

INCOMING TELEGRAM Department of State

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TO RUEHC/SECSTATE WASHDC PRIORITY
INFO ZEN/AMEMBASSY RIODEJANEIRO
RUESUP/AMCONSUL SAOPAULO
STATE GRNC
BT

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December 23, 1966

9:43PM

CONFIDENTIAL SECTION 1 OF 2 BRASILIA 357

SUBJECT: CONGRESS AND CONSTITUTION: NEW TEXT PASSES, DOUBT
REMAINS

REF: (A) BRASILIA 168; (B) BRASILIA 308; (C) BRASILIA 353

1. WITH EXPECTEDLY SOLID ARENA SUPPORT FAVORING APPROVAL OF
TEXT OF NEW CONSTITUTION IN VOTE DEC. 21/22, ADMINISTRATION HAS
SMOOTHLY TRAVERSED FIRST, AND MOST IMPORTANT, STAGE OF THREE-STAGE
OPERATION LAID DOWN IN INSTITUTIONAL ACT NO. 4. CONSTITUTION, WITH
OR WITHOUT AMENDMENTS, WILL BE PROMULGATED NEXT JAN. 24. IN SPITE
MASSIVE ARENA VOTE, HOWEVER, ADMINISTRATION
CONGRESSMEN ALMOST TO MAN AT BEST LUKEWARM ABOUT NEW CONSTITUTION,
AND DEEPLY CONCERNED ABOUT MANY OF ITS KEY PROVISIONS. THEY HOPE
THAT PRESENT TEXT CAN BE AMENDED IN JAN. OR, IF NOT THEN, IN YEARS

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TO COME. SOME CALUSES OF NEW CONSTITUTION WILL CERTAINLY BE
ALTERED BEFORE PROMULATION, BUT PROBABLY NOT VITAL ONES.

2. ONCE TEXT OF PROPOSED CONSTITUTION REVEALED, ALL EYES HAD
TURNED TO ARENA'S LEADING CONSTITUTIONALISTS: SENATORS MILTON
CAMPOS, MEM DE SA (BOTH FORMER MINJUSTICES IN CASTELLO BRANCO
GOVERNMENT), AND AFONSO ARINOS. WHEN VOTE COME NIGHT DEC. 21
EACH TOOK DIFFERENT PATH. CAMPOS--TYPIFYING FEELING WITHIN
MAJORITY OF ARENA--VOTED YES, BUT IN PUBLIC "EXPLANATION OF VOTE"
MADE CLEAR HIS APPROVAL HEAVILY QUALIFIED. ARINOS ABSTAINED,
ALTHOUGH VIEWS HE EXPRESSED IN SERIES OF MAJOR SPEECHES
COINCIDED IN MANY WAYS WITH CAMPOS'S. MEM DE SA, IN LETTER
ADDRESSED TO ARENA SENATE LEADERS, EXPRESSED DISAPPROVAL
OF TEXT AND MODE OF OBTAINING CONGRESSIONAL APPROVAL, THEN
ABSENTED HIMSELF FROM SESSION. CAMPOS PERHAPS MOST RESPECTED

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POLITICAL FIGURE IN BRAZIL AND HIS STATEMENT ON CONSTITUTION MOST CONCISE AND CLEAR YET TO APPEAR. SUMMARY HIS VIEWS, PLUS THOSE OF ARINOS AND MEM DE SA, FOLLOWS (CAMPOS' AND MEM DE SA'S STATEMENTS PUBLISHED DEC.22 JORNAL DO BRASIL AND POUCHED TO DEPT SAME DAY):

(A) SENATOR CAMPOS EXPLAINED HE VOTED IN FAVOR EXECUTIVE'S TEXT BECAUSE PROPOSAL WAS EXPRESSION GOVERNMENT'S INTENTION "CLOSE CYCLE OF REVOLUTIONARY PROCEDURES," AND HE HOPED THAT THOUGH

