

COMMENTS ON ARTICLE 140 – FRIDAY, MAY 9 (REAGAN BUILDING)

(OPENING COMMENTS ON PG'S COMMENTS)

THE CHALLENGES ASSOCIATED WITH IMPLEMENTING THE MANDATE OF ART. 140 ARE AMONG THE MOST MOMENTOUS AND CRITICAL CHALLENGES FACING THE LEADERS OF IRAQ'S NASCENT DEMOCRACY. AT THE HEART OF THESE CHALLENGES LIE CENTRAL PRINCIPLES OF JUSTICE, SELF-DETERMINATION, FAIRNESS AND SECURITY.

IRAQ'S VERY PEACE AND STABILITY ARE AT STAKE. IT IS ESSENTIAL LEADERS OF THE VARIOUS SECTARIAN, ETHNIC AND REGIONAL INTERESTS ACT SO AS TO EARN THEM THE TITLE OF "STATESMEN," THE RESPECT OF THE WORLD, AND A PLACE AMONG HISTORY'S GREAT PEACEMAKERS. AND GET THE JOB DONE!

AS ABRAHAM LINCOLN PUT IT IN HIS FIRST INAUGURAL ADDRESS, ON THE BRINK OF THE CATAclysmic AMERICAN CIVIL WAR, IT IS ESSENTIAL THAT ALL PARTIES HEED THE “BETTER ANGELS OF OUR NATURE” AND FIND THE PATH TO A JUST AND PEACEFUL RESOLUTION OF THESE ISSUES.

REGARDLESS OF HOW WE DEFINE THE CHALLENGES, OR WHAT SOLUTIONS WE DEVISE TO SOLVE THEM, IT IS IMPORTANT TO UNDERSCORE HOW VERY MUCH EASIER IMPLEMENTING 140 WILL BE, IF THE MINORITIES, IE, THE NON- KURDS OR OTHER MINORITY GROUPS (TURKMEN, SYRIANS, CHALDO-ASSYRIANS, ARABS, YASIDIS), PERCEIVE THAT THEY WILL BE TREATED FAIRLY, AND GIVEN THE SAME KIND OF AUTONOMY THAT OTHERS WOULD WANT IN LIFE, LIBERTY AND PURSUIT OF HAPPINESS.

TWO WORDS: GOOD GOVERNANCE.

ART. 140 OF THE IRAQI PERMANENT CONSTITUTION WAS NOT IMPLEMENTED BY THE CONSTITUTIONALLY MANDATED DEADLINE (DEC 31, 07).

THAT DEADLINE, BY AGREEMENT, WAS EXTENDED 6 MONTHS TO JUNE 30, 08.

ART. 140 WILL NOT BE IMPLEMENTED BY THAT DEADLINE. WHAT EXACTLY DOES "IMPLEMENTED" MEAN? TO ME IT MEANS THAT THE DESTINY OR ULTIMATE RESOLUTION OF THE DISPUTED AREAS, WHICH KURDS HAVE ASKED TO BE ATTACHED TO THEIR REGION---IS SETTLED. AT LEAST TWO MAIN CHALLENGES MUST BE OVERCOME TO ACHIEVE A JUST AND PEACEFUL SETTLEMENT.

THE FIRST IS THE INHERENT DIFFICULTY OF ANY POLITICAL LINE-DRAWING.

THE SECOND ARISES FROM THE AMBIGUITIES OF 140 ITSELF. I WILL DEVOTE MY REMARKS TO PUTTING THESE CHALLENGES INTO PERSPECTIVE BY RELATING THEM TO OUR OWN AMERICAN EXPERIENCE.

LET THERE BE NO DOUBT: EVEN IN THE BEST OF CIRCUMSTANCES, DRAWING LINES, BOUNDARIES THAT INCLUDE AND EXCLUDE - - GEOGRAPHICAL BOUNDARIES, IS AND WILL ALWAYS BE EXTREMELY CONTENTIOUS--EVEN WITHOUT THE ADDED, INCENDIARY INGREDIENTS PRESENTED BY IRAQ'S HISTORY - - HORRENDOUS TORTURE, ABUSE, ARABIZATION, AND ETHNIC CLEANSING. (JULIE ZANN: PASS OUT GERRY MANDER EXAMPLES) DRAWING GEOGRAPHIC LINES THAT WILL DICTATE POLITICAL CONTROL IS AS HOTLY CONTESTED IN THE U. S. AS ANY OTHER LEGAL OR POLITICAL ISSUE. ONCE EVERY 10 YEARS, THE UNITED STATES ENGAGES IN THE REDRAWING OF LINES BETWEEN CONGRESSIONAL DISTRICTS, AND THIS PROCESS ALWAYS PRODUCES A FLURRY OF CONTENTIOUS LAWSUITS THAT OFTEN GO ALL THE WAY TO THE

SUPREME COURT, EVEN AFTER THE LANDMARK SUPREME COURT CASE, BAKER VS. CARR, WHICH REMAINS THE SEMINAL CONG'L REDISTRICTING CASE.

