



TAFS MUN 2016

Rerum. Reform. Rebuild.

**The Air Force School,
Subroto Park**

Dates: 26th to 28th December, 2016

Venue: The Air Force School, Subroto Park

**Constituent Assembly of Brazil 1988 -
Background Guide**

CONTENTS

A MESSAGE AND AN INTRODUCTION	3
THE CONSTITUTION OF 1969	4
THE PROCESS OF ADOPTING THE 1988 CONSTITUTION.....	5
THE NO ARCHITECT/NO BLUEPRINT APPROACH TO CONSTITUTION BUILDING	8
THEMATIC COMMITTEES AND SUBCOMMITTEES	8
ANOTHER ASPECT.....	10
POPULAR PARTICIPATION – A PERSPECTIVE ON THE CONTEXT OUTSIDE THE ASSEMBLY	10



A MESSAGE AND AN INTRODUCTION

It is our pleasure to serve as the Executive Board for the Constituent Assembly of Brazil (1988) at TAFS MUN 2016.

At the outset we would like to clarify a few things. Firstly, the simulation will follow standards Model UN procedures, with little variation (if any). The procedure as such may be flexible, not necessarily relaxed, to ensure that our discussion remains both smooth and fruitful. Secondly, since it is a committee trying to frame an entire constitution for a country, the task ahead is monumental. For the same, the following flow in the form of debate shall be preferably followed – Before diving into any discussion we shall first make drafts on specific topics first and debate them later. Usually in Model UNs it is observed that there is a discussion on a few topics and then drafting, however we will follow it the other way round. Thirdly, as it is a historical committee, there shall be a time-freeze, that is, we shall assume that we are in 1988 and the process of drafting is underway. Our meeting is a hypothetical meeting before **5th of October 1988**. In this meeting we are assuming that the several recommendations or drafts which are already available are before us, and it is our task to integrate, discuss and bring to the table one document as the proposed constitution.

As we are talking about formulating the legal basis of existence of a state, its systems, principles or guidelines, and that too in a historical context, researching for this simulation can be tricky. So here are a few tips and suggestion which we would like to put forward. Rather than only looking at available drafts and recommendations for this constitution, try and understand Brazil as a country, its history, people, culture, politics, economic conditions and so on up until 1988. Do look at other constitutions as, their processes and content, which you feel Brazil can and should adopt, keeping in view its need and its vision as a society. So feel free to be innovative with your suggestions, and feel comfortable enough to bring in points which you feel may reflect in the everyday life of a citizen. Rather than only looking at how 1988 constitution was actually made, look at how it should be made “according to your understanding of the context of Brazil”. When we say context, the context about transition from a regime with military influence to a democratic one does become an important one. It is from there we will also begin to give you an insight into the simulation. However, that does not mean you have to ignore any context before this period, as already mentioned. That do not see this guide as your “bible” or a one-stop shop for the entire preparation. We have taken a

chapter from the book *Framing the State in the Times of Transition* to bring to you an insight, a glimpse into the context which we have been talking about. Kindly do not restrict yourself to the same, rather see it as a base to read up more. There are several terms which have been highlighted in bold, and you are requested to further explore their meaning, background and importance. Furthermore, read as many articles, books, personal or historical accounts, academic perspectives, videos, news items, reports or reviews you can lay your hands on to get the grasp of the nitty gritty. In this committee you are free to use any source for research, and will be judged more on how you use that content to discuss and aid the process of drafting. However, it is to be noted that for the purpose of simulation, all events post freeze-time shall be considered non-existent, but that does not mean you cannot use material from the subsequent times to bring in a perspective to the discussions. If there are facts which are under dispute, then it will be the prerogative of the participants to decide their validity based on their understanding of what needs to be deemed “credible” for this assembly. But since our focus will be more on creating and discussing the drafts, we as the Board feel it should not be the only focus.

Lastly, we would just like to say that see the task as a *responsibility*, a responsibility to frame the future of a country. Yes, there will conflicting interests, views and solutions to address, but the wider aspect of ensuring the success of the process, its gravitas must not take a back seat. As a member of this simulation, your most important job shall be to resolve those conflicts and ensure consensus, and consensus here means willingness of all stakeholders to agree, to believe in the terms. Do understand that in this hypothetical scenario, hopes of thousands are pinned on you, and failure to cater to the same may presumably also have its aftereffects in the lives of Brazilian society, its peace and tranquility. It is not only a step towards re-democratization, but also a chance which must not be lost.

