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FOLLOWING FOR GOULDEN FROM WOOD

IRAQ/KUWAIT: LEGAL BASIS FOR MILITARY OPTIONS

SUMMARY

1. AS I MENTIONED DURING OUR TELECON OF 6 SEPTEMBER, I WENT OVER THE GROUND TODAY IN DETAIL AND AT SOME LENGTH WITH BOLTON AND HIS ASSISTANTS AS WELL AS WITH A REPRESENTATIVE OF THE LEGAL ADVISERS. THE ANSWERS TO YOUR QUESTIONS ARE, IN BRIEF NO, NO AND NO.

DETAIL

2. THE AMERICANS, AFTER SOME DISCUSSION, TOOK THE POINT THAT A CASE COULD BE MADE OUT FOR THE REFERENCE TO ECONOMIC MEASURES IN THE KUWAITI LETTER AS LIMITING OUR FUTURE FREEDOM OF ACTION. THEY DID NOT HOWEVER THINK THE CASE A STRONG ONE GIVEN THE EARLIER REFERENCE TO THE GENERAL PURPOSE OF IMPLEMENTING RESOLUTION 660. SECONDLY THEY BELIEVED THAT THE INHERENT RIGHT TO COLLECTIVE DEFENCE, AND ARTICLE 51, WOULD COVER ANY CONCEIVABLE US MILITARY ACTION, TAKEN IN DEFENCE OF VITAL US INTERESTS AND TO PROTECT AMERICAN LIVES. THEY FURTHER ARGUED THAT ANY ACTION WOULD BE TAKEN WITH AT LEAST A NOD FROM THE KUWAITIS BEFOREHAND.

3. THE AMERICANS DO NOT ENVISAGE TAKING ACTION WITH KUWAIT ON A CONTINGENCY BASIS. THEY SAY THAT THEY HAVE NOT FELT A NEED TO DO SO IN ANALOGOUS CASES IN THE PAST AND FEAR ANY SUCH ACTION NOW MIGHT EITHER GIVE ADVANCE WARNING OF US INTENTIONS OR BE MISREAD. THEY HAVE NO DRAFT UP THEIR SLEEVES. THEY HAD IN THE PAST GOT LETTERS AFTER THE EVENT, AS NECESSARY AND SAW NO NEED TO ACT DIFFERENTLY NOW.

4. I WARNED BOLTON I MIGHT GET INSTRUCTIONS TO COME BACK TO HIM. IT WAS EVIDENT FROM OUR CONVERSATION THAT THE THOUGHT WAS A NEW ONE TO THE AMERICANS, AND IT TOOK ME A LITTLE TIME TO MAKE THEM UNDERSTAND QUITE WHY I WAS PUTTING QUESTIONS TO THEM ABOUT IT. THAT SAID, THEY APPEARED TO ME CONFIDENT THAT THEY ALREADY HAD SUFFICIENT LEGAL BASIS FOR ADDITIONAL MILITARY MEASURES SHOULD THIS BECOME NECESSARY, AND SURE IN THEIR OWN MINDS THAT ANY TIDYING UP THAT MIGHT BE DESIRABLE AFTER THE EVENT COULD BE ACCOMPLISHED WITHOUT SIGNIFICANT DIFFICULTY.

ACLAND