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# The Situation in Brazil

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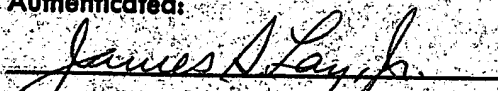
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*The following intelligence organizations participated in the preparation of this estimate:*

The Central Intelligence Agency and the intelligence organizations of the Departments of State and Defense, and the NSA.

**Concurring:**

Dr. R. J. Smith, for the Deputy Director, Central Intelligence

Mr. Thomas L. Hughes, the Director of Intelligence and Research, Department of State

Lt. Gen. Joseph F. Carroll, the Director, Defense Intelligence Agency

Lt. Gen. Marshall S. Carter, the Director, National Security Agency

Mr. Charles A. Sommer, for the Assistant General Manager, Atomic Energy Commission

**Abstaining:**

Mr. William O. Gregar, for the Assistant Director, Federal Bureau of Investigation, the subject being outside of his jurisdiction.

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## THE SITUATION IN BRAZIL

### THE PROBLEM

To assess the character and short-term prospects for the military regime, and to estimate the implications for the US.

### CONCLUSIONS

A. On 13 December 1968 the Brazilian Government published the fifth and much the most rigorous of a series of Institutional Acts promulgated since the military takeover of Brazil in March 1964. The Fifth Institutional Act (IA-5) and subsequent measures completed the strong assertion of direct military control over the country's political life. But recent events have done little to shape any positive direction for the "Revolution" and they presage a long period of sustained, and possibly internally unstable, military rule. At present, it is not clear where within the government or the military ultimate power lies.

B. Opposition to the military regime is weak and unlikely to challenge seriously its control. Still the regime is likely to be troubled by dissident elements within the Church, the universities, and elsewhere. Their opposition will be important to the extent that it influences factions within the military. A sustained period of political and social unrest could stiffen the resolve of those who feel that a more extensive military dictatorship is needed in Brazil.

C. Sporadic urban terrorism, a relatively new phenomenon in Brazil, will continue to trouble the government. While IA-5 may drive some who would prefer political opposition into participation in terrorism, it is unlikely that for the foreseeable future Brazil will have a major problem with insurgency.

D. Brazilian relations with the US are likely to be under strain for some time to come. A major reduction of aid from the US, which would be deeply resented by the regime, would be a serious setback to the

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progress recently made in controlling inflation and encouraging economic growth. This in turn would exacerbate present political uncertainties and tend to strengthen those in the military presently pushing for a more nationalist and independent stance. Yet, no matter what its level, resumption of aid would not be likely to lead to a flourishing of needed social and political development. Nor would it necessarily strengthen the hand of any "moderates" in the government. But no matter what action the US takes with respect to aid, there will almost certainly be a continuation in Brazil of the nationalistic trend that has been growing since the 1920's and only interrupted during World War II and the Castello Branco period.

## DISCUSSION

### I. BACKGROUND—THE INSTITUTIONAL ACTS

1. On 13 December 1968 the Brazilian Government published a decree which nearly completed the assertion of strong direct military control over the country's political life. This was the fifth, and much the most rigorous, of a series of Institutional Acts promulgated since the military takeover of Brazil in March 1964.

2. For decades the Brazilian military had prided itself on its function as guardian of the Constitution. It was an exercise of this function which led the military to overthrow President Goulart and frustrate what it considered his subversion of both the Constitution and Brazilian institutions generally. Even then, the move came only after months of prodding by conservative political leaders and the small clutch of perennial coup plotters in the officer corps who were alarmed at Goulart's apparent toleration of corruption, economic chaos, and political tumult. Suspicion that Goulart intended to move Brazil steadily toward a Brazilian brand of communism, as well as his encouragement of mutiny in the ranks, finally united the military against him.

3. After the removal of Goulart, however, an increasing number of military men came to believe that power could not safely be returned to the politicians, and that only through a sustained period of military tutelage could Brazil achieve order and initiate the economic preconditions for social and political reform. From time to time during the presidency of Marshal Castello Branco, and again under Marshal Costa e Silva, a number of influential military officers have insisted that strong measures be brought into play to defend the "integrity of the Revolution" and to prevent a resurgence of those aspects of Brazilian political life which they saw as producing turmoil and holding back the process of modernization.

