

The Military in the Constitutions
of the Southern Cone Countries, Brazil and Spain

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INTRODUCTION

Success in the consolidation of the emergent democracies in South America will be largely achieved if the new civilian leadership can set the institutional basis for subordinating the military in the long run. The handling of social demands and present economic difficulties, and the legitimacy that political parties and governments can reach, are all factors that will influence the leaders' standing before the military. However, the military's expectations regarding its future role will also depend upon the coherence and initiative that civilians show in their policies toward the armed forces and national defense.

Constitutional definitions provide the legal-formal background of opportunities and constraints in which military and civilian actors relate to one another. As new institutional arrangements favoring democratic consolidation are sought, current constitutional prescriptions highlight those opportunities or constraints that have been inherited from the past, or those that result from present compromise.

The purpose of this paper is to provide basic information about the ways in which the relations between military and state authorities are formalized in the Constitutions currently in force in the countries under study. Brief references are made to previous constitutions in those cases where the military regime issued the Constitution now in force.

In the first part, the Constitution of each country studied is briefly compared along some relevant dimensions. In the second part, the relevant sections of the Constitutions are presented country-by-country.

I. THE CONSTITUTIONS COMPARED

Great variation is found in the Constitutions presented here. With the exception of the Constitution of Argentina, the rest have been issued relatively recently; but their timing varies in connexion with regime change. Argentina and Uruguay maintain the Constitutions that preceded the authoritarian regimes. Brazilian democracy is governed by the Constitution enacted by the military, and Chile's military regime gradually moves to fully enforce the permanent articles of the Constitution it created. Spain, on the other hand, enacted the current Constitution as the final stage of the transition to democracy.

These timing variations probably bear upon differences in the extent of their legitimacy. Argentines and Uruguayans may wonder about the adequacy of their Constitutions for current efforts at democratic consolidation-- the former because the political process has been so much at variance with the Constitution through history; the latter because of the inconsistencies introduced by military pressure in the pact that led to democratic restoration.¹-- while Brazilians debate Constitutional reform. In the Chilean case, constitutional legitimacy goes in tandem with regime legitimacy, and the sharp decline in the latter is aggravated by the widespread suspicions of fraudulent approval of the Constitution.² The Spanish Constitution, on the other hand, reflects the broad coalition that cooperated in the transition and participated in the constitutional debate, giving it high legitimacy.³

The Constitutions differ also in the importance attached to the armed forces in the formal text. The Chilean and Brazilian texts devote entire sections to the armed forces and national security. Argentines and Uruguayans make few and concise references to the military. Spain makes few references, but devotes an article in the Preliminary Titles to the nature and mission of the forces.

Differences are found in the powers assigned to the president, congress and the armed forces, as the table summarizes. The two Constitutions born of authoritarian regimes--Brazil and Chile--apparently provide their presidents wide-ranging powers. However, their power is also more explicitly limited by attributions assigned to the military. The Brazilian president, for instance, has supreme command over the armed forces but can select only those commanders vaguely referred to as 'principal'. Congress has no say in this selection. The Chilean president exercises the supreme command only in case of war, and his power to appoint commanders is severely limited. Congress has no role in confirming presidential appointments. The president's power to remove commanders is shared with the National Security Council, controlled by the commanders-in-chief. In both cases, Congress has participation only in determining the size of the forces, which is a matter of law. In the case of Argentina and Uruguay, Congress is assigned the power to confirm presidential appointments in the armed forces' higher echelons. Overall, the Uruguayan president having less limitations, appears to be the strongest in his relations with the military according to the Constitution. The reality of recent civil-military agreements, however, throws a shadow on the efficacy of these prescriptions.

Only Uruguay's and Argentina's Constitutions abstain from defining an internal mission for the armed forces. The other three Constitutions define this mission as some kind of guarantee of the constitutional order.

