

ARGENTINA

Criminal Prohibitions

The Penal Code provides no punishment specifically for acts of terrorism or related acts like funding terrorism. However, some actions related to terrorism may be criminal, especially considering their nature and results, under different categories of the Argentina Penal Code, such as “unlawful association” for criminal purposes and “offences against public safety”, including “offences against public health – poisoning or adulterating drinking water, food or medicines”. Unlawful association is defined as “participation in an association or group of three or more persons existing for criminal purposes.” Mere membership is enough to warrant criminal prosecution, regardless of where the crime is committed. Aggravated circumstances exist if an unlawful association “jeopardizes the operation of the Constitution.” The Penal Code also criminalizes “recruitment” as an offence related to unlawful association. This can be applied to members of terrorist groups.

Offences of “public intimidation” include acts intended to “frighten the public or incite disturbances or disorder”, such as making signs, raising alarm, threatening to commit acts that endanger the public or using “material means suited to producing such effects.” Using “explosives, harmful chemicals or similar materials for such purposes” constitutes aggravated circumstances. Related to this offense is the crime of “attack against public security”: “[A]nyone who organizes or takes part in permanent or temporary groups not covered [elsewhere] whose primary or secondary purpose is to impose their ideas or combat those of others by force or threat shall be punished ... solely by virtue of being a member of the group.”

Argentine law does include an Act for the protection of those who assist in investigating acts of terrorism. This Act defines terrorism as “Criminal acts committed by members of unlawful associations or organizations established for the purpose of creating alarm or fear, which are carried out by means of explosive or inflammable substances, weapons or other deadly items, when used to endanger the life of physical integrity of an indeterminate number of persons.”

As for making certain offences extraditable, Argentine law does not require treaties to authorize extraditions, and thus no legislative amendments or addition are necessary. In principle, extradition requests of other States have to be fulfilled. “Anti-terrorism treaties comprise a rule whereby the offenses that they enumerate are to be considered as belonging to the category of extraditable offences in any extradition treaty in force between States which were parties before the entry into force of the Convention....”

Weapons Control and Weapons of Mass Destruction

It is a crime to possess a war weapon without authorization. Stockpiling of weapons “or parts or machinery to produce such weapons” are also criminal offenses. The Penal Code punishes “anyone who ‘for the purposes of helping to commit crimes against public security or causing damage to machinery or production, manufactures, supplies, acquires, steals or possesses bombs, nuclear materials or devices, explosives, inflammables, asphyxiating or toxic substances or substances or materials used in their preparation.’” Punishment extends to those who instruct others to prepare materials or substances “when they know or should have known that they are aiding or abetting the commission of offences against public security of acts intended to cause damage to machinery or production.”

The Weapons Act requires importers, exporters, manufacturers, clients and others who trade, manufacture, or use gunpowder, explosives and related materials to register with the Ministry of Defense. Since 2001, the export of weapons has been prohibited and attempts to export weapons will be blocked automatically through the Customs Service computer system. The National Arms Registry (RENAR) is the agency that records and controls activity involving

firearms, munitions and explosives. RENAR's comprehensive computerized database of registered firearms enables it to monitor and record cross-border movements of arms, explosives and armored vehicles. Transporters of such controlled goods must provide information about themselves and the goods. The inspection record for imported or exported goods generated by an inspection commission made up of officials from RENAR, Customs, PAN, the Coastguard or GNA and the customs clearance and transportation agent is stored in the national computerized database. This enables the tracking and monitoring of sales of goods.

The MERCOSUR countries are planning a joint registration system for buyers and sellers of firearms, explosives, ammunition and related materials. An agreement provides for information to be shared upon request via the MERCOSUR, Bolivia and Chile Security Information System. This register will list persons selling such goods, and it will also list ports of arrival and departure authorized for trade in these goods. The system is not yet fully set up, and Argentina has proposed to use existing comparable databases until the new system can be fully implemented and utilized. Another database is the Registry of Chemical Weapons under the Sub-Secretariat for Industry in accordance with the Chemical Weapons Convention. Persons engaging in activities involving CWC-listed chemicals "and who produce, prepare, consume, import or export chemicals or [listed precursors] must make a declaration to the Registry." This also applies to persons legally responsible for industrial complexes or plants that synthesize certain organic chemicals. The government is about to incorporate the provisions of the CWC into national legislation and is making operative a draft decree to control imports of chemical substances.

The governing Decree No. 603 (1992) implements a control -- the National Commission for the Control of Sensitive Exports and War Material -- which regulates the "illicit trafficking in weapons and illicit circulation of nuclear, chemical, biological and other potentially lethal materials" alongside the Inter-Ministerial Commission for the Prohibition of Chemical Weapons. A list of biological material announced by the Australia Group is used by this National Commission. Protection of nuclear material is achieved through physical protection of nuclear power plants with an emphasis on deterrence and prevention.

