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AIR POUCH

Department of State

X-TRA

Ambassy, BRASILIA Office

July 9, 1964

Supreme Court Refuses to Judge Ato Institucional Imprisonments

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It has been known for some time that habeas-corpus requests for persons imprisoned under the Ato Institucional might be submitted to the Supreme Court as a means of opening discussion on judgement of the legality of "revolutionary acts" and of the Ato itself. Especially since June 15 (the terminal date for cancellation of mandates and political rights under the Ato), there have been various and contradictory rumors in Brasilia and in the press that the Court would "stand up to the military and judge the revolution" or would back down. The first test case came up July 1 and the Court backed down. The case involved seven civilians, including Celso Furtado, who have had their civil rights suspended, and some of whom presumably are in jail.

The Court decided that it was not originally competent to judge habeas-corpus requests on civilian political prisoners held by military authorities. As a result of the Court's decision, the case will presumably go to the Supreme Military Court. That Court also recently refused to judge habeas-corpus requests for imprisoned civilians but now may review its decision in light of the Supreme Court's action. The Supreme Military Court refused the case because the defendants were civilians. The Supreme Court refused the case because the defendants were held by military authorities. The habeas-corpus requests for court action in cases where the arrests have been made under the Ato

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Institucional have apparently become a political hot potato. In the breakdown of the Supreme Court's decision, Justices Hermes Lima and Manemann Guimarães simply did not recognize the case. Justices Evandro Lins and Vitor Nunes Leal opined that the case should be transformed into a judicial proceeding to verify if legal arbitrarities were being practiced against any who may be held prisoners. Conservative Justice Pedro Chaves, supported by Antônio Vilasboas, argued that the Supreme Court did not have its powers to decide on civil and judicial rights cases taken away by the Ato Institucional. He cited Article 101 of the Constitution which provides that the Supreme Court has original jurisdiction on habeas-corpus requests "when there is danger that the violence will be consummated before another judge or court can take cognizance of the request." He was quoted as saying, "It seems to me that the danger is still great that violence will continue and, as the privation of liberty becomes greater, so the offense becomes more serious and the consequences merit more rapid reparation. For these reasons, I accept the request."

COMMENT: The Court's decision was related to the fact that all judges, including those of the Supreme Court, have had their immunities and life tenure suspended until October 9 by the Ato Institucional. The insecurity generated by this provision probably was an important factor--especially for left-leaning Justices Hermes Lima and Evandro Lins--in the Court's refusal to accept the case.

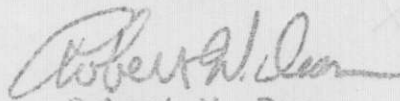
As background to the decision, it was widely expected that Goulart-appointed Justices Evandro Lins and Hermes Lima were going to have their political rights suspended by the revolutionary forces before June 15. Although it was heavily debated in the government, these Justices were spared and the solution of packing the Court with up to four more Justices came into vogue (Brasilia tel 205, June 10, 1964). This solution has been made difficult because the Constitution requires that the various Supreme Courts must themselves request any changes in their number. A request by the government to change the personnel of the Supreme Military Court met with congressional resistance and was voted unconstitutional in committee (See Brasilia's A-185). In the controversial case that has just been refused the Court apparently did not want to rock its still-vulnerable boat.

For the Ambassador:

Enclosure

As stated

NOTE: See attached Memo of Conversation for additional light on the Supreme Court's position.



Robert W. Dean
Counselor of Embassy

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MEMORANDUM OF CONVERSATION

Participants: Minister Vitor Nunes Leal, Supreme Court Justice
Robert B. Bentley, Political Officer

Place: Supreme Court

Date: July 14, 1964

Subject: The Supreme Court and habeas-corpus

(NOTE: Subsequent to the writing of Airgram A-5 the Supreme Court agreed to recognize a habeas-corpus case arising from an Ato Institucional imprisonment. The conversation confirms the political nature of the Court's operations and the cautiousness of the Court in confronting the Revolution.)

Minister Vitor Nunes Leal said the Court recognized a habeas-corpus case last week because it was a special case that was not part of the civilian-military conflict that is presently so thorny for the Court. The law on which previous cases have been rejected, the constitutionality of which is often debated, provides that civilians arrested by military officers of less than ministerial rank are to be judged by military courts. Nunes Leal hopes that Supreme Court President, Ribeiro da Costa, will resolve the question for the Court whether cases that come under that law should be taken by the Supreme Court. Ribeiro da Costa is presently on a leave of absence. As for Nunes Leal's position, he said many unnecessary abuses have taken place during the revolution and the Court should do its duty as it sees fit, or it will begin to go downhill. On the other hand, he said the habeas-corpus requests were politically very hot for the Court at this time and, even though they might be accepted from time to time because of special conditions or flagrant abuses, they probably would not be judged until animosities over revolutionary acts are less pronounced. Continuing in this vein, he added that the Court cannot put itself in the middle of the deepest political question of the day, especially since there is a revolutionary situation and the Justices are without personal guarantees. (Further information on Vitor Nunes Leal's political outlook on the Court is contained in Brasilia's A-120).

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Humes Leal also requested copies of some old US Senate hearings in which President Roosevelt's request for additional members for the Supreme Court was rejected. He said there is still pressure to pack the Brazilian Court but held it stems more from the new administration's desire to hand out some choice positions rather than limiting left-wing influence on the Court.

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