

# The Captured Ba‘thist State Records from the 2003 Iraq War: Repatriation and Retribution?

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On May 16, 2013, amid Iraq’s descent into renewed sectarian conflict and civil war, the administration of President Barack H. Obama covertly repatriated millions of seized Ba‘thist regime records from the 2003 war to the loyalist security services of Iraqi Prime Minister Nuri al-Maliki.<sup>1</sup> The repatriated documents contained reams of personal identifiable information on former military and security officials, as well as numerous private individuals under Saddam Hussein’s Ba‘thist state. While mundane budget cuts largely drove the Defense Department to unload the seized documents—less than eighteen months after US troops left Iraq in 2011—the Maliki regime had furtively pursued their restitution at the highest levels. It was no surprise that the return of the seized documents into the hands of Maliki’s security services was kept under wraps. Nor is it a surprise that their restitution has raised questions about whether Maliki’s sectarian-driven regime, perhaps assisted by Iranian intelligence, exploited the incriminating files against the Sunni Arab elites, as well as against the prime minister’s Kurdish and Shi‘ite Islamist political rivals.

These questions merit inquiry given that the repatriation of the captured records occurred as Maliki was increasing his authoritarian grip on power, cleansing Sunni Arab politicians from the government, abandoning the Sons of Iraq Awakening Councils to the resurgent Islamic State in Iraq and al-Sham (ISIS), and violently confronting the rapidly growing Arab Sunni protest movement in the provinces. The extent to which the repatriation contributed to sectarian targeting and violence, leading to renewed civil war, may never be known. Nonetheless, it is hoped that this research will prompt current and former US and Iraqi sources to break their silence, as well as lead other researchers to investigate this subject.

Although a State Department official has stated that there is “no evidence” that the repatriated records were misused, a former high-level diplomat with substantial experience in Iraq has said that it is a “pretty good assumption” that they were.<sup>2</sup> It would be naive to presume that Maliki’s security services did not exploit this rich trove of intelligence against the regime’s sectarian adversaries and political rivals.<sup>3</sup> The surreptitious nature of the restitution, as Iraq was lurching toward another civil war, has raised misgivings—not only that Maliki’s regime exploited the documents for sectarian retribution and political score-settling, but that their misuse may have played a role in fueling the rise of ISIS in 2014.



The 2013 repatriation also is linked to the clandestine return, seven years later in August 2020, of another major cache of Saddam-regime documents from the 2003 war—the Baʿth Regional Command records held by Stanford University’s Hoover Institution. The archive had been deposited at Hoover in 2008 by the Iraq Memory Foundation (IMF), founded by the Iraqi dissident, political opponent, and Brandeis University professor emeritus of Islamic and Middle Eastern Studies Kanan Makiya.<sup>4</sup> The IMF had assumed custody of the records after entering Iraq on the tail of the 2003 US invasion to rescue the archives of the atrocity of Saddam’s murderous regime. Nonetheless, two years later, the sectarian violence and armed insurrection against the occupation compelled the IMF to flee Iraq—but not without the help of the US military, which airlifted the archive to the US for its intelligence value. The archive remained at Hoover for twelve years until its quiet return in 2020, shortly after the prime-ministerial appointment of the pro-American Mustafa al-Kadhimi—one of the founders of the IMF. The archive’s restitution, however, provoked considerable anxiety among Kadhimi’s national security advisors, who had the records spirited away to a secure, undisclosed location—likely intent on avoiding the social and political aftershocks of the 2013 repatriation.

This article will discuss the fate of the three major caches of seized documents that were returned by US institutions to Iraq under dramatically different circumstances: (1) the Baʿth Party and secret police files seized by the Kurds in the March 1991 uprising, held by the Archives at the University of Colorado Boulder Libraries and returned to Baghdad in 2005 for the Anfal trials of Saddam Hussein and his senior henchmen; (2) the vast trove of records captured in the 2003 war in the hunt for unconventional weapons, held by the US military in Qatar and covertly returned in 2013 to Iraq’s sectarian-driven security services; and (3) the Baʿth Regional Command records, rescued by the IMF in Baghdad after the US-led invasion in 2003, deposited at the Hoover Institution Library & Archives, and discreetly returned to Kadhimi’s government in 2020.<sup>5</sup>

In researching this article we uncovered many details concerning the records repatriated in 2013, though much remains shrouded in secrecy. The captured Iraqi documents from the 2003 war remain a sensitive subject for many of the US officials and government agencies involved in their restitution. More than two dozen current and former officials spoke with or communicated in writing with the authors, but only on condition of anonymity. We filed many Freedom of Information Act (FOIA) requests with government agencies; as of this writing, many have been rejected and some are still pending.<sup>6</sup> None has been filled. Nevertheless, some documents on the subject from other sources were made available to the authors.

This article’s research methodology combines both investigative-journalistic and historical approaches to the subject. Writing for the *New Republic* in 1943, Alan Barth declares, “News is only the first rough draft of history.”<sup>7</sup> This article aims to serve, at the very least, as a substantial second draft. Beyond the primary aims of this inquiry, the restitution of the

archives of Saddam Hussein's regime provides a unique perspective on the nature of US-Iraq bilateral relations over the past decade. The relevance of this subject also extends beyond Iraq, serving as a cautionary tale regarding the perils of repatriating state security records of a former dictatorial state to an unstable and vengeful post-authoritarian government more interested in retribution than national reconciliation and the rule of law.

### **Prelude: The Anfal Files**

The repatriation of the Ba'ath Regional Command archive in 2020 involved the last major cache of records to be returned to Iraq following the 1991 and 2003 wars.<sup>8</sup> Nearly three decades earlier, after Saddam's defeat in the 1991 Gulf War, the Kurdish population in northern Iraq seized the opportunity for freedom, rising in rebellion against a gravely weakened Ba'athist regime. In the uprising, the Kurds captured eighteen tons of Ba'ath Party and secret police records detailing the "Anfal campaigns" in Iraqi Kurdistan, a counterinsurgency turned genocide in the mid-to-late 1980s. Saddam's military campaign to subdue a Kurdish insurgency rapidly escalated into a rampage of destruction and mass murder in retaliation for the Kurdish Peshmerga militia's alliance with the Iranians in the Iran-Iraq war.

The history surrounding these captured Ba'ath Party and secret police records augured the political and sectarian enmities that would plague the restitution of the Ba'athist documents seized in the 2003 US invasion of Iraq. During the 1991 uprising, various Kurdish resistance parties had taken possession of the documents, secreting most of them away to remote mountain hideouts before Saddam could send reinforcements to crush the rebellion and wreak vengeance—which drove more than a million refugees in desperate flight to the border regions of Iran and Turkey.

Saddam's violent suppression of the Kurdish revolt prompted the United States and its allies to intervene in late 1991 to impose a no-fly zone and safe haven in the north that allowed the Kurds to establish self-rule. The two dominant, adversarial parties, the Talibani family-led Patriotic Union of Kurdistan (PUK) and the Barzani family-led Kurdistan Democratic Party (KDP), agreed to a power-sharing arrangement. The two bitter rivals entered the arrangement despite their history of mutual treachery, which had been exacerbated by Saddam's strategy of sowing division among the Kurds.

Saddam's security directorate and military intelligence had recruited tens of thousands of Kurds into the Kurdish National Defense Battalions.<sup>9</sup> The Kurdish rebels called them "jash," meaning "little donkey" or "traitors" doing the regime's dirty work. According to some estimates, they numbered about 250,000 men at the height of the Ba'athist regime's power. The jash forces became complicit in the Anfal campaigns to destroy the Kurdish resistance throughout northern Iraq during and after the Iran-Iraq war. But many turned against Saddam and joined the resistance in the 1991 rebellion, while others remained loyal to the Ba'athist regime. Even so, many jash were hunted down and murdered during and after the uprising.<sup>10</sup>



Among the first decisions of the incipient Kurdish government was to pardon individuals who had collaborated with Saddam's regime, including during the Anfal.<sup>11</sup> The power-sharing arrangement, however, broke down in 1994 with the outbreak of the intra-Kurdish civil war. Threatened by Iranian support for the PUK, the fighting reached its perfidious nadir in 1996 when Masoud Barzani, leader of the KDP, appealed to Saddam for assistance to defeat the PUK. More than one hundred Iraqi tanks and thirty thousand troops invaded and imposed KDP control of Erbil, the capital of Kurdistan. With the backing of Iraqi forces, the KDP also overran the PUK stronghold of Sulaymaniyah, though the PUK's forces would later recapture the city.

