CHAPTER 9

# Response and Recovery in the Event of CBRN Terrorism

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## 1 Introduction

The present chapter examines the strengths and limitations of the international legal framework applicable to the response and recovery phases that follow CBRN terrorist activities and that are not regulated by humanitarian law or other branches of international law, including human rights law.[1]

To this end, Section 2 and Section 3 respectively review universal obligations concerning response and recovery that stem from international treaties and United Nations (UN) resolutions, also considering the most relevant non-binding guidelines for inter-agency cooperation and the activity of national first responders. Section 4 discusses the gaps and shortcomings in monitoring, sanctioning and implementation. Section 5 concerns bilateral and multilateral agreements, while Section 6 analyses the regional framework concerning CBRN terrorism response and recovery, namely the North Atlantic Treaty Organization (NATO), African, American, Asian and European (with the exclusion of European Union[2]) contexts. Section 7 concludes the chapter.

The main finding is that, although the proliferation of international legal instruments against CBRN terrorism reveals a significant commitment to counter the phenomenon, the plurality of legal tools and the lack of effective monitoring and sanctioning mechanisms hinder the effectiveness of such a framework.

## 2 Response to CBRN Terrorism: The International Legal Framework

A review of the international legal instruments concerning CBRN terrorism reveals that the response phase primarily requires States to investigate the

1 International obligations of more general scope to respond to and recover from CBRN emergency situations are discussed in ch 5 by Bakker.

2 On the EU, see ch 10 by Villani.

facts and ensure that perpetrators are brought to justice.[3] Complementary measures are also required, including the provision of mutual assistance, both legal and operational, and the exchange of information beyond national borders. The present section reads international treaties together with soft law instruments with the aim of discussing the strengths and weaknesses of the international legal framework regulating States' response to CBRN terrorism.

Resolution 1540 is the starting point of the present inquiry. It was adopted in 2001 by the UN Security Council (SC) under Chapter VII of the UN Charter. As with UNSC Resolution 1373 (2001), Resolution 1540 represents an example of the UN Security Council acting in a quasi-legislative capacity and imposing on all States the obligation to undertake internal legal reforms to include counter-terrorism measures. Beyond recognising the proliferation of nuclear, chemical and biological weapons as a threat to international peace and security, Resolution 1540 connects this threat with the risk that non-State actors may acquire, develop, traffic or use weapons of mass destruction (WMD). Whilst the existing multilateral regime on non-proliferation and disarmament was originally aimed at dealing only with States,[4] Resolution 1540 requires all UN Member States, independently from their participation in international treaties, to establish and enforce (upon completion of a fair trial) appropriate criminal and civil penalties applicable to non-State actors for acts connected with the preparation and perpetration of CBRN terrorist attacks. To adopt such measures, it is mandatory for all States to criminalise terrorism-related offences under their national law and to investigate the relevant facts when terrorist events occur.

Although technological innovations, such as the use of satellites for gathering intelligence, have progressively enhanced the possibility of cross-border surveillance and investigation, their effectiveness is not *per se* sufficient to adequately respond to CBRN terrorism, especially when this requires international cooperation. Both the investigation of facts and the prosecution of perpetrators can be seriously hindered by significant differences in the national contexts, including with regard to the level of available resources, national legislation, the use of special investigation techniques and the admissibility problems of certain types of evidence before national courts. In this regard, Resolution 1540 requires States to offer adequate assistance, both legal and operational, to other States which lack legal and regulatory infrastructure, implementation

3 Jurisdiction and the principle of *aut dedere aut judicare* are discussed in ch 33 by Amoroso.

4 Treaty on the Non-Proliferation of Nuclear Weapons (NPT, 1968); Biological and Toxin Weapons Convention (BWC, 1972); Chemical Weapons Convention (CWC, 1993).

experience and/or resources for the investigation and prosecution, among others, of CBRN terrorist events.

