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Terrorism and anti-terrorism in South America with a special consideration of Argentina, Chile and Colombia

Terrorismo e antiterrorismo na América do Sul com uma especial consideração sobre a Argentina, o Chile e a Colômbia¹

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DOSSIÊ TERRORISMO

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Terrorism and anti-terrorism in South America with a special consideration of Argentina, Chile and Colombia

*Terrorismo e antiterrorismo na América do Sul com uma especial consideração sobre a Argentina, o Chile e a Colômbia*¹

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Abstract

This report focuses on the phenomenon of terrorism and the anti-terrorist legislation in three Southern American countries: Argentina, Chile and Colombia. It will be to prove, firstly, whether in these countries the definition of terrorism, if a definition is provided at all, is clear enough; secondly, whether it is defined according to the constitutional requirements and to the principles of the rule of law; and thirdly, whether its definition is in accordance with fundamental Human Rights. It is also outlined the anti-terrorism legislation and its enforcement by pointing out the most salient features in each country.

Keywords: Anti-terrorist legislation; South America; Argentina; Chile; Colombia; Rule of law.

Resumo

Este relatório foca o fenômeno do terrorismo e da legislação antiterror em três países latino-americanos: Argentina, Chile e Colômbia. Pretende provar, primeiro, se nesses países a definição de terrorismo, se é que ela alguma vez chegou a ser fornecida, é clara o suficiente; segundo, se tal definição está em acordo com os requisitos constitucionais e os princípios do Estado de Direito; e, terceiro, se respeita os Direitos Humanos. Delineia-se, igualmente, a legislação antiterror e a sua aplicação indicando suas mais salientes características em cada país.

Palavras-chave: Legislação antiterror; América do Sul; Argentina; Chile; Colômbia; Estado de Direito.

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1 Introduction

Since the beginning of the 20th century, at least, there have been counter-terrorism policies that mix war and criminal arguments. However, the current politics are manifestations of a new security-paradigm which also shows new forms and constructions. In the current *securitization*² processes, foreign dangers mix with domestic dangers, social fears mix with fears of the State and crime control measures mix with defense measures. In the past, the decision to go to ‘war’, or to *fight* against individuals, usually individuals and groups seen as ‘terrorists’ which have been declared enemies inside a national State, was very complex. The counter-terrorism policies were enforced only on the basis of exceptional law or, alternatively, had to be taken in spite of the law. At present, the ‘declaration of war’ and the persecution of those who are taken as possible enemies occur not against, but in a sphere that is beyond the modern law, beyond the principles of a constitutional State, and beyond the notion of national sovereignty. And this occurs, often, in evident violation of fundamental Human Rights. It is obvious that more efforts must be made in order to change this situation.

The Philosopher *Ralf Dahrendorf* claimed that terrorism is an essentially destructive phenomenon. Because of this, he claimed that any answer must be essentially constructive.³ We consider that this is a fundamental point in terms of deciding how to react when confronting terrorist acts. The possible causes of the different forms of terrorism in the world are the gap between richness and poorness, class conflicts and scarce natural resources, the conflicts between different ethnic and racial groups, conflicts emerging from cultural differences (motivated in religious or political ideals), the fear of the “other” (multiculturalism),⁴ among other grounds. Because of this, the reaction to “terrorism” should not, or *at least not only*, be oriented to the harsh punishment of the singular offenders, but actually to the eradication of those conflicts, through mutual respect and peaceful coexistence. Of course, this is easier said than done. Anyway, keeping this idea in mind, we should be in the best form to define what we consider terrorism and how to respond to it, through and beyond the criminal law.

In this report we will concentrate on the phenomenon of terrorism and the anti-terrorist legislation in three Southern American countries: Argentina, Chile and Colombia. They show differentiated types of terrorism and terrorist acts, and also have dissimilar legislations put in place to react against it. We seek to prove, firstly, whether in these countries the definition of terrorism, if a definition is provided at all, is clear enough, and secondly, whether it is defined according to the constitutional requirements and to the principles of the rule of law, and thirdly, whether its definition is in accordance with fundamental human rights. We also achieve to outline the anti-terrorism legislation and its enforcement at the national and regional levels by pointing out the most salient features in each country. After this revision, we will try to answer two central questions: Can we affirm that the anti-terrorism legislation and its implementation in Argentina, Chile and Colombia are essentially *constructive*? What would the key features be of a constructive anti-terrorism legislation in accordance with the political, legal and social situation of South American countries? Before starting with the individual country reports, in the next sections some general ideas of this sub-continent are introduced, the forms of terrorism which have taken place there and its regional legislation.

In South America, and in general in the so called “Latin America”⁵, there have been different forms of terrorist acts and terrorists groups for decades. It is not possible to put together all of these realities under one label, such as, for example, “Latin American terrorism”. Each country has had very particular conflicts originated in concrete political reasons, economic struggles, ideologies, etc.

Only one kind of “terrorism” has been similar in several American countries: the Terrorism of State or State of Terror.⁶ Military and civil dictatorships dominated the political, social and economic scenarios of countries in South and Central America between the decade of the 1960s and until the later years of the 1990s.

Most of these unlawful governments were supported by foreign interests, fundamentally by the USA, within the political framework of the so called “cold war”. These regimes decided to avoid the possibility of socialist or communist democratic governments. Therefore, they practiced censures, political persecutions, violations of the rule of law and of fundamental human rights throughout the whole population. Especially brutal were the common and numerous illegal imprisonments, torture, forced disappearances and illegal executions of members of the opposition, which means of those who held different opinions, regardless whether the opponent was a student, an intellectual or an armed combatant. The installation of regimes on the basis of terror was the most effective instrument to hold political power during years, and to stop the “red menace”.⁷ These regimes fought the opposition and the insurgence, whereby each political opponent was seen as an enemy. Some of them, in fact, tried to defend their ideas and tried to reach the political victory of communism or socialism by means of armed conflict.

Thus, on the one side was the State apparatus spreading fear and terror in the public. On the other side were the political subversives, who did not accept the methods and impositions of the governments and were not afraid of their cruel methods. In this way, many political opponents fought against these regimes, often spreading fear to the rest of the society as well, which did not want to get involved, or could not, or did not want to, see the violent methods of the regimes, and principally, because of fear, the new dictatorial rules were accepted. States of Terror are a very particular category under the possible forms of terrorism. However, in this report we will not analyze this form of terrorism, which is fortunately not present in Latin America anymore, but we will concentrate our attention on the current situation of terrorism and the anti-terrorism legislation in Argentina, Chile and Colombia.⁸

Coming back to the question of the “terrorist groups”, apart from States, in Latin American countries, it is possible to summarize the following groups, which during the time of opposition to the dictatorships, committed attempts and crimes against the civil population also took place on their behalf: the *Sendero Luminoso* and the *Movimiento Revolucionario Tupac-Amaru* in Peru; the *Montoneros*, the *ERP (Ejército Revolucionario del Pueblo)* and the *FAR (Fuerzas Armadas Revolucionarias)* in Argentina; the *Frente Patriótico Manuel Rodríguez* and the *Movimiento Izquierdista Revolucionario* in Chile; the *ELN (Ejército de Liberación Nacional)* in Bolivia; the *MLNT (Movimiento de Liberación Nacional Tupamaros)* in Uruguay; the *VRP (Vanguardia Revolucionaria Popular)* in Brazil, and the *Fuerzas Armadas Taoístas* in Guatemala.

Currently, in Mexico the *EZLN (Ejército Zapatista de Liberación Nacional)*, the *FARC-EP (Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo)* and the *ELN (Ejército de Liberación Nacional)*, and the *Sendero Luminoso* in Peru exist. In addition, active self-called guerrilla groups, as well as a group of *autodefensas* (self-defence) in Colombia (*AUC-Autodefensas Unidas de Colombia*) currently operate. They are considered as terrorists according to national and international voices.⁹

If one wants to generally and perfunctorily differentiate the main streams of terrorism in Latin America, one could say that there is, firstly, the guerrilla-like left oriented terrorism; secondly, the drug-related terrorism, and, thirdly, the religious-motivated terrorism whose most widespread version is fundamentalist Islamic terrorism. The first form is rooted in the Marxist movements of the 1960s which were very common and widespread in the 1970s and 1980s in Latin America, and is currently fundamentally present in Colombia. The second form is currently increasing in Mexico, where different drug-cartels are fighting for control of the illegal drug markets. The third form is not really taking place in Latin America at present (with regard to the two most important attempts of recent decades, which took place in Argentina, this will be explained below). There is always new information about possible cells of Al Qaeda or other international groups having movement in

Latin America, especially in the so-called Triple Frontier (Argentina, Brazil and Paraguay). However, until now these suspicions cannot be seriously proven.¹⁰

This scenario, thus, shows how different the situation of Latin America is with respect to terrorist activities in Europe, Middle Eastern countries or the USA, where fundamentalist Islamic attacks and menaces have made this topic first priority in the criminal law agendas.

The respect of democratic values, the rule of law, freedoms, and international law, and first of all the respect of Human Rights in the context of the anti-terrorism measures should be a central aspect of the Latin American legislation. The implementation of a normative order in accordance to the Human Rights standards should conduce to a *constructive* anti-terrorist legislation at the national level. In the following we will describe three of these legislations and their practices in order to know if they are really in accordance with such standards.

2 Terrorism in Argentina

2.1 Introduction

Argentina does not currently suffer from “terrorist acts”, does not have “terrorist groups”, and is not really considered to be menaced by international terrorism. Some voices have claimed for years that there are terrorists cells in the so-called “Triple Frontier” between Argentina, Paraguay and Brazil, but these claims have not been proven nor are held serious by researchers or specialists.¹¹ In the following we will describe the historic cases of terrorism in Argentina during the dictatorship (terrorism of State and terrorist counter-measures) and the two terrorist attacks against Israeli institutions in 1992 and 1994.

In the last decades, the concept of terrorism in Argentina has been closely related to the idea of “terrorism of State”, in the sense above mentioned regarding the whole Latin America. The most important armed group, which is also considered a terrorist organization, fighting for the implementation of communist ideals was the *ERP (Ejército Revolucionario del Pueblo)*, which was harshly fought by the army and the Intelligence Services of Argentina (1976-1983) through the counter-terrorism policy. As in most cases of Latin-American dictatorships,¹² the counter-terrorism policies in Argentina were decided by exceptional law, i.e. non parliamentary statutes. They were aimed at the national defense and reformed or suspended the constitutional law, as well as the rights that this constitution used to establish for its citizens. On March, 1976, the new military committee (*Junta Militar*) removed the president of his functions and dissolved the national and provincial parliaments as well as the Supreme Court and superior tribunals. The National Constitution was suspended and the political parties and political activities were forbidden. Every activity or opinion against this resolution was seen as a political threat and as an act of war against Argentina.¹³ The enforcement of these exceptional laws did not have any judicial control, since the Supreme Court was dissolved and the faculties of each judge were diminished. The kidnapping, torture and disappearance of political opponents, who were constructed and displayed to the public as the ‘enemy’, - were practices extended throughout the entire Argentinean territory as part of the counter-terrorism measures. These practices were systematically organized, but often kept secret and were neglected and refused several times.¹⁴ The practices took place in military buildings and camps. The construction and prosecution of the ‘enemy’ group were addressed to each socialist, communist and anti-capitalist sympathizing¹⁵ individual. These individuals were seen as a threat to the neoliberal economic system which was aimed for and established by the military regime. After the dictatorship the enforced disappearance of 8.960 individuals was documented, but all in all around 30.000 people were and are still missing.¹⁶ This was a relatively specifically predefined and constructed terrorist-group. They were constructed as enemies inside national frontiers, as enemies of national interests and as enemies of the Argentinean people.

After the establishment of democracy in December of 1983, the first modification in the legislative framework in relation to Terrorism was *Ley 23.077* (1984), whose meaningful name was “Law for the Defense of Democracy”¹⁷ and which introduced limits to State actions, precisely to avoid the possibility of new terror-regimes. Since the return of democracy to Argentina, there were two severe attacks with terrorist characteristics in Argentina. In both cases the attacked were Israeli institutions.

The bombing of the Israeli Embassy in Argentina is considered the arrival point of Middle Eastern terrorism in South America. On March 17th, 1992, a car bomb explosion killed 29 and injured over 250 people. The investigation of the case was assigned to Argentina’s Supreme Court, concretely to Judge *Levene*, but for over two years the investigation did not really advance, despite the fact that the Islamic *Jihad* had claimed responsibility for the explosion.

In 1994, six Lebanese and a Brazilian were arrested in relation to a drug case and were found to be members of the *Hezbollah* (Iranian-backed Lebanese group). It was announced that the men were involved to the bombing of the embassy, but some days later this claim was released due to a lack of evidence. In 1998, a telephone call was intercepted from the Iranian Embassy in Argentina and it conclusively demonstrated that Iran was involved in the attack of the embassy. Six of seven Iranian diplomats were expelled from Argentina. Until now the case remains unsolved, since it could not be determined who was culpable for the attack.

The bombing of the *AMIA* (Israeli-Argentinean Benefit Society) in Buenos Aires took place when a suicide-terrorist drove a bomb-car into the seven floors building on July 18th 1994. In the attack 85 people were killed and around 300 were injured. It was the deadliest attack targeting Jews since World War II, and it remains unsolved. The investigation, at first under the direction of Judge *Galeano* of the Supreme Court of Justice of Argentina, did not really continue. Several years ago, the Supreme Court upheld a finding that the investigation had been badly flawed by the actions of the investigating judge, the State prosecutors and the government.

The investigation has two main areas: the local connection and the international connection. “Local connections” refer to the part of the investigation addressing Argentinean citizens, who allegedly assisted in the logistics necessary to complete the attack. As a result of the first trial, five people were accused of being facilitators in the attack, but they were ultimately acquitted. Furthermore, the former president *Carlos Menem*, who was in post at the time of the attack, is now being investigated because of irregularities which he provoked during the investigation. The second area of investigation, the “international connection”, was followed beyond Argentinean borders by the Argentinean Intelligence Service and had three key conclusions: Firstly, Iranian officials were accused of participating in the attack; secondly, Iranian Intelligence charged Hezbollah with mounting the attack; and thirdly, the attack was perpetrated by a *Hezbollah*’s operational unit abroad.¹⁸ In October of 2006 the prosecution unit requested international assistance in apprehending and extraditing eight Iranians. After that the attack was qualified as a crime against humanity, and the formal request to Interpol was issued.