#### Economic Gains

4. Since the Revolution of 1964, the military government has had considerable success with its economic policy. This has been particularly notable in view of

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the deplorable economic situation it inherited. The political instability and unrest which led to the overthrow of the Goulart government had been paralleled by adverse economic performance. Brazil's economic growth rate, as measured by gross domestic product, had steadily declined since 1961; by 1964 it had fallen below two percent. Inflation was rampant and the deficit in Brazil's balance of payments continued to grow. The new military government installed a group of economic technicians who devised programs which would gradually contain inflation and at the same time accelerate the rate of growth. The rate of inflation fell from 90 percent in 1964 to 40 percent in 1966. The growth of gross domestic product improved to above three percent in 1965 and above four percent in 1966.

5. Although the Costa e Silva regime inherited a business recession due to the severe curb on credit imposed under Castello Branco, economic growth again reached a level of between four and five percent in 1967 and the rise in cost of living dropped to 25 percent. Moreover, the level of industrial investment rose almost 40 percent in 1967. Preliminary data indicate that economically 1968 was the best year since 1959; inflation was again held down to about 25 percent and gross domestic product grew more than six percent. Exports reached an all-time high and there was a significant improvement in foreign exchange position. As in 1967, however, a large government deficit was incurred which necessitated a renewed program for strict economies in current expenditures in 1969. After the promulgation of IA-5, Costa e Silva adopted stringent measures over the objections of military and civilian figures to reduce this deficit.

6. These economic accomplishments have not, however, engendered any great popularity for the government, except in the business community, or even any great enthusiasm among most of the military themselves. Nor could they be expected to, given the burden of austerity such a program requires. Economic programs undertaken by the Brazilian Government have been impressive when compared with the chaos which was developing under Goulart, but measured against Brazil's longstanding, great, and growing needs, the progress made to date does not appear encouraging. Even after almost five years, the military leaders appear to have a clearer idea of whom they have to defend their "Revolution" against than what, in a positive sense, they have to achieve or how to go about achieving it. Their actions have taken place in an atmosphere of strong moral fervor against corruption in government, politics, the economy, and the press, and against dissent in the universities and the Church. With the exception of certain of the economic programs described above, their goals have been far from revolutionary in the sense of profound and lasting change in social and economic institutions.

7. Conflict and confusion have also existed within the military ever since 1964 as to the Revolution's political format. Castello Branco (who at first was prepared to hold the scheduled presidential election in 1965) and then Costa e Silva attempted to balance the expediency of authoritarian rule with maintaining some of the attributes of a representative government. Nevertheless, political life under the first four Acts was severely circumscribed and figures connected with previous governments were deprived of their political rights. The list of political cassations

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was extensive and included politicians and civil servants as well as the three former presidents Kubitschek, Quadros, and Goulart. The Acts also gave extraordinary powers to the executive at the expense of Congress and pushed the government of Castello Branco into an increasingly authoritarian posture, but the constitutional forms were preserved. The Fifth Institutional Act (IA-5) under his successor has now demolished most of these.

8. At first glance the sweeping powers granted to the president under IA-5 would seem unnecessary. The Revolution had already been institutionalized by the authoritarian Constitution of 1967, which codified a major part of the previous accretions to executive power of the first four Acts. Congress and the courts more or less accepted the president's dominance of the political process, and most forums for public opposition were suppressed or neutralized. Finally, the military had endowed itself with the legal machinery to control the selection of the president not only for the election of 1971 but for others beyond.

#### **Military Apprehension**

9. During the almost five years of military government there has been growing disagreement among officers of the armed forces on the goals of the Revolution and sometimes deep frustration with the performance of Marshal Costa e Silva as president. There is also growing discontent among workers and the politically articulate minority of the population generally. While student demonstrations have been commonplace over the last few years, those which took place in June and July 1968 aroused concern among the officers, as the students seemed to be expanding their support among liberal prelates, and for the first time to be garnering some support from labor and other elements. Most Brazilians have been politically apathetic, but military officers were becoming highly sensitive to what they considered indignities suffered at the hands of civilians—for example, a popular song mocking them. In any case, they were aware that the Revolutionary purgation had only made the populace yearn for a return to the Kubitschek era of national optimism, political laxity, and free spending.

