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Criminalization of Terrorist Offenses

The Brazilian Constitution repudiates terrorism: “the law shall consider the practice of torture, unlawful trafficking in narcotics and similar drugs, terrorism and crimes defined as heinous crimes to be crimes not entitled to bail or to mercy or amnesty, and shall hold responsible individuals who order or commit such acts and those who, though in a position to stop them, refrain from doing so.” Furthermore, “acts of civilian or military armed groups against the constitutional and democratic order” are not subject to the statute of limitations. Terrorism is a heinous crime; terrorist acts are not political offenses. There are descriptions of offenses of collective endangerment necessary to carry out acts of terrorism: “Attacking persons of property, for seditious, immoral or frivolous reasons, by means of serious threats, violence or harmful methods, for the purpose of spreading terror.” No amnesty, mercy, pardon, bail or interim release is available to terrorism perpetrators, and a sentence has to be served in a closed prison regime.

The main legal texts regarding terrorism are the Penal Code, The Code of Criminal Procedure, the National Security Act, the Heinous Crimes Act, the Act for the Oversight of the Export of Services and Items for Military Use, Dual-Use and Use in the Nuclear, Chemical or Biological Fields, the Money Laundering Act, and the Act establishing the Brazilian Intelligence System (SISBIN). Law No. 8.072, 25 July 1990, specifies that the practice of torture, the illicit traffic of narcotics and related drugs, as well as terrorism and crimes defined as heinous crimes shall be considered by law as non-bailable and not subject to grace or amnesty, and their principals and agents will be held liable. A proposed amendment to the Penal Code would add a new section divided into five chapters to cover crimes against national sovereignty, democratic institutions, the functioning of democratic institutions and essential services, foreign or international authorities and citizenship. The third chapter criminalizes terrorist acts and would introduce an offense of terrorism with appropriate penalties, an offense of financing of terrorism, a crime associated with money laundering, and would update the concept of criminal association.

The Penal Code criminalizes the formation of criminal groups by three or more persons, which comprises the recruitment of members for terrorist organizations. Another act permits police or intelligence agents to infiltrate in the course of an investigation and “authorized by a reasoned judicial order delivered in secret.” Voluntary cooperation with the authorities in an investigation of a criminal organization can be rewarded by reducing the penalty for the cooperating criminal.

The Brazilian legal system allows for extradition of criminals, but Brazilian nationals are exempt from extradition, except for “naturalized Brazilians in the case of an ordinary offence committed prior to naturalization or proven involvement in unlawful trafficking in narcotics and similar drugs.” According to the Constitution, extradition is not available in cases of political or ideological offenses, as determined by the judiciary. However, political offenses do not include “offences against society or offences or attacks against the life of a head of State,” attacks against other authorities, acts of anarchy, terrorism, sabotage, kidnapping, war propaganda and violent subversion of order. If the crime in question is an ordinary crime, even if related to a political offense, extradition is possible. Extradition is not available, pursuant to national law and most international extradition treaties, when the death penalty could be imposed. Bilateral and multilateral agreements on extradition and legal assistance provide conditions for the provision of assistance, such as requiring a minimum of information to accompany a request.

Any persons that cannot be extradited have to be prosecuted in Brazil under the “no safe haven principle” contained in various bilateral agreements and the United Nations Convention against Transnational Organized Crime, adopted by Brazil in 2000; if extradition is impossible, the requesting state shall submit all available information and evidence to the requested state to facilitate investigations and judicial proceedings by the requested state’s legal authorities.

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The Brazilian government is especially concerned with the possibility that its citizens or residents may support terrorism abroad or commit terrorist acts outside the country. Brazilian law provides for the prosecution of its citizens whenever they commit crimes abroad. The Penal Code applies to perpetrators of crimes committed abroad when Brazil has decided to punish the offense by treaty or convention (e.g. terrorism), when Brazilians committed the offense, and when the offense took place on board Brazilian aircraft or vessels in foreign territory, where it was not prosecuted. Restrictions are that the perpetrator has to have entered Brazil for at least a short time, the act must also be a crime in the country where it was committed, it must be one for which Brazilian law permits extradition, the person cannot have been acquitted or have already served a sentence abroad, or pardoned or absolved of responsibility. Brazilian law applies as long as the person was not tried abroad or did not serve a sentence, if convicted.

Laws Pertaining To Biology

The Ministries of Health and of Agriculture exert control over biological materials in accordance with the Biological Weapons Convention and the act on exports controls. A decree by the Minister of Health (No. 1919/GM), combined with the federal health regulations, requires the reporting of any samples of *bacillus anthracis* that may exist in public and private laboratories. The National Health Foundation can inspect laboratories and make biosafety recommendations in cases of such reports. Legislative Decree No. 89 approves the text of the Biological Weapons Convention. Transport of biological materials is regulated, and certain types of biological material require advance authorization before importation. Law No. 9112 regulates the export of goods and services with possible military applications or dual use; in that connection, it regulates the export of goods or services with possible application for the development of weapons of mass destruction, whether nuclear, chemical or biological, and their delivery vehicles.

