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A-42
NO.
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TO : DEPARTMENT OF STATE
INFO : RIO DE JANEIRO, SAO PAULO, RECIFE
FROM : AMEMBASSY BRASILIA
SUBJECT : Constitutional Reform
REF : Brasilia A-23, 4/24/69; Telegrams 304, 7/24/69, 309, 7/28/69, 317, 7/31/69, 327, 8/19/69, 332, 8/14/69; A-35, 8/18/69; Telegrams 347, 8/19/69, 357, 8/28/69

AIR POUCH
HANDLING INDICATOR
DEPARTMENT OF STATE
BUREAU OF
INTER-AMERICAN AFFAIRS
OCT 22 1969

DATE: October 8, 1969

SUMMARY

By late August it was apparent that President Costa e Silva intended to announce his carefully prepared constitutional reforms during the first week of September, probably on September 7 -- Independence Day. The President's incapacitation by a stroke on August 29 and the subsequent assumption of presidential responsibilities by the three military ministers brought the process of constitutional reform to a halt. Recently, however, there have been reports that a revised version of Costa e Silva's reforms will be promulgated in early October. The purpose of this airgram is to trace briefly the history of the Costa e Silva administration's efforts at constitutional reform and to describe what to the Embassy's knowledge were the specific reforms the President planned to make.

President Costa e Silva requested Vice President Pedro Aleixo in May 1969 to begin studies concerning constitutional reforms which would permit the political system to open up a little and provide at least a semblance of popular participation but which also would include provisions protecting the "Revolution" and further increasing the power of the executive branch. The Vice President's studies were prepared in the form of optional courses of action on each of several issues. The President, with the assistance of a high level committee, studied the Vice President's options and indicated his choice in mid-July. Pedro Aleixo then drafted specific constitutional reforms which the President approved and then submitted to members of the National Security Council and the Supreme Court for suggestions. Over 400 suggestions were received. The strongest pressure for modifications seems to have come from the more authoritarian elements of the regime.

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After reviewing the suggestions, the President requested Pedro Aleixo to prepare a final draft which was completed on about August 26. A comparison of what is known of the first draft with the final draft reveals that the most controversial issues were resolved largely in favor of the more authoritarian positions. The next President would be chosen by the present well-weeded Congress rather than by a newly elected one as proposed in the first draft. The 1970 gubernatorial elections would be indirect with the pro-regime current state legislatures serving as electoral colleges rather than direct as believed to have been stipulated in the first draft. The power of the executive branch to control Congress and remove individual legislators was greater in the final draft than in the early draft. In addition, the final draft gave the President broadly expanded powers to issue decree laws and thus circumvent Congress. The Embassy received unconfirmed reports that several military personalities pressured the President during the last week of August in an effort to prevent the incipient reopening of Congress, but that the President decided to go ahead with the agreed upon reforms.

The leaders of the relatively more moderate group within the regime were the President himself and the Vice President, both of whom were removed from the political scene by the events of August 29. Whatever reforms ultimately emerge will be indicative of differences which may exist between the Costa e Silva administration and Brazil's new leaders.

1. In May 1969 President Costa e Silva asked Vice President Pedro Aleixo to prepare some studies concerning possible revisions of the 1967 Constitution which would protect the executive branch against effective obstruction, opposition or even criticism, such as provoked Institutional Act 5 of December 1968, while still preserving a semblance of popular political participation and a division of powers. Pedro Aleixo prepared his studies in the form of optional courses of action which the President might choose on each of several issues. Costa e Silva, with the assistance of a high level civilian committee, reviewed the Vice President's studies and in mid-July indicated the options he preferred. He asked Pedro Aleixo to draft specific constitutional reforms which would conform to the options he had selected; then he approved the draft.

2. The substance of the more important provisions of the Vice President's draft was leaked to the press by Aleixo himself. The following were the provisions with the most political significance:

A. The next President and Vice President were to be chosen on February 15, 1971 by a new Congress to be elected on November 15, 1970. This provision would have reduced the current administration's control over the choice of its successor somewhat in that the new Congress would be likely to be a little less subservient to the administration's wishes than the current one which had been carefully weeded by the cassation process. More important, however, was the fact that, if the first act of a new Congress were to be the selection of a new President and Vice President, the

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congressional election would tend to become an indirect presidential election with the congressional candidates promising to support specific individuals for President and Vice President. Thus, this proposal could have markedly opened up the political system.

B. Direct elections for state governors were to be maintained as stipulated in the 1967 Constitution, but the federal government was to have the power to intervene in cases of corruption or subversion.

C. The number of senators was to be reduced from three per state to two and consequently the Senate membership would be cut from 66 to 44. This provision would have been a blow to the opposition MDB which in some states can only capture a senate seat when its candidate can defeat the weaker of the two ARENA candidates during those elections in which two of the three seats are being contested.

D. The number of federal deputies from each state was to be three plus one for every 100,000 registered voters. The 1967 Constitution provides for seven deputies plus one for each 300,000 inhabitants up to a total of 25 deputies, then one for each 1,000,000 inhabitants. The modification would serve to reduce the membership of the Chamber of Deputies from 409 to approximately 275. It would tend to reduce the representation of the Northeast more than that of the Center-South because the former has a lower ratio of registered voters (who must be literate) to population.

