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CN 1686

# Department of State TELEGRAM

12 MAR 71

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INDICATE:

- COLLECT
- CHARGE TO

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XR-PPB-67*

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 DCM  
 MINECON  
 USIS  
 POL-2  
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 ECON  
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 MILGP-2  
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 SCI  
 CF

ACTION: SECSTATE WASHDC

INFO: AMCONSUL SAO PAULO  
 AMCONSUL RECIFE  
 AMEMBASSY BRASILIA  
 USCINCSO

RIO DE JANEIRO 1686

SUBJECT: SUPREME COURT MINISTER RESIGNS IN PROTEST

REF: A-29, June 12, 1970

1. ADAUTO CARDOSA RESIGNED FROM SUPREME COURT (STF) AT MARCH 10 SESSION IN PROTEST OVER COURT REFUSAL TO CONSIDER MDB INSTITUTED CHALLENGE TO CONSTITUTIONALITY OF DECREE LAW ON PRE-PUBLICATION CENSORSHIP (SEE REF). IN IMPASSIONED SPEECH CARDOSO POINTED OUT THAT COURT'S REFUSAL TO ENTER INTO SUBSTANCE OF PLEA BY ADMITTING SOLICITOR GENERAL'S CLAIM TO DENY TRANSMISSION OF CASE TO STF ON GROUND THAT IT LACKED FOUNDATION, WAS EQUIVALENT TO ESTABLISHING EXECUTIVE AS FINAL JUDGE OF CONSTITUTIONALITY. WHEN CARDOSO ARGUMENT WAS DEFEATED 8 TO 1, HIS RESIGNATION FOLLOWED.

DRAFTED BY: BRASILIA:POL:WPYoung <i>WPA</i>	DRAFTING DATE 3/11/71	TEL. EXT.	APPROVED BY: DCM:CABoonstra <i>Pol: WPA</i>
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ACTION:

2. COMMENT: STF DECISION WAS TAKEN TO AVOID POLITICALLY EXPLOSIVE JUDICIAL REVIEW OF CONTROVERSIAL DECREE ~~KAWX~~ LAW. CARDOSO HAS CHOSEN TO TAKE HIS STAND ON POINT OF CONSIDERABLE LEGAL SIGNIFICANCE AND HIS RESIGNATION WILL DRAMATIZE STEP TOWARDS GREATER SUBSERVIENCE OF JUDICIARY BRANCH TO EXECUTIVE. HIS RESIGNATION WILL ALSO REMOVE FROM COURT LAST JUDGE OF INDEPENDENT TEMPERAMENT WITH POSSIBLE EXCEPTION OF PRESIDENT ALIOMAR BALEEIRO WHO DID NOT VOTE.

3. CARDOSO ACTION MAY HAVE BEEN MOTIVATED BY POLITICAL CONSIDERATIONS. IT IS KNOWN THAT HE HAD BEEN ASKED BY FORMER VICE PRESIDENT PEDRO ALEIXO TO HEAD PROJECTED THIRD PARTY. HE IS NOW FREE TO ~~RE~~ ACCEPT PLACE IN NEW PARTY.

4. CARDOSO HAS A NATIONAL REPUTATION AS A MAN OF INTEGRITY WHO IS WILLING TO STAND UP FOR PRINCIPLE. HE WAS STRONG SUPPORTER OF THE 1964 REVOLUTION AND PRESIDENT OF CHAMBER

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- INDICATE:
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ACTION:  
 OF DEPUTIES IN 1966. HE RESIGNED FROM CONGRESS IN LATE  
 1966 IN PROTEST AT CASTELLO BRANCO'S CASSATION OF SIX  
 DEPUTIES, THOUGH HIS SUBSEQUENT APPOINTMENT TO THE STF  
 TOOK SOME OF SHINE OFF IMAGE. IF HE ACCEPTS PLACE IN NEW  
 PARTY, IMAGE OF MAN OF PRINCIPLE WILL AGAIN BE SOMEWHAT  
 TARNISHED. RESIGNATION, ALTHOUGH UNLIKELY TO PROVOKE A  
 CRISIS, IS A BLOW TO THE RESPECTABILITY OF THE STF AND  
 WILL TEND TO DISTURB THE COMPLACENCY WHICH CHARACTERIZES  
 PRESENT POLITICAL ATMOSPHERE.

ROUNTREE

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