THE CONSTITUTION OF 1969

In August 1969, President da Costa e Silva suffered a stroke. Rather than permit the civilian vice president, Pedro Aleixo, to succeed to the presidency in accordance with the constitution, the armed forces issued Institutional Act 12, authorizing the military leaders to assume executive power in the form of a junta. A few months later Institutional Act 17 of October 17, 1969, authorized the military junta to issue constitutional amendments. The junta promptly issued Constitutional Amendment 1, which rewrote and renumbered the entire text of the 1967 Constitution. Despite its label, most Brazilian constitutional scholars treat Amendment 1 as the 1969 Constitution.

The 1969 Constitution strengthened the powers of the executive. It increased the presidential term of office from four to five years and expanded the ambit of the president's **decree-law** power to include taxation, creation of public employment, and determination of salaries for civil servants. The greatest expansion of executive power came from a provision allowing the president to send bills to Congress on any subject, but giving each house only forty-five days to consider such bills. If labelled urgent, both houses had only forty days to consider such bills jointly. Any bill not considered or rejected during that period was deemed automatically approved.

The 1969 Constitution sharply reduced the **nominal protection** previously accorded to individual rights. Publications contrary to good morals were prohibited. The government could impose the sanctions of death, perpetual imprisonment, banishment, and confiscation. Even those individual rights that were theoretically guaranteed remained suspended until October 13, 1978, when the institutional acts were revoked.

The 1969 Constitution, like the 1967 and 1937 Constitutions, institutionalized de-facto military regimes. All three constitutions shared the basic feature of heavy centralization of power. All transferred power to the federal government from the states and municipalities, leaving Brazilian federalism a shadow of its former self. All transferred powers from the legislature to the executive.

In practice, none actually provided minimally adequate protection for individual rights. All lacked legitimacy, for none was adopted by the people or their democratically elected representatives. None of the regimes they institutionalized had any serious commitment to constitutionalism.

THE PROCESS OF ADOPTING THE 1988 CONSTITUTION

Unlike transitions from military rule in many countries, the Brazilian transition was not initiated by pressure from civil society. Instead, it was initiated by the military. In 1974, President Ernesto Geisel and his chief of cabinet, General Golbery de Couto e Silva, started an eleven-year gradual relaxation of dictatorial measures that eventually resulted in re-democratizing the nation. Their motives for beginning the long transitional process are complex and to some extent remain enigmatic. Alfred Stepan, who conducted interviews on the subject with both Geisel and Golbery, reports that the decision to reach out to civil society for allies was motivated in large part by concern about the growing

autonomy of the security apparatus, both in the state and within the military itself. Because Brazil's leftist guerrilla movements had long been destroyed, the security apparatus was no longer needed and constituted a serious danger to the military as an institution.

In 1978, at the end of Geisel's term, Congress enacted Constitutional Amendment

11, which revoked the institutional acts and their complementary measures to the extent they conflicted with the 1969 Constitution.

Also in 1978, a massive strike in the auto industry on the outskirts of São Paulo marked the beginning of a period of substantial labor unrest and dissatisfaction with government-dominated labor relations.

General João Baptista de Oliveira Figueiredo, who assumed the presidency in 1979, permitted the enactment of an **amnesty law** that applied not only to members of the security forces who had committed human rights violations but also to political prisoners and exiles. This double-sided amnesty law which, unlike similar laws in Argentina and Uruguay, has never been overturned—facilitated widespread acceptance of re-democratization by the military and its most vociferous opponents. A new law on political parties permitted the resumption of a much more vigorous and diverse political life. In 1980, the National Conference of Lawyers approved the Declaration of Manaus, calling for a return of the constituent power to the people. Distinguished jurists, such as Raymundo Faoro and Miguel Seabra Fagundes, began to call publicly for convocation of an assembly to draft a new constitution.

In 1982, concerned about losing its control over constitutional amendments, the military government increased the number of votes required in Congress to adopt a constitutional amendment from an absolute majority to two-thirds.