10. Some alarmists in the officer corps saw all this as an ominous portent of a gradual reversion to the Goulart period. They blamed the inadequacies of the regime alternately on the trappings of constitutional democracy that remained and on the man they had placed in the presidency. Institutions such as the press and the still somewhat independent judiciary were special targets. The former's criticisms of the regime were regarded as undermining the Revolution, and the latter was in their view too mindful of the letter of the Constitution in such actions as letting arrested students off with little or no punishment.

11. The greatest disappointment to the military, however, was the rather passive performance of their 1966 consensus candidate, President Costa e Silva. They came over time to view him as unwilling or unable to take effective action against these "counter-revolutionary" currents. Most of the officer corps chafed under the passivity of his regime but were divided as to how to correct it. A small minority felt that the president should be replaced by some tougher military

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figure, and others may have felt that control should revert to the civilians, but most agreed that the military should stick with Costa e Silva while pressuring him to take firmer action against corruption and dissidence, both of which they equate with subversion.

#### The Adoption of IA-5 and IA-6

12. Ultimately, it was Congress' defense of its diminished prerogatives that catalyzed the military into taking action against the fractious civilians. In September 1968 a minor opposition federal deputy, Marcio Moreira Alves, had bitterly denounced the military in a speech before the Chamber of Deputies; it was little noted except by the military, who demanded that the government prosecute him for "undermining the Revolution." Costa e Silva agreed to do so but found that he had to overcome the constitutional stipulation that deputies enjoyed political immunity while addressing the Chamber. Wishing to proceed under the letter of the law, the government set about pressuring the Chamber of Deputies into voting to lift Alves' immunity. But in December, just as it appeared about to succeed in doing so, many of the generally supine government majority party, ARENA, rebelled against the government's clumsy attempts to insure their acquiescence and voted with the opposition to defeat the government bill.

13. The strong, almost instantaneous reaction of the military leaders forced Costa e Silva into issuing IA-5. The Act gave the president power to recess Congress (which he immediately did), to intervene in the states, to go further than before in suspending political rights, and to "establish restrictions or prohibitions related to the exercise of any other public or private rights." In particular, "the guarantee of habeas corpus is suspended in cases of political crimes against national security, social and economic order, and consumer economy." The president is now empowered to confiscate the property of those who have "enriched themselves illicitly while in public office." As with the earlier Institutional Acts, all actions carried out under this one are "excluded from judicial review." (See ANNEX for complete text.)

14. With IA-5, the military appears to have forsaken for the foreseeable future its attempt since 1964 to forge an effective political arm of the Revolution. IA-5 was aimed not only at the scattered militant left and politicians of the Kubitschek-Quadros-Goulart stripe but also at the former revolutionaries whose defiance, if left unchecked, could presage the dissolution of the Revolution and facilitate the return to the type of politics that they had overthrown in 1964. The new list of those denied political rights for 10 years included Carlos Lacerda (who had switched from being the Revolution's most avid civilian partisan in 1964 to its most feared opponent), some of the congressmen (both ARENA and opposition) who had voted against the government, and the owner of a moderately anti-regime newspaper that had also initially backed the coup. Other congressmen were denied their seats but not deprived of other political rights.

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15. The judiciary was also purged and three justices of the Supreme Court were forced to retire; shortly afterwards the chief justice and another justice resigned in protest. These and other attacks on the judiciary have since been codified by a Sixth Institutional Act, dated 31 January 1969. The new Act among other things takes account of the five retirements by reducing the court from 16 to 11 members. It further limits the courts' rights to consider habeas corpus and removes the right of appeal from military tribunals in the case of political offenses. This Act is similarly closed to judicial review. (See ANNEX.)

16. Such withdrawals of political rights are continuing. On 7 February the president recessed the state legislative assemblies of Guanabara (the city of Rio de Janeiro), São Paulo, Pernambuco, Rio de Janeiro, and Sergipe because they had "contradicted the fundamental ethics on which the Democratic Revolution was based." The Complementary Act which formalized the recess also accused the assemblies of "abusing rights which they did not possess, including the granting to their members of undue remuneration and advantages, as well as promoting acts which violated the dignity of the mandate given to them by the people." Meanwhile the number of federal congressmen deprived of their mandates was increased to 81, nearly 20 percent of the total. As an indication that this was not the last of such actions, the president also announced the creation of a "General Political-Military Inquiry Commission" which would carry out the investigation of "subversive" or counter-revolutionary acts.

