

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.

**(b) Penal Code and other relevant provisions**

Under Uruguayan law, recruitment to terrorist groups and the supply of arms may be forms of criminal complicity. Moreover, all such activities would doubtless fall within the specific definition of association with criminal intent (Penal Code, article 150, amended by Act No. 16,707 of 12 June 1995), which carries a penalty of up to five and, in some cases, eight years' imprisonment; this is particularly important in cases involving the receiving or concealment of money or securities deriving from a terrorist act. This crime of association (which is a form of conspiracy crime) is aggravated and its penalty increased by up to half if the association took the form of an armed group or included more than 10 members, if the guilty person was the chief or instigator of such a group or if the group included any member of the police (Penal Code, article 151).

The offence of "association with criminal intent" (article 150, Penal Code) was amended in the Civil Security Act, which defined it as a "conspiracy crime".

Article 150 actually referred to the criminal *cuadrilla*, meaning, in eighteenth and nineteenth century Spain, a gang of bandits with at least four members, who associated for the purpose of committing multiple crimes.

The Security and Public Order Act No. 14,068 of 1972, reduced the number of active participants by using the words "those who", allowing for the possibility of only two participants in the commission of an offence. But the plural was retained for the offences: an association existed if at least two persons associated for the purpose of committing various offences.

The Security Act No. 16,707 of 1995 uses the wording "those who" (only two needed) associate for the purpose of committing "one or more offences". The objective could now be a single offence. An association exists if two persons associate for the purpose of committing a single offence. Therefore, associating for the purpose of committing an offence is an offence of association with criminal intent.

This implies a substantial change in the regime of article 7 of the Penal Code, which provides that "a conspiracy exists when two or more persons agree on the commission of an offence", and that a conspiracy is punishable only when the law specifically provides for that possibility.

Since agreement between two persons for the purpose of committing a single offence now constitutes an offence of association with criminal intent, it is always punishable as an offence against public order.

Association for the purpose of committing an offence may refer to any kind of offence, naturally including acts of terrorism.

This is what comparative law calls a “conspiracy crime”, and what Uruguay calls an offence of association with criminal intent.

In addition, article 1(1) of Act No. 9,936 of 18 June 1940, defines unlawful associations as “those which disseminate ideas contrary to the democratic republican form of government adopted in article 72 (1) of the Constitution”.

Terrorism as such is not defined as a separate offence, although there are a number of activities that are considered to be terrorist acts: the taking of hostages, the assassination of foreign ambassadors or heads of State, multiple homicides, the use of destructive force, arson, bombs, attacks on aircraft, ships and public works, etc.

The provisions of the Penal Code, Act 16,707 of 12 June 1995 and Act 17,343 of 25 May 2001 are applicable to activities committed by criminals acting from our territory against third States or against foreign citizens. The first issue raises a classic case in criminal law, the offence committed at a distance. The applicable rule according to the majority theory is that of ubiquity, such that both the country where the act is committed and that where it is consummated are both competent to judge the case. If the extradition is not in order, the rule is to punish such acts within our country provided that the offenders were detained within Uruguayan territory, without prejudice to cases coming under worldwide jurisdiction (cf. article 10, Penal Code).

The procedure for prosecuting offences committed abroad follows the general rules contained in articles 9, 10 and 11 of the Penal Code.

Terrorism is under universal jurisdiction and persons who commit such acts can be prosecuted in Uruguay (article 10, paragraph 7); since it is not considered a political offence, such persons are subject to extradition, both active and passive.