s repressive apparatus. Attention will also be paid to post-communist legislation in the three ex-CEE [Central and Eastern Europe] countries who have high-level representatives in the CPA. Their personal views on the effectiveness of these laws will be listened to.”

**104.** The author of the telegram commented that he had hoped:

“... to have these criteria embodied in a new Order ... [to] supplement Order No.1 on de-Ba'athification ... [which] might also have allayed the concerns of those Iraqis who doubt whether the CPA is being sufficiently robust with the remnants of the former regime (there is a fine line between achieving this and disqualifying – and possibly alienating – those with skills and experience the new Iraq needs).”

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<sup>92</sup> Telegram 82 IraqRep to FCO London, 13 July 2003, 'Iraq: Formation of the Governing Council'.

<sup>93</sup> [Telegram 79 IraqRep to FCO London, 13 July 2003, 'Iraq: Governing Council: Analysis and Comment'](#).

<sup>94</sup> Telegram 81 IraqRep to FCO London, 13 July 2003, 'Iraq: Governing Council: Authorities'.

<sup>95</sup> Telegram 1 Security Affairs Iraq to FCO London, 27 July 2003, 'Iraq Security Sitrep No.1'.

**105.** The official wrote that the new Order had not happened because of a wider sense of sensitivity about work on Iraq's intelligence agencies.

**106.** In late July Sir Jeremy Greenstock, who was to succeed Mr Sawers as the Prime Minister's Special Representative on Iraq in September, had a bilateral meeting with the UN Special Representative, Mr Sérgio Vieira de Mello.<sup>96</sup> During that discussion, Mr Vieira de Mello's adviser had cautioned that "we should not over emulate post-war Germany in the extreme to which we took de-Ba'athification".

**107.** According to the authors of the RAND report *Occupying Iraq*, in August 2003 Ambassador Crocker was raising concerns with Ambassador Bremer about the differing ways in which the de-Ba'athification policy was being implemented across Iraq.<sup>97</sup> He also identified that it was affecting more than just hard-core supporters of Saddam Hussein, and that procedures for making exceptions were slow.

**108.** Ambassador Crocker suggested transferring responsibility for the implementation of de-Ba'athification to the GC, on the grounds that "an Iraqi body would be more sensitive to the nuances of the policy". As a result, on 10 August Ambassador Bremer put a proposal entitled "Proposal for Implementing the Iraqi de-Ba'athification Council" to the GC.

**109.** In early September Mr Blair's Assistant Private Secretary recorded that he believed "flexible handling of de-Ba'athification" was needed to avoid excluding potential recruits to the Iraqi police unnecessarily.<sup>98</sup>

**110.** Mr David Richmond, the Prime Minister's Interim Special Representative on Iraq, reported on 4 September that Ambassador Bremer understood the need for flexibility on de-Ba'athification, as did a senior Iraqi interlocutor; although they would be "closely watched by some members of the Governing Council who are strongly opposed to any concessions in this area".<sup>99</sup>

**111.** On 8 September, in a House of Lords debate following an Oral Statement on Iraq and the Middle East, Baroness Symons, FCO Minister of State, commented:

"The fact that so many senior Iraqi officials in all walks of life, whether civilian or military, were members of the Ba'ath party was a function of the old regime ... in clearing out anyone who was a member of the Ba'ath party, a great deal of valuable expertise has been lost. I believe that we have now found a better balance on that issue."<sup>100</sup>

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<sup>96</sup> Telegram 1116 UKMis New York to FCO London, 23 July 2003, 'Iraq: meeting with de Mello'.

<sup>97</sup> Dobbins J, Jones SG, Runkle B & Mohandas S. *Occupying Iraq: A History of the Coalition Provisional Authority*. RAND Corporation, 2009.

<sup>98</sup> [Letter Cannon to Adams, 2 September 2003, 'Iraq: Briefing for Prime Minister'](#).

<sup>99</sup> Telegram 150 IraqRep to FCO London, 4 September 2003, 'Iraq: Briefing for Prime Minister'.

<sup>100</sup> House of Lords, *Official Report*, 8 September 2003, column 49.

**112.** In early September, the GC told Ambassador Bremer that it had formed the High National de-Ba'athification Commission (DBC), under the chairmanship of Dr Chalabi, with Mr Nuri al-Maliki as his deputy.<sup>101</sup>

**113.** On 17 September, Dr Chalabi reported to Ambassador Bremer that the Commission's first two decisions had been to rescind the exemptions that had previously been issued to fourth-tier Ba'athists and to extend the ban on public employment to include a wider range of public activities, including the media.

**114.** On 18 September, Sir Jeremy Greenstock, who had now arrived in Iraq, reported that the GC's de-Ba'athification Council had approved a resolution calling for the immediate firing of all high-level Ba'ath Party members from Government service:

“Bremer urged the IGC to co-ordinate with the Ministry of Education to ensure that the process of teacher de-Ba'athification was complete before the schools re-open on 1 October. The general issue, which remains controversial, of how to manage exemptions is one that the IGC will soon have to engage on.”<sup>102</sup>

**115.** The following day, Sir Jeremy commented:

“I find Bremer's readiness to push the senior Iraqis to the front very interesting. We Brits think it the right tactic, but I expected more resistance from him. He continues to remind the GC eg when they produce 'decisions' on ... de-Ba'athification ... that only he can sign things into law. But he does not seem fussed to be losing the substantive initiative ...”<sup>103</sup>

**116.** By 2 October, Sir Jeremy was reporting that the issue of de-Ba'athification had:

“... not proceeded over the week, despite the mounting concerns of both the CPA and the GC. The harder-line end of the GC demanded that senior remaining Ba'athists should be physically removed from the streets – not just their jobs – and quickly. Bremer reminded them that the CPA were still worried about due process, but had yet to receive clarification from the GC on what their recent decision meant. He asked for decisions on this soon.”<sup>104</sup>

**117.** On 4 November, Ambassador Bremer signed CPA Memorandum No.7.<sup>105</sup>

**118.** Memorandum No.7 transferred responsibility for the implementation of de-Ba'athification to the GC, and enshrined in law the first two decisions of Dr Chalabi's

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<sup>101</sup> Dobbins J, Jones SG, Runkle B & Mohandas S. *Occupying Iraq: A History of the Coalition Provisional Authority*. RAND Corporation, 2009.

<sup>102</sup> Telegram 174 IraqRep to FCO London, 18 September 2003, 'Iraq: Governing Council Roundup'.

<sup>103</sup> [Telegram 175 IraqRep to FCO London, 19 September 2003, 'Iraq: Political Process'](#).

<sup>104</sup> Telegram 195 IraqRep to FCO London, 2 October 2003, 'Iraq: Governing Council update 1 October'.

<sup>105</sup> Coalition Provisional Authority Memorandum Number 7, 4 November 2003.

Commission, rescinding all exemptions granted under CPA Order No.1 and extending the ban on public employment to wider involvement in public life.<sup>106</sup>

**119.** Sir Jeremy Greenstock reported on 6 November that the transfer of responsibility:

“... worried regional commanders in the Sunni Triangle area. They expressed particular concern about the security implications of another round of dismissals in the public sector and the knock-on impact. General Odierno put it bluntly: decisions from Baghdad that alienated local populations led to his soldiers getting killed.”<sup>107</sup>

**120.** Having read Sir Jeremy’s message, the IPU’s view was that the decision to hand full control of de-Ba’athification to the GC “could result in further instability ... we would wish to see a more pragmatic approach”.<sup>108</sup>

**121.** Reporting from Baghdad, Sir Jeremy wrote that he continued to urge a flexible approach to de-Ba’athification.<sup>109</sup> His messages indicate that Ambassador Bremer agreed with this, though “the IGC wanted tougher de-Ba’athification”.

**122.** In late November, the head of the Iraqi National Movement, Mr Hatim Mukhlis, told Sir Jeremy that the de-Ba’athification policy and disbanding the Iraqi Army had been mistakes:

“Rather than de-Ba’athification ... Iraq needed a truth and reconciliation committee. The Ba’ath Party has been a career route for many people. Those who had committed atrocities or crimes had to be held to account. But many members were intellectuals and professionals. What was required was time for wounds to heal, but the opposite was happening, and this was being exacerbated by militia activity. The CPA could exert pressure on the IGC and influence the de-Ba’athification process, which was wrong.”<sup>110</sup>

**123.** According to the RAND report *Occupying Iraq*, on 9 December Ambassador Bremer:

“... informed all CPA civilians and Coalition military personnel, ‘de-Ba’athification is now an Iraqi process ... immediately cease any involvement in de-Ba’athification’.”<sup>111</sup>

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<sup>106</sup> Dobbins J, Jones SG, Runkle B & Mohandas S. *Occupying Iraq: A History of the Coalition Provisional Authority*. RAND Corporation, 2009.

<sup>107</sup> Telegram 252 IraqRep to FCO London, 6 November 2003, ‘Iraq Regional Coordinators and Commanders Meeting’.

<sup>108</sup> Minute King-Smith to Buck, 7 November 2003, ‘Iraq: CPA Strategic Plan’.

<sup>109</sup> Telegram 176 Baghdad to FCO London, 8 November 2003, ‘Iraq: Sir Nigel Sheinwald’s Call on Bremer’.

<sup>110</sup> Email Alkadiri [ORHA] to FCO [junior official], 24 November 2003, ‘Sir Jeremy Greenstock and David Richmond’s meeting with Hatim Mukhlis (CEO-Iraqi National Movement) 21 November, 2003’.

<sup>111</sup> Dobbins J, Jones SG, Runkle B & Mohandas S. *Occupying Iraq: A History of the Coalition Provisional Authority*. RAND Corporation, 2009.

**124.** On 12 December, in a telegram to the FCO on strategy for engaging the Sunni community, Mr David Richmond, now Deputy Special Representative on Iraq, wrote that it was essential that:

“The possibility of de-Ba’athification ... distinguish[ed] between senior/criminal elements and those whose party affiliation was obligatory or nominal. The CPA almost certainly made a mistake in handing this issue to the IGC. Most IGC members are hard-liners more interested in rooting out Ba’athists wherever they can be found and excluding all former Ba’ath Party members from standing for elections to the TNA [Transitional National Assembly] than in reconciliation. Not all Sunnis were Ba’athists but this is bound to cause further alienation. I have spoken to Bremer about this. He is ready to make clear to the IGC that sweeping exclusions are unacceptable and that the economic and security consequences have to be considered”.<sup>112</sup>

**125.** In January 2004, the GC published procedures for the implementation of de-Ba’athification.<sup>113</sup> They confirmed that all individuals working in the public sector who fell into the following categories were to be dismissed immediately if they had not already been removed from office:

- those in the top four tiers of Ba’ath Party membership;<sup>114</sup> and
- those in the top three tiers of public sector management qualifying as member or active member (less senior Ba’athists).