2.2 Concept of terrorism in the Argentinean criminal and criminological literature

Part of the Argentinean literature rightly holds that it is essential to differentiate between terrorism and organized crime. The first one is fundamentally politically inspired, the second one is economically moved; the first one searches the publicity of its demands, the second one tries to stay in the shadows.¹⁹ We also think that it is necessary that a definition of terrorism, if it is possible to provide one definition, must not be related to concepts of economic crimes.

Besides, it is important to require specificity when speaking of a possible definition of the crime. The last amendments of Argentinean law make evident, on the contrary, the “emergency” of this amendment, which are only having effects as symbolic legislation... in a very punitive symbolic way.²⁰

In sum, Argentina does not have a definition of terrorism which is accepted by the majority of scholars and specialists.²¹

2.3 Anti-terrorist national legislation

At the present there are several legal documents regulating different aspects related to anti-terrorism efforts. Nevertheless, neither an act nor regulation establishes exactly what terrorism is. That means that terrorism as a crime is not provided in the Penal Code of Argentina (*Código Penal, CP*).²²

The most accepted definition of terrorism is not a doctrinal definition and it is not the definition of terrorism, but of “acts of” terrorism, and it is provided by Law 25.241 (Article 1): “*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 or physical integrity of an indeterminate number of persons*”.

Special attention must be given to *Ley 25.520* (2001) which is a very good step forward with regard to the protection of constitutional rights of defendants even in the case of investigations of suspects of terrorism. In their central sections, the law stipulates that for intelligence agencies it is forbidden to carry out enforcements and investigations, unless required by a judicial authority (Article 1); it is forbidden to obtain and collect personal data on religion, race, private acts or political opinions (Article 2); it is forbidden to reveal or share personal data related to any individual or legal entity, unless there is a judicial order (Article 4); and, it is forbidden to intercept and wiretap oral, written or electronic communication of any kind, unless there is a judicial order (Article 5). In Argentina, how and on what grounds wiretapping is possible is regulated in detail; the necessary judicial order is valid for 60 days only, being renewable for another 60 days, and the obtained data must be destroyed if criminal proceedings are not initiated (Articles 18 to 22).²³

2.3.1 “Illegal terrorist associations” and their financing

One of the most significant amendments to the Penal Code with regard to terrorism in the last years, and also one of the most controversial amendments was the *Ley 25.268* (2007), partially amended later by the *Ley 26.734* (see below 2.3.2.). Formally, this law referred to the prohibition of the “financing of terrorism”, but the amendments go far beyond the financing question. Through this law the figure of the “illegal terrorist association” was created, an aggravate case of the “illegal association” (Art. 210 *CP*) that consists fundamentally of a group of 3 or more persons constituted with the purpose of committing offences. The “illegal terrorist association” was defined²⁴ and hard punishments were established: To be a member of such an association could be punished with between 5 and 20 years of incarceration; initiators and chiefs of the association were punished with at least 10 years of incarceration (former Art. 213 *ter*). According to the figure “Financing of Terrorism” (former Art. 213 *quáter*), bystanders and contributors to the association who provide goods or money could be punished with between 5 and 15 years of incarceration. Definition and punishment, however, were later suppressed and partially replaced by the mentioned new *Law 26.734*.

2.3.2 “Anti-Terrorism Law”

On 30 December 2011 was passed in Argentina the *Ley 26.734* (the so-called *Ley Antiterrorista*). This Law suppresses the two articles on “illegal terrorist association” (former art. 213 *ter*) and on “Financing of

Terrorism” (former art. 214 *quater*) in its articles 1 and 2. In its article 3, this law establishes the incorporation of a new standard for the aggravation of the punishment (double of the minimum and of the maximum) when an offence established in the Penal Code is committed “either in order to terrorize the population or in order to press the national state authorities, or foreign governments, or agents of an international organization to do or not to do something...”.²⁵ It is clear that the openness of the legal description (“an offence of the Penal Code”) does not limit the application of this aggravation only to violent offences, but authorizes actually its application to *any* offence of the Penal Code.

Article 5 re-incorporates in a reformulated version the crime of “Financing of Terrorism” establishing in its part 1 a punishment of 5 to 15 years of prison as well as a fine between 2 and 10 times higher than the amount of the transaction for those who recollect or provide goods or money for the financing of acts with terrorist goals (according to the new art. 41.5).²⁶

It is no secret that this amendment responds to very strong pressure from non-national organizations, as it was also the situation in former cases.²⁷ International covenants, concretely the obligations with respect to the Financial Action Task Force (FATF), demanded the amendment of the Penal Code.²⁸ Without this amendment Argentina would be put on the “black list” of the non-cooperative States in the fight against terrorism. And this situation would mean serious difficulties in the area of trade and investments for Argentina. Thus, it is clear that the first motivation to pass this law was not bound with international terrorism, but with national economic interests. And so, we can be sure that this was also the situation in many other countries acting under pressure of the USA and of the organizations closely bound with the interests of the USA.

This law is an example of an unnecessary or at least of a mistaken law: There is a lack of political-criminal necessity²⁹, as it was shown at the beginning of this chapter. There is also a violation of the principle of proportionality because the sanctions are not proportional to the object of legal protection: since *any* offence could be criminalized with the double of the original punishment established in the law, the gravity of the terrorist act does not seem to be clear. Social protests, for example, and therefore non grave offences committed in its occasion could be easily prosecuted as an offence with terrorist goals.

2.3.3 “Acts of International Terrorism” – A Project in the Legislative

In the same breath of the 4th Meeting of War against Terrorism (July 14th-15th 2010), organized in commemoration of the 16th anniversary of the terrorist attack against the *AMIA*, legislators of different parties submitted to the Federal Congress the “Acts of International Terrorism. Definition in Criminal Law. International Terrorist Organizations” Bill (*Actos de terrorismo internacional. Tipificación. Organizaciones terroristas internacionales*). In this bill the crimes which could constitute “acts of international terrorism” are stipulated. On July 15th, 2010, this Bill was presented to the Congress to be analyzed by the Parliamentarian Commission on Criminal Law and the Parliamentarian Commission on Foreign Affairs and Religion.³⁰ According to this project, some crimes within the Penal Code are put into relation with “acts of international terrorism”.³¹ This project also offers a definition of “international terrorist organization” (Article 2):

It will be considered as international terrorist organizations those that through the commission of crimes have the purpose of terrorizing the public, or putting pressure on a government or on an international organization to do something or to abstain from doing something, always when they have the following features:

- a) *To have an action plan aimed at spreading ethnic, religious or political hate;*
- b) *To have war arms, explosives, chemical or germ agents at their disposal, or any other mean suitable to put in danger the life or the personal safety of an undetermined number of persons;*

- c) *To get any kind of support from a foreign country, or from an organization established abroad, or to develop actions of this type in more than one country, or to conspire in more than one country for doing that.*

The aim of this bill is to put the described actions and crimes against humanity on the same level. In this sense, it is provided that the criminal prosecution against these crimes does not will prescribe. Furthermore, since these crimes are considered part of “international terrorism”, the prosecution limits would be open to foreign States and international organizations. One of the most critical aspects of this project is that, according to the description of the terrorist acts, the organized social protest could be criminalized and even put on the same level as grave massive crimes.³²

The legislators supporting this bill consider that the inclusion of international acts of terrorism in the Penal Code is the best way to be in line with international anti-terrorism legal tendencies and, thus, is the best way to face the challenges imposed by international terrorism.

2.4 Conclusion

Argentina has had two, most likely international, terrorist attacks in the last 30 years. Their connection with Islamic terrorism has not been proven yet. The legislation in Argentina, however, has increased at an international speed, according to international circumstances and especially as a response to the requirements and pressure from the USA.

Thus, even without sufficient criminal-political reasons at the national level, we can say that Argentinean legislation is in accordance with current international legislation and “requirements”. The Argentinean Penal Code does not provide a crime of terrorism, but in different amendments and special laws has incorporated several terrorism related infractions. Argentina has also signed and ratified almost all international Conventions and Treaties on Terrorism, and was even one of the more active States in the preparation of some of these documents.

This entire “good job” shows itself, however, very problematic from the point of view of national criminal policy, the rule of law, constitutional principles and with respect to human rights. Specifically when one considers the possibility established by the law that *any* offence could be considered as “terrorist”. It is worth mentioning that the alleged exceptional situation which is often mentioned and which was pointed out as reason in all indicated amendments in Argentina³³ is actually a conceptual trap, with concrete consequences: quickly discussed projects, exaggerated measures, conceptual and methodological changes without analysis of long term impacts of law and society, a non-check of assumed international obligations and the “international legality” of the new measures, abrupt response to external pressure, etc.

Under these conditions it is absolutely impossible to achieve a constructive anti-terrorist legislation respectful of human rights.

3 Terrorism in Chile

3.1 Introduction

The word “terrorism” started to be used strongly in Chile in the beginning of the 1970s. The international context determined by the cold war had a strong influence on the political instability present during those years. In 1970, the socialist *Salvador Allende Gossens* won the presidential election, assuming presidency on November 3rd, 1970. Beginning with his first days in power, *Allende* carried out its socialist program through the so-called *vía chilena al socialismo* (the Chilean Path to Socialism).³⁴ The socialist program of *Allende*

was viewed by the USA as a threat of a beginning of a communist regime, especially after the visit of Fidel Castro to Chile in 1971.

The population was polarized and violence started to rule the streets, especially through the confrontation of two radical groups: the Revolutionary Left Movement (*Movimiento de izquierda revolucionaria – MIR*) and Fatherland and Liberty (*Patria y Libertad*). The latter one carried out different terrorist attacks supported by external assistance such as the CIA, in order to overthrow *Allende's* government.³⁵

On September 11th, 1973 the *coup d'état* led by the Commanders in Chief of the army forces took place. From this moment on, the country was under the control of the military junta headed by the Commander in Chief of the Army *Augusto Pinochet*.³⁶ The leftist groups opposed to the military regime carried out terrorist actions, but they were easily counteracted by the intelligence services. In the middle of the military regime a new Constitution (in force since 1981) was enacted, whose Art. 9 made reference to terrorism as an attempt to human rights. At that time, new left-wing terrorist groups emerged, namely the United Popular Action Movement-Lautaro (*Movimiento de Acción Popular Unitario-Lautaro – MAPU-L*), the United Popular Action Movement (*Movimiento de Acción Popular Unitario – MAPU*), the Lautaro Popular Rebel Forces (*Fuerzas Rebeldes Popular Lautaro – FRPL*), and the Manuel Rodríguez Patriotic Front (*Frente Patriótico Manuel Rodríguez – FPMR*).³⁷ These armed political groups carried out a series of criminal acts, e.g. kidnappings, attacks on police stations, murders, etc. In order to deal with the increase of such types of criminality, the so-called “Anti-terrorism Law” was enacted in 1984.³⁸

Democracy was achieved in Chile through the election of *Patricio Aylwin*, a centre-left candidate who assumed the direction of the country on March 11th, 1990. The recovery of democracy also implied a decrease in the amount of terrorist actions.

3.2 Mapuche's conflict considered as terrorism

Nowadays, the use of the Anti-terrorism Law has been limited to offences committed within the so-called *conflicto* mapuche. The mapuche conflict³⁹ concerns a movement of indigenous communities (mapuches) which emerged once democracy was in recovery in Chile in order to achieve greater autonomy, the recovery of land and the recognition of rights.⁴⁰ As part of their demands, mapuche groups have carried out a series of criminal acts, which have been qualified by the Office of the Public Prosecutor as terrorist conducts. For its part, the government has requested support from the FBI in order to manage these conflicts and to confirm a possible link between the mapuche communities and the Spanish terrorist group ETA.⁴¹ Nevertheless, serious evidences pointing to such a link have not been confirmed. For its part, most of the criminal acts carried out by members of mapuche communities are against properties, such as, for example, incendiary attacks on non-inhabited houses, machinery, tracks, etc. Such a condition implies not only the application of special norms established within Anti-terrorism Law, but also the stigmatization of the mapuches, as they are considered as a terrorist ethnic group.⁴²

The criminal actions carried out by mapuche activists started in 1997. At that time, three tracks of the forest enterprise *Arauco* were burned as a measure of pressure for the return of ancestral lands, which were under property of the enterprise.⁴³ In 1998, the mapuche communities formed the *Arauco Malleco* Coordinating Group of Communities in Conflict (*Coordinadora Arauco Malleco – CAM*). One of the main goals of this association is the recovery of former mapuche lands, which nowadays are properties of big national and international corporations. Under the organization of the *CAM* several demonstrations have been carried out, both passive and violent. It is precisely the violent demonstrations which have been of discussion, indicating that the *CAM* represents a terrorist association. Nevertheless, despite the violent nature

of the activities carried out by the members of the *CAM*, they have not caused death or physical injuries to people.⁴⁴

In order to counteract the violent demonstrations, the anti-terrorism law has been made use of. Under such circumstances, the people affected by the application of the law have acted in response to its severity; one of the most important manifestations was the hunger strikes carried out for 80 days in July of 2010. Due to this demonstration modifications were introduced into the Anti-terrorism Law and the Code of Military Justice. Nevertheless, although the amendments partly relieved the situation of the affected people, they did not alleviate the biggest problem: the use of the law for an inexistent fact. The criminal actions committed in relation to the mapuche conflict do not fit into the notion of terrorism. Applying the Anti-terrorism Law to the mapuche activists constitutes an abuse.⁴⁵ The mapuche conflict represents a problem of multiple connotations, social, economic, political, etc. Nevertheless, even though the conflict could be described as solely political, it must be clarified that not all violence founded on political grounds is terrorism.⁴⁶

Within the framework of the conflict, four mapuche activists, *Héctor Llaitul*, *Ramón Llanquileo*, *José Huenuche* and *Jonathan Huillical*, were condemned to punishments of between 20 and 25 years of prison for attempted murder against a prosecutor and robbery.⁴⁷ The condemned persons solicited the Supreme Court to declare the sentence invalid. The Supreme Court did not make a declaration of invalidity, but reduced the quantum of the punishment.⁴⁸ The relevant aspect of this case is that although the charges of terrorist arson and illicit terrorist associations were rejected, the evidence obtained according to the specific norms contained in the Anti-terrorism Law was considered. This is a case where the witnesses had reserved identities (*testigos con reserva de identidad*).⁴⁹ The results therefore are contradictory as, on the one hand, the Anti-terrorism Law was rejected and, on the other hand, evidences obtained through the special rules contained in the same Anti-terrorism Law were validated.