Law No. 9.782, of January 26, 1999 (as modified by Provisional Remedy No. 2.039-20, 25 August 2000) defines the National Sanitary Surveillance System and establishes the National Sanitary Surveillance Agency. Law No. 9.782, 26 January 1999, creates a National Agency of Sanitary Vigilance. Law No. 9.677, 2 July 1998 penalizes companies manufacturing and/or selling counterfeit or adulterated pharmaceutical and food products. Under this law (Article 273, specifically), violators are subject to a prison term of 10 to 15 years without bail, plus fines.

The Act on Guidelines for the Use of Genetic Engineering Techniques and for Release into the Atmosphere of Genetically Modified Organisms (Law No. 8974, as modified by Decree No. 1.752, 20 December 1995) sets the standards for use of genetic engineering techniques in the construction, cultivation, manipulation, importation, transportation, marketing, consumption, storage, and release and disposal of genetically modified organisms (GMOs). It creates classifications of genetic material based on the risk the pathogen presents with the objective of protecting the life and health of humans, animals, plants and the environment. This Act authorizes creation of the National Technical Commission on Biosafety (CTNBio) and outlines its responsibilities, structure, staffing, functioning and standards. The Act requires any organization using genetic engineering techniques and methods to create an Internal Biosafety Commission (CIBio) and outlines their responsibilities. It outlines crimes and corresponding punishments, including the crime of the genetic manipulation of germ cells. That Act also authorizes the Brazilian Ministry of Agriculture and Supplying to conduct inspections of entities which work with genetically modified organisms. This Act primarily regulates genetically modified organisms but also applies to genetically modified pathogens that could be used by terrorists.

Weapons Control

Brazil applies IAEA physical protection guidelines to protect its nuclear facilities and materials. The National Nuclear Energy Commission CNEN took administrative steps to increase security, to institute stricter procedures for controlling staff access to facilities and to increase the number of security guards in the wake of September 11th, 2001.

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Pursuant to Brazil's obligations under the Chemical Weapons Convention, the government set up an inter-ministerial commission under the leadership of the Ministry of Science and Technology to implement the Convention. The Parliament is considering laws on administrative and criminal sanctions "for the production, development, stockpiling, transfer and use of chemical weapons," which would "extend penalties to Brazilian nationals (physical or moral persons) who conspire to commit abroad any activities prohibited under the Convention." A different law controls exports of chemical substances that could be used to produce chemical weapons. Regulation 105 governs chemicals within Brazil, and requires that the army "must license and monitor activities using controlled materials, including the chemical weapons precursors listed in the Convention."

On the international level, Brazil is interested in strengthening multilateral arrangements for the disarmament and non-proliferation of chemical, biological, nuclear and ballistic weapons, for instance through the Organization for the Prohibition of Chemical Weapons (OPCW), the Conference of the Biological Weapons Convention, the IAEA and other organizations. The IAEA continues to add measures to improve nuclear security and the safety of other radioactive materials. A resolution from 2001 supports, inter alia, efforts to create a working group on the potential expansion of the scope of the Convention on the Physical Protection of Nuclear Material so that it would include the regulation of domestic transport, use and stockpiling of such materials and to provide for safety measures for nuclear facilities, while the Convention originally only deals with international transports of nuclear materials.

Brazil is a party to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA). Exports of sensitive goods would now require prior permission from the relevant federal agencies under the overall co-ordination of the Strategic Affairs Secretariat of the Presidency of the Republic. Breaches of the law concerning the export of sensitive goods are punished with sanctions ranging from admonition to the suspension of the right to participate in foreign trade activities. Sanctions are provided for violation, including incarceration from 1-4 years.

Suppressing the Financing of Terrorism and Money-Laundering and Freezing Assets

Brazilian law prohibits money-laundering, defined as converting the proceeds of crime into licit assets or acquiring, receiving, exchanging, trading, giving or receiving as guarantee, keeping, storing, moving or transferring funds or assets and is punishable with three to ten years in prison and a fine, as well as confiscation of the funds involved. Using the proceeds of crime, even if obtained in legitimate ways and knowing participation in a group set up to commit terrorism or other listed crimes are punishable with up to 30 years in prison. The applicable law provides an exhaustive list of various underlying offenses to money-laundering, including terrorism and arms smuggling. Acts of terrorism include cyberterrorism (via the Internet) and bioterrorism (spreading pathogenic agents). Supporting a terrorist organization or committing any criminal acts to obtain funding for such a group constitutes the crime of financing terrorism. Repeated criminal conduct and commission of crimes by a criminal organization are treated as aggravated crimes in the context of the financing of terrorism.