**126.** Those in the top three tiers of Ba’ath Party membership would have no opportunity for appeal. A formal appeal mechanism was put in place for:

- those in the fourth tier of Ba’ath Party membership; and
- those in the top three layers of public sector management who had not been senior Ba’athists.

**127.** Appeals were to be held in two stages; first by local de-Ba’athification Review Committees (established by the relevant ministry, in each governorate area) and then by Dr Chalabi’s Higher National de-Ba’athification Commission. Appeals could be either on factual grounds (for example, that the individual had been mistakenly identified as a senior Ba’ath Party member but had not in fact been one), or on broader grounds regarding the degree to which the individual subscribed to the ideals of the former regime. The criteria against which commitment to the regime would be judged were:

- whether the employee had renounced Ba’ath Party membership;

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<sup>112</sup> Telegram 306 IraqRep to FCO London, 12 December 2003, ‘Iraq: Sunni Strategy’.

<sup>113</sup> Talmon, S. *The Occupation of Iraq: Volume II The Official Documents of the Coalition Provisional Authority and the Iraqi Governing Council*. Hart Publishing, 2013.

<sup>114</sup> Defined as Udw Qutriyya (Regional Command Member), Udw Far (Branch Member), Udw Shu’bah’ (Section Member) and Udw Firqah (Group Member).

- the circumstances under which the employee became a Ba'ath Party member and was promoted to the fourth tier of membership;
- employment history, including links to Ba'athist military, intelligence or security services;
- whether during their time in office the employee was dedicated to furthering the goals of the Ba'ath Party;
- any illegal activities by the employee;
- whether the skills of the employee were rare or replaceable; and
- whether the individual had attained fourth-tier membership solely as a result of having been a prisoner of war in the Iran-Iraq conflict (there was a presumption that this group of individuals should retain their employment).

**128.** Appeals to the local de-Ba'athification Review Committees were to be processed within six weeks. A panel of two judges, nominated by the Iraqi Council of Judges and approved by the GC, would sit on Dr Chalabi's Commission for the purpose of hearing appeals, and one of these would be required to agree and sign the appeal decision. Exemptions to the bar on public employment could be granted either for life or for a one-year probationary period. A probationary exemption could be revoked if the individual was found to have fabricated evidence, if new evidence came to light, or if the individual re-engaged in Ba'athist activities.

**129.** Sir David Manning, who had been appointed British Ambassador to the US, reported a member of the Department of Defense describing the new appeal process as "a step forward".<sup>115</sup>

**130.** Ambassador Bremer told the Inquiry that "it was a mistake for the CPA to devolve the implementation of the de-Ba'athification programme to Iraqi politicians who then attempted to broaden the decree's effect".<sup>116</sup> He suggested that a wiser move would have been to set up a judicial panel to oversee implementation.

## **De-Ba'athification in the Transitional Administrative Law**

**131.** In early February 2004, Sir Jeremy Greenstock reported that Ambassador Bremer had been lobbying the GC President on the need to ensure that the provisions in the Transitional Administrative Law (TAL) on who could qualify to stand for election to the Transitional National Assembly were not drawn too tightly and did not exclude junior Ba'athists or those who had been exempted by Dr Chalabi's Commission from standing for election.<sup>117</sup> The development of the TAL is covered in Section 9.2.

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<sup>115</sup> Telegram 75 Washington to FCO London, 16 January 2004, 'Visit of the House of Commons Defence Committee to the US, 11-15 January'.

<sup>116</sup> Statement Bremer, 18 May 2010, page 5.

<sup>117</sup> Telegram 032 IraqRep to FCO London, 2 February 2004, 'Iraq: Political Process: TAL Update'.

**132.** On 4 February, in response to a question from Mr Llew Smith, Mr O'Brien told the House of Commons that:

"The process of de-Ba'athification is an Iraqi led process. Guidelines were announced by the Iraqi Governing Council on 11 January and provide a clear framework for this process. The Transitional Administrative Law, which will include the criteria for nomination to the Transitional National Assembly, is in the final stages of drafting. It is likely to follow the existing practice that nominees shall not have been a member of the dissolved Ba'ath Party at the rank of Division Member ... [the fourth tier of membership] or higher – unless exempted by the National De Ba'athification Commission – or a member of the past agencies of repression, or one who participated in the oppression of citizens."<sup>118</sup>

**133.** The TAL published on 8 March contained the following restrictions on former members of the Ba'ath Party:

- Senior members (fourth tier and above) were not eligible to stand unless they had been successful in their appeal to the de-Ba'athification Commission.
- "Full" members would be required to renounce the Ba'ath Party and swear they had no further dealings or connections with Ba'athist organisations.<sup>119</sup>

**134.** In late March, Sir Jeremy Greenstock reported to the FCO in London, following a discussion between his staff and Ambassador Bremer, that:

"Bremer remains committed to de-Ba'athification but believes that Chalabi has abused the process by emphasising its retributive elements and ignoring the appeals procedures ... Given the fragile security situation ... Bremer is keen to make the process appear as independent and fair as possible."<sup>120</sup>

**135.** Sir Jeremy reported that Ambassador Bremer was considering taking responsibility for de-Ba'athification away from the GC, and giving it to an independent body. As a first step, he intended to write to Dr Chalabi, asking for changes to de-Ba'athification procedures.

**136.** In April, Mr Dominic Asquith, Deputy Chief Commissioner in the CPA, reported that Ambassador Bremer was seeking to expedite efforts to address Sunni concerns, in particular taking "steps designed to make the [de-Ba'athification] process appear less partisan by taking responsibility for the process away from Ahmed Chalabi ... he also wants blanket exemptions for teachers".<sup>121</sup>

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<sup>118</sup> House of Commons, *Official Report*, 4 February 2004, column 907W.

<sup>119</sup> Iraqi Transitional Administrative Law, 8 March 2004, Articles 31(B)(2) and (3).

<sup>120</sup> Telegram 107 IraqRep to FCO London, 25 March 2004, 'Iraq: de-Ba'athification progress'.

<sup>121</sup> Telegram 181 IraqRep to FCO London, 21 April 2004, 'Iraq: Sunni Politics'.

**137.** There had been “opposition to Bremer’s ideas on de-Ba’athification on a local level” from Shia politicians. In addition, Mr Asquith reported that:

“Washington have also sought to hobble Bremer’s efforts. Principals prohibited him from giving a speech on 16 April outlining the new initiatives as part of a broader national reconciliation speech ... According to Bremer, senior US officials want the message delivered by an Iraqi, and failing that Rumsfeld.”

**138.** Ambassador Bremer made a speech in Baghdad addressed to the Iraqi people on 23 April.<sup>122</sup> He said:

“... many Iraqis have complained to me that de-Ba’athification policy has been applied unevenly and unjustly. I have looked into these complaints and they are legitimate. The de-Ba’athification policy was and is sound. It does not need to be changed. It is the right policy for Iraq. But it has been poorly implemented.”

**139.** As a result, Ambassador Bremer announced that he had agreed with the Iraqi Ministers of Education and Higher Education, and with Dr Chalabi, that “decisions made by local appeals committees of the Ministry of Education will be effective immediately. This will allow thousands of teachers to return to work. Thousands more will begin receiving pensions this week.” Arrangements had also been put in place to speed up appeals that were still in the system.

**140.** General Sir John McColl, who served as the Senior British Military Representative – Iraq from April to October 2004, told the Inquiry that the adaptation of how de-Ba’athification was implemented was “a welcome development”.<sup>123</sup>

**141.** On the eve of Ambassador Bremer’s speech, CNN quoted a State Department spokesman saying “we are working to try to develop an equitable solution to address the widely divergent activities of former Ba’athist party members.”<sup>124</sup> The same article also quoted Secretary Rumsfeld stating “the remnants of Saddam Hussein’s regime know they have no future in a free Iraq”.

**142.** The GC issued a statement on 25 April indicating that its policy on de-Ba’athification had not changed, nor was there any intention to change it.<sup>125</sup> It confirmed that the statements in Ambassador Bremer’s speech were “in agreement with the views of the Governing Council and with the Supreme National Commission on de-Ba’athification”. The statement continued:

“Even as the Governing Council draws attention to the positive work of the Supreme National Commission for De-Ba’athification, it notes the necessity of distinguishing

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<sup>122</sup> Speech L. Paul Bremer III, 23 April 2004, ‘Turning the Page’.

<sup>123</sup> Public hearing, 8 February 2010, pages 20-21.

<sup>124</sup> *CNN World*, 22 April 2004, *From ‘de-Ba’athification’ to ‘re-Ba’athification?’*

<sup>125</sup> Statement Governing Council, 25 April 2004.

between criminal Ba'athists and those Ba'ath Party members who were not criminals ...”

**143.** In late April, Sir David Manning reported from Washington that de-Ba'athification was featuring regularly in US media comment on Iraq:

“Most commentators have portrayed Bremer’s new instructions to the IGC as a long-overdue reversal of a fundamental error, and an attempt to clip Ahmed Chalabi’s wings. Chalabi put a different spin on the decision ... arguing that Bremer had not changed the policy, but had agreed with the de-Ba'athification Commission on the need to speed up the appeals process.”<sup>126</sup>

**144.** On 20 May, during one of their regular video conferences, Mr Blair proposed to President Bush that they should look at the approach to de-Ba'athification.<sup>127</sup> He suggested that there were probably a few individuals who could play a role in “calming the Sunnis”.

**145.** Mr Richmond’s assessment, at the end of May, was that “implementation of Bremer’s initiative to alleviate the consequences of de-Ba'athification has been slow”.<sup>128</sup> However, the appeals process was working, and was having significant results in the education sector.

**146.** In higher education, there had been 1,681 appeals, of which 750 had been successful already and the remainder were expected to be granted shortly.

**147.** In the primary and secondary education sector, 12,000 employees had been removed under the de-Ba'athification rules, around 9,000 of whom were entitled to appeal. So far, 4,600 had appealed successfully and a further 1,300 successful appeals were expected by the end of the month, although there were significant variations between governorates: “Several southern governorates, including Najaf and Nasiriyah, have reported that local political and community groups blocked the appeals process.”

**148.** Set against that progress, there were not always jobs available for those who were reinstated. Within the university sector, a number of posts had been filled and vacancies no longer existed. Elsewhere, reinstated teachers were “facing competition for jobs from some 6,000 colleagues who had been removed by Saddam for political reasons and are now eligible to return to work”.

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<sup>126</sup> Telegram 530 Manning to FCO London, 27 April 2004, ‘Iraq: The Public Debate, 26 April’.

<sup>127</sup> Letter Quarrey to Owen, 20 May 2004, ‘Prime Minister’s VTC with Bush, 20 May: Iraq’.

<sup>128</sup> Telegram 257 IraqRep to FCO London, 26 May 2004, ‘Iraq: de-Ba'athification Update’.

