



***U.S.-Iraq Strategic Dialogue Washington, D.C. Session (19-20 August 2020)***

**AmCham-Iraq Communique to the U.S. and Iraqi Delegations:  
Bilateral Policy Issues of Most Concern to the  
American Business Community with Interest in Iraq**

18 August 2020

**TO OUR MEMBERS, STAKEHOLDERS, COLLEAGUES AND FRIENDS:**

On 15 August 2020, the American Chamber of Commerce in Iraq (“AmCham-Iraq”) presented a communique, on behalf of the American business community in Iraq, to the heads of the United States and Iraq delegations to the U.S.-Iraq Strategic Dialogue. Our communique addresses policy issues that are of most concern to the American business community, and encourages the United States and Iraq to discuss and agree on affirmative, concrete to resolve those issues in the upcoming Washington D.C. session of the Dialogue.

AmCham-Iraq is delighted to share this communique with you.

Sincerely,

***Timothy Mills***  
President

**2020 Strategic Dialogue between the United States and Iraq –  
Policy Issues of Most Concern to the American Business Community that the American  
and Iraqi Governments Should Agree Upon and Resolve in the Washington D.C.  
Discussions between President Trump and Prime Minister al-Kadhimi, and  
Communications between the Iraq and American Senior-Level Delegations**

15 August 2020

**TO:** Members of the Republic of Iraq Delegation to the U.S. Iraq Strategic Dialogue  
Members of the United States Delegation to the U.S. Iraq Strategic Dialogue

As the representative of all American businesses with interests in Iraq, the American Chamber of Commerce in Iraq (AmCham-Iraq) is heartened by the plans, commitments, and progress that the Government of His Excellency Prime Minister Mustafa al-Kadhimi has made in his short time in office toward:

- The Iraqi State regaining sovereignty over foreign-backed militia groups as well as organized criminal elements, and thereby beginning to providing the security against depredations of these groups experienced in Iraq by the Iraqi people as well as the domestic and foreign commercial sectors that are key to reform and balancing of the Iraqi economy;
- Re-initiating the hope of reforming the Iraqi economy to create a vibrant, well-financed international investment community dedicated to Iraq's growth and well-being, working in tandem with a newly-restored Iraqi private sector – all as part of transforming Iraq from being strictly an “oil state” economy;
- Recognizing that for the Government of Iraq to achieve its goal of attaining political stability and providing economic stability for the people of Iraq, Iraq and its people need the involvement of American investors and businesses across all sectors of the Iraqi economy, but particularly now in the realms of energy, health care, finance, agriculture and industry – and therefore needs to provide a level, stable playing field for American businesses, large and small, with willingness to commit to Iraq; and
- Acknowledging, with utmost realism, that corruption in most of its forms, is pervasive in Iraq, and must be confronted and defeated – not just for reasons of illegality, but in particular because for more than a decade corruption by public officials in Iraq has stolen the wealth of Iraq from the people of Iraq and has dissuaded ethical business enterprises from doing honest business that is essential to Iraq.

AmCham-Iraq is also encouraged by the response of the United States Government. Under President Donald Trump, the United States has formally re-affirmed the importance of the strategic relationship between the United States and Iraq, with particular focus on economic and security cooperation. The United States also has recognized that the reform agenda and policies now being pursued by Prime Minister al-Kadhimi's Government provide a unique opportunity for renewal of the relationship between the United States and Iraq as well as between the American and Iraqi peoples.

AmCham-Iraq has addressed these points in detail in our June 2020 White Paper, *The Future of the Strategic Relationship between the United States and the Republic of Iraq: Key Policies for Growth of the American Business Community's Contributions to Further Essential Economic Development of Iraq*. (We provided our White Paper to the two Governments ahead of the first round of Strategic Dialogue discussions by the two delegations in June 2020.)

***In light of such progress toward renewal of the relationship, on behalf of all American businesses with interest in Iraq, AmCham-Iraq encourages the two Governments to seize the opportunity presented by the Strategic Dialogue to agree that the following policies of the two Governments should be developed and implemented through concrete measures taken by each Government:***

**1. Security in Iraq for All Peoples and All Businesses**

**A. Security of All Peoples, Businesses and Foreign Diplomatic Missions Against Predations by Foreign-Backed Militias and Organized Criminal Elements**

The oldest and simplest justification for government is as protector: protecting citizens from violence. The horrors of little or no government to provide that function are on display in the world's many fragile states, still including Iraq. The idea of government as protector requires funding, training and equipping a military force and a police force that are under the control of the State, are loyal to the State, its constitution and laws, and are effective in protecting the people and the economy (including private sector businesses) against illegal predations of militias and organized criminal organizations. Regarding foreign threats (including the presence of foreign-dominated militias on a country's sovereign territory), "government as protector" requires the ability to meet, counter, overcome and remove such threats.