"New types of crimes identified in the conventions ratified by the State or proposed by export control groups (information-exchange groups), in order to set penalties for criminal activities related to weapons of mass destruction (nuclear, biological and chemical), anti-personnel mines, and illicit manufacturing of and trafficking in firearms" are to be incorporated into the Penal Code. Similar efforts are currently being made with respect to Inter-American and United Nations treaties against Illicit Manufacturing and Trafficking in Firearms etc.

Organizational Structure of the Administration

The Domestic Security Act authorizes broad powers to "implement counter-terrorist measures and actions." Various government officials and senior officers of the different police forces cooperate in the planning and monitoring centre to "assist and advise the Ministry of the Interior (now the Ministry of Justice, Security and Human Rights) and the Crisis Committee in the management of the police and security forces" to implement security operations under the Act. The Office of the Special Representative for Matters Concerning Terrorism and Related Offences (RETOD) under the Foreign Policy Department of the Ministry coordinates measures to comply with UN resolutions, other inter-American, international and bilateral agreements.

The Federal Police includes a Directorate for International Terrorism and Complex Offences, which is under direct authority of the Headquarters Command. It investigates criminal activities thought to be connected to terrorist organizations or gangs and conduct identified by the Ministry of Justice. The Directorate also governs the Interpol Department, the Department of the Anti-Terrorist Investigation Unit (DUIA), the Department for Complex Offences, Special Federal Operations Group Division (GEOF), the Division for the Investigation of Discriminatory Behaviour, the Complex Offences Operations Division, the Complex Offences Intelligence

Division and the Three Borders Section. The Directorate has at its temporary disposal the police headquarters, staff, equipment and financial resources necessary to carry out its operations.

Security efforts focus on large cities and border areas, especially the “tri-border” area where Argentina borders with Brazil and Paraguay. The national police force ENP under the command of the Domestic Security Secretariat as well as inter-agency operations engage in intelligence and preventive measures to uncover and prevent activities of organizations that may be linked to terrorist groups. Such activities also cover the control of smuggling of illegal weapons. Of help is a new informatics system, the National Argentine Node (NONARG), under the Planning and Control Centre of the Domestic Security Secretariat. It functions as a security information exchange for federal security and police forces. NONARG includes registers of weapons, persons and vehicles. This system is of central importance to the Security Information Exchange System (SISME) of MERCOSUR, Bolivia and Chile as it allows information sharing across borders.

Laws Pertaining To Biology

Argentina has promulgated various guidelines and resolutions with respect to experimentation and possible release into the environment of genetically modified organisms. The Secretary of Agriculture, Livestock, Fisheries and Food is the competent authority to issue licences for experimentation on and/or release into the environment of genetically modified plant organisms, in reliance on the opinions of the National Advisory Committee on Agricultural Biotechnology (CONABIA). License requirements apply to laboratory greenhouse tests, field trials, and pre-commercial production of the material.

Money-Laundering

The Argentine Penal Code defines money laundering as “any use of assets derived from an offence of a total value exceeding 50,000 pesos, either by a single act or by the repetition of various interrelated acts.” The government has established the Financial Intelligence Unit (UIF) for the purposes of analysis, processing and transmission of information to prevent money-laundering. As a member of the Financial Action Task Force on Money-Laundering (FATF), Argentina has adopted special recommendations on terrorist financing and a plan of action. Argentina is also a member of the South American Financial Action Group (GAFIDUD), with headquarters in Buenos Aires.

The Ministry of Foreign Affairs has updated the list of persons, entities and their assets to be frozen named in UN Resolutions 1333, 1390 and 1267. Provisions of U.N. Security Council Resolution 1373 for the purpose of freezing assets of terrorist groups and associated persons have been incorporated into national law granting all bodies of the federal, provincial and local governments the power to use “whatever measures may be necessary to comply with the decisions contained in resolution 1373 (2001).” Similarly, resolution 1267 (1999) for the freezing of assets belonging to the Taliban has been incorporated into national law, and yet another decree implements resolution 1333 (2000) to freeze financial assets of Osama bin Laden and Al-Qaida.

The basic preventive measures include the four internationally adopted elements of familiarity, registration, information and analysis of any suspicious financial transactions. The Central Bank continues to develop measures to stay in compliance with the FATF. Moreover, bank secrecy is no longer an obstacle to judicial assistance when transnational organized crime is involved. The Federal Administration of Public Income (AFIP) operates a registry where all financial entities, stockbrokers and dealers report transactions whose amounts exceed \$8,000. AFIP departments are also supposed to detect suspicious operations via computer.