None of the Constitutions, except for the Brazilian and the Uruguayan, make explicit reference to political rights of members of the armed forces, and the conditions in which they may or may not be exercised. Finally, only the Chilean Constitution prescribes explicit limitations on civilian power indirectly related to the military. The Senate is denied oversight capacity, and the attributions of the Chamber of Deputies in this regard are severely curtailed. On the other hand, only Argentina's Constitution explicitly prohibits any armed force to petition in the name of the people. A similar clause was included in Chile's Constitution of 1925.

One notable similarity in the South American countries is the presidential character of their constitutions. Regardless of differences in the extent to which the president shares his power with the armed forces themselves, common to all these constitutions is the absence of an assertive role or a strong oversight function of Congress. In the case of Spain, the parliamentary character of the Constitution is obscured in this regard by the fact that most military issues were left for later treatment in a special law.

Civilian Powers and Position of the Military in the Constitution⁴

	Argentina	Brazil	Chile	Uruguay	Spain
Year	1853	1967	1980	1967	1978
Powers of President	-Commander-in-Chief -appoints military chiefs with Senate -disposes organization and distribution of forces	-Supreme command -selects principal commanders -disposes transfers and retirements -fixes strength of forces -responsible for war policy	-Supreme command in case of war only -appoints & removes commanders within limits -disposition & org. of the forces	-Supreme Command -confer offices & grants retire. -grants promotion with Senate appr. -remove on his own initiative in special cases	-Supreme Command (King) -Gov. conducts administration of the military and defense of the state
Powers of Congress	-approves appointments -fixes strength of forces -provides regulations and rules	-establishes size in peacetime with president's approval	-participates in law over size of forces under the president's initiative	-approves appointments of h-rank officers -approves size -permits expedition abroad	-unspecified
Devotes Section to Armed Forces	No	Yes	Yes	No	-One article in Preliminary Titles
Internal Mission of Military	- - -	-guarantee the constituted powers and law and order	-guarantee the institutional order -participate in regional government and through the NSC	- - -	-guarantee territorial integrity & constitutional order
National Security Council	- - -	-advices president -establishes national objective -military presence not prescribed	-military majority -represented in Senate, Constitution Tribunal -express opinion to any authority on matters that affect institutional	- - -	- - -
Political Rights	no mention of military	specifies conditions	not mentioned	specifies conditions	not mentioned
Explicit limits on use of forces	Yes	No	No	No	No
Limits on Civilian Power	No	No	Yes Senate denied overseeing	No	No

II. The Constitutions by Country

1. Argentina

The Constitution currently in force dates back to 1853, and includes the amendments of 1860, 1866, 1898 and 1957. The amendments introduced by Peron in 1949 were dropped in 1956.

The military regime that took over in 1976 did not abolish the Constitution. It was subordinated to the Statute for the Process of National Reorganization issued that year, whereby authorities throughout the country were to observe "the basic objectives established, the Statute and the Constitutions of the Nation and the Provinces".

A definite Statute was issued in November 1978. The Military Junta, in exercise of the constituent power, declared itself the Supreme Organ of the Nation, with the exclusive right to exercise command over the armed forces and to appoint and remove the President of the Nation. The Junta would also appoint the members of the Supreme Court of Justice, the Attorney General and the Prosecutor General. According to the Statute, the Junta held powers granted by the Constitution to the Executive and Legislative Powers with respect to peace treaties, alliances, boundaries and neutrality. The President of the Nation would appoint the higher officers of the armed forces, "for which purposes he shall confirm the respective decisions of the Chiefs of Staff of the Armed Forces." Agreement of the Junta was also mandatory for the appointment of Ambassadors. Finally, the legislative Advisory Committee contemplated by the Statute, was to be composed of nine high ranking officers, three appointed by each one of the services, and was to assist the president in the exercise of the legislative power previously held by congress.

The inauguration of Alfonsín restored the rule of the 1853 Constitution. The following are its provisions with regard to the relationship between the military and civilian authorities:

(1) The president is commander-in-chief of the armed forces. He appoints the military officers, "by himself on the field of battle", and with the consent of the Senate for the higher offices and ranks. He disposes of the military and naval forces and attends to their organization and distribution. Also, with the authorization and approval of Congress, he declares war and "grants letters of marque and reprisal" (Article 86).

