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## Repression of Terrorism in the Brazilian Legal System: The Effectiveness of Law No. 13.260/2016 In Light of International Standards

*Repression of Terrorism in The Brazilian Legal System: The Effectiveness of LAW NO. 13.260/2016 in Light of International Standards*

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### Summary

This article aims to analyze Law No. 13.260/2016, which defines and regulates terrorism in Brazil, from the perspective of international repression of this phenomenon and its conformity with the national legal system. Based on a study of the vast literature on the subject, the phenomenon of terrorism is investigated throughout history and its "waves," according to Rapoport's theory, to contextualize the Brazilian reality. The work examines the alignment and convergence of national legislation with international standards of protection and repression, questioning whether Brazilian legal instruments are sufficient and adequate to combat terrorism with the rigor required by the Constitution and international treaties. Furthermore, it analyzes the influence of typically national political and social issues on the shaping of the law, especially the legislative choice to exclude political motivation from the criminal offense, focusing on promoting social terror. Finally, the article presents a critical analysis of the problem and discusses the effectiveness of the model adopted by Brazil. It is concluded that, although the law represents progress in filling a historical legal gap, its restrictive conceptualization of terrorism, which avoids political motivation, may limit its effectiveness in the face of the complexity of the phenomenon, requiring continuous evaluation and potential refinement to balance effective repression with democratic guarantees.

**Keywords:** Terrorism. Law 13.260/2016. Brazilian Legal System. International Repression. National Security.

### Abstract

This article aims to analyze Law No. 13.260/2016, which defines and regulates terrorism in Brazil, from the perspective of international repression of this phenomenon and its compliance with the national legal system. Based on a study of the vast literature on the subject, the phenomenon of terrorism is investigated through history and its "waves," according to Rapoport's theory, to contextualize the Brazilian reality. The work examines the affectivity and convergence of national legislation with international standards of protection and repression, questioning whether Brazilian legal instruments are sufficient and adequate to combat terrorism with the rigor required by the Constitution and international treaties. Furthermore, the influence of typically national political and social issues on the shaping of the law is analyzed, especially the legislative option to exclude political motivation from the criminal offense, focusing on promoting social terror. Finally, the article presents a critical analysis of the problem and discusses the effectiveness of the model adopted by Brazil. It is concluded that, although the law represents progress in filling a historical legal gap, its restrictive conceptualization of terrorism, which avoids political motivation, may limit its effectiveness in the face of the complexity of the phenomenon, requiring continuous evaluation and potential refinement to balance effective repression with democratic guarantees.

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## 1. INTRODUCTION

Terrorism is a political and social phenomenon of extreme relevance and complexity. in the contemporary global context. Because it possesses mutable characteristics, adapting itself. Dynamically linked to the geopolitical context in which it occurs, the task of suppressing its [violence] becomes arduous. activities are carried out in a homogeneous manner, making even their own conceptualization difficult. In the words of Laqueur (2003), "no definition can encompass all the varieties of terrorism that have existed throughout history", which illustrates the primary challenge faced by legislators and scholars of International and criminal law.

Brazil, in line with the efforts of the international community, is a signatory to several treaties. Multilateral initiatives aimed at combating the terrorist threat on both domestic and international levels. The 1988 Federal Constitution (Brazil, 1988), in its article 4, VIII, establishes the rejection of terrorism as... one of the governing principles of the country's international relations, further equating it in Article 5, XLIII, to heinous crimes, subjecting it to a more severe legal regime. However, for almost three Decades after the promulgation of the Constitution, the country critically lacked a specific law that It lacked a clear and precise definition of what constitutes a terrorist act. This regulatory gap contrasted in flagrant violation of the international commitments solemnly undertaken by the State Brazilian, generating legal uncertainty and questions about the national capacity to confront the threat.

The enactment of Law No. 13,260, of March 16, 2016 (Brazil, 2016), popularly known as known as the Anti-Terrorism Law, it sought to remedy this historical deficiency. However, the way The peculiar way in which the national legislator defined terrorism has generated intense and fruitful doctrinal debate. The core of the discussion, which serves as the guiding thread of this investigation, lies in the following question. Problem statement: Does Brazilian legislation have effective and adequate instruments to repress and To punish terrorist acts with the rigor stipulated by the Federal Constitution and international commitments. Do they require this? And, more specifically and forcefully, what is the legislative choice to exclude? explicitly state the political motivation behind the criminal offense, focusing on the purpose of provoking social terror or While generalized, it is sufficient and technically adequate to encompass the complexity and mutability of Terrorist phenomenon in its contemporary expression?

