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To: Cathy Dennis * Beirut- Conf
From: Adrian Bedford *Beirut - Conf
Subject: FW: I:OO:REST:IRAQ: "DE-BA'ATHIFICATION":FCOLN/IRAQR 2:Id=0562125
Sent: 14 May 2003 15:21:35 GMT

-----Original Message-----

From: BEIRX - etelegrams
Sent: 14 May 2003 17:01
Cc: Beirut CONF Tel Float
Subject: FW: I:OO:REST:IRAQ: "DE-BA'ATHIFICATION":FCOLN/IRAQR 2:Id=0562125

-----Original Message-----

From: COMCEN Gateway 1a
Sent: 14 May 2003 15:28
To: BEIRX - etelegrams
Subject: I:OO:REST:IRAQ: "DE-BA'ATHIFICATION":FCOLN/IRAQR 2:Id=0562125

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LNBGDN 1238 MAMIAN 6538

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OO AMMAN ANKAR ATHEN BEBER BEIJI BEIRU BREEC BREMB BRNAT BUCHA
OO CAIRO CANBE COPEN DAMAS DUBLI GEDIS GEMIS HELSI HOSEE ISLAM
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TO IMMEDIATE IRAQREP

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OF 141252Z MAY 03

INFO IMMEDIATE EU POSTS, EU ENLARGEMENT POSTS, MIDDLE EAST POSTS
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INFO IMMEDIATE PRETORIA CAPETOWN, , CABINET OFFICE, DFID, DTI
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SUBJECT: IRAQ: "DE-BA'ATHIFICATION"

Summary

1. We agree that there should be a process, but its scope should be limited, and there needs to be room for discretion. Reminder of legal framework applying to Coalition actions.

Detail

2. We agree that the net should not be cast too wide. Excluding the top three ranks from public service, i.e. region (qutriyah), branch (far') and sub branch (shu'ba), is probably the most practical approach. We recognise, too, that it is important to assure a still apprehensive population that the Baath days are over. In certain cases, particularly in the security services, Baath members may have to be moved aside in order to provide that reassurance, whatever their position in the party. But we do not want to create a large underground of disaffected Baathists who see no possible future for themselves in post-Saddam Iraq. And we have to balance the need to address popular anger at the past excesses of the Ba'ath party

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against the priority to get an effective public administration up and running. Some of our contacts question whether even the automatic removal of Baath members down to sub branch (shu'ba) level is necessary or desirable.

3. There should also remain some scope for discretion. We would not necessarily wish to exclude all senior Baathists from remaining in place if there are compelling reasons for them to do so; nor should we exclude the possibility of lower level officials being suspended if a valid case is made against them. So the short answer to the question about the fourth level of the Baath is that there will be a vetting process (which we do not need to describe in detail) to ensure no rotten apples are kept on, while ensuring the earliest possible establishment of an efficient administration to meet Iraqi needs.

4. One of the leading academic Iraq-watchers, Toby Dodge, has remarked to us that membership of the Baath was less significant latterly than less formal networks of control and influence. There is a danger, in focusing on the Baath, of overlooking potentially more malign elements. (He will be visiting Baghdad at the weekend and might usefully meet your team).

5. You should also be aware of the legal position. Geneva Convention IV (Article 54) sets out the general principle that the Occupying Powers cannot alter the status of public officials nor (subject to limited exceptions) oblige them to carry on with their functions if they wish to abstain for reasons of conscience. But it also expressly states that the Occupying Powers have the right to remove public officials from their posts. On the face of it, this right is unlimited. But for both policy and legal reasons, we should stick to what is necessary as set out in the proposals above. There is no obligation in the Convention to continue paying removed officials. The Occupying Powers cannot regulate or prohibit political expression or activity except to the extent that that is necessary on grounds of security or public order. This would be an extremely delicate matter, of course, that should be subject to careful consultation before any action is taken.

6. Paragraph 2 of ORHA's draft "Instruction No. 2" is an attempt to disapply all Iraqi laws that "perpetuate the regime of Saddam Hussein". This is superficially attractive, but is too vague to be of use as a legal measure. We and the Australians have commented that the draft should be amended to identify the particular laws that are to be disapplied. There are some provisions of the 1991 Interim Constitution, for example, that should be annulled. It would be useful if you could encourage ORHA to produce a further draft for consultation with us and the Australians.

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

STRAW

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