

Preparedness Rules Applicable to CBRN Terrorism

Andrea de Guttery

1 Introduction

Many international studies,¹ criminal investigations,² and intelligence reports from international organisations (IOs)³ and national institutions⁴ have reached the conclusion that, for a multiplicity of reasons,⁵ there is an increas-

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- 1 According to E Dinu, 'Assessing CBRN terrorism threats', in S Fei, I Anthony (eds), *Reassessing CBRN Threats in a Changing Global Environment* (SIPRI 2019), the threat posed by CBRN terrorism 'is still considered relevant, driven by political, ideological, social, economic and technological factors. Although threats should not be unnecessarily exaggerated, attack could plausibly be conducted with CBRN means targeting random civilians or selected individuals because of their political or ideological significance', p. 13. See also K Ivanova and T Sandler, 'CBRN Attack Perpetrators: An Empirical Study' (2007) 3(49) *Foreign Policy Analysis*, 273.
 - 2 Europol, *Terrorism Situation and Trend Report (TE-SAT) 2017*, p 16: <www.europol.europa.eu/sites/default/files/documents/tesat2017.pdf>. All links were last accessed in May 2021.
 - 3 Vladimir Voronkov, Under-Secretary-General of the UN Office for Counter-Terrorism, stated recently that 'Over the years, terrorists have tested new ways and means to acquire and use more dangerous weapons [...] including weapons incorporating CBRN materials [...] Recent events such as the use of chemical weapons on civilians by terrorist groups during the terrific war that started in Syria in 2011 have shown us that this is indeed a very real threat'. United Nations Office for Counter-Terrorism, *Ensuring Effective Interagency Operability and Coordination in Case of Chemical and/or Biological Attacks*, (UN 2017). In a recent study by E Nexon and C Wachte, commissioned by the European Parliament and titled '*EU preparedness against CBRN weapons*', reference is made to 'repeated chemical attacks by both State and non-state actors in the context of the Syrian conflict (since 2012), allegations about a North Korean offensive chemical programme and the assassination of the North Korean leader's half-brother with vx nerve agent (2017), the Salisbury Novichok poisonings likely perpetrated by individuals affiliated to a State security service, as well as the disruption of two ricin terror plots in Germany and France (2018)': <[https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603875/EXPO_STU\(2019\)603875_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603875/EXPO_STU(2019)603875_EN.pdf)>.
 - 4 According to the CIA, Al-Qaeda and several associated extremist groups 'have a wide variety of potential agents and delivery means to choose from for CBRN attacks': CIA, *Terrorist CBRN: Material and Effects*, <https://www.cia.gov/library/reports/general-reports-1/CBRN_threat_wo.pdf>.
 - 5 These are the reasons identified by E Dinu, n 1, '1. Sophisticated CBRN agents are potentially highly lethal while being silent killers, and therefore harder to detect and contain; 2. Any attack using CBRN material would attract attention and receive prime-time coverage in the mass media; 3. CBRN attacks would most certainly provoke terror and panic among civilians;

ing risk that terrorist groups might make use of CBRN material to carry out attacks in the near future, or target installations containing CBRN material. To reduce the risk of these events, which could be extremely deadly and cause widespread damage, it is essential all over the world to adopt, test and continuously update not only prevention procedures⁶ but also specific preparedness measures. While there is no guarantee that these measures will succeed, even if fully implemented, they can minimise and mitigate the consequences of such malicious events.⁷ Furthermore, as no State has the capacity to deal with the consequences of a serious CBRN terrorist event on its own, reinforced international cooperation is not only desirable but necessary.

This chapter investigates the content of international obligations and soft law instruments related to preparedness measures, which States and, where applicable, International Organisations are expected to adopt and implement to face potential CBRN terrorism activities. Therefore, the chapter is mostly devoted to careful examination of relevant international treaties at the universal and regional levels, as well as UN Resolutions and soft law instruments. The closing paragraph is devoted to a preliminary assessment of the effective impact of these measures and the degree to which they are implemented at the national level.

The definition of 'preparedness' is that already adopted in Chapter 4, according to which, in general terms, a state of preparedness is 'the product of a combination of planning, allocation of resources, training, exercising, and organizing to build, sustain, and improve operational capabilities based on risk assessments'.⁸ This chapter will not examine the generic preparedness obligations which States are supposed to implement to face any kind of potential CBRN event (including malicious events caused by terrorists), as these were already examined in Chapter 4.