This change proved critical two years later, when the Partido do Movimento Democrático Brasileiro (Party of the Brazilian Democratic Movement, or PMDB), the principal opposition party with 200 seats in the Chamber of Deputies, proposed a constitutional amendment to restore popular election of the president. All opposition parties joined in mobilizing popular support for the measure. Millions of Brazilians attended rallies and took to the streets in the principal cities to demand *diretas-já*, direct presidential elections, immediately. On April 25, 1984, a majority of Congress voted for a constitutional amendment to restore direct elections but fell twenty-two votes short of the two-thirds majority needed for enactment.

As the military government changed the rules for amending the constitution, it decided also to change the rules for the next presidential election, which was moved forward from October 1984 to January 1985. Constitutional Amendment 22, which the military pushed through Congress in 1982, modified the Electoral College that indirectly selected the president. The Electoral College had been composed of the entire National Congress, plus an additional group of electors selected by the state legislatures in proportion to each state's population. Amendment 22 eliminated proportional representation for the additional group of electors; instead, each state selected six additional electors, chosen by the majority party in a **winner-take-all** vote.

Nevertheless, this strategy failed to prevent the Electoral College, which met in January 1985, from ending twenty-one years of military rule by electing as president Tancredo Neves, the head of the PMDB and a principal leader of civilian opposition to military rule. Shortly thereafter, fate seriously undermined the Brazilian red-emocratization process. Neves died shortly before assuming office. The vice president, José Sarney, was a lackluster traditional politician from Maranhão, a backward northeastern state. Until shortly before the 1985 election, he had been president of the Partido Democrático Social (Social Democratic Party, or PDS), the promilitary regime party. The PDS had split, and its dissidents, including Sarney, joined the Partido a Frente Liberal (Liberal Front Party, or PFL). The PFL then formed a coalition with the PMDB called the Democratic Alliance, which produced the Neves–Sarney ticket. Although many PMDB politicians had wanted Ulysses Guimarães, popular leader of the PMDB, to succeed Neves, the military insisted that Sarney be sworn in as Brazil's transitional president on March 15, 1985.

Two months later, Congress adopted Constitutional Amendment No. 25, which not only restored **direct elections** for all levels of government but also totally liberalized the rules governing political parties by legalizing Marxist parties, abolishing the requirement of party discipline, eliminating obstacles to party formation, and permitting multiparty alliances.

With Constitutional Amendment No. 25, the path of Brazilian constitutionalism reached a critical juncture. Because most of its authoritarian features had been relaxed by subsequent constitutional amendments, the 1969 Constitution could have been maintained. Alternatively, the democratic 1946 Constitution could have been restored. But Neves had promised a new constitution, and after his untimely death, his successor was determined to fulfil that promise.

THE NO ARCHITECT/NO BLUEPRINT APPROACH TO CONSTITUTION BUILDING

The constitutional assembly's decision to proceed without a draft seriously complicated the assembly's principal task. Had it started with a coherent draft, the assembly could have shortened the drafting process enormously and probably would not have produced a document with such serious conceptual and organizational flaws. In July 1985, President Sarney appointed **a blue-ribbon committee**, headed by Afonso Arinos, a distinguished jurist and politician, to prepare a draft constitution for submission to the constituent assembly. The extensive Arinos Draft, issued in September 1986, contained 451 articles with many commendable features.

It proposed a type of parliamentarism similar to the French Fifth Republic, with a congressionally chosen prime minister and a popularly elected president. It also proposed a badly needed German-style reorganization of the party system with proportional representation and a threshold of 3 percent of the national vote for party representation in Congress. But President Sarney refused to submit the Arinos Draft to the constituent assembly because he disagreed with many of its provisions, particularly the creation of a **mixed parliamentary-presidential system** of government. Nevertheless, a strikingly similar proposal surfaced in the assembly's draft constitution. Though the entire 559-member assembly drafted the constitution from scratch, the draft itself was patched together; delegates borrowed many provisions from previous Brazilian constitutions and the Arinos Draft.

THEMATIC COMMITTEES AND SUBCOMMITTEES

The assembly's internal rules, approved on March 24, 1987, adopted a decentralized system of drafting, to be done initially by the members themselves rather than hired experts or a special committee. The rules called for all assembly members to divide themselves into eight thematic committees, each made up of sixty-three regular members and a similar number of substitutes, who were also assembly members. Each committee, in turn, was divided into three thematic subcommittees, each with twenty-one members. At every phase, decisions were made by absolute majority vote.