(2) The powers of Congress over the military are stated in Article 67. Congress has the power "to fix the strength of land and naval forces in times of peace and war, and to provide regulations and rules for the government of such forces".

(3) The president commands the forces and acts upon their organization and distribution, and Congress decides over its size. Both powers cooperate in the appointment of Chiefs. No specific functions or powers are prescribed for the armed forces in the Constitution. Article 22 of the First Part sets one specific limitation on the use of armed force: "The people do not deliberate or govern except through their representatives and authorities created by this Constitution.

Any armed force or meeting of persons assuming the rights of the people and petitioning in the latter's name, commits the crime of sedition".⁵

The Alfonsín government, in assuming office, swiftly moved to enforce civilian presidential control over the armed forces. He emphasized his position as commander-in-chief, removed a high number of generals, and initiated reforms involving the structure of the Chiefs of Staff and the civilianization of leading positions in the local arms industry.⁶

2. Brazil

The Constitution under which the new democratic government was inaugurated is a legacy from the military authoritarian regime. It was issued in 1967, and includes the constitutional amendment of 1969. Its distinctiveness with regard both to previous constitutions and to those of the countries under study--with the partial exception of Chile--lies in the large sections devoted to national security, the armed forces, and military courts and judges. Previous constitutions, however, had not flatly ruled out political involvement of the military. As Alfred Stepan noted,

"The constitutions adopted in 1891, 1934, and 1946 were virtually identical in their two major conclusions in regard to the role of the military in Brazilian politics. This role was described in two key clauses. The first stated that the military was a permanent, national institution specifically charged with the task of maintaining law and order in the country and of guaranteeing the continued normal functioning of the three constitutional powers: the executive, the legislature and the judiciary. The second clause made the military obedient to the executive, but significantly stated that they should only be obedient 'within the limits of the law' (dentro dos limites da lei). This in effect authorized the military to give only discretionary obedience to the president, since obedience was dependent upon their decision regarding the legality of the presidential order."⁷

According to Stepan, major actors in Brazilian politics felt the need for a device to check the chief executive, "and before 1964 they consistently expressed the belief that the military was the appropriate institution for carrying out this role."⁸

The Constitution of 1967, as issued by the military rulers, maintained the dentro dos limites da lei clause and reflected the "steady broadening of military jurisdiction over Brazilian life" which Stepan has analyzed.⁹ However, the president's powers were also well defined. This could support a civilian president's attempt to improve his control over the military.

Article 81 of the Constitution gives the president of the republic the power to "exercise supreme command of the armed forces". According to Article 57, he has exclusive power to propose laws that "establish or modify the strength of the armed forces" and that "make provisions regarding...retirement and transfer of military personnel to inactive status". Article 91 makes the president "responsible for the direction of war policy and selection of the principal commanders" (my emphasis). He is empowered, in extreme cases and

provided that no increase in expenditure results, to issue decree-laws on national security, which the congress can approve or reject within sixty days.

The legislature only has the power to make provisions for the "establishment of the numbers of men of the armed forces in peacetime", and this with the approval of the president.

The Constitution devotes an entire Section to the armed forces. Its main clauses (Articles 90 and 91) specify that they are "permanent and regular national institutions, organized on the basis of rank and discipline, under the supreme authority of the president of the republic and within the limits of the law" (my emphasis). "It is the mission of the armed forces, which are essential to the execution of the national security policy, to defend the country and to guarantee the constituted powers, and the law and order".

Another section is devoted to "National Security", and indicates that the National Security Council (NSC) "is the organ of the highest level in providing direct advice to the president of the republic for the formulation and execution of national security policy". Presided over by the president of the republic, it is composed of the vice president and all the ministers of state as participants ex officio. No specific provisions are made for the participation of members of the armed forces, though it is stipulated that the law may admit other members to the Council as ex officio or special members. While Article 87 gives the Council an advisory role, Article 89 gives it the power "to establish the permanent national objectives and the bases for national policy; to study, in the domestic and foreign sphere, the matters of importance to national security". The Council shall also indicate which areas are indispensable to national security, and in these areas, give prior consent for concession of lands, installation of means of communication, construction of bridges, and other measures. The Council has the power "to grant permission for the operation of organs or delegations of foreign labor union entities, as well as to authorize the affiliation of national labor union organizations with such entities".