4. CBRN materials have the potential to inflict serious consequences and collateral economic damage (e.g. by contaminating the environment and affecting animal and human health);

5. CBRN materials offer the means to blackmail governments or at least pressure them; and

6. Possession and use of CBRN means would place the perpetrator in a position of perceived power vis-à-vis national authorities (at least temporarily)'.⁶

6 See ch 7 by Poltronieri Rossetti in this volume.

7 A very interesting and comprehensive analysis of the drivers of violent extremism (which often then transforms into terrorist activities) is offered in the 24 December 2015 Report of the Secretary General of the UN, 'Plan of Action to Prevent Violent Extremism' (UN doc A/70/674).

8 Ibid p 42.

2 Preparedness Obligations Regulated in International Instruments

2.1 *At the Universal Level*

In Chapter 4, the conclusion was reached, on the basis of a detailed analysis of international treaties, that States and IOs must adopt a wide array of generic preparedness measures to deal with any kind of CBRN event.⁹ The following paragraphs investigate preparedness measures dealing specifically and exclusively with CBRN terrorist activities. While in the past such rules have been rare,¹⁰ more recently they have attracted increasing interest, especially at the regional level. However, this recent trend is far from uniform, and there are still several relevant conventions devoted to terrorism that do not contain any reference to preparedness measures.¹¹

The first universal agreement to codify preparedness obligations related to potential terrorist activities was the Convention for the Suppression of Unlawful Seizure of Aircraft (1970). According to Article 9 of this Convention, whenever a person on board an aircraft in flight unlawfully – by force or threat or any other form of intimidation (which might include the threat to use CBRN substances) – seizes or attempts to exercise control of that aircraft, contracting States ‘shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft’.¹² While the rule seems to be relevant mostly in the ‘response’ phase of a CBRN terrorist event, it is mentioned here because it implies that States must adopt all relevant measures to be prepared to confront this kind of criminal act, using whatever policy is deemed appropriate (that is, to negotiate or to use force). The importance of the adoption of these measures was reiterated by the

9 See ch 4 by de Guttery.

10 One of the exceptions that is worth remembering is represented by P K Ray, *Disaster Preparedness Against Accidents or Terrorist Attack (Chemical, Biological, Radiological)*, (New Age International Limited Publisher 2006).

11 For example, the well-known and relevant Convention on the Physical Protection of Nuclear Material (1980; renamed after the 2005 Amendment as the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities) does not contain any reference to preparedness obligations. This is also the case of several other relevant international treaties, such as the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (2010), the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971), and the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988).

12 N M Poulantzas, ‘The Hague Convention for the Suppression of Unlawful Seizure of Aircraft (December 16, 1970)’, NILR, (1971)18 (1), pp 25–75. See also J F Murphy, *Punishing International Terrorists: The Legal Framework for Policy Initiatives*, (Rowm and Allanheld 1985).

International Civil Aviation Organization in the 2017 Global Aviation Security Plan,¹³ which enumerated five key priorities, almost all of which are in the realm of preparedness.¹⁴

Moreover, the International Convention Against the Taking of Hostages (1979) contains a relevant rule related to preparedness obligations. Although this Convention does not directly refer to terrorism in its title, the Preamble makes the connections between hostage-taking and terrorism very explicit.¹⁵ Thus, the Convention is applicable whenever, for example, a terrorist group takes hostages and then threatens to use CBRN substances if forceful attempts are made to free them, or such a group uses hostages as a bargaining chip to access CBRN materials. Article 3 requires the State in whose territory the hostage is held to 'take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure'. Although drafted in a very generic manner, this rule requires States to be prepared to manage a possible hostage-taking situation in an appropriate manner. Once again, this obligation mainly refers to the response phase, but it can clearly be interpreted as also implying that States must adopt proper preparedness measures in advance, in order to be ready to face a hostage-taking situation.

In the International Convention for the Suppression of the Financing of Terrorism (1999),¹⁶ a few more preparedness obligations were codified in order to guarantee greater transparency and to improve the monitoring of financial transactions and flows. To this end, States Parties are expected to take all practicable measures for the identification of unusual or suspicious dealings suspected of stemming from a criminal activity.¹⁷ Introducing specific rules in the domestic legal system can qualify as a preparedness measure, while the actual use of the same rules is part of the response phase.¹⁸

13 <<https://www.icao.int/Security/Documents/GLOBAL%20AVIATION%20SECURITY%20PLAN%20EN.pdf>>.