To answer these questions, this article is structured in five chapters, in order to In addition to this introduction and the final considerations, the first chapter outlines the situation. A historical overview of the evolution of terrorism, using Rapoport's "waves" as a theoretical framework. The second chapter is dedicated to the thorny task of conceptualizing terrorism, analyzing the... The difficulties in reaching an international consensus and the political instrumentalization of the term. The third chapter delves into Brazilian legislation, analyzing Law 13.260/2016 (Brazil, 2016) in its



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dogmatic aspects and their dialogue with international law. In the fourth chapter, a...

A critical analysis of the law's effectiveness, identifying potential gaps and evaluating its practical application.

Finally, in the concluding remarks, the study's findings are summarized, answering the research question.

research and proposing reflections for the future.

The methodology employed is qualitative, of a theoretical nature, using the methods of Bibliographic and documentary research. Bibliographic research involves the analysis of doctrine. National and international publications, scientific articles and specialized works on terrorism and criminal law. Documentary research encompasses the analysis of Brazilian legislation, presidential messages, and treaties. international and relevant case law. The approach is deductive, starting from general premises about the The phenomenon of terrorism is used to analyze the specific case of Brazilian law, and dialectically, confronting Arguments for and against the legislative options adopted.

## 2. The Historical Phenomenon of Terrorist Praxis

### 2.1 Rapoport's Four Waves

To understand the challenges faced by Brazilian law, it is essential to analyze its evolution. historical and morphological aspects of terrorism. David Rapoport (2004), in his seminal theory, proposes a didactic division of the phenomenon into four "waves," each with its own characteristics and objectives. distinct modus operandi and social support bases, lasting approximately four decades. This The theoretical model is not watertight, allowing for overlaps and reverberations of previous waves, but It offers a powerful tool for understanding the mutability of terrorism.

The first wave, anarchist, broke out in the 1870s and lasted until approximately 1920. Its main target was the old European empires, notably the Russian one. The followers of this Inspired by thinkers like Mikhail Bakunin, this wave believed that the destruction of the State and of their authority figures through selective attacks, such as assassinations of heads of state, Bombs in cafes and theaters would be the catalyst for a spontaneous proletarian revolution. The attack on Tsar Alexander II of Russia in 1881 is a paradigmatic example. The modus operandi was... predominantly individualistic or small-group, with widespread use of pamphlets and newspapers. to spread their ideas, in a primitive "propaganda by deed".

The second wave, the anti-colonial movement, flourished between the 1920s and 1960s. During this period, the focus shifted from Europe to the colonies in Asia and Africa. Groups such as the IRGUN (in Palestine), The FLN (Algeria) and EOKA (Cyprus) used urban and rural guerrilla tactics and acts of terrorism. to draw international attention to their cause, destabilize the colonial administration, and raise the political and economic cost of occupation for the metropolises. Unlike the anarchist wave, these



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These groups had broad support or sympathy from segments of the local population, and their ultimate goal was...

Clearly political: national independence and sovereignty.

The third wave, of the left or "new left," emerged in the context of global polarization of the Cold War, between the 1960s and 1979. Groups such as the Baader-Meinhof (Germany) (Western), the Red Brigades (Italy) and the Faction Armée Révolutionnaire Libanaise sought, in theory, the overthrow of capitalism and Western imperialism. Its modus operandi was characterized by... whether through spectacular attacks with high media impact, such as aircraft hijackings, takeovers of Embassies, assassinations of businessmen and military personnel, and bomb attacks. Media coverage of the crowd became a fundamental strategic element, transforming each act into a spectacle of... propaganda. As Gonçalves and Reis (2017) point out, "The former terrorists sought to negotiate, "New terrorists only want to express their anger and paralyze the enemy," an observation that, although more suited to the next wave, it already finds an echo in the more spectacular and less negotiating character of these groups.