## II. THE REVOLUTION AFTER IA-5

17. The Fifth and Sixth Institutional Acts greatly strengthened the military government's powers to eliminate opposition and impose its will. There has been, however, no concurrent charting of positive social or political reforms or programs to replace the old order and the dismissed institutions. The goals of the Revolution once again seem to emphasize the negative (anticorruption, anti-communism), and few among the military appear to have any notion how to deal with the country's vast social problems.

18. The economic programs, left largely to civilian planners, remain intact. Apart from officers with regional interests, few among the military have concerned themselves deeply with economic matters. But there are signs that strains may be developing between budget-minded planners and those officers who favor the development of rural areas. When the Minister of the Interior, General Affonso de Albuquerque Lima, resigned, he denounced the planners' diversion of funds from development of the Northeast towards expansion of urban industry in the South, in terms calculated to enhance support for his political ambitions. If growing numbers of military officers take sides in this dispute, or if the military regime begins to apply the strictures of IA-5 more generally among civilians, it will become increasingly difficult for the economic planners to continue their constructive role. One possible portent of this has been the criticism by Roberto Campos, the chief architect of Castello Branco's economic program, of the present government's economic policy since IA-5.

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19. Much of the impetus for IA-5 has been attributed by many senior officers to their subordinates at the battalion level. The whole range of grievances of these lower ranking officers is difficult to ascertain; among other things they had previously complained of low salaries and indecisive leadership. The former condition has made them especially intolerant of political corruption at all levels, and many feel that prosecution of malefactors has not been sufficiently stringent. The facts that Congressman Alves had a reputation as a playboy and was from a prominent, wealthy family were particularly galling. Some of the junior officers are said to favor populist programs such as sweeping agrarian reform, and to have expressed hope that the Act could now make this possible. And some senior officers have attempted to exploit such feelings. In particular, Albuquerque Lima has already made overt appeals for their support.

20. In general, distinct factions in the military are not yet identifiable. It is evident that not all the officers were lobbying for IA-5; at the very time it was being drawn up, a small group of perennially dissatisfied majors and colonels may have been plotting with Carlos Lacerda to overthrow Costa e Silva. Other officers almost certainly feel that the Act went too far, and hope that its harsher aspects can be toned down. Most officers, however, probably approve of it. Of this indeterminate group, the majority is most likely content at present to scrutinize the government's actions and apply pressure if the government appears to be relaxing. A zealous few, regarding themselves as in some special sense the "conscience of the Revolution," probably want in any case to depose Costa e Silva. But such desire for finding stronger alternatives must be tempered by the realization that at present none is attractive and that attempts to create one could seriously split the military establishment.

21. Such trepidations have kept Costa e Silva in office if not in power. His initial resistance to the Act probably further reduced his prestige within the military, but he is attempting to regain strength with the help of his Army Minister and the more moderate generals. He hopes to profit from the current confusion within the military perhaps by making important changes in the cabinet and the command structure. The resignation of Albuquerque Lima removed one potential rival, but this may turn out to be a mixed blessing. Costa e Silva also aspires to transfer the commanding general of the First Army, who was instrumental in forcing the Act upon him. Apart from securing his position, the president's plans are vague. He has indicated some interest in gradually restoring the constitutional façade, and would like to see Congress opened in a few months under the control of a chastened and obedient government party.

### III. PROSPECTS

22. One thing seems clear in an otherwise murky situation: the likelihood of a long period of sustained, but possibly internally unstable, military rule. Although there probably still are some within the military who doubt the efficacy of prolonged military rule, they are and probably will be for quite a while overshadowed by the revolutionary zealots, who can play on the pride and fears of the vast majority of officers.

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23. This prospect stands in contrast to Costa e Silva's earlier hopes for gradual movement toward more civilian participation in the government. Among other things, he apparently was considering the selection of a tame civilian as president in the indirect election announced for January 1971. But now the closing of Congress, which is the nucleus of the electoral college that chooses the president, casts some doubt that there will be an election at all. And the future of the Congress itself remains in question.

24. Indeed a further weakening of existing civilian and political institutions is probable. Military zealots are likely to pressure the government into at least some additional purges of politicians at all levels. There are already plans to investigate corruption and subversion at the state and municipal levels, and local military commanders have prepared lists of likely offenders. Some sort of investigation and repression of university professors and students is also likely. Such actions would doubtless be justified by an alleged need to remove all obstacles to "social reforms" and other moves toward modernization. Some military leaders may soon press for agrarian reform efforts in the Northeast, but we do not believe that they intend—or could afford—to back a major and costly program. More likely they are interested in a well advertised but limited approach, aimed as much as anything at appealing to idealistic young officers—and perhaps to foreign observers as well.