14 The five priorities are to a) enhance risk awareness and response, b) develop security culture and human capability, c) improve technological resources and foster innovation, d) improve oversight and quality assurance and e) increase cooperation and support.

15 It is reaffirmed that it is urgently necessary to develop international cooperation between States 'in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism'.

16 The Convention was adopted by UNGA Resolution 54/109 (9 December 1999), UN Doc A/Res (54/109).

17 Art 18, para 1, letter b.

18 See N Angelet, 'Vers un renforcement de la prévention et de la répression du terrorisme par des moyens financiers et économiques' in K Bannelier, T Christakis, O Corten and B Delcourt (eds), *Le droit international face au terrorisme*, (Pedone 2002), 219–238;

While the risk of terrorists (mis)using the financial system is high, there is also a menace that terrorist groups could use nuclear material. This concern was at the core of The Hague Nuclear Security Summit (2015). A communiqué adopted on 25 March 2015¹⁹ reaffirmed ‘the need to maintain effective emergency preparedness, response and mitigation capabilities in a manner that addresses both nuclear security and nuclear safety’.²⁰ Making further reference to this communiqué, on 14 December 2016, a group of States coordinated by South Korea²¹ presented the Joint Statement on Supporting Nuclear and Radiological Terrorism Preparedness and Response Capabilities,²² which contains a comprehensive list of what needs to be included in nuclear terrorism preparedness and response capabilities.²³ Additional relevant treaty obligations codified in conventions devoted to CBRN weapons are further examined in Part 3 of this book.

The UN has obviously played a relevant role in this context, focusing on several terrorism-related issues,²⁴ including prevention, punishment of terrorists and international cooperation. However, only in the more recent UNSC Resolution 2341 (2017), on threats to international peace and security caused by terrorist acts, was there wide agreement on the importance of preparedness measures that entail multiple streams of efforts, such as ‘planning; public information and warning; operational coordination; [...] cybersecurity; physical protective measures; risk management for protection programmes and

I Bantekas, ‘The International Law of Terrorist Financing’, (2003) 97 *AJIL*, 315–333; R Laval, ‘The International Convention for the Suppression of the Financing of Terrorism’, (2000) 60 *ZaöRV* 491–510.

19 The main goal of the Nuclear Security Summit Initiative is ‘to address the threat of nuclear terrorism by minimizing and securing weapons-usable civilian nuclear materials, enhancing international cooperation to prevent the illicit acquisition of nuclear material by non-state actors such as terrorist groups and smugglers, and taking steps to strengthen the global nuclear security system’: <<https://www.armscontrol.org/factsheets/NuclearSecuritySummit>>.

20 <<https://2009-2017.state.gov/documents/organization/237002.pdf>>.

21 The Joint Statement has been endorsed by 24 States, including the USA.

22 A Joint Statement on Supporting Nuclear and Radiological Terrorism Preparedness and Response Capabilities, IAEA *INFCIRC/90414*, December 2016: <<https://www.iaea.org/sites/default/files/publications/documents/infcircs/2016/infcirc904.pdf>>.

23 The capabilities are grouped under the following headings: National Policies and Plans; Technical Expertise and Capabilities; Public Communications and Education; Sustainment of Capabilities; International Coordination and Assistance Mechanism.

24 As far as CBRN-related activities are concerned, the Security Council has specifically addressed the threat of WMD/CBRN terrorism in Resolutions 1373 (28 September 2001), UN Doc S/Res/1373 and 1540 (28 April 2004), UN Doc S/RES/1540, which focused on prevention and repression; surprisingly, no reference is found regarding preparedness obligations.

