

Brazilian Counterterrorism Efforts: Legislative Progress, But Little Action on the Ground

by [Matthew Levitt \(/experts/matthew-levitt\)](/experts/matthew-levitt)

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ABOUT THE AUTHORS



[Matthew Levitt \(/experts/matthew-levitt\)](/experts/matthew-levitt)

Matthew Levitt is the Fromer-Wexler Fellow and director of the Reinhard Program on Counterterrorism and Intelligence at The Washington Institute.



Brief Analysis

In March, Brazilian authorities drafted a new antiterrorism law instituting stiff penalties for a variety of violent acts committed by both individuals and organizations. The new legislation, expected to pass Brazil's congress in a modified form, will likely be used to target criminal gangs from Brazil's indigent favela neighborhoods, not Middle Eastern terrorist groups operating in the Argentina-Brazil-Paraguay Tri-Border Area (TBA). Brazil denies that illegal terrorist activities are being conducted in the TBA, and it does not regard groups like Hizballah or Hamas as terrorist organizations. Much of the legal foundation needed to successfully combat international terrorism is already in place in Brazil, but the government has not demonstrated the will to confront the problem.

Brazil's Legal Regime against Terrorism

According to a 2005 Financial Action Task Force (FATF) report on compliance with anti-money laundering and terrorism financing guidelines, Brazil has a comprehensive legal and regulatory framework in place to prevent money laundering, including the capacity to freeze and confiscate funds. Brazil outlawed terrorism and its financing in a December 1983 National Security Act; in 1998, the government included these crimes in its broadened list of predicate offenses for money laundering. The 1998 law also established the Council for Financial Activities Control (COAF) as the country's main financial intelligence unit, in charge of examining suspected illicit financial activity and developing information exchange policies to combat money laundering.

Further legislation in 2001 and 2003 relaxed bank secrecy laws to grant COAF greater access to financial records and strengthen its ability to share information with foreign counterparts. COAF is housed in the Brazilian Ministry of Finance and has been a member of the Egmont Group -- an international certifying association for financial intelligence units -- since 1999. More than 24,000 suspicious transaction reports were filed by 2003, and Brazilian federal police have since increased their caseload of money laundering investigations.

In 2005, Brazil ratified the UN International Convention for the Suppression of the Financing of Terrorism after years of internal deliberation. Nevertheless, the country has not used its formidable anti-money laundering regime to target terrorism financing, in large part because it does not acknowledge the presence of such financing in the region. For example, in responding to evidence provided by the United States in December 2006, Brazilian officials

stated that the information did not provide "any new elements that would permit [Brazil] to affirm the existence of terrorist activities in the region, including the financing of terrorism."

Terrorist Fundraising in the TBA

The TBA is especially important to Hezbollah. The group raises nearly \$10,000,000 per year there, according to a study produced by the U.S. Naval War College. The report cited U.S. Southern Command estimates "that Islamist terrorist groups raise between three hundred million and five hundred million dollars per year in the Triple Frontier and the duty-free zones of Iquique, Colon, Maicao, and Margarita Island."

In June 2004, the U.S. Treasury Department designated Assad Barakat as a terrorism financier, identifying him as "the deputy to a Hezbollah financial director, Ali Kazan, and the primary liaison in the TBA for Hezbollah's Spiritual Leader Hussein Fadlallah." The department also stated that Barakat was "involved in a counterfeiting ring that distributes fake U.S. dollars and generates cash to fund Hezbollah operations," and that he personally couriered contributions to Lebanon on the organization's behalf. In addition, Barakat's personal secretary, Sobhi Mahmoud Fayad, served as Hezbollah's military leader in the TBA. Fayad has been arrested at least three times since 1999, including once for conducting surveillance on the U.S. embassy in La Asunción, Venezuela.

In December 2006, the Treasury Department designated another group of Hezbollah members in the TBA. This group included Farouk Omairi, whom the department identified as "a coordinator for Hezbollah members in the region, . . . [and] a key figure in the procurement of false Brazilian and Paraguayan documentation [who] assisted individuals in the TBA with obtaining Brazilian citizenship illegally." Omairi was also involved in narcotics trafficking operations between South America, Europe, and the Middle East.

Hamas raises funds in the TBA as well. A Canadian intelligence report noted that "Hamas supporters and fundraising activity also appear to be present in the [TBA]. . . . Reporting indicates funds are regularly sent to groups in the Middle East, including Hamas, from supporters in the [TBA]." U.S. officials agree, noting that a prominent Sunni cleric in the area, Sheikh Khalid Taqi al-Din, "is primarily affiliated with Hamas."

Since 2003, Brazil has participated in numerous meetings of the 3+1 Group on Tri-Border Area Security with the United States, Argentina, and Paraguay. In December 2006, an intelligence agency backed by the three neighboring governments began to investigate illegal activities in the region. Despite these measures, as late as February 2007, all three countries continued to deny U.S. accusations of terrorist activities in the region.

Legal Foundation, But Lack of Will

Although Brazil has a legal foundation in place to combat terrorism financing, it needs to demonstrate the will to apply these laws. For example, the establishment of specialized regional courts to try financial crimes was an important step, but Brazil has yet to use them to prosecute terrorism financiers. It is also unclear whether authorities can freeze suspect funds without judicial authorization, as UN Security Council Resolution 1267 requires. FATF has argued that the country's banks need stronger tools toward this end, but it is unlikely that the Brazilian government will seriously consider such recommendations. Despite U.S. Treasury Department actions to the contrary, Brazil reported to FATF that it has thoroughly cross-referenced all Brazilian bank accounts and relevant databases with lists of suspected terrorists and found no matches.

The proposed legislation now under review in Brazil would expand what qualifies as terrorism financing and establish sentencing guidelines for specific offenses. It would not, however, equip Brazilian authorities with the tools to effectively target illicit activity in the TBA. Most terrorism financing consists of supporting logistical activity, not buying bullets. Under the new law, Brazil would define terrorism financing in two ways: (1) providing funds to designated terrorist groups, and (2) facilitating transactions proven to have a "direct or indirect connection" to the practice of terrorism. Neither of these definitions would give authorities sufficient basis to take significant action,

given that Brazil has not designated Hizballah or Hamas as terrorist organizations, and that providing definitive links between transferred funds and specific terrorist acts is often difficult.

Moreover, unlike the United States, Brazil has not been the target of a terrorist attack perpetrated by a Middle Eastern terrorist organization and therefore does not view terrorism financing in the TBA as an internal threat requiring urgent attention. If Brazil is to be effective in halting the flow of funds from this region to Middle Eastern terrorist groups, it will first need to acknowledge that terrorists are active within its borders. Although the United States has stepped up its efforts to address the issue, such measures will have only a limited impact without parallel action by the Brazilian government.

Matthew Levitt is a senior fellow and director of the Stein Program on Terrorism, Intelligence, and Policy at The Washington Institute. Previously, he served as deputy assistant secretary for intelligence and analysis at the Treasury Department. His publications include the recent book ❖

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