**149.** Mr Richmond observed that Dr Chalabi had “continued to try to interfere” and that the “patchy follow up” meant that “we are in danger of yet again appearing not to be delivering on our promises”. He cautioned that it might be necessary to revisit the original de-Ba’athification orders:

“... as they give a government broad scope to arrest and detain suspected Ba’athists for security purposes. Applied punitively, the order could legitimate the type of mass arrests already proposed by some serving ministers. This would have serious repercussions, especially among the Sunni community.”

**150.** In a debate in the House of Commons on 7 June, Mr Donald Anderson asked Mr Straw whether the Government supported a statement by Dr Allawi that “there should be greater progress towards finding places in the new Iraq for former Ba’athists who are not guilty of human rights abuses”.<sup>129</sup>

**151.** Mr Straw told the House of Commons:

“As for progress on the absorption of former Ba’ath party members who are not implicated in the excesses of the regime, we strongly agree with Prime Minister Allawi, and that view is now shared by the United States Government.”

## The Interim Iraqi Government

**152.** On 28 June 2004, the CPA formally handed over to a sovereign Iraqi Government. In the 11 months that followed, the governance of Iraq was the responsibility of the Interim Iraqi Government (IIG), headed by Prime Minister Ayad Allawi. The process of establishing the IIG, and its membership, is described in Section 9.3.

**153.** On 30 June, the Joint Intelligence Committee (JIC) assessed that:

“Former Ba’athists are attempting to reorganise both military and political structures. The attitude of the IIG to former Ba’athists will be key in gaining support in Sunni Arab areas and discouraging hardliners from attacking the political process or coalescing with Islamist terrorists. But Allawi’s efforts to draw Ba’athists into the political process will need to be carefully judged if he is to avoid alienating the Shia.”<sup>130</sup>

**154.** On 1 July, Saddam Hussein and 11 other senior Ba’athists appeared in front of an Iraqi court convened at the Camp Victory court martial facility in Baghdad.<sup>131</sup>

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<sup>129</sup> House of Commons, *Official Report*, 7 June 2004, column 26.

<sup>130</sup> [JIC Assessment, 30 June 2004, ‘Iraq Security’](#).

<sup>131</sup> Telegram 006 Baghdad to FCO London, 1 July 2004, ‘Iraq: High Value Detainees: First Court Appearance’.

**155.** The presiding judge advised all 12 of the crimes they were accused of having committed. Mr Chris Segar, Head of the British Office Baghdad, reported that:

“... under Iraqi law this was a first step in which the accused is informed that there are allegations against him which deserve investigation, which allow for continued detention and that he has a right to legal counsel.”

**156.** On 2 July, the Cabinet Office Assessments Staff told Sir Nigel Sheinwald, Mr Blair's Foreign Policy Adviser, that there were indications that former Ba'athist groups were planning targeted attacks on Iraqi Government ministers.<sup>132</sup>

**157.** On 5 July, the Assessments Staff provided Sir Nigel with statistics on the number of attacks against the Multi-National Force (MNF) and Iraqi targets.<sup>133</sup> It was too early to judge the lasting impact of creating the IIG on the security situation.

**158.** On 12 July, Mr Hoshiyar Zebari, the new Iraqi Foreign Minister, told a meeting of EU Foreign Ministers that:

“The original policy of de-Ba'athification has been right but too generalised. He had ex-Ba'athists in his ministry though not those who had been involved in intelligence or atrocities. Ex-Ba'athist insurgents were now in isolated groups. They did not represent a coherent force.”<sup>134</sup>

**159.** In one of its regular assessments of security in Iraq, the JIC judged on 21 July that Prime Minister Allawi had achieved only limited success in his attempts to bring former Ba'athists “on board”.<sup>135</sup> In the absence of a single Ba'athist organisation with which to negotiate, that would remain the case. Reports of plans to carry out assassinations, including of IIG members, continued.

## The Amnesty Order

**160.** In early August, Prime Minister Allawi signed an order that offered amnesty to those who had played more minor roles in Iraq's insurgency between 1 May 2003 and 7 August 2004.<sup>136</sup> Mr Asquith reported:

“Amnesty is only provided to Iraqis and only for a limited number of terrorism-associated crimes: possession of certain firearms and explosives, the harbouring of terrorists or the failure to inform the authorities of known terrorist groups.”

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<sup>132</sup> Minute Dowse to Sheinwald, 2 July 2004, ‘Iraq Update – 2 July’.

<sup>133</sup> Minute Dowse to Sheinwald, 5 July 2004, ‘Iraq Attack Statistics’.

<sup>134</sup> Telegram COREU CFSP/Sec/1509/04, 12 July 2004, ‘COMIN-COPOL – Foreign Ministers’ Lunch with Iraqi Foreign Minister Mr Zibari’.

<sup>135</sup> [JIC Assessment, 21 July 2004, ‘Iraq Security’](#).

<sup>136</sup> Telegram 112 Baghdad to FCO London, 9 August 2004, ‘Iraq: Amnesty Law and Death Penalty Announced’.

**161.** A second order was also announced which re-introduced the death penalty for around 30 crimes. Most of those crimes related to actions which resulted in the death of another person, but the list also included:

“... where there has been an armed uprising against the armed forces; where an armed uprising aims to invade another country or seize public property; and the distribution of narcotics with the aim of aiding those trying to overthrow the Government by force. It also introduces a law that imposed the death penalty on kidnappers who seek to broadcast pictures of their victims.”

**162.** Mr Asquith judged that the order “reflected Allawi’s belief that the insurgents needed to have brought home to them the consequences of their actions”.

**163.** *USA Today* reported that in relation to the amnesty order:

“Allawi said:

“This order has been established to allow our citizens to rejoin civil society and participate in the reconstruction of their country and the improvement of their lives, instead of wasting their lives pointlessly towards a lost cause ...

“Iraqi officials had earlier said the amnesty might extend to those who had killed US and other coalition troops.”<sup>137</sup>

**164.** FCO officials had seen a draft of the amnesty order in July at which point it covered “both Iraqis and foreigners”.<sup>138</sup>

**165.** On 9 August, Mr Asquith reported to the FCO that Prime Minister Allawi had been “reaching out to Ba’athists inside and outside the country”.<sup>139</sup> Some had been prepared to talk but “there was too little time before [elections in] January to put in place a political party that could represent them and be accepted by the rest of Iraq”.

**166.** During a discussion with Sir Nigel Sheinwald on 8 September, Prime Minister Allawi reported “variable success” on drawing people away from the insurgency.<sup>140</sup> He explained: “The Sunni should not feel they had lost power. Some would help to resist radical Islamist forces if they were brought back into the fold.”

**167.** When Mr Blair visited Iraq 11 days later, Prime Minister Allawi told him that he had spoken to “a number of ex-Ba’athists in the region – Yemen, UAE and Jordan. They were ready to talk.”<sup>141</sup> He hoped that a conference would be convened in Jordan to make it clear that they were ready to “move on and re-engage”.

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<sup>137</sup> *USA Today*, 7 August 2004, *Iraq passes amnesty law for minor players in insurgency*.

<sup>138</sup> Minute Cabinet Office [junior official] to Sheinwald, 13 July 2004, ‘Iraq Strategy Group’.

<sup>139</sup> Telegram 107 Baghdad to FCO London, 9 August 2004, ‘Iraq: Security: Prime Minister’s Views’.

<sup>140</sup> Letter Quarrey to Owen, 9 September 2004, ‘Nigel Sheinwald’s meeting with Allawi, 8 September’.

<sup>141</sup> Letter Sheinwald to Adams, 19 September 2004, ‘Iraq: Prime Minister’s Meeting with Prime Minister Allawi, Sunday 19 September’.

**168.** On 7 October, the JIC assessed that:

“A number of former senior Ba’athists formed the New Regional Command (NRC) in the early summer, based in Damascus with members in Iraq, Lebanon, Jordan and the Gulf states. The NRC maintains links to a number of insurgent groups and may provide some strategic military and political direction and funding. But the scope and scale of its influence is not clear and, whatever its aspirations, the NRC has not yet developed a coherent or widespread Sunni following. Many, if not most, Sunni Arab insurgents are happy to oppose the coalition but are not part of any efforts to reinvigorate the Ba’ath party.”<sup>142</sup>

**169.** On 11 October, Mr Straw’s Private Secretary told Mr Blair’s Private Secretary that:

“We plan to work on Iraq’s neighbours to support Allawi’s efforts to detach former Ba’athists from the insurgency and persuade them to run for elections. Allawi told us in London that he was hoping to arrange a conference of former Ba’athists in Amman in October.”<sup>143</sup>

**170.** At the end of October, the JIC assessed that:

“Intelligence indicates a number of former Ba’athist groups are operating, but not necessarily in a co-ordinated fashion.”<sup>144</sup>

**171.** On 11 November, the JIC reported that although there was no overall co-ordination of the insurgency:

“Some intelligence suggests that the Syria-based Ba’athist new Regional Command is becoming more influential.”<sup>145</sup>

## **A draft new de-Ba’athification Order**

**172.** On 4 December, the British Embassy Baghdad sent the FCO an account of a meeting between Mr Gavin Hood, the Embassy’s Legal Adviser, and Dr Fadel Jamal Kadhum, Legal Adviser to Prime Minister Allawi.<sup>146</sup> They had discussed a new de-Ba’athification Order.

**173.** The report of the meeting said that the effect of CPA Orders No.1, 2 and 5 had been to remove an estimated 35,000 people from their posts, of whom 15,000 had so far been allowed to return. A further 700 had been offered retirement and 8,000 applications for “rehabilitation” remained outstanding. Dr Chalabi’s Commission had removed a further 3,000 individuals from office.

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<sup>142</sup> [JIC Assessment, 7 October 2004, ‘Iraq Security: External Support for Insurgents’.](#)

<sup>143</sup> [Letter Owen to Quarrey, 11 October 2004, ‘Iraq: Contingency Planning’.](#)

<sup>144</sup> [JIC Assessment, 27 October 2004, ‘Iraq: A Long Term Insurgency Problem’.](#)

<sup>145</sup> [JIC Assessment, 11 November 2004, ‘Iraq Security – Current Concerns’.](#)

<sup>146</sup> eGram 452 Baghdad to FCO London, 4 December 2004, ‘Iraq: ‘Re-Ba’athification’.

**174.** Prime Minister Allawi's Legal Adviser told Mr Hood that the new Order had been drafted on the instructions of Prime Minister Allawi, who judged that returning to public service might prevent thousands of disaffected former Ba'athists supporting the insurgency. The philosophy behind the Order was "punish an individual for their crimes and not their ideology". It had been approved by the Council of Ministers but not yet by the President and was unlikely to be signed before the election.

**175.** The draft Order, which Mr Hood was not shown, was said to:

- disband the de-Ba'athification Commission;
- allow all those removed by the CPA to return to their posts, unless that post was judged to be sensitive or senior (Director General and above) or they were found to have committed a "crime against the Iraqi people" (undefined); and
- establish a new judicial Commission to investigate allegations of such crimes.