Under the 1998 peace agreement brokered by Washington that ended the civil conflict, the two factions divided Kurdistan into two regional governments—a “power-sharing dictatorship”—with the KDP ruling in the north and the PUK in the south.<sup>12</sup> According to Ferdinand Hennerbichler, former Austrian diplomat and professor of history at the University of Sulaymaniyah, though Kurdistan's oligarchs ostensibly reigned over the regions, in “reality the KDP north is ruled by the Turkish [Consulate] General in Erbil and the PUK south by the Iranian one in Sulaymaniyah.”<sup>13</sup> The precarious position of Iraq's Kurdish parties made them increasingly reliant on their principal foreign patrons.

Despite their history of betrayal, both parties had separately agreed—in 1992 and 1993—to send their share of the captured Ba'ath Party and secret police files to the US for analysis, although they first searched the records for informants and collaborators in their ranks who had worked for Saddam's regime. Under the protection of US fighter planes, truck convoys hauled the captured documents in several shipments across northern Iraq to a staging area near the Turkish border. From there, they were transported to Turkey's Incirlik Air Base where the Pentagon airlifted them to the US in two separate shipments in May 1992 and August 1993. The US Senate Committee on Foreign Relations, which held legal custody of the files, then entrusted their storage to the National Archives at a branch facility in Maryland.<sup>14</sup>

The documents detailed mass executions, disappearances, forced deportations, poison gas attacks, and the razing of towns and villages, culminating in the Anfal campaign against the Kurds and other minority groups in 1988.<sup>15</sup> Senator Claiborne Pell, chair of the US Senate Foreign Relations committee, compared the slaughter of the Kurds to the Holocaust. The documents, Pell said, could support hauling Iraq before an international tribunal on charges of crimes against humanity and genocide.<sup>16</sup>

The US government subsequently gave Human Rights Watch (HRW) exclusive access to study the documents for a possible genocide case against Saddam's regime. Under HRW's direction, from 1992 to 1994 the Defense Intelligence Agency (DIA) provided logistical assistance in digitizing the records, creating 176 CD-ROMs.<sup>17</sup> After studying the secret police files and other medico-legal evidence, HRW concluded that Saddam's Anfal

campaign constituted genocide.<sup>18</sup> But HRW's ensuing efforts to prosecute the Ba'athist state before the World Court at The Hague under the 1948 Genocide Convention failed to mobilize sufficient international support.<sup>19</sup>

In 1998, the DIA distributed several copies of the CD-ROMs to the PUK and KDP, as well as to the Iraq Research and Documentation Project and the University of Colorado Boulder Archives, the latter of which also received the original Ba'ath Party and secret police files with the authorization of the Senate Foreign Relations committee.<sup>20</sup> The PUK and KDP received the copies around the same time they were negotiating an end to their bloody civil war that killed thousands of Kurds. Despite their peace agreement, the two rival factions furtively exploited the incendiary digital files to "threaten" and "incriminate" individuals and "political enemies"—while concealing them from the public. Among the files on the CD-ROMs were numerous personnel lists and payroll records of jash collaborators and informants, who earned more than Saddam's own secret police and intelligence agents had.<sup>21</sup>

Neither party displayed interest in publicly releasing the files with the aim of fostering intra-Kurdish reconciliation or exposing the Kurdish public to their authoritarian past under the Ba'athist state. Instead, the files were used as political weapons, according to Hennerbichler. Both parties gleaned incriminating information from the files "in the background . . . not in the open," resorting to "Mafia-style crippling or finishing off [of] arch enemies among Iraqi Kurds."<sup>22</sup> As a result, the Kurds continued their blood feuds and revenge killings of jash throughout the 1990s and beyond.<sup>23</sup> The exploitation of the informant files in searching for traitors, enemies, and rivals within and outside their party ranks portended the ways in which the archives of Saddam's regime would be abused by both the Kurds and the future order presided over by the majority Shi'ite Islamist parties after the 2003 war.

The fate of the captured Ba'ath Party and secret police files took an abrupt turn after the 2003 US invasion of Iraq when Saddam and eleven of his top lieutenants were captured and transferred in 2004 into the legal custody of the Iraqi interim government to stand trial. The University of Colorado Boulder Archives turned over the original records in 2005 to the US Justice Department's Regime Crimes Liaison Task Force, which shipped them to Baghdad for the Anfal trials.<sup>24</sup> The files were returned to Baghdad shortly after the Pentagon airlifted the Ba'ath Regional Command archive in the possession of the IMF to the US. The transfers of Ba'athist state documents to and from the US occurred as Iraq fell into sectarian violence and civil war—animated largely by the atrocities and grievances detailed in the Saddam regime's documents. After their shipment from Colorado to Baghdad, the Anfal files were secured at a former Ba'athist regime prison in the Kadhimiyya neighborhood before being transferred to the trial court.<sup>25</sup> The Iraqis had chosen to try Saddam and his henchmen before a specially constituted court in Baghdad—the Special High Tribunal—rather than an ad hoc international criminal tribunal created by the United Nations Security Council.<sup>26</sup>



Among Saddam's captured associates was his notorious first cousin, Ali Hassan al-Majid ("Chemical Ali"), the secretary general of the Northern Bureau of Iraq's Ba'ath Party and overlord of the Anfal campaigns.<sup>27</sup> In December 2006, amid the violence and chaos, Prime Minister Maliki preempted Saddam's Anfal trial by rushing him to the gallows after his conviction for another crime—the 1982 Dujail massacre involving his own Shi'ite Islamist-based Da'wa Party.<sup>28</sup> Al-Majid was also sent to the gallows in 2010 after receiving eight death sentences by the tribunal.

The Ba'ath Party and secret police documents captured in the 1991 uprising remain a source of anxiety in Kurdistan. In October 2014, University of Colorado Boulder officials presented a hard drive of the secret police CD-ROMs to a visiting Kurdish delegation. The hard drive is now housed in Sulaymaniyah, Kurdistan, at the Zheen Center, but its directors see it "as a constant danger for their lives and existence" and are too fearful to make the database publicly available to researchers.<sup>29</sup> Their fear seems to be warranted. According to Hennerbichler, even though it has been almost twenty years since the fall of the Ba'athist state, former Kurdish collaborators continue to face "risks of revenge killings." Kurdish families that had been "betrayed by the jash, including the two leading Kurdish families [the Talibanis and Barzanis] and the parties that they dominate, have continued to seek revenge in the absence of justice. Blood feuds and revenge killings have not relented."<sup>30</sup>

In June 2019, the University of Colorado Boulder also returned fifty-seven boxes of original Ba'athist files to Iraqi Kurdistan that were inadvertently left behind in the transfer of the documents to the Special High Tribunal in Baghdad in 2005. The files have been stored separately under the protection of "pro-US committed Kurds," but it is unlikely that these documents will see the light of day.<sup>31</sup> Moreover, according to Kurdish sources, sectarian Shi'ite militias ransacked the secret police files housed at the Tribunal, looking for incriminating information against Kurdish adversaries and Ba'athist operatives of Saddam's security apparatus.