E. The minimum percentage of seats in state and federal legislatures which a party must obtain to maintain representation in them was to be reduced from 10% to 5%. This provision presumably was designed to keep the MDB afloat in the Senate where its representation could be expected to be slight.

F. Article 151 of the 1967 Constitution was to be modified so that it no longer stated that, in order for a legislator to be tried for abuse of political rights, permission had to be granted by the respective congressional chamber. This change would put Congress at the mercy of the executive branch and severely inhibit the autonomy and influence of individual legislators.

Other provisions would have reduced the size of state legislative assemblies, allowed the question of whether legislators should be elected on a proportional or single member district basis to be resolved by ordinary legislation, reduced congressional pay and allowances, and limited the Congress' power to investigate and to request information from the executive branch.

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3. The Vice President's draft constitutional reforms were circulated to members of the National Security Council (which consists of all Ministers of State and high ranking members of the armed forces) and the Supreme Court for suggestions. The Embassy heard reports to the effect that more authoritarian elements, including Justice Minister Gama e Silva and the military ministers, were displeased with some of the provisions of the draft. The general tenor of the views of these individuals was that the political system must be more tightly circumscribed and subservient to the President. For instance, the Embassy understood that they were applying strong pressure for increased presidential power to issue decree laws (without any congressional participation), provisions authorizing cassation and impeachment of legislators and a provision according to which the party leader in each house of Congress would cast votes on behalf of the entire party delegation. In addition, there were strong pressures against direct election of governors in 1970. The alternative offered was to have the 1970 gubernatorial elections be indirect with the current pro-regime state legislatures serving as electoral colleges. Among other provisions the Justice Minister was advocating, were judicial reforms which would streamline court procedures and increase the power of military tribunals to try civilians in certain cases.

4. By early August an estimated 400 suggestions had been received and the President, [redacted] and the Chiefs of the Civil and Military Households, Rondon Pacheco and General Jaime Portella, reviewed the suggestions and made the final decisions on them. Reportedly, the only other individuals who were consulted at this stage were Finance Minister Delfim Neto and Planning Minister Helio Beltrão. Pedro Aleixo then began to write the final draft of the reforms.

5. At this point the debates emerged from secrecy as several ministers and politicians made their suggestions and views public. The issues most hotly contested were: a) whether a newly elected Congress would choose the next President and Vice President, as the Vice President's early draft provided, or whether the present Congress would do so; b) whether state governors should be chosen by direct or indirect elections; and c) whether the number of senators from each state should remain three or should be reduced to two as stipulated in the early draft.

A. Foreign Minister Magalhães Pinto, Interior Minister Costa Cavalcanti and Labor Minister Jarbas Passarinho defended the election of the new President and Vice President by the present Congress. All three men had presidential ambitions and undoubtedly were trying to ingratiate themselves with the current congressional leadership. In addition they probably hoped to attract the support of more authoritarian elements -- in the military especially -- which feared that selection of a President by a newly elected Congress might tend to open up the political system too fast.

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B. It was generally agreed that ultimately gubernatorial elections would have to be direct, but there was profound disagreement over whether or not an exception should be made in the 1970 elections. (See Brasilia A-35, 8/18/69) Those who had no particular political ambitions, such as President Costa e Silva himself, Vice President Aleixo and ARENA party President Filinto Müller as well as those politicians, such as Magalhães Pinto, and Transport Minister Mario Andreazza, who were confident they had strong popular bases, favored the retention of the provision of the 1967 Constitution which called for direct gubernatorial elections. On the other side of the issue were politicians who were in the regime's favor and therefore might be able to win governorships in indirect elections by the current state legislatures but who could not hope to win in direct elections. This group included Civil Household Minister Rondon Pacheco, Interior Minister Costa Cavalcanti and some military figures, among others.

C. The effort by Magalhães Pinto and others to preserve each state's right to three senators probably was designed to attract support from the 'political class' including current members of the Congress.

6. The final draft of the constitutional reforms was completed on about August 26, 1969, but the President reportedly was planning to delay their promulgation until September 7 -- Brazilian Independence Day. The two most prestigious Brazilian newspapers, the Estado de São Paulo and the Jornal do Brasil, published on August 31 and September 1 respectively essentially identical reports derived from allegedly official sources in Brasilia describing the substance of the reforms which the President was prepared to announce. The Embassy has no reason to doubt the veracity of the reports (which coincide closely with those from Embassy sources) and in succeeding paragraphs describes some of the more important provisions and analyses them briefly in terms of the Vice President's earlier draft and the subsequent suggestions.

7. The next President and Vice President were to be selected in October 1970 by an electoral college consisting of the present Congress (plus delegates named by the state legislative assemblies), rather than in February 1971 by a newly elected Congress, as proposed in the early draft. This was clearly a concession to those who were unwilling to open up the political system this soon.

8. Elections of state governors would be direct, but in 1970 there would be an exception whereby the governors would be elected indirectly by the present state legislatures. This represented another concession by the President and other moderates.

