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LETTER DATED 27 APRIL 1966 FROM THE MINISTER FOR FOREIGN AFFAIRS  
OF PORTUGAL ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to acknowledge receipt of your cable, dated 10 April 1966, transmitting the text of the resolution adopted on 9 April 1966 by the Security Council. This document has been studied and has given rise to certain reservations which I communicate to you for whatever action you may deem appropriate.

2. It is noted that the preambular part of the resolution sets forth only assumptions; it mentions the possibility that fuel supplies may reach Rhodesia and that they may be pumped by pipeline through Mozambique. These facts are not established, much less proved. Nevertheless, in its operative part, the resolution continues with clauses which would have meaning only if based on facts and not on hypotheses. This inconsistency, which is quite obvious, does not appear to constitute a sound basis for a resolution which has such serious implications and which is said, moreover, to have been submitted under Chapter VII of the Charter.

3. If the resolution is considered as a whole, it will be seen that the text does not mention a single event which has already occurred, which is deemed to constitute a genuine threat to or breach of the peace. Whereas resolutions Nos. 216 of 12 November 1965 and 217 of 20 November 1965 describe as a threat to peace the illegal situation alleged to exist in Rhodesia, the resolution of 9 April merely indicates that the situation which may result from the fulfilment of the hypotheses referred to in the preamble constitutes a threat to the peace. This resolution is related, therefore, to possible future events which, if they occurred, would determine its implementation, and not to past or present events which have not been verified. In other words, the resolution is a document containing only preventive provisions and is intended merely for general guidance. The necessary conclusion, therefore, is that it is not a mandatory resolution, but simply a recommendation.

4. Under Article 27, paragraph 3, of the Charter, decisions of the Council are to be made with the concurring votes of its permanent members. On the interpretation implicit in the text, that rule means that the negative vote or abstention of a permanent member prevents the Council from taking a positive decision. When the resolution referred to in your cable was put to the vote, the Soviet Union and France abstained and, since both countries are permanent members, the conclusion should be that the resolution was not adopted. The Portuguese Government is aware, however, that the jurisprudence of the Council has ruled otherwise and that a doctrine contrary to the Charter has been admitted according to which the abstention of a permanent member is not equivalent to a veto. The Portuguese Government nevertheless observes that that doctrine appears to have been advanced to deal with matters not involving Chapter VII, and that it was developed when the Security Council consisted of eleven members. Since, in an eleven-member Council, the Charter requires seven affirmative votes for the adoption of a resolution, the resolution was held to be rejected when there were five abstentions; and, since there are five permanent members, the conjoint abstention of all meant the defeat of any resolution so that the Council could never make positive decisions against the simultaneous abstentions of the five permanent members. But the Security Council now consists of fifteen members. The Charter provides that a resolution must receive nine affirmative votes in order to be adopted, so that seven abstentions cause the defeat of any proposal. However, the number of permanent members has not been changed, and remains five. Hence, if all five permanent members abstain conjointly and there are no other abstentions, the resolution can be adopted, since seven abstentions are required for its rejection. This means that, if the foregoing principle is applied, the Council, as now constituted, can adopt a resolution against the abstentions of the five permanent members. In these circumstances, the Portuguese Government considers it essential that the following points should be clarified: (a) If the abstention of a permanent member of the Security Council is understood not to be equal to a veto, must it then be concluded that a resolution under Chapter VII, involving the use of force, can be deemed to be adopted even when all the permanent members have abstained? (b) If this conclusion is wrong, how many and which of the permanent members of the Council may abstain without such abstention causing the rejection of a draft resolution?

(c) If the conclusion is correct, is it to be understood that the non-permanent members of the Council have the right, or the practical opportunity, to take decisions concerning peace, war and world security, and to formulate and apply a policy which affects the entire community of nations, without the votes of all or some of the permanent members? These questions appear to be extremely serious, and to affect the very constitutional structure and the political balance of the Council. The Portuguese Government, which represents a country not a member of the Security Council, has a point of view of its own which is certainly very similar to that of many countries Members of the United Nations; but it considers that, when action under Chapter VII is sought for the first time in the fifteen-member Council and force is resorted to in the face of the abstention of certain permanent Members, the entire problem needs urgent examination under the new conditions prevailing in that important organ of the United Nations.

5. The Portuguese Government further notes that the resolution considered to have been adopted by the Security Council on 9 April constitutes a clear denial of the principle of freedom of the seas and the principle of free access to the sea by land-locked countries. As these principles have been embodied in conventions which have the status of international law, the Portuguese Government does not believe that the Security Council can legislate against international law as now in force. Otherwise, it must be asked whether international law is to be regarded as repealed. If the reply should be in the negative, the resolution of 9 April will have to be regarded as invalid. If it should not be possible to give an absolute reply, the question would then be when can the Council violate international law and when can it not do so?

6. The resolution contains five injunctive or operative paragraphs, and the final one - paragraph 5 - authorizes the Government of the United Kingdom, under specific conditions and for specific purposes, to use force. It appears that the application of paragraph 5 precludes the occurrence of situations provided for in the preceding operative paragraphs, namely, in paragraphs 2, 3 and 4. That being so, it would be desirable to know the purpose of the last-mentioned paragraphs, which, being merely theoretical, apparently must be regarded merely as recommendations.

7. The problem of Rhodesia has been discussed on numerous occasions over a period of years in the Fourth Committee of the General Assembly, in the Committee of

Twenty-Four, in the General Assembly itself and in the Security Council. In every case, the delegation of the United Kingdom consistently affirmed, and the Portuguese Government agreed, that the problem did not come within the jurisdiction of the United Nations but was within the exclusive jurisdiction of the United Kingdom Government, which refused even to participate in the voting. As the Government of the United Kingdom took the initiative in submitting the matter to the Security Council and affirmed that it was then doing so under the terms and for the purposes of Chapter VII of the Charter, and as, in addition, it participated in the voting, it appears that the question must now be asked whether the matter can still be regarded as coming within the exclusive jurisdiction of the United Kingdom or whether it henceforth comes within the international jurisdiction of the Council. This point is very important because, if it is not clarified, there will be no way of knowing who will be authorized to supervise compliance with the resolution of 9 April, if it should be regarded as binding, nor will there be any way of knowing before what authority eventual offenders will be called to account, unless the Council is regarded as having decided to abdicate part of its responsibilities and to confer on a single Member State the power to supervise at its own discretion the possible compliance or non-compliance by all the other States Members of the United Nations with the Council's resolution.

8. I should be grateful if, as a matter of urgency, you would be kind enough to have the reservations set out above submitted to the Office of Legal Affairs of the United Nations and if you would give me its replies so that the Portuguese Government will be able to be better informed in the matter. I would also ask you to arrange for this letter to be immediately circulated to all the members of the Security Council as a Council document under the usual conditions.

Accept, Sir, the assurances of my highest consideration.

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

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