3.3 International terrorism

Terrorism as an international phenomenon in Chile is almost non-existent. Nevertheless, in the north of the country incidents of the financing of terrorism have taken place within the so called tri-border area (*triple frontera*).⁵⁰ Although Chile is not geographically part of the tri-border area, it has been implicated to have residents who conduct illicit activities such as money laundering, financing of terrorism, etc. For example, the Lebanese businessman *Hatim Ahmad Barakat*, travelled to the *Iquique* Free Trade Zone, northern Chile, in order to collect funds destined to the terrorist group *Hezbollah*.⁵¹ Although judicial investigations took place in order to confirm the links of *Barakat* and other Lebanese businessmen present in the zone, concrete evidence was not found, and the investigations were finally closed. *Hatim Ahmad Barakat* was arrested in *Ciudad del Este* (*Paraguay*) and convicted in first instance to six years in prison for document fraud.⁵² An Appeals Court reduced the punishment to three years.⁵³

3.4 Concept of terrorism in the Chilean criminal and criminological literature

Because terrorism, apart from the mapuche conflict, does not constitute a relevant topic within the Chilean reality, there is only a small number of authors who research the issue from a juridical perspective. Among them, *Bustos Ramírez* points out that terrorism is a fight against criminal law.⁵⁴ This author maintains the idea that the terrorist crime emerges from the penal faculty of the State.⁵⁵ The penal faculty of the State produces insecurity,⁵⁶ with criminal law, as a control instrument of such faculty, aimed at counteracting such insecurity.

For its part, with regard to the concept of terrorism, as well as at the international level, it has been difficult to unify criteria for its definition; under the Chilean context it has also faced the same problem. First of

all, Chile presented the following before the United Nations General Assembly: “Terrorism [...] stands outside the pale of any human values. It is a primitive and totalitarian ideology of politics, a commitment to murder and violence transformed into a method of war against innocent people.”⁵⁷ This understanding of terrorism is in accordance with the Chilean Constitution (Art. 9) which considers terrorism as contrary to human rights.

The Anti-terrorism Law established in its original version a concept of terrorism, based on an ideological character, as an act against the State’s security. With the return of democracy, the concept of terrorism changed, considering it as a “method of criminal action used by both right and left extremisms, drug dealers, religious fanatics, arms’ traffickers, totalitarian governments, and dictatorships”.⁵⁸ Furthermore, it is added that through acts of terrorism life, corporal integrity and the freedom of people are attacked, causing fear in a part or in all the population.⁵⁹

According to *Villegas*, the amendments which gave rise to the current text of the Anti-terrorism Law did not consider two relevant aspects of terrorist crime: the political finality and the activities of a terrorist organization.⁶⁰ For the mentioned author a concept of terrorism must include the following elements as:⁶¹

1. Terrorism attacks or concretely endangers the life, the corporal integrity, the freedom, or health of people.
2. Its pursued goal is “to disturb” the democratic constitutional order.
3. It is committed by people who belong or integrate with a criminal association.
4. The conduct must be violent, through apt means in order to attack the mentioned objects of legal protection and achieve the pursued goal.
5. The provisory aim of causing, to all or to a part of the population, fear or suffering the same damage must also be pursued. This concerns a provisory finality since the last goal disrupts the democratic constitutional order.

3.5 Anti-terrorist national legislation

The juridical national framework on terrorism is basically contained in the Constitution and Anti-terrorism Law. The Constitution states in its Art. 9 that terrorism is “by essence” contrary to human rights. Moreover, the same norm establishes that the responsible people of terrorism acts cannot hold public office, or be a rector or director of an educational institution, or carry out educational activity for a duration of 15 years. During the same period, they also cannot be proprietors of any social communications media, or being a director or administrator thereof, or give opinions or information to it.

The Chilean legal order has also considered anti-terrorism legislation since the enactment of the law 18.314 in 1984.⁶² This law has been subject to several modifications as Chile has subscribed to different treaties in matters of terrorism. The conducts described and punished by the Anti-terrorism Law are basically established in Arts. 1 and 2. These norms state:

Art. 1. It shall constitute terrorist crimes all those indicated in Art. 2, when the fact is committed in order to produce in the population, or in a part of it, the founded fear of being a victim of crime of the same kind, either by the nature and effects of the employed means, either by the evidence that the fact is part of a premeditated plan of attacking against a category or a determined group of people, either it is committed in order to remove or inhibit authority’s resolutions or impose them exigencies.

This law shall not be applied to conducts carried out by people under the age of 18 years old.

The exclusion contained in the last subsection shall not be applicable to people older the age of 18 years old, who have acted as perpetrators, accomplices or accessory after the fact in the same offence. In such a

case, the determination of the punishment shall be made in regard to the committed crime according to this law.

Art. 2. It shall constitute terrorist crimes, when they satisfy that which is established in the last article:

- 1. Murder punishable in Article 391; injuries established in Articles 395, 396, 397 and 398; kidnapping and abduction of minors punishable in Articles 141 and 142; delivery of explosive letters or packets of Article 403; arson and havoc, described in Articles 474, 475, 476 and 480, and the infractions against public health of Articles 313 d), 315 and 316, all norms of the Penal Code. Likewise, the derailment contemplated in Articles 105, 106, 107 and 108 of the Railways General Law.*
- 2. Taking possession or making an attempt against a ship, airship, train, bus or other public means of transportation in use, or carrying out acts which put in danger the life, the corporal integrity or health of their passengers or crew members.*
- 3. The attempt against the life or corporal integrity of the head of State or other political, judicial, military, police or religious authority, or internationally protected persons by virtue of their positions.*
- 4. Putting, delivering, activating, throwing, detonating or shooting any kind of bomb or explosive or incendiary devices, weapons or devices of great destructive power or of toxic, corrosive or infectious effects.*
- 5. The illegal association in the case of its goal is the commission of crimes which must be assessed as terrorist according to the preceding numbers and Article 1.*

From the analysis of the two norms the following ideas can be extracted:

1. The terrorist crimes established within anti-terrorism law are based on offences which are already existent in the ordinary criminal legislation, most of them in the Penal Code.
2. In its configuration, the crime of terrorism presents some particularities. Thus, besides the intent (*Vorsatz, Dolo*) required by every single offence, the existence of a subjective element is also necessary. Article 1 demands as a subjective element the production of founded fear among the population or a part of it. According to this regulation there is founded fear when: a) the nature and effects of the employed means allow to conclude such fear; b) evidence exists that there is a premeditated plan of attacking a category or a determined group of people; c) it is committed in order to remove or inhibit authorities' resolutions, or to impose exigencies on them.
3. It is precisely the existence of that subjective element which determines the application of an aggravated punishment. Nevertheless, the determination of a punishment cannot only be based on the existence of such a subjective element. In that regard, the offences are contemplated depending on the objects of legal protection, and then the punishment which corresponds to each crime is determined by the gravity of the punishable conduct. Therefore, the object of legal protection also exercises a relevant role in the justification of the depth of punishments.
4. According to the crimes mentioned in Art. 2, Anti-terrorism Law considers the following objects of legal protection: life, corporal integrity, freedom, public health and property. At first view it can be observed that the Anti-terrorism Law is not proportional in the consideration of the objects of legal protection, since property is not given the same consideration as other objects of legal protection.⁶³ In fact, the original text of Law 18.314 does not consider property as an object of legal protection.⁶⁴ It was neither considered in the preamble of the first Bill of Modification of the Anti-terrorism Law, which established that terrorism consists of "attacking life, physical integrity

or freedom by means which produce or may produce indiscriminate harm, with the purpose of causing fear in a part of or in all the population".⁶⁵ The consideration of objects of legal protection of different magnitude under Anti-terrorism Law violates the principle of proportionality.

Moreover, a crime against property, as for example arson, disrupts the harmony of the legal system. If the Constitution states that terrorism is contrary to human rights, an inferior level norm could not consider as terrorism a conduct which violates an object of legal protection of less gravity, such as property.⁶⁶ Although Art. 19 Nr. 24 of the Chilean Constitution establishes property as a fundamental right, this is plenty protected by the ordinary legislation.⁶⁷

Concerning punishment, the application of the Anti-terrorism Law implies the degree of the sanction. This occurs according to the respective punishment indicated for each specific offence ruled in the ordinary legislation. The increase in a punishment must be made by the judge after considering the punishment *in concrete*, e.g. after determining the respective punishment as if it is a non-terrorist crime (Art. 3 *bis*). For its part, an increase in a punishment will depend on the committed crime according to the rules established on Art. 3. According to *Bustos Ramírez*, this system of determining punishments constitutes a manifestation of the *criminal law of the offender* (*Täterstrafrecht- Derecho penal de autor*),⁶⁸ since an increase of the quantum of the punishment is related to the "character or attitude" of the offender, and not to the fact itself.⁶⁹

3.6 Conclusion

Terrorism has been recognized in the Chilean legislation since 1984 with the enactment of Law 18.314. This law was enacted during the military regime in order to counteract the criminal actions committed by left-oriented terrorist groups. Since the recovery of democracy in Chile in 1990, terrorist activity of political character has decreased, and can be considered nonexistent. For its part, despite a worldwide increase of international terrorism, this has not been reflected in Chile. The judicial investigations in order to confirm activities aimed at the financing of terrorism and the links between Lebanese businessmen and the terrorist group *Hezbollah* did not lead to conclusions and the investigations were finally closed.

The Anti-terrorism Law has been used with regards to the mapuche conflict, although the actions of the conflict do not reach the threshold required by the Anti-terrorism Law. The influence of landowners and businessmen, who have been affected by the criminal activity carried out by members of mapuche communities, over the Chilean authorities is considered the main reason why Anti-terrorism Law has been used against the mapuche activists. The consequence of this abuse of the application of such a law is the stigmatization of the native population, as they have then been considered terrorists by society. The Inter-American Commission on Human Rights has recently submitted before the Inter-American Court on Human Rights a case of application of the Anti-terrorism Law against a group of mapuche activists, under the argument that such application is discriminatory.⁷⁰

The text of Law 18.314 has been subject to a series of modifications, whose goal has been, on the one hand, to adapt the internal legal order according to international treaties ratified by Chile in matters of terrorism and, on the other hand, to put an end to protest manifestations carried out by members of mapuche communities and sympathizers, (e.g. hunger strikes). Nevertheless, the law considers some crimes against property, e.g. arson, as terrorism, even though these crimes have not reached a threshold which would justify the increase in the quantum of punishment for terrorist crimes. In this sense, both the Anti-terrorism Law and the current use of it allows for the conclusion that Chile does not have a constructive model in place in order to face the terrorist phenomenon.

4 Terrorism in Colombia

4.1 Introduction

In Colombia, by virtue of the complex situation resulting from armed conflict for nearly 50 years, one can observe different demonstrations and groups related to terrorism. The internal armed conflict in Colombia can be characterized by different actors and different expressions of violence. In the beginning, the conflict was marked only by a war between armed insurgent groups and armed forces of the Colombian State. At that time, the conflict was understood as an attempt of revolution or Communist guerrilla warfare similar to the processes which were taking place in other Latin American countries. However, the long duration of the guerrilla warfare evolved along with other criminal expressions associated with organized crime. In this respect, both the illegal drug trade and the growing illegal arms trade in the 1980s and 1990s produced a first transformation in the Colombian conflict and its actors. Afterwards, the dehumanization of combatants in the last two decades, which was a new transformation of the Colombian conflict, led to the perpetration of cruel practices as tools to achieve their respective political and military purposes. Consequently, the perpetration of kidnappings (and the taking of hostages),⁷¹ the perpetration of terrorist attacks through the medium of explosive devices and indiscriminate attacks against civilians have been frequent within the conflict.

In general, as a result of this transformation of the Colombian conflict and its actors, terrorist demonstrations in Colombia can be classified historically into two temporal phases: on the one hand, a first phase of domestic terrorism with a solid connection to the violence caused by the drug cartels between 1980 and 1995 (before the terrorist attacks of 9/11); on the other hand, a later phase (ongoing) of redefining the actors involved in the conflict as terrorist organizations, this as a result of both its atrocities and the global concerns about international terrorism (since the terrorist attacks of 9/11).