Relevant provisions can also be found in the UN international treaties specifically dealing with CBRN terrorism, according to which States are required to criminalise certain offences, investigate the facts and ensure that the offenders are brought to justice.[5] Complementary to the obligations to investigate and prosecute, is the mandate to exchange accurate and verified information. Indeed, States are required to inform 'without delay' other States and 'where appropriate' international organisations about the commission of one or more of the offences made punishable by the Convention.[6] Moreover, States shall afford mutual assistance, both legal and operational, including in criminal or extradition proceedings.[7]

In addition to binding instruments, the response phase is also addressed in a set of soft law instruments and initiatives, including the Proliferation Security Initiative, the Global Initiative to Combat Nuclear Terrorism, the Nuclear Security Summits and the G8 Global Partnership Against the Spread of WMD. On 17 December 2020, INTERPOL and the United Nations Counter-Terrorism Centre (UNCCT) of the United Nations Office of Counter-Terrorism (UNOCT) launched a joint initiative aimed at enhancing national responses to crimes committed by non-State actors and involving CBRNE (explosive) materials. More broadly, in 2006, the UN General Assembly adopted by consensus the Global Counter-Terrorism Strategy, the main policy framework for international action against terrorism within the UN system. The Strategy condemns terrorism in all its forms – including with the use of CBRN weapons – and it provides States with guidance on the most effective measures to combat the phenomenon. Although general in its scope, the document also specifically covers the response phase of CBRN attacks by calling on States to cooperate with one another in order to 'find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning,

5 Convention on the physical protection of nuclear material (CPPNM, 1968) art 3; International convention for the suppression of acts of nuclear terrorism (ICSANT, as amended in 2005) art 5; International convention for the suppression of terrorist bombings (Terrorist bombings convention, 1997) art 4; Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005) art 5; Protocol to the Protocol to the Convention for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf (SUA protocol, 2005) arts 2 bis and 2 ter; Convention for the suppression of unlawful acts relating to international civil aviation (Beijing convention, 2010) art 3.

6 ICSANT art 7(1)(b).

7 CCPNM art 13; ICSANT art 14; Terrorist Bombing Convention art 10; SUA Convention art 8 bis and art 12; Beijing Convention art 17.

preparation or perpetration of terrorist acts or provides safe havens'.[8] To this end, the Strategy stresses the need to maximise the exchange of relevant information and to afford mutual assistance for timely investigation and prosecution in the aftermath of CBRN terrorist acts.

## 3 Recovery from CBRN Terrorism: The International Legal Framework

Strongly connected with States' response to CBRN terrorism and of utmost importance for its consequences, is the recovery phase. The international legal framework dealing with recovery, however, is fragmented, incomplete and inconsistent.

In the aftermath of a terrorism-related offence, a few UN treaties require States to locate, render harmless and recover any CBRN materials unlawfully taken and/or used, including through international cooperation.[9] Arguably, however, the attention paid to the recovery phase is not adequate to the complexity of terrorist events. This can be confirmed on the basis of two considerations: first, both the UN conventions and Resolution 1540 are silent on the treatment of the victims of terrorism; second, the prosecution of perpetrators is incomplete if considered independently from the rehabilitation and reintegration of the wrongdoers. The present section briefly addresses both these issues.

In its Resolution 73/305 (2019), the UN General Assembly calls on States to strengthen international cooperation to respect the dignity and legal rights of victims of terrorism, including the right to be considered for witness protection measures. The Resolution emphasises that all victims should have their status, rights and protection recognised, regardless of the identification, apprehension, prosecution or conviction of the perpetrators; also, they should be properly involved in the development of criminal justice strategies against terrorism, including those concerning the prosecution, rehabilitation and reintegration of the offenders.[10] While all the victims, experts and witnesses must receive proper assistance, special protection is to be granted to those who give testimony in criminal proceedings, their relatives and other persons

8 UNGA Res 60/288 (20 September 2006) 5.

9 Amendment to the CPPNM (2005) art 2A(1)(b) and art 5(1)(b); ICSANT (2005) art 2 and art 5; Beijing Convention (2010) art 16(2).

10 UNGA Res 305 (2 July 2019) UN Doc A/RES/73/305, para 4 and 6.

close to them. This is what emerges from, among others, the UN Convention against Transnational Organized Crime (art 25) and the UN Convention against Corruption (art 32) which require States Parties to protect the identity, physical integrity and safety of such persons with adequate measures, including by entering into agreements or arrangements with other States for their relocation.

