

CONFIDENTIAL  
FM WASHINGTON  
TO IMMEDIATE FCO  
TELNO 2730  
OF 080205Z NOVEMBER 90  
INFO IMMEDIATE UKMIS NEW YORK

*See by DM*  
*CR*

FOR BERMAN, LEGAL ADVISERS  
IRAQ/KUWAIT: LEGAL ISSUES

## SUMMARY

1. NO MAJOR DIFFERENCES WITH THE AMERICANS ON CURRENT LEGAL ISSUES.

## DETAIL

2. SIR ARTHUR WATTS CALLED ON WILLIAMSON (STATE DEPARTMENT LEGAL ADVISER), MATHESON (DEPUTY LEGAL ADVISER) AND RASHKOW (ASSISTANT LEGAL ADVISER) THIS AFTERNOON (7 NOVEMBER). THEY DISCUSSED THE LEGAL BASIS FOR MILITARY ACTION, WAR CRIMES AND REPARATIONS.
3. ON MILITARY ACTION, WILLIAMSON SAID HE WAS COMFORTABLE RELYING ON ARTICLE 51 AS A LEGAL BASIS. HE WAS PREPARED TO INTERPRET IT EXTENSIVELY. WILLIAMSON AND HIS COLLEAGUES THOUGHT THAT A SECURITY COUNCIL RESOLUTION COULD GIVE BETTER LEGAL COVER FOR EXTENDED MILITARY ACTION AGAINST IRAQ, BUT WERE WELL AWARE OF THE DANGERS OF SEEKING SUCH A RESOLUTION AND ONLY GETTING ONE ON RESTRICTED TERMS. THEY CLEARLY THOUGHT THAT THE REAL POSSIBILITY OF MILITARY ACTION UNDER ARTICLE 51 WOULD ENCOURAGE WAVERERS NOT TO OPPOSE A BROADLY-WORDED RESOLUTION, IF THAT COURSE WERE EVENTUALLY CHOSEN.
4. ON WAR CRIMES, WATTS DREW ATTENTION TO THE DISTINCTION BETWEEN GRAVE BREACHES OF THE GENEVA CONVENTIONS (FOR WHICH PUNISHMENT PROCEDURES EXISTED) AND NUREMBERG-TYPE WAR CRIMES (FOR WHICH THEY DID NOT). HE SUGGESTED THAT THERE MIGHT BE DANGERS IN RESOLUTION WORDING WHICH POINTED TOO CLEARLY TO A NUREMBERG-TYPE OUTCOME WITHOUT HAVING A MUCH CLEARER IDEA THAN AT PRESENT OF HOW THIS MIGHT BE ACHIEVED. WILLIAMSON NOTED THAT THE NUREMBERG REFERENCE SERVED THE POLITICAL PURPOSE OF INCREASING THE PRESSURE ON SADDAM HUSSEIN TO BACK DOWN. ALTHOUGH IT WAS CLEAR THAT THE AMERICANS HAD NOT THOUGHT THROUGH MANY OF THE PRACTICAL PROBLEMS, THEY SEEMED TO HAVE REACHED A PROVISIONAL VIEW THAT THE RIGHT COURSE WOULD BE FOR A WAR CRIMES TRIBUNAL TO BE SET UP BY THE SECURITY COUNCIL. IF THAT WERE DONE, THEY SEEMED CONFIDENT THAT OTHER MATTERS WOULD SOMEHOW FALL INTO PLACE. WILLIAMSON ASKED IF WE COULD KEEP HIM INFORMED OF ANY ACTION WE MIGHT TAKE

TO COLLECT EVIDENCE OF WAR CRIMES.

5. ON REPARATIONS, THERE WAS DISCUSSION OF THE INTENDED SCOPE, PARTICULARLY AS REGARDS NON-FINANCIAL PROPERTY (EG, SHIPS, BUILDINGS), OF PARA 19 OF THE MOST RECENT US DRAFT RESOLUTION. WILLIAMSON AND HIS COLLEAGUES DID NOT SEE THIS AS ADDING VERY MUCH TO OBLIGATIONS UNDER EXISTING RESOLUTIONS, BUT AS MAINLY CLARIFICATORY. THEY DID NOT SEE THE PROPOSED REQUIREMENT TO TAKE CONTROL OF IRAQI PROPERTY AS LIKELY TO CAUSE SERIOUS PRACTICAL OR LEGAL PROBLEMS, ALTHOUGH THEY RECOGNISED THAT IT MIGHT DO SO AT THE MARGINS.

ACLAND

YYYY

DISTRIBUTION

273

MAIN 229

IRAQ/KUWAIT  
LIMITED

MED

ADDITIONAL 44

IRAQ/KUWAIT  
(PASSED TO EMERGENCY UNIT)

NNNN