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LETTER DATED 29 JULY 1966 FROM THE MINISTER FOR FOREIGN AFFAIRS OF PORTUGAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. I have the honour to inform you that, by a letter dated 27 April 1966, the Portuguese Government submitted to the Secretary-General of the United Nations certain reservations and asked certain questions with reference to resolution 221 (1966), concerning Rhodesia, which was adopted by the Security Council on 9 April 1966. The letter of 27 April was reproduced in official document S/7271 and Corr.1, which was circulated to the Security Council and which is attached hereto.^{1/}
2. On 21 June 1966 the Secretary-General of the United Nations was good enough to reply to the above-mentioned communication. In substance, the Secretary-General informed the Portuguese Government that in his opinion it was not appropriate for the Secretariat, through its Office of Legal Affairs, to respond to a request from a Member State for clarification regarding the validity and interpretation of decisions of principal organs of the United Nations; and he indicated that only those organs could and should address such requests to the Secretariat. The Secretary-General also stated that a detailed study prepared under his instructions did not support any of the reservations advanced by the Portuguese Government with regard to the above-mentioned resolution 221 (1966). However, the fact that that study has been treated as confidential by the Secretary-General means that the Portuguese Government and all other Member Governments are deprived of information which would undoubtedly be of the greatest value in shedding light on the problems at issue. A copy of this letter from the Secretary-General is also annexed hereto.^{2/}

^{1/} See S/7271 and Corr.1.

^{2/} See S/7373.

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3. Since the Secretary-General states that it is for the organs of the United Nations to consult him and to refer to him questions of a legal nature regarding the validity and interpretation of decisions of such organs, and since in addition it has unfortunately not been possible to examine the private study prepared at the Secretary-General's request, I have the honour to address to you a formal request that the Security Council, as one of the principal organs of the United Nations, should submit to the Secretary-General the reservations made and the problems raised in the Portuguese Government's letter of 27 April 1966, which appears in document S/7271 and Corr.1, and that the Council should ask the Secretary-General to express his views on the matter through the Office of Legal Affairs. For all necessary purposes, the considerations set forth in the letter of 27 April 1966 should be understood to be reproduced here in their entirety.
4. However, as a result of the Portuguese Government's continued study of resolution 221 (1966) of 9 April and the reflections prompted thereby, it now wishes to mention, in addition to the reservations made and questions raised in the letter of 27 April, a number of other doubts which are discussed below.
5. From an analysis of the Security Council debate of April 1966 on the Rhodesian problem it may be concluded that the Council has resolved to deal with the matter in the light of Chapter VII and has decided - although the resolution approved is not explicit on this point - to act under the provisions of Article 42 of the Charter. It appears that Article 42 of the Charter may be interpreted as authorizing the Security Council to take a number of measures, which are indicated; it does not, however, appear to give authority for entrusting to the forces of any Member State, in their capacity as such and on a national basis, the adoption and execution of those measures. It is recognized that the Security Council may employ the forces of one or more Member States; it is clear from Article 45, however, that such forces are not permitted to act in their capacity as national forces but only as forces in the service of the Council. A clear and fundamental distinction must therefore be made between action taken by the United Nations and action taken by a State; since the latter is not being provided for in the Charter, it must be regarded as not permissible. Since the Security Council, in its resolution of 9 April, entrusted the execution of certain measures to United Kingdom forces without relinquishment by those forces of their national status, the

Portuguese Government has doubts as to whether Articles 42 and 43 of the Charter were correctly applied; in the light of the above considerations, those Articles appear to have been violated by the Security Council's decision.

6. The fact that the United Kingdom forces retain unimpaired their national status and only that status, and that they are neither in the service of the United Nations, nor subordinate to the United Nations, nor integrated into a chain of command emanating from it, gives rise or may give rise to consequences of the utmost gravity. The position is that the United Kingdom forces in question consider themselves authorized to take enforcement measures and consequently to apply sanctions against those who, in the sole judgement of the United Kingdom Command, violate or disregard the orders issued by that Command. It is possible that the country or countries which are the target of such measures and sanctions, or their nationals, may hold a different view from that of the United Kingdom Command and may not agree with the application of the said measures and sanctions or with the said Command's interpretation of the Charter and the Security Council resolution. If and when such a situation presents itself, this problem arises: to what authority can recourse be had by the victim or victims of such enforcement measures as the United Kingdom Command may decide to apply or institute? No purpose will be served by appealing to the United Kingdom Government because the Command in question is acting on its behalf; and it will not be feasible or practical to appeal to the Security Council which, lacking its own means of investigation and action, will have to judge the matter on the basis of information furnished by the United Kingdom delegation. Furthermore, if the aggrieved party should not be a member of the Security Council and if the Council should by any chance decide not to authorize that party to participate in a debate on the specific problem arising, the aggrieved party would be given no hearing and would be defenceless, quite apart from the fact that, in any case, the United Kingdom delegation always has a vote in the Council and the aggrieved or injured party does not. In the circumstances, it must be concluded that the Security Council, in a dispute which it has described as grave within the meaning of Chapter VII of the Charter, has entrusted the adoption of enforcement measures to national elements of one country, which are not subordinate to the Council and against which those subjected to such enforcement measures have no defence or legal recourse, being left

with no alternative but to try and defend themselves by whatever means are available to them. Furthermore, in the case under consideration, the forces belong to a country which is a directly and deeply interested party to the dispute. This situation would appear to constitute a glaring denial of equity, and the Portuguese Government therefore asks whether it is the understanding of the Security Council that the Charter authorizes national forces involved in a dispute to take enforcement measures against third parties who have no means of recourse to or legal defence before independent bodies.

7. Lastly, I wish to inform you that, as a result of the measures adopted by the Security Council and applied by the United Kingdom forces, grave damage is being done to the economy of the province of Mozambique. The Portuguese Government is in a position, if the Council so requests, to furnish specific and documented information on such damage, its causes and the amounts involved. For the time being, however, the Portuguese Government seeks only to ascertain whether the application of Article 50 of the Charter is contemplated; this Article grants the injured country the right to consult the Security Council with regard to the solution of special economic problems arising from the carrying out of enforcement measures adopted by that organ of the United Nations.

8. In the circumstances I should be very grateful if the Security Council would ask the Secretariat for a legal opinion on the questions and doubts raised in the letter of 27 April 1966 and in this letter, and if it would in due course inform the Portuguese Government of the reply received.

9. I should also be grateful if you would arrange for this letter to be circulated immediately to all members of the Security Council as a Council document under the usual conditions.

Accept, Sir, etc.,

(Signed) A. Franco NOGUEIRA
MINISTER FOR FOREIGN AFFAIRS OF PORTUGAL