The fourth and current wave, religious in nature, began in the 1970s and continues to this day, current. Its emergence is closely linked to the Iranian Revolution of 1979 and the War of Afghanistan against the Soviet invasion. Groups such as Al-Qaeda, the Islamic State (ISIS) and Boko Haram are its contemporary exponents. Their central motivation is religious, seeking, in many cases, the founding of a global caliphate and the unleashing of an apocalyptic clash between "faithful" and "infidels." The violence is often sectarian, indiscriminate, and extremely brutal, targeting To maximize terror and commotion, communication technologies are used in a sophisticated manner for recruitment, financing and advertising, representing a qualitative leap compared to Previous waves. This change in profile, where the objective is no longer negotiation, but annihilation. The symbolic and physical understanding of the "other" demands equally dynamic methods of repression and intelligence. sophisticated, demonstrating that the phenomenon is not static, but continually adapts to its time.

## **2.2 Terrorism as an instrument of political strategy**

Although Rapoport's wave theory focuses on the modern era, it is crucial to recognize that The use of terror as a political tactic is ancient. The Sicarii, a Jewish sect from the 1st century AD, who He carried out political assassinations in public places to terrorize the Romans and their collaborators. It is often cited as a historical precursor. In the 11th century, the Shiite sect of the Hashshashin (or Assassins) used the selective and systematic assassination of political and military leaders as A tool of coercion and propaganda. The transition to modernity, however, qualitatively alters the nature of the phenomenon. With the



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During the French Revolution, the "terror" was elevated to the status of state policy.

known as "The Terror" (1793-1794), under the leadership of Robespierre. In this context, terror was

An instrument of civic virtue, used to purge the nation of its internal and external enemies.

This association between terror and the construction of the modern state is a fundamental paradox that

It reverberates to this day, when states accuse others of sponsoring terrorism, while they themselves practice it.

forms of "state terrorism".

The 20th century, with its two world wars and the totalitarian experience, brought a

The industrialization of political violence. The Nazi and Stalinist regimes used systematic terror against their populations as a method of social and political control. It is in this breeding ground that...

Rapoport waves develop in response to specific geopolitical contexts. The first

One wave reacts to the remnants of the Old Regime; the second, to colonialism; the third, to bipolarity.

of the Cold War; and the fourth, to power vacuums, identity crises and post-colonial frustrations in globalized world.

Understanding this long historical period is essential to avoid an anachronistic view of

Terrorism is not a product unique to the 21st century. It is a tactic, a strategy of war.

asymmetrical, which has been and continues to be used by a myriad of actors, from non-state groups

...to nation-states, in different contexts and with different purposes. This historical perspective

It sheds light on the difficulty of fitting such a polymorphic phenomenon into a legal definition.

Rigid and universal, a challenge that will be addressed in the next chapter.

### **3. THE CONCEPTUALIZATION OF TERRORISM: FROM THE INTERNATIONAL LEVEL TO BRAZILIAN**

One of the biggest obstacles in the international fight against terrorism is the notorious difficulty in

to establish a universally accepted legal concept. The adage "one man's terrorist is another

"Man's freedom fighter" encapsulates the problem.

central: the classification of an act as "terrorist" is inherently political and depends on the point of view.

From the perspective of the person issuing it.

The United Nations (UN), despite having promulgated more than a dozen

sectoral conventions that repress specific acts commonly associated with terrorism (such as the

(aircraft hijacking, financing of terrorism and bombing attacks), never succeeded

to adopt a General Comprehensive Convention on International Terrorism. The obstacles are

Deep and reflect geopolitical divisions. One of the main controversies revolves around...

The distinction between terrorism and legitimate national liberation struggle. Arab and Islamic countries, for example.

For example, historically they argue that acts of resistance to foreign occupation, including the



Armed resistance should not be characterized as terrorism.

Amid this impasse, some definitions from international organizations have gained prominence.

The definition of Art. 2.1(b) of the International Convention for the Suppression of Financing Terrorism (1999) is frequently cited. It defines a terrorist offense as any act that aims to cause death or serious injury to a civilian or any other person not directly involved in the hostilities in a situation of armed conflict, "when the purpose of the act, by its nature or context, whether it be to intimidate a population, or to force a government or an international organization to "To do or refrain from doing any act."