activities'. Member States are therefore urged to adopt the necessary preparedness measures, as well as to promote 'better interoperability in security and consequence management'.²⁵ In addition, the UN General Assembly has devoted several resolutions to this issue.²⁶ For example, the 2006 Resolution on the UN Global Counter-Terrorism Strategy²⁷ enumerates several preparedness measures which States are required to introduce at the national level. The status of implementation of these measures is at the core of the Annual Review of the UN Global Counter-Terrorism Strategy. Recently,²⁸ the GA directed attention to the preparedness measure related to potential terrorist attacks against critical infrastructure that could significantly disrupt the functioning of government and the private sector alike, as well as cause knock-on effects. In light of this risk, Member States have been invited to consider the 'growing importance of protecting critical infrastructure from terrorist attacks and of fostering comprehensive preparedness for such attacks, including through public-private partnership, as appropriate'.²⁹ In another Resolution, adopted in December 2020, the UNGA encouraged Member States 'to participate, on a voluntary basis, in the Incident and Trafficking Database programme of the International Atomic Energy Agency'.³⁰ This is a voluntary mechanism for the international exchange of information on incidents of illicit trafficking and other unauthorised activities and events involving nuclear and other radioactive material, aimed at supporting the Participating States to be better prepared to deal with radioactive and nuclear material that may have fallen out of regulatory control.

The UN Counter-Terrorism Implementation Task Force Working Group on the Protection of Critical Infrastructure including Vulnerable Targets, Internet and Tourism Security developed a Compendium of good practices for

25 Para 2 of the UNSC Resolution 2341(2017), UN doc/S/Res/2341. During the discussion of this resolution, the Acting President of the Security Council underlined that this resolution was a decisive step 'towards global preparedness for terrorist attacks': UN Doc S/P V.7882 (13 February 2017), 3.

26 For an example, see UNGA Resolution 46/51 (9 December 1991), UN Doc A/RES/46/51; and the 2005 World Summit Outcome, particularly its section on terrorism (UNGA Resolution 60/1 (24 October 2005; UN Doc A/RES/60/1).

27 The United Nations Global Counter-Terrorism Strategy, UNGA Resolution 60/288 (8 September 2006), UN Doc A/RES/60/288.

28 UNGA Resolution 72/288 (2 July 2018), UN Doc A/RES/72/284.

29 Member States are also encouraged to consider developing or further improving their strategies for 'reducing risks to critical infrastructure from terrorist attacks, which should include, inter alia, [...] taking preparedness measures, including effective responses to such attacks'. Ibid para 42.

30 UNGA Resolution 75/70 (20 December 2020), A/RES/75/70.

the protection of critical infrastructure against terrorist attacks (with noteworthy indicators, standards, risk assessment measures, recommendations and good practices).³¹ Finally, in 2008, the International Atomic Energy Agency released a reference manual that details how to prevent, detect and respond to an incident of nuclear terrorism.³²

Great attention has also been devoted to preparedness measures related to potential terrorist activities at the regional level. In the following paragraphs, attention will be focused on the relevant activities carried out in the different regional settings.

2.2 *At the Regional Level*

This section is devoted to the specific measures adopted within the European continent (with the exception of the activities carried out by the EU),³³ in Africa, in the Americas, and in Asia and the rest of the world. This overview will provide a comparative picture of the measures adopted and the valuable lessons learned in the different regional contexts.

2.2.1 In Europe

Notwithstanding the fact that, since 1990, the Council of Europe has carried out numerous activities in the areas of terrorism prevention and response,³⁴ it was not until 2005 that preparedness measures were introduced in the Convention on the Prevention of Terrorism.³⁵ The situation within the OSCE is very similar: a first, timid reference to preparedness measures was codified in the 2001 OSCE Council Decision No. 1, Combating Terrorism, to which the

31 <https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/eng_compndium-cip-final-version-120618.pdf>.

32 <https://www-pub.iaea.org/MTCD/publications/PDF/pub1309_web.pdf>.

33 The EU measures are analysed in ch 10 by Villani.

34 We refer, for example, to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime to Include the Financing of Terrorism (1990); the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1999); and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005). All these conventions are mostly focused on prevention and repression of terrorism.

35 Art 3, para 2 of this treaty requires States to take such measures 'as may be necessary to improve and develop the cooperation among national authorities with a view to preventing terrorist offences and their negative effects by, inter alia: [...] c) enhancing training and coordination plans for civil emergencies'.

