Attached is a draft memo which recaps the soon-to-be announced de-ba'athification policy and provides recommendations concerning its implementation.

Please keep this memo very close hold for obvious reasons. I would appreciate any comments on the content of the memo. As the memo is due to Ambassador Bremer by 9am Friday, I will take into consideration any comments I receive by 8am Friday morning (in the MCO). I apologize for the short fuse, but it is dictated by the rapid pace of events.

The policy has been set in Washington and agreed to by Ambassador Bremer. This memo is not concerned with the actual substance of the policy, but its implementation. When providing comments, please keep in mind the purpose of the memo is not to protest the policy but rather to influence its implementation.

For those of you interested in a brief description of the Ba'ath Party Structure, I have made a slide which I will attach.

Many thanks

Ba'ath Party Structure

Types of Involvement in the Ba'ath Party

- Senior positions (leadership positions in the structures of the previous slide)
- Full members ('udwa)
- Prospective members ('udwu murashah)
- Advanced supporters (nassir mutaqaddem)
- Supporters (nassir)
- Sympathisers (mu'ayyed)

To: Ambassador Bremer

From: Ambassador Raphel
Drafted: Meghan O'Sullivan

Re: Procedures to Implement De-Ba'athification Policy

Date: 15 May 2003

De-ba'athifying Iraq is an important policy objective of the President. The Coalition will soon issue a declaration laying out the scope of its de-ba'athification policy. Determining how this policy will be implemented must be a top priority for ORHA. This memo summarizes the declaration and presents options and recommendations in three key areas: ascertaining who is a senior Ba'ath party official, weeding out ba'athists from ministry management, and formulating exceptions where needed. Another issue demanding consideration - the status of pay and pensions owed to ba'athists - is not dealt with in this memo.

The New Policy

A soon-to-be released Coalition declaration has several key components. It:

1. Removes Iraqis holding a senior rank within the Ba'ath party from any employment in the public sector. Senior ranks are defined to include anyone in the highest tier of the party as well as those in the party branches (far'), sections (shu'bah), and groups (firqah). Our best estimates suggest _____ people could potentially be affected by this order.

2. Removes Iraqis who are/were full members of the Ba'ath Party from all positions in the top three layers of management in every national government ministry.

3. Provides the Administrator of the Coalition Provisional Authority or his designees the power to grant exceptions to the above on a case-by-case basis.

Determining Who is a Ba'athist

The cornerstone of a successful policy is a legitimate process to determine who is a ba'athist member or leader. We must be careful to avoid the perception of a witch hunt and ensure that de-ba'athification does not become a vehicle for Iraqis to advance personal agendas. At the same time, we must be as systematic and thorough as possible in extirpating ba'athists from public life so that Iraqis can build their future free of the influence of the old regime.

We should approach the identification of ba'athists in Iraqi public service the same way the USG conducts a security clearance for a prospective government official. We should bring teams of professional investigators to Iraq with the explicit purpose of conducting dispassionate assessments of who is a ba'ath party member.

While potentially cumbersome and expensive, such an arrangement is needed to protect us and Iraqis from an ad hoc process open to inconsistencies and recriminations. The investigatory teams will collect a range of information on individuals to determine both their membership and status within the party. With the exception of a personal admission, investigators will need to rely on a multiplicity of sources in making their deteriminations; no one source of information will in itself be sufficient to prove party membership. Investigators will base their assessments on:

- Interviews with the individual;
- Public records and announcements documenting the ascension or promotion of party members;
- Judgments of ORHA senior ministry advisors;
- Testimony of Iraqis who have worked or lived with the person in question;
- Assessments of the Iraqis political parties comprising the Leadership Council;
- Government records revealing bonuses or other privileges associated with being a party member (it is, however, important to note that many of these records are likely to be destroyed upon our announcement of the new policy).

This approach has the benefit of distancing ORHA senior advisors from the process of determining who is a Ba'ath Party official in the ministries they oversee. Maintaining such a buffer is essential if advisors are to continue their efforts to get ministries operational at the same time that de-ba'athification is proceeding.

Weeding Out Ba'athists from Ministries

While the new declaration clearly states that Ba'ath Party members must be removed from the top three layers of management in the national ministries, several related issues need to be resolved before implementation can begin.