Prime Minister al-Kadhimi already has expended considerable energy, time, and effort in his attempt to attract international investment and world-class businesses to Iraq. And, he will continue these efforts during his upcoming visit to Washington D.C.

Prime Minister al-Kadhimi's efforts cannot change these two truisms:

--In the boardrooms of U.S. companies, Board Chairmen and CEOs simply are not willing to send business executives to Iraq, or to make significant investments in Iraq business projects, when Americans are subject to be tracked, violently threatened and targeted by elements in Iraq that do not want to Americans to be present in Iraq at all.

--Foreign direct investment is fluid, and will flow to where the risk-reward ratio is most in favor of the investor. Given the present security scenario in Iraq – in which the Iraqi Federal Government cannot provide for the security of Americans individually and American enterprises (and their investments) overall, Iraq is unattractive to international FDI generally, and American FDI in particular.

The security institutions of Federal Iraq formerly provided such protections – before the days of ISIS, the consequent establishment and rise of the foreign-backed Popular Mobilization Forces, and the expansion of organized criminal elements. But now they do not.

#### Recommended Policy Outcomes

>>The Federal Government of Iraq must meet its State obligations to provide security for the Iraqi people, business entities (including American businesses in Iraq) and foreign diplomatic missions in Iraq against the predations of foreign-supported militias and organized criminal elements by reforming and reorganizing its Ministry of Defense military forces and Ministry of Interior police and security forces.

>>The capability to develop actionable intelligence as well as the means to act on such intelligence, is critical to Iraq providing such security. Thus, these capabilities within the Ministry of Defense and the Ministry of Interior should be further developed and enhanced.

>>The Government of Iraq should acknowledge its need for international assistance in these regards, and should request such assistance.

>>The Government of the United States should encourage any such Iraqi-requested international assistance, and should provide such assistance that the Government of Iraq requests from the United States.

#### **B. Security from Continuing ISIS Insurgency Activity**

As to the fight against ISIS, it is widely agreed that ISIS continues to exist and still presents a security challenge to Iraq and its people through insurgent activities conducted across several Governates. Some in Iraq have said that Iraq can successfully end the threat posed by the ISIS insurgency activities without assistance from the NATO Mission in Iraq (including the assistance provided by U.S. Forces in Iraq).

However, there is great risk to Iraq and the United States failing to reach agreement on the continued presence of U.S. Forces in Iraq to continue assisting Iraq to vanquish ISIS. And a failure by the United States and Iraq to come to such an agreement will have grave cascading effects on the willingness of American businesses to expand their business opportunities and investments in Iraq (as sought by Prime Minister al-Kadhimi as a key part of his economic reform plan).

#### Recommended Policy Outcomes

>>The Government of Iraq should recognize that the assistance of the United States and the NATO Mission in Iraq – including re-confirmation by Iraq of the request for the presence of U.S. Forces in Iraq to assist in the fight against ISIS – is in the national security interests of the Government of Iraq and the people of Iraq.

>>The United States should continue to provide such security interest to Iraq, as requested by the Government of Iraq, so long as ISIS continues to operate (particularly in Iraq), and thus poses a threat to the national security of Iraq and the national security of the United States.

## **2. Level, Stable Playing Field for American Businesses in Iraq**

In our White Paper (June 2020), AmCham-Iraq established how American businesses in Iraq – because of the policies and practices of prior Iraqi governments – have not been accorded a level, stable playing field in Iraq that is comparable in all material aspects to the business treatment that prior governments of Iraq (including Iraqi Ministries and State-Owned Enterprises) have accorded to businesses from other countries.

As a matter of bilateral policy, these impediments to American businesses being accorded a level playing field should be addressed and resolved during the Strategic Dialogue:

### **A. Visas on Arrival at Iraqi Ports of Entry for American Business Visitors**

As reported and established in two AmCham-Iraq White Papers first published in 2018 and then again in preparation for the 2020 Strategic Dialogue, American business travel to Federal Iraq is *not* on a level playing field with business travel by competing business counterparts from Turkey, Lebanon and other countries because those business counterparts are given visas on arrival at Iraqi ports of entry.