I SAY THIS BECAUSE YOU MUST KEEP A GOOD SENSE OF HUMOR, AND UNDERSTAND THAT THIS PROBABLY IS UNAVOIDABLE IN THE DEMOCRATIC PROCESS. WHEN YOU LOOK AT HOW SOME OF THOSE LINES HAVE BEEN DRAWN HERE IN THE UNITED STATES, YOU EITHER HAVE TO LAUGH---OR YOU HAVE TO CRY.

(SHOW MAPS)

IN THE WORDS OF WINSTON CHURCHILL, THERE IS NO FORM OF GOVERNMENT WORSE THAN A DEMOCRACY - - SAVE ALL OTHERS. AS DEMOCRACY AND 140 UNFOLD IN IRAQ, IT WILL DO ALL OF US GOOD TO BE MINDFUL OF WINSTON CHURCHILL'S OBSERVATION. DEMOCRACY IS GOOD, BUT NEVER EASY.

UNAMI - - UNITED NATIONS ASSISTANCE MISSION FOR IRAQ - - IS CHARGED, WITHIN THE NEXT WEEK, TO RECOMMEND A PLAN TO RESOLVE THE DESTINY OF AT LEAST 4 CONTESTED AREAS OF IRAQ. IN ADDITION TO KIRKUK, UNAMI IS LOOKING AT OTHER DISPUTED AREAS SPANNING AN ARC ALMOST 300 MILES LONG, STRETCHING IN THE NORTHWEST FROM THE CITY OF SINJAR, DOWN TO THE DIYALA PROVINCE IN THE EAST.

SOME DISPUTED AREAS--THOSE OVERWHELMINGLY MADE UP OF ONE OF 3 ETHNIC GROUPS, ARE REFERRED TO AS “SOFT” AREAS. “HARD” AREAS ARE THOSE THAT ARE MORE MIXED AND CONTENTIOUS. I SHOWED YOU MAPS OF SELECT U.S.

CONG’L DISTRICTS, NOT AS PARAGONS OF GOVERNANCE, BUT RATHER, OF EXAMPLES OF THE SOMETIMES MESSY AND IMPERFECT PROCESS OF DEMOCRACY.

WE'VE ALL WITNESSED WHAT RECENTLY HAS UNFOLDED IN KOSOVO, THE TENSIONS CREATED BY THE SMALL, LARGELY AFFLUENT, NORTHERN, AND LARGELY SERBIAN, PART OF THAT NEW STATE. I'M REMINDED OF STORIES WES CLARK TOLD ME BACK IN THE MID-1990'S, OUT IN DAYTON, OHIO, STORIES OF KNOCKING ON SLOBODAN MILOSEVIC'S DOOR, AT 1:00 A.M. IN THE MORNING, AND HAGGLING OVER SINGLE VILLAGES, AND EVEN FARMS AND HOUSES. AT THE END OF THE DAY, WHERE THE BACKDROP OF HISTORY INCLUDES EGREGIOUS VIOLATIONS OF HUMAN RIGHTS AND ETHNIC CLEANSING, A JUST SOLUTION IS HARDLY AN EXACTING SCIENCE. IT WILL BE TEDIOUS, IT WILL REQUIRE COMPROMISE, AND THE BIGGEST WINNERS INVARIABLY WILL BE THOSE WHO ARE PERCEIVED GENUINELY TO BE COMMITTED TO RULE OF LAW AND EQUALITY FOR ALL.