First, *how the top three layers of management are defined* will determine the scope of de-ba'athification in each ministry. Some ministries will be tempted to interpret this narrowly to include only Minister, Deputy Minister, and Undersecretary-equivalents; others will see the inclusion of Director Generals (DGs) in this category as essential or unavoidable. Although it is not necessary to publicly issue guidelines on this matter, consistency in

application will underscore our seriousness and professionalism in implementing the President's policy and de-ba'athifying Iraq. Excluding DGs from scrutiny could make our de-ba'athification policy look like a farce or even call into question our compliance with the declaration; including them will maximize the disruption that weeding out ba'athists causes to our reconstruction efforts. In weighing this tradeoff, we recommend that DGs are considered to be part of the affected-management structures. However, as discussed below, we advise this robust interpretation be accompanied by exception policies that allow some DGs to maintain their posts.

Also pertinent is the question of whether those removed from positions of management on account of Ba'ath Party full membership (opposed to being in a senior party official) will be allowed to stay on as ministry employees at lower levels. The declaration does not explicitly address this issue. Yet, by implying that the presence of full party members (opposed to senior ones) at junior levels of government is tolerable, it suggests that allowing such people to stay on in a demoted capacity is acceptable.

Finally, implementing the new de-ba'athification policy will require basic decisions about who must leave the ministries immediately and who can stay until proven to be a ba'athist. (Or, put another way, who is presumed guilty and who is presumed innocent). Many Iraqis will undoubtedly self-select after you encourage those affected by the new policy to stay at home. In other cases, however, we will should consider two options:

1. Leave it to each individual to decide. Those that continue to come to work will be subject to the scrutiny of our de-ba'athification teams and the pressure their peers and colleagues will generate if they are known Ba'ath Party officials. While this strategy minimizes disruption, it could invite unrest in the ministries. It could also appear – to Iraqis and to Washington – that we are not serious about implementing the policy.

2. Presume the top three layers of the ministries are all full party members and should not come to work until investigated. Weed out the senior level Ba'ath party officials below this level through the investigatory process. Temporary exemptions may be granted (??) The strategy makes the most sense – as it is the easiest and the delivers the strongest message about our seriousness regarding de-ba'athification.

Devising Exceptions

As noted above, the declaration gives you (or those you designate) the ability to grant exceptions at your discretion. The fair use of this power will allow you to stay true to the essence of the policy, while mitigating adverse consequences that would arise from its unexamined application. Our objective in devising these

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exceptions is not to minimize inconvenience or disruption that de-
ba'athification will cause. Rather, we propose these exceptions to
ensure that talented Iraqis who only joined the party for
professional reasons are able to use their technical or operation
expertise to Iraq's benefit. Moreover, we have a responsibility to
see that our other policy objectives (normalization of the security
situation, re-establishment of courts, conduct of a census needed
for elections, etc.) are not needlessly frustrated or compromised by
an unnecessary blanked application of the policy.

For these reasons, we suggest that you:

* Consider those in the lowest tier of the Ba'ath Party targeted
  by the policy (firqah) to be *eligible* for rehabilitation and
  rehiring at relatively low levels of the ministry (below the
  third layer of management). Requiring such people to renounce
  their former affiliation with the party may be one of a few
  steps required for this eligibility to be translated into a
  reality. Other steps will involve the return of the privileges
  of party membership (cars, houses, etc.).

* Allow those DGs who were full Ba'ath Party members (as distinct
  from senior Ba'ath Party officials) and who now renounce the
  Ba'ath Party, demonstrate their technical qualifications for
  their position, and can make a valid case that their membership
  in the party was necessary simply to hold their job to return
  to their previous positions.

* Decide that the lowest one or two tiers of the ministry need
  not be subject to the interview processes to determine party
  status. At some level of juniority, it is safe to assume that
  there are no senior level Ba'ath Party members.

* Institute a "national security waiver" akin to that included in
  some U.S. legislation mandating sanctions against foreign
  countries or entities. *(I'm not sure about this
  recommendation, as it is already in essence included in the
  declaration in the granting of the Administrator having the
  power to make exceptions.)*

CCad: Mr. Jay Garner
       Ambassador John Sawers
       Ambassador Ryan Crocker
       Mr. Scott Carpenter