

Notes for remarks of Ambassador David Berger
Session on reconciliation and power sharing

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Article 140 and the Future of Iraq: A Conference Sponsored by Washington Kurdish Institute,
the Penn Program in Ethnic Conflict – University of Pennsylvania, and Kurdish National
Congress of NA

Washington, D.C.
May 9, 2008

I met Ambassador Howar Ziad shortly after his arrival in Canada in early 2005. What brought us together was federalism. I knew that federalism was very much being considered by Iraqis in discussions about their new constitution, and that for obvious reasons, the Kurds were its leading proponents. I believed that Canadians had a responsibility to share our experience with Iraqis.

I tried to provide Howar with insights into Canada's history, customs, and politics and helped him with some early introductions. His views on Iraq were jarringly at variance with much received wisdom. He did not speak of an occupation but liberation. We quickly became friends.

Early on, Howar became convinced that Canada was a model which Iraqis should emulate. Howar was impressed with various Canadian measures that secure minority rights and ensure representation of minorities in our public life. These measures apply in the realm of language, education, and political life. I will refer to these practices later.

How to manage relations between persons of different ethnic, religious or linguistic backgrounds is an age old question and probably the greatest challenge of our day. We experienced ethnic and religious conflict of an unprecedented scale in the 20th century. Partition of India in 1947 produced the largest movement of people in history. 12 million people moved; about half were Muslims who moved west from India to Pakistan and half were Hindus who moved east from Pakistan to India. Half a million people were killed in communal violence. Gandhi and Nehru fought what was called communalism in India and what is called sectarianism in Iraq today. Gandhi and Nehru were opposed to partition. Gandhi remained firmly opposed but it appears that Nehru came to accept it as inevitable. Nehru nonetheless sought to appeal to the common humanity of Indians and sought to quell inter-communal violence, sometimes at great personal risk. He once went on two a rooftop in Dehli and rescued two Muslim children who would have been killed by a mob.

In law school, I took a course from John Humphrey in the international protection of human rights. Professor Humphrey wrote the first draft of the Universal Declaration of Human Rights and was the first director of the United Nations Secretariat's Division of Human Rights from 1946 to 1966. Professor Humphrey included an article on the protection of minorities in his draft.

The draft article read as follows:

"In states inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of any funds available for the purpose, their schools and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the state and in the press and public assembly."

In his book on his experience at the United Nations, Professor Humphrey explains that the part referring to public funds, which he considered to be the most important part, was dropped because France did not allocate public funds to private educational institutions. He added that the article gave rise to so much controversy that that the Human Rights Commission finally dropped it, with the result that the draft sent to the General Assembly did not even mention minorities.

There were later attempts to introduce a measure of protection to minorities. However, Latin Americans insisted there were no minorities in Latin America. The Americans and the British said that any compromise would be impossible between the views of the New World, where countries wanted to assimilate immigrants, and views held in Europe, where there were historical national minorities. Humphrey believed this was an oversimplification not only because there are in fact indigenous and other national minorities in the Americas but because most European governments were just as keen to assimilate their minorities as governments on the other side of the Atlantic.

Federalism can allow people of different backgrounds to live together in one state and to exercise power at the provincial or state level while sharing power with others in a broader unit.

The Americans invented federalism. But their constitution was not based on a bargain between ethnic, religious, or linguistic groups. To the contrary, they sought ways to mitigate the harm caused by "factions", either a minority or majority acting in their self-interest contrary to the general good. James Madison concluded that only the extent and variety of the union could protect against the dangers of faction. In *The Federalist Papers*, he wrote: "Take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens."

This political culture may explain why Americans have refused to provide official status to languages other than English. The U.S. Congress has admitted 37 states to the original 13. But always an unstated condition was that English be the official language. Louisiana, for example, retained the Napoleonic Code, but trials were to be in English. Daniel Patrick Moynihan once wrote, "This position may seem arbitrary, but it is defensible. *E pluribus unum.*" (Out of many, one.)

The Canadian experience is different. Canada would never have seen the light of day without a federal system that gave political power to English and French-speaking Canadians, while respecting minority rights throughout the federation.