The thematic committees and subcommittees consisted of the following:

- I. Committee on Sovereignty and the Rights and Guarantees of Men and Women
 - (a) Nationality, Sovereignty, and International Relations

- (b) Political Rights, Collective Rights, and Guarantees
- (c) Individual Rights and Guarantees

II. Committee on Organization of the State

- (a) Federal Government, Federal District, and Territories
- (b) States
- (c) Counties and Regions

III. Committee on Organization of the Branches and System of Government

- (a) Legislative Branch
- (b) Executive Branch
- (c) Judicial Branch

IV. Committee on Electoral and Party Organization and Institutional Guarantees

- (a) Election System and Political Parties
- (b) Defense of the State and Society and their Security
- (c) Guarantee of the Constitution, its Reform, and Amendment

V. Committee on the Tax System, Budget, and Finance

- (a) Taxation and Revenue Participation and Sharing
- (b) Budget and Financial Oversight
- (c) Financial System

VI. Committee on the Economic Order

- (a) General Principles, State Intervention, and Regimes of Property to the Subsoil and Economic Activity
- (b) Urban Questions and Transportation
- (c) Agricultural Policy, Land Tenure, and Land Reform

VII. Committee on Social Order

- (a) Rights of Workers and Civil Servants
- (b) Health, Security, and the Environment
- (c) Blacks, Indians, Disabled, and Minorities

VIII. Committee on Family, Education, Culture, Sports, Communication, Science, and Technology

In June 1987, the assembly created a **special systematization committee**, the function of which was to integrate the final reports of the eight thematic committees into an organic draft for presentation to the entire assembly.

ANOTHER ASPECT

The PMDB had by far the largest representation on each committee and subcommittee because membership on all committees was proportional to each party's representation in the assembly. The PMDB allowed its members to designate the committees on which they wished to serve. Each committee and subcommittee was headed by a president, two vice presidents, and a general rapporteur. These leadership positions were allocated on the basis of negotiations among the leaders of the various parties. The liberal wing of the PMDB took advantage of the internal divisions within the conservative wing of its party to elect Mário Covas, a liberal senator from São Paulo, as floor leader of the PMDB in an internal election on March 18, 1987. Covas made sure that all nine of the committee rapporteurs who played critical roles in the initial drafting process, were PMDB members, and that eight were drawn from the liberal wing of that party. Eight committee presidents were members of the second largest party, the PFL, and one presidency went to the much smaller PDS. The great bulk of the vice-presidential positions also went to the PMDB. While leadership of the subcommittees was more evenly divided among the parties, Covas secured the bulk of the leadership positions for the more liberal members of the PMDB.

The internal rules permitted civic associations, private citizens, and members of the assembly to submit suggestions to each subcommittee.

POPULAR PARTICIPATION – A PERSPECTIVE ON THE CONTEXT OUTSIDE THE ASSEMBLY

Unlike the assembly that drafted the U.S. constitution, which operated in complete secrecy, Brazil's constitutional assembly made a concerted effort to make its proceedings as public as possible. The assembly strongly encouraged popular participation from all sectors of civil society. The internal rules created the so-called popular amendment, which enabled citizens' groups to present constitutional proposals that the entire assembly had to consider. Popular amendments required the signatures of at least 30,000 voters and had to be organized by at least three legally constituted associative entities responsible for the authenticity of the signatures. For each popular amendment, one signatory had the right to make a twenty-minute presentation to the full assembly. One hundred twenty-two **popular amendments**, some with more than one million

signatures, were actually submitted to the assembly in the month following the systematization committee's presentation of its initial draft.

The assembly's internal rules also required that each subcommittee devote five to eight sessions to hearing from entities representing various sectors of Brazilian civil society. *Virtually all interest groups—including government ministers, environmentalists, human rights activists, feminists, business associations, unions, landlords, Indians, street urchins, prostitutes, homosexuals, and maids—sought to protect their interests and to include their demands in the new constitution.* Proposals from any civic organization were automatically submitted to subcommittees, who were required to hold public hearings on them. PRODASEN sent out more than five million questionnaires to voters and civic groups soliciting suggestions on what they believed should be in the new constitution. PRODASEN also set up a computerized data bank containing the results of the 72,719 popular suggestions received in return.

