

THE MISSION  
CONSTITUTIONAL  
OF FORCES  
ARMS OF  
BRAZIL IN  
WARRANTY  
ORDER

THE  
CONSTITUTIONAL  
MISSION OF THE  
ARMED FORCES OF  
BRAZIL IN THE  
GUARANTEE OF  
THE ORDER

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#### SUMMARY

This study brings within its scope the use of the Armed Forces and their role in Law and Order Guarantee operations. The Constitutional mission of the Armed Forces is presented, mainly in protecting the national territory and strengthening the force to prevent attacks, whether of a national or international nature. It was concluded that the constitutional mission of the Armed Forces, based on compliance with the law, played a fundamental role in social and political achievements.

**Key words:** Constitutional Mission. Armed forces. Order.

#### ABSTRACT

This study brings with it the employment of the Armed Forces and their performance in Law and Order Guarantee operations. The Constitutional mission of the Armed Forces is presented, mainly in the protection of the national territory and strengthening of the force to prevent attacks, whether they are of a national or international nature. It was concluded that the constitutional mission of the Armed Forces, based on compliance with the law, played a fundamental role for social and political conquests.

**Keywords:** Constitutional Mission. Armed forces. Order.

#### 1. INTRODUCTION

Although the use of the Armed Forces is not predominantly related to urban violence, it is relevant to point out that their role in Law and Order Guarantee operations has become increasingly common, especially in the State of Rio de Janeiro, where public security and its personnel are in daily combat with

criminal factions, either due to the number of communities throughout the territory, or due to the dominance exercised by criminality.

The Constitutional mission of the Armed Forces is presented, mainly focused on protecting the national territory and strengthening personnel to prevent attacks, whether of a national or international nature, as the State must be prepared to face and protect its citizens from any threats.

## 2 THEORETICAL FOUNDATION

### 2.1 ARMED FORCES AND THEIR CONSTITUTIONAL MISSION

The study of constitutional guidelines on the role of the Armed Forces is essential for promoting understanding of the military institutions responsible for safeguarding, defending and monitoring land, air and sea of the national territory. The Armed Forces are institutions made up of the following Arms: Army, Navy and Air Force, which together perform a primary function for society, defending the homeland, producing guarantees for constitutional powers and serving permanently under the authority of the President of the Republic of Brazil, following the precepts of the article 142 of the Federal Constitution of 1988<sup>1</sup>

One may ask: what is the strength of the Armed Forces? How many reserve and reservists? If Brazil went to war today, how many men could it have available for immediate employment? Today, 1,674,000 men and women are ready for employment, 334,500 of whom are<sup>two</sup>of active military personnel and 1,340,000 reserve military personnel. Military police officers in Brazil: 413,920, in 2012, Brazilian public security yearbook. This public force has the function of protecting the entire national territory, as well as establishing the country's protection against possible national and international attacks and disagreements. According to Friede (2018, p.13): "(...) the construction given to the current text (art. 142, Federal Constitution) was precisely to avoid the

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<sup>1</sup>Art. 142. The Armed Forces, constituted by the Navy, the Army and the Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and are intended to defend the Homeland, to guarantee constitutional powers and, at the initiative of any of them, law and order. (FEDERAL CONSTITUTION, 1988).

<sup>two</sup>Art. 48. It is up to the National Congress, with the sanction of the President of the Republic, not required for what is specified in arts. 49, 51 and 52, provide for all matters within the competence of the Union, especially: III - establishment and modification of the number of Armed Forces; (CONSTITUIÇÃO FEDERAL, 1988).

previously frequent use of the Armed Forces as an instrument of political stabilization, as has happened so many times”.

The role of the Armed Forces before the Federal Constitution went through a long historical process, mainly during the period of drafting the current constitutional text, see:

General Leônidas saw one article, but what was printed in the substitute was another. The military ministers wanted - and will continue to want - that the article reserved for the use of the Armed Forces made express mention of their function of also guaranteeing law and order, as stated, for example, in the current Constitution. The reference to maintaining law and order disappeared in Cabral's replacement. You may return after the replacement is examined by the Systematization Committee.