The Anfal files held at the Tribunal may have taken a more fateful turn when the Ministry of Justice turned them over to the Ministry of Interior, the notorious fiefdom of Maliki's Da'wa Party and the Badr Organization, an Iran-created fighting force that became and remains part of Iraq's new security apparatus.<sup>32</sup> It is unclear when the files were transferred, but it seems to have occurred after the conclusion of the Anfal trials in 2010 when Maliki began ardently pursuing the restitution of the seized records from the 2003 war. Their transfer to the Interior Ministry would have made them fully accessible to the sectarian-driven militias and their Iranian patrons.<sup>33</sup>

Members of the Badr Organization, for example, worked with Iranian intelligence in hunting down former Ba'athist pilots and carried out some of the worst sectarian violence against Sunnis in the 2006–2008 civil war, much of it in broad daylight while wearing Interior Ministry uniforms. US troops could identify the sect of the victims based on how

they were tortured and killed—those who were beheaded were Shi‘ites and the corpses with drill holes through their eyes, ears, and knees were Sunnis.<sup>34</sup> It is a reasonable assumption that the militias’ sadistic and vengeful zealotry would have motivated them to scour the trove of files to identify and target sectarian adversaries. The repatriation of the Ba‘thist state records first seized by the Kurds in 1991 has thus been—while opaque—anything but benign in both the Iraqi Kurdistan region and Baghdad.<sup>35</sup>

### **Seizure of the Ba‘thist State Archives in the 2003 War**

The political exploitation of the 1991 Ba‘th Party and secret police files by the PUK, KDP, and Shi‘ite militias anticipated the Maliki regime’s acute interest in retrieving the Saddam-regime documents seized in the 2003 war. The US seizure of the Ba‘thist documents in the invasion of Iraq set off a struggle for the files as various Iraqi and foreign parties vied to control, use, or malignly exploit Saddam’s legacy of atrocity. Those who aimed to put the documents to humanitarian use—to expose Iraqis to their authoritarian past in the name of reconciliation and the rule of law, or to find missing relatives—had to contend with both the US military and the pervasive forces of sectarian retribution.

Nevertheless, the US had captured the overwhelming majority of the Ba‘thist archives in the war for intelligence purposes and held the highly incriminating records for a decade before returning them to a volatile and paranoid Iraqi regime bent on sectarian revenge. The events surrounding the seizure, restitution, and exploitation of the Saddam-regime files revealed both the erroneous rationale for the invasion as well as Iraq’s social and political unrest and subsequent disintegration into sectarian violence.

The US military captured the records of Saddam’s regime in the 2003 invasion in the urgent hunt for evidence of unconventional weapons and ties to al-Qaeda terrorist networks—the motives for the war. US document exploitation units had swept across Iraq, seizing millions of state security files from Saddam’s palaces, government ministries, military installations, and other sites—constituting the largest seizure of enemy documents since World War II. After the exploitation teams analyzed the captured records in the field for any actionable intelligence, they were transferred to the DIA’s Combined Media Processing Center’s Document Exploitation (DOCEX) facility at the headquarters of the US military’s Central Command in Doha, Qatar.<sup>36</sup>

The DIA had quickly staffed the Qatar facility with more than five hundred linguists, analysts, and technicians to triage, screen, digitize, and produce rough English translations of the files of interest, uploading them into the Department of Defense’s shared Harmony database to maximize their analysis. In so doing, the DIA’s staff strove to rapidly process more than seven linear miles of captured documents and media in various formats.<sup>37</sup> Despite the enormous volume of material, analyses of the records quickly revealed telling absences. Charles Duelfer, project leader at the Qatar media processing center, notes, “Unfortunately,



there seemed to be some gaps in the types of Mukhabarat [intelligence service] documents obtained—for example, concerning Iraqi operations in Iran. The United States was not always the first to get to important Iraqi document archives.”<sup>38</sup> Indeed, it was no surprise that Tehran’s intelligence services and their Iraqi allies would hasten to seize whatever useful Ba’thist documents they could find and exploit—presaging the retribution campaigns that helped to fuel Iraq’s fall into sectarian mayhem.<sup>39</sup>

By early 2004, the CIA’s Iraq Survey Group (ISG), comprising an international team of 1,400 experts, had interviewed and interrogated Iraqi scientists and officials, dispatched search teams to scour the countryside for weapons sites, and analyzed millions of documents seized in the war. Nevertheless, the ISG repeatedly came up empty-handed, intensifying political criticism of the George W. Bush administration’s war narrative.<sup>40</sup> The seized documents also became entangled in the political crossfire over the war in 2006 when, in opposition to the intelligence agencies, the White House sanctioned an ill-fated effort to produce evidence of Saddam’s active unconventional weapons program and operational ties to al-Qaeda. The project involved crowdsourcing the raw documents, without contextual analysis, on the internet with the hope of enlisting the assistance of legions of eager amateur researchers conversant in Arabic.<sup>41</sup> A former CIA counterterrorism specialist scoffed at the document free-for-all, likening it to “putting firearms in the hands of children.” The project went awry and was abruptly terminated after several posted documents revealed detailed technical information on Iraq’s unconventional weapons programs before the 1990–91 Gulf War.<sup>42</sup>

The seized records held more importance for understanding the background to the war and the nature of Saddam’s dictatorship. Seeking to expand their immediate value for wartime intelligence, the Pentagon initiated a research project to study the documents to glean lessons from the 2003 military campaign.<sup>43</sup> The fall of Baghdad in April 2003 had opened to outside examination one of the twentieth century’s most secretive and ruthless regimes. In addition to interviewing former Ba’thist political and military officials, the Pentagon sponsored researchers to probe the records to understand the Saddam regime’s strategic political and military calculations.<sup>44</sup> The initiative produced a series of insightful studies relating to the perspectives of Iraqi generals, the Iraqi plan of battle in 2003, the audio recordings of meetings between Saddam and his advisors, the Iraqi military perspectives on both the Iran–Iraq and first Gulf wars, as well as the Saddam regime’s ties to terrorist groups.<sup>45</sup>

The Defense Department also created the Conflict Records Research Center (CRRC) to foster social science research into declassified digital documents and audio files captured in the wars in Afghanistan and Iraq.<sup>46</sup> The CRRC was launched in 2010 as a digital research archive in a few windowless rooms at the National Defense University in Washington, DC. The center derived the digital files from the Harmony database with the aim of making them available to civilian scholars and researchers. The CRRC recalled the post–World War II



effort by the US government and the American Historical Association to declassify and open for public study the records and archives seized from Hitler's Third Reich.<sup>47</sup> The center drew increasing numbers of scholars to study and research the captured Ba'athist documents before Defense cuts terminated its operations and impelled the repatriation of the original records back to Iraq.<sup>48</sup>

By the time the CRRC was shuttered in June 2015, the center had processed, indexed, and translated approximately 143,000 pages of digital documents, a mere fraction of the totality of the seized records. The center's collections were then returned to join the remaining millions of pages of digitized records in the US government's Harmony database—which is unavailable to researchers and beyond the reach of FOIA requests. As nonfederal records, the digital Iraqi files could not be deemed “classified” under US law, but their status as captured adversary documents allowed the Pentagon to restrict their public availability. The CRRC, however, currently awaits transfer to a civilian academic institution.<sup>49</sup>

With the Pentagon controlling the original documents and opening digital copies for public study, Iraqi officials began demanding the restitution of their national history under the Ba'athist dictatorship. The campaign was initially led by Saad Eskander, a Feyli Kurd who had joined the Kurdish Peshmerga in 1981 to fight Saddam's forces in the mountains of Iraqi Kurdistan in northern Iraq. He later went into exile in Iran and Syria, then moved to London in 1991, where he earned a doctorate in history from the London School of Economics. Eskander worked as a researcher at the Iraqi Cultural Forum in London before joining other Iraqi expatriate intellectuals and exiled artists in returning to Iraq after the invasion to rebuild the country's cultural life.<sup>50</sup> One month after arriving in Baghdad, he accepted the position of director general at the Iraq National Library and Archive (INLA). For Eskander, restoring and preserving Iraq's cultural patrimony was vital for the country's future social and political stability. “Without cultural education,” he explained, “we cannot emerge from Saddam Hussein's dictatorship properly. Without it, we cannot resist the ideas of religious fundamentalism.”<sup>51</sup>

Amid Baghdad's worsening sectarian violence, including car bombs and assassinations, Eskander worked with meager resources as he solicited international aid to rebuild the INLA after looters and arsonists raided and torched many of its priceless holdings.<sup>52</sup> He envisioned retrieving the seized Saddam-era documents to preserve the history of Ba'athist dictatorial rule and foster reconciliation, democracy, and the rule of law in the new Iraq.<sup>53</sup> His demands for the return of the documents to the INLA ran into conflict with the Pentagon as well as with Kanan Makiya and the IMF.