Constitutional provisions were not always respected and unity has been strained at times. We have had our differences over language and religion, over sharing natural resources and countless other issues. Canadians have struggled to find the right balance between the government of Canada and the provinces. These conflicts are features of a federal system, which flourishes and ensures freedom because it is competitive.

We nonetheless have a spirit of compromise and nation-building that goes back to 1867 and before. For example, in 1774, only 14 years after the British conquest, Britain passed the Quebec Act which guaranteed religious freedom for the colony's Roman Catholic majority and adopted a simplified Test Oath which omitted references to religion enabling them to enter public office conscientiously. The Act established French civil law and British criminal law and provided for continued use of the seigniorial system of land tenure. The Act has been variously interpreted. It is clear that one of the motivations was to ensure the loyalty of French Catholics with trouble brewing in the American colonies.

Let me provide more specifics regarding Canada. Constitutional provisions that address minority rights include the use of official languages in Parliament, the courts and provincial legislatures in Ontario, Quebec, Manitoba and New Brunswick; minority language educational rights including the right of minorities to manage their school boards; a provision that requires that one-third of the Supreme Court justices should be of the civil law tradition.

Also, the Official Languages Act provides that both English and French have equal status in federal institutions and English and French speaking Canadians have the right to communicate with federal departments and agencies in the language of their choice.

In addition to this there are customs or practices that put English and French in a position of equality in public life. There is a tradition of alternating between English and French-speaking Canadians in the position of governor-general or vice-regal representative.

The Liberal Party of Canada, which has formed the government of Canada for long periods in Canada's 141 year history, has also a tradition of alternating between English and French speaking leaders.

Proficiency in both languages has become a practical requirement for any person who aspires to lead a federal political party.

Prime Ministers generally ensure that the federal cabinets are also representative of Canada's linguistic, geographical, and lately gender diversity.

It is unquestionably a colossal task to build a state and implement similar measures in the volatile circumstances of Iraq. Howar Ziad has often said that there are only three possible solutions for Iraq. One is a return to the status quo ante where one group dominated the others. A second is for the three main groups, the Shias, the Sunnis, and the Kurds, to go their separate ways. A third is some sort of federal or confederal system. Howar has added that he prefers messy democracy to the stability of tyrants.

Canadians are assisting in the effort to build a democratic Iraq. I might refer the work of the Forum of Federations which was initiated by Canadians and is headquartered in Canada but which is an international network. The Forum has conducted many training sessions on basic concepts of federalism, decentralization and power sharing for Iraqi legislators, lawyers, judges and officials.

Let me turn now to the situation in Kurdistan and Kirkuk. First, I should say that I understand that in Kurdistan, a tradition has been established of respect for minority rights and the representation of minorities in government. There is no comparison with the circumstances that prevailed previously in Iraq.

Discussions today have focused on the implementation of article 140 and the disputed territories including Kirkuk. Brendan O'Leary addressed this subject in a conference at Chatham House on December 19, 2007, entitled "Nationalities, Oil, and Land: Kirkuk and the Disputed Territories".

Professor O'Leary reviewed the current situation in Kirkuk and concluded "it is possible to see the outlines of a local power-sharing settlement with numerous minorities who are not cohesively opposed to Kurdistan Regional Government's territorial ambitions." He argued that "Kirkuk's minorities should bargain now for appropriate guarantees and rights within the Kurdistan Region – which has not yet issued its draft constitution."

Let me suggest that the KRG should take the initiative and offer power sharing in detailed terms. The KRG should offer radical, far reaching accommodation beyond the Canadian model. Many Canadian practices are consensual whereas other countries have more explicit guarantees for minority representation.

For example, Northern Ireland's agreement allows effectively every party seats in government in proportion to the seats they win in the Assembly; South Africa's transitional arrangements from 1994 to 1999 did the same; Belgium requires that half of the cabinet should be French and half Flemish; Bosnia requires that its three party presidency be comprised of one Serb, one Croat and one Bosniac-Muslim.

Power-sharing also requires some veto-rights for minorities, proportionality in staffing throughout the broad public sector, including the police.

Such guarantees and practices are not the norm in the Middle East but perhaps it is time for a new direction. They might assist in overcoming domestic and international opposition to the implementation of article 140.