Section VI of the Constitution states that military courts shall try and judge military personnel for military crimes, and that this "jurisdiction may be extended to civilians in cases provided for by law, for the repression of crimes against national security or the military institutions".

The Superior Military Court is an organ of military justice and has the power to try and to judge, in the first instance, the state governors and their secretaries, for the crimes against national security or the military institutions. This superior court is "composed of fifteen judges, appointed for life by the president of the republic after their selection has been approved by the federal Senate, three of them being selected from among active Navy flag officers, four from among active general officers of the Army, three from among active general officers of the Air Force, and five from among civilians".

Finally, Article 147 stipulates that members of the armed forces may register as voters, and Article 150 specifies the conditions under which they may be elected to office. For instance, a member on active duty, with at least five years of service, will be removed temporarily from active service when he becomes a candidate for elective office.

3. Chile

The constitution promulgated by the Pinochet government in 1980, after having it approved in a plebiscite, departs significantly from the previous constitution.¹⁰ While this holds for its general design--a significant strengthening of the president's powers--the shift is most notably evidenced in the role and institutional presence assigned to the armed forces.

The 1925 Constitution gave the following attributes to the president in regard to the armed forces: "to command in person the sea and land forces with the approval of the Senate"; to "dispose" of those forces and "to organize and distribute them as he may find convenient"; to supply the military employees "and to confer, with the approval of the Senate, the offices of grades of colonel, captain of the navy, and other superior offices of the army and navy"; "to declare war with the prior authorization of law".

The constitution stated that only by virtue of law is it possible "to fix the air, land and sea forces that are to be maintained in service in time of peace and of war", thus giving congress a role that was added to that stated above. Also, a special law would prescribe the means for recruitment and replacement of the forces.

Article 22 made explicit reference to the character of the forces: "The public force is constituted (solely and exclusively) by the Armed Forces and the carabinero guards, which entities are essentially (professional, organized by rank, disciplined), obedient and nondeliberating. Only by virtue of a law may the manning of these institutions be determined. (Recruitment of the Armed Forces and the carabineros may be done only through their own specialized schools, except in the case of personnel who must perform exclusively civil functions)".¹¹

Restrictions on the use of force were made in the same section by indicating that "no armed body can make requisitions or exact any kind of aid except through the civil authorities and by order of the latter". Article 23 added: "Every resolution of the President of the Republic, the Chamber of Deputies, the Senate or the Courts of Justice may agree to in the presence of or on demand of an army, a commandant at the head of an armed force, or of any assembly of people, with or without arms and in disobedience of the authorities, is null in law and cannot produce any effect".

The 1980 Constitution, in turn, gives broad powers to the armed forces and non whatsoever to congress with regard to the former. The Constitution explicitly prohibits the Senate and the senators from overseeing the acts of the government or any of its departments. The Senate, or any of its committees, can not convene with the purpose of "stating views" on these acts. Only the lower Chamber can oversee the government's acts. To do this, however, the Chamber can, with the majority of its members present, suggest written observations to the president, who is then obliged to respond through the pertinent secretary of state within 30 days. The duty of the government is fulfilled by merely submitting an answer (Article 48). The Chamber can also consider whether there is ground for indicting generals

or admirals of the armed forces for having seriously compromised the honor and security of the nation. Congress holds no other attributes with regard to the armed forces, except for participating in the "law that indicates the forces that must be maintained in time of peace or war, and the norms permitting the entry of foreign troops into the territory of the republic, as well as the departure of national troops from the territory" (Article 62). But the president holds the exclusive initiative for this project of law.