25. Various factors give Costa e Silva a better than even chance of retaining office through the remainder of his term, the most notable being the general lack of consensus within the military as to an attractive alternative. Jockeying for power and maneuvering for survival, rather than pushing for broad reforms, are likely to characterize the year or so before the president is due to leave office. He has been a fairly adept manipulator in the past, but now clearly has less room for maneuver. In particular, he will be under strong pressure to implement oppressive measures and to crackdown quickly on any manifestations of active opposition. He may seek to temper the government's actions in such circumstances by trying to rally the moderates within the military; this, however, could prove to be a risky course. His major problem will be to avoid provoking a crisis within the military which would unite it against him. As January 1971 approaches ambitious commanders will probably concentrate on the struggle to succeed rather than overthrow him. Now 66 years old, Costa e Silva is not in robust health, and his removal might occur through death or illness. If he is replaced, it will almost certainly be by a military figure or junta; we cannot predict with any confidence who the new leaders might be.

26. Political opposition to the military government is too weak and disorganized to offer any kind of serious resistance. Most civilian sectors have been apathetic or hostile to IA-5, but a considerable amount of support for it was generated within the business community. Even there, enthusiasm has been qualified with some apprehension over the possible damage to the economy because of hostile foreign and domestic reaction to the Act, and over possible applications of its confiscation clause. Most of the politically literate who saw some hope in Costa e

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Silva's inaugural pledge to "humanize the Revolution" have been demoralized by the wave of censorship and oppression. Yet the civilian politicians have been widely discredited and the government's repression of them has caused no public outcry. We conclude that no political figure is likely to rise soon as a symbol of civilian resistance to the military.

27. Organized labor has chafed under military rule, and in particular its austerity program which brought about a continuing decline in real wages until 1968 and then a stagnation. But compared with other major Latin American countries it represents a small percentage of the total labor force; it has traditionally been controlled by the government and its leadership has been notoriously flaccid. Periodic wildcat strikes are much more likely than protests organized by labor leadership.

28. Students are a predictable source of opposition to both the Act and the regime. During the past year they were the only group to initiate organized protest against the government and managed to appear more effective than they had at any time in the past. In July in Rio de Janeiro military men were alarmed to see normally passive Cariocas support the students by hurling bottles at the police in one demonstration and marching with them in another. Provisions of the new Act and the tougher atmosphere, however, make student demonstrations far riskier than before. Physical repression is likely to be more brutal, and the regime is no longer hampered by the writ of habeas corpus or sympathetic judges. This alone will tend to deter all but the bravest and most determined. Attempts to make common cause with labor will probably be fruitless as well. Labor's attitude to radical student movements probably is more nearly like that of the rank and file of the AFL-CIO in the US than that of some sympathetic labor unions in France.

29. We believe that the Church is the only institution that could begin to marshal serious resistance against the government. Over the past few years most Brazilian prelates have been moved by a growing sensitivity to the effects of economic and cultural poverty on the population. The Church in general has increasingly become a voice for reform. Moderate clerics who might have applauded the removal of Goulart have more recently attacked the military and the government for its lethargy in combating social ills. IA-5 was generally disliked by the Church, and even the conservative cardinal archbishop of Rio de Janeiro issued a homily attacking the government.

30. Despite its unhappiness over the present situation, the concerned clergy is also divided and confused as to what role the Church should play in changing it; church leaders have generally been quiet since IA-5. A small but possibly growing minority has argued in justification of revolutionary violence, but most reformist priests are political moderates who fear a clash with the military. Nevertheless, strains between the military and the Church are likely to increase. Some military officers believe that the priesthood is crawling with Communists in cassocks. If priests began to take an active role in organizing protests, such officers might

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force the government into an open conflict with the Church, one effect of which would be a further polarization of Brazilian society.