However, the absence of an agreed definition of 'victims of terrorism' in international law gives rise to a variety of different understandings and legal consequences at the national level.[11] While it is of primary importance that individuals who are entitled to hold the status and receive support as victims are clearly identifiable for the purpose of domestic legislation, the wide variety of laws, policies and procedures is not consistent with the transnational nature of terrorism. Indeed, the harmonisation of national systems has become of paramount importance for the transnational protection of the victims, which also includes facilitating the victims' participation in trial proceedings, access to information, rehabilitation and compensation.[12]

Turning to the second consideration – that is, the insufficient attention paid to the rehabilitation and reintegration of perpetrators in the recovery process – the UNSC Resolutions 2178 (2014) and 2396 (2017) are particularly relevant. They address, *inter alia*, the cross-border movements of Foreign Terrorist Fighters (FTFs) and call for comprehensive and tailored prosecution, rehabilitation and reintegration strategies for those involved in terrorist activities. The issue was specifically addressed by the participants in the 2020 UN Virtual Counter-Terrorism Week, who emphasised that rehabilitation and reintegration are long-term processes that should begin during detention and continue afterwards. They require a multisectoral approach, including skills development, psychosocial care and economic reintegration.

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11 The UNGA 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (1985) provides the soft law basis for the international standards concerning the treatment of victims and it is designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime. Although it does not specifically refer to CBRN terrorism, it could nevertheless be considered a valid guiding instrument for national legislation dealing with CBRN terrorist events.

12 The 'Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings' (2012) provides good practices that can help identify international standards in the establishment of victim-support mechanisms. For a human rights perspective, see 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' (4 June 2012) UN Doc A/HRC/20/14; see also ch 27 by Venier, ch 34 by Capone, ch 5 by Bakker.

## 4 Monitoring, Sanctioning and Implementation Gaps

Despite the proliferation of international legal instruments dealing with CBRN terrorism, national implementation is far from ideal. Both the UN treaty system and Resolution 1540 contain significant gaps in their monitoring and sanctioning mechanisms, leading to implementation shortfalls at the national level.

On the one hand, UN agencies widely promote the ratification of international conventions dealing with CBRN terrorism;[13] on the other hand, however, the UN framework does not offer any effective tool for measuring States' progress in the implementation of international obligations, nor does it provide for any sanctions in the event of non-compliance. As a result, in the absence of any indicators, benchmarks or penalties, States are given broad discretion in the fulfilment of their duties, with the advancement of their counter-terrorism measures left uncertain and their violations of international obligations never dealt with.

The effectiveness of the '1540 system' is also controversial. Since the very adoption of Resolution 1540, governments have lamented a 'legitimacy deficit' due to the imposition of general and legally binding obligations on 193 Member States without their explicit consent. Indeed, with the 15 Members of the UNSC relying on Chapter VII of the UN Charter, Resolution 1540 has been perceived as a departure from the consensual nature of international law, especially because it shares multiple features with any general disarmament treaty but lacked the negotiation processes prior to its final adoption. The necessity to overcome criticisms and facilitate implementation has led the '1540 Committee' – a body created as a Special Political Mission under the Sanctions and Monitoring cluster – to adopt a voluntary and cooperative approach, thus refraining from any investigative and sanctioning measures.[14]

13 For example, based on the 2018 UNODC Report 'Supporting legal responses and criminal justice capacity to prevent and counter terrorism', between 2003 and 2018, UNODC has provided legislative services that have led to the review and drafting of 172 pieces of national counter-terrorism legislation; also, according to the Report of the Secretary General on the 'Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy' (20 April 2018) UN Doc A/72/840: 'Since January 2016, it has contributed to 40 additional ratifications by Member States of the international conventions and protocols related to terrorism, assisted in revising or drafting more than 35 pieces of legislation and trained more than 8,000 criminal justice officials through more than 400 workshops'.

14 Broadly on the '1540 Committee': S Shirazyan, 'Building A Universal Counter-Proliferation Regime: The Institutional Limits of United Nations Security Council Resolution 1540' 18, Journal of National Security Law and Policy (2019) 150, 162.

While the political strategy has favoured a general acceptance of Resolution 1540, it has not contributed to the achievement of its effective implementation.

The monitoring mechanism identified to overcome the initial inconsistencies in States' reporting – the 1540 matrix – has proved to be effective solely for the quantitative analysis of national measures. Indeed, it allows for the translation of primary data into standard templates with no further investigation on the information provided.