The president, whose "authority is extended to all that related to the preservation of the internal public order and the external security of the Republic, in accordance with the Constitution and the laws", is provided with the following powers:

- "To appoint and remove Commanders in Chief of the Army, Navy, Air Force and the Director General of 'Carabineros' in conformance with Article 93, and provide for assignments, promotions and retirement of officers of the Armed Forces and 'Carabineros' as prescribed for in Article 94;
- To order the disposition of the air, sea and land forces; organize and distribute them in accordance with national security needs;
- To assume, in case of war, supreme command of the Armed Forces;
- To declare war, with the prior authorization of law; leaving on record that the National Security Council has been heard in this regard..."

However, conformity with Article 93 limits the appointing powers of the president, who must choose "from among the five senior generals who have the qualifications required as per the respective institutional statutes for such posts. They shall serve their posts for four years, may not be reappointed for a new term of office and shall not be subject to removal from their posts. In qualified cases, the President of the Republic, with the agreement of the National Security Council, may call to retirement the Commanders in Chief of the Army, Navy and Air Force or the Director General of the Armed Police, as the case may be" (my emphases).

Also, appointments, promotions and retirement of officers shall be made by supreme decree, "in accordance with the law and the regulations of each institution" (my emphasis). The National Security Council, the agreement of which is needed for the president to remove commanders-in-chief, is composed by the latter, who form a majority in it.

The armed forces are given the following powers: 1) The three commanders-in-chief, plus the Director General of Carabineros participate as full members in the National Security Council (NSC). The council is presided over by the president of the Republic, and is formed also by the president of the Senate and the president of the Supreme Court. 2) The NSC elects two lawyers to the Constitutional Tribunal, which is composed of seven members, and presides over constitutional controversies. The Tribunal declares the unconstitutionality of organizations, movements and political parties that promote doctrines contrary to the family, or in favor of violence, or that sustain a totalitarian view of the state and society, based on class struggle. 3) The NSC designates a former commander-in-chief from each one of the armed services and a former Director General of Carabineros to the Senate. Senators will hold their post for a period of eight years. 4) Each one of the armed services and 'carabineros' will have

regional representatives in the Regional Development Councils established in the thirteen regional administrative divisions of the country. The Constitution specifies that the private sector shall hold a majority in these councils. The council shall decide on the regional development plans, and on the regional budget and its allocations. 5) The NSC may be convoked on the request of two of its members and will require a quorum of an absolute majority--four--of its members in order to hold sessions, that is, it can hold sessions with the exclusive presence of the commanders-in-chief and director general of carabineros.

Some of the functions of the NSC shall be:

- "To advise the President of the Republic on any matter linked to the National Security when he should so request;
- "To express to any authority established by the Constitution, its opinion regarding any deed, act or matter which in its judgement gravely attempts against the foundations of the institutionality or which might affect the national security;
- "To seek from authorities and officials of the Administration all the antecedents related to the external and internal security of the State. In such case, the person to whom the petition has been made, is obliged to furnish them, and his refusal shall be sanctioned in the manner established by law".

An entire chapter of the Constitution is devoted to the Armed Forces, Forces of Order and Public Security. In defining the character and mission of these forces, Article 90 states: "The Armed Forces are composed of the Army, Navy and Air Force only. They exist for the defense of the fatherland, are essential for national security and guarantee the institutional order of the Republic. The Forces dependent on the Ministry in charge of National Defense are constituted only and exclusively by the Armed Forces and the Forces of Order and Public Security." Then, the clauses that were introduced in the constitutional reform of 1971 regarding the armed forces are retained in terms of their obedient, nondeliberating, professional, hierarchic and disciplined character.

The transitory dispositions of the Constitution, in force until a new presidential term begins in 1989, give special powers to president Pinochet. He can appoint the commanders-in-chief without the limitations of Article 93. These commanders, however, who are members of the Government Junta (except for the army, where the Junta member is the deputy commander-in-chief, given that the commander-in-chief is also president of the Republic and, as such, head of the executive and head of state) can be removed by their peers only. In addition, the Government Junta shall designate by unanimity the president of the Republic for the period of eight years starting in 1989. If no unanimous decision were reached, designation would be made by the NSC. The person nominated shall be ratified in a plebiscite.