This definition, although limited to the context of financing, captures key elements that These are recurring elements in many attempts at conceptualization: a) the intention to cause death or serious harm. a) to civilians; b) the objective of intimidating a population or coercing a government/international organization. However, it does not resolve the central issue of motivation (political, ideological, racial, religious). leaving it open-ended.

The lack of universal consensus does not, however, mean a total absence of standards. A jus The anti-terrorism commune has been forming from the convergence of national legislation and the sectoral conventions. This common law tends to include the following core elements: (i) a (i) the practice of a violent act or threat of violence; (ii) the intention to spread terror or coerce a population or government; (iii) a political, ideological, religious or similar purpose. It is precisely It is in this third element that Brazilian legislation will take a divergent path, as will be seen. forward.

The September 11, 2001 attacks in the US represented a turning point in the trajectory. of the fight against terrorism. The Bush administration's response was the declaration of a "War on Terror." "Terror" (War on Terror), a concept that transcended mere security policy to become a global paradigm. Richard Jackson (2005) argues persuasively that the "War on Terror" It is, above all, a powerful political discourse: "a set of practices, wars, covert operations, Agencies and institutions, and a set of assumptions, beliefs, justifications, and narratives.

This discourse, according to Jackson (2005), operates by creating a Manichean dichotomy between the "Civilized world" and "global terrorism," between good and evil. In this context, the term "terrorist" It is stripped of its precise legal content and transformed into a floating signifier, a stigma. which can be used to delegitimize and neutralize enemies of the State, movements of opposition or simply "the others." The language of the "War on Terror" serves to justify exceptional measures, such as preventive wars, targeted assassination operations, surveillance in The mass appeal and the erosion of procedural guarantees, under the argument of the need for existential security.

Suarez (2013) deepens this analysis by discussing the hegemony of the North American security discourse. American, which was largely "bought" by the Western world. In this logic, the fight against terrorism



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It becomes a moral and political imperative that tends to suppress critical debate about its causes.

Methods and consequences. The definition of who is a "terrorist" ceases to be a mere qualification.

A legal-technical process that becomes an act of sovereign power. This is the political instrumentalization of the term.

This creates a dangerous environment where the creation of anti-terrorism laws may be motivated more by adherence.

driven more by a geopolitical agenda or the repression of internal dissent than by a genuine...

technical concern with public safety.

This background is crucial to understanding the political context in which Law 13.260/2016 was enacted.

conceived in Brazil. The fear that a broad definition of terrorism could be used to

to criminalize social movements, indigenous people, landless peasants, and political opponents, as has occurred in a manner...

The systematic implementation of the National Security Law during the military regime was a decisive factor that...

shaped the final text of the law, leading to the explicit exclusion of political motivation.

Analyzing how other nations define the crime of terrorism provides a valuable benchmark.

to evaluate the Brazilian option. A considerable variety of approaches can be observed, which may

They can be grouped into two main models, albeit with nuances.

The Anglo-Saxon model, exemplified by the United Kingdom and the USA, tends to adopt

Broad definitions. The UK Terrorism Act 2000 defines terrorism as the use or threat of...

an action designed to influence the government or intimidate the public, done with the purpose of advancing

a political, religious, racial, or ideological cause. The action includes serious violence against people, damage

serious damage to property, which endangers people's lives or creates a serious health risk or

public safety. Here, the clear inclusion of political/ideological motivation as an element is noticeable.

central to the criminal type (Jackson, 2005).

The continental European model, like that of Germany, is often more restrained. §

Article 129a of the German Penal Code refers to the formation of terrorist organizations and defines their...

activities based on a list of crimes (such as murder, homicide, crimes against liberty)

(personal) when such crimes are committed with the aim of seriously intimidating the population,

to forcibly remove or destabilize the fundamental constitutional structures of a State or of

an international organization. The political motivation, although underlying, is subtly incorporated.

through the purpose of attacking the constitutional order (Jackson, 2005).

French legislation, following the 2015 attacks, also strengthened its legal framework.

The French Penal Code associates terrorism with intentional acts linked to an individual company or

A collective action aimed at seriously disrupting public order through intimidation or terror.

Case law and legal doctrine hold that this "enterprise" must have an ideological, political motivation.

or religious (Gonçalves, 2017).