31. Sporadic urban terrorism, a relatively new phenomenon in Brazil, will continue to plague the government. Never very widespread or on the whole destructive, it has nonetheless been galling to the police and military who, at least until recently, have been generally unable to arrest the terrorists. Of particular concern has been the extent to which the terrorists may have infiltrated the security forces. In the eyes of the military, the leading terrorist is the dissident Communist leader Carlos Marighella, an advocate of violent revolution. The size of his group is unknown, and it may be one among several small terrorist organizations. On the other side, rightist terror groups have also been carrying out bombings in an attempt to goad the military into further repressive action. While IA-5 may drive some who would prefer political opposition into participation in terrorism, we doubt that, at least for some time, Brazil will have a major problem with insurgency.

32. In short, the opposition, whether through political action or violence, is not likely to challenge seriously the regime. The quantity and quality of the activities of the opposition, violent and otherwise, will have an effect on the regime but only insofar as they have an impact on the various factions within the military itself. A sustained period of sporadic terror, student dissidence, and manifest popular dissatisfaction with military rule could stiffen the resolve of those who feel that a more extensive dictatorship is the only way for Brazil. A certain number of corporatist-minded officers have expressed the opinion that the state should extend even further its control over the economy. On the other hand, sustained turmoil would undermine the confidence of a few more military leaders in the ability of the military establishment to govern.

#### IV. IMPLICATIONS FOR THE US

33. Brazilian relations with the US are likely to be under strain for some time to come. The generation of military officers who fought in Italy is reaching retirement age and the newer breed lacks that bond of sympathy with the US. Military officers, like Brazilians generally, are now far more susceptible to nationalistic arguments than before, and the day is past when a foreign minister could say (as Castello Branco's did) that "what's good for the US is good for Brazil." Many military men are as responsive as civilians to the charge that the US is trying to manipulate Brazilian affairs for its own purposes, and bitterly resent critical editorials in US journals. The government has grown increasingly nervous over the withholding of US aid. Pro-US figures (largely veterans of the Castello Branco era) have remonstrated with officials of the US Embassy to the effect that the failure of the US to resume economic and military aid could bring about the seizure of power by a more dictatorial, less friendly group.

34. A major reduction or outright denial of economic aid from the US, which would be deeply resented by the regime, would be a serious setback to the current efforts to control inflation and encourage rapid economic growth. This in

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turn would exacerbate present political uncertainties and tend to strengthen those in the military presently pushing for a more nationalistic and independent stance. Yet, since the roots of the present crisis are political rather than economic, the resumption of US aid would not necessarily strengthen whatever "moderate" officers remain in the Costa e Silva government. Opponents of the regime, particularly those in the Church or the universities, will more than ever resent the continuation of US economic and military assistance as helping to keep an inept and repressive dictatorship in power. This kind of hostility will extend to US aid efforts in such civilian sectors as education. Nor would the resumption of aid be likely to lead to a flourishing of needed social and economic reforms. But no matter what action the US takes with respect to aid, there will almost certainly be a continuation in Brazil of the nationalistic trend that has been growing since the 1920's and only interrupted during World War II and the Castello Branco period.

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## INSTITUTIONAL ACT NO. 5

### Preamble

1. The President of the Federative Republic of Brazil, after consulting the National Security Council:

2. Considering that the Brazilian Revolution of March 1964 had, according to the Acts through which it became institutionalized, foundations and objectives which aimed at giving the country a regime which, meeting the demands of a juridical and political system, would assure an authentic democratic order based on liberty, respect the dignity of the human being, carry on the fight against subversion and ideologies which are contrary to the traditions of our people, and the fight against corruption, and thus seek the essential means for the work of economic, financial, political, and moral reconstruction of Brazil, so as to be able to face in a direct and immediate way the grave and urgent problems on which depend the restoration of internal order and the international prestige of our country (Preamble of Institutional Act No. 1 of April 1964);

3. Considering that the Government of the Republic, which is responsible for the fulfillment of those objectives as well as for order and internal security, not only cannot permit that persons or antirevolutionary groups work, plot, or act against it, without failing to meet the commitments which it assumed before the Brazilian people, but also that the revolutionary power, in issuing Institutional Act No. 2 affirmed categorically that "it was not said that the revolution was, but that it is and will continue to be" and therefore the revolutionary process in development cannot be stopped;

4. Considering that this same revolutionary power, which is exercised by the President of the Republic, in convoking the National Congress to discuss, vote, and promulgate the new Constitution, established that the Revolution, besides representing "the institutionalization of the ideals and principles of the Revolution," should "ensure the continuity of the revolutionary work" (Institutional Act No. 4 of 6 December 1966);