The first phase as mentioned above refers to a series of bombings by drug cartels in a war between these cartels and also between these criminal organizations against the Colombian State. These acts were known as “narcoterrorism” in the late 1980s and in the early 1990s.⁷² Generally speaking, narcoterrorism was a series of terrorist attacks with a great impact, where the principal purpose was to generate fear in the State and the society which were taking measures against the illegal drug trade. Among the most significant terrorist incidents were: the bombing of a major newspaper in Colombia *El Espectador* (September 2nd 1989), the bombing of *Avianca* Flight 203, causing 110 deaths (November 27th 1989) and the *DAS* Building bombing with 104 people reported dead and approximately 600 injured (December 6th 1989). In the same way, there were a huge number of assassinations and targeted attacks against presidential candidates, ministers, judges and policemen with the purpose of breeding fear and terror among the population. These terrorist acts were ordered primarily by *Pablo Escobar*, who at that time was the leader of a major drug cartel in Colombia. These drug cartels made use of both paramilitaries⁷³ and guerrillas⁷⁴ for the perpetration of other terrorist incidents. Because of this delicate situation of security and public order, Colombia was ruled through a State of Siege for many years.⁷⁵ Through the declaration of a State of Siege, the government adopted many effective measures against narcoterrorism, however, the constitutional rights of the citizens were systematically violated. In the early 1990s, within the Penal Code and the Code of Penal Procedure, too drastic of reforms were implemented as a result of these serious incidents of terrorism.⁷⁶ The main counter-narcoterrorism emergency measure was named *Statute for the Defense of Justice*⁷⁷ and involved a consequent reform of the criminal justice system.⁷⁸ These counter-terrorism measures created a *Public Order Jurisdiction* (*Jurisdicción de Orden Público*), where the identities of judges, prosecutors and sometimes even witnesses were reserved.⁷⁹

The second phase mentioned above refers to the current redefinition of the conducts developed by the actors of the Colombian conflict in the context of the global fight against terrorism. Not only the guerrillas, but also the paramilitaries have perpetrated acts considered to be terrorism several times. Both criminal organizations have systematically executed multiple crimes against humanity, most of them with the purpose of building fear and terror among the civilian population and authorities. One can say that the illegal armed groups have learned “the strategies to sow the fear and terror” of narcoterrorism. In this aspect, one of the most important terrorist incidents in recent history was the car bombing at the *Nogal Club* in Bogota, causing 36 deaths and over 200 injured (February 7th 2003). For this reason, in academic and political contexts, the term “terrorist organization” is increasingly used to refer to the illegal armed groups of the Colombian internal conflict. For the Colombian government guerrillas, the *FARC-EP* and the *ELN*,⁸⁰ as well as the paramilitary organization, *AUC*,⁸¹ are considered as terrorist organizations. This status of terrorist organizations has transformed the classical official view of the conflict. With this in mind, the official policy of the Colombian government has changed its military and political language surrounding the armed conflict. So one could say that in Colombia there is not an internal armed conflict, but there is an ongoing “permanent terrorist threat”.⁸² Furthermore, the constant cooperation between Colombia, the United States and the European Union in the war against terrorism and organized crime has allowed for the *FARC*, the *ELN* and the *AUC* to constantly be on their official list as terrorist organizations.⁸³

4.2 Concept of terrorism in the Colombian criminal and criminological literature

In Colombia there is research and publications concerning terrorism; although none if only the political and military significance of the issue is considered. Most of them refer to concepts developed by important security agencies,⁸⁴ international summits and decisions of the Colombian courts or of the Government.⁸⁵ One of the few authors who has analyzed the concept of terrorism in Colombia is *Rafael Nieto*, the ex-judge of the International Criminal Tribunal for the former Yugoslavia. *Nieto* points out that an important feature of the conceptualization of terrorism is its particular aim, which is to terrorize the population with the purpose of achieving a specific goal.⁸⁶ Of course, he explains that there are several goals (political, religious, etc.) which can vary according to the type of terrorism; therefore he makes a difference between international terrorism and domestic terrorism.⁸⁷ Likewise, domestic terrorism is divided between spontaneous terrorism and terrorism perpetrated by rebels. According to *Nieto's* approach, the Colombian illegal armed groups fit into this last category of terrorism.⁸⁸ In contrast, in the framework of a joint legal and political vision, *Alberto Ramos* not only puts forward the concept of “political terrorism” but also “terrorism of the State”. In this aspect, he points out that terrorism and terror must be differentiated between. Terror comes from top down and refers specifically to the “terrorism of State”. Instead, real terrorism comes from the bottom up, from the public to the State. Therefore, in his concept, terrorism is described as an excessive use of violence, with political purposes, from certain sectors of the public against the State.⁸⁹

Finally, another important element of the analysis of the concept of terrorism, with regard to the national perspective, is the official position that the Colombian State has sustained in international discussions and summits about the issue. In this respect, the Colombian government has manifested its definition of terrorism in the following way:

The acts, methods and practices of terrorists are criminal acts that are unjustifiable and contrary to the purposes and principles of the United Nations. They are a threat to the peaceful and civilized co-existence of our peoples, to the stability of our institutions and to global peace and security. [...] Colombia is of the

view that international terrorism differs from other serious crimes because its aim is to sow terror among the population and to destabilize or force a government or an international organization to take or refrain from taking some action.[...] We must once and for all isolate terrorism from its political context in order to be able to combat it for what it is, namely, a grave crime against the lives of innocent persons.⁹⁰

4.3 Anti-terrorist national legislation

The valid national legislation on terrorism can be summarized into five laws which articulate the various international instruments on terrorism ratified by Colombia.⁹¹ The Penal Code (Law 599)⁹² is the main law of the juridical national framework on terrorism, because the Code contains the description of the conducts and offences on this issue. In the same way, there are four other laws covering various measures against terrorism, concerning both the judicial aspect for the punishment of terrorist acts and the administrative control of the financing of terrorism.

In relation to the measures against the financing of terrorism, there are two special laws. On the one hand, Law 526⁹³ has created a system of financial control on this issue. On the other hand, Law 1.121⁹⁴ has created various measures which reinforce the prevention and detection of financial transactions related to the financing of terrorist organizations. The later law increased the number of criminal conducts and elevated punishment related to the management and financing of terrorism, according to the anti-terrorist international covenants for the economic decline of terrorist organizations.⁹⁵ In regards to the other two laws, Law 1.142⁹⁶ and Law 733,⁹⁷ both are legal reforms of the Penal Code and the Code of Penal Procedure in order to prevent and punish terrorist acts which endanger the public security. Law 733 of 2002 especially introduced several measures against terrorism. This law was a response to the kidnappings perpetrated by the guerrilla groups. The enactment of this law as a criminal emergency measure coincided with the first counter-terrorism measures of different countries in the months following 9/11. This law increased the punishment for crimes of kidnapping, extortion, terrorism and the illicit association for the perpetration of crimes of terrorism.

4.3.1 The conducts of terrorism established in Colombia

The Penal Code that – as already mentioned above – contains the description of terrorist conducts. In Colombia there are a lot of offences in connection with terrorism, although there is no special law that expressly manifests those offences as in other countries. Therefore, it is necessary to make a comprehensive analysis of the Colombian Penal Code in order to classify the crimes of terrorism. In general, the measures against terrorism are presented in different articles, which can be classified into three groups.

Firstly, one can distinguish main conducts directly related to terrorism, according to the global strategies of anti-terrorism. These are the following offences: Terrorism,⁹⁸ Terrorist Acts,⁹⁹ Financing of Terrorism and Management of Financial Resources related to Terrorist Acts¹⁰⁰ and Hijacking of Aircraft, Ships or any Means of Public Transportation.¹⁰¹ Within these terrorist offences, one can point out that the crime of “Terrorism” is the most important. This conduct is described in the Penal Code in following way: *“Any person who provokes or maintains a situation of terror in the population or a sector of it, through acts that endanger the life, physical integrity or freedom of persons or endanger buildings or means for the fluid conveyance, using means capable of causing havoc [...]”*. Nevertheless, there is another conduct of terrorism in this same offence with regard to mild acts of terrorism. In this aspect, if the situation of terror is caused through a telephone, video format or anonymous letter, the punishment shall be a term of imprisonment only between 32 and 90 months. The crime of terrorism, in both forms, is punished without prejudice of the punishment for other crimes, which are caused for this same conduct.¹⁰² Besides, the crime of terrorism has five aggravating factors; consequently

the punishment shall be a term of imprisonment between 192 and 360 months. Those five circumstances, aggravating factors, are the following: Firstly, when in the perpetration of the crime there is an accomplice who is a minor (under 18 years old); secondly, when the attempt is against facilities of the Armed Forces, an embassy or a consulate; thirdly, when the conduct is perpetrated against Democratic events; fourthly, when the perpetrator or the accomplice is an employee of the Armed Forces; fifthly, when the attempt is against an internationally protected person, a diplomatic or against buildings of friendly countries.¹⁰³

In addition, there is another conduct related to the crime of terrorism, but this conduct is focused to restrict the “acts committed during the course of a combat within an armed conflict” (*actos de combate*) related to International Humanitarian Law. In this regard, the crime of “Terrorist Acts” is very appealing, because it was created to severely punish conducts considered as terrorism, which are perpetrated within an armed conflict. Therefore, this offence is included in the chapter of “Crimes against People protected by International Humanitarian Law” of the Colombian Penal Code.¹⁰⁴ Specifically, the norm, which describes this conduct, points out: “*Any person who, during the course of an armed conflict, undertakes or orders indiscriminate or excessive acts, or targets the civilian population for attacks, reprisals, violence or threats for the main purpose of terrorizing them [...]*”.¹⁰⁵ In relation to the offence of the financial suppression of terrorist organizations, the Penal Code includes this crime with the description of several conducts (acts) within the “Financing of Terrorism and Management of Financial Resources related to Terrorist Acts”: “*Any person who, directly or indirectly, provides, collects, delivers, receives, manages, supplies, custodies funds, properties or financial resources, or makes any other act, which promotes, organizes, supports or finances [...] foreign or domestic terrorist organizations, terrorists or terrorist acts [...]*”. Finally, there is another offence that can also be interpreted as a major crime of terrorism within this first group. This offence is the “Hijacking of Aircraft, Ships or any Means of Public Transportation”, because the inclusion and description of this crime into the Colombian Penal Code is due to the international conventions against terrorism, and was ratified by Colombia. The article about this conduct states: “*any person who, through violence, threats or deceptive maneuvers, takes over a ship, aircraft or any other means of public transportation or changes its itinerary or takes control thereof[...]*”.¹⁰⁶

Secondly, a series of ancillary offences related to the conducts for the preparation of terrorist acts exists. Besides the main offences of terrorism, the Colombian Penal Code contains other conducts related to the preparation of terrorist acts and the creation of terrorist organizations. These conducts are incorporated in a chapter about the “Terrorism, Threats and Instigation”, whose aim is to protect public safety as an object of legal protection.¹⁰⁷ Within these offences, one can highlight the “Illicit Association for the Perpetration of Crimes of Terrorism”,¹⁰⁸ which is the crime through which the members of terrorist organizations are currently prosecuted in Colombia. On the whole, the other ancillary offences which are related to terrorism can be summarized as follows: Training for the Perpetration of Terrorist Acts,¹⁰⁹ Threats with Intention to Cause Terror¹¹⁰ and Instigation of Military Crimes for the Perpetration of Terrorist Acts.¹¹¹

Thirdly, terrorism plays an important role as an aggravating factor, of the punishment, of other crimes. In this respect, there are conducts which are punished as crimes of terrorism, when they are perpetrated within a terrorist act or with a purpose eminently terrorist.¹¹² The Colombian Penal Code includes fifteen of these conducts which are common offences, but which shall be considered as crimes of terrorism, if such crimes are committed with terrorist purposes.¹¹³ In this regard, terrorism as an aggravating factor of other conducts can be outlined as follows: Homicide with Terrorist Purposes or in the Perpetration of Terrorist Acts,¹¹⁴ Kidnapping with Terrorist Purposes,¹¹⁵ Illegal Coercion with Terrorist Purposes,¹¹⁶ Illegal Coercion for the Perpetration of Crimes, when the Conduct Seeks the Entry of People in Terrorist Organizations,¹¹⁷ Illicit Use of Transmitters or Receivers with Terrorist Purposes,¹¹⁸ Extortion for the Perpetration of Terrorist Acts¹¹⁹

Environmental Contamination with Terrorist Purpose,¹²⁰ Instigation to Crime with Terrorist Purposes,¹²¹ Damage to Communications Services and Infrastructure of Energy and Combustibles with Terrorist Purposes,¹²² Use of Dangerous Substances or Objects with Terrorist Purposes,¹²³ Poisoning of Water with Terrorist Purposes,¹²⁴ Alteration of Food, Medical or Prophylactic Material with Terrorist Purposes,¹²⁵ Usurpation and Abuse of Public Offices with Terrorist Purposes,¹²⁶ Perverting the Course of Justice in Terrorism Cases¹²⁷ and Favoring Escape of Prisoners of Terrorism.¹²⁸

4.3.2 The Anti-terrorist Statute

One of the most controversial counter-terrorism measures, with regard to the global strategies of anti-terrorism after 9/11, was the Colombian Anti-terrorist Statute. This statute was the main strategy against domestic and international terrorism which has been discussed in recent years in Colombia. The Anti-terrorist Statute wanted to confer judicial and police powers to the members of the armed forces. With these extraordinary powers, they could arrest suspects for up to 36 hours, interrogate people, spy on private communications, search homes, etc., and all these without a legal warrant or judicial oversight.¹²⁹

This anti-terrorism project consisted of a constitutional amendment (2003) and of a regulatory law (2004), which wanted to restrict several constitutional rights of the citizens with the aim of effectively combating terrorism in Colombia.¹³⁰ The constitutional amendment was passed by Congress through the *Acto Legislativo 02* (December 18th 2003).¹³¹ However, this amendment was later declared unconstitutional by the Constitutional Court through the Decision C-816/2004 (August 30th 2004).¹³² Therefore, given that the *Acto Legislativo 02* was rejected, its regulatory Anti-terrorism Law¹³³ had neither reached validity.¹³⁴

4.4 Conclusion

In Colombia there have been terrorist incidents both in the past and in the present. However, it can be considered a domestic terrorism which has had international relevance because the terrorist acts have been perpetrated within a very prolonged armed conflict. Particular elements of the Colombian conflict have facilitated the existence of terrorist organizations. In fact, the organized crime related to drug trafficking in all its phases and the “political violence” of more than half a century are two inseparable components of the terrorism in Colombia. Nevertheless, the Colombian government has often taken a set of measures to prevent and counteract the effects of the terrorist organizations and of their acts. Colombia has a serious commitment in the fight against terrorism. At the international level, almost all international conventions against terrorism have been ratified. In addition, Colombia is currently a non-permanent member of the United Nations Security Council and has defended the ongoing fight against terrorism in this council and in various international summits. Internally, in Colombia there is a very solid legal framework against terrorism. In this regard, the large number of offences under the Penal Code is an indicator of legal measures against terrorism. Likewise, in the political and military aspects, the Colombian government has a stable public policy in place for the suppression of the terrorist organizations and for the prevention of terrorist attacks.

In sum, in the Colombian case, one can see a parallel and constant development between terrorism and counter-terrorism measures. Colombian law has tried to adjust to the several transformations of its internal armed conflicts and the respective changes in the behavior of terrorists. However, throughout the political and military fight against terrorism there have sometimes been decisions made which are considered detrimental to human rights. Fortunately, some institutions of the State, as in the case of the Constitutional Court in relation to the Anti-terrorist Statute, have achieved that the anti-terrorism measures respect human rights and constitutional principles. In this regard, the main commitment of the Colombian State in the global fight against terrorism is

to continue preventing terrorist acts and suppressing terrorist organizations while respecting the human rights of both terrorists and non-terrorists. Thus, the State guarantees that it is not repeating the atrocities perpetrated by the terrorists who it is trying to punish.