In common, most laws in democratic countries include, explicitly or

implicit, a finalistic subjective element that goes beyond the direct intent to commit the violent act: the



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The intention is to intimidate the population or coerce the powers of the State, with a view to achieving a political, ideological or religious objective (Gonçalves, 2017). It is precisely this motivational element

The political-ideological framework that Brazilian law has explicitly chosen to abandon, opting instead for a list...

a definitive set of catalysts (xenophobia, discrimination) which, as will be seen, represents a unique feature.

in the comparative scenario.

#### **4. Brazilian Legislation and its Compliance with Commitments**

##### **INTERNATIONAL**

To understand the genesis and peculiarities of Law 13.260/2016, it is necessary to refer to its...

The main legislative precedent: the National Security Law (LSN), Law No. 7,170 of 1983.

Enacted at the end of the Brazilian military regime (1964-1985), the National Security Law was conceived as a an instrument of political repression, designed to criminalize and persecute any activity considered oppositional or subversive to the government.(Queiroz, 2013).

Your text is marked by vague and open-ended criminal offenses, such as "attempting to change, with use of violence or serious threat, order, the current regime or the democratic State" (art. 11) or "to slander or defame the President of the Republic" (art. 26). During its years of validity, the National Security Law It was widely used to prosecute, arrest, and silence journalists, artists, intellectuals, and leaders. trade unionists and opposition politicians. It thus became the legal symbol of state repression and of authoritarianism.

This traumatic legacy created a "ghost" in the Brazilian legal and political imagination, the widespread fear that any law aimed at protecting the state and democratic order might, in the end In the future, it could be used for purposes of political persecution, as was the National Security Law. This "ghost" of The National Security Law (LSN) loomed over the entire legislative debate that preceded the approval of the anti-terrorism law. more progressive sectors of civil society, left-wing parties and entities such as the Order of Brazilian lawyers (OAB) and human rights associations have strongly warned about... risks of creating a "new instrument of political persecution".

It was this historical and political context, and not merely a purely technical and legal discussion, that determined the Brazilian legislator's choice for an extremely cautious type of crime, and some They would say it's restrictive. The need to rule out any possibility of criminalizing movements. Social events and popular demonstrations, fundamental activities in a vibrant democracy, have become an unavoidable political imperative. The solution found was, as we shall see, surgical in its The intention is good, but its scope is potentially problematic.



#### 4.1 The advent of Law No. 13.260/201, when the external puts pressure on the internal.

International pressure for Brazil to establish a specific law within its legal system.

The fight against terrorism intensified significantly from the 2000s onwards, especially after the September 11 attacks. Brazil's participation in forums such as the G20 and its selection to host... international mega-events, such as the 2014 World Cup and the 2016 Olympic Games,

They exposed the country to greater scrutiny and increased the demand for an anti-terrorism legal framework. robust. International organizations such as the Financial Action Task Force (FATF)

They are pushing for effective national legislation against the financing of terrorism, which, in turn, In turn, it requires the prior classification of the crime of terrorism.

Internally, the debate was heated and prolonged. The Bill that gave rise to the law

It was debated in the National Congress for years, undergoing numerous changes. The government of President [Name] Dilma Rousseff, who submitted the bill, initially advocated for a wording that included the justification. Politics. However, strong opposition from civil society and parts of Congress forced a change. direction.

Message No. 85, dated March 16, 2016, which accompanied the presidential sanction of the law, is A revealing document. In it, the Presidency of the Republic explained the reasons that led to the vetoes. and changes to the text approved by Congress, making clear the intent to remove any Ambiguity that could lead to the criminalization of social movements:

[...] the decision was made to exclude the expression 'reasons of policy' [...] to avoid any interpretation that social movements and demonstrations could be classified as terrorism. The new wording, therefore, seeks to reconcile the indispensable repression of terrorism with the guarantee of public freedoms and the exercise of citizenship.

This official excerpt demonstrates that the main concern of the Executive Branch when enacting the The law was not only about repressive effectiveness, but, above all, about protecting fundamental rights against potential state abuses. The law was therefore born with a "birthmark": it is, in its In essence, it is a defensive law, shaped by the country's authoritarian past and the desire to avoid its... repetition. This political option, however, would have a cost in terms of technical scope, such as An analysis of the criminal offense will demonstrate this.

The core of Law 13.260/2016 (Brazil, 2016) is in its Article 2, which defines the crime of Terrorism. A detailed dogmatic analysis of its elements is fundamental to understanding it. its potential and limitations.