5. Considering, however, that clearly subversive activities originating in the most varied political and cultural sectors have proved that the juridical instruments which the victorious revolution gave to the nation for its defense, development, and welfare, are serving to fight it and destroy it;

6. Considering, thus, that it becomes imperative to adopt measures to prevent the high ideals of the Revolution from being frustrated and to preserve order, security, tranquillity, economic and cultural development of the political and social harmony of the country, which are threatened by subversive processes and revolutionary war;

7. Considering that all these facts which disturb order are contrary to the ideals and consolidation of the March 1964 movement and compel those who

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are responsible for it, and who have sworn to defend it, to adopt the necessary measures to avoid its destruction;

8. Resolves to issue the following Institutional Act:

#### **Institutional Act Number Five**

Article 1. The Constitution of January 1967 and the State Constitutions, with the changes contained in this Act, remain in force.

Article 2. The President of the Republic may decree recess of the National Congress, the State Assemblies, and the Municipal Chambers through complementary edicts with or without a state of siege being in force. They will be called to operate again only by decision of the President of the Republic.

1. Until the Congress begins operating again, the executive power may legislate on all matters established in the Constitution and laws of municipalities.

2. During the recess, senators, deputies, and councilmen will receive only their basic salaries.

3. In case of recess of municipal chambers, the financial and budgetary inspection of municipalities which do not have auditing agencies will be exercised by the auditing agency of the respective state. Its action will extend to auditing functions and to the judgment of accounts of administrators and other persons responsible for public properties and values.

Article 3. The President of the Republic in the national interest may decree intervention in the states and municipalities without the limitations set forth in the Constitution.

Sole paragraph. The interventors in the states and municipalities will be appointed by the President of the Republic and will exercise all functions and duties which are the respective responsibility of the governors or mayors and will enjoy all privileges, salaries, and benefits fixed by law.

Article 4. In the interest of preserving the Revolution, the President of the Republic after consultation with the National Security Council and without the limitations established in the Constitution will be able to suspend the political rights of any citizen for 10 years, and to cassate federal, state, or municipal elective mandates.

Sole paragraph. Federal, state, and municipal legislative members whose mandates are cassated will not be replaced, and the parliamentary quorum will be adjusted in accord with the number of places effectively filled.

Article 5. The suspension of political rights based on this Act will simultaneously: (1) terminate the right of special hearing for certain privileged officials; (2) suspend the right to vote and to be a candidate in labor union elections; (3) prohibit activity or manifestation of a political nature; (4) apply when necessary the following security measures: (a) freedom under vigilance, (b) prohibition against visiting certain places, (c) designation of place of residence.

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1. The Act which determines the suspension of political rights may establish restrictions or prohibitions related to the exercise of any other public or private rights.

2. The security measures dealt with in item 4 of this article will be applied by the Minister of Justice and excluded from review by judicial authority.

Article 6. The following constitutional or legal guarantees are suspended: (a) life tenure, (b) fixed place of employment, (c) job tenure, plus the exercise of functions for fixed periods.

1. The President of the Republic through decree may dismiss, remove, retire, or place in availability any holders of the guarantees referred to in this article as well as employees of autonomous agencies, of public enterprises or of mixed public and private organizations, and he may dismiss or transfer to the reserve or retire members of the armed forces or military police. He may also assure, when appropriate, the salaries and other advantages which are due them according to their time in service.

2. The provision of this article and its first paragraph applies also in states, municipalities, the federal district, and the territories.

Article 7. The President of the Republic in any of the cases established in the Constitution may decree or extend a state of siege and fix the period it will be in force.

Sole paragraph. In case the National Congress is recessed, the requirement of paragraph 1, Article 153 of the Constitution is dispensed with.

Article 8. The President of the Republic, after investigation, may decree confiscation of property of any persons who have enriched themselves illicitly while exercising public office, including positions in autonomous agencies, public enterprises, or mixed public and private organizations, without waiving any penal sanctions which may also be applicable.

Sole paragraph. If the properties are proved to be legitimately acquired, they will be returned.

Article 9. The President of the Republic may issue complementary edicts for the execution of this Institutional Act as well as adopt, if necessary, for the defense of the Revolution, the measures established in items (d) and (e) of paragraph 2 of Article 152 of the Constitution.

Article 10. The guarantee of habeas corpus is suspended in cases of political crimes against national security, social and economic order, and consumer economy.