The Argentine legal system allows provisional attachment and seizure of assets during penal proceedings, but “funds in bank accounts cannot be frozen without a court order.” A predicate offence has to be shown first. Suspicions that funds are linked to terrorism are not enough; evidence has to establish a connection with a crime. But because “all terrorist activities are

connected with the commission of a crime, since terrorist organizational structures, are, by their very nature, illegal,” members of terrorist groups would be guilty of a crime merely by belonging to an unlawful association. The Money Laundering Act places more burdens on organizations that receive third party donations or contributions. They have to prove their identity, legal capacity and domicile and additional proof to show that the organization fulfills its purpose. Legal entities also have to report suspicious acts, transactions or operations. Persons required to report cannot invoke privileges of bank, tax or professional secrecy, nor any confidentiality agreements.

International Cooperation

To assist other States with criminal proceedings and investigations, Argentina is party of agreements that provide for extradition and legal assistance, including the Protocol on Mutual Legal Assistance in Criminal Matters (MERCOSUR) (1996), the Treaty on International Criminal Law (1889) and the Inter-American Convention on Extradition (1933). Even in the absence of treaties, Argentine authorities are obligated to extradite or provide legal assistance: The willingness to cooperate is visible in the principle that, “in determining the competence of the requesting country with regard to the offence to which the request relates, that country’s legislation shall apply; the fact that the offence comes also under Argentine jurisdiction shall not constitute an obstacle to the provision of assistance, except in certain extradition cases.” Although Argentine nationals are not excluded from extradition, they may choose to be tried in their home country.

Other efforts include inter-agency counter-terrorism agreements, for instance one between the Ministry of the Interior and the FBI of the United States. Most important for regional security are all efforts under the auspices of MERCOSUR. Argentina has signed all of the 12 international conventions relating to terrorism and is a party to nine of them. Argentina is also considering to become a signatory to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. It has further ratified the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.

Argentina is active in the Inter-American Committee against Terrorism (CICTE) and serves as Vice-President. The Committee has the goal of cooperating to “prevent, combat and eliminate terrorist acts and activities.” It does this by establishing a technical cooperation framework, by developing, coordinating and evaluating recommendations of government experts, by encouraging member States to adopt necessary legislation, and by coordinating and carrying out ways to share and exchange information on pertaining groups or activities, including early warnings. Argentina participates in various groups for the purpose of information sharing on the threat of terrorist groups that may possess weapons of mass destruction and groups that share information on sensitive dual-use exports: the Nuclear Suppliers Group, the Australia Group, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies and the Missile Technology Control Regime. The Ministry of Defense is updating its lists of weapons and dangerous materials to include military and dual-use items identified by the Wassenaar Arrangement. Information exchange and international consultation are to be increased and improved by designating within the Argentine Federal Police regular liaison persons and circulating their contact information.

The central authorities cooperate with Interpol and the Ministry of Justice and Human Rights. Internationally, the Ministry of Foreign Affairs and International Trade also communicates with foreign authorities which facilitates judicial assistance and extradition procedures. A program to standardize extradition requests and to gather all information relating to such requests is being devised by the Ministry of Foreign Affairs. The current National Coordination and Analysis Directorate for Crime Prevention will become the National Criminal Intelligence Directorate which will be in charge of ensuring compliance with provisions of the Domestic Security Act -- in particular, coordination for the protection of national security.

BIBLIOGRAPHY OF ARGENTINE LEGISLATION

The Argentine Criminal Code

1. Argentine Penal Code, Article 210 (unlawful association and recruitment)
2. Article 210 bis (aggravated unlawful association)
3. Article 211 (public intimidation)
4. Title VII, “Offences against public safety”, chapter 4, Articles 200, 202 (“Offences against public health – poisoning or adulterating drinking water, food or medicines”), and Title VIII, Articles 210-213 (“Offences against public order”)
5. Act No. 25,241 on repentant offenders (defines terrorist acts)
6. Penal Code, Article 45, 46 (participation in the commission of a crime)
7. Article 189 bis (supply of weapons)
8. Resolution 189/2002 (2002)
9. Act No. 24,767

Jurisdiction over Terrorist Acts

1. Constitution of the Republic of Argentina, Articles 5, 75, 116, 117, 121
2. Act No. 13,985 (crime against State security)
3. Act No. 20,840 (national security)
4. Act No. 23,767 (narcotics)
5. Act No. 24,059 (domestic security) (1992)
6. Decree 452/00 (special investigation unit for AMIA incident)
7. Supreme Court of Justice, case S.143 XXIV (Israeli Embassy)
8. National Court for Federal Criminal and Correctional Cases No. 9, Registry No. 17, case 1156, “633 Pasteur Street, offense: murder, injuries, damage” (AMIA)