**176.** The report ended:

"Allawi right to see some modification of the de-Ba'athification process as a necessary part of promoting national unity, but amending the rules can only be credibly done by some form of elected government and preferably as part of a wider initiative on transitional justice."

**177.** In the form described, the Embassy judged that the Order would "lead to an outcry from across Iraqi society" with vigilantism expected to follow.

**178.** After visiting Iraq in December 2004, Mr Dominic Asquith, FCO Iraq Director, commented that in order to achieve political reconstruction and Iraqiisation by early 2006:

"One answer is gradually to incorporate – if necessary into the less sensitive areas to begin with – experienced Ba'athists (ex or otherwise) prepared to opt into government and security structures, separating 'those who served' from 'those who served the previous regime', while ensuring the appointments survive the transition to the new government. Established vetting procedures will be key, but the work done by British experts in CPA days has strangely disappeared from view."<sup>147</sup>

## Former Ba'athists and the Sunni insurgency

**179.** In January 2005, the Defence Intelligence Staff judged:

"Within the Arab Sunni community there are a number of former senior military officers and Ba'ath Party officials who remain intrinsically opposed to anything other than the full restoration of the Ba'ath Party and, in many cases, their own positions of power. Prominent among this group are the New Regional Command (NRC), but there are probably further independent actors and organisations not yet identified ...

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<sup>147</sup> Minute Asquith to Owen, 20 December 2004, 'Visit to Iraq, 13-17 December'.

It is important to note that the majority of former regime elements and Ba'athists may not be 'restorationists'.<sup>148</sup>

**180.** On 19 January, the JIC assessed that Sunni turnout in elections might be as low as one-third of the eligible voters, which would give a disproportionately low representation to Sunni Arabs in the elected institutions.<sup>149</sup> The policy implication of this was, in the JIC's view, that "Sunni outreach will need to intensify after the elections to ensure that Sunnis do not opt out of the political and constitutional drafting process altogether".

**181.** In early February, the JIC judged that the "hard core and most effective" Sunni Arab insurgents were former Ba'athists, but the bulk of those involved were simply disaffected Iraqis "most of whom probably have no long-term political objectives".<sup>150</sup>

## The Transitional National Assembly's de-Ba'athification policy

**182.** Elections for the Transitional National Assembly (TNA) and for Provincial Assemblies took place across Iraq on 30 January 2005.<sup>151</sup> Results were announced on 13 February.<sup>152</sup>

**183.** On 7 April, the Assembly elected its first Speaker and swore in the future Presidential Council and Prime Minister, Dr Ibrahim al-Ja'afari, of the Dawa Party.<sup>153</sup> Prime Minister Designate Ja'afari presented the majority of his Cabinet to the TNA for ratification on 28 April and took office on 3 May.<sup>154</sup> The elections and their outcome are described in more detail in Section 9.3.

**184.** On 23 February, Mr Tim Torlot, Deputy Head of Mission at the British Embassy Baghdad, called on Dr Ja'afari and explained that the UK saw merit in a "National Reconciliation Conference" which might demonstrate the Transitional Government's commitment to a fully inclusive political process.<sup>155</sup> Dr Ja'afari endorsed the idea, but preferred "National Dialogue Conference" because:

"... too many people now associated the word 'reconciliation' with co-operation with former Ba'athists or criminals. Such a meeting could involve anyone who was prepared to renounce violence."

**185.** A UK strategy for Iraq in 2005 co-ordinated by the Cabinet Office in February 2005 suggested that "resolving the **de-Ba'athification** dilemma to allow Security Sector

<sup>148</sup> Report DIS, 7 January 2005, 'Nature of the Insurgency in Iraq'.

<sup>149</sup> JIC Assessment, 19 January 2005, 'Iraq: Elections Update'.

<sup>150</sup> [JIC Assessment, 3 February 2005, 'Iraq: Insurgency and Counter-Insurgency'](#).

<sup>151</sup> Public hearing Chaplin, 7 December 2009, page 12.

<sup>152</sup> Telegram 99 Baghdad to FCO London, 13 February 2005, 'Iraq: Provisional Election Results'.

<sup>153</sup> *BBC News*, 7 April 2005, *Talabani: Iraq's pragmatic new leader*.

<sup>154</sup> eGram 3590/05 Baghdad to FCO London, 28 April 2005, 'Iraq: New Cabinet Ratified by the TNA'.

<sup>155</sup> Telegram 114 Baghdad to FCO London, 23 February 2005, 'Iraq: Call on Ja'afari, UIC Nominee for Prime Minister, 23 February'.

Reform to work” was a key element of supporting the Iraqi Security Forces to deliver security.<sup>156</sup> The strategy also recommended that the UK should “encourage the ITG [Iraqi Transitional Government] to relax the rules on de-Ba’athification as a way of drawing disaffected former Army officers and officials back into the system”.

**186.** In early March, senior US and UK officials discussed the strategy for Iraq in 2005.<sup>157</sup> They identified that, in order to modify the current policy, “one option might be to shift de-Ba’athification from a political to a quasi-judicial process”. Mr Asquith said that de-Ba’athification was likely to be on the agenda of the new government at an early stage and so “we should start engaging the likely key players ... at this stage before their views became settled”.

**187.** A few days later, Mr Charles Heatly (a No.10 Press Officer who had returned from a secondment in Iraq, where he had been working in Prime Minister Allawi’s office) advised Mr Blair that one of the key points for UK engagement with the new government should be: “Minimising the fall-out from de-Ba’athification etc. On our side, we should continue to monitor carefully, and advise caution.”<sup>158</sup>

**188.** In late March, Mr Straw also identified the “enormous damage that could be done to efforts at outreach by a significant renewal of the de-Ba’athification drive” as one of the messages being given to the United Iraq Coalition, which had gained the highest number of seats in January’s election.<sup>159</sup>

## The new Government takes office

**189.** On 6 May, Mr Chaplin reported to the FCO on prospects for Prime Minister Ja’afari’s government.<sup>160</sup> He identified “how to square the zeal for renewed de-Ba’athification in the army, police and ministries with maintaining effective forces to fight the insurgency” as an early challenge. Mr Chaplin reported assurances from Prime Minister Ja’afari that he would only pursue individuals “who have crimes to answer for”.

**190.** On 5 July, Mr Straw wrote to Mr Blair about the Iraqi Constitution.<sup>161</sup> He reported that the timetable remained “tight, but doable”. The UK would need to maintain pressure on the drafters and senior Iraqi politicians to stick to the principle of consensus and work towards agreement of a document which reflected the values and aspirations of all Iraqis.

**191.** Sunni involvement in the Committee established to draft a new Constitution for Iraq is addressed in Section 9.3.

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<sup>156</sup> [Paper Cabinet Office, 7 February 2005, ‘Iraq: Strategy for 2005’.](#)

<sup>157</sup> Minute Fergusson to Sheinwald, 2 March 2005, ‘Iraq: VTC Meeting with NSC/Department of State/Pentagon 28 February 2005’.

<sup>158</sup> Minute Heatly to Prime Minister, 10 March 2005, ‘Iraq: Risks and Media Impact’.

<sup>159</sup> [Minute Straw to Prime Minister, 24 March 2005, ‘Iraq: Ad Hoc Ministerial Meetings’.](#)

<sup>160</sup> eGram 4045/05 Baghdad to FCO London, 6 May 2005, ‘Iraq: Prospects for the Ja’afari Government’.

<sup>161</sup> Letter Straw to Prime Minister, 5 July 2005, ‘Iraq: Constitution’ attaching Paper RAD, June 2005, ‘Constitutional Issues’.

**192.** Mr Straw enclosed with his letter a paper produced by the FCO Research Analysts which set out the substantive issues that the Iraqi Constitution needed to address, including:

- language on how the Constitution could be amended; this was particularly important given concern among Sunni Arabs that they had not had sufficient involvement in the development of the Constitution; and
- de-Ba'athification – in the interests of national unity, the UK wanted to ensure these provisions did not become “more draconian” than the existing provisions in the Transitional Administrative Law.

**193.** The paper stated:

“Substantive moves towards a ‘truth and reconciliation process’ or further amendments to the policy of de-Ba'athification should be dealt with outside the Constitution.”

**194.** Under the heading “The detail”, FCO Research Analysts explained that the Transitional Administrative Law said that no candidate for the Transitional National Assembly should have been a Division member of the Ba'ath Party, unless they had been given specific exemption to stand. They must not have participated in persecution. Members of the Presidency Council must also have left the Ba'ath Party at least 10 years before the fall of Saddam Hussein.

**195.** Adherence to these criteria by the main Shia and Kurdish political blocs had meant rejection of several Sunni Arabs for positions, which has “caused some resentment”.

**196.** On 12 July, Mr William Patey, successor to Mr Chaplin as British Ambassador to Iraq, reported that Grand Ayatollah al-Sistani<sup>162</sup> had told the UN Special Representative to Iraq that “it would be important to maximise Sunni inclusion. The only people who should be excluded were criminals and former members of the regime.”<sup>163</sup>

**197.** In mid-July the JIC assessed the state of the insurgency in Iraq, at the request of the Cabinet Office.<sup>164</sup> It judged that the bulk of Iraqi insurgents were Sunni Arabs but did not see evidence of a unified or national command structure:

“The Iraqi Sunni Arab insurgency remains characterised by disparate groups, some based on family, tribal and religious links. Many have former regime connections, and military expertise is widely exploited. But we judge the influence of recalcitrant Ba'athists, including the Ba'ath Party's military wing, Jaysh Muhammad, to be marginal.”

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<sup>162</sup> Iraq's most senior Shia theologian.

<sup>163</sup> eGram 8781/05 Baghdad to FCO London, 12 July 2005, ‘Iraq: UNSRSG meets Sistani and Muqtada al Sadr’.

<sup>164</sup> [JIC Assessment, 14 July 2005, ‘Iraq: State of the Insurgency’.](#)

**198.** In a separate Assessment covering the effectiveness of efforts to engage with Iraq's Sunni Arab communities, the JIC judged that "The Iraqi Ba'ath Party, now based in Damascus, has no obvious support base within Iraq."<sup>165</sup>

**199.** The JIC also assessed that "perceptions that ministries are being purged of Sunnis under the banner of de-Ba'athification" were "exacerbating tensions".

**200.** The Iraq Sub-Committee of the Defence and Overseas Policy Committee (DOP(I)) considered a paper on 18 July entitled "Iraq: Splitting the Jihadists from the National Opposition".<sup>166</sup> It had been written by the FCO and was presented by Mr Patey.

**201.** The paper described jihadists as "principally foreigners, but an increasing number of Iraqis". Its recommendations included:

- continuing to demonstrate inclusivity in the drafting of the Constitution, committing to the timetable set out in the TAL, and being prepared to intervene if necessary;
- ensuring that the system used in the December elections was province-based in order to maximise Sunni Arab participation; and
- pressing the ITG to relax the de-Ba'athification rules to allow disaffected former Army officers and officials back into the ISF and government institutions, and ensuring that de-Ba'athification decisions were based in a legal framework rather than a political one.