Makiya was an influential voice in the humanitarian argument for the 2003 Iraq War; he often met in the Oval Office with President George W. Bush.<sup>54</sup> He had first gained the attention of US foreign policy makers more than a decade earlier. His 1989 book, *Republic of Fear*, quickly became a bestseller following Saddam's invasion and occupation



of Kuwait on August 2, 1990. Originally published under the pseudonym Samir al-Khalil, the book portrayed Iraq's pervasive brutality and paranoia under Saddam's reign of terror, which had been modeled after the murderous totalitarian ideologies of twentieth-century Europe—the Nazis, fascists, and communists.<sup>55</sup> Makiya had urged the George H. W. Bush administration to stop Saddam's slaughter of the predominantly Shi'ite Arabs and Kurds in their uprisings in southern and northern Iraq following Iraq's ignominious defeat in Kuwait. He also exhorted the US-led coalition to march on Baghdad to overthrow Ba'thist rule.<sup>56</sup> The war and the mass killings of Iraqi Shi'ites and Kurds—including the earlier Anfal (predominantly Kurdish) genocide—set Makiya on a new path in the 1990s to document Saddam's dictatorial rule, leading him to form the IMF shortly before the 2003 US-led invasion of Iraq.<sup>57</sup> In creating the IMF, Makiya recruited the assistance of two cofounders: Hassan Mneimneh, who served as IMF director from 2004 to 2008, and Mustafa al-Kadhimi, who became prime minister of Iraq in 2020.<sup>58</sup>

Registered as an NGO in Washington, DC, and Baghdad, the IMF entered Iraq as a defense contractor soon after the invasion to collect and preserve the artifacts and documents of the Ba'th's oppressive rule. Makiya aimed to build a memorial center in the heart of Baghdad similar to Germany's Stasi Records Archive or the US Holocaust Memorial Museum in Washington. He envisioned the memorial center standing as an enduring indictment of Saddam's carnage and the terrible toll it took on Iraq and its people. He also believed that exposing Iraqis to their past would help foster transitional justice and national reconciliation as in Czechoslovakia and East Germany after the fall of communism, or South Africa following the end of apartheid.<sup>59</sup>

In April 2003, one month after the invasion, a US Army civil affairs officer led Makiya to his most dramatic find—nearly 6.5 million pages of documents beneath a trap door of the tomb of Michel Aflaq—one of the founders of the Ba'th Party in Damascus, Syria, in the early 1940s.<sup>60</sup> The archive of the Ba'th Party Regional Command offered the view from the top, revealing the interactions of the ruling elite with the provincial branches, the party and state security agencies, and the Presidential Diwan. There was arguably no greater find of primary sources documenting the Ba'th Party's rule in Iraq.

The IMF had assumed custody of the forty-eight tons of records with the approval of the US occupation authorities and the Iraqi interim government. Nonetheless, Makiya and the IMF abandoned their memorial project amid the outbreak of sectarian civil war and armed insurrection against the US occupation. Alarmed that the archive might be destroyed in the spiraling violence, Makiya and his associates had initially hoped the Pentagon would fly the documents to the vast media storage center in Doha, Qatar, where the previously captured Ba'thist records were being processed. However, due to the anticipated delay in clearing Qatari customs and the backlog at the Doha processing facility, Defense officials arranged in 2005 to airlift the records to the US pursuant to an agreement with the IMF.<sup>61</sup>

The agreement came after Makiya convinced Defense officials of the intelligence value of the Ba'ath Regional Command archive in understanding the Sunni Arab insurgency in central and western Iraq. The “Memorandum of Understanding” (MOU), executed on February 2, 2005, was signed by IMF Vice President Hassan Mneimneh and Special Assistant to the Office of the Secretary of Defense Doman (Dobie) O. McArthur. The MOU outlined the IMF’s intelligence role in analyzing the files, providing that it would “assist and advise the USG [United States Government] in devising efficient, productive methodologies for successful classification, annotation, and extractions of useful, real-time information from the Foundation documents for purposes of interest to the USG.”<sup>62</sup>

After the US military airlifted the archive to safety in the US, it was transferred to a West Virginia naval facility where DIA contractors digitized the records. In keeping with the MOU, the files were also uploaded into the Harmony database, after which the originals were handed back to the IMF.<sup>63</sup> Then, in January 2008, Makiya and the IMF arranged to place the archive at the Hoover Institution at Stanford University under a temporary deposit agreement that acknowledged its status as Iraqi patrimony.<sup>64</sup>

The IMF-Hoover agreement incited allegations of pillage among several Iraqi officials, as well as a chorus of archivists, librarians, and academics in and outside Iraq. As the leading Iraqi critic against the taking of the Saddam-regime files, Eskander campaigned for the return of all the documents in the hands of the Pentagon and the IMF. In November 2007, he traveled to the US—which he later criticized as “the hungriest scavenger” of other nations’ archives—to lobby for their restitution to Baghdad.<sup>65</sup> He found a receptive audience among academics, archivists, and museum officials in recognition of his efforts to rebuild the INLA amid Iraq’s post-2003 chaos and spiraling sectarian violence. Indeed, that same year the Middle East Studies Association, an American scholarly society, gave Eskander its Academic Freedom Award to a standing ovation at its annual meeting in Montreal.<sup>66</sup>

Although the IMF-Hoover agreement had received the blessing of the Iraqi prime minister’s office, academic critics and archivists joined Eskander in denouncing the US seizure of the Saddam regime’s documents and the IMF-Hoover deal as acts of cultural plunder under international law. On April 22, 2008, the Society of American Archivists and the Association of Canadian Archivists issued a joint statement condemning the agreement as a possible “act of pillage” and calling for the immediate repatriation to Iraq of all documents held by US institutions.<sup>67</sup> Others countered that the US had seized the documents under the laws of war, warning of the human rights risks in returning them to a vengeful regime amid Iraq’s sectarian civil war.<sup>68</sup> In the latter view, repatriating the poisonous documents into the hands of an Iraqi regime, whose ministries and security forces had been heavily infiltrated by death squads bent on sectarian vengeance, only promised to incite further bloodshed.<sup>69</sup> The question was not whether the seized documents should be returned, but when and under what circumstances—so as to minimize the risk of their political or sectarian exploitation for blackmail, revenge, or extrajudicial killings. At the same time,



behind closed doors, US officials and many Iraqi officials also shared concerns about Iraq's institutional capacity to handle the documents.

Amid the escalating controversy, in April 2010 a three-member Iraqi delegation, including Eskander, visited California and Washington to meet with officials from the Hoover Institution, Pentagon, and State Department. It was the first time, Eskander said, that Iraq demanded the return of all the Ba'hist documents removed from the country by the US.<sup>70</sup> Although the meetings failed to yield their immediate repatriation, they set the course for the diplomatic discussions to come.

More than a year later, on October 24, 2011, the Hoover Institution received a high-level visit from Iraq's national security advisor, Falih al-Fayyadh, to discuss the Ba'hist Regional Command archive. In addition to serving as national security advisor since 2011, Fayyadh had held other key national security and intelligence positions. Fayyadh's two-day visit indicated the Maliki regime's ardent desire to retrieve the seized documents from the 2003 war. Fayyadh met with staff "to review and discuss current and future cooperation between the Iraqi government and the Hoover Institution."<sup>71</sup> In his additional capacity as Iraq's director of national reconciliation, Fayyadh quietly became the "Ba'hist documents czar." Over the next year and a half, he led Iraq's discreet discussions with officials at the US embassy in Baghdad concerning the repatriation of the seized Saddam-regime records held by the DIA in Doha. Fayyadh's personal involvement suggests that Maliki's regime was more interested in retrieving the archival trove for its incriminating intelligence on former Ba'histis than it was in reclaiming Iraq's historical patrimony so as to expose Iraqis to their authoritarian past and advance national reconciliation.