Article 2. Terrorism consists of the practice by one or more individuals of the crimes foreseen in this Article, for reasons of xenophobia, discrimination or prejudice based on race, color, ethnicity and religion, when committed with the purpose of provoking social or widespread terror, endangering persons, property, public peace or public safety.

Sole paragraph. The provisions of this Article do not apply to the individual or collective conduct of persons in social, trade union, religious, class or professional category movements, directed by social or protest purposes, aimed at contesting, criticizing, protesting or supporting, with the objective of defending constitutional rights, guarantees and freedoms, without prejudice to the criminal classification contained in law.

The criminal offense is of a mixed or complex verb type, as it depends on the commission of a base crime. provided for elsewhere in the law (such as causing an explosion, attempting to take the life or physical integrity of person, etc. listed in items I to VII of article 2). There is no abstract "terrorist act"; it always occurs. It is based on a common crime, to which specific subjective elements are added. Herein lies the unique aspect of Brazilian law is that there are two special subjective elements (which go beyond intent to deceive). (to commit the underlying crime). 1) Catalyst (Determining reason): The crime must be committed "for reasons" "Xenophobia, discrimination, or prejudice based on race, color, ethnicity, and religion." This is an exhaustive list. The legislator exhaustively listed the only reasons that, if present, can qualify the underlying crime. such as terrorism. Notably, the motivation was political, ideological, or opposition to governments. excluded. A violent act committed to overthrow the government, for example, would not qualify as such. Terrorism under Brazilian law, unless it was also motivated by xenophobia or prejudice. racial and 2) Specific Purpose: The agent must act "with the purpose of provoking social terror or "Widespread." This element is more aligned with international definitions and captures the essence of terrorism as a tactic of spreading fear. It is important to distinguish this purpose from mere... The result. The terror may not materialize, but if that was the agent's intention, the type will be... Configured.

The sole paragraph is a safeguard clause almost unique in comparative law. It acts as a cause for exclusion of typicality for social movements and protest activities. It is an explicit attempt to legally "immunize" these activities, reflecting the "ghost" of the National Security Law. Although it is a commendable provision from the point of view of protecting rights, it can also be... criticized for introducing an ambiguity: where does the legitimate claim end and the act begin? Terrorist? The law presumes that a social movement, by definition, cannot have the purpose of... to provoke social terror, which can be a dangerous oversimplification in cases of extreme violence in protests.

#### 4.2 Exclusion in favor of social protection and political freedom

The decision to exclude political motivation is undoubtedly the most controversial aspect of... Law 13.260/2016 (Brazil, 2016). This is a choice that prioritizes legal certainty and protection. of democratic freedoms at the expense of repressive scope.



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From a rights-based perspective, the option is defensible. Vague criminal types that incorporate the Political motivations are historically dangerous, as they open the door to discretionary power.

The State's role in criminal prosecution. By restricting the definition to a closed list of catalysts, the legislator sought to create a barrier against the criminalization of political dissent. The sole paragraph reinforces this.

barrier, creating a procedural "shield" for social movements.

However, from the perspective of effectiveness in combating international terrorism, the option is...

That's questionable. Terrorist groups like Al-Qaeda and the Islamic State are driven by an ideology.

Political-religious. If a group with these characteristics were to carry out an attack in Brazil targeting...

to coerce the government into changing its foreign policy in the Middle East, for example, framing

Proving it terrorism would be, at the very least, complex. Unless it can be demonstrated that the act was motivated.

specifically due to religious prejudice (which, in this case, would be a forced interpretation, since the

The motivation is broader, encompassing political and religious aspects; the crime could be treated simply as crimes-

common grounds (homicide, explosion, etc.), losing the aggravating circumstance and the more severe legal regime.

counterterrorism.

In other words, Brazilian law may be technically incapable of defining certain forms of crime.

purely political-ideological terrorism is precisely the focus of concern.

international. This is the main gap pointed out by critics such as Pinheiro (2023), who questions

if the law is "technical enough to not only prevent abuses by the State but also to guarantee protection

"Social and the Brazilian system." The law seems to have missed its target: while international terrorism

The contemporary landscape is predominantly political and ideological; Brazilian law has focused on combating a

Terrorism of a discriminatory nature, while existing, is not the main threat in the current scenario.

global.

