

XV. BRAZIL³⁶

SUMMARY OF LEGISLATION OF BRAZIL RELATED TO TERRORISM

(a) Constitution

Article 4, paragraph VIII, of the Constitution of the Republic establishes the “repudiation of terrorism” and imposes an obligation on the country to join efforts to combat terrorism.

In addition, *Article 5*, provides that:

“All persons are equal before the law, without any distinction whatsoever, and Brazilians and foreigners resident in Brazil are assured of inviolability of the right to life, liberty, equality, security and property, on the following terms:

“(…) XLIII. 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;

“XLIV. the acts of civilian or military armed groups against the constitutional and democratic order are crimes not entitled to bail or subject to the statute of limitations”

These constitutional imperatives form the basis for the extensive complementary legislation on the subject. Worth noting, in particular, are Act 6815 of 18 August 1980 (provides that terrorism cannot be deemed a political offence); Act 7170 of 14 December 1983 (defines offences against national security and the political and social order; title II, “Offences and Penalties”, establishes the penalty for “terrorist acts”); Act 8072 of 25 July 1990 (classifies terrorism as a heinous crime); and Act 9613 of 3 March 1998 (establishes as the offence of money-laundering any activity aimed at concealing or disguising the true nature, source, location, disposition, movement or ownership of property, rights or assets derived directly or indirectly from the crime of terrorism; offences against the national financial system; and offences committed by criminal organizations, among others).

³⁶ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1285, annex), on 8 July 2002 and on 14 March 2003. Information was also provided in respect of Act 9474 of 22 July 1997 (“to define mechanisms for the application of the 1951 Status of Refugees, and to create other provisions”), Act No. 9613 of 3 March 1998 (offences of laundering or concealing property, rights and assets) and the Code of Criminal Procedure.

In implementation of article 5, paragraph XLIII, of the Constitution, Brazilian law prescribes penalties for individuals who order or commit terrorist acts and those who, though in a position to stop them, refrain from doing so. The possibility that natural and legal persons resident in Brazil may be involved in international crimes such as terrorism, contraband, drug or arms trafficking, money laundering and piracy is a matter of concern for the Government of Brazil. When the issue is raised by representatives of concerned States, the Brazilian authorities always request concrete information that would assist in the launching or expansion of investigations in Brazil. Act No. 9034 of 3 May 1995, in article 2, paragraph V, allows for infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies and authorized by a reasoned judicial order delivered in secret. Investigative resources were strengthened with the passage of Act No. 10446 of 8 May 2002, which contains provisions governing criminal acts with inter-State and international repercussions that must be prevented and punished in Brazil based on uniform standards. It is important to note that, in keeping with the constitutional principles of a democratic State based on the rule of law, the Government does not accept denunciations or follow up rumours, allegations and insinuations unsubstantiated by solid evidence. Where it detects the existence of a system of support for terrorist activities, the Federal Government takes the appropriate domestic legal measures and notifies the target State of the criminal act so that it could alert its security organs.

(b) Penal Code

The constitutional imperatives and international commitments undertaken by Brazil are the basis of extensive legislation that supports and provides the tools and legitimacy for the fight against terrorism in the national territory. Although there is still no criminal characterization that includes a specific and detailed definition of the crime of terrorism, the legislation contains a series of provisions that describe criminal conduct inherent in terrorist acts (including criminal association, currency fraud, and trafficking in arms, ammunition and explosives).

As mentioned above, there is no precise and detailed legal description of the crime of terrorism in Brazilian legislation; there are only descriptions of conduct that constitutes a means of carrying out a terrorist act, as in the case of offences of collective endangerment (see, for example, article 373 of the Penal Code: "Attacking persons or property, for seditious, immoral or frivolous reasons, by means of serious threats, violence or harmful methods, for the purpose of spreading terror").

In specific cases, the judicial authorities are responsible for verifying the existence of an offence, in accordance with developments in the doctrine and case law and in application of the provisions of Act 8072 of 25 July 1990, which deals with heinous crimes and establishes stricter rules for the serving of sentences. Article 2 of that law provides that persons convicted of the crime of terrorism are

not entitled to “I — amnesty, mercy or pardon; II — bail or interim release; paragraph 1 shall be carried out in its entirety under a closed prison regime”.

Article 288 of the Penal Code deals with associations of more than three persons for the purpose of undertaking criminal activities. The recruitment of new members for terrorist groups would fall under the definition of that crime. Act 9034 of 3 May 1995, in article 2, paragraph V, allows for “infiltration by agents of the police or the intelligence services as part of an investigation undertaken by the relevant specialized bodies, and authorized by a reasoned judicial order delivered in secret” The Act also provides for the possibility of a reduced penalty in order to encourage voluntary cooperation on the part of a criminal leading to the dismantling of the organization.

Furthermore, in accordance with the Criminal Code, Article 7, II, “a”, the Brazilian jurisdiction is extended over perpetrators of offences described in international conventions to which Brazil is a part of as soon they are found in the national territory. Brazil is a member of most anti-terrorism international conventions. Therefore, under Brazilian law, anyone who has committed terrorist acts abroad and is found in the national territory may be punished. The Criminal Code, Article 7, also prescribes a series of other cases in which the Brazilian jurisdiction is extended over perpetrators of offences committed abroad.³⁷

(c) Other Legislation

Act No. 8072 of 25 July 1990 governing heinous crimes provides more rigid rules for the serving of sentences. Article 2 of the Act provides that individuals convicted of the crime of terrorism may not receive amnesty, mercy, pardon or bail. It further provides that the entire sentence must be served under incarceration. Article 7 of Decree-Law No. 2848 of 7 December 1940 (Penal Code), as amended by Act No. 7209/84, deals with the application of Brazilian law to crimes committed by Brazilians abroad, which acts as a further deterrent to the recruitment of nationals by terrorist groups.

37 See Presidência da República. Subchefia de Assuntos Jurídicos. www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm