

## **CXXVII. UNITED STATES OF AMERICA<sup>206</sup>**

### **SUMMARY OF LEGISLATION OF THE UNITED STATES OF AMERICA RELATED TO TERRORISM**

(a) Antiterrorism and Effective Death Penalty Act 1996; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the “USA PATRIOT Act”)<sup>207</sup>; Immigration and Nationality Act and related legislation.

There are several sources of legal authority for the U.S. Government to rely upon in imposing civil and criminal penalties for the provision and collection of funds to provide support to terrorists. These include both laws prohibiting material or other support to terrorists and their supporters, and money laundering laws addressing a variety of criminal activity, including the unlawful movement of money without proper reports.

Providing “material support” to terrorists or terrorist organizations has been prohibited as a crime since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996. As a result of the October 26, 2001 enactment of the antiterrorism bill known as the “USA PATRIOT Act”, there is now specific authority to forfeit terrorist assets as well, thus providing a direct means to deprive terrorists of their funds.

U.S. law makes it a crime to provide material support or resources within the U.S. to a person intending that the support or resources will be used, or is in preparation for, the commission of a wide variety of specified terrorism-related crimes.<sup>208</sup> “Material support or resources” is very broadly defined and means “currency or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”<sup>209</sup>

Property provided as “material support” to a terrorist in violation of 18 U.S.C. § 2339A is subject to forfeiture if it is involved in a transaction or attempted transaction in violation of 18 U.S.C. § 1956-57, or if it is the proceeds of a section 2339A offence.<sup>210</sup>

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<sup>206</sup> Transmitted to the Secretariat by that Government on 19 December 2001 (S/2001/1220, annex) and on 14 June 2002 (S/2002/674, enclosure). Information was also provided in respect of other legislation, including money laundering statutes and the Gun Control Act of 1968 (GCA), 18 U.S.C.

<sup>207</sup> Public Law 107-56 (26 October 2001).

<sup>208</sup> 18 U.S.C. § 2339A.

<sup>209</sup> *Ibid.*

<sup>210</sup> 18 U.S.C. § 981(a)(1)(A) would authorize forfeiture for the transaction offence, and 18 U.S.C. § 981(a)(1)(C) would authorize forfeiture for the proceeds offence.

18 U.S.C. § 2339B makes it a federal crime to knowingly provide or attempt or conspire to provide material support or resources to a designated foreign terrorist organization.<sup>211</sup> U.S. jurisdiction is extraterritorial and the statute specifically contemplates the movement of material support or resources from the U.S. to a foreign terrorist organization outside the U.S.

A foreign terrorist organization is designated as such by the Secretary of State, in consultation with the Attorney General and the Secretary of the Treasury. A Foreign Terrorist Organization (FTO) may be designated pursuant to section 219 of the Immigration and Nationality Act (INA)<sup>212</sup> (as amended by the Antiterrorism and Effective Death Penalty Act of 1996). When a financial institution becomes aware that it has possession of, or control over, any funds in which a Foreign Terrorist Organization, or its agent, has an interest, it shall retain possession or control over the funds, and report the existence of such funds to the Secretary of the Treasury. Failure to do so may result in civil penalties. Providing prohibited “material support” is punishable criminally by 15 years imprisonment and/or a fine of up to \$250,000 for individuals and \$500,000 for organizations.

For the purposes of designation of foreign terrorist organizations in connection with 18 U.S.C. § 2339B, a foreign terrorist organization is (1) a foreign organization, (2) that engages in terrorist activity, which (3) threatens the security of United States nationals or the security of the United States, as prescribed pursuant to 219 of the INA.

Any United States-based fund-raising activity on behalf of a terrorist organization, even those organizations whose acts of terrorism did not target the United States, would likely easily meet the threshold level of threat to the security of United States nationals or the security of the United States, as prescribed pursuant to 219 of the INA. In addition, the provisions of 18 U.S.C. § 2339A, described below, and the provisions of the International Emergency Economic Powers Act (IEEPA), also described below, are available to prevent and punish acts committed by terrorist organizations operating from the United States.

Section 2339A enables the United States to prosecute those who provide, or attempt or conspire to provide, material support or resources for use in the commission of a wide variety of crimes, including terrorist related crimes. Those who conceal or disguise the nature, location, source of ownership of materials for use in the commission of a crime and those who aid in the escape of those committing such crimes can also be prosecuted. Charges under § 2339A may be brought whether or not a designated foreign terrorist organization is involved in the violation. (Penalties for each violation can include criminal fines and incarceration of up to fifteen years or life.)

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<sup>211</sup> 18 U.S.C. § 2339B. Penalties for each violation can include criminal fines and incarceration of up to fifteen years.

<sup>212</sup> 8 U.S.C. § 1189.

Providing or collecting funds for the use of terrorists or terrorist organizations is also a violation of the law.<sup>213</sup> Transactions need not be entirely domestic, but rather can be, and in some cases must be, international to meet the elements of the violation.<sup>214</sup>

In addition to the substantial terms of incarceration and the criminal and civil fines imposed for the above violations, the code also authorizes the U.S. to seize and forfeit funds and other assets involved in violations of §§ 1956, 1957, 2339A, and 2339B and funds or assets in which terrorists or terrorist organizations have an interest.<sup>215</sup> The code also includes numerous crimes that may be charged against individuals who act from the U.S. against the citizens of another country or against the interests or facilities of another country, regardless of whether those citizens, facilities or interests are located within the U.S. or within that other country.<sup>216</sup>

Also, the 50 states each have criminal codes that may enable them to punish people who conspire within their borders to commit serious, terrorist-related crimes beyond the borders of the U.S.

U.S. legislation contains provisions prohibiting admission of foreign nationals who have engaged in terrorist activity. It provides for removal of such persons if they are in the U.S. Also, foreign nationals who are closely associated with or who support terrorist activity can also be denied admission or removed in certain circumstances (e.g. foreign nationals who act as representatives of foreign terrorist organizations or of certain groups that publicly endorse acts of terrorism).

For immigration purposes, the “terrorist activity” definition includes any unlawful act involving: hijacking; sabotage; detention under threat for the purpose of coercion (of a government or an individual); violent attack on an internationally

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<sup>213</sup> 18 U.S.C. §§ 1956 and 1957

<sup>214</sup> Penalties for each violation can include enhanced criminal fines and incarceration of up to twenty years. Section 1957 makes it a crime to engage in a monetary transaction in property derived from specified unlawful activity, such as 18 U.S.C. §§ 2339A and/or 2339B. Transactions under § 1957 need not be entirely domestic, but can be, and in some cases must be, international to meet the elements of the violation. Penalties for each violation can include criminal fines and incarceration of up to ten years.

<sup>215</sup> 18 U.S.C. §§ 981 and 982. While the terrorist financing statutes at 18 U.S.C. §§ 2339A and 2339B each authorize imposition of a period of 15 years incarceration for each violation, under the Sentencing Guidelines, a multiple count conviction could result in a sentence of considerably more time than 15 years.

<sup>216</sup> For example, 18 U.S.C. § 956 makes it a crime to conspire to kill, maim, or injure persons or damage property in a foreign country; 18 U.S.C. § 2332b makes it a crime to engage in acts of terrorism transcending national boundaries; 18 U.S.C. § 2332a(b) makes it a crime for a national of the United States to use certain weapons of mass destruction outside the United States; 18 U.S.C. § 1116 the murder or manslaughter of foreign officials, official guests, or internationally protected persons a crime; 18 U.S.C. § 1119 makes a foreign murder of a U.S. national a crime; 18 U.S.C. § 32 makes it a crime to destroy aircraft or aircraft facilities within or outside the U.S.; and finally, 49 U.S.C. §§ 46502 - 46507 make it a crime to engage in aircraft piracy or carry a weapon or explosive on an aircraft.

protected person; assassination; the use of biological, chemical, or nuclear weapons; or the use of explosives, firearms, or any other weapon or dangerous device with the intent to cause harm to individuals or damage to property. The attempt or conspiracy to commit these acts is also included as “terrorist activity.”

The law defines “engage in terrorist activity” broadly to include committing, inciting, preparing or planning a terrorist activity; gathering target information; soliciting funds or resources for terrorist activity or a terrorist organization; soliciting an individual to engage in terrorist activity or to join a terrorist organization; and affording material support (e.g. a safe house, transportation, communications, funds, funds transfer), false documentation or identification, weapons, or training for the commission of terrorist activity to a person who has committed terrorist activity, or to a terrorist organization.

Conspiracy and other laws make it illegal to solicit a person to commit a terrorist act or other crime. Recruiting for membership in a terrorist organization is grounds for denying a visa. A foreign national who enters the United States and is later found in violation of these prohibitions is subject to deportation.<sup>217</sup>

There are additional terrorism-related grounds for denying admission to the U.S. Terrorists are ineligible, for example, for temporary protected status, and asylum and refugee status. There are also provisions in the U.S. Criminal Code, and the Immigration and Nationality Act, to prosecute those who harbour or smuggle alien terrorists, or who provide them with material support (including immigration or other identity documents). In addition, foreign nationals who provide material assistance to, or solicit it for, certain designated terrorist organizations are inadmissible to the United States or may be deported if previously admitted.

The provisions of the criminal code directed against terrorist acts are among the most serious offences under United States law. Not only do they carry substantial penalties, including life imprisonment or, in certain circumstances, the death penalty, but many of them also include extraterritorial jurisdiction that make them applicable to “acts committed outside the United States by a person who is a citizen of, or habitually resident in, the United States (whether that person is currently present in the United States or not);” and “acts committed outside the United States by a foreign national who is currently in the United States”.<sup>218</sup>

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<sup>217</sup> §212(a)(3)(B)(iv)(V) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182.