### **The Budget Sequester**

Fayyadh's visit to Hoover came just days after President Obama announced the withdrawal of the last remaining thirty-nine thousand troops from Iraq. While Iraq thereafter spiraled into growing authoritarianism, renewed sectarian conflict, and state failure, the repatriation discussions regarding the seized records from the 2003 war gained momentum. For the US, the talks also were driven by the "Sequester," a series of mandated federal spending cuts designed to tame a surging deficit resulting from the Great Recession.<sup>72</sup> Initially passed as part of the Budget Control Act of 2011, the measure aimed to incentivize the Joint Select Committee on Deficit Reduction to reach agreement on the deficit by December 23, 2011.<sup>73</sup>

But the efforts to strike a deficit deal failed, triggering spending cuts across federal agencies, including the Pentagon, starting on March 1, 2013.<sup>74</sup> With the Iraq War over and in search of discretionary cuts, the Defense Department targeted the Combined Media Processing Center in Doha, where the DIA was storing the records seized in 2003. According to one source, after the US government fully exploited the records for intelligence and analysis of the war, DIA officials concluded, "We really didn't need this stuff anymore. It was just

sitting in the warehouse taking up space.”<sup>75</sup> The exorbitant costs of renting and storing the documents in an air-conditioned warehouse amid the heat and humidity of the Persian Gulf region, and the “desire to return to Iraq what the US military had removed from Iraq after 2003,” were contributing factors behind the repatriation, according to several sources.<sup>76</sup>

The Pentagon enlisted the State Department’s assistance in expediting the diplomatic talks with Iraq to unload the millions of pages of documents and shut down the storage facility.<sup>77</sup> After some interdepartmental haggling, the State Department also agreed to cover the costs of repatriating the documents. A chagrined Pentagon source recounted one of his associates “openly bragging about getting State to foot the bill”—indifferent to the human rights risks of returning the poisonous records to a sectarian regime in an increasingly unstable country.<sup>78</sup>

On September 2, 2012, the State Department issued a press release, reconfirming the US-Iraq strategic partnership and noting the “ongoing process of repatriating archives and documents” to the Iraqi government.<sup>79</sup> In Iraq, Ambassador Robert S. Beecroft (2012–2014) and Deputy Chief of Mission Douglas A. Silliman handled the restitution talks with Fayyadh and his associates at the US embassy in Baghdad.<sup>80</sup> At the logistical level, the talks were driven by the DIA, which was managing the documents at the media processing center in Qatar and would be responsible for carrying out their repatriation. “The ‘negotiations’ were not really a traditional negotiation,” recalled one participant in the talks. “They were more a series of discussions with Iraqi officials about this issue and working out how and when they would be returned to Iraq. The documents were in the possession of the Department of Defense, so, as I recall, it was DoD that approved the return.”<sup>81</sup>

The high-level involvement of Beecroft, Silliman, and Fayyadh, however, indicated that the repatriation involved a sensitive diplomatic matter. It is likely that Fayyadh wanted to keep the restitution quiet to avoid alerting either the Sunni Arab political elites or the Da’wa Party’s Shi’ite Islamist and Kurdish political rivals, many of whom may have been named in the files. Fayyadh’s preeminence in Iraq’s national security apparatus and his central role in the repatriation talks signified the Maliki regime’s determination to retrieve the documents.

### **US Covertly Returns the Seized Records in 2013**

By late April 2013, after Fayyadh, Beecroft, and Silliman had concluded their talks, the Pentagon’s lawyers drafted the repatriation agreement. The agreement was based on the restitution pact with West Germany, which had demanded the return of its national history shortly after World War II. In a show of diplomatic good will with its new post-war ally, from 1953 to 1968 the US repatriated most of the seized records and archives of the Third Reich, dating back though the Weimar Republic to the Second Reich of Otto von Bismarck.<sup>82</sup>



The US nevertheless withheld files relating to national security, the glorification of the Nazi regime, or the occupation of foreign states.<sup>83</sup>

The Iraq repatriation agreement incorporated the same terminology, deeming the return of the records as a “donation” and “gift.” This wording acknowledged that the captured records constituted US property under the laws of war, including the right to withhold selected documents on national security grounds. In the Iraq case, the US withheld files concerning Iraq’s chemical, biological, and nuclear weapons programs in the 1980s and early 1990s.<sup>84</sup> Moreover, the agreement covered the restitution of only the seized files from the 2003 war held in Doha, which excluded the DIA’s database of the digitized documents, as well as the Ba’th Regional Command archive deposited at the Hoover Institution by the IMF.

With the pro forma agreement in hand, on April 22, 2013, the US embassy in Baghdad sent a diplomatic note to the Iraqi government: “The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Iraq and wishes to inform that Customs clearance is required for a diplomatic shipment.” According to the note, the shipment was exempt from customs duty and tax and would be arriving in Iraq through the Umm Qasr border point.<sup>85</sup>

Several weeks later, on May 16, 2013, the *Al-Rumelia*, carrying a diplomatic shipment of 35,504 boxes of Saddam-regime records, arrived at the port of Umm Qasr.<sup>86</sup> The documents were returned in roughly the same disorganized state in which they were seized in the chaos and confusion of the 2003 invasion.<sup>87</sup> The packing inventory listed the shipment’s net weight at 526,220 kilograms (1,160,116.52 pounds) and its gross weight at 532,560 kilograms (1,174,093.82 pounds).<sup>88</sup> The shipping receipt and “Relinquishment of Possession” document transferring responsibility for the records to Iraq were signed by Fayyadh and US Ambassador to Iraq Beecroft.<sup>89</sup>

Other documents dating to April and May, before the repatriation, indicated that the documents, exceeding 580 tons, were destined for the “Embassy of the United States of America in the International Zone, Baghdad.”<sup>90</sup> This designation may have concerned nothing more than the customs process. Alternatively, it may have provided diplomatic cover for discreetly returning the files to Maliki’s regime.

Both Washington and Baghdad kept the repatriation of the Ba’thist state files under wraps, despite the widespread media attention given to their seizure in the war and what they revealed about the inner workings of Saddam’s regime.<sup>91</sup> US officials were aware that returning the files to Maliki’s increasingly repressive and sectarian regime could considerably inflame Iraq’s sectarian and political violence. In response to questions about whether US officials discussed the risks of repatriating the documents amid Iraq’s intensifying sectarianism and social unrest, a participant in the talks would only say,

“Any such discussions would have been classified.”<sup>92</sup> Another US official stated that Iraqi officials gave assurances that the documents would not be exploited, that “they wanted to bury and forget about the stuff.”<sup>93</sup> As Iraq descended into renewed civil war, US officials demonstrated a remarkable indifference to the potential human rights consequences of repatriating the documents to a sectarian-motivated regime. “I don’t think that many people really cared,” one former US official told us.<sup>94</sup> Another official involved in the repatriation discussions put it more bluntly, “We decided that at a certain point, a country has to handle its own affairs and we needed to treat the Iraqis like adults. If the Iraqis were going to kill each other, they were going to kill each other.”<sup>95</sup>

The state security documents offered Maliki’s security services a trove of readily exploitable intelligence for blackmail, political purges, arbitrary arrests, or revenge and extrajudicial killings of Sunni and Shi’ite alike in a highly charged political and sectarian environment. It was hard to imagine Maliki receiving a greater intelligence gift to exploit against his political and sectarian enemies. Like other dictatorships have done, Saddam’s overlapping security and intelligence agencies documented their activities and crimes in detail. The highly sensitive files named thousands of former Ba’th Party personnel and members of the military, secret police, intelligence agencies—as well as informants, collaborators, and religious figures who had needed to accommodate the Ba’th Party in order to survive in Iraq. Of likely interest would have been the names of individuals who informed on or betrayed the Da’wa Party when it was the main underground opposition party battling Saddam’s regime.