ONE CHALLENGE KURDISTAN OBVIOUSLY MUST NAVIGATE WITH THE PASSAGE OF TIME IS THE PERCEPTION BY SOME THAT KURDISTAN IS NOT DEDICATED TO

BECOMING AN INTEGRAL PART OF IRAQ AS A WHOLE. AS TO KIRKUK, WHAT THIS MEANS, AT LEAST FOR SOME NON-KURDS, IS THAT THERE IS BUT ONE OF 2, MUTUALLY EXCLUSIVE ALTERNATIVES: EITHER KIRKUK IS TO BE SHARED FAIRLY BY ALL IRAQIS, OR, IT IS TO BE DOMINATED DISPROPORTIONATELY BY THE KURDS. THIS OBSTACLE MAY NOT BE INSURMOUNTABLE IF THE WILL AND COMFORT OF A CLEAR MAJORITY IS KURDISH GOVERNANCE. I SAY THIS ONLY BECAUSE PERCEPTIONS HERE OBVIOUSLY MAY ALTER OVER TIME.

THE SECOND SET OF CHALLENGES THAT MUST BE CONFRONTED ARE THOSE THAT ARISE FROM ART. 140 ITSELF. THE LANGUAGE OF 140 OBVIOUSLY WAS BORN OF A GIVE-AND-TAKE NEGOTIATION.

140 UPHOLDS TAL ARTICLE 58's CALL FOR A 3-STEP PROCESS:

(1) NORMALIZATION; (2) A CENSUS; AND (3) A REFERENDUM "TO DETERMINE THE WILL

OF THE CITIZENS." HOWEVER, WE MUST FRANKLY ACKNOWLEDGE THAT THE TEXT IN SEVERAL BASIC RESPECTS IS AMBIGUOUS.

1ST, IT IS NOT ALTOGETHER APPARENT (A) WHICH AREAS, IN FACT, ARE ELIGIBLE FOR REFERENDA; OR (B) THE BORDERS SEPARATING THE DIFFERENT AREAS.

WHY? THE CONSTITUTION NOWHERE DEFINES "DISPUTED AREAS."

2ND, THE ACTUAL, FINAL OUTCOME OF A KIRKUK REFERENDUM IS NOT CLEAR. IS IT AN EITHER/OR - - EITHER JOINING THE KIRKUK REGION OR STAYING UNDER BAGHDAD'S CONTROL, OR, AS SOME ARGUE, DOES IT ALLOW FOR THE OPTION OF A STAND-ALONE FEDERAL REGION, OR SOME OTHER, HYBRID "SPECIAL" STATUS?

3RD, THE CRITICAL ISSUE OF VOTER ELIGIBILITY REMAINS UNRESOLVED, AND THERE IS NO AGREED-UPON PROCESS FOR RESOLVING SUCH DISAGREEMENT.

FINALLY, SOME EVEN ARGUE THAT BECAUSE THE CONSTITUTIONALLY MANDATED DEADLINE OF DEC 21, 07, WAS PASSED, THE ENTIRE PROVISION HAS BEEN RENDERED NULL AND VOID. I'M TOLD THE IRAQI TURKMEN FRONT (ITF), A MORE MILITANT CAMP SUPPORTED BY TURKEY, AND ALSO MANY ARABS ARGUE THAT ARTICLE 140 HAS EXPIRED. THEY ARGUE THAT THE ONLY SOLUTION NOW IS TO DECLARE KIRKUK A "SPECIAL PROVINCE" AND ALLOW A PERIOD OF AT LEAST 10 YEARS TO RESOLVE INTERNAL BORDER DISPUTES.

LET ME SAY THAT ARGUING ART. 140 IS NULL AND VOID, SOLELY BECAUSE THE DECEMBER 31ST DEADLINE WAS MISSED, IS SIMPLY LUDICROUS IN LAW AND LOGIC. IF AN ACT IS DEEMED SO CRITICAL THAT A TIME CERTAIN IS CODIFIED IN WHICH TO MAKE IT HAPPEN, BUT IT DOESN'T GET DONE BY THAT STATUTORY DEADLINE, NO LOGIC WOULD SUPPORT A CONCLUSION THAT IT NO LONGER HAS TO BE DONE. STATED ANOTHER WAY, WE JUST DON'T THROW OUT THE BABY WITH THE BATH WATER. 2d, IF

THE DRAFTERS OF THE IRAQI CONSTITUTION HAD INTENDED ART. 140 TO LAPSE AFTER THE MANDATED DEADLINE, IT COULD EASILY HAVE STATED THAT, EXPLICITLY. DRAFTING PARTIES, BE THEY CONSTITUTIONAL CONVENTIONS OR LEGISLATIVE BODIES, KNOW PRECISELY HOW, AS DID THE CONSTITUTIONAL COMMISSION OF IRAQ, TO CODIFY THE VOIDING OF A RIGHT IF IT DOESN'T HAPPEN BY A DATE CERTAIN. IT IS A SIMPLE MATTER TO WRITE LAWS THAT VOID ACTIONS THAT DON'T HAPPEN BEFORE A CERTAIN DATE. OUR OWN CONGRESS DID PRECISELY THIS WITH THE ERA AMENDMENT. IT SAID IF THE ERA WAS NOT RATIFIED BY $\frac{3}{4}$ 'S OF THE STATES BY A CERTAIN DATE, THEN IT BECAME NULL AND VOID.