4. Uruguay

The military government that took over in 1973, initiated in 1976 the promulgation of a number of Institutional Acts. Among other measures, the government created the National Security Council. However undermined, the Constitution of 1967 never was explicitly repealed. The government elaborated a project for a new constitution, envisaging a system of 'democradura',¹² and submitted it to a plebiscite in 1980, but it was rejected by Uruguayan voters. The new democratic government inaugurated in 1985 is again ruled by the 1967 Constitution, but some inconsistencies still prevail, as a result of the Pacto del Club Naval. Reference to the content of this pact is made at the end.

Under the 1967 Constitution, the president holds the supreme command of all armed forces and grants retirement of military employees, in accordance with the laws. He confers military offices, and grants promotions with the consent of the Senate for promotions to colonel or higher ranks. Also, the president can "remove on his own initiative military and police employees and others which the law declares removable" (Article 168).

The legislative power can declare war and "designate each year the armed force that may be necessary. Military effectives may be increased only by an absolute majority of the votes of the full membership of each Chamber". Congress can also "refuse or permit the expedition of national forces outside the Republic" and "issue regulations concerning the militia and... fix their number and designate the times they shall be called to service".

The Constitution prohibits participation of members of the armed forces in political organizations, but grants them the right to vote. The fourth clause of Article 77 states that "...persons in active military service regardless of rank, and police officials of whatever category, must abstain under penalty...from membership in political committees or clubs, from signing party proclamations, and from authorizing the use of their names and, in general, from any other public or private act of a political character, with the exception of voting".

Articles 91 and 92 state the conditions in which military persons may serve as representatives: "Military persons who resign their posts and salary in order to serve in the Legislature shall retain their rank, but for the duration of their legislative functions they may not be promoted; they shall be exempt from all military discipline and the time during which they hold their legislative position shall not be counted for purposes of seniority for promotion...Military officers in the districts in which they command forces or actively perform any other military function, may not be candidates unless they resign and terminate their positions three months prior to the election". Only the Brazilian Constitution contains clauses of a similar type.

With regard to military jurisdiction, Article 253 states that it should be "limited to military offenses and to a state of war". "Common offenses committed by the military in time of peace, regardless of the place in which they are committed, shall be subject to the ordinary courts".

Finally, Article 35 declares: "No one shall be compelled to render aid of any kind to the army, or to permit his house to be used for the billeting of troops except by order of a civil magistrate according to law..."

The concise and clear-cut constitutional provisions for civilian control have been undermined by the military demands to which party leaders agreed in the Club Naval in August 1984. The accords were signed by the commanders-in-chief of the armed services and leaders of the Frente Amplio, the Civic Union and the Colorado Party. As contemplated in the pact, parties were reinstated, elections were held in November 1984 and the transfer to a civilian government took place in March 1985. In return, party leaders gave in to the military's demand that constitutional reforms be enacted to give the armed forces a voice in the government and, above all, to grant them more institutional autonomy.

The president's power to appoint colonels and officers of higher rank, with Senate approval, are now limited to nominations prepared by the high command. The president can choose from among two officers nominated by the military for each vacancy. In the case of officers with the rank of general, the same procedure is followed, but for the Senate to deny confirmation, two thirds of the votes are required. Senate consent is not required for appointment of the commanders-in-chief, but the president chooses from a list of three candidates for the post.¹³

The National Security Council was maintained, but only in an advisory capacity. On the other hand, a new clause was introduced--the "estado de insurrección"--which is to be declared in case of subversive activities and would allow for the immediate suspension of constitutional guarantees to individual rights, and for the application of military justice.

These measures were included in Institutional Act No. 19 of August 1984, and would be in force for one year starting with the inauguration of the new government. Parliament was to confirm the constitutional status of the measures, to be submitted later to a plebiscite, all in the course of 1985. In the meanwhile, the Defense Information Service was transferred from the Defense Ministry to control by the Junta of Commanders-in-chief.