9. Each state would still have three senators, rather than two as suggested in the first draft. This provision would have helped keep the opposition MDB alive in the Senate and would have pleased some professional politicians.

10. The number of deputies was to be reduced to three per state plus one for each 100,000 registered voters (or fraction thereof over one half) until there was a total of 25. Then there would be one for each 500,000 registered voters.

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This provision was essentially identical with that contained in the earlier draft.

11. The minimum percentage of seats in state and federal legislatures which a party must obtain to maintain representation in them was to be reduced from 10% to 5%, as proposed in the early draft. In addition, other measures would be taken to help preserve the existence of the opposition party. The framers of the reforms did not wish to see the MDB come to power, but neither did they wish the opposition party to disappear completely.

12. No longer would the permission of the respective congressional chamber be required before charges could be brought against a senator or deputy for abuse of political rights or the practice of corruption. Furthermore, there would no longer be parliamentary immunity for congressmen accused of common crimes. In addition, the congressional leadership would have to prescribe rigorous norms of discipline and decorum and penalties for infractions which would include cassation. These provisions went beyond what the Embassy understood to have been in the Vice President's early draft and seem to be in line with the thought of Justice Minister Gama e Silva and others of a relatively authoritarian bent.

13. Other provisions in the final draft also indicated that the early one had to be modified to favor the more authoritarian positions. For instance, the final draft provided that the President's power to issue decree laws would be substantially broadened beyond the areas of national security and public finance as prescribed by the 1967 Constitution. In addition, the President was to have exclusive power to call special sessions of Congress, whereas under the 1967 Constitution one third of the deputies and senators could do so.

14. There were several sections dealing with judicial reforms, the most politically significant of which confirmed two provisions of Institutional Act 6 of February 1, 1969. These provisions reduced the Supreme Court from the sixteen members stipulated by the 1967 Constitution to eleven members and eliminated the Court's power to review decisions by military tribunals concerning civilians accused of crimes against military institutions or national security.

15. As in the earlier draft, the final one included provisions reducing the membership of state legislatures, more carefully controlling the pay and allowances of federal and state legislators, and limiting the investigatory powers of Congress. In addition, there were other relatively non-controversial provisions which would have streamlined congressional and judicial activities. For instance, Congress was to be in session continuously from April 1 until November 30 with no midterm recess as in the past and the Supreme Court's workload was to be reduced.

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16. There were also some social provisions, such as the one drawn from Institutional Act 9 which eliminated the need for prior compensation for expropriated rural lands and the one which required all states and municipalities to spend at least 20% of their budgets on primary education.

17. During the final week of August most Embassy sources believed that the President did not intend to submit his constitutional reforms to Congress for approval, but rather would issue them by means of an Institutional Act. This would have been a clear contravention of the President's promise of March 31, 1969, the anniversary of the 1964 Revolution, to the effect that he would request congressional approval for any institutional changes. A decision not to do so would have been another victory for the more authoritarian elements who did not want Congress tampering with "revolutionary decisions." The Embassy received unconfirmed reports that during the last week of August several high ranking military officers, including Minister of the Navy Rademaker and Army Chief of Staff Muricy, called upon President Costa e Silva to advise him that there were powerful groups within the armed forces, including at the lower levels, which were strongly opposed to any constitutional reforms which would allow Congress to open in the near future. Apparently the President chose to reject those views and intended to make the reforms to which he had already agreed. On August 29 he left Brasilia for Rio prepared to announce the constitutional reforms within a week, but that very day he was incapacitated by a stroke and his reforms were not promulgated.

18. Recently, however, there have been reports that a revised version of Costa e Silva's reforms will be promulgated by the military ministers in early October. The individual who has been primarily responsible for the latest revisions is reported to be Carlos Medeiros da Silva, who holds no governmental position at present but who, among other things, was President Castelo Branco's Minister of Justice and the principal author of the 1967 Constitution, was a member of the high level committee which advised Costa e Silva on his constitutional reforms and was the author of Institutional Act 12 which "legitimized" the military ministers' assumption of presidential responsibilities upon Costa e Silva's incapacitation.

19. Comment: The efforts by the Costa e Silva administration to prepare constitutional reforms were shrouded in such secrecy that it is difficult to determine precisely the source and extent of the various pressures which were acting upon the President. Some general conclusions can be drawn, however. It seems that the leaders of the group which wished to open the political system (relatively speaking) and begin a return to more democratic political forms were President Costa e Silva himself and Vice President Pedro Aleixo. Pressure was applied by those of a more authoritarian bent such as Justice Minister Gama e Silva and some military leaders to keep the political system closed and firmly under the control of the executive branch of the government. This pressure was great enough to cause the original

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draft of the reforms which had been approved by the President to be modified so that on several of the most controversial issues the final draft reflected the more authoritarian views. With the incapacitation of the President and the effective elimination of the Vice President as a political force by the military ministers who assumed presidential responsibilities on August 29, the leadership of the more moderate faction disappeared. The constitutional reforms which the government finally enacts will be an early indication of any differences which may exist between the positions of Brazil's present leaders and those reached within the Costa e Silva administration.

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