Television and newspapers kept the work of the assembly in constant public view. O Globo, Brazil's largest television network, carried the entire initial session of the assembly in a live broadcast. The congressional staff set up a media center to ensure that news outlets disseminated and explained the assembly's acts to the general public. This center produced 716 television programs, 700 radio programs, 3,000 hours of video, and 4,871 interviews with members of the assembly.

Five-minute radio and television segments on the assembly's work were aired twice a day. The center's weekly journal on the assembly's proceedings was distributed to more than seventy thousand government officials, universities, and research institutions.

The press, the Roman Catholic Church, unions, human rights groups, and civic groups repeatedly urged the public to become involved in the process of drafting the new constitution. During the seemingly interminable deliberations, virtually all aspects of Brazilian society were debated. Both in principle and in final result, nothing was deemed too trivial for possible inclusion in the new constitutional text. Some 61,142 amendments were proposed; some 21,000 speeches were delivered. The annals of the constituent assembly fill one hundred volumes.

As president of the assembly, Ulysses Guimarães dubbed Brazil's new charter "The Citizens' Constitution" for good reason. Because the political parties were weakly organized and political forces badly divided, the assembly was unusually susceptible to pressures from societal interest groups. Seven of the most influential societal interest groups were organized labor, business groups,

rural landowners, the military, the Church, peasants, and the so-called popular movement.

Organized Labor

Since labor unions had difficulty agreeing upon specific proposals, a lobbying organization called the Inter-Union Department for Parliamentary Action (DIAP) had the task of articulating organized labor's interests before the constituent assembly. Organized in 1983 by a group of labor unions, DIAP was a voluntary organization run by a group of labor lawyers. The interests of the labor movement were also promoted by the Workers' Party (PT), founded in 1980 by Luis Inácio Lula da Silva. Sixteen PT representatives were elected to the 1986 Congress. The labor movement lobbied hard and effectively for autonomy from the Ministry of Labor and a series of specific labor benefits, such as reducing the number of hours in the workweek from forty-eight to forty-four, extending the right to strike to all workers, extending maternity leave and creating paternity leave, and increasing the compensation rate for overtime. They also lobbied hard for restoration of job tenure, which the military had replaced with the Fund for the Guarantee of the Time of Service (FGTS).

Business groups' strong opposition to restoring job tenure in the private sector ultimately resulted in its defeat after bitter debate. However, civil servants successfully lobbied for job security and extending tenure to all government employees with five years of service irrespective of whether they had passed the entrance exams, as well as generous retirement benefits. Maids' organizations, formed specifically to lobby the assembly, successfully inserted a provision that extended to domestic workers the benefits of the minimum wage, a month's paid vacation, one day off a week, a month's notice before dismissal, four months of paid maternity leave, and retirement. The labor movement also supported land reform, albeit much less effectively. The labor movement sought to influence the assembly directly through its PT representatives by sending delegations to lobby, mobilizing the rank and file, and holding rallies to support pro-labor candidates.

Business Groups

The business sector was much more diverse than the labor sector and consequently had even greater difficulty in articulating a set of policies for which to lobby. The Federation of Industries of São Paulo (FIESP) set up a special committee to prepare constitutional proposals, which in 1986 produced a

neoliberal document called Contribution to the Future Brazilian Constitution. In March 1986, industrial leaders organized the Union of Brazilian Businessmen (UBE) in Brasília as an umbrella organization for diverse business groups to formulate constitutional proposals for the business community. In November 1987, a similar umbrella organization, the National Front for Free Enterprise (FNLI), was organized to mobilize business interests to defend free enterprise against the constitutional draft emerging from the assembly; it ran a fifteen-day television campaign in favor of free enterprise. Industrial business groups lobbied hard in favor of free enterprise, restriction of governmental enterprises, and **neoliberalism**. They also lobbied against labor demands for absolute job security and an extension of the right to strike. But some business groups diverged from neoliberalism to support market protection, special privileges for firms of national capital, and extensive restrictions on foreign investment. Perhaps the most effective technique that business groups used to influence the outcome of the constitutional drafting process was to elect 211 of their members to the assembly. Business groups also generated numerous documents articulating and explaining their positions.