**202.** These were to be accompanied by a strong media strategy, aimed at undermining the jihadists' "un-Islamic" message, and active engagement with neighbouring States.

**203.** DOP(I) agreed the broad approach proposed by the FCO.<sup>167</sup>

## De-Ba'athification in the Iraqi Constitution

**204.** In an update on the Iraqi Constitution sent to the FCO on 25 July, Mr Patey advised that the first full draft contained "two unnecessary and unhelpful mentions of Ba'athism: 'Saddamist Ba'athist' thinking is prohibited and nominees for the National Assembly must not have been covered by de-Ba'athification law."<sup>168</sup>

**205.** Mr Patey considered that it would be "better and more conducive to national reconciliation if both references were to be dropped".

**206.** A note by the IPU on 24 August said that the UK was pushing for an article on de-Ba'athification to be deleted "in order to increase the chances for Sunni buy-in".<sup>169</sup> Shia representatives were keen to retain the section "believing it would make it harder

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<sup>165</sup> JIC Assessment, 14 July 2005, 'Iraq: Outreach to Sunni Arabs'.

<sup>166</sup> Paper FCO, 18 July 2005, 'Iraq: Splitting the Jihadists from the National Opposition'.

<sup>167</sup> Minutes, 21 July 2005, DOP(I) meeting.

<sup>168</sup> eGram 9738/05 Baghdad to FCO London, 25 July 2005, 'Iraq: Constitution Update, 25 July 2005'.

<sup>169</sup> Paper IPU, 24 August 2005, 'Iraq: Constitution: Analysis'.

for the de-Ba'athification Commission to be dissolved". The IPU observed that this belief was mistaken, since dissolution of the Commission was a decision for the National Assembly.

**207.** Mr Patey told the FCO that he had lobbied President Jalal Talabani and Mr Abdul Aziz al-Hakim, leader of the UIA/SCIRI, for the removal of reference to the de-Ba'athification Commission.<sup>170</sup>

**208.** Mr Patey also suggested to Prime Minister Ja'afari and Mr Masoud Barzani, leader of the Kurdistan Democratic Party, that "If mention of the de-Ba'athification Commission could not be removed perhaps there could be some reference to indicate that the process would be a judicial one".<sup>171</sup>

**209.** Secretary Rice told Mr Straw on 24 August that reference to the de-Ba'athification Commission appeared to have been "dropped".<sup>172</sup>

**210.** On 28 August, Mr Patey reported to the FCO on the substance of the new Constitution which had been presented to the National Assembly.<sup>173</sup> He commented:

"The spectre of de-Ba'athification continues to haunt the text although such references were heavily diluted in efforts to meet Sunni concerns ..."

**211.** Mr Patey observed that the preamble to the Constitution made an important distinction between "the dictator's regime and the mainstream Ba'ath Party" and recognised that Sunnis had suffered with other Iraqis under Saddam. But extremist groups, which included "Saddamists" were prohibited.

**212.** Sir William Patey told the Inquiry:

"We spent a lot of time ... trying to convince the transitional government and the Shia politicians that de-Ba'athification had gone too far, that the de-Ba'athification commission was being abused. It was being used as a tool to further political ends rather than save Iraq from a return of the Ba'ath. Now, that is not an argument that was accepted very readily by Shia, who had a visceral fear of the Ba'athists and saw Ba'athists in most places. So we had limited success. We were arguing for the de-Ba'athification provisions to be excluded from the Constitution. We managed to get them watered down, we managed to get them reviewed."<sup>174</sup>

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<sup>170</sup> eGram 11744/05 Baghdad to FCO London, 24 August 2005, 'Iraq: Constitution: Getting Sunni Arab Buy-In'.

<sup>171</sup> eGram 11834/05 Baghdad to FCO London, 25 August 2005, 'Iraq: Constitution: Some Prospect of Changes to Draft to Accommodate Key Sunni Arab Concerns'.

<sup>172</sup> Minute Siddiq to Sawers, 24 August 2005, 'The Foreign Secretary's conversation with the US Secretary of State, 24 August'.

<sup>173</sup> eGram 12004/05 Baghdad to FCO London, 28 August 2005, 'Iraq: Constitution: Worth Waiting For'.

<sup>174</sup> Public hearing, 5 January 2010, pages 6-7.

**213.** Mr Straw and Secretary Rice discussed the Constitution on 29 August.<sup>175</sup> Dr Rice highlighted that the process against Ba’athists set out in the Constitution was “on an individual basis rather than simply on proof of party membership” and described that as “a very big concession”. To deal with fears about individuals being victimised, they discussed a potential international review body which would consider the decision-making process, but not re-hear cases.

**214.** Mr Straw recorded that he had asked for some work to be done on this idea, and asked Mr Patey to discuss the concept with Ambassador Khalilzad.

**215.** At the end of August, the US Red Team published its “Integrated Counterinsurgency Strategy for Iraq”.<sup>176</sup> It stated that one of the conditions for a successful counter-insurgency campaign was to:

“Work with Iraqi leaders in the next government to continue progress in increasing political accommodation and effective cooperation to solve specific policy challenges. Place priority on finalizing and implementing agreements to redress key divisive issues (e.g. de-Ba’athification, professionalizing ISF institution etc.)”

**216.** UK responses to the Red Team’s report are described in Section 9.3.

**217.** On 12 October, the IPU reported that broad agreement had been reached on changes to the draft Constitution, including provisions on de-Ba’athification.<sup>177</sup> Those amendments (to Article 131) were:

- Membership of the Ba’ath Party alone would not be considered sufficient basis for prosecution. Members would enjoy equality and protection under the law unless they were covered by “the provisions of de-Ba’athification and the orders issued under it”.
- The Council of Representatives would form a committee to monitor and review acts of the de-Ba’athification Commission.

**218.** Alongside other measures, the IPU commented that these changes might “help significantly increase the overall vote in favour of the Constitution”.

**219.** An IPU paper on Sunni outreach dated 27 October referred to the same amendments as “a step forward” and proposed that the UK should “give our assurance that we will push hard for implementation of Article 131 in the next Parliament in a way which allows non-criminal ex-Ba’athists into government service”.<sup>178</sup>

**220.** In an update on Sunni outreach two weeks later, the IPU described the shared UK and US goal on de-Ba’athification as “to persuade the Iraqis to repeal

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<sup>175</sup> Letter Straw to Sheinwald, 30 August 2005, ‘Conversation with US Secretary of State, 29 August’.

<sup>176</sup> Report Red Team, 31 August 2005, ‘An Integrated Counterinsurgency Strategy for Iraq’.

<sup>177</sup> Paper IPU, 12 October 2005, ‘Amendments to the Draft Iraqi Constitution’ attaching ‘Further Amendments to the Draft Iraqi Constitution’.

<sup>178</sup> Paper IPU, 27 October 2005, ‘Sunni Arab Outreach’.

the de-Ba'athification Law and abolish its enforcement mechanism, the Supreme de-Ba'athification C [sic] Commission".<sup>179</sup> The British and US Embassies in Baghdad were reported to be "working up ... a gameplan" and Mr Straw would take Prime Minister Ja'afari through the arguments.

**221.** On 21 November, Mr Asquith commented on a research paper on Iraq by an external organisation.<sup>180</sup> He wrote:

"Tackling de-Ba'athification is very important, but I'm not sure that just changing the level of the bar is sufficient: those inside Iraq are more interested in making a distinction between those who can be prosecuted for criminal acts, not merely membership in or association with the Ba'ath party. Key in all this will be a credible and independent body to adjudicate."

## Election preparations

**222.** On 27 November, Mr Doug Wilson, an official in the British Embassy Baghdad sent a report to Mr Patey of a briefing by the Independent Electoral Commission of Iraq's (IECI) International Commissioner, Mr Craig Jenness.<sup>181</sup> Mr Wilson wrote that the IECI had sent the names of around 7,000 electoral candidates to the de-Ba'athification Commission for checking. Having considered 70 percent of those names, the Commission had recommended that 67 individuals be disqualified, including some senior politicians. Mr Wilson proposed that the US and UK should lobby Dr Chalabi.

**223.** A message from the British Embassy Baghdad to the FCO on 29 November stated that the UK and US had encouraged the IECI "to adopt a process which allows them to reject the rulings of the de-Ba'athification Commission and retain most of the names on the electoral lists".<sup>182</sup> Mr Patey had lobbied senior members of the TNA to allow those recommended for disqualification to run and commented that "with the US, we will co-ordinate an approach to seek the Commission to reverse its decisions".

**224.** Mr Patey called on Dr Chalabi on 30 November to convey concerns about the involvement of the de-Ba'athification Commission in vetting electoral candidates, which he explained was likely to be seen as political interference.<sup>183</sup> He suggested that there should instead be "due judicial process" for those identified, whose names ought to stay on the electoral lists until their appeal had been dealt with.

**225.** In response, Dr Chalabi reminded Mr Patey that the Commission had no authority to ban any candidate. Its remit was to identify those covered by the

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<sup>179</sup> Paper IPU, 10 November 2005, 'Sunni Arab Outreach: Update as of 10 November 2005'.

<sup>180</sup> Email Asquith to Hilder, 21 November 2005, 'Iraq: Org Draft'.

<sup>181</sup> Email Wilson to Patey, 27 November 2005, 'Elections: de-Ba'athification'.

<sup>182</sup> eGram 19506/05 Baghdad to FCO London, 29 November 2005, 'Iraq: Elections: de-Ba'athification Affects Candidates'.

<sup>183</sup> eGram 19906/05 Baghdad to FCO London, 5 December 2005, 'Iraq: Elections: de-Ba'athification of Candidates: Update'.

de-Ba'athification Law; it was for the IECI to determine eligibility, accepting or rejecting the de-Ba'athification Commission's recommendation as they saw fit.

**226.** Mr Patey subsequently briefed the UN Special Representative and the IECI International Commissioner on his meeting with Dr Chalabi. They explained that the IECI was in some difficulty since it had to be seen to be acting in accordance with Iraqi law: CPA Order No.1 and the Electoral Law both said that anyone covered by de-Ba'athification could not stand for election. The IECI therefore had little choice but to accept the de-Ba'athification Commission's recommendations.

**227.** By 1 December, the number of individuals recommended for disqualification by the de-Ba'athification Commission had risen to 134.<sup>184</sup>

**228.** A message from the IPU setting out Iraq policy priorities for the week ahead recorded that Mr Straw had raised de-Ba'athification with Secretary Rice.<sup>185</sup> They had agreed that the de-Ba'athification Commission was "acting in a way which ran entirely counter to our efforts on outreach" and that they would lobby Dr Chalabi in his capacity as Chairman of the Commission.