5. Spain

The Constitution of Spain was approved in a referendum held on December 6, 1978, establishing a parliamentary form of government with the king as head of state. Clause h of Article 62 states that "it is incumbent upon the king to exercise supreme command of the armed forces." It is the king also that can declare war and make peace, after the authorization of the Cortes. On the other hand, Article 97 establishes that "the government directs...civil and military administration and the defense of the State."

In regard to the functions of the armed forces, the Constitution states in Article 8 of the preliminary considerations:

"1. The Armed Forces, constituting the Land army, the Navy and the Air Force, have as their mission the guarantee of the sovereignty and independence of Spain, the defense of its territorial integrity and the constitutional order.¹⁴

2. An Organic Law will regulate the bases of the military organization in conformity with the principles of the present Constitution".

The comparatively few references to the armed forces in the text certainly do not reflect lack of importance attributed to them, as the functions defined in Article 8 clearly state. Rather, it reflects the delicate balance of forces involved in the transition. Since the first democratic government, a number of legal initiatives have been undertaken which have introduced significant changes in military organization and plans, and made the hierarchical subordination to the government more precise.¹⁵

III. Conclusion

The Chilean 1980 Constitution is the only one overtly and broadly designed to prevent civilian control. Should the entire Constitution along with its military sections become permanently enforced in 1989, no civilian president or congress will have the legal means to conduct policy autonomously, let alone control the military. Instead, military control of civilian institutions will be institutionalized, and even small changes in the formal aspects of civil-military relations will face unsurmountable difficulties.

The provisions for civilian control that exist in the Uruguayan Constitution are certainly at variance with the reality of enhanced military autonomy. The future of civilian control in Uruguay will partly depend on the way in which the government, parties, the legislature and voters face the constitutional reforms due this year, that result from the Club Naval pact.

Civilian leaders in Argentina and Brazil should find no major legal obstacles in their Constitutions for exerting control over the military. Despite the origin of the Brazilian Constitution in the military authoritarian regime, the president can find enough means available for asserting his supremacy. No institutional means of military participation in the government is prescribed in the Constitution.¹⁶ Likewise, the Spanish Constitution and later legislation provide the basis for governmental control.

Of course, Constitutions provide only the formal background for the opportunities available to governments and the constraints they face. The real picture is completed with resilient structures that stem from the past, the relative strengths currently at stake, and the initiative that different actors are willing to display. However, the constitutional fixation of the 'guarantor' mission of the armed forces in some of the countries reviewed, may provide ground for the military to upgrade their perception about the need for deeper political involvement.