This discussion presented divergent conceptions among constitutional scholars, as there were different understandings about the importance of the role of the Armed Forces. Among the military, while part wanted a clear mention of the “submission” of this figure to the one with greater power within the State, another sought the consolidation of their independence, as well as the recognition of their institutional strength. After intense debates about the expression “on the initiative of any of these”, the provision of Article 142 of the current Federal Constitution was confirmed.<sup>3</sup>

After intense debate, it was defined that the Armed Forces, composed of the Navy, Army and Air Force, are permanent and regular national institutions, organized according to hierarchy and discipline under the maximum authority of the President of the Republic, and aim to Defense the Fatherland , the guarantee of constitutional power and the guarantee of law and order (FERREIRA FILHO, 2008).

The Constituent Assembly also determined the adoption of a complementary law to establish the general rules to be adopted in the organization, preparation and employment of the Forces

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<sup>3</sup>Only the "left" parties were against the approval of the article that regulates the constitutional role of the Armed Forces. By 326 to 102 votes and five abstentions, the plenary of the constituent Congress yesterday maintained the text of the Systematization Commission (identical to that of the Centrão) that allows the military to defend the national territory, guarantee constitutional powers and, on the initiative of one of these (reference to the three Powers), law and order. [...]. "Military supervision was maintained because the extension of the expression 'law and order' is very broad. It could be either an intervention in a strike or a military coup", said deputy José Genoíno (PT-SP), author of the attempt to restrict the powers of the Armed Forces. His amendment, which reproduced in full the text of the former Constitutional Studies commission chaired by today's senator Afonso Arinos (PFL-RJ), limited the military's action to defending "the constitutional order". (MOREIRA, 1988, p. 6)

Armed. Since the Constitution of 1891, they have been used to guarantee law and order and, as seen in the current constitutional charter, this mission has been maintained. Despite this tradition, but by inserting commands from article 142, §1º of the 1988 Federal Constitution, and in order to avoid repeating the same errors, it is necessary to adequately outline the role of the Armed Forces.

In this regard, especially with regard to the protection of law and order, perfectly coordinate the legal and democratic system with the appropriate contours to prevent unconstitutional control incidents from occurring. According to Complementary Law No. 97, of June 9, 1999, the Minister of Defense exercises superior leadership of the Armed Forces, in addition to other functions, such as: formulating policies and guidelines for defense products used in business activities, including armaments, ammunition, means of transport and communication, uniforms and materials for individual and collective use (Article 11-A)<sup>4</sup>.

Still regarding the issue of safeguarding law and order, Decree No. 6,703, of December 18, 2008, approved the National Defense Strategy, an important step in coordinating legislation and training the Armed Forces for use sporadic development of specific methods for these tasks. This shows that the Constitution and the law define the performance of the Armed Forces at the current level.

According to **National Defense White Paper (from the Ministry of Defense)**, The expression “national defense” can be described as a set of measures and actions taken by the country, emphasizing military expressions to protect territory, sovereignty and national interests from major threats or external lists. In turn, according to the National Defense Policy approved by Decree No. 5,484 of June 30, 2006, the objectives of national defense are: ensuring sovereignty, national heritage and territorial integrity; defend

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<sup>4</sup>Furthermore, art. 15 of the aforementioned Complementary Law states that the use of the Armed Forces in the defense of the Homeland and in guaranteeing constitutional powers, law and order, and in participation in peace operations, is the responsibility of the President of the Republic, who will determine the Minister of Defense the activation of operational bodies. Likewise, paragraph 1 of the same art. 15 gives the President of the Republic the decision to employ the Armed Forces, on his own initiative or in response to a request made by any of the constitutional powers, through the Presidents of the Federal Supreme Court, the Federal Senate or the Chamber of Deputies. Furthermore, under art. 15, § 2, the performance of military institutions in guaranteeing law and order, on the initiative of any of the constitutional powers, will occur in accordance with the guidelines issued in an act of the President of the Republic, after the instruments intended for the preservation of public order and the safety of people and property, listed in art. 144 of the Federal Constitution. (FRIEDE, 2018, p. 30).

the national interests and interests of the Brazilian people and resources abroad; contribute to and maintain national cohesion and unity; promote regional stability; contribute to the maintenance of international peace and security; strengthen Brazil's forecasts in international cooperation and greater involvement of Brazil in the international decision-making process (SILVA, 2005).