## 5. CRITICAL ANALYSIS AND EFFECTIVENESS OF THE BRAZILIAN ANTI-TERRORISM LAW

### 5.1 Compliance with International Treaties: An Analysis of Convergence and

#### Divergence

Brazil is a signatory to at least 14 international conventions against terrorism.

The question that arises is: does Law 13.260/2016 (Brazil, 2016) comply with the provisions of these treaties?

The answer is partial and ambiguous. On the one hand, the law fulfills the general obligation of defining specific conduct.

Domestic terrorists. It creates a specific legal framework for terrorism, establishing

Severe penalties and investigative mechanisms, theoretically fulfilling the State's duty of *due diligence*.

(Queiroz, 2013).

On the other hand, the restrictive conceptualization adopted by Brazil may put it out of step.



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with the spirit and interpretation of these treaties. International conventions, although they do not define  
Terrorism, in a broad sense, often refers to acts committed with "political aims" or  
to "intimidate a population or compel a government". Council Resolution 1566 (2004)  
UN security, for example, refers to:

"Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or to take hostages, for the purpose of inciting terror among the general public or a group of people or specific individuals, intimidating a population, or compelling a government or an international organization to do or refrain from doing any act."

By excluding political motivation, Brazilian law significantly narrows the scope of application of the criminal type in relation to this international understanding. An act committed to "compel" "A government refraining from taking any action" will only be considered terrorism in Brazil if, and only if, it is... motivated by xenophobia or discrimination (Queiroz, 2013). An act with the same purpose, but motivated by purely political reasons, such as anarchism, the far left, Non-discriminatory far-right groups would be left out.

Therefore, there is a qualitative divergence between national law and international standards. emerging economies. Brazil fulfilled the formality of having a law, but the content of that law may not be fully aligned with the expectations of the international community, especially those countries that view terrorism primarily as a phenomenon of a political nature. Cristina Queiroz (2013) warns that, in the current global context, it is simplistic thinking to believe that the Mere neutrality can provide protection to states. Legislation considered "lax" or Being considered "insufficient" by international standards can, paradoxically, make the country a more vulnerable target. whether for attacks or for sanctions within the scope of financial control bodies.

## 5.2 Gaps and Potential Zones of Impunity

The conceptual approach of Brazilian law creates tangible loopholes that can turn into zones. impunity or, at the very least, inadequate criminal treatment for extremely serious offenses.

We can list three problematic scenarios (Rapoport, 2004):

Terrorism Motivated Purely by Politics: As already highlighted, a group that engages in acts of extreme violence with the clear objective of destabilizing or overthrowing the government, without any... An element of xenophobia or racial/religious discrimination cannot be classified under the law of Terrorism (Queiroz, 2013). Its members will be held accountable for common crimes (homicide, assault). bodily, explosion), which, although serious, do not carry the same symbolic weight, the same legal repercussions and the same severe prison regime as for heinous crimes. This is a flaw in Legal labeling that may underestimate the dangerousness of the act (Rapoport, 2004).



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Non-Discriminatory Far-Right or Far-Left Terrorism: Neo-Nazi groups that

attack state symbols, or anarchist groups that promote arson attacks on buildings.

Public actions intended to incite insurrection may escape being classified as terrorism if

if it is not possible to prove that the act was motivated by prejudice against a specific race or religion,

but rather due to a generic opposition to the system (Queiroz, 2013). The anti-capitalist political motivation

or anti-state is not sufficient under Brazilian law (Rapoport, 2004).

Cyberterrorism for Political Purposes: A large-scale cyberattack that disables critical infrastructure (such as the energy or water supply system) with the aim of

Coercing the government to change a policy would be a typical case of cyberterrorism, according to the understanding...

Internationally. In Brazil, unless discriminatory motivation is proven, the matter would be dealt with...

such as a crime against the safety of a public utility service or damage, with penalties

considerably smaller (Rapoport, 2004).

These loopholes demonstrate that the law, in its quest to be "the anti-terrorism law that doesn't step on anyone,"

"At the risk of criminalizing politics," it may have treaded on the opposite footing: that of being a law that fails.

to capture the political essence of the phenomenon it seeks to combat. Repression thus becomes...

incomplete and potentially ineffective against some of the most common terrorist threats of the century.