Endnotes

1. The Club Naval pact of August, 1984. See Juan Rial, "Los Militares en tanto 'Partido Político Sustituto' frente a la Redemocratización", paper delivered in the seminar "Autonomización Castrense y Democracia: Dinámica del Armamentismo y del Militarismo en América Latina", Santiago, 23-25 May, 1985.
2. According to recent statements by General Gustavo Leigh, a Junta member when the plebiscite was held in 1980.
3. The constitution-drafting committee consisted of representatives of the Democratic Center Union (UCD), the Spanish Socialist Workers Party (PSOE), the Spanish Communist Party (PCE) and the Popular Alliance (AP). The final text of the Draft Constitution was approved by both Houses of the Cortes on October 31, 1978. In the Congress of Deputies the vote was 325 to 6 and 14 abstentions. The Senate vote was 226 to 5 and 8 abstentions. (For the source see the following note).
4. Unless otherwise mentioned, all Constitutions have been taken from the following source: Constitutions of the Countries of the World, edited by Albert P. Blaustein and Gisbert H. Flanz (Dobbs Ferry, New York: Oceana Publications); Argentina, by Fortuna Calvo Roth (July, 1983); Brazil, by Fortuna Calvo Roth, updated 1975-1982 by G. Flanz with the assistance of Kyra Sinkovsky (August, 1982); Chile, by Fortuna Calvo Roth (July, 1973); Chile, by Albert P. Blaustein, Fortuna Calvo Roth and Robert J. Luther (November, 1980); Uruguay, by Gisbert H. Flanz and Carol Serpa (April, 1971); Spain, by Gisbert H. Flanz (October, 1979).
5. Law No 14,439 of 1958 on Ministries, further specified the responsibilities of the executive agencies in managing the defense sector and the armed forces. Article 13 of the law is devoted to "National Defense", and centralized the management of defense related issues under the Ministry of National Defense. However, it introduced ambiguous statements with regard to the role of the armed forces in policy-making bodies, and to new areas under military supervision. For instance, the Ministry should "coordinar, preparar, proponer y asesorar al Poder Ejecutivo, previa intervención de los organismos pertinentes, en los asuntos de la defensa nacional..." and "proponer al Poder Ejecutivo, previo acuerdo con las Secretarías, la designación de los cargos superiores de los organismos conjuntos..." Similarly, the Departments of War, the Navy and Aeronautics would propose to the Executive the appointment of the higher posts, and the size and distribution of the forces. Also, the Defense Ministry would coordinate industrial mobilization in charge of the armed forces.
6. See Carlos J. Moneta, "Fuerzas Armadas y Gobierno Constitucional después de Malvinas: hacia una Nueva Relación Civil-Militar", Estudios Internacionales, No 69, enero-marzo, 1985; and Augusto Varas, "La Reforma Militar de Alfonsín", Documento de Trabajo, FLACSO, Santiago, May, 1985.
7. Alfred Stepan, The Military in Politics. Changing Patterns in Brazil, (Princeton: Princeton University Press, 1971), page 75.

8. Ibid., page 78.
9. Alfred Stepan, "The New Professionalism of Internal Warfare and Military Role Expansion", in Authoritarian Brazil, edited by A. Stepan (New Haven and London: Yale University Press, 1973).
10. For an excellent analysis of the 1980 Constitution see Genaro Arriagada, "El Sistema Político Chileno (una exploración del futuro)", Colección Estudios Cieplan, No 15, December 1984.
11. Sections in parenthesis were introduced with the amendment of January 9, 1971, which resulted from the Statute of Constitutional Guarantees that president elect Salvador Allende agreed to sign with the Christian Democratic leadership.
12. Luis González, "Transición y Restauración Democrática", Montevideo, July, 1985.
13. This part is based on Juan Rial, op. cit. See also, Charlie Gillespie, "'Democratadura' or 'Reforma Pactada'?" Comparative Perspectives on Democratic Restoration in Uruguay", Presented to the World Congress of the International Political Science Association, Paris, 15-20 July, 1985; and, of the same author "Uruguay's Transition from Collegial Military-Technocratic Rule", forthcoming in Transitions from Authoritarian Regimes: Volume II Latin America, edited by Guillermo O'Donnell, Philippe Schmitter, and Laurence Whitehead (Johns Hopkins).
14. This clause does not differ much from the one in force during Francoism. Article 37, in the Organic Law of the State, of 1967, states: "The Armed Forces of the Nation, consisting of the Army, the Navy and Air Force, and the Forces of Public Order, guarantee the unity and independence of the country, the integrity of her territory, national security and the defence of the institutional system." See Spain, by Gisbert H. Flanz and Eugene A. Hernández (June, 1974) in the volume cited in note 4.
15. See Pablo Casado, "Changes in the Political and Social Functions of the Armed Forces in Democratic Spain", IPSA Study Group on Armed Forces and Society, West Berlin Meeting, September 1984; Antonio Porras Nadales, "Ordenamiento de la Defensa, Poder Militar y Régimen Constitucional en España", Revista de Estudios Políticos (Nueva Epoca) No 35, September-October 1983; Enrique Gomáriz, "Los Militares ante la Transición. El Posfranquismo", Zona Abierta No 19, March-April 1979.
16. Military participation in Sarney's government in Brazil is, therefore, the result of a certain Southern Cone 'tradition' and of the power capacity of the military. See the paper presented by Alfred Stepan and Michael J. Fitzpatrick to this Conference.