Rural Landowners

Rural landowners vigorously and effectively opposed peasant demands for land reform. Membership in its lobbying organization, the Rural Democratic Union (UDR), organized in 1985 in reaction to a land-reform program, grew from 50,000 to 230,000 between 1986 and 1987. In October 1986, several rural agribusiness organizations, such as the Confederation of Agriculture (CNA) and the Brazilian Rural Society (SRB), joined the UDR to form an umbrella organization called the Ample Front for Agriculture (FAA) to lobby the constituent assembly. Landowners raised substantial funds by auctioning off cattle, using the funds to mobilize mass demonstrations and buy media time urging rejection of constitutional provisions on **land reform**.

They also had eighty of their members elected to the constituent assembly.

The Military

The military lobbied the assembly very effectively through thirteen superior officers assigned as liaisons to Congress and through its longtime ally, President Sarney. It also strongly pressured—even intimidated—members of the assembly through public threats of another coup d'état by military ministers. The military successfully sought to protect its **corporate privileges**, retain its historic position as the guardian of domestic order and protector of the constitutional order, increase military appropriations, and maintain its

contingent of six cabinet positions. It also successfully opposed civilian control over the military, an attempt to create a ministry of defense, a parliamentary form of government, attempts to dismantle the National Security Council (CSN) and the National Information Service (SNI), land reform, and extension of the right to strike to essential public services. The military's influence on the assembly's deliberations was so great that Alfred Stepan and Juan Linz have placed the 1988 Brazilian constitution in the category of constitutions "created under highly constraining circumstances reflecting de facto power of non-democratic institutions and forces."

The Church

The Roman Catholic Church had been a significant moral force in opposing the military regime, particularly in criticizing its human rights violations and in promoting social justice for the poor through grassroots church committees (CEBs). It eschewed covert lobbying of assembly members; instead, the National Conference of the Bishops of Brazil (CNBB) tried to set the agenda for the assembly by publishing a document in 1986 entitled *For a New Constitutional Order*, which called for protection of human rights, income redistribution for the poor, agrarian reform, reduction in media monopolization, and more active citizen participation in government. Rather than endorse specific candidates for the assembly, the Church urged its members to vote for candidates dedicated to social justice and human rights. The Church did play an active role, however, in promoting popular amendments and organizing public meetings with assembly members. It also organized a special commission to record and disseminate the assembly's work.

The bishops successfully included a provision in the constitution that made **religious education optional** during normal school hours in public elementary schools; they also successfully blocked feminist attempts to legalize abortion. The Church was less successful, however, in preventing expansion of the right to divorce and artificial birth control.

Peasant Groups

With millions of members, the National Confederation of Agricultural Workers (CONTAG) was one of the leading organizations pressing for agrarian reform. In 1985, CONTAG prepared a document for the Arinos Commission setting forth its constitutional agenda for land reform. In 1985, the CNBB formed the Pastoral Commission for Land to support peasant lobbying for land reform. The Movement of the Landless Rural Workers (MST), formed in 1980, also pushed hard for land reform. The agenda of these groups was specific constitutional

provisions permitting expropriation of productive land and payment of compensation for land taken for agrarian reform at less than fair market value and in bonds. They urged that 5 percent of governmental revenues be set aside solely for agrarian-reform purposes.

They also demanded limits on the size of land holdings by both Brazilians and foreigners, as well as severe constraints on the ability of property owners to resist the **expropriation** of their lands in the courts. The peasant groups' principal lobbying technique was mass mobilization. Lacking the financial resources of the rural landowners, the peasant groups managed to have only one of their members elected to the assembly. Intense political maneuvering by rural landowners ultimately led to rejection of most of the peasants' demands in the assembly.

The Popular Movement

The popular movement consisted of a diverse group of civic and professional organizations, as well as a broad array of grassroots organizations and technical institutions, that began as a lobby for a popular constituent assembly.

It was led by the Brazilian Bar Association (OAB), the CNBB, and the PT. Achieving their initial goal, the groups began lobbying the constituent assembly to make the drafting process transparent and accessible to the public. They succeeded in having the assembly adopt the popular amendment process, which they then used to propose detailed and programmatic measures to make Brazilian society more just. Their lobbying efforts consisted of rallies, leaflets, demonstrations, books, posters, and popular amendments.