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AMENDMENTS CONGRESS WOULD "IMPRESS ON TEXT A MORE DEMOCRATIC QUALITY." AFTER THIS BRIEF INTRODUCTION, TURNED TO HIS PRINCIPAL OBJECTIONS TO TEXT: (1) POWER OF FEDERAL GOVERNMENT TO INTERVENE IN STATES SHOULD LATTER ACT CONTRARY TO ECONOMIC "GUIDELINES" IS BOTH DANGEROUS AND UNNECESSARY. INTERVENTION TO ENFORCE FEDERAL LAW SHOULD BE SUFFICIENT. (2) POWER OF PRESIDENT ISSUE DECREE-LAWS IS BOTH EXCESSIVE AND UNNECESSARY IN VIEW EXECUTIVE'S BROAD POWER OF INITIATIVE AND TIME LIMITS ON CONGRESSIONAL PROCEDURES. (3) APPROVAL OF EXECUTIVE PROPOSALS FOR CONSTITUTIONAL AMENDMENTS BY ABSOLUTE MAJORITY WITHIN 60 DAYS IS TOO EASY AND WOULD MAKE CONSTITUTION TOO FLEXIBLE. (4) PRESIDENT SHOULD BE ELECTED BY ABSOLUTE MAJORITY IN DIRECT POPULAR VOTE "TO THOSE WHO ARGUE, WITH SOME REASON, THAT DIRECT ELECTIONS RUN RISK OF CORRUPTION INTO DEMOGOGY, I REMIND THAT INDIRECT ELECTION CAN ALSO BE CORRUPTED INTO OLIGARCHY." (5) TRIAL BY CIVILIANS IN MILITARY COURT FOR CRIMES AGAINST "NATIONAL SECURITY" SHOULD BE ELIMINATED, SINCE MILITARY COURTS DO NOT HAVE "PREPARATION OR ORGANIZATION" HANDLE SUCH DELICATE MATTER. (6) ROLE OF ORDINARY LAW IN DEFINING RIGHTS OF INDIVIDUALS SHOULD BE ELIMINATED. (7) SUSPENSION OF POLITICAL RIGHTS BY SUPREME COURT INAPPROPRIATE AND UNNECESSARY, SINCE OCCURS AUTOMATICALLY WHEN PERSON CONVICTED

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OF CRIME. (8) ALLOWING ORDINARY LAW DETERMINE "OTHER MEASURES" PRESIDENT CAN TAKE DURING STATE OF SIEGE IS NOT SUFFICIENT GUARANTEE TO INDIVIDUAL LIBERTY. ALL PRESIDENT'S EMERGENCY POWERS SHOULD BE SPELLED OUT. (9) FEDERAL APPEALS COURT SHOULD BE LEFT UNCHANGED.5

(B) AFONSO ARINOS STATE THAT GOVERNMENT MERITED "APPLAUSE, CONFIDENCE, AND SUPPORT" FOR INITIATIVE IN DEVELOPING NEW CONSTITUTION SINCE IT INTENDED TO PUT END TO PERIOD OF ARBITRARY POWER.

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TEXT, HOWEVER, WAS "FATAL ERROR," AND CONGRESS NOT GIVEN SUFFICIENT TIME TO CORRECT IT. ANALYZED DRAFT AS CONTAINING BASIM CONTRADICTION BETWEEN HOPE FOR REDEMOCRATIZATION AND FEAR OF RETURN PRE-MARCH 1964 SITUATION. ATTACKED INDIRECT ELECTION OF PRESIDENT, SAYING IT REPRESENTED CONTINUATION IN POWER OF MILITARY OLIGARCHY. EXPANDED ON ROLE OF MILITARY IN BRAZIL, POINTING OUT MILITARY INTERVENTIONS HAVE BEEN INSTIGATED BY CIVILIAN POLITICIANS, AND ASSERTED MILITARY NOT CAPABLE OF GOVERNING COUNTRY. (ARINOS INFORMED EMBOFFS IN PRIVATE CONVERSATION THAT CASTELLO BRANCO HAD TOLD KRIEGER THAT HIS -- CASTELLO BRANCO'S -- SPEECH AT NATIONAL WAR COLLEGE DEC. 18 WAS INTENDED AS REPLY TO ARINOS' REMARKS ON MILITARY.) ARINOS ATTACKED DRAFT PROVISIONS ON INDIVIDUAL RIGHTS AND HUARANTEES AND CRITICIZED STATE OF SEIGE PROVISIONS, BUT PRAISED DRAFT FOR MAINTAINING JUDICIARY ALMOST UNTOUCHED.

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C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 357

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(C) MEM DE SA'S FIRST REASON FOR REFUSAL VOTE FOR CONSTITUTION WAS "DISCUSS AND DISAGREEMENT WITH SLIGHT CONSIDERATION" GIVEN TO DRAFT PREPARED BY COMMITTEE OF JURISTS. EVEN MORE IMPORTANT OBJECTION WAS PROCESS LAID DOWN BY INSTITUTIONAL ACT NO. 4 FOR APPROVAL OF CONSTITUTION. LASTLY, CONSTITUTION EMBODIES "ANTITHESIS OF MY THOUGHT AND CONVICTIONS," NAMELY AGGRANDIZEMENT OF EXECUTIVE POWER AND "DELIBERATE REDUCTION OF INDIVIDUAL RIGHTS AND GUARANTEES." PRAISING ECONOMIC PROVISIONS OF CONSTITUTION, MEM DE SA SAID HIS ABSENCE WAS EQUIVALENT TO A NEGATIVE NOTE BUT WOULD NOT VOTE NO BECAUSE, AMONG OTHER REASONS, HE DID NOT WISH JOIN RANKS OF OPPOSITION

NOR WOULD POLITICAL FRIENDS SUCH AS PRESIDENT HIMSELF.