Based on the information recorded in the 1540 matrices, the latest report of the 1540 Committee (2016) shows an overall increase of approximately 7% in the quantity of measures adopted pursuant to Resolution 1540, compared to 2011.[15] What the report does not clarify is the type and effectiveness of the measures adopted. The absence of any substantive assessment gives the monitoring process a mere formal dimension, leaving space for obsolete or false information in States' reports. Syria is a case in point, with its reports repeatedly declaring the non-possession of chemical weapons,[16] later contradicted by the confirmation of their use by the IS and the Syrian government.[17]

Problems also arise with regard to the match-making role of the Committee between assistance seekers and providers. According to the available data, only nine States that are registered as assistance providers (out of 47) have responded to legal or technical assistance requests; also, specific needs are rarely met, including those concerning the adoption of legislative measures to respond to and recover from terrorist acts.[18]

Although not exhaustive,[19] the present section suggests that the existing gaps in monitoring and enforcing the implementation of international

15 UNSC, 'Letter dated 9 December 2016 from the Chair of the Security Council Committee established pursuant to resolution 1540 (2004) addressed to the President of the Security Council' (9 December 2016) UN Doc S/2016/1038, para 28.

16 UNSC 1540 Committee, 'Note verbale dated 14 October 2004 from the Permanent Mission of the Syrian Arab Republic to the United Nations addressed to the Chairman of the Committee' (24 November 2004) UN Doc S/AC.44/2004/(02)/70; 'Note verbale dated 7 November 2005 from the Permanent Mission of the Syrian Arab Republic to the United Nations addressed to the Chairman of the Committee' (10 November 2005) UN Doc S/AC.44/2004/(02)/70/Add.3.

17 OPCW, 'Report of the OPCW Fact-Finding Mission in Syria Regarding an Alleged Incident in Khan Shaykhun, Syrian Arab Republic April 2017' (29 June 2017) UN Doc S/1510/2017.

18 UNSC 1540 Committee, '2016 Comprehensive Review Background Paper for the Formal Open Consultations by the 1540 Committee' (2016) 8, <http://www.un.org/en/sc/1540/documents/CR-June-Consultation-Background-Paper.pdf> (all links were last accessed on 30 November 2021).

19 The implementation of the NPT, BWC and CWC is also problematic. See J Tucker, 'Bridging the Gaps: Achieving the Potential of the Nonproliferation Treaties to Combat Nuclear, Biological, and Chemical Terrorism' 83(2/3) Die Friedens-Warte (2008) 81, 103.

obligations adversely affect the impact of the international legal framework dealing with the consequences of CBRN terrorism.

## 5 Response and Recovery in Bilateral and Multilateral Agreements

Obligations to respond to and recover from CBRN terrorism stem also from a multitude of bilateral and multilateral agreements stipulated between two or more States (either within the same region or not) or between States and international organisations. Some of these agreements regulate criminal justice cooperation, some provide a basis for the relocation of witnesses or other persons under protection and several others govern the sharing of terrorism-related information for the effective investigation of facts beyond national borders.[20] Other response and recovery obligations are also expressly mentioned, including emergency response and training programmes.[21]

## 6 Response and Recovery: The Regional Legal Framework and Its Implementation

The present section provides an overview of the main regional instruments relevant to CBRN terrorism response and recovery. To this end, the analysis focuses on NATO, the African region, the Americas, the Asian region and the European region (with the exclusion of the European Union[22]).

### 6.1 *NATO*

Two soft-law instruments are particularly important for the response and recovery phases, namely the 2014 'Guidelines for First Responders to a CBRN Incident' and the 2019 'Non-binding Guidelines for Enhanced Civil-Military Cooperation to Deal with the Consequences of Large-Scale CBRN Events

20 For example, on 31 August 2020, a Memorandum of Agreement (MoA) was signed by ICAO and the UN Office of Counter-Terrorism (UNOCT) aimed at facilitating criminal investigations into terrorist offenses through the collection and analysis of Advance Passenger Information and Passenger Name Record data. See also: Accordo tra il Governo della Repubblica italiana e il Governo della Repubblica d'Austria in materia di cooperazione di polizia (L. 209/2016); Agreement on the cooperation in the area of witness protection (Republic of Austria, Republic of Bulgaria, Republic of Croatia, Czech Republic, Hungary, Romania, Slovak Republic, Republic of Slovenia, 11 October 2012).