**229.** Sir Nigel Sheinwald raised UK concerns that de-Ba'athification might disrupt the elections with Mr Stephen Hadley, the US National Security Advisor, on 2 December.<sup>186</sup> Sir Nigel said: "It would be much better to leave this until after the election and decide then whether anyone should be prevented from taking up their seat because their background infringed the Constitution." He suggested that it would be helpful for the US to talk to Dr Chalabi.

**230.** On 5 December, Mr Blair's Private Secretary told Mr Blair:

"We are working with the US to reverse a decision by the de-Ba'athification Commission to bar a number of former Ba'athists (both Shia and Sunni) from standing in the election ... It looks like a brazenly partisan move, and deeply unhelpful."<sup>187</sup>

**231.** In a conversation with President Bush the same day, Mr Blair suggested that the US and UK needed to keep a close eye on the actions of the outgoing Government, including the de-Ba'athification Commission.<sup>188</sup>

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<sup>184</sup> eGram 19784/05 UKMIS New York to FCO London, 1 December 2005, 'Iraq: UK-US-UN Trilateral: 1 December'.

<sup>185</sup> eGram 19874/05 FCO London to Baghdad, 2 December 2005, 'Iraq: Policy Priorities for the Week Beginning Saturday 3 December'.

<sup>186</sup> Letter Sheinwald to Hayes, 2 December 2005, 'Conversation with US National Security Adviser, 2 December'.

<sup>187</sup> Minute Phillipson to Prime Minister, 5 December 2005, 'VTC with President Bush, 1425 5 December'.

<sup>188</sup> Letter Quarrey to Siddiq, 5 December 2005, 'Prime Minister's VTC with President Bush: Middle East'.

**232.** Also on the same day, the IPU instructed the UK Permanent Mission to the UN in New York to press the UN to support the UK position on de-Ba'athification of electoral candidates.<sup>189</sup> The IPU described the best solution as:

“... for the IECI to (i) note the DBC's submission of a list, (ii) make clear that the submission had come at a very late stage and that it would not be possible to go through the required appeals process before the election, (iii) commit therefore to process the list after the elections, after going through the necessary appeals process.”

**233.** Sir Emyr Jones Parry, UK Permanent Representative to the UN in New York, replied the same day to say that he had spoken to Mr Kofi Annan, the UN Secretary-General, who was “sympathetic” to processing the de-Ba'athification list after the election and intended to send instructions to Mr Ashraf Jehangir Qazi, his Special Representative.<sup>190</sup>

**234.** Mr Annan's Chef de Cabinet confirmed later in the day that Mr Annan had spoken to Mr Qazi “who had also agreed on the need to find a way forward that allowed participation”.

**235.** On 6 December, officials from the British Embassy Baghdad met Mr Jenness to discuss action on de-Ba'athification.<sup>191</sup> Of the de-Ba'athification Commission's initial list of 218 candidates, there remained 120 individuals at risk of being removed from the candidate lists. A further 83 individuals would be required by the Commission to sign a disavowal of Ba'athism. The remaining 15 were not mentioned.

**236.** Mr Patey reported that Mr Jenness remained concerned for the IECI's legal position, but wanted to find solutions that allowed participation in the elections. They agreed that the IECI would publish non-final candidate lists (including the remaining 120 names) immediately, to test the reaction from the de-Ba'athification Commission's supporters, and that it would write to the three-man Presidency Council asking for guidance and explaining that the IECI would not remove candidates from the lists without its agreement. The candidate lists were published that evening.

**237.** Mr Patey wrote: “This issue has underscored the need to look ahead to the arduous but urgent task of securing reform of the de-Ba'athification Law.”

**238.** The IPU observed on 9 December that there had been “little or no public reaction to the inclusion in the list of candidates named by the de-Ba'athification Commission

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<sup>189</sup> eGram 19989/05 IPU to Baghdad and UKMIS New York, 5 December 2005, ‘Iraq: Elections: De-Ba'athification of Candidates’.

<sup>190</sup> eGram 20001/05 UKMIS New York to FCO London, 5 December 2005, ‘Iraq: Elections: de-Ba'athification of Candidates’.

<sup>191</sup> eGram 20199/05 Baghdad to FCO London, 7 December 2005, ‘Iraq: Elections: De-Ba'athification of Candidates: Progress’.

in their [the IECI's] list".<sup>192</sup> As a result, if the government supported the Commission's recommendations, it would be seen as a political decision and was "potentially very divisive". The IPU suggested that Mr Straw should seek Prime Minister Ja'afari's agreement to putting de-Ba'athification on hold until after the elections, when it could be "addressed by a new, and fully representative, national assembly and government".

**239.** On 12 December, the British Embassy Baghdad reported that the IECI had issued a statement setting out why it would not be removing any candidates from the electoral lists as a result of their identification as Ba'athists by the de-Ba'athification Council.<sup>193</sup> Prime Minister Ja'afari had responded to the IECI's request for guidance in support of that decision.

## De-Ba'athification after the 2005 Iraqi election

**240.** A "Work Plan" for the post-election period, drafted by the IPU in December 2005, said that the UK needed to:

"Press for early review of de-Ba'athification Commission (as provided for under Constitution) and continue to stall de-Ba'athification of (successful) electoral candidates".<sup>194</sup>

**241.** Once elections had taken place, Mr Straw spoke by telephone to President Talabani on 21 December.<sup>195</sup> He emphasised that:

"... the process of de-Ba'athification should not be allowed to derail the formation of a new Government. It was important that Sunni Arabs did not feel excluded, with the risk that the insurgency would continue and escalate to civil war."

**242.** Mr Straw made similar points in a call to Mr Barzani the following day, explaining UK concern about "overzealous de-Ba'athification" and stressing the need for a consensus government with Sunni representation.<sup>196</sup>

**243.** On 24 December, the British Embassy Baghdad reported the outcome of the case brought by the de-Ba'athification Commission against the IECI.<sup>197</sup> The Transitional Electoral Panel found against the IECI, which consequently decided to remove all the candidates identified by the Commission from their party lists. The British Embassy Baghdad reported that this would affect three individuals who would otherwise have taken up a seat at governorate level, and others who were candidates for national seats.

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<sup>192</sup> Submission IPU [junior official] to Foreign Secretary, 9 December 2005, 'Iraq: Human Rights/ De-Ba'athification: Telephone Call to Prime Minister Ja'afari'.

<sup>193</sup> eGram 20573/05 Baghdad to FCO London, 12 December 2005, 'Iraq: Elections: Final Preparations'.

<sup>194</sup> Paper IPU, 16 December 2005, 'Iraq: Post-Election: UK Work Plan'.

<sup>195</sup> Email Wilson to Asquith, 22 December 2005, 'Foreign Secretary's Call to Talabani: 21 Dec'.

<sup>196</sup> Email Wilson to Asquith, 22 December 2005, 'Foreign Secretary's Call to Barzani, 22 December'.

<sup>197</sup> eGram 21681/05 Baghdad to FCO London, 28 December 2005, 'Iraq: Elections: Results'.

**244.** At the end of December 2005, the British Embassy Baghdad wrote to the FCO to describe conversations with Iraqi and US officials about the possibilities for reform of the de-Ba'athification Commission.<sup>198</sup>

**245.** The Embassy described the Commission as “an inherently political body”, and said that there was no real prospect of appeal against its decisions. The new Constitution offered a potential opportunity to reform the de-Ba'athification Law, but also the risk of deepening existing divisions. Article 134(6) obliged the Council of Representatives to establish a committee to review acts of the de-Ba'athification Commission and government agencies. In the Embassy's opinion that was “a real opportunity to set in motion concrete reform of the DBC”.

**246.** Although “the ultimate goal” was repeal of the de-Ba'athification Law and dissolution of the Commission, possible steps to address concerns about the de-Ba'athification process included:

- imposing procedural checks to “choke the Commission in its own bureaucracy”;
- removing politically active individuals from the Commission;
- pressing for the extradition to Iraq of senior Ba'athists suspected of criminal activity; and
- publication of a final report by the Commission, indicating that its work was complete.

**247.** Attached to the Embassy's message was a minute written by the IPU for Mr Patey earlier in December.<sup>199</sup>

**248.** The IPU set out more information about the composition and operation of the DBC. Its six serving Commissioners were all from the Shia community as two positions allotted to the Kurdish parties had never been filled. The DBC did not hold formal meetings, and its only active members were Dr Chalabi, Mr Maliki and Sheikh Jalal al-Din al-Sagheer.

**249.** The IPU also described Article 7 of the new Constitution, which banned the glorification and promotion of the Ba'ath Party in Iraq and its symbols. Although the text had been “continually watered down”, the final text specified that its provisions would be regulated by a law. The IPU judged:

“The regulating law will be a yardstick testing attitudes towards de-Ba'athification – on the one hand it could be an opportunity to seek concrete reform and repeal of CPA Order No.1 (the de-Ba'athification Law). But on the other hand, it could be used as an opportunity to widen and deepen de-Ba'athification, or restrict the activities of political groups which contain former Ba'athists. That said, because it [sic] such a political hot potato, it may not be one of the laws prioritized as important in the new parliament.”

<sup>198</sup> eGram 21802/05 Baghdad to FCO London, 31 December 2005, 'Iraq: Reforming de-Ba'athification'.

<sup>199</sup> Minute Wilson to HMA, 10 December 2005, 'Iraq: de-Ba'athification: Possible Next Steps'.

## A new government

**250.** Evidence seen by the Inquiry confirms that in January and February 2006 the UK stepped up its efforts to encourage Iraq to form a broad and inclusive government of national unity through high-level visits and rounds of phone calls.<sup>200</sup>

**251.** Mr Straw visited Basra and Baghdad in early January.<sup>201</sup> He met representatives of political parties from all the main communities, reinforcing the UK's message on the need for a unity government. In his view, achieving that mattered more than who became Prime Minister.

**252.** Some Sunni representatives told Mr Straw that they had been “cheated out of seats”. He responded that “they must accept the election results once confirmed or they will be pitting themselves against the whole international community”.

**253.** Vice President Adel Abdul Mehdi, a potential candidate for Prime Minister, told Mr Patey on 1 January that “he would be ready to look at the possibility of appointing a judge to head the de-Ba’athification Commission” and to reduce the role of politicians within it.<sup>202</sup>

**254.** Prime Minister Ja’afari told Mr Patey on 3 January that, although the Ba’ath Party and its ideology should remain outlawed, “the half-million former Ba’ath members Ja’afari saw as his ‘children’ should not and the de-Ba’athification Commission and its procedures should be reviewed”.<sup>203</sup>

**255.** On 3 January, Mr Ayad Allawi told Mr Blair that in forming the new government “the key bridge to the Sunnis would be revision of the de-Ba’athification process”.<sup>204</sup>

**256.** An IPU brief for Mr Straw’s visit to Baghdad in early April listed “participation by all (including former Ba’athists) who are committed to furthering the political process and can run government effectively” as one of the main issues for the new Iraqi Government to address.<sup>205</sup>

**257.** After the announcement of Mr Nuri al-Maliki as the nominee for Prime Minister, the British Embassy Baghdad’s pen picture of him recorded that he had been Deputy Chair of the de-Ba’athification Commission and “a driving force for that body’s work”.<sup>206</sup> The

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<sup>200</sup> eGram 359/06 Baghdad to FCO London, 9 January 2006, ‘Iraq: Visit by Foreign Secretary, 6-7 January 2006: Elections and Formatio[n]’; eGram 3684/06 Baghdad to FCO London, 22 February 2006, ‘Iraq: Foreign Secretary’s Visit, 20-21 February 2006: Formation of Govern[ment]’; Minute Bayley to Foreign Secretary, 16 January 2006, ‘Iraq: Keeping Up The Momentum – Proposed Telephone Calls/Visit’.