The US returned the documents at a decidedly ill-fated time, just as the Syrian uprising was merging with the growing unrest in Iraq. In April 2013, the leader of the metastasizing cross-border insurgency, the black-clad terrorist Abu Bakr al-Baghdadi, had declared the theocratic militant movement under his command as the Islamic State in Iraq and al-Sham.<sup>96</sup> Weeks later, the day preceding the repatriation, a leading military and security affairs analyst warned of Iraq’s disintegration in an article titled “Yes, Iraq Is Unraveling.”<sup>97</sup> One year later, the lightning advance of ISIS across northern Iraq and the fall of Mosul in June 2014 compelled a reluctant President Obama to order troops back to Iraq under Operation Inherent Resolve. With the fall of Mosul, Maliki’s regime fell into disarray, leading him to step down as prime minister under heavy US pressure.<sup>98</sup>

### **Delivering the Files into Authoritarian Hands**

Repatriating the incriminating files into the hands of Maliki’s security chief, Fayyadh, augured their malignant misuse. Fayyadh and Maliki held long-standing personal vendettas against the former Ba’thists. As early acolytes of the persecuted Shi’ite Da’wa Party, both had suffered grievously under Saddam’s regime, instilling in them an abiding sense of vengeance. Fayyadh had been arrested shortly after joining the Da’wa Party in the early 1970s; he spent five years in the notorious Abu Ghraib prison before Saddam ordered his release



after a meeting over coffee with Fayyadh's tribal leader.<sup>99</sup> Saddam's release order included Fayyadh's brother as well, but it arrived too late to save him from execution.<sup>100</sup>

Fayyadh's sectarian vendetta melded with his pro-Iranian politics, which became increasingly evident after the US withdrew its troops from Iraq in 2011. Fayyadh and his former deputy, Abu Mahdi al-Muhandis, had nominally led the Popular Mobilization Forces (PMF), which were formed in June 2014 after ISIS routed the Iraqi army in Mosul. The PMF comprised an umbrella group of various competing militias largely dominated by conservative Islamists armed and supported by Tehran.<sup>101</sup> Muhandis had also served as an advisor to General Qassim Suleimani, head of Iran's Islamic Revolutionary Guard's Quds Force. In 2009, the US Treasury sanctioned Muhandis for his ties to Suleimani and Hezbollah, posing a threat to the stability of Iraq.<sup>102</sup> Both Muhandis and Suleimani were later killed outside Baghdad International Airport on January 3, 2020, in a drone strike ordered by President Donald J. Trump.<sup>103</sup> Among Fayyadh's network of pro-Iranian associates was Hadi al-Amiri, leader of the Iranian-backed Badr organization and one of Iraq's most sectarian figures.<sup>104</sup> Fayyadh's next-door neighbor was Qais al-Khazali, leader of the pro-Iranian militia Asa'ib Ahl al-Haq (League of the Righteous), which had launched hundreds of attacks on US troops starting with the 2003 war.<sup>105</sup> Given Fayyadh's personal vendetta against former Ba'athists, involvement with pro-Iranian militias, and control over the repatriation discussions with US officials, it is more than a fair wager that the security services fully exploited the files against the Sunni Arab elites. "It's a pretty good assumption," said a highly respected former diplomat with extensive experience in Iraq, "that if Falih al-Fayyadh had custody of the documents, they were used for sectarian purposes."<sup>106</sup>

Prime Minister Maliki, who appointed Fayyadh national security advisor in January 2011, was likewise driven by sectarian and pro-Iranian politics. Few Iraqi politicians aimed to exact sectarian retribution more than Maliki, who was fixated on cleansing Sunni Arab political elites from the government and seeding the intelligence agencies with Shi'ite Islamist loyalists in the name of preventing the return of the Ba'ath Party.<sup>107</sup> His background shows that he too would have been strongly inclined to exploit the repatriated documents against his sectarian enemies and political rivals, real and imagined.

Maliki was born and raised in a devout Shi'ite family in the village of Tuwairji, outside the Iraqi holy city of Karbala. Maliki joined the Da'wa Party in his youth, drawn by its call to replace secular Ba'athist rule with an Islamist government in Iraq. Saddam banned the rival party, declared membership a capital crime, and accused the Da'wa Islamists of serving the interests of Iranian clerics and intelligence services; he arrested, tortured, and executed thousands of its members and their relatives.

The records of Saddam's regime detail numerous executions of Da'wa Party members and the punishment of their families.<sup>108</sup> Some of Maliki's close relatives were killed in the purges.



For more than thirty years, Maliki devoted himself to organizing covert operations against Saddam's regime from bases in Iran and Syria, eventually becoming head of Iraq's Da'wa branch in Damascus. In the 1980s, during the Iran–Iraq war, the Da'wa Party served as one of Iran's Shi'ite proxies, bombing the Iraqi embassy in Beirut and the US and French embassies in Kuwait.<sup>109</sup>

Following the 2003 US-led invasion of Iraq, Maliki returned to the country and was elected to the new parliament. He chaired the committee supporting the De-Ba'athification Commission, which was used by Shi'ite Islamists to purge the Iraqi government and its security apparatus of former members of Saddam's Ba'ath Party. Despite his violent history with the secretive Da'wa Party, Maliki leveraged his support from US officials to become prime minister in May 2006. US officials had considered Maliki the only option among Iraq's political elite who could potentially draw support from Iraq's various factions, subdue the pro-Iranian Shi'ite militias, battle al-Qaeda in Iraq, and forge a semblance of national unity. As Maliki stepped into the prime minister's post, he vowed to form a strong, united Iraq—while it was rapidly descending into sectarian civil war and ethnic cleansing.<sup>110</sup>

Driven by his own Ba'athist paranoia and distrust, however, Maliki demonstrated a fervor for retribution and authoritarianism. Although the US military stood solidly behind his prime-ministerial rule amid the sectarian violence that was killing thousands each month and displacing millions, Maliki linked his own personal and political survival to the coercive forces of the state.<sup>111</sup> The exigencies of the civil war gave the new prime minister latitude to begin seizing personal control over the security services, seeding them with Shi'ite loyalists and arresting, purging, and assassinating—with Tehran's assistance—numerous former Ba'athist intelligence operatives, many of whom were recruited by the CIA to rebuild Iraq's intelligence and security apparatus.<sup>112</sup>

Nevertheless, under US pressure Maliki reluctantly yielded to the 2007 surge and the arming and funding of Sunni tribal and former Ba'athist insurgents to turn their weapons on al-Qaeda in Iraq, which had recently proclaimed itself the Islamic State in Iraq.<sup>113</sup> The Anbar Awakening's Sons of Iraq movement proved successful in subduing much of the Sunni Arab insurgency, but Maliki later betrayed his promises to keep the tribal fighters on the payroll.<sup>114</sup> The betrayal left members of the movement jobless, embittered, and inclined toward radicalization—as well as vulnerable to attacks by the resurgent Islamic State over the next several years.<sup>115</sup>

In 2008, with the incoming Obama administration pledging to end the war, and distracted by the worst global economic crisis since the Great Depression, Maliki moved to tighten his grip on power and ramp up sectarian retribution, laying the foundations for another civil war.<sup>116</sup> According to Ali Khedery—former special assistant to various US ambassadors and senior advisor to the US Central Command from 2003 to 2009—Maliki “began a systematic campaign to destroy the Iraqi state and replace it with his private office and his political party.”<sup>117</sup>



After the failed negotiations over the Status of Forces Agreement resulted in the last US troops leaving Iraq in December 2011, Maliki's systematic campaign involved unleashing his loyalist security forces—along with rounding up numerous individuals among the Arab Sunni elites in order to cleanse every vestige of their influence from the government.<sup>118</sup> The prime minister's sectarian purges and intensified efforts to subjugate the political, security, and judicial branches of the state—while expanding his political patronage at the expense of his rivals—inflamed Iraq's growing disorder.

By early 2013, Maliki's autocratic sectarianism was inciting mass protests in the predominantly Sunni Arab regions of Iraq over government neglect, marginalization, the arrest and torture of thousands, and the killing of hundreds by Maliki's security services.<sup>119</sup> While Maliki's sectarian regime purged Sunni Arab elites from power and violently confronted the anti-government protests, stoking sectarian tension and armed opposition, Fayyadh was carrying out restitution talks with US officials at the US embassy in Baghdad. Just months later in May, after the signing of a repatriation agreement, the Pentagon returned the politically explosive records of Saddam's regime into the hands of Fayyadh and the security services.

### **No Comment**

Following the covert return of the Saddam-regime documents into the hands of Maliki's security services, US officials stopped tracking the documents' whereabouts.<sup>120</sup> Iraq's political class was kept in the dark, including the parliament, which passed legislation in 2006 and 2016 related to the historical records of the former Ba'athist state.<sup>121</sup> In the years after the 2013 repatriation, Iraqi officials made frequent inquiries to the US government about the status of the archives of Saddam's regime, believing they were still held in Doha. One US official who received many of these inquiries commented, "Nobody seems to know where the documents are in Iraq."<sup>122</sup>

Iraqi sources have since said the files have remained in Iraq, including a high-level intelligence official who noted that the "documents were delivered to a team effort by several government departments who are in charge of their safekeeping."<sup>123</sup> Other Iraqi sources, however, have cast doubt on this claim, believing that the records were transferred to Iran—a plausible scenario given the infiltration of Iraq's security services by pro-Iranian militias armed, funded, and directed by Tehran. An independent Iraqi researcher enlisted the help of a handful of Iraqi employees across several ministries with the aim of locating the files. After making inquiries the employees quickly grew fearful for their personal safety and the investigation was abruptly halted.