The current Federal Iraq business arrival visa process for Americans – which requires a trip to an Iraqi consulate outside Iraq and a wait of up to five days for the Iraqi consulate to receive visa approval from the Ministry of Interior in Baghdad – is cumbersome, time consuming and disadvantageous. It functions as a significant impediment to Americans doing business in Federal Iraq.

And, there is no valid policy reason for Federal Iraq to continue this process – which dates back to the administrative processes established under the Saddam Hussein regime.

One need only look to the Kurdistan Region of Iraq, the UAE, Jordan, Lebanon, Turkey, and other countries in the region for examples of how visa-on-arrival programs for business travelers have spurred economic activity – precisely the outcome Prime Minister al-Kadhimi’s government now seeks.

### Recommended Policy Outcomes

>>The Governments of the United States and the Republic of Iraq forthwith enter into a bilateral agreement to provide American business travelers with Iraqi entry visas on arrival at Iraqi ports of entry.

**B. As a Matter of Policy and Practice, All Significant Iraqi Projects (Including Investment Projects) Should be Open to Competition by American Businesses on Equal Terms (including Financing Terms) to those Offered to Companies from Other Countries**

In recent times, the Ministry of Oil (MoO), through MoO State-owned companies, has awarded contracts for major refinery design-build projects to companies from two Asian countries, without competing the opportunities to other interested parties.

In late 2019, the Ministry of Transportation was preparing to designate a railway design-build project solely to an Asian State-owned enterprise following a trip to Asia by then-Prime Minister Adel Abdul Mahdi in the company of the then-Ministry of Transportation (among others).

In 2018-2019, the Government of Iraq established an off-budget mechanism for the sole benefit of making payments in oil to a company from an Asian country. Such a payment mechanism could prove useful to American companies for projects in Iraq. As yet, there is no such payment mechanism in place for the benefit of American companies.

Conversely, (1) the United States has not put into place a trade-finance credit facility for projects in Iraq that is equivalent to the \$15 billion trade finance facility provided to Iraq by the Export-Import Bank of China or by the multi-billion dollar loans provided by the Japan International Cooperation Agency for the Basrah Refinery Upgrade Project; and (2) the United States Government has not staffed a trade promotion activity as part of the U.S. Mission in Baghdad at equivalent levels of personnel and at equivalent or better levels of advocacy as the highly-effective Baghdad trade promotion offices of Asian and European countries.

Recommended Policy Outcomes

As part of promoting the strategic relationship with the United States in the economic sphere:

>>The Federal Government of Federal Iraq should put in place and enforce policies and practices governing public procurements, investments and project finance that result in stable, level competitive playing fields for qualified American companies seeking to do business with the Government of Iraq.

>>The Governments of the United States and Iraq should do all things necessary to establish a trade and project finance facility for the benefit of American businesses competing for projects and investing in Iraq that is equivalent to or superior to the trade and project financing facilities established for Iraq by Asian countries.

>>The Trump Administration should do all things necessary to staff a U.S. Government trade promotion activity as part of the U.S. Mission in Baghdad at equivalent levels of personnel and

at equivalent or better levels of advocacy as the highly-effective Baghdad trade promotion offices of Asian and European countries.

### 3. Anti-Corruption

It is indisputable that the time has come for Iraq, assisted by the international community (including the United States) to finally embark on a serious and effective anti-corruption program.

In the time since we published our June 2020 White Paper, several significant developments have underscored the need for bilateral cooperation with the object of beginning to counter corruption in Iraq:

–On 29 July 2020, The New York Times published *Inside the Iraqi Kleptocracy*,<sup>1</sup> an authoritative reporting on the origins and sources of – as well as the current scope and extent – of corruption in Iraq,

–Prime Minister al-Kadhimi has launched an anti-corruption campaign, first aimed at countering corruption at the borders, but also targeting corruption more broadly; and

–Finance Minister Ali A. Allawi’s March 2020 paper, *The Political Economy of Institutional Decay and Official Corruption – The Case of Iraq*,<sup>2</sup> has been recognized as a roadmap for the beginnings of an unprecedented and sweeping anti-corruption program that could be undertaken by the al-Kadhimi government – provided that Prime Minister al-Khadimi is able to overcome the inertia within the Iraqi political classes that prevented predecessor Prime Ministers (dating back to 28 June 2004) from marshalling the requisite political will to do so.