5 The anti-terrorist international instruments in Argentina, Chile and Colombia

The most important legal document at the regional level is the “Inter-American Convention against Terrorism” of 2002¹³⁵, adopted by the State Parties of the Organization of American States (OAS).¹³⁶ The Convention starts by recognizing the threat that terrorism poses to democratic values, as well as to international peace and security, and seeks a strengthening hemispheric cooperation for the prevention, combating, and elimination of terrorism. The Convention is based on previous regional meetings and documents,¹³⁷ and establishes an integral framework of principles and measures related to the juridical aspects of terrorism, cooperation between States, and fundamental rights which cannot be ignored by national legislations in their anti-terrorism laws and proceedings.

The Inter-American Convention explicitly points out the obligatory respect of Human Rights in the context of anti-terrorism measures. In its *Article 15* it is established that:

Human rights:

1. *The measures carried out by the state parties under this Convention shall take place with full respect for the rule of law, human rights, and fundamental freedoms.*
2. *Nothing in this Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law.*
3. *Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law.*

After the adoption of the *Inter-American Convention against Terrorism*, in 2002, the *Inter-American Commission on Human Rights* issued a report on Terrorism and Human Rights.¹³⁸ The Commission undertakes a “rights-based approach” and focuses on the scope and potential limitation of some particular rights,¹³⁹ and stresses that it is necessary to follow the doctrines of necessity, proportionality and non-discrimination.¹⁴⁰ The Report recalls the 1906 resolution of the General Assembly of the Organization of American States, which states that:

1. *To reiterate that the fight against terrorism must be waged with full respect for the law, human rights, and democratic institutions, so as to preserve the rule of law, freedoms, and democratic values in the Hemisphere.*
2. *To reaffirm the duty of the member states to ensure that all measures taken to combat terrorism are in keeping with obligations under international law.*¹⁴¹

Later in 2007, and recalling the above mentioned documents as well as Resolutions 2035,¹⁴² 2143¹⁴³ and 2238¹⁴⁴ of the General Assembly of the OAS, through Res. 2271 the General Assembly more clearly repeats the limits and conditions which must be respected in anti-terrorism campaigns. Thus, in the document *Protecting Human Rights and Fundamental Freedoms While Countering Terrorism*,¹⁴⁵ the Assembly resolved in its first articles:

1. *To reaffirm that the fight against terrorism must be waged with full respect for the law, including compliance with due process and human rights comprised of civil, political, economic, social, and cultural rights, as well as for democratic institutions, so as to preserve the rule of law and democratic freedoms and values in the Hemisphere.*
2. *To reaffirm that all member states have a duty to ensure that all measures adopted to combat terrorism are in compliance with their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.*
3. *To urge all member states, with a view to fulfilling the commitments undertaken in this resolution, to consider signing and ratifying, ratifying, or acceding to, as the case may be and as soon as possible, the Inter-American Convention against Terrorism and the American Convention on Human Rights; and to urge the states parties to take appropriate steps to implement the provisions of those treaties.*
4. *To request the Inter-American Commission on Human Rights (IACHR) to continue promoting respect for and the defense of human rights and facilitating efforts by member states to comply appropriately with their international human rights commitments when developing and executing counterterrorist measures, including the rights of persons who might be at a disadvantage, subject to discrimination, or at risk as a result of terrorist violence or counterterrorist initiatives, and to report to the Permanent Council on the advisability of conducting a follow-up study.*

The regional conventions in matters of terrorism ratified by Argentina, Chile and Colombia can be summarized as follows:

Regional Convention and Incorporation into National Law	Argentinian Law	Chilean Law	Colombian Law
Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (1971)	-	-	Ley 195 12/07/1995
Inter-American Convention Against Terrorism (2002)	Ley 26.023 18/04/2005	Decreto 263 10/02/2005	Ley 1.108 07/12/2007

On the whole, within the international framework against terrorism, Argentina, Chile and Colombia are part of the following conventions:

International Convention and Incorporation into National Law	Argentinian Law	Chilean Law	Colombian Law
Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)	Ley 18.730 07/08/1970	Decreto 711 17/12/1974	Ley 14 01/02/1973
Convention for the Suppression of Unlawful Seizure of Aircraft (1970)	Ley 19.793 11/09/1972	Decreto 147 19/04/1972	Ley 14 01/02/1972
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)	Ley 20.411 30/05/1973	Decreto 519 09/09/1989	Ley 4 15/10/1974
Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, Including Diplomatic Agents (1973)	Ley 22.509 21/10/1981	Decreto-Ley 1.593 10/12/1976	Ley 169 09/12/1994
International Convention against the Taking of Hostages (1979)	Ley 23.956 07/08/1991	Decreto 989 08/01/1982	Ley 837 18/07/2003
Convention on the Physical Protection of Nuclear Material (1980)	Ley 23.620 02/11/1988	Decreto 1.121 17/10/1994	Ley 728 30/12/2001
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention of 1971 (1988)	Ley 23.915 02/04/1991	Decreto 519 09/09/1989	Ley 764 05/08/2002
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)	Ley 24.209 24/06/1993	Decreto 793 08/08/1994	-
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988)	Ley 25.771 15/09/2003	Decreto 793 08/08/1994	-
Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)	Ley 24.722 19/11/1996	Decreto 1.301 31/10/2000	Ley 831 14/07/2003
International Convention for the Suppression of Terrorist Bombings (1997)	Ley 25.762 11/08/2003	Decreto 519 06/02/2002	Ley 804 02/04/2003
International Convention for the Suppression of the Financing of Terrorism (1999)	Ley 26.024 19/04/2005	Decreto 163 13/09/2002	Ley 808 28/05/2003
International Convention for the Suppression of Acts of Nuclear Terrorism (2005)	-	Decreto 252 30/04/2011	-
Amendment to the Convention on the Physical Protection of Nuclear Material (2005)	-	-	-
Protocol to the Convention of 1988 (2005)	-	-	-
Protocol to the Protocol of 1988 (2005)	-	-	-

6 Comparative conclusions and proposal

In Latin America, anti-terrorism legislation follows international developments with regard to policies and measures aimed at preventing and sanctioning terrorist acts. This means that national legislations often do not actually and solely focus on the internal socio-political reality of each country. Quite the contrary, the national normative order gives in to the pressure of international and sometimes unilateral interests, which are not closely related to the necessities of the country. This can be displayed by a closer examining the already mentioned Laws on the Financing of Terrorism in Argentina, Chile and Colombia. Thus, we are pointing out our disagreement with all of the reforms which are inspired by external legislation or which obey to political demands from powerful countries or international organizations (*e.g.* U.S.A., FATF, etc.), when those amendments do not really fit into the internal context.¹⁴⁶

However, this criticism does not mean that States are not obliged to ratify international instruments for the protection of the human rights of suspects or for international cooperation in the context of the prevention and sanction of terrorism. We have seen how Argentina, Chile and Colombia have ratified almost all instruments and that they were even very active in the preparation of them. Further, each State shall not only ratify, but concretely contribute to an effective implementation of these instruments and to a correct application of them.

If the legislation on terrorism does not observe human rights and constitutional principles, the risk of violating the rights of suspects and of condemned people always exists, and in such a way, the whole rule of law and the concept of an illustrated penal law is broken down. In these cases, the suspects are not seen any more as citizens or as social individuals, but as enemies or even as non-persons. For about ten years now, discussions concerning the relationship between war and criminal law have become frequent. It has been even explicitly formulated, theorized and proposed by the German scholar *Günther Jakobs*, who is in favor of an “enemy criminal law” or an “enemy penalty” (*Feindstrafrecht*).¹⁴⁷ According to this approach there are some individuals who cannot be seen as “persons”, as they are not citizens anymore and must be excluded from society because they represent a social menace. Criminal law should apply different rules to these enemies such as the forward displacement of punishability without reducing punishment in spite of this displacement; rights and guarantees are reduced or even denied, and the criminal legislation becomes war legislation. These individuals do not have to be punished by the criminal system, but to be fought against as enemies. The proposal of *Jakobs* is, according to him, a real, and not ideal, way to deal with the limits of law. This reality can be observed within the government and the legislation, which are currently acting according to these ideas. Good examples of this problematic trend are how Chile is treating the mapuche people in the framing of the mapuche conflict, or how Colombia is dealing with terrorists and presumed terrorists among the “common” public.

As we have seen, each country has a different idea of what terrorism is. Of course there are some common points between the different concepts of “acts of terrorism”, “terrorist organization”, etc., but there is not a unique definition. Further, it seems not to be useful to develop such a definition of terrorism at the international level since it would not fit into the concrete national realities of the different States.¹⁴⁸ We rather suggest to not speak of terrorism as a crime, but of terrorism as a method in cases of grave offences committed in a specific way. The idea of terrorism as a method has been already suggested, for example, in the Chilean Parliament while discussing a bill of law for the amendment of the Anti-terrorism Law. In addition, this possibility has been evaluated within the literature on terrorism.¹⁴⁹ A list of features of this method is not able to be proposed yet, but we emphatically claim that research and theoretical analysis shall advance in this direction.

As a consequence of this method-perspective, the implementation and application of anti-terrorism legislation should not be addressed to “terrorists”, as a specific category of person with a special label, but to individuals who are suspected to have committed offences in a very specific way; the legislation would

then not be a “war” or a “fighting” legislation, but principled legislation orientated to prevent the use of this method. These differences are not only terminological, but also conceptual. This means that the notion of “terrorism” would be understood from a complete different perspective. The individuals would not be considered as enemies; the legislations would probably be in agreement with the rule of law and human rights. To this respect, it is finally worth mentioning that the role of tribunals is crucial in order to channel the right application of law. The Colombian Constitutional Court, for example, has declared an anti-terrorism law as unconstitutional because it violated constitutional principles; similarly, the Inter-American Court of Human Rights has condemned Peru because of its anti-terrorism legislation, which did not respect due process rules.¹⁵⁰

If the legislation is in agreement with the rule of law and respectful of human rights, and if judges assume a high responsibility for the correct application and control of this legislation, we have no doubt that in the future anti-terrorism normative will be more and more constructive.

References

- AA.VV. (2006). *Memorias del Seminario internacional sobre desaparición forzada, Derecho penal y Procesos restaurativos: Dilema y desafíos de la verdad, la justicia y la reparación en el contexto colombiano*, Bogotá: Fundación Social.
- Amnistía Internacional. (1983). *Desapariciones*, Barcelona: Editorial Fundamentos.
- Anitua, Gabriel I. (2007). La legislación penal en la dinámica de la guerra contra el “mal” o el “enemigo”. In: Böhm, M. Laura; Gutiérrez, Mariano H. (ed.). *Políticas de Seguridad. Peligros y desafíos para la criminología del nuevo siglo*. Buenos Aires: Editores del Puerto.
- Anzorena, Oscar R. (1988). *Tiempo de violencia y utopía (1966-1976)*. Buenos Aires: Contrapunto.
- Aponte, Alejandro D. (2007). Civiles y conflicto armado en la jurisprudencia de la Sala Penal de la Corte Suprema de Justicia. In: *Revista de Derecho Penal y Criminología*, Madrid: UNED, n. 19, p. 79-117.
- Bailone, Matías. (2007). *Conference at the Seminario de Derecho Penal y Procesal Penal*. Mendoza. Available at <http://cuestionpenal.blogspot.com/2007_06_01_archive.html>.
- Bialostozky, Noah. (2007). The Misuse of Terrorism Prosecution in Chile: The Need for Discrete Consideration of Minority and Indigenous Group treatment of Rule of Law Analyses. *Northwestern Journal of International Human Rights*, v. 6, n. 1, p. 81-103.
- Böhm, María Laura. (2007). Desvíos del derecho penal. In: *Clarín Newspaper*, 15/09/2007.
- Boorstein, Edward. (1977). *Allende's Chile: an inside view*. New York: International Publishers Co. (Printing 2006).
- Buompadre, Jorge Eduardo. (2009). *Tratado de Derecho Penal*. Parte Especial. Buenos Aires: Astrea.
- Bustos Ramírez, Juan. (2004). In-seguridad y Lucha contra el terrorismo. In: Losano/Muñoz Conde (eds.). *El Derecho ante la Globalización y el Terrorismo. Actas del Coloquio Internacional Humboldt*. Montevideo, abril 2003. Valencia: Tirant lo Blanch. p. 403-410.
- Buzan, B., Waeber, O. and De Wilde, J. (2006), *Security: a new framework for analysis*, Boulder, CO: Lynne Rienner, 1998; C.A.S.E. Collective, *Critical Approaches to Security in Europe: A Networked Manifesto*. In: *Security Dialogue*, v. 37, n. 4, p. 443-487.
- Colectivo de Investigación y Acción Jurídica – CIAJ. (2007). Report: Terrorismo en Argentina. La Ley 26.268 – Imposición de una reforma penal polémica y silenciosa. Available at <http://www.ciaj.com.ar/images/pdf/consideraciones%20finales%20de%20la%20ley%20Antiterroristas%2026268%20_CIAJ_.pdf>.
- Conte, Alex. (2010). Counter-terrorism and human rights. In: Sarah Joseph/Adam McBeth (ed.). *Research Handbook on International Human Rights Law*. Cheltenham/Northampton: Edward Elgar, p. 512-540.
- Cragin, Kim/Hoffman, Bruce (2003), *Arms Trafficking and Colombia*. Pittsburgh, RAND National Defense Research Institute.
- D'Alessio, Andrés José. (2009). *Código Penal anotado y comentado*. Buenos Aires: La Ley.
- Dahrendorf, Ralf. (2004). Terror versus libertad. In: *El Universal*, 24 May.
- Díaz Bessone, Ramón G. (1988). *Guerra revolucionaria en la Argentina (1959-1978)*. Buenos Aires: Círculo Militar.
- Gallardo, Helio. (2010). *El Terrorismo desde América Latina. Enciclopedia Latinoamericana de Derechos Humanos*. Brasil. Available at <http://heliogallardo-americalatina.info/index.php?option=com_content&task=view&id=201&Itemid=1>.