Organizational structure of the administration

1. Ministerial Decision No. 187 (2002)
2. Gendarmería Nacional Act No. 19,349 and Regulatory Decree No. 83/74 Act No. 24,059, Article 7
3. Domestic Security Act No. 24,059 (operational measures), (role of the new National Criminal Intelligence Directorate created under Act 25,520), Articles 2, 3, 10, 15, 16
4. National Intelligence Act No. 25,520 (2001), Article 13
5. Decree No. 950 (2002)
6. Decrees 452/00 and 107/01 (special investigation units for terrorist attacks against Embassy of Israel and AMIA)
7. Law No. 25,246/00 (2001) (money-laundering)
8. Decree 1,500/91 (creation of UIF)
9. Decree No. 1045/2001

Weapons Control and Weapons of Mass Destruction

1. Weapons Act No. 20,429, Articles 20, 23, 25 (on weapons, gunpowder, explosives and related materials and registration of trade)
2. Article 189 bis (supply of weapons)
3. Decree No. 603 (1992) (created the National Commission for the Control of Sensitive Exports and War Material)
4. Decree No. 1035 (2001) (prohibits the export of weapons)
5. General Instruction No. 63/01 (2001) (computer blocks of attempts to export weapons)
6. Act No. 24,492 (1993) (established RENAR registry)
7. Law 24,051 on Dangerous Wastes (1992)
8. Resolution 904/98 (1998) (set up Registry of Chemical Weapons)
9. Decree No. 920/97 (created the Inter-Ministerial Commission for the Prohibition of Chemical Weapons)
10. Acts No. 24,804 (nuclear power), Act No. 25,018 (nuclear waste)
11. Act No. 24,776 (ratified Convention on Nuclear Safety)

Laws Pertaining To Biology

1. Decree No. 603, 9 April 1992
2. Law 24.051 on Dangerous Wastes, 17 January 1992
3. SAGPyA Resolution No. 131/98, 1998
4. SAGyP Resolutions No. 656/92, No. 837/93, and No. 289/97
5. <http://siiap.sasyp.mecon.ar/http-his/english/conabia/forveuk.htm>
6. Seeds and Phytogenetic Products Law No. 20.247/73 and its Regulatory Decree, 1973
7. Decree-Law on Health Protection of Farm Products No. 6704/66 and its amendments, 1966
8. Veterinary Products Law. Manufacturing and Trading Controls. No. 13.636/49, 1949
9. SAGPyA Regulation No. 511/98
10. The Argentinean Guidelines for Testing Genetically Modified Plants

Money-Laundering

1. Act No. 25,246 on Concealment and Laundering of Assets of Criminal Origin, (2000), Article 5 (established the Financial Intelligence Unit), Articles 6, 13, 14, 19
2. Penal Code, Articles 125, 125 bis, 127 bis, 128, 174, 210, 210 bis, 278 (established the offense of money-laundering)
3. Decree No. 1500/01 (make-up of FIU) and decree No. 1547 (2001)
4. Constitution of the Republic of Argentina, Articles 18, 31, 75
5. Ministerial Resolution No. 623/2002
6. Ministerial Resolution No. 839/002
7. Executive decree No. 1235/01 (2001) and decree No. 253 (freezing assets) (2000)
8. Decree No. 1035 (freezes assets of Osama bin Laden and Al Qaida) (2001) and Chapter XXII of the revised text (N.T. 2001), and Chapter XXVIII
9. Ministerial Resolutions No. 2973, 3165, 3291, 3397 and 3711 (specify what assets to freeze) (2001)
10. Communications “B” 6986, 7017, 7023, 7035, 7085, 7114, 7163 and 7176 of the Central Bank of the Argentine Republic (2001)
11. Federal Administration of Public Income, General Resolution AFIP-DGI No. 160/98 (1998), General Instruction 591/01
12. Code of Penal Procedure, Article 518 (provisional attachment) and Article 231 (seizure of assets)
13. Act No. 21,526 on Financial Entities (bank secrecy)
14. Charter of the Central Bank of the Argentine Republic
15. General Resolutions CNV No. 375/01, 377/01 and 390/02
16. Penal Code, Articles 45, 46, 210, 210 bis, 213 bis
17. Decree No. 1570 (2001), Article 2
18. Act No. 22,315, Articles 2, 6, 10, 90
19. Decree No. 1493/82, Articles 30-33
20. General Resolution No. IGPJ 6/80, Articles 91-144
21. Act No. 25,246, Articles 6, 20-21
22. Customs Code – Act No. 22,145, Articles 20, 23

International Cooperation

1. Act 24.767 (international cooperation in criminal matters), Article 1 (full cooperation), Articles 5, 23, 68
2. Act No. 25,520, Articles 4, 7, 13
3. Act No. 24,059
4. Decree No. 950 (2002)
5. Decree No. 1210 (2002)