Because terrorist organizations are themselves criminal, and any activities for or with them are punishable, as well as any kind of support for them, the proceeds obtained from and for terrorist groups are "proceeds obtained through the perpetration of a criminal act" and can be seized or attached. Support means sustaining and taking responsibility for expenses. The Public Prosecutor's Office or the police can request upon consultation and if there is enough evidence that the competent judge seize or attach *ex parte* (or "*inaudita altera parte*", i.e. without a hearing of the concerned persons), if deemed necessary, the funds or assets involved in the criminal activities under investigation or that belong to terrorists, according to the Code of Criminal Procedure and the Penal Code. This applies to any assets or funds held in Brazil by anyone who

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committed acts of terrorism abroad. The Code of Criminal Procedure and provisions in international agreements govern procedures for seizure and attachment of property and assets derived from offenses committed abroad, forfeiture and preventive measures, and require dual incrimination, i.e. both countries involved have to consider the offense a crime. No particular agreement is necessary, as long as reciprocity is offered.

A Complimentary Act provides for lifting the bank secrecy rules in the course of criminal investigations, including for acts of terrorism. Therefore, reporting suspicious or known criminal activities and information on money-laundering to the authorities is acceptable, especially if the transactions are connected with terrorism or other acts of a criminal organization. Within MERCOSUR, there is a “standing working group on terrorism...to coordinate measures at the subregional level to prevent, combat and eliminate terrorism.” Brazil has signed the Convention for the Suppression of the Financing of Terrorism and approved the Decree on the implementation of the United Nations Security Council resolution 1373 (2001).

International Cooperation

Brazil is expanding ways to cooperate internationally in judicial matters by negotiating and signing bilateral agreements and by active participation in multilateral initiatives of the United Nations. Assistance can involve taking evidence or statements, issuing documents, examining property, locating and identifying persons or assets, service of documents, transfers of persons in custody to testify, granting requests for search and seizure and freezing and confiscating assets, restituting assets and collecting fines. Brazil has concluded bilateral treaties on judicial cooperation and mutual legal assistance in criminal matters with Germany, Canada, Colombia, the United States of America, France, Italy, Peru, Portugal, Uruguay, Japan and Belgium. In 1998, Brazil signed extradition agreements with MERCOSUR countries and Chile and Bolivia “to allow for swift repatriation of fugitives from justice, under clear rules to facilitate criminal prosecution and allow for execution of a request for detention prior to extradition via Interpol.”

Bilateral agreements deal with terrorism by providing for information exchange on terrorist activities and the organizational structure of terrorist groups, their members and their financing and operating methods. Information on counter-terrorism techniques as well as scientific and technological expertise for the protection of sea, air, road and railway transport and to modernize security measures at ports, airports, railway stations, bus stops and buildings and facilities that could potentially be terrorist targets is exchanged. Cooperation with other states in early warning mechanisms and information sharing is provided for in the National Public Security Plan of 2000, a series of 15 commitments and 124 comprehensive, high-priority and strategic activities.

Brazil was at the forefront in establishing a MERCOSUR and associated States working group on firearms and munitions to discuss topics such as harmonizing the laws on firearms and munitions, coordinating the topic in international forums, developing technologies to reduce accidents connected with the use of firearms and munitions, and the link between illegal arms and munitions trade and drug trafficking. The MERCOSUR plan includes provisions on terrorism and concrete counter-terrorism measures. It also foresees refresher courses on counter-terrorism, surveys to find persons or groups that support terrorism, mechanisms to prevent bioterrorism and studies of laws related to terrorism.

The State takes the necessary steps whenever grounds exist to believe that there are terrorist links, and contacts the authorities of the country concerned. The Ministry of Justice and the Institutional Security Cabinet in the Office of the President are in charge of anti-terrorist activities. The National Secretary for Public Security coordinates activities of various security agencies through the Public Security Intelligence Subsystem (SISP), consisting of the Institutional Security Cabinet and other Ministries and Departments. The Executive Secretariat of the Chamber of Foreign Affairs and National Defence (CREDEN) of the Council of Government is provided by the Institutional Security Cabinet, and its functions are to formulate policy,

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establish guidelines, adopt programs and monitor their implementation, for instance for the combat against illicit drug trafficking and transnational crime, such as terrorism.

The Ministry of Defence in cooperation with intelligence centres of the armed forces, the federal police force and the Brazilian Intelligence Agency (ABIN) “has been conducting a survey and cross-referencing of data for checking the list issued by the United States of more than 340 persons suspected of participating in terrorist activities, together with a follow-up of information on the existence of ‘ sleeper cells ’ and shelters for foreigners under suspicion of supporting terrorism, and on the use of forged documents, fund-raising for terrorist causes or triangulation of communications with extremist organizations, including the al-Qa’idah movement of Osama bin Laden.” UN Security Council resolutions 1267, 1333, and 1373 are now an integral part of Brazilian law. In force are also the OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance and the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials. Brazil signed the Inter-American Convention against Terrorism.

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