3. OTHER ARENA ATTITUDES TOWARDS NEW CONSTITUTION BEST SUMMARIZED BY DEPUTY HERBERT LEVY (CONSERVATIVE, EX-UDN) WHO SAID HE WOULD VOTE FOR TEXT AS "LESSER EVIL" (GREATER EVIL PRESUMABLY IMPLIED CONTINUANCE OF ARBITRARY EXECUTIVE ACTIONS VIA INSTITUTIONAL ACTS.) PHRASE "LESSER EVIL" CONSTANT THEME OF CORRIDOR CONVERSATIONS DURING SESSION. ANOTHER LEITMOTIF WAS CRI

CRITICISM OF MINJUS MEDEIROS SILVA:
SENATOR KRIEGER TOLD BRASILIA COUNSELOR MEDEIROS SILVA NOT RIGHT MAN DRAW UP CONSTITUTION FOR BRAZIL. ADDING THAT TEXT WOULD

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HAVE BEEN MUCH WORSE IF WERE NOT FOR HIS PERSONAL INTERVENTION WITH PRESIDENT. CHIEF OF CIVIL HOUSEHOLD, NAVARRO DE BRITO, ALSO PRIVATELY CRITICAL OF CONSTITUTION AND MINJUSTICE, CALLING TEXT "SPECIOUS" IN MANY WAYS. NAVARRO ESPECIALLY HARSH ON CONSTITUTIONAL CLAUSE IN EFFECT SETTING UP TWO-PARTY SYSTEM.

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4. MDB CUT PRETTY SORRY FIGURE DURING SESSION ENDING DEC. 22. EXCEPT FOR FEW INDIVIDUALS, PARTY NEVER CLEARLY ARTICULATED ITS POSITION -- AS SENATOR CAMPOS AND OTHERS IN ARENA DID. FINAL SPEECH OF VIEIRA DE MELLOAN MDB LEADER IN CHAMBER, BEFORE VOTE WAS LITTLE MORE THAN STREAM OF VITUPEGATIVE ADJECTIVES. UNCERTAIN, DISPIRITED ATTITUDE OF MDB CONGRESSMEN EPITOMIZED BY

STATEMENT OF MDB VICE PRESIDENT OSVALDO LIMA FILHO WHO TOLD US PARTY SIMPLY DID NOT KNOW WHICH WAY TO TURN, DID NOT KNOW WHETHER COUNTRY GETTING RID OF ONE DICTATORSHIP OR INSTITUTIONALIZING ANOTHER. AT CLOSE OF SESSION, PARTY WAS REDUCED TO HOPING THAT SOME AMENDMENTS WOULD BE PASSED TO IMPROVE NEW TEXT.

5. RE AMENDMENTS, IT INCREASINGLY CLEAR DRAFT TEXT WILL BE CHANGED UNDER EXCLUSIVE AUSPICES ARENA, AND NOT AS RESULT "NEGOTIATIONS" WITH MDB. THIS POINT MADE PUBLICLY AND EXPLICITLY BY PEDRO ALEIXO AND LUIZ VIANA, WITH LATTER ADDING THAT ADMINISTRATION WOULD NOT ACCEPT REVIEW OF "REVOLUTIONARY" ACTS OR ALTERNING INDIRECT PRESIDENTIAL ELECTION. (SEE HBB-784 FOR PRESIDENT'S VIEWS.) OF HUNDREDS BEING BRUIED ABOUT, SIGNIFICANT AMENDMENTS THAT SEEM ACCEPTABLE AT PRESENT CONCERN (A) CHAPTER ON HUMAN RIGHTS (ARTS. 150 AND 151) WHICH APPARENTLY TO BE LIBERALIZED; (B) REDUCING SOMEWHAT PRESIDENTIAL AUTHORITY ISSUE DECREE-LAWS.

6. SENATOR CAMPOS' LUCID CRITIQUE OF CERTAIN PORTIONS NEW CONSTITUTION REPRESENTS ZTH BILL OF PARTICULARS AND SUGGESTED AMENDMENTS. IT PROBABLE THAT ARENA LIBERALE WILL REALL AROUND THEM IN FORTHCOMING SESSION TO CONSIDER AMENDMENTS, BUT AS SESSION ENDED YESTERDAY NO GROUNDSWELL WAS DISCERNIBLE IN THAT DIRECTION.

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