<sup>218</sup> See, for example, 18 U.S.C. §§ 32 (relating to the destruction of aircraft), 37 (relating to violence at international airports), 351 (relating to congressional or Cabinet officer assassination), 831 (relating to prohibited transactions involving nuclear materials), 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce), 875 (relating to interstate communications), 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), 1111 (relating to murder), 1114 (relating to murder of United States law enforcement officials), 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), 1201 (relating to kidnapping), 1203 (relating to hostage taking), 751 (relating to Presidential assassination), 2280 (relating to violence against maritime navigation), 2281

The USA PATRIOT Act<sup>219</sup> provides for broad investigative and information sharing between law enforcement and intelligence agencies with respect to terrorist financing. It expands the scope of U.S. regulations against money laundering by requiring securities brokers and dealers to file suspicious activity reports and gives new power to act against money laundering havens. The PATRIOT Act also expands the President's powers to confiscate property under the International Emergency Economic Powers Act (IEEPA) when the U.S. is engaged in armed hostilities or has been attacked.

**(b) International Emergency Economic Powers Act**

The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 (IEEPA), authorizes the President to exercise broad emergency powers when he has declared a national emergency to deal with a threat to the national security, foreign policy, or economy of the United States. Pursuant to IEEPA, the President issued Executive Orders 12947 of January 23, 1995, and 13099 of August 20, 1998 (both entitled "Prohibiting Transactions that Threaten to Disrupt the Middle East Peace Process"), and Executive Order 13224 of September 23, 2001 ("Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), which designated terrorist groups and individuals, and delegated authority to, as appropriate, the Secretary of State or the Secretary of the Treasury, in consultation with each other and the Attorney General, to designate further entities and individuals (persons), including, among others, persons providing financial, material, or technological support for, or services in support of, terrorist acts or for other designated persons, as well as persons the Secretary of the Treasury determines are owned or controlled by, or act for or on behalf of other designated persons. The Executive orders block the assets of and prohibit transactions with designated persons. Knowing violation of these prohibitions is a federal crime, and civil remedies are also provided.

**(c) Arms Export Control Act and other statutory authority of the Department of Commerce and the Nuclear Regulatory Commission**

U.S. law contains criminal prohibitions on the acquisition, transfer and exportation of certain firearms.<sup>220</sup> Numerous state and local laws also apply.

The U.S. Government requires licences for the export of defence articles (which includes technical data) and defence services pursuant to the Arms Export

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(relating to violence against maritime fixed platforms), 2332 (relating to terrorist acts abroad against United States nationals), 2332a (relating to use of weapons of mass destruction), 2332b (relating to international terrorist acts transcending national boundaries), or 2339A (relating to providing material support to terrorists).

<sup>219</sup> "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Acts of 2001," Pub. L. No. 107-56, H.R. 3162, 107th Congress (2001).

<sup>220</sup> Title 18 of the U.S.C. (Chapter 44 – Firearms) 18 U.S.C. §§ 921, et seq.

Control Act (AECA),<sup>221</sup> which counters the illicit transfer of U.S.-origin defence items to any unauthorized person. Violations of the AECA or its implementing regulations can result in civil and criminal penalties.

The U.S. Government also applies controls to exports and re-exports of sensitive U.S.-origin dual-use items and nuclear-related items pursuant to the statutory authorities of the Department of Commerce and the Nuclear Regulatory Commission. The Department of the Treasury administers and enforces economic sanctions against designated terrorists and those determined to be linked to such terrorists. These sanctions prohibit any transactions or dealings in property or interests in property of terrorism-related entities or individuals, including the exportation or re-exportation of any goods or technology either from the U.S. or by U.S. persons. Violations of these laws or their implementing regulations can result in civil or criminal penalties.

Terrorist acts are among the most serious offences under U.S. law. Violent, terrorist-related crimes generally carry substantially higher criminal penalties and can lead to imposition of the death penalty, or life imprisonment.<sup>222</sup>

Depending on the defendant's acts, his criminal history, and his willingness to cooperate with authorities, there is a range of sentences from which the sentencing judge may select. In recent years, the death penalty has not been imposed in a federal international terrorism prosecution.

## **CXXVIII. URUGUAY<sup>223</sup>**

### **SUMMARY OF LEGISLATION OF URUGUAY RELATED TO TERRORISM**

#### **(a) Constitutional provisions**

Under articles 38 and 39 of the Constitution, unlawful associations do not enjoy constitutional protection.

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<sup>221</sup> 22 U.S.C. § 2778 and the International Traffic in Arms Regulations (ITAR).

<sup>222</sup> E.g., 18 U.S.C. §§ 2332a and 2332b.

<sup>223</sup> Transmitted to the Secretariat by that Government on 19 December 2001 (S/2001/1235, annex) and on 12 June 2002 (S/2002/676, enclosure). Information was also provided in respect of other legislation, including: Acts Nos. 10,415 of 13 February 1943 and 14,157 of 21 February 1974 on the supply of arms through legal trade; Decree No. 652170, which regulates the bearing of arms; and Acts Nos. 17,300 of 22 March 2001 and 17,343 of 25 May 2001 with regard to the illicit arms trade.