- Greenberg, Nathaniel. (2010). *AMIA and the Triple Frontier in Argentine and American Discourse on Terrorism*. In: *A Contracorriente*, v. 8, n. 1, p. 61-93.
- Hanson, Stephanie. (2009). FARC, ELN: Colombia's Left-Wing Guerrillas. In: *Council on Foreign Relations Website*. Available at <<http://www.cfr.org/colombia/farc-eln-colombias-left-wing-guerrillas/p9272#p5>> (Stand 28/07/2011).
- HRW, Undue Process: Terrorism Trials, Military Courts, and the Mapuche in Southern Chile. *HRW & Indigenous Peoples' Rights Watch*, v. 16, n. 5, October 2004. Available at <<http://www.hrw.org/sites/default/files/reports/chile1004.pdf>> (Stand 27/07/2011).
- Hudson, Rex. (2003). Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America, Report Prepared by the Federal Research Division, Library of Congress under an Interagency Agreement with the Crime and Narcotics Center Director of Central Intelligence. (Revised December 2010). Available at <http://www.loc.gov/rr/frd/pdf-files/TerrOrgCrime_TBA.pdf> (Stand 21/07/2011).
- Iribarren, Pablo. (2011). *Delitos contra el Orden Público*. Río Negro: Universidad Nacional del Comahue.
- Kretschmer, Daniel. (2002). *Das Scheitern der Unidad Popular in Chile. Darstellung und Analyse der ausschlaggebenden Faktoren*. München: Grin.
- Martínez Vargas, Juan. (2006). Terrorismo: acercamiento conceptual y breve análisis del tratamiento jurisprudencial de la Corte Constitucional colombiana en el marco del derecho internacional público. In: Cavellier/Abello (ed.). *Derecho internacional contemporáneo: lo público, lo privado, los derechos humanos*. Bogotá: Universidad del Rosario. p. 333-351.
- Marulanda, John. (2006). El delito de terrorismo en la región andina (aproximaciones). In: *Elementos de Juicio*, Bogotá: JGHG Publicaciones, n. 3, p. 223-230.
- Marulanda, John. (2007). *Terrorismo en Colombia ¿un delito inútil?* Bogotá: JGHG Publicaciones.
- Millaleo Hernández, Salvador A. (2008). Landesbericht Chile. In: A. Eser/U. Sieber/J. Arnold (ed.). *Strafrecht in Reaktion auf Systemunrecht. Vergleichende Einblicke in Transitionsprozesse*. Berlin: Duncker & Humblot. Vol. Part 11 (Chile – Uruguay). p. 23-447.
- Murphy, Edward. (2006). *A Home of One's Own: Finding a Place in the Fractured Landscapes of Urban Chile*. Michigan: University of Michigan.
- Nagle, Luz Estella. (2005). Global Terrorism in Our Own Backyard: Colombia's Legal War against Illegal Armed Groups. In: *Transnational Law & Contemporary Problems*, v. 15, n. 5, p. 6-86.
- Nieto Navia, Rafael. (2008). ¿Hay o no hay conflicto armado en Colombia? In: *ACDI*, Bogotá: Universidad del Rosario, n. 1, p. 139-159.
- Oloqui, José Juan de. (2003). Reflexiones en torno al terrorismo. In: J.J. de Oloqui (ed.). *Problemas jurídicos y políticos del terrorismo*. México, DF: Universidad Nacional Autónoma de México. p. 1-30.
- Orejuela Botero Nicolás. (2011). *Los estados de excepción en Colombia*. Cali: USABU.
- Orozco Abad, Iván. (2006). *Combatientes, rebeldes y terroristas: guerra y derecho en Colombia*. Bogotá: Temis.
- Palacios, Marco. (1995). *Entre la legitimidad y la violencia. Colombia 1875-1994*. Bogotá: Norma.
- Privacy International. (2004). Terrorism Profile: Colombia. In: *Privacy International Website*. Available at <<http://www.privacyinternational.org/article/terrorism-profile-colombia>>. (Stand 28/07/2011).
- Ramos, Alberto. (2008). Terrorismo internacional y nuevo orden mundial. In: Ramos/Cárdenas. *Terrorismo, globalización y Estado nación*. Cali: Universidad Libre, p. 11-100.
- Report on activities during the first five years of the declaration on security in the Americas (DSA) in combating traditional threats and new threats to security, Permanent Council of Organization of American States, Committee on Hemispheric Security, OEA/Ser.G, CP/CSH-1085/09, 13/09/2009.
- Roxin, Claus. (2006). *Strafrecht, Allgemeiner Teil*. 4. ed. München: C.H. Beck. v. 1.
- Sánchez Arce, Rodrigo. (2004). Derechos Humanos y Terrorismo. ¿Es posible responder al terrorismo con la paz y los derechos humanos? In: *7º certamen de ensayo sobre Derechos Humanos, Derechos Humanos y Terrorismo*. Toluca: Comisión de Derechos Humanos del Estado de México. p. 7-27.
- Sancho, Roberto. (2003). *Guerrilla y terrorismo en Colombia y España: Eln y Eta*. Bucaramanga: UNAB.
- Schmid, Alex/Jongman, Albert. (2005). *Political terrorism: A new guide to actors, authors, concepts, data bases, theories and literature*. New Jersey: Transaction Publishers.

- Sedano, Fernanda/Galera, Julieta. (2004). Criminalización de la Protesta Social: El Estado Chileno y la Utilización de la Figura Jurídica de Terrorismo contra el Pueblo Mapuche en el Marco de una Disputa Territorial. In: *7º certamen de ensayo sobre Derechos Humanos, Derechos Humanos y Terrorismo*, Toluca: Comisión de Derechos Humanos del Estado de México. p. 49-69.
- Sessoms, Allen L. (2003). Terrorism after 9/11/01: One American's Perspective. In: J.J. de Olloqui (ed.). *Problemas jurídicos y políticos del terrorismo*. México, DF: Universidad Nacional Autónoma de México. p. 335-346.
- Sueiro, Carlos Christian/Birriel Bibiana. (2006). El terrorismo y sus dos discursos jurídicos: Del Derecho penal del enemigo al autor por convicción. Publicado en el Suplemento de Derecho Penal y Procesal Penal de *Editorial La Ley*, p. 1-12, Viernes 29 de diciembre de 2006.
- Sueiro, Carlos Christian/Birriel, Bibiana. (2007). La banalidad del Derecho penal posmoderno. Sobre los tipos penales de Asociación ilícita terrorista y financiación del terrorismo. Publicado en el Suplemento de Derecho Penal y Procesal Penal de *Editorial La Ley*, p. 1-14, Jueves 27 de diciembre de 2007.
- Tarapués Sandino, Diego. (2008). Diferencias ideológicas y aumento del narcotráfico: la posición ambivalente de Venezuela. In: Pastrana/Wieland/Vargas (ed.). *Vecindario agitado. Colombia y Venezuela: entre la hermandad y la conflictividad*. Bogotá: Konrad-Adenauer Stiftung, p. 137-173.
- United States Department of State Publication Office of the Coordinator for Counterterrorism, Country Reports on Terrorism 2007, Released April 2008. Available at <<http://www.state.gov/documents/organization/105904.pdf>> (Stand 27/07/2011).
- Valdés, Juan Gabriel (2001). Statement, Defining Terrorism & its Root Causes: references to the definition of terrorism and the root causes as discussed in the UNGA debate "Measures to eliminate international terrorism", October 1-5, 2001, United Nations, New York. Available at <<http://www.reachingcriticalwill.org/political/1com/terror.html>> (Stand 28/07/2011).
- Valdivieso, Alfonso. (2001). Defining Terrorism & its Root Causes: Colombian Statement discussed in the UNGA debate "Measures to eliminate international terrorism", New York, United Nations, October 2nd 2001. Available at <<http://www.reachingcriticalwill.org/political/1com/terror.html>> (Stand 28/07/2011).
- Villar, Oliver. (2009). Inside the "Crystal Triangle": The US "War on Narcoterrorism" in Colombia. In: *International Review of Business Research Papers*, v. 5, n. 3, p. 90-99.
- Villegas, Myrna. (2006). Los delitos de terrorismo en el Anteproyecto de Código Penal. *Polít. crim.*, a. 3, n. 2, p. 1-31.

Notes

- ¹ Paper based on the report submitted to the "Third Session of the International Forum on Crime and Criminal Law in the Global Era: Basic Trend of Worldwide Terrorism and Countermeasures in the Post-Bin Laden Era", Beijing, October 2011.
- ² Buzan/Waever/de Wilde, 2006: 455.
- ³ Dahrendorf, 2004: A24.
- ⁴ Sánchez Arce, 2004: 14 et seq.
- ⁵ South, Central and North American countries where the official languages are Spanish or Portuguese.
- ⁶ On the distinction between Terror of State (*Terror de Estado*) and Terrorism (*terrorismo*) in Latin America see Gallardo, 2010.
- ⁷ However, this kind of regime was not exclusively against communism: Similar accusations have been witnessed by the Regime of Fidel Castro in Cuba, where the Communist Party has also been harsh to any kind of opposition.
- ⁸ This decision does not mean that we ignore or reject the significance and gravity of the terror regimes of our countries in the last decades. The concentration in the current reality is a methodological decision adopted in order to fit this report in the general conceptual framework and objectives of the Third Session of the International Forum on Crime and Criminal Law in the Global Era: "Basic Trend of Worldwide Terrorism and Counter Measures in the Post-Bin Laden Era".
- ⁹ See Olloqui, 2003: 15 et seq.; see also the list of Foreign Terrorist Organizations of the U.S. Department of State, where the *FARC* and the *Sendero Luminoso* (Shining Path) are currently (May 2011) considered terrorist groups, but not the *EZLN* (List available at <<http://www.state.gov/s/ct/rls/other/des/123085.htm>>). From the perspective of the USA and their list of foreign terrorist groups see Sessoms, 2003: 335 et seq.
- ¹⁰ See on these three streams the comment of *Rosendo Fraga* under <http://www.nuevamayoria.com/index.php?option=com_content&task=view&id=2313&Itemid=40> (Stand 19/08/2011).
- ¹¹ See CIAJ, 2007: 1.
- ¹² On these regimes see Díaz Bessone, 1988.
- ¹³ This first decision for the new institutional organization was explicitly exposed in the *Decreto-ley 21.256* (published in *Boletín Oficial* on March 26th 1976).
- ¹⁴ See from the point of view of the subversives Anzorena, 1988.
- ¹⁵ In other words: Cuba, i.e. *Fidel Castro* sympathizer, as well as the non-USA-sympathizer.
- ¹⁶ For a complete report about these cases see the report *Nunca Más* (*supra* note 15).

¹⁷ *Ley de Defensa de la democracia*, Official Journal 27/08/1984 (see *infra* note 49).

¹⁸ See Centro de Estudios Sociales (DAIA), Report *Informe sobre Antisemitismo en la Argentina* (2005, 2006, 2007). Available at: <http://www.daia.org.ar/Site2009/ces/informes.php> (Stand 19/08/2011). According to some authors, for example Greenberg, 2010, this posture (*Hezbollah* responsibility) had been introduced by US intelligence, and unfortunately it remained the sole focus of Argentinean media.

¹⁹ Iribarren 2011: 122 et seq. with further references; Buompadre, 2009: 580.

²⁰ Sueiro/Birriel, 2007: 752 et seq. In the same vein Iribarren, 2011: 133.

²¹ Sueiro/Birriel, 2006: 1 et seq.

²² In general, the Argentinean legislation on terrorism can be schematically summarized as follows: *Ley 2007* (15/12/1972): Provides faculties to the Executive Power in order to compensate victims of terrorism; *Ley 23077* (22/08/1984): After the last dictatorship in Argentina, the Penal Code was amended in order to protect the Rule of Law and the democratic System; *Ley 25.241* (17/03/2000): This law provides a definition of acts of terrorism. The reduction of prison terms if the defendant collaborates with the investigation during the instruction of the process, before judgment, is provided (for the first time in such a way in Argentinean law). This is the legal regulation of the so called *arrepentido* ("reformed" or "repentant"); *Ley 25.246* (11/05/2000): This law was introduced in the Penal Code. Article 5 establishes the creation of the Financial Intelligence Unit (*Unidad de Inteligencia Financiera*), which has the task of controlling and obtaining information from banks and financial transactions related to money laundering; *Ley 25.520* (3/12/2001): Reorganization of the Argentinean intelligence system stressing the protection of constitutional rights. Provisions seek the limitation of the faculties of intelligence agencies; *Ley 25.764* (13/08/2003): Provisions linked to providing protection to victims and repentant offenders related to *Ley 23.737* (drug crimes) and to *Ley 25.241* (Collaboration to solve Terrorism Crimes); Decree 826/2003 (01/10/2003): Decree on the obligation of all national and provincial governments to adopt all possible measures in order to implement U.N. Resolution 1452 (2002); *Ley 25.268* (4/07/2007): This law incorporated two new articles into the Penal Code. The new *Art. 213 ter CP* defined when an illicit association must be considered a terrorist. The new *Art. 213 quater CP* established as a crime the financing of an illicit association or of one of its members (see more below); *Ley 26.734* (28/12/2011): This law suppresses articles 213 *ter* and 213 *quater CP* (incorporated by *Ley 25.268*), incorporates a new case of aggravation in the punishment scale in cases of crimes committed pursuing terrorist goals (new article 41 *quinquies*), and incorporates a new article into the Penal Code. The new *Art. 306 CP* establishes as a crime the financing of activities which have a terrorist goal.

²³ See the Report of *Privacy International* for more details. Available at <https://www.privacyinternational.org/article/terrorism-profile-argentina_rgr> (Stand 19/08/2011).

²⁴ The definition was as follows: "... *Illegal association whose purpose is, through the commission of crimes, terrorizing the public, or obligating a governmental or an international organization to do something or to abstain from doing something, always when this association has the following features: a) To have an action plan aimed at spreading ethnic, religious or political hate; b) To be organized in international operative networks; c) To have war arms, explosives, chemical or germ agents at their disposal, or any other means suitable to put in danger the life or the personal safety of an undetermined number of persons...*" (former Article 213 *ter*; suppressed by Law 26.734, Art. 1).