Plan of Action for Combating Terrorism was annexed.³⁶ Specific preparedness rules were introduced in the 2002 OSCE Charter on Preventing and Combating Terrorism³⁷ and in the 2007 OSCE Decision No. 6/07 Protecting Critical Energy Infrastructure from Terrorist Attacks.³⁸

Unlike the Council of Europe and the OSCE, NATO has a much more solid record of paying attention to preparedness measures. As an example, at the 2016 Warsaw NATO Summit, Allied leaders issued a communiqué stressing their willingness to cooperate to 'prevent, mitigate, and respond effectively to terrorist attacks, including through our efforts to project stability'.³⁹ Making specific reference to CBRN events, the NATO leaders restated their firm commitment to ensure that the organisation:

continues to be both strategically and operationally prepared with policies, plans, and capabilities to counter a wide range of state and non-state Chemical, Biological, Radiological, and Nuclear (CBRN) threats, based on NATO's Comprehensive Strategic-Level Policy for Preventing the Proliferation of WMD and Defending Against CBRN.⁴⁰

The NATO communiqué also clarifies the specific goals of the preparedness measures. These include continuity of government and critical government services, energy supplies, resilient food and water resources, civil communications systems and civil transportation systems. The definition of specific goals to be achieved, standards to be respected and procedures to be enforced boosts the implementation of the necessary preparedness measures and favours more standardised and homogeneous approaches. As such, this structured approach to preparedness measures should serve as a reference point for

36 <<https://www.osce.org/mc/22645?download=true>>. Participating States are required to offer adequate training opportunities to the personnel of domestic financial institutions 'in counterterrorism areas inter alia on monitoring of financial flows and on prevention of money laundering'. Para 25.

37 According to para 28 of the Charter on Preventing and Combating Terrorism (2002), the OSCE Participating States 'Will make every effort to minimize those dangers through national efforts and through strengthening and enhancing the existing multilateral instruments in the fields of arms control, disarmament and non-proliferation'.

38 <<https://www.osce.org/files/f/documents/4/5/29482.pdf>>.

39 Warsaw Summit Communiqué Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw (8–9 July 2016), para 8: <https://www.nato.int/cps/en/natohq/official_texts_133169.htm?selectedLocale=en>. See more in ch 10 by Villani.

40 Ibid para 74.

other relevant international and domestic actors. Additionally, NATO has contributed to the promotion of soft law by approving procedural guidelines for strategic, operational and tactical planners responsible for CBRN preparedness and response. Among these, the following two deserve special attention: the 2009 Non-Binding Guidelines for Enhanced Civil-Military Cooperation to Deal with the Consequences of Large-Scale CBRN Events Associated with Terrorist Attacks⁴¹ and the Non-Binding Guidelines and Minimum Standards for CBRN First Responders.⁴²

The Eastern part of the European continent has also been impressively proactive in adopting measures aimed at preparing Member States to request/receive international support and assistance in case of terrorist events (especially if they involve CBRN material). This vigour is clearly reflected in the numerous treaties signed within the Commonwealth of Independent States⁴³ that regulate how mutual assistance will be conducted in the event of a terrorist event.⁴⁴

Finally, brief reference is made to the relevant activities carried out in Southern Europe, where the countries of the Euro-Mediterranean partnership – guided by the principles and objectives of the Barcelona Declaration⁴⁵ – have adopted the Euro-Mediterranean Code of Conduct on Countering Terrorism, declaring their commitment to ‘be prepared to minimise the consequences of attacks’, ‘share experience on managing the consequences of terrorist attacks and build contacts as appropriate’.⁴⁶

41 <<https://www.securityresearch-cou.eu/sites/default/files/PO%282019%290054%20-%20Non%20Binding%20Guidelines%2000n%20Civil-Military%20Cooperation%20in%20CBRN%20Defence.pdf>>.

42 <https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_08/20160802_140801-cep-first-responders-CBRN-ng.pdf>.

43 See, for example, the Treaty on Cooperation Among the States Members of the Commonwealth of Independent States in Combating Terrorism (1999): <<https://treaties.un.org/doc/db/Terrorism/csi-english.pdf>>.

44 See also the protocol approving regulations on the procedure for organising and conducting joint counter-terrorism Activities in the Territories of States Members of the Commonwealth of Independent States (2002): <https://read.un-ilibrary.org/international-law-and-justice/international-instruments-related-to-the-prevention-and-suppression-of-international-terrorism_652e7898-en>.

45 Barcelona Declaration, adopted at the Euro-Mediterranean Conference (27–28/11/95): <http://www.eeas.europa.eu/archives/docs/euromed/docs/bd_en.pdf>.

