

# AIRGRAM

Pol 23-5 Brnz  
R SOC 11-3 Brnz  
FILE DESIGNATION  
Def 9-3 Brnz  
A-535

ORIGIN/ACTION			
ARA-10			
RS/R	REP	AF	ARA
1			
EUR	FE	NEA	CU
INR	E	P	IO
5			5
L	FBO	AID	VO
3		9	1
s/s	sy	o/fs	PM
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scs			
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AGR	COM	FRB	INT
LAB	TAR	TR	XMB
AIR	ARMY	NAVY	OSD
5	3	5	34
USIA	NSA	CIA	
10	3	20	
Jus	NSC	FBI	
1	6	1	

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HANDLING INDICATOR

TO : Department of State

INFO : BRASILIA, RECIFE, SAO PAULO, BELEM, BELO HORIZONTE, PORTO ALEGRE, SALVADOR, USCINCSO

FROM : Amembassy RIO DE JANEIRO

SUBJECT : Institutional Act No. 14: The Death Penalty

REF : Rio's 7505

DATE: September 18, 1969

ANALYSIS BRANCH  
SEP 24 8 25 AM 1969  
RECEIVED  
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Institutional Act No. 14, which authorizes the death penalty, life imprisonment and confiscation of properties in certain cases, was signed by the military Ministers on September 5, 1969, and published on September 9. The penalty of banishment, which is also mentioned in IA-14, had already been authorized in Institutional Act No. 13, reported in Rio telegram 7422. A free translation of Institutional Act No. 14 is enclosed.

Article 150, paragraph 11, of the 1967 Constitution does not authorize the penalties of life imprisonment or banishment, and limits the death penalty to acts governed by the military legislation applicable during foreign war only. Article 150 has, therefore, been modified by IA-14, and the death penalty is now also authorized (as well as that of life imprisonment and banishment) in cases of "adverse psychological, revolutionary or subversive war in the terms that the law shall determine." The immediate reason for the institution of banishment was that, without it, there would have been no legal basis for release by the Executive power of prisoners held by the judiciary branch.

Institutional Act No. 14 also provides for confiscation of properties for reasons of illicit enrichment and "damage caused to the public treasury" from people who have "a position, function or employment in the direct or indirect public administration." The previous constitutional provision was more restricted, being applicable to people "who enriched

Enclosure: Translation of Institutional Act No. 14

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themselves illicitly in the exercise of public function" only. The new provision seems to be intended to cover a wider range of people and activities. IA-14 also maintains the validity of "Institutional Acts, Complementary Edicts, laws, decree-laws, decrees and regulations" issued in connection with the matter.

Although the concept of adverse psychological and revolutionary war already exists in the National Security Law, a complementary law establishing the specific cases in which the death penalty, life imprisonment and banishment are to be applied, will be required. It is expected that the recent kidnapping of the Ambassador and other terrorist activities which have lately been carried out in Brazil may be included as cases for application of such penalties. This assumption is based on two main facts: first, on the statement made by the Military Ministers before issuing the Institutional Act No. 13 that the process of revolutionary or subversive war was in full evolution in the country, thus referring to the recent terrorist activities, and second, on the assignment of the date of September 5 to Institutional Act No. 14 which, according to the general belief, was predated with the intention of having it applied to Ambassador Elbrick's kidnappers.

By maintaining the validity of Institutional Acts, Complementary Edicts, decree-laws, regulations, etc., which have been issued so far on the matter of confiscation of properties for illicit enrichment, Institutional Act No. 14 also seems to have eliminated any chances of success that Juscelino Kubitschek might have had for a favorable response to his request to the Supreme Court that the General Commission of Investigations (CGI) be prevented from continuing to investigate accusations of illicit enrichment against him. (See Rio's A-522.) Juscelino made such a request on grounds that the CGI was created by a decree-law and not by an Institutional Act.

The Brazilian press of September 12 carries some informal statements reportedly made to journalists by Minister of Justice Gama e Silva in connection with the application of Institutional Act No. 14. The Minister was quoted as saying that the National Security Law will be reviewed so that it can be adapted to Institutional Act No. 14. He reportedly said that the people accused under Institutional Act No. 14 will be tried by military courts and added that "in accordance with the Constitution crimes against national security are within the competence of military courts, no matter whether they have been committed by civilians or military..." and that "since problems of revolutionary and subversive war are problems of national security, they will fall under the jurisdiction of military courts." The Minister reportedly concluded that defendants will be allowed full right of defense.

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