It has been the case since 28 June 2004 that, at the very least, corruption in Iraq has:

- (1) Enriched the corrupt (both corrupt Iraqi officials as well as complicit companies and their owners);
- (2) Impoverished Iraq and its people<sup>3</sup>; and
- (3) For projects and contracts awarded on the basis of corruption (particularly bribery), has resulted in Iraq losing the services of the best companies in the

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<sup>1</sup> See <https://www.nytimes.com/2020/07/29/magazine/iraq-corruption.html>

<sup>2</sup> Originally presented at the Atlantic Council US-Europe-Iraq Track II Dialogue in March 2020 (the “Allawi Paper”). Available at <http://iraqieconomists.net/en/2020/05/19/the-political-economy-of-institutional-decay-and-official-corruption-the-case-of-iraq/>.

<sup>3</sup> The Allawi Paper estimates that the large majority of \$125 billion to \$150 billion in assets held overseas by Iraqis were illegitimately acquired. *Id.* at 22. Additionally, the Allawi Paper reports specific instances of alleged corruption totaling more than \$30 billion, based on a summary of reports in Iraqi Integrity Commission files. *Id.* at 16-18.

world – American and European alike – who are prohibited by law<sup>4</sup> from participating in bribery schemes and in any event will not do so.

AmCham-Iraq and our members hold the view that, if Prime Minister Al-Kadhimi is serious about expanding the participation of world-class American businesses in Iraq and about securing American private-sector investment in Iraq, then the al-Kadhimi government must move swiftly to reform procurement and administrative practices across the Federal Iraqi bureaucracy to counter corruption in the form of both bribery for contract awards and the many forms of extortion that are demanded throughout the course of contract performance.

Because corruption in the Iraqi Federal Government sphere has been so persistent and pervasive, it is the case that immediate and unprecedented wholesale anti-corruption reforms are needed to instill integrity into the contracting process for projects as well as for foreign direct investment.

AmCham-Iraq therefore recommends that as part of the Strategic Dialogue, the two Governments jointly commit to the recommended policy outcomes that follow.

#### Recommended Policy Outcomes

>>The United States and the Republic of Iraq each commit, as a matter of policy, that for Iraqi Federal Government procurements of a size of more than \$25 million that have the potential for participation by American and international companies, the Government of Iraq remove the potential for corruption by delegating all such procurement actions (including the competitive process, contract administration and payment) to an international body (such as UNDP) renowned for the integrity of its procurement processes and contract administration.

>>That the United States provide that technical assistance and support needed by the al-Kadhimi Government to achieve this first policy outcome as quickly as practicable.

>>That, with technical assistance and support from the United States, the al-Kadhimi Government establish an anti-corruption organization in the Office of the Prime Minister (wholly separate from the Integrity Commission) to receive and immediately act upon reported corruption in procurements, and empowered to immediately take action to prevent contracts from being corruptly awarded and/or corruptly administered.

>>That, to provide a strong disincentive to Iraqi public officials and complicit companies from acting corruptly and gaining enduring economic benefit from corrupt acts, the Federal Government of Iraq and the United States work together to build an effective anti-corruption and anti-money laundering detection, prosecution and international ill-gotten-gains tracing and recovery program.

>>That, as part of the Strategic Dialogue, the al-Kadhimi Government request the United States to utilize the United States' international economic sanctions powers and extraterritorial

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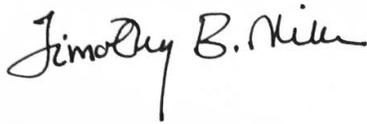
<sup>4</sup> See e.g., U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 *et seq.*; Bribery Act 2010, UK Public General Acts 2010 c. 23; Germany, Gesetz zur Bekämpfung der Korruption (20 November 2016).

jurisdiction to freeze ill-gotten gains of corrupt Iraqi officials and their conspirators that are in the possession of and within the control of international financial institutions, equivalent to the actions the United States has taken in the matter of the Bank of Credit and Commerce International (BCCI) (1991)<sup>5</sup> and the Malaysian sovereign wealth fund 1MDB.<sup>6</sup>

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AmCham-Iraq looks forward to a continued dialogue with you – before, during and after the Strategic Dialogue session in Washington D.C. on 19-20 August.

**THE AMERICAN CHAMBER OF COMMERCE IN IRAQ**



***Timothy Mills***  
**President**

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<sup>5</sup> See “The BCCI Affair”, A Report to the Committee on Foreign Relations, United States Senate (December 1992), available at <https://info.publicintelligence.net/The-BCCI-Affair.pdf> .

<sup>6</sup> See “United States Seeks to Recover More than \$1 Billion Obtained from Corruption Involving Malaysian Sovereign Wealth Fund”, U.S. Department of Justice, July 20, 2016. Available at <https://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign> .