46 The Code of Conduct on Countering Terrorism was agreed at the Euro-Mediterranean Conference (27 and 28 November 2005): <http://www.eeas.europa.eu/archives/docs/euromed/summit105/terrorism_en.pdf>.

2.2.2 In the African Continent

In the African continent, the issue of preparedness has received special attention due to the involvement of relevant regional organisations in matters related to terrorism. For example, in the Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism (1999), the States Parties decided to 'co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes or organizing, where necessary and for the benefit of their personnel, joint training courses involving one or several States Parties in the area of control of terrorist acts, in order to improve their scientific, technical and operational capacities'.⁴⁷ In the Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism (2002),⁴⁸ a few additional preparedness obligations were introduced, including requirements for Member States to 'provide regular training to immigration officials with regard to the profiling of travellers and the verification of the authenticity of documents'⁴⁹ and to:

establish or develop anti-terrorist units and provide them with access to specific equipment and the requisite training to enhance the efficiency of their counter-terrorism units, particularly in matters of intervention, protection and detection.

In the Protocol to the OAU Convention on the Prevention and Combating of Terrorism (2004), there is an innovative reference to the need for preparedness measures adopted by States to always be consistent with the States' human rights obligations.⁵⁰ This important link was also codified in the 2005 Resolution on the Protection of Human Rights and the Rule of Law in the Fight Against Terrorism, adopted by the African Commission on Human and Peoples' Rights.⁵¹

Within the African continent, many sub-regional agreements have introduced additional preparedness measures. The measures adopted by the Economic Community of West African States (ECOWAS) can rightfully be

47 Art 5, para 6 of the 1999 Treaty.

48 <<http://www.peaceau.org/uploads/au-anti-terrorism-plan-of-action.pdf>>.

49 Ibid para 11, letter i.

50 The Parties committed themselves to 'take all necessary measures to protect the fundamental human rights of their populations against all acts of terrorism'.

51 ACHPR/Res.88 (XXXVIII) 05: <<https://www.achpr.org/sessions/resolutions?id=222>>. States are required to 'Fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties'.

considered some of the most innovative worldwide. After codifying several sub-regional treaties dealing with terrorism,⁵² in 2013, ECOWAS adopted the innovative Political Declaration and Common Position Against Terrorism,⁵³ to which the ECOWAS Counter-Terrorism Strategy is annexed. This is a detailed document built upon three pillars: prevent, pursue and reconstruct.⁵⁴ Specific preparedness measures are spelled out in Pillar 2.⁵⁵ To ensure speedy implementation, ECOWAS adopted a counter-terrorism implementation plan, which lists specific actions to be undertaken by Member States.⁵⁶

2.2.3 In the Americas

Compared to other regions, the progress of the North and South American continents concerning preparedness measures clearly lags behind. Although the Organization of American States (OAS) has traditionally played an important role in the fight against terrorism,⁵⁷ the OAS Member States only expressed their clear commitment to strengthening 'the capacity of our states to promote citizen security and to respond effectively to insecurity, crime, and violence, by adapting their legal framework, structures, operational procedures, and management mechanisms, as necessary' in 2008 in the document entitled 'Commitment to Public Security in the Americas'.⁵⁸

52 The following are the key sub-regional treaties adopted within ECOWAS and dealing with terrorism: ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006); Protocol Relating to the Establishment of an ECOWAS Bureau of Intelligence and Investigation on Criminal Matters (2006); ECOWAS Convention on Extradition; and 1992 ECOWAS Convention on Mutual Judicial Assistance in Criminal Matters (1994).

53 <<https://www.ecowas.int/wp-content/uploads/2019/05/POLITICAL-DECLARATION-ENG.pdf>>.

54 Ibid, para 20.

55 In Pillar 2 of the ECOWAS Strategy, there is a list of preparedness measures that States are required to implement.

56 <<https://www.ecowas.int/wp-content/uploads/2019/05/IMPLEMENTATION-PLAN-CT.pdf>>.

57 In 1999, the OAS General Assembly decided to establish the Inter-American Committee against Terrorism (Resolution AG/RES.1650 (XXIX-O/99)). See more on CICTE at <<http://www.oas.org/en/sms/cicte/default.asp>>.

58 The document was adopted at the First Meeting of the Ministers Responsible for Public Security in the Americas (7 and 8 October 2008): <https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-040/15>. See also M B Lloyd, *Transnational Crimes in the Americas: Law, Policy and Institutions*, (Anthem Press 2018).