<sup>201</sup> Minute Straw to Prime Minister, 11 January 2006, ‘Iraq: Post-Elections and Government Formation’.

<sup>202</sup> eGram 69/06 Baghdad to FCO London, 4 January 2006, ‘Iraq: Call on Vice President Abdul Mehdi’.

<sup>203</sup> eGram 129/06 Baghdad to FCO London, 4 January 2006, ‘Iraq: Call on Prime Minister Ja’afari’.

<sup>204</sup> Letter Prentice to Quarrey, 3 January 2006, ‘Prime Minister’s Meeting with Iyad Allawi, Amman, 2 January’.

<sup>205</sup> Briefing IPU, 31 March 2006, ‘Iraq: Foreign Secretary’s Visit, 2-3 April 2006’.

<sup>206</sup> eGram 13011/06 Baghdad to FCO London, 24 April 2006, ‘Iraq: Formation of the New Government: al-Maliki Nominated by UIA as Prime Minister’.

Embassy wrote that Mr Maliki was “opposed to the participation of any former Ba’athists in government institutions and public life”.

**258.** When Prime Minister Designate Maliki met Mr Patey and Sir Nigel Sheinwald on 24 April, he said he was “proud to be known as a hardliner” on de-Ba’athification but acknowledged that the de-Ba’athification Commission had made some mistakes.<sup>207</sup>

**259.** Mr Maliki planned to propose a “radical overhaul” that would transform the de-Ba’athification Commission into a “Truth and Reconciliation Commission, sending Ba’athists who had committed crimes to the courts and rehabilitating those who had not”. He was most concerned about Ba’athist military officers. The establishment of a “Commission for Equality of Employment” would reassure Sunnis that they would get a fair share of government jobs and that dismissals would not be sectarian.

**260.** On 10 May, the JIC assessed how the Sunni insurgency was evolving.<sup>208</sup> It concluded:

“The strength of the insurgency is in part affected by Sunni participation in the political process. If Sunni confidence is to be bolstered, respected Sunnis will need to gain some major ministries. Even then, Sunni participation will remain fragile. Much will depend on the actions of the new government in addressing broader Sunni concerns: federalism, de-Ba’athification, reform of the Iraqi Security Forces (ISF), MNF withdrawal, security and detainees, and improvement in the quality of life.”

**261.** On 19 July, the JIC assessed that:

“Little has changed in the nature and intensity of the Sunni Arab insurgency since our last assessment in May. We continue to judge that the strength of the insurgency is in part affected by Sunni participation in the political process. Prime Minister Maliki’s government includes Sunnis in Ministerial and executive positions, and some key Sunni demands have been partially met; for example, limited release of detainees. Maliki has announced a National Reconciliation Plan aimed at addressing wider Sunni concerns, but there has been no substantive progress as yet. Some Sunni politicians have voiced their scepticism at Maliki’s offer of amnesty (on current proposals most insurgents need not apply), plans to relax de-Ba’athification, and his lack of reference to an MNF withdrawal timetable.”<sup>209</sup>

**262.** On 27 July, the IPU reported to the British Embassy Baghdad that the Iraq Strategy Group had agreed:

“... the review Maliki has promised of de-Ba’athification needs to happen urgently. This is not only important to operationalising his national reconciliation plan: but

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<sup>207</sup> eGram 13126/06 Baghdad to FCO London, 24 April 2006, ‘Iraq: Government Formation: Maliki’s Views’.

<sup>208</sup> [JIC Assessment, 10 May 2006, ‘Iraq: How is the Sunni Insurgency Evolving?’](#)

<sup>209</sup> [JIC Assessment, 19 July 2006, ‘Iraq: Insurgency, Sectarianism and Violence’.](#)

also to stopping the crippling, continuing purges of middle-ranking managers in key public services.”<sup>210</sup>

**263.** In August 2006, the British Embassy Baghdad reported to the FCO some changes at the de-Ba’athification Commission.<sup>211</sup> A new Acting Chair, Sheikh Jalal al-Din al-Sagheer, had been appointed and the Commission’s Legal Department had begun work on a new law for the structure and administration of the Commission, including the process for appointing its Chair. Sheikh Sagheer told the Embassy:

“He was aware that both the policy and the structure of the Commission had been subject to heavy criticism from many quarters and expected the new legislation to address those concerns. He asked for HMG’s input on how the current system could be improved.”

**264.** Mr Ali Faisal Alami, the Director General of the Commission’s Follow-Up and Implementation Department, told Embassy officials that 10,924 orders had been issued by the Commission, of which 6,788 had been implemented.

**265.** When the Iraq Strategy Group met on 15 September, Ms Bridget Brind, Deputy Head of the IPU, gave an update on reconciliation work by the Iraqi Government.<sup>212</sup> She reported that:

“A conference with tribal leaders had taken place in August, and future conferences were scheduled with civil society, party leaders and armed groups. As yet, there were no firm plans on the big issues of de-Ba’athification and detainees.”

**266.** In an Interim Progress Report on Prime Minister Maliki’s Government, in October 2006, the JIC judged that:

“In the current political and security climate, key Sunni concerns are not being addressed. There has been no significant change in de-Ba’athification policies, they remain highly suspicious of SCIRI’s federalist aspirations, little action has been taken against the Shia militias, and the total number of detainees has not significantly changed.”<sup>213</sup>

**267.** On 8 November, the British Embassy Baghdad reported “Indications that the door may be opening to a less stringent de-Ba’athification process” and sent “proposals for how we engage” to the FCO in London.<sup>214</sup>

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<sup>210</sup> eGram 32790/06 IPU to Baghdad, 27 July 2006, ‘Iraq: Reply to Your Valedictory’.

<sup>211</sup> eGram 36238/06 Baghdad to FCO London, 20 August 2006, ‘Iraq: Changes at the De-Ba’athification Commission’.

<sup>212</sup> Letter Cabinet Office [junior official] to Sheinwald, 18 September 2006, ‘Iraq Strategy Group, 15 September’.

<sup>213</sup> [JC Assessment, 5 October 2006, ‘Al-Maliki’s Government: Interim Progress Report’](#).

<sup>214</sup> eGram 49594/06 Baghdad to FCO London, 8 November 2006, ‘Iraq: De-Ba’athification Developments’.

**268.** The message explained that, on 6 November, the Director General of the de-Ba'athification Commission had announced that a draft law on de-Ba'athification, consistent with Prime Minister Maliki's National Reconciliation Plan, had been prepared and would be sent to the Council of Representatives soon.

**269.** The new law would mean that only 1,500 of the 10,302 Senior Ba'athists currently affected would lose their jobs. Of those, only the top tier of party members would be denied a pension. The cases of those further down the ranks would be reviewed and those who had not been convicted of a crime would have the option of reinstatement or retirement with a pension.

**270.** UK officials explained that they would "seek to agree a few components of a 'fair law' with the US and UN and lobby hard for those changes". They would "focus on reinforcing the underlying principle that de-Ba'athification should be an independent judicial process rather than a political process".

**271.** UK officials subsequently discussed five changes with US officials, who raised the first four with Dr Chalabi.<sup>215</sup> The proposals, which received a mixed response, were:

- The de-Ba'athification Commission should review the cases of all de-Ba'athified individuals.
- The Commission should have a purely investigative role, passing all evidence to a judge for criminal proceedings where justified.
- The new law should not extend the remit of the Commission to civil society, press and the media.
- The Commission should produce a report for the Council of Representatives, which would then consider its dissolution.
- The article that prohibited the passing of legislation in breach of the de-Ba'athification Law should be removed.

**272.** In November 2006, Mr John Sawers, FCO Director General, Political, wrote to Mr Blair from Baghdad, where he had just spent three days:

"... the pace of the insurgency hasn't slackened. The Shia put the blame squarely on Ba'athists/Saddamists, who they think we under-estimate. They are convinced that the former regime's security and intelligence officials are the driving force behind the attacks on the coalition, the Shia, and government officials, with the aim of creating mayhem and an opportunity for them to return to power as the only ones capable of restoring order. The level of concern has gone up sharply, with reports of Ba'athist intimidation on the streets of Baghdad ... The relative weight of the Ba'athists in the insurgency isn't easy to divine, but it is clear that both the Shia and the Kurds still fear them above all."<sup>216</sup>

<sup>215</sup> Email Sharif to Shokat, 10 November 2006, 'Re: De-Ba'athification: key components of a fair law'.

<sup>216</sup> Minute Sawers to Prime Minister, 13 November 2006, 'Iraq'.

**273.** On 15 November, the JIC judged that:

“The Iraqi Government’s response to deteriorating security remains ineffective. Many Shia politicians blame all violence on ‘Ba’athists’. There has been no progress on national reconciliation ...”<sup>217</sup>

**274.** The Iraq Forward Plan developed by UK officials in November 2006 (see Section 9.5) said that the UK should encourage Iraqi political leaders to sign up to a Declaration of Principles/National Compact which included a commitment to prevent the return of a Ba’athist government “while reviewing de-Ba’athification to allow all those who have not committed crimes to participate in building Iraqi stability and prosperity”.<sup>218</sup>

**275.** Implementing the Compact would require two new bodies: a Peace Commission and a Reconciliation/Rehabilitation Commission. The latter, it was proposed, would not deal with cases before the de-Ba’athification Commission which would continue to be heard there, but would address detainee issues and hear accounts of pre- and post-2003 violence from victims and perpetrators.

### De-Ba’athification in 2007

**276.** At the end of January 2007, Mr Dominic Asquith, British Ambassador to Iraq, recorded a report from the Iraqi Ministry of Foreign Affairs that the Iraqi Ba’ath Party had split, and a splinter group had formed that wanted to “come back to Iraq, start a dialogue, renounce violence and act politically”.<sup>219</sup> It was hoped that others might be attracted to the same strategy.

**277.** The IPU provided advice on “how best to step up and co-ordinate work on reconciliation” in February 2007.<sup>220</sup> It said that de-Ba’athification was a “major inhibitor” of reconciliation and a cause of grievance in the Sunni community.