Article 11. All activities carried out in accordance with this Act, its complementary Acts, and its respective effects, are excluded from judicial review.

Article 12. The present Institutional Act goes into effect on this date and all provisions to the contrary are hereby revoked.

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Brasilia, 13 December 1968, signed by the President of the Republic and all Ministers of State.

\* \* \* \* \*

Complementary Edict No. 38 of 13 December 1968. The President of the Republic in accordance with Article 9 of Institutional Act No. 5 of 13 December 1968 resolves to issue the following Complementary Edict:

Article 1. In accordance with Article 1 and its paragraphs of Institutional Act No. 5 of 13 December 1968, the recess of the National Congress is decreed as of this date.

Article 2. The present Complementary Edict goes into effect on this date and all provisions to the contrary are hereby revoked.

Brasilia, 13 December 1968.

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## INSTITUTIONAL ACT NO. 6

By the President of the Republic:

1. Whereas, as indicated in Institutional Act No. 5 of 13 December 1968, the Brazilian revolution reaffirmed that its constitutive power had not been exhausted but that its action is continuing and will continue unabated to achieve the revolutionary movement's high ideals and consolidate its work;

2. Whereas, as the highest institution in the judiciary the Federal Supreme Court is an institution of a constitutional nature and receives from the Constitution its duly defined structure, prerogatives, and jurisdiction;

3. Whereas, the government, which still retains constitutive power, has recognized the need to alter the composition and jurisdiction of the Federal Supreme Court to benefit the system of justice itself with a view to strengthening its position as an eminently constitutional court and, by eliminating some of its duties, to facilitate the exercise of its prerogatives;

4. Whereas, persons affected by the political and administrative penalties of the revolutionary process must receive equal treatment under the rule of the institutional precepts and other legal regulations originating in them,

The following Institutional Act is issued:

Article 1. The provisions of the Constitution of 24 January 1967 hereinafter named shall be worded as follows:

Article 113. The Federal Supreme Court, situated in Brasilia and having jurisdiction throughout the territory of the nation, is composed of 11 justices.

1. The justices will be appointed by the President of the Republic, after their selection has been approved by the Federal Senate, from among native-born Brazilians over 35 years old, exceptionally versed in the law, and of spotless reputation.

2. In offenses involving their posts the justices will be tried and sentenced by the Federal Senate.

Article 114. The Federal Supreme Court has authority:

II. To hear cases of ordinary appeal involving:

a. Denial of habeas corpus in decisions of last resort or sole resort handed down by local or federal courts when the appeal cannot be avoided by a petition based on the case;

b. Cases to which a foreign state and a person domiciled or residing in the country are parties;

c. Cases established in Article 122, Paragraph 2.

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III. To hear extraordinary appeals from decisions of sole resort or last resort handed down by other courts when decisions under appeal meet the following conditions:

- a. Go against some provision of this Constitution or deny the effectiveness of some federal law or treaty;
- b. Declare some federal law or treaty unconstitutional;
- c. Declare valid some law or action of a local government that has been challenged on the basis of the Constitution or a federal law;
- d. Give the law an interpretation differing from the interpretation that has been given by some other court or the Federal Supreme Court itself.

Article 122. It is the prerogative of the military courts, in cases of military offenses defined by law, to try and sentence members of the armed forces and persons having similar status.

1. This special prerogative may be extended to cover civilians in cases provided for by law to suppress crimes against the nation's security or the military institutions.
2. The Superior Military Court has original jurisdiction in trying and sentencing governors of states and their cabinet members for crimes mentioned in the first paragraph.
3. The law will control the application of the penalties of military legislation in wartime.

Article 2. The provisions of Article 5 and its paragraph 1 and 2 of Institutional Act No. 5 of 13 December 1968 apply to persons coming under Article 10 and its sole paragraph of Institutional Act No. 1 of 9 April 1964 or Article 15 of Institutional Act No. 2 of 27 October 1965.

Article 3. Constitutional amendments enacted by Complementary Acts subsequent to Institutional Act No. 5 of 13 December 1968 are hereby ratified.

Article 4. There shall be no judicial review of any of the actions carried out pursuant to this Institutional Act and its Complementary Acts, or their respective effects.

Article 5. The present Institutional Act shall take effect as of this date; any measures to the contrary are revoked.

Brasilia, 31 January 1969.

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