2.2.4 In Asia and the Rest of the World

In Asia, a leading role in the fight against terrorism has been played by the Association of Southeast Asian Nations (ASEAN), which adopted a specific Convention on Counter Terrorism in 2007.⁵⁹ Article VI of this Convention requires States to strengthen their 'capability and readiness to deal with chemical, biological, radiological, nuclear (CBRN) terrorism, cyber terrorism and any new forms of terrorism'.⁶⁰ Preparedness measures received additional and more detailed attention in the ASEAN Plan of Action in Combating Transnational Crime (2016–2025).⁶¹

While the Organisation of Islamic Cooperation (OIC) has thus far shown limited interest in preparedness measures related to terrorism,⁶² the Shanghai Cooperation Organisation (SCO) has a proven record of interest in the area. Four relevant treaties have been adopted by the SCO to regulate specific aspects of terrorist activities which might involve CBRN material.⁶³ The first reference to preparedness measures can be found in the Agreement on Regional Anti-Terrorist Structure Between the Member States (2002) in which a regional anti-terrorist structure is created to assist Member States

59 See more on the ACCT: M Borelli, 'ASEAN Counter-terrorism Weaknesses', (2017) 9(9) Counter Terrorist Trends and Analyses, pp 14–20, S Tan and H Nasu, 'Asean and The Development of Counter-Terrorism Law and Policy in Southeast Asia', (2016) 39(3) University of New South Wales Law Journal, pp 1291–1238.

60 A thought-provoking and comprehensive overview of the measures adopted within ASEAN to prevent terrorist attacks and to increase preparedness levels is to be found in R Yasir and R Tiara, 'The Implementation of the ASEAN Convention on Counter Terrorism in Preventing Terrorism for ASEAN Countries': <https://www.researchgate.net/publication/338479485_The_Implementation_of_the_ASEAN_Convention_on_Counter_Terrorism_in_Preventing_Terrorism_for_ASEAN_Countries/citation/download>.

61 <https://asean.org/wp-content/uploads/2012/05/ASEAN-Plan-of-Action-in-Combating-g-TC_Adopted-by-11th-AMMTC-on-20Sept17.pdf>.

62 Art 4 of the OIC Convention on Combating International Terrorism (1999) states that 'Contracting States shall cooperate within the scope of their capabilities to provide available technical assistance for preparing programmes or holding joint training sessions with one or more Contracting States if the need arises for personnel required in the field of combating terrorism in order to improve their scientific and practical potential and upgrade their performance standards'. In the Arab Convention for the Suppression of Terrorism (1998), adopted within the Arab League, there is a similar reference to preparedness measures: <<https://www.refworld.org/pdfid/3de5e4984.pdf>>.

63 The Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001), the Agreement on Regional Anti-Terrorist Structure Between the Member States of the Shanghai Cooperation Organisation (2002), the Convention Against terrorism (2009) and the Agreement on Cooperation in Combating Crime Between the Governments of the Member States of the Shanghai Cooperation Organisation (2010).

‘in preparing and conducting anti-terrorist command and staff and battle exercises at the request of concerned parties’. In this specific case, the preparedness obligations are incumbent on the newly created structure and not on the Member States.

Other regional treaties in the same area do not contain any specific reference to preparedness measures, being mostly focused on prevention, punishment and extradition issues, as well as the financing of terrorist groups.⁶⁴

3 **Summing up: The Content of the Key Preparedness Measures Related to CBRN Terrorist Events that Are Regulated in International Instruments**

The investigation carried out in the previous paragraphs allows us to now sum up the main preparedness measures related to CBRN terrorist events, which States are required to implement. To be better prepared to deal with future CBRN terrorist events, States are expected to adopt relevant measures which will allow them:

- to guarantee continuity of government and critical government services, energy supplies, resilient food and water resources and civil communications systems;
- to quickly request and receive international assistance;
- to deal with specific activities, such as those involving the seizure of an aircraft or the detention of hostages with the threat of using CBRN substances;
- to investigate and respond to any terrorist attack involving CBRN substances, especially those against critical infrastructure, means of public transportation and critical energy infrastructure;
- to immediately detect attempts to illegally import/export CBRN substances, as well as individual precursor elements that can be used to make CBRN substances;
- to protect sensitive sites (civil and military) which contain or use CBRN substances (nuclear plants, chemical production factories, etc.);
- to increase the resilience capacity of populations and institutions at all levels;
- to regularly organise training activities and exercises to prevent misuse of the financial system for financing terrorism and to prevent the use of fake travel documents;

64 See, for example, the Additional Protocol to the South Asian Association for Regional Co-operation Regional Convention on Suppression of Terrorism (2004).