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### 5.3 The Practical Application of the Law: Cases and Perspectives

Since its enactment in 2016, the Anti-Terrorism Law has had practical application.

It is quite restricted in Brazil. There hasn't been, up to now, a major trial that has brought it to the forefront.

at the center stage of the criminal justice system. This low application can be interpreted in two ways.

shapes.

On the one hand, it could be an indication that the classic terrorist threat is, in fact, low in national territory, making the law a preventative tool, but without routine use. On the other hand

On the other hand, it may be a symptom of its own ineffectiveness and the difficulties of factual framing.

created by restrictive wording.

Some emblematic cases tested the limits of the law. The most notorious was the investigation related to acts of vandalism during the 2013 and 2016 protests. There were attempts to

sectors of the public authorities are framing black blocs and more radical protesters under terrorism law.

However, the courts, for the most part, rejected such classifications, invoking precisely the sole paragraph of Article 2.

The acts, however violent they may have been, were understood as falling within...

in the context of social movements and demands, not constituting the specific purpose of

to provoke "social or widespread terror" detached from a claim-making purpose (Borges, 2017).



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Another case that generated discussion was the arrest of suspects allegedly sympathetic to or linked to... The Islamic State. In these situations, the accusation often falls on the figure of the "organization". "terrorist" (Article 3 of the law) or regarding crimes of incitement and recruitment. The group's qualification as In these cases, whether someone is considered terrorist does not depend on the motivation of the specific individual, but on the nature of the group. which may facilitate the framing. However, for a concrete attack, the barrier of Article 2... would remain (Rapoport, 2004).

The practical application of the law, therefore, has confirmed its guarantor vocation. It has been more Effective as a shield to protect freedom of assembly and expression rather than as a sword. to punish acts of terrorism. This is not necessarily a criticism, but an observation that the The law fulfilled its main stated political objective: to prevent a repeat of past persecution. politics. However, the question remains open as to whether she will be up to the challenge should the Brazil may face, in the future, a more sophisticated terrorist threat of a clearly political nature. or ideological.

## FINAL CONSIDERATIONS

The analysis carried out throughout this article allows us to conclude that Law No. 13.260/2016 (Brazil, The 2016 law represented a fundamental, yet incomplete, advancement in the Brazilian legal system. She fulfilled the historic mission of filling a serious and embarrassing gap, providing the State with specific legal instruments for combating terrorism and aligning it, at least formally, in line with the demands of the international community.

However, the legislative option, deeply influenced by the "ghost" of the Law of National security and a turbulent internal political context, excluding political motivation. of the criminal type, replacing it with an exhaustive list of catalysts (xenophobia, discrimination, etc.), This calls into question the full effectiveness and scope of the rule. Although understandable and commendable... From the point of view of protecting democratic freedoms and legal certainty, this choice The conceptual framework reveals a disconnect with the predominant nature of contemporary terrorism, which It is inherently political and ideological.

Therefore, in response to the central research problem, it is concluded that Brazilian legislation It possesses instruments for the repression of terrorism, but these prove to be partial and potentially insufficient to encompass the complexity and mutability of the phenomenon with complete rigor. Required by constitutional and international commitments. The law is a primary and necessary step. a step, but a cautious one that rightly prioritized avoiding abuses, but which possibly... It erred by creating a conceptual reduction that could leave room for impunity for certain types of offenses. Specific to terrorism.



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Law 13.260/2016 (Brazil, 2016) is, therefore, a product of its time and its trauma. It is a law that looks more to Brazil's authoritarian past than to the complex challenges of Future global terrorism. Its practical application has been consistent with this design, acting more as a safeguard against the criminalization of politics rather than as a repressive tool. robust.

The future of this legislation will depend on the evolution of the terrorist threat in the national scenario. If Brazil remaining on the sidelines of the main flows of international terrorism, the law, in its form Currently, it can be considered sufficient. However, if the threat materializes in a more... forceful, especially in the form of attacks with purely political or ideological motivation, the The legislation will need to be reevaluated and refined. The major challenge that remains will be to calibrate the... A delicate balance between the necessary and effective repression of terrorism and the inviolable protection of The democratic rule of law and the freedoms that sustain it. The debate, far from being over, It's only just beginning.

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