²⁵ Original text: "*Artículo 41 quinquies: Cuando alguno de los delitos previstos en este Código hubiere sido cometido con la finalidad de aterrorizar a la población u obligar a las autoridades públicas nacionales o gobiernos extranjeros o agentes de una organización internacional a realizar un acto o abstenerse de hacerlo, la escala se incrementará en el doble del mínimo y el máximo. Las agravantes previstas en este artículo no se aplicarán cuando el o los hechos de que se traten tuvieren lugar en ocasión del ejercicio de derechos humanos y/o sociales o de cualquier otro derecho constitucional.*"

²⁶ Original text: "*Artículo 306: 1. Será reprimido con prisión de cinco (5) a quince (15) años y multa de dos (2) a diez (10) veces del monto de la operación, el que directa o indirectamente recolectare o proveere bienes o dinero, con la intención de que se utilicen, o a sabiendas de que serán utilizados, en todo o en parte: a) Para financiar la comisión de un delito con la finalidad establecida en el artículo 41 quinquies; b) Por una organización que cometa o intente cometer delitos con la finalidad establecida en el artículo 41 quinquies; c) Por un individuo que cometa, intente cometer o participe de cualquier modo en la comisión de delitos con la finalidad establecida en el artículo 41 quinquies.*"

²⁷ Sueiro/Birriel, 2007: 5.

²⁸ See on former amendment in the same sense: CIAJ 2007: 1; see also a critical comment on this question Böhm 2007.

²⁹ CIAJ 2007: 4; Sueiro/Birriel, 2007: 13-14.

³⁰ *Exp. Nr. 5179-D-2010, Trámite Parlamentario 097* (15/07/2010).

³¹ The 19 crimes are (Article 1): "1. *Homicide (with intent)* (sec. 79 and 80 CP); 2. *Grave and very grave injuries (with intent)* (sec. 90 and 91 CP); 3. *Extortion* (sec. 168 and 170 CP); 4. *Damages* (sec. 183 and 184 CP); 5. *Arson and grave damages* (sec. 186 to 188 CP); 6. *Illegal possession of weapons or explosives* (sec. 189 CP); 7. *Unlawful deprivation of freedom* (sec. 141 to 143 CP); 8. *Actions against means of public transportation or social communication media* (sec. 190, 191, 102, 193, 194 and 197 CP); 9. *Piracy* (sec. 198 and 199 CP); 10. *Poisoning of waters and food* (sec. 200 and 202 CP); 11. *Instigation to commit a crime* (sec. 209 CP); 12. *Illicit Association* (sec. 210, 210 bis, 213 bis, 213 ter, and 213 quater CP); 13. *Public intimidation* (Art 210 and 211 sec.); 14. *Crime apology* (sec. 213 CP); 15. *Attack against the Constitutional Order* (sec. 226 and 226 bis CP); 16. *Attack and resistance against the Authority* (sec. 237 and 238 CP); 17. *Covering up and money laundering* (sec. 277, 277 bis and 278); 18. *Counterfeiting of documents* (sec. 292 and 293 CP); 19. *Every act included in the Inter-American Convention against Terrorism passed by Law 26.023*".

³² Cfr. some of these criticisms in "*Argentina: Nuevo proyecto de 'Ley Antiterrorista': la cultura represora del estado y otra escalada en la criminalización de la protesta social*", available at <<http://elpolvorin.over-blog.es/article-argentina-nuevo-proyecto-de-ley-antiterrorista-la-cultura-represora-del-estado-y-otra-escalada-en-la-criminalizacion-de-la-protesta-social-56488503.html>> (Stand 19/08/2011).

³³ Cfr. on the exceptionality of current anti-terrorist legislation in Argentina and also in other countries Anitua 2007: 33 *et seq.*

³⁴ Cfr. Murphy, 2006: 89 *et seq.*

³⁵ Kretschmer, 2002: 55; Boorstein, 1977: 253.

³⁶ With regard to the military regime, see: Millaleo, 2008: 45-53.

³⁷ For more details about these groups see cfr. Schmid/Jongman, 2005: 521 *et seq.*

³⁸ Cfr. Human Rights Watch 2004: 3 and 21. Available at <<http://www.hrw.org/sites/default/files/reports/chile1004.pdf>> (Stand 27/07/2011).

³⁹ With regard to the economical reason of the mapuches' conflict, see: Sedano/Galera 2004: 58.

⁴⁰ The mapuche population is one of the most important indigenous groups of Chile. With the arrival of the Spanish conquerors in XVI century began the warlike confrontation between the Spaniards and the mapuches. The Spanish domination produced a subjection of the mapuche population firstly under the Spanish crown and then under the Chilean Republic.

⁴¹ Country Reports on Terrorism 2007, United States Department of State Publication Office of the Coordinator for Counterterrorism Released April 2008, at 154. Available at <<http://www.state.gov/documents/organization/105904.pdf>> (Stand 27/07/2011).

⁴² Cfr. Human Rights Watch 2004: 4.

⁴³ Sedano/Galera, 2004: 59.

⁴⁴ For more details, see: Bialostozky, 2007: 82-83.

⁴⁵ See interview from Human Rights lawyer *Hernán Montealegre*, 03/09/2010 in: *El mostrador*. Available at <<http://www.elmostrador.cl/uncategorizado/2010/09/03/%E2%80%9Ces-abusivo-calificar-a-los-mapuche-de-terroristas%E2%80%9D/>> (Stand 27/07/2011). According to *Montealegre*, the use of the Anti-terrorism Law is the consequence of the high level of influence over the authorities of the landowners and businessmen affected by the crimes committed by mapuche groups.

⁴⁶ Villegas, 2006: 3.

⁴⁷ *Ministerio Público con Héctor Javier Llaitul Carrillanca y otros, Robo con intimidación, atentado contra la autoridad, incendios, asociación ilícita terrorista y otros*, RIT 35-2010, 22/03/2011, at 428.

⁴⁸ Supreme Court, *Recurso de Nulidad*, 03/06/2011.

⁴⁹ According to Art. 18, a judge can allow witnesses to testify prior to the hearing. This exception takes place when the personal security of the witness may be in danger. The judge must verify the effectiveness of the information regarding the identity of the witness before he or she declares. In any case, the defendant can always make use of the right to cross-examination.

⁵⁰ The tri-border area describes the criminal activity carried out on the common frontier between Brazil, Argentina and Paraguay. For more details cfr. Hudson, 2003 (revised December 2010). Available at <http://www.loc.gov/rr/frd/pdf-files/TerrOrgCrime_TBA.pdf> (Stand 21/07/2011).

⁵¹ Cfr. in Embassy of the United States Asuncion Paraguay, News “Tri-Border Area, Hizballah Fundraising Network in the Triple Frontier”, 06/12/2006. Available at <http://paraguay.usembassy.gov/hizballah_fundraising_network_in_the_triple_frontier2.html> (Stand 21/07/2011). With regard to Hezbollah, see also: Levitt, 2007: 134-151.

⁵² Report on activities during the first five years of the declaration on security in the Americas (DSA) in combating traditional threats and new threats to security, Permanent Council of Organization of American States, Committee on Hemispheric Security, OEA/Ser.G, CP/CSH-1085/09, 13/09/2009, at 2.

⁵³ Country Reports on Terrorism, 2007 (note 97) at 166.

⁵⁴ Bustos Ramírez, 2004: 410.

⁵⁵ *Idem*, at 407.

⁵⁶ *Idem*, at 405.

⁵⁷ Statement by Ambassador *Juan Gabriel Valdés*, Defining Terrorism & its Root Causes: references to the definition of terrorism and the root causes as discussed in the UNGA debate “Measures to eliminate international terrorism”, October 1st-5th 2001, United Nations, New York. Available at <<http://www.reachingcriticalwill.org/political/1com/terror.html>> (Stand 28/07/2011).

⁵⁸ Parliamentary discussion of the Law 19.027, at 5. Available at <<http://www.leychile.cl/Navegar?idNorma=29731&buscar=18314>> (Stand 28/07/2011).

⁵⁹ *Ibidem*.

⁶⁰ Villegas, 2006: 7.

⁶¹ *Idem*, at 19.

⁶² *Ley 18.314*, “Determina conductas terroristas y fija su penalidad, 17/05/1984. Available at <<http://www.leychile.cl/Navegar?idNorma=29731&buscar=18314>> (Stand 21/07/2011).

⁶³ In this sense Human Rights Watch, 2004: 3, with regard to the mapuche’s conflict.

⁶⁴ The original version of the *ley 18.314* is available at <<http://www.leychile.cl/Navegar?idNorma=29731&tipoVersion=0>> (Stand 27/11/2011).

⁶⁵ *Historia de la ley 19.027*, “Modifica ley N° 18.314, que determina conductas terroristas y fija su penalidad”, at 7-8. Available at <<http://www.leychile.cl/Navegar?idNorma=29731&buscar=18314>> (Stand 27/07/2011). The crimes against property established in the Anti-terrorism Law were included during the parliamentary discussion.

⁶⁶ Human Rights Watch, 2004: 24.

⁶⁷ Villegas, 2006: 10.

⁶⁸ Cfr. Roxin, 2006: 178-179.

⁶⁹ Bustos Ramírez, 2004: 409.

⁷⁰ Inter-American Commission on Human Rights, Press Release, “IACHR takes case involving Chile to Inter-American Court”, 94/11, August 19th 2011. Available at <<http://www.cidh.oas.org/Comunicados/English/2011/94-11eng.htm>> (Stand 20.08.2011).

⁷¹ For more details about the kidnappings and other terrorist acts, see: Hanson, 2009, available at <<http://www.cfr.org/colombia/farc-eln-colombias-left-wing-guerrillas/p9272#p5>> (Stand 28/07/2011).

⁷² In the present the word “narcoterrorism” is also used with regard to the connection between the Colombian illegal armed groups and the drug trade as dual objectives of the Colombian and American governments. For more details about this conflict and the drug trade, see: Tarapués, 2008: 137-144. With regard to the cocaine drug trade, the Colombian civil conflict and the US War on Drugs and Terror, see also: Villar, 2009: 90-99.

⁷³ Paramilitary groups were formed to fight the enemy organizations, for example: the *MAS*: “Kill the Kidnappers” (*Muerte a secuestradores*) and the *PEPES*: “Victims of persecution by Pablo Escobar” (*Perseguidos por Pablo Escobar*). See Nagle, 2005: 18.

- ⁷⁴ With regard to the connection between drug cartels and guerrillas, the most important terrorist incident was “The Palace of Justice siege” (*Toma del Palacio de Justicia*), when 95 people died (November 6th 1985).
- ⁷⁵ During the term of the previous Constitution, Colombia was ruled more than half a century through the State of Siege (*Estado de Sitio*). For more details, see: Palacios, 1995: 189-191; with regard to the State of Exception (*Estado de Excepción*) and to the last years of the State of Siege in Colombia, see also: Orejuela, 2011: 70-77.
- ⁷⁶ In the 1970s and 1980s, other statutes were instituted with different names but with the same purposes. For example, the “Statute for the Defense of Democracy” (*Estatuto para la Defensa de la Democracia*) and the “Anti-terrorist Statute” (*Estatuto Antiterrorista*). Available at <[ftp://ftp.camara.gov.co/camara/basedoc/decreto/1978/decreto_1923_1978.html](http://ftp.camara.gov.co/camara/basedoc/decreto/1978/decreto_1923_1978.html)> and <http://www.cntv.org.co/cntv_bop/basedoc/decreto/1988/decreto_0180_1988.html> (Stand 26/07/2011). With regard to the “Statute for the Defense of Democracy”, see: Nagle 2005: 31; see also: Orozco, 2006: 180-188.
- ⁷⁷ *Decreto 2790 of 1990*, “*Estatuto para la Defensa de la Justicia*”. Available at <[ftp://ftp.camara.gov.co/camara/basedoc/decreto/1990/decreto_2790_1990.html](http://ftp.camara.gov.co/camara/basedoc/decreto/1990/decreto_2790_1990.html)> (Stand 26/07/2011).
- ⁷⁸ *Decreto 2700 of 1991*, “*Reforma al Código de Procedimiento Penal*”. Available at <[ftp://ftp.camara.gov.co/camara/basedoc/codigo/codigo_procedimiento_penal_1991.html](http://ftp.camara.gov.co/camara/basedoc/codigo/codigo_procedimiento_penal_1991.html)> (Stand 26/07/2011).
- ⁷⁹ The justice with reserved identity (*justicia sin rostro*) had its basis in the *Decreto 2700 of 1991*, Art. 158. The Constitutional Court said in the Decision C-053/1993, that this article was not adverse to the Constitution, but later the same Court rejected the Law 504 of 1999, which extended the validity of this Art. 158, in the Decision C-393/2000. See this decision, available at <<http://www.corteconstitucional.gov.co/relatoria/2000/C-393-00.htm>> (Stand 26/07/2011).
- ⁸⁰ The “Revolutionary Armed Forces of Colombia – People’s Army” (in Spanish: *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo*) and the “National Liberation Army” (in Spanish: *Ejército de Liberación Nacional*). For information about the role of the FARC and the ELN in the violence in Colombia, see: Cragin/Hoffman 2003: 4-6. Only about the ELN, see also: Sancho, 2003: 23-32.
- ⁸¹ The “United Self-Defense Forces of Colombia” (in Spanish: *Autodefensas Unidas de Colombia*). For information about the role of the AUC in the violence in Colombia, see: Cragin/Hoffman 2003: 6-7.
- ⁸² With regard to the effects of 9/11 in Colombia, see Nagle 2005: 63-65.
- ⁸³ See the list of foreign terrorist organizations by the United States Secretary of State, available at <<http://www.state.gov/s/ct/rls/other/des/123085.htm>>; see also the European Union list of terrorist groups and individuals, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF>>; and the Canadian list of terrorist organizations, available at <<http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx>> (Stand 05/08/2011).
- ⁸⁴ See Nagle 2005, 26-28.
- ⁸⁵ See for example: Martínez, 2006: 333-351. See also: Marulanda 2007: 23.
- ⁸⁶ Cfr. Nieto, 2008: 151.
- ⁸⁷ This differentiation is according to the definitions used by the FBI. For more details about the domestic terrorism and the international terrorism, see: Nagle, 2005: 26.
- ⁸⁸ Nieto, 2005: 152.
- ⁸⁹ Cfr. Ramos, 2008: 15-16.
- ⁹⁰ Valdivieso, 2001, available at <<http://www.reachingcriticalwill.org/political/1com/terror.html>> (Stand 28/07/2011).
- ⁹¹ See Nagle 2005: 32-35, for a chart with more details about the historical Colombian laws against terrorism (in general about the national legislation against the narcoterrorism).
- ⁹² *Ley 599 (24/07/2000)*: Penal Code that includes the description of the various terrorist offences. Available at <http://www.secretariasenado.gov.co/senado/basedoc/ley/2000/ley_0599_2000.html> (Stand 05/08/2011).
- ⁹³ *Ley 526 (15/08/1999)*: Creating a “Department of Information and Financial Analysis” with a focus on money laundering and financing of terrorism. Available at <http://www.secretariasenado.gov.co/senado/basedoc/ley/1999/ley_0526_1999.html> (Stand 05/08/2011).
- ⁹⁴ *Ley 1.121 (30/12/2006)*: Measures for the prevention, detection, investigation and punishment of the financing of terrorism. Available at http://www.secretariasenado.gov.co/senado/basedoc/ley/2006/ley_1121_2006.html (Stand 05/08/2011).
- ⁹⁵ Before this law, the offence for the financing of terrorism was called “Management of Resources related to Terrorist Acts” (*Administración de recursos relacionados con actividades terroristas*), with imprisonment between 6 and 12 years. Currently this crime is called “Financing of Terrorism and Management of Financial Resources related to Terrorist Acts” (*Financiación del terrorismo y [...] y administración de recursos relacionados con actividades terroristas [...]*), with imprisonment between 13 and 22 years. See Penal Code, Law 599 of 2000 (note 178), Art. 345.
- ⁹⁶ *Ley 1.142 (28/07/2007)*: Legal reform of the Penal Code and Code of Penal Procedure and incorporation of measures for the prevention and suppression of crimes of particular significance for coexistence and citizen security. Available at <http://www.secretariasenado.gov.co/senado/basedoc/ley/2007/ley_1142_2007.html> (Stand 05/08/2011).
- ⁹⁷ *Ley 733 (31/01/2002)*: Measures against kidnapping, terrorism and extortion. Available at <http://www.secretariasenado.gov.co/senado/basedoc/ley/2002/ley_0733_2002.html> (Stand 05/08/2011).
- ⁹⁸ Cfr. Penal Code, Law 599 of 2000 (note 178), Art. 343: “*Terrorismo*”. Imprisonment: Between 160 and 270 months.
- ⁹⁹ Idem, Art. 144: “*Actos de terrorismo*”. Imprisonment: Between 240 and 450 months.
- ¹⁰⁰ Idem, Art. 345: “*Financiación del terrorismo y de grupos de delincuencia organizada y administración de recursos relacionados con actividades terroristas y de la delincuencia organizada*”. Amended by Law 1.453 of 2011, Art. 16. Imprisonment: Between 13 and 22 years.
- ¹⁰¹ Idem, Art. 173: “*Apoderamiento de aeronaves, naves, o medios de transporte colectivo*”. Imprisonment: Between 160 to 270 months.
- ¹⁰² See the article on the offence of “Terrorism” (note 187).
- ¹⁰³ See Penal Code, Law 599 of 2000 (note 178), Art. 344.
- ¹⁰⁴ See the single chapter of the Title II: “*Delitos contra personas y bienes protegidos por el Derecho Internacional Humanitario*” (note 178).