**278.** The IPU wrote:

“We have worked in close consultation with the US to promote a substantive discussion between the main political parties on reforming the de-Ba’athification process. The aim is to take account of the concerns of all major communities, help reduce the numbers of Iraqis excluded from public life and thus reduce alienation and motives for violence. A number of different draft laws have been provided by different political parties. We are working to help bring these together in a single document, ideally including a sunset clause to bring an end to de-Ba’athification in the future. A US/UK facilitated version has just gone to President Talabani with

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<sup>217</sup> [JIC Assessment, 15 November 2006, ‘Iraq: Risk of Deepening Sectarian Division’.](#)

<sup>218</sup> [Minute McDonald to Banner, 24 November 2006, ‘Iraq Forward Plan’ attaching Paper, \[undated\], ‘Iraq: Forward Plan’.](#)

<sup>219</sup> Email Asquith to Gelling, 29 January 2007, ‘Call on MFA – Syria, Neighbouring States’.

<sup>220</sup> Paper IPU, February 2007, ‘Reconciliation’.

the aim of having a cross-sectarian draft presented to the Iraqi parliament by the Presidency Council.”

**279.** In a separate ‘Update on de-Ba’athification’, also dated February 2007, the IPU explained that “we want to see the de-Ba’athification process reformed and ultimately brought to an end”.<sup>221</sup> In the short term, the objective was to reform the de-Ba’athification Commission so that it operated in a more independent and transparent way. Specifically, this meant that it should:

- ... target an individual’s conduct, not membership of the Ba’ath party, reinforcing the underlying principle that de-Ba’athification should be a judicial rather than political process;
- review the cases of all individuals who have already been de-Ba’athified, as the previous process was deeply flawed due to political interference;
- complete the de-Ba’athification process within a defined period.”

**280.** The IPU explained that the draft US/UK text proposed abolishing the de-Ba’athification Commission and replacing it with a “Reconciliation and Accountability Commission” for six months. President Talabani had indicated that he was broadly content with the US/UK text. If the Presidency Council exercised its right to put the draft law to the Council of Representatives directly, and other drafts were also presented, they were likely to be considered by a Committee of the Council.

**281.** On 5 March, Mr Blair’s Private Secretary wrote to the Private Secretary to Mrs Margaret Beckett, the Foreign Secretary:

“The Prime Minister would like us to get a UK adviser on reconciliation into Maliki’s office as quickly as possible ... We also need to build influence with Abdul-Mehdi on de-Ba’athification ... The Prime Minister is pleased at UK/US efforts to ensure that there is now a single document on de-Ba’athification with Talabani.”<sup>222</sup>

**282.** In an update for Mr Blair on 23 March, his Private Secretary reported a sense that Iraqi politicians risked missing the opportunity presented by the Baghdad Security Plan (see Section 9.5) to pursue reconciliation.<sup>223</sup> He wrote that “faltering progress on the oil law and on de-Ba’athification” were contributing to increased suspicion within the Sunni community.

**283.** In his Weekly Assessment dated 29 March, Mr Asquith reported that the proposed new de-Ba’athification Law had become “another victim of the US fixation on security

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<sup>221</sup> Paper IPU, February 2007, ‘Update on de-Ba’athification’.

<sup>222</sup> Letter Fletcher to Hickey, 5 March 2007, ‘Iraq’.

<sup>223</sup> Minute Banner to Prime Minister, 23 March 2007, ‘Iraq Update, 23 March’.

‘results’<sup>224</sup> Mr Asquith wrote that the departure of Ambassador Khalilzad would “deprive Iraq of one of the great contrivers” and that his final act was:

“... a de-Ba’athification draft law – a characteristic mix of the bad and the superficially plausible fix, designed to service immediate domestic US rather than Iraqi long term interests. My Legal Adviser had been working closely with the Americans and Iraqis for some months on the substance. I had in parallel been discussing the provisions with political leaders. The key objectives were to set an early (eg. six month) date for the termination of the de-Ba’athification Commission’s work, drawing a line definitively in the sand, reduce to as few as possible (1,200-1,500) those caught by the provisions and secure the agreement of the three-man Presidency Council to a text which could then be introduced directly into Parliament.

“... Khalilzad persuaded the PM and President (alone) to sign off, thereby failing the Constitutional condition for fast-track introduction of legislation. Those caught by the provisions will increase by 10-12,000 (and indeed potentially many more, if Provinces decide to exploit the latitude they are given on implementation). The termination of the de-Ba’athification Commission in a year is undermined by the creation of a ‘Special Committee’ (of political/security ‘experts’ appointed by the Presidency and PM) to adjudicate on security clearances for sensitive jobs (in effect a vetting committee), which has no/no termination date. And the PM is given the right to intervene in the decisions of the Special Committee and a separate panel of judges appointed to consider the decisions of the de-Ba’athification Commission or Special Committee.”

**284.** Mr Asquith recorded that there had as yet been no co-ordinated response from Sunni Arab politicians. The only way to introduce the draft legislation into Parliament rapidly would be to “bend the Constitution”.

**285.** On 12 April, Dr Mowaffak al-Rubaie, the Iraqi National Security Adviser, told Sir Nigel Sheinwald that the proposed “accountability and justice” law would “allow 90 percent of Ba’athists to return to work”.<sup>225</sup> Those who had held high rank would be excluded from the security ministries, but pension rights for the families of those who had been prosecuted for their actions would be protected. Dr Rubaie described implementing the policy as an uphill struggle, but pointed to a “growing consensus in support of the need to rehabilitate and reconcile”.

**286.** After visiting Baghdad and Basra, Mr Des Browne, the Defence Secretary, wrote to Mr Blair on 5 May with an assessment of work under way on reconciliation and its prospects for success.<sup>226</sup> Mr Browne judged that a “bridging package” to attract

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<sup>224</sup> eGram 13103/07 Baghdad to London, 29 March 2007, ‘Iraq: Weekly Assessment’.

<sup>225</sup> Letter Cabinet Office [junior official] to Hickey, 12 April 2007, ‘Iraq: Nigel Sheinwald’s Conversation with Muaffaq al Rubaie’.

<sup>226</sup> [Letter Browne to Blair, 5 May 2007, ‘Iraq: Reconciliation’](#).

a broad range of Sunni support would include: “recognition, amnesty, reversal of de-Ba’athification, progress on sharing natural resources ... investment, employment, political representation, and release of detainees”.

**287.** On 16 May, the JIC assessed that “genuine fears of a Ba’athist resurgence” were helping to keep the fragile Shia coalition, the United Iraqi Alliance, together.<sup>227</sup> There had been “little substantive progress on de-Ba’athification”.

**288.** The JIC judged that there had been “no tangible progress on national reconciliation” and that “antipathy” between Shia and Sunni communities remained “intense”.

**289.** The JIC judged that:

“... progress on national reconciliation will remain slow unless there is a major shift in both Shia and Sunni attitudes and expectations, backed by strong and persistent Coalition pressure. At the moment it means different things to different groups.”

**290.** On 23 May, Mr Blair’s Private Secretary reported:

“... there are now sensible amendments agreed by the Executive Committee to the existing draft law, which should address some of the key problems for the Sunni, including a sunset clause for the de-Ba’athification Commission, a representative Political Committee to supervise the process (overseen by the CoR [Council of Representatives]), and introducing a judicial element to the process. Some issues remain, but this represents welcome progress. Further pressure will have to be put on the Shia in particular to agree an acceptable law, and on the Council of Representatives to pass it.”<sup>228</sup>

## June 2007 onwards

**291.** As described in Section 9.5, Mr Blair stood down as Prime Minister on 27 June 2007. Shortly after Mr Blair tendered his resignation, HM The Queen asked Mr Gordon Brown to form a government.

**292.** On 20 August, a Current Intelligence Group (CIG) judged that:

“I. The influence of the Iraqi Ba’ath Party on the Sunni Arab insurgency is marginal. The party is fractured with little political relevance or popular support in Iraq; this is highly unlikely to change.

“II. Iraqi Shia politicians’ fears of a Ba’athist resurgence, however exaggerated, are genuinely held. They will limit the Shia appetite for reconciliation with the Sunni more broadly.”<sup>229</sup>

<sup>227</sup> [JIC Assessment, 16 May 2007, ‘The Iraqi Government: One Year On’.](#)

<sup>228</sup> Minute Banner to Blair, 23 May 2007, ‘Iraq Meeting, 25 May’ attaching Paper ‘Iraq – Reconciliation’.

<sup>229</sup> [CIG Assessment, 20 August 2007, ‘Iraq: How Important is the Ba’ath Party?’](#)

**293.** On 1 October, a brief for Mr Brown's first visit to Iraq as Prime Minister stated:

“Following the Petraeus/Crocker testimonials [see Section 9.6], the centre of gravity has switched back from Washington to Baghdad, where Maliki is enjoying a somewhat more secure position. However, he still faces significant challenges: to break the impasse over key legislation (de-Ba'athification and Provincial Powers laws) ... and drive forward the reconciliation agenda.”<sup>230</sup>

**294.** The list of points for Mr Brown to make in his meeting with Prime Minister Maliki suggested that he should stress the Prime Minister's particular responsibility to give a strong lead to national reconciliation.

**295.** In November, the British Embassy Baghdad reported:

“After two months of playing games, the correct draft of the Accountability & Justice Law (de-Ba'athification) has now made it to the CoR ... there should be sufficient majority to see this law through.”<sup>231</sup>

**296.** By the end of December, the Accountability and Justice Law still had not been passed.<sup>232</sup>

**297.** The Law was approved by the Council of Representatives on 12 January 2008.<sup>233</sup>

**298.** The British Embassy Baghdad reported on 24 January that, although Vice President Hashimi had continuing concerns, he had agreed to register them in a letter to the Speaker rather than delay or veto the law.<sup>234</sup>

**299.** On 12 January, the Iraqi Council of Representatives approved the Justice and Accountability Law (formerly the de-Ba'athification Law).<sup>235</sup> The Cabinet Office told Mr Brown that:

“Although the law's practical impact will be more symbolic than substantive, its approval nevertheless sends out a positive message especially to Sunnis, about the ability of the political system to function.”

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<sup>230</sup> Minute Cabinet Office [junior official] to Prime Minister, 1 October 2007, 'Iraq Visit: 2 October 2007'.

<sup>231</sup> eGram 47120/07 Baghdad to FCO London, 19 November 2007, 'Iraq: Political Round-Up'.

<sup>232</sup> [Minute Rollo to CDS, 31 December 2007, 'Iraq in 2008 – An Opportunity to be Taken'](#).

<sup>233</sup> Minute Cabinet Office [junior official], 18 January 2008, 'Iraq Update'.

<sup>234</sup> eGram 2673/08 Baghdad to FCO London, 24 January 2008, 'Iraq: Internal Political Progress?'

<sup>235</sup> Minute Cabinet Office [junior official] to Prime Minister, 18 January 2008, 'Iraq Update'.