THAT IS WHY THE U.S. HAS NO ERA! ARTICLE 140 EASILY COULD HAVE STATED: --
-“UNLESS COMPLETED BY DEC 31, 2007, THE RQMTS OF ART 140 ARE NULL AND VOID.”
IT DOESN'T SAY THAT, AND IT CANNOT MEAN THAT.

THESE ARE 2 DIFFERENT REASONS WHY FAILURE TO TIMELY IMPLEMENT IN NO WAY VOIDS OR DIMINISHES THE LEGAL OBLIGATION TO IMPLEMENT ART. 140. INDEED, FAILURE TIMELY TO COMPLY ACTUALLY CREATES A RIGHT, TO BRING SUIT TO ENFORCE WHATEVER WAS CONSTITUTIONALLY MANDATED. THE “2 WRONGS MAKE A RIGHT” NOTION THAT DELAY VOIDS SUCH RIGHT, AGAIN, IS FRIVOLOUS.

THE ENTIRE U.S. CONSTITUTION ONLY ONCE MAKES REFERENCE TO A DATE, THAT BEING ARTICLE 1, SECTION 9, WHICH BARRED ANY LAW BEFORE JANUARY 1, 1808, THAT WOULD PROHIBIT IMPORTING SLAVES. BENJAMIN FRANKLIN DURING THE CONSTITUTIONAL CONVENTION, ARGUED DESPERATELY THAT WE SHOULD DEAL COMPREHENSIVELY WITH THIS IMPOSING ELEPHANT THEN IN THE ROOM - - SLAVERY. NO ONE ELSE AGREED. HE WAS ALONE. SO SLAVERY WAS NAVIGATED BY INTERIM LANGUAGE (WHICH WAS PREDICTABLY FOLLOWED UP BY AN ACT BARRING IMPORTATION OF SLAVES POST-JANUARY 1, 1808). BUT NO ONE ON EARTH IN THEIR

RIGHT MIND WOULD ARGUE THAT ILLEGALLY IMPORTING A SLAVE i.e., VIOLATING THIS LAW, SOMEHOW VOIDED THE STATUTE OR THE CONSTITUTIONAL PROVISION. JUST THE OPPOSITE--IT WOULD CONSUMMATE A SERIOUS CRIME.

AS WE SIT HERE IN THE RAYBURN BLDG OF WASHINGTON DC, IT MAY BE WORTH REFLECTING UPON A DEMOCRACY GONE AWRY---1861-65---THE U.S. CIVIL WAR. THERE, A MINORITY, THE SOUTHERN STATES AND PEOPLE, FELT TERRIBLY AGGRIEVED.

AND, FEELING THIS WAY, THEY, VERY FOOLISHLY I MIGHT ADD, AND IT IS MY ANCESTORS I'M SPEAKING OF, STARTED A WAR OVER IT. THE FOLLY OF SECESSION IS THAT THERE WAS AN OFFER TO COMPROMISE, AND A CLEAR PATH TO PEACE. ABRAHAM LINCOLN OFFERED NOT ONLY FREEING OF THE SLAVES, BUT FAIR COMPENSATION TO THE OWNERS FOR THE FREED SLAVES. THE UPSHOT OF THE CIVIL WAR IN THE U.S. WAS THAT THE SLAVE OWNERS BOTH LOST THEIR SLAVES, AND

**DIDN'T GET COMPENSATED FOR IT. AND, DEALING WITH THE ELEPHANT IN THE ROOM
BACK DURING THE CONSTITUTIONAL CONVENTION---SLAVERY---WAS POSTPONED WITH
CONSTITUTIONAL LANGUAGE GIVING 3/5'S OF A VOTE FOR EACH BLACK CITIZEN, AND A
DATE CERTAIN BAR TO ANY LAW BARRING THE IMPORTATION OF SLAVES. THE CIVIL
WAR WAS DELAYED FURTHER BY THE MISSOURI COMPROMISE & THE COMPROMISE OF
1850.**