- ¹⁰⁵ Translation of the conduct from Spanish into English by Interpol. Available at <<http://www.interpol.int/Public/BioTerrorism/NationalLaws/Colombia.pdf>> (Stand 05/08/2011).
- ¹⁰⁶ Ibidem.
- ¹⁰⁷ See Chapter 1: “*Del concierto, el terrorismo, las amenazas y la instigación*”, Title XII: “*Delitos contra la seguridad pública*” (note 178), Art. 340 to 349.
- ¹⁰⁸ Cfr. Penal Code, Law 599 of 2000 (note 178), Art. 340: “*Concierto para delinquir [...] para cometer [...] terrorismo [...]*”. Amended by Law 733 of 2002, Art. 19 and by Law 1121 of 2006, Art. 19. Imprisonment: Between 8 and 18 years.
- ¹⁰⁹ Idem, Art. 341: “*Entrenamiento para actividades ilícitas [...] para el desarrollo de actividades terroristas [...]*”. Imprisonment: Between 240 and 360 months.
- ¹¹⁰ Idem, Art. 347: “*Amenazas (...) con el propósito de causar alarma, zozobra o terror en la población o en un sector de ella [...]*”. Amended by Law 1142 of 2007, Art. 36 and by Law 1426 of 2010, Art. 4. Imprisonment: Between 4 and 8 years.
- ¹¹¹ Idem, Art. 349: “*Incitación a la comisión de delitos militares [...] en beneficio de actividades terroristas [...]*”. Imprisonment: Between 32 and 90 months.
- ¹¹² For more details about the use of this aggravating factor, see: Aponte 2007: 104-111.
- ¹¹³ However, there are authors which point out that terrorism is an aggravating factor for more than 15 offences. For example, see: Marulanda 2006: 225-226.
- ¹¹⁴ Cfr. Penal Code, Law 599 of 2000 (note 178), Art. 103: “*Homicidio*” and Art. 104.8: “*Circunstancias de agravación. [...] Con fines terroristas o en desarrollo de actividades terroristas*”. Imprisonment: Between 400 and 600 months.
- ¹¹⁵ Idem, Art. 169: “*Secuestro extorsivo*” and Art. 170.7: “*Circunstancias de agravación punitiva. [...] Cuando se cometa con fines terroristas*”. Amended by Law 733 of 2002, Art. 2 and 3. Imprisonment: Between 448 and 600 months.
- ¹¹⁶ Idem, Art. 182: “*Constreñimiento ilegal*” and Art. 183.1: “*Circunstancias de agravación punitiva [...] cuando el propósito o fin perseguido por el agente sea de carácter terrorista*”. The imprisonment of this offence has an increase of one third to one half. Between 13 and 36 months.
- ¹¹⁷ Idem, Art. 184: “*Constreñimiento para delinquir*” and Art. 185.1: “*Circunstancias de agravación punitiva [...] cuando la conducta tenga como finalidad obtener el ingreso de personas a grupos terroristas [...]*”. The imprisonment of this offence has an increase of one third to one half. Between 16 and 54 months.
- ¹¹⁸ Idem, Art. 197: “*Utilización ilícita de equipos transmisores o receptores [...] con fines terroristas*”. Amended by Law 1.453 of 2011, Art. 8. Imprisonment: Between 8 and 16 years.
- ¹¹⁹ Idem, Art. 244: “*Extorsión*” and Art. 245.5: “*Circunstancias de agravación [...] si el propósito o fin perseguido por el agente es facilitar actos terroristas [...]*”. Amended by Law 733 of 2002, Art. 5 and 6. The imprisonment of this offence has an increase of one third to one half. Between 192 and 288 months.
- ¹²⁰ Idem, Art. 332.1: “*Contaminación ambiental [...] cuando la conducta se realice con fines terroristas*”. Amended by Law 1.453 of 2011, Art. 34. The imprisonment of this offence has an increase of one third to one half. Between 55 and 112 months.
- ¹²¹ Idem, Art. 348: “*Instigación a delinquir [...] con fines terroristas*”. Imprisonment: Between 80 and 180 months.
- ¹²² Idem, Art. 357: “*Daño en obras o elementos de los servicios de comunicaciones, energía y combustibles [...] cuando la conducta se realice con fines terroristas*”. The imprisonment of this offence has an increase of one third to one half. Between 32 and 90 months.
- ¹²³ Idem, Art. 359: “*Empleo o lanzamiento de sustancias u objetos peligrosos [...] cuando la conducta se realice con fines terroristas*”. Amended by Law 1.453 of 2011, Art. 10. Imprisonment: Between 80 and 180 months.
- ¹²⁴ Idem, Art. 371: “*Contaminación de aguas [...] cuando la conducta se realice con fines terroristas*”. Amended by Law 1.220 of 2008, Art. 4. The imprisonment of this offence has an increase of one third to one half. Between 4 and 10 years.
- ¹²⁵ Idem, Art. 372: “*Corrupción de alimentos, productos médicos o material profiláctico [...] con fines terroristas*”. Amended by Law 1.220 of 2008, Art. 5. Imprisonment: Between 8 and 15 years.
- ¹²⁶ Idem, Art. 427: “*Usurpación y abuso de funciones públicas con fines terroristas*”. Amended by Law 1.453 of 2011, Art. 14. Imprisonment: Between 4 and 8 years.
- ¹²⁷ Idem, Art. 413: “*Prevaricato por acción*”, Art. 414: “*Prevaricato por omisión*” and Art. 415: “*Circunstancia de agravación punitiva [...] cuando las conductas se realicen en actuaciones judiciales o administrativas que se adelanten por delitos de [...] terrorismo [...]*”. The imprisonment of this offence has an increase of one third. Between 32 and 144 months.
- ¹²⁸ Idem, Art. 449: “*Favorecimiento de la fuga [...] cuando el detenido, capturado o condenado estuviere privado de su libertad por [...] terrorismo [...]*”. Amended by the Law 1.453 of 2011, Art. 17. The imprisonment of this offence has an increase of one third. Between 80 and 144 months.
- ¹²⁹ See “Terrorism Profile: Colombia” in *Privacy International Website*, available at <<https://www.privacyinternational.org/article/terrorism-profile-colombia>> (Stand 28/07/2011).
- ¹³⁰ Particularly, this counter-terrorism measure attempted to reform articles 15 (Right to Privacy), 24 (Freedom of Movement), 28 (Right to Individual Freedom), and 250 (Functions of the Prosecutor) of the Colombian Constitution. For more details about the proposed modifications of the Anti-terrorist Statute, see: Nagle 2005: 43-44.
- ¹³¹ Available at <http://www.secretariassenado.gov.co/senado/basedoc/cp/acto_legislativo_02_2003.html> (Stand 28/07/2011).
- ¹³² Available at <http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/2004/c-816_2004.html#1> (Stand 28/07/2011).
- ¹³³ See “*Proyecto de Ley Estatutaria*”: 176/04 Senate and 211/04 House of Representatives. Available at <http://www.elabedul.net/San_Alejo/Estatuto_estatuto_antiterrorista.php> (Stand 28/07/2011).
- ¹³⁴ See the decision of the Constitutional Court in this issue: C-1119/2004. Available at <http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/2004/c-1119_2004.html> (Stand 28/07/2011).
- ¹³⁵ Resolution adopted at the first plenary session, held in Bridgetown, Barbados, on June 3rd, 2002 (AG/RES. 1840 [XXXII-O/02]).

- ¹³⁶ See the schematic presentation of the Convention elaborated by the OAS, available at <http://www.icd.go.cr/sitio/downloads/uploads/TallerTerrorismo2010/TallerFinTerrorismo_CICTE%20_OEA.pdf> (Stand 19/08/2011).
- ¹³⁷ The Declaration of Lima to Prevent, Combat, and Eliminate Terrorism and the Plan of Action on Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism, adopted within the framework of the *First Inter-American Specialized Conference on Terrorism*, in Lima, Peru, April 1996, as well as the *Commitment of Mar del Plata*, adopted at the *Second Inter-American Specialized Conference on Terrorism*, and the work of the *Inter-American Committee against Terrorism (CICTE)*.
- ¹³⁸ *Inter-American Commission on Human Rights, Report on Terrorism and Human Rights* (OAS/Ser. L/V/II. 116, October 22nd 2002). Available at <<http://www.cidh.org/Terrorism/English.toc.htm>> (Stand 19/08/2011). See also *Inter-American Commission on Human Rights, Recommendations of the Inter-American Commission on Human Rights for the Protection by OAS Member States of Human Rights in the Fight Against Terrorism* (Washington, May 8th 2006).
- ¹³⁹ Conte 2010: 529.
- ¹⁴⁰ Inter-American Commission – Report 2002, para. 51 and 55. See also Conte 2010: 529.
- ¹⁴¹ *Human Rights and Terrorism*, AG/Res 1906 (XXXII-O/02) (June 4th 2002). Available at <http://www.oas.org/dil/general_assembly_resolutions.htm> (Stand 19/08/2011).
- ¹⁴² *Protecting Human Rights and Fundamental Freedoms While Countering Terrorism*, AG/RES. 1931 (XXXIII-O/03), adopted at the fourth plenary session, held on June 10th 2003 (available at <http://www.oas.org/juridico/english/ga03/agres_1931.htm>).
- ¹⁴³ *Protecting Human Rights and Fundamental Freedoms While Countering Terrorism*, AG/RES. 2143 (XXXV-O/05), adopted at the fourth plenary session, held on June 7th 2005. Available at <<http://www.state.gov/p/wha/rls/61937.htm>> (Stand 19/08/2011).
- ¹⁴⁴ AG/RES. 2238 (XXXVI-O/06), AG/RES. 2238 (XXXVI-O/06), adopted at the fourth plenary session, held on June 6th 2006. Available at <http://www.cicte.oas.org/rev/en/documents/oas_ga/ag_res_2238_06_xxxvi_o_eng.pdf> (Stand 19/08/2011).
- ¹⁴⁵ *Protecting Human Rights and Fundamental Freedoms While Countering Terrorism*, AG/RES. 2271 (XXXVII-O/07), adopted at the fourth plenary session, held on June 5th 2007. Available at <http://www.oas.org/dil/AG-DOC_4771-07_rev1_eng.doc> (Stand 19/08/2011).
- ¹⁴⁶ See Gallardo 2010, *passim*.
- ¹⁴⁷ See Jakobs 2000: 51 et seq.; 2004: 90; 2006: 289.
- ¹⁴⁸ Pellet 2003: 14 et seq
- ¹⁴⁹ See among others Schmid/Jongman 2005: 28.
- ¹⁵⁰ Inter-American Court of Human Rights, *Case of Loayza-Tamayo v Peru*. Merits. Judgment of September 17th 1997, *Series C No 33, para 62*.