The covert repatriation, moreover, remained concealed from Mustafa al-Kadhimi, who was director of the Iraqi National Intelligence Service from June 2016 until his appointment

as prime minister in May 2020 but did not have an official government capacity in 2013. According to sources, Prime Minister Kadhimi and his aides still have little intimation of what happened to the records; they may remain beyond the premier's reach and in the hands of pro-Iranian militias or Iranian intelligence.<sup>124</sup> Although a US State Department official claims there is no evidence that any of the repatriated documents was misused, it is more than likely, given Fayyadh's high-level involvement in the restitution, that the security services led the "team effort," perhaps with Iranian assistance, in exploiting the files for sectarian purposes or Iranian benefit.<sup>125</sup>

One of the former Obama officials asked about the 2013 repatriation was Brett McGurk, who was a key advisor on Iraqi affairs before becoming deputy secretary of state for Iraq in August 2013. Commenting on the repatriation, McGurk would only say, "It definitely would have come across my desk." He declined further comment, referring additional questions to the State Department.<sup>126</sup> McGurk has come under some disparaging criticism for his role as the Obama administration's so-called chief "Maliki whisperer."<sup>127</sup> While his reticence in discussing the repatriation indicates its continuing sensitivity, it also raises questions regarding how much McGurk knows about what Maliki's security services did with the documents. Washington and Baghdad have their evident reasons for keeping the repatriation shrouded in secrecy. Given McGurk's high-level diplomatic role in the Obama administration, he may know whether Maliki's regime abused the files or allowed Iranian intelligence to exploit them—to the detriment of Iraq's social and political stability. If the files were abused, his whisperer influence with Maliki was less than he thought. At the very least, McGurk and other former and current officials could be cast in a critical light if it became known that Maliki and his security services had either allowed Iranian intelligence to exploit the files or transferred them to Tehran.

Another former Obama administration official who, like McGurk, is now serving in the administration of President Joseph R. Biden, confirmed hearing about the repatriation but did not have direct knowledge of the operation.<sup>128</sup> A Pentagon official responsible for Middle Eastern affairs at the time did not recall working on the issue, which suggests that perhaps the Pentagon delegated the matter to its own lawyers and the DIA.<sup>129</sup> If so, the highest-ranking Pentagon official to sign off on the repatriation of the documents to Iraq would likely have been either Lieutenant General Michael T. Flynn, who was the DIA director from July 2012 to August 2014, or his deputy David Shedd. Attempts to reach Flynn through his lawyers proved unsuccessful, and Shedd did not reply to an email request for comment. Moreover, email inquiries went unanswered by former deputy secretary of defense Ashton B. Carter and former under secretary of defense for policy James N. Miller, both of whom were serving in the Pentagon when the records were clandestinely repatriated in 2013.

The Office of the Secretary of Defense, the Defense Intelligence Agency, the Department of State, and US Central Command all declined to comment for this article through official



public affairs channels. Several Iraqi officials also declined requests to comment on the subject. The covert repatriation of the documents and the reluctance of officials to comment on the record suggest, at minimum, concerns about how Maliki's regime used or misused the documents while Iraq was falling into another civil war in 2013 and 2014. Moreover, the leak in November 2019 of secret Iranian intelligence documents detailing Iran's pervasive infiltration of nearly every aspect of Iraq's political, economic, and religious life raises the question of whether Tehran's intelligence services also exploited the files against former Ba'athist political and state security officials in order to advance its aim of transforming Iraq into a client state.<sup>130</sup>

Some current and former US officials suggest that Iraq's dysfunction, lack of state capacity, and disintegration into another sectarian conflict likely prevented Maliki's security services from exploiting the documents, but this scenario seems improbable. Even if one were to accept this premise, Fayyadh could have easily mobilized a "team effort" comprising one or two hundred low-level loyalists and Shi'ite militia members, or solicited Iranian intelligence to help scour the thousands of boxes for incriminating information. The Maliki regime may have been Balkanized, dysfunctional, corrupt, and beset by weak institutions, but these factors would not have prevented his security services from abusing the files and exposing them to Iranian intelligence.

### Archival Politics

Among the many casualties of Iraq's pervasive corruption was Saad Eskander, the former director general of the INLA. Eskander had initiated the campaign to retrieve the Saddam-regime documents held by both the IMF and the US military, drawing support among US and Western academics, archivists, and others. However well-intentioned these advocates and critics were in calling for the immediate repatriation of the archives of Saddam's regime, they misunderstood Iraq's violent sectarian politics and naively believed that Eskander and the INLA would be the recipients of the documents.

None of the Saddam-regime files was ever destined for Iraq's archives or other cultural institutions. Even as late as February 2020, for example, then minister of culture, tourism, and antiquities Abd al-Amir al-Hamdani was still in the dark about the repatriation of the Anfal files—which had transpired fifteen years earlier—when he erroneously announced that they were "present in North Carolina" and would be returned to Iraq in 2021.<sup>131</sup> A former US official noted that the US government considered the INLA unsuitable to house the documents because it lacked institutional capacity and security. The source believed that the most realistic option involved delivering the records directly to the government, despite the serious risks. "The thing you need to know about the Iraqi government," he stated, "is that it is ineffective and highly Balkanized. . . . The Iraqis had huge records-management problems. There was a substantial chance the records would be lost or even destroyed."<sup>132</sup>

Nonetheless, US officials had little interest in dictating what the Iraqis should do with the repatriated files or where they should go in Iraq. What for Maliki and his security services had been an ardent pursuit, the unloading of the seized records was for the Pentagon merely a small line-item budget cut. Indeed, it was improbable that Eskander and the INLA could have withstood the corruption of Iraq's political class and the powerful interests of the security services and the Iranian-backed militias—all vying to assert control over the files and exploit them against sectarian adversaries.

In May 2015, Eskander made the following announcement on Facebook: “I’d like to inform you,” he writes, “that corrupt elements within the hierarchy of the ministry of culture have been able to force me out of my post with the help of the new minister, who is an ignorant and arrogant person. . . . My staff wanted to resist the Minister’s decision, but I discouraged the idea, as I did not want them to be hurt.”<sup>133</sup> Eskander’s ouster largely fell on deaf ears among academics and archivists abroad—figures who had previously showered him with accolades for his work in rebuilding the INLA and campaigning to reclaim the seized archives of Saddam’s regime. After leaving Baghdad, Eskander moved to Sulaymaniyah, where he advised the Kurdistan Parliament on the establishment of a future Kurdish national library and archive.<sup>134</sup>

His politically motivated deposing belied the hope that Iraq would govern the documents by the rule of law—like the Stasi archives in Germany had been—in the service of human rights, reconciliation, and public understanding of the country’s authoritarian past.<sup>135</sup> Eskander’s vision for the documents never had a chance amid Iraq’s fall into renewed sectarianism and civil conflict. Eskander’s later return as an advisor to the ministry of culture after Kadhimi became prime minister in May 2020 signifies, perhaps, a glimmer of hope.

### **The Last Ba’thist Documents in the United States**

By the time of Eskander’s 2015 dismissal, the US had returned most of the Saddam-regime files to Iraq. The tons of Ba’th Party and secret police records seized by the Kurds in the 1991 uprising had been returned in 2005 for the Anfal genocide trials of Saddam and his henchmen. More than seven years later, in 2013, the US returned the vast trove of captured records from the 2003 war, stored in Doha, to Maliki’s regime. Only the Ba’th Regional Command archive held by the Hoover Institution remained to be repatriated. Like Eskander, the Hoover Institution and the IMF had been kept in the dark by the US and Iraqi governments with respect to the talks and repatriation of the records from Doha.