It should be noted that the actions of the Armed Forces are well defined in accordance with the aforementioned normative framework (Federal Constitution, Complementary Law No. 97/99, National Defense Strategy, National Defense White Paper, National Defense Policy), which does not occurred in the past. Given its relevance, in General Enzo Martins Peri's farewell speech at the Brazilian Army Command on February 5, 2015, he recalled the last three guidance documents for the activities of the Armed Forces.

It is worth noting that Commander Enzo did not make any political comments in his speech, but only expressed the understanding that the Armed Forces must know their importance and position within the Brazilian institutional framework. Despite the clear constitutional vocation of the Armed Forces, there are exceptional circumstances in which they can be used subsidiarily to the authorities described in article 144 of the Federal Constitution, in typical public security activities, for the reestablishment or guarantee of law and order.

## 2.2 CONSTITUTIONAL DETERMINATIONS AND CLASSIFICATIONS

The provision of public services is defined in art. 175 of the Federal Constitution of 1988. From reading the article it is noted that the ownership of public services concerns the State, the role of the individual in the provision of public services will only occur before delegation by the state. As a rule, public services are not free to be exercised by individuals, who can only exercise them through a concession or permission contract. And as everything in law is surrounded by exceptions, we have the following reservations. There are relevant services for the population that can be provided by both the State and private individuals, if provided by the state they are considered a public service, which is what happens with the provision of health through public hospitals, clinics, agencies. When provided by individuals, they will be considered private activities with public interest. Article 6 of the Federal Constitution demonstrates an exemplary list of rights

social services by the State to education, health, food, work, housing, leisure, security, social security, motherhood and childhood protection, assistance to the destitute. The classifications below for public services are presented by Hely Lopes Meirelles and Celso Antônio Bandeira de Mello (2007, p. 89):

Public services can be classified based on various criteria: the first category concerns essentiality: a) public services themselves: they are exclusive to the Public Power as they are considered indispensable and necessary for the survival of the social group and the State itself. Example: national defense; b) public utility services: their provision is not indispensable for society, but convenient and timely to the extent that it makes life easier for the individual. Example: electrical energy.

Another category concerns adequacy: a) State-owned services: these are those linked to the essential duties of the Public Power, and are generally provided directly by the State, free of charge or for low remuneration. Example: public health and public safety; b) inappropriate State services: those that do not substantially affect the needs of the community, which is why their provision may be granted to decentralized state entities or delegated to individuals. Example: landline telephony.<sup>17</sup>

And also regarding the purpose, they are: a) administrative services: provided to meet the internal needs of the Administration. Example: official press; b) industrial services: consist of the exploitation of economic activities by the State, producing income and profit for the provider. Example: sale of meals at popular prices by a municipal public company.<sup>18</sup>

On the other hand, according to Celso Antônio Bandeira de Mello, given the treatment given by the Federal Constitution, public services can be divided into four categories: a) services of mandatory and exclusive provision by the State: these are those that can only be provided directly by the State or by state entities, not allowing delegation to individuals. These are cases in which the State has to provide the service alone. Example: postal service and national air mail (MEIRELLES, 2007). Services that the State has an obligation to provide and an obligation to grant: these are cases in which the Constitution determines provision by the State and simultaneously delegation to individuals. In such cases, the State has to provide together with individuals. And also, the services that the State has an obligation to provide, but without exclusivity: this is the case of health and education services, which, when provided by the

State, are public services. In them, the State cannot allow services only provided by individuals.

In this aspect, it must be emphasized that the classification presented above is essential for the construction of the work problem, so that we realize that the existence of public services is essential for the construction and maintenance of the ideal society, based on aspects of justice, equality, equity, In this vein, we will see urban violence next.

## CONCLUSION

The constitutional mission of the Armed Forces was presented, based on compliance with the law and mainly as an instrument of political stabilization, because throughout history the Armed Forces played a fundamental role in social and political achievements.

During the drafting of the current constitutional text, there was concern about the role of these forces and to whom they would be submissive, or even whether they would be considered functionally independent.

During each historical period there was a conception of the importance of the police for social organization, because a ruler, independent of the regime, needs these forces to assert his power within a given territory.

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