- to have a well-prepared communication strategy which allows a wider audience affected by the terrorist event to be correctly informed, and to prevent, as much as possible, the spread of fake news;
- to use, if appropriate, military assets to face terrorist activities involving CBRN substances.

While universal instruments and institutions have traditionally been the primary promoters of these measures, regional organisations have been less active. Considering that the relevant universal rules are comprehensive and rather detailed, regional organisations have, in most cases, limited themselves to reiterating rules already codified, without any significant added value. Only NATO and ECOWAS have opted for a far more dynamic role in defining preparedness rules in order to enable a better mitigation of the terrorist risk by their Member States. The uniquely dynamic attitude of these two organisations is partly explained by their military/strongly security-oriented nature.

4 Concluding Remarks and Preliminary Assessment of the Impact of the International Obligations and of the Soft Law Instruments Related to Preparedness Activities

This chapter has demonstrated the increasing attention States and IOs are paying to preparedness measures specifically aimed at potential CBRN terrorist events. This attention is largely due to the concern that terrorist groups might use CBRN materials in their activities in the near future. States are therefore required to implement not only the generic preparedness rules applicable to any CBRN event, as described in Chapter 4, but also the specific measures related to CBRN terrorist events investigated in this chapter.

The increasing number of preparedness rules codified in treaties and in soft law instruments is undoubtedly an important achievement. States now face the challenge of fully and quickly implementing these measures at the domestic level. Recent studies⁶⁵ and reports on the degree of domestication of these measures have reached the conclusion that these preparedness measures are far from being fully implemented. The justifications States use for their delays are usually based on the costs of the preparedness activities and the difficulty of justifying the necessary investment, especially in countries facing other challenges or in which significant terrorist activities have not (yet) occurred.

65 For example, see the European Parliament, Directorate General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, 'Terrorism: Member States' Preparedness for CBRN Threats Study': <<https://www.statewatch.org/news/2018/may/ep-study-cbrn-threats-ms-preparedness-5-18.pdf>>.

However, the decision of a few States to create national ad hoc institutions⁶⁶ or to adopt national CBRN strategies and plans to deal with potential terrorist activities⁶⁷ deserves recognition. Additionally, it is envisaged that future treaties on CBRN terrorism will give greater attention to developing more systematic, credible and effective independent monitoring mechanisms which, together with increased technical and financial backing, could represent a stimulus and a valuable support to States in the timely implementation of their international preparedness obligations. The current delays in the national implementation of the terrorism-specific preparedness measures strongly justify this new approach.

The failure to fully implement preparedness activities at the national level (the level at which most of the measures must inevitably be implemented), makes international cooperation even more important as a tool to stimulate States to fully implement their international obligations. Thus, all efforts carried out in this regard and the numerous treaties regulating the details of such cooperation are encouraging and need to be praised, strongly supported and broadened.

Finally, in the case of CBRN terrorist activities, the use of military assets can represent a fundamental tool for both the prevention and the response phase.⁶⁸ To facilitate the use of these assets in a non-war context, several administrative and organisational measures need to be orchestrated: as mentioned in Chapter 4, these measures can be qualified as preparedness activities. Their adoption is a new and valuable tool to prepare States to handle potential CBRN terrorist events.

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66 For example, see the Centre for Emergency Preparedness and Response in the United Kingdom's Health Protection Agency: <<http://www.istc.int/en/institute/13473>>.

67 For example, see the 2011 Chemical, Biological, Radiological, Nuclear and Explosives Resilience Strategy for Canada (<<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rslnc-strtg/index-en.aspx>>) and the subsequent Chemical, Biological, Radiological, Nuclear and Explosives Resilience Action Plan for Canada, which is an integral part of the strategy (<<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rslnc-ctn-pln/index-en.aspx>>).

68 This specific aspect emerges also in the EP Study, EU Preparedness Against CBRN Weapons, cit. in n 3.

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