The 2013 repatriation and its aftershocks nevertheless likely informed the caution and concern that attended the eventual return of the Ba’th Regional Command records in 2020. The archive had remained in the Hoover Institution’s custody for twelve years. Its restitution had been impeded by the outbreak of renewed civil conflict from 2013 to 2019, when the ISIS territorial caliphate was finally destroyed. Amid the conflict and sharp



decline in the global price of oil, the Iraqi government informed US officials that it could not cover the cost of shipping the documents back to Iraq—putting the onus on the US to foot the bill.<sup>136</sup> Nevertheless, Iraqi officials supported Hoover’s continuing custodianship of the records; indeed, Iraqi Ambassador Lukman Faily participated in a conference about the documents at Stanford in June 2014.<sup>137</sup> The archive’s repatriation also became bogged down by a bureaucratic impasse between the State Department and the Pentagon over which would pay to fly the archive back to Baghdad.

The interagency standoff continued for years as Defense officials shifted responsibility for funding the archives’ return to the State Department, considering it a diplomatic matter between Washington and Baghdad. It was the Pentagon, however, that originally authorized the IMF as a contractor to collect the Saddam-regime documents after the 2003 invasion. At the IMF’s behest, the Defense Department funded the transfer of the archive to the US in 2005. The IMF-Pentagon “Memorandum of Understanding” defined the foundation as the custodian of the records, including its role in extracting useful information from the files that would be of interest to the US government. The State Department considered the disposition of the archive outside the parameters of its responsibility. In 2010, for example, Philip Frayne, spokesman for the US embassy in Baghdad, states, “This should be the subject of discussion between Hoover, the Iraqi Memory Foundation and the Iraqi government. In other words, they’re in the custody of the Hoover Institution right now, not in the custody of the US government.”<sup>138</sup>

The appointment of Kadhimi to Iraq’s premiership in May 2020—following his role since 2016 as director of the National Intelligence Service—helped to break the bureaucratic impasse between the Pentagon and State Department. Kadhimi’s pro-American inclinations and previous experience as cofounder and director of the IMF in Baghdad helped accelerate discussions on returning the archive to Iraq. US officials viewed the repatriation as a low-cost goodwill gesture that would signify support for the new prime minister as he confronted the myriad political, economic, and security challenges in Iraq.<sup>139</sup>

The US and Iraqi officials scheduled the repatriation talks for late summer 2020 as part of their larger strategic dialogue. In June, before the strategic dialogue took place, Kadhimi sacked Fayyadh from his post as national security advisor and related security functions, restricting his security portfolio to the chair of the PMF.<sup>140</sup> It is doubtful Kadhimi could have dismissed Fayyadh from the government altogether given his base of support among the heavily armed militias and Iran. The timing of Fayyadh’s demotion suggests that Kadhimi aimed, among other things, to sideline him from the confidential talks—as he was likely concerned that Fayyadh would advise the militias under his command about the repatriation of the documents.

Fayyadh had proved an adept political survivor over the span of several post-Maliki regimes, initially gaining the trust of US officials as a useful and “honest” source of information from

inside Maliki's government. But by the time of Kadhimi's rise as prime minister, Fayyadh had revealed himself to be a malign proxy for Iranian interests. He had increasingly done Iran's bidding on a range of malevolent activities, from directing Iranian-backed militias in the violent crackdown and killing of hundreds of Iraqis protesting government corruption to abetting a militia attack on the US embassy in Baghdad in 2019. Fayyadh's servitude to Iran and unmistakable sectarianism led the US Treasury to sanction him under the Global Magnitsky Act in 2021.<sup>141</sup>

With Fayyadh mostly out of the way, the confidential US-Iraqi discussions proceeded swiftly with an initial restitution plan that involved conveying the documents over several shipments aboard the State Department's monthly COVID-19 flights to Baghdad. Nonetheless, this arrangement posed risks that the records could still be intercepted by the sectarian, Iranian-backed militias.<sup>142</sup> Kadhimi's security aides also aimed to avoid press coverage or intelligence leaks that might tip off the militias before the documents could be secured in Iraq.<sup>143</sup>

Considering these concerns, the Pentagon worked to expedite the return of the records to Iraq in one shipment. Acting Assistant Secretary of Defense for International Security Affairs Kathryn Wheelbarger, however, opposed the operation on grounds that it had little to do with advancing US national security interests. This last bureaucratic impediment was inadvertently resolved during Trump's tumultuous final year in office when Wheelbarger was ousted from her position amid allegations of insufficient loyalty to the president.<sup>144</sup> After Wheelbarger's departure, the records were transported from Hoover to Travis Air Force Base in Fairfield, California. Then, on August 31, 2020, a C-5 Galaxy transport plane covertly flew the archive back to Baghdad.<sup>145</sup> On arrival, members of the Iraqi National Intelligence Service immediately unloaded and transported the archive under armed guard to a secret location. Deferring to anxious Iraqi officials, the *Wall Street Journal*, the first news outlet to break the story, agreed to delay publication until midnight Baghdad time, enabling Iraqi officials to tightly secure the records at their final undisclosed destination.<sup>146</sup>

The return of the records involved many of the same security implications as the 2013 repatriation had. Like the other stores of Saddam-regime documents repatriated to Iraq, the Ba'ath Regional Command archive included sensitive personal information on former Ba'ath Party members, secret police and intelligence agents, officers in the armed forces, informers, and private individuals—information that could be readily exploited against political rivals and sectarian adversaries.

Although Iraq's political violence has subsided since the days of Maliki, major challenges concerning human rights and the rule of law still confront the country's political reformers.<sup>147</sup> Not everyone was convinced of the merits and timing of the archive's repatriation. Abbas Kadhim, the director of the Iraq Initiative at the Atlantic Council and an Iraqi scholar who has studied the records, criticized the restitution. "Iraq is not ready,"



he states. “It has not started a process of reconciliation that would allow this archive to play a role. . . . Baathists documented everything, from a joke to an execution. Politicians, tribal leaders, people in the street will begin to use it against one another.”<sup>148</sup>

### Concluding Remarks

The repatriation of the seized Iraqi state security records in 2013, detailed here for the first time, has until now formed a missing chapter within the wider history of the seized archives of Saddam Hussein’s regime. This story raises serious questions regarding the potential for such repatriated records to be misused and exploited in ways contrary to both humanitarian concerns and American interests, as it speaks to the tension that sometimes exists between a state’s duty to repatriate a given country’s archival records and the responsibility not to let those records be used to fuel retribution.

The 2013 repatriation constituted one of the largest returns of captured adversary documents in American history, and yet the US and Iraqi governments have thus far refrained from commenting on the transaction or even acknowledging that it took place. This wall of silence by both governments unavoidably raises questions about the extent to which Maliki’s regime misused the files, perhaps with Iranian complicity, against sectarian and political adversaries—as well as the role that this may have played in creating the conditions for the emergence of ISIS. Indeed, Maliki’s tormented past in fighting Saddam’s murderous regime—as well as his prime-ministerial corruption, lust for power, anti-Sunni and anti-Ba’thist paranoia, and close association with sectarian Shi’ite militias and Iranian intelligence—strongly indicates that his security services exploited the Saddam-era files, helping to fuel renewed sectarian civil war. The intelligence contained in the troves of highly incriminating files would have been much too compelling to let it go to waste. Such a likelihood would explain the unfaltering silence of the US and Iraqi governments regarding the 2013 restitution. It would also explain the Kadhimi government’s acute anxiety over receiving and tightly securing the Ba’th Regional Command archive in 2020. The repatriation of the Ba’thist state files makes this matter of contemporary history a policy issue for the current and future Iraqi government, as well as for Iraq’s parliament and individual citizens. Security threats to the Saddam-regime archives will remain a major challenge as long as Iraq remains a deeply fractured country under the sway of the militias and Iran.

The Saddam-regime documents are unlikely to be made available anytime soon to either Iraqi scholars studying the Ba’thist period or private citizens searching for their missing relatives. Some of the documents may be relatively secure under the more responsible stewardship of the Kadhimi government, but the present situation may prove only temporary. As one of us (Montgomery) noted at the time of the August 31, 2020, repatriation, “Iraq deserves its historical legacy back, and we can have some confidence that the



Kadhimi government will handle them [the documents] responsibly. But what happens after his prime ministership ends may very well be problematic.”<sup>149</sup>

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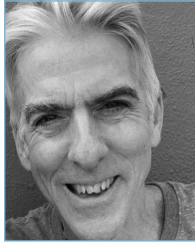
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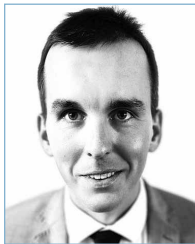


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