**BUT THE SOUTH REFUSED, ULTIMATELY, TO ALLOW ANY COMPROMISE,
INCLUDING LINCOLN'S OFFER. THE UPSHOT WAS AN IGNOMINIOUS DEFEAT, IN A
HORRENDOUS WAR, AND NO COMPENSATION.**

**REFLECTING ON THE FOLLY AND TRAGEDY OF THE AMERICAN CIVIL WAR,
LINCOLN'S 2ND INAUGURAL ADDRESS STILL SPEAKS TO US TODAY:**

"NEITHER PARTY EXPECTED THE WAR'S, MAGNITUDE, OR DURATION."

BOTH READ THE SAME BIBLE, AND PRAY TO THE SAME GOD; AND EACH INVOKES HIS AID AGAINST THE OTHER... THE PRAYERS OF BOTH COULD NOT BE ANSWERED; THAT OF NEITHER HAS BEEN ANSWERED FULLY. THE ALMIGHTY HAS HIS OWN PURPOSES. "WOE UNTO THE WORLD BECAUSE OF OFFENCES! FOR IT MUST NEEDS BE THAT OFFENCES COME; BUT WOE TO THAT MAN BY WHOM THE OFFENCE COMETH!"

IN THE WORDS OF ONE OBSERVER, THE DEMOGRAPHICS OF KIRKUK OVER THE CENTURIES HAVE BEEN RIGGED, SO MANY TIMES, THAT IT IS IMPOSSIBLE TO TELL THE STACKING FROM THE UNSTACKING. THERE IS ONE CONSTANT.

MOST OF THE CITIZENS AT STAKE HERE WILL VALUE SECURITY AND PEACE

ABOVE ALL ELSE.

(LAWYERS WOULD NEVER MAKE A LIVING IF CLIENTS TOOK THIS ADVICE, BUT THE MOST IMPORTANT COUNSEL THAT CAN BE FOLLOWED IS “BE NICE.”) IF THE 2005 ELECTIONS IN KIRKUK ARE ANY HARBINGER OF THE FUTURE (FOR EXAMPLE, VERY FEW VOTERS IDENTIFIED THEMSELVES AS TURKMEN IN THE 2005 ELECTION, FROM A STANDPOINT OF WHO WILL TAKE BETTER CARE OF THE PEOPLE, AND LET THEM LIVE IN PEACE AND FREEDOM) ---THE FUTURE LOOKS GOOD FOR THE KURDS. MESSY, BUT GOOD. THE AMBIGUITIES IN ARTICLE 140 OF THE IRAQI CONSTITUTION ARE SUCH THAT THOSE HELL BENT AND DETERMINED CAN ALWAYS RAISE QUESTIONS. THE STATUS QUO IS TOTALLY UNACCEPTABLE BECAUSE IT DISSERVES THE MAJORITY, AND LIMBO DISSERVES EVERYONE. FOR THE MINORITIES, THE ONE MOTIVE FOR EXPLOITING

AMBIGUITIES WOULD BE A FEAR OF DISPARATE TREATMENT, DISCRIMINATION, OR WORSE. WHO WILL TAKE BEST CARE OF THE MINORITIES?

THE FACT THAT THE KURDISH LIST COMMANDED SO MANY VOTES IN 2005 IS PROMISING EVIDENCE OF THE PERCENTAGE OF VOTING KURDS, AS WELL AS THOSE WHO ALIGN THEMSELVES WITH THE KURDS--THOSE NON-KURDS WHO RESPECT THE FACT THAT THE KURDS OFFER THE BEST POTENTIAL FOR PEACE AND SECURITY.

AS A U.S. CITIZEN, TO ME AT LEAST IT IS HIGHLY RELEVANT THAT, WHILE WE HAVE SUFFERED SOME 4,100 DEAD AMERICAN SOLDIERS & MARINES (AND 30,000 MORE WHO WERE WOUNDED) NOT ONE OF THESE 34,000 CASUALTIES HAS OCCURRED ANYWHERE WITHIN THE KURDISTAN REGIONAL GOVERNMENT. NOR WILL THE MANY TENS OF THOUSANDS OF MINORITIES WHO HAVE MOVED TO THE KURDISTAN REGION OF IRAQ GO UNNOTICED AS THE GOVERNING DECISIONS UNDER ARTICLE 140 ARE PUT INTO EFFECT. THANK YOU.