21 For example: Memorandum of understanding between the Italian public security department and the Sudanese national police (3 October 2016).

22 On the EU, see ch 10 by Villani.

Associated with Terrorist Attacks' (2019). While the former clarifies the actions required by all first responders in the immediate aftermath of CBRN incidents, the latter provides detailed guidance on how to coordinate civil-military operations in the event of CBRN terrorism. Indeed, military capabilities include specialised competences and training concerning the medical treatment of CBRN casualties, detection of nonconventional weapons and decontamination. When civil authorities are overwhelmed, military resources can significantly contribute to a successful response.

However, command and control operations during a CBRN incident require the highest coordination between civil and military authorities, that is, the mutual understanding of roles and resources, including via a comprehensive legal review and joint training courses. While such measures seem to belong to the preparedness phase, they allow for the use of military assets when civil responders lack capacity.

### 6.2 *The African Region*

At the regional level, three instruments adopted by regional organisations require States Parties to criminalise terrorism-related offences, investigate the relevant facts, prosecute perpetrators and provide victims with adequate assistance. They are the Arab League Convention on the Suppression of Terrorism (1998); the Organisation of the Islamic Conference (OIC) Convention on Combating International Terrorism (1999) (today an instrument of the Organisation of Islamic Cooperation); and the Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism (1999) (today an instrument of the African Union, AU). While the first two treaties are silent about any implementation monitoring mechanisms, the OAU Convention has been integrated with an additional protocol, adopted in 2004, which requires States Parties to regularly report to the AU's Peace and Security Council (PSC) on the measures taken to combat terrorism.[23] Moreover, the AU has developed an 'African Model Anti-Terrorism Law' as a soft law instrument aimed at providing a blueprint for domestic legislation, including with regard to terrorist offences involving CBRN materials.[24]

At sub-regional level, further legal instruments relevant to the response and recovery phases have been adopted by the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS). Both the SADC 'Declaration on Terrorism' (2002) and the ECOWAS

23 As of 30 November 2021, the Protocol has been ratified by 21 of the 55 AU Member States, <www.au.int>.

24 African Union, 'African Model Anti-Terrorism Law' (2011) para XXXIX.

'Political Declaration and Common Position against Terrorism' (2013) task States Parties with condemning terrorism-related offences and ensuring that offenders are brought to justice. To this end, they emphasise the need for inter-State cooperation on the sharing of relevant information and the harmonisation of prosecution mechanisms. Unlike the SADC, ECOWAS expressly calls on Member States to criminalise terrorist offences, including with the provision of severe penalties for perpetrators of such acts, and adopts a Counter-Terrorism Strategy and Implementation Plan based on three Pillars: Prevent, Pursue and Repair. The latter two Pillars are particularly relevant to States' response and recovery because they respectively concern the need to strengthen national legislation so as to incorporate all criminal justice aspects of counter-terrorism, and the reconstruction of the society through the recovery and rehabilitation of the victims of terrorism and their families.

### 6.3 *The Asian Region*

There are four regional and sub-regional instruments that are relevant to CBRN terrorism response and recovery: the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001) by the Shanghai Cooperation Organisation (SCO); the Mutual Legal Assistance Treaty (MLAT, 2004) by the Association of Southeast Asian Nations (ASEAN); the ASEAN Convention on Counter Terrorism (ACCT, 2007); and the Convention on Suppression of Terrorism (1987) by the South Asian Association for Regional Cooperation (SAARC) with its Additional Protocol (2004).

All of these instruments require States Parties to suppress identified offences connected with terrorism – including those involving CBRN materials – prosecute perpetrators, afford mutual assistance and cooperate in the sharing of information. In addition to the obligations concerning States' response to CBRN terrorism, the ACCT is the only one that focuses on some recovery measures to be adopted by the Parties, namely the sharing of best practices on rehabilitative programmes, including, where appropriate, the social reintegration of the wrongdoers. A reference to the victims of terrorism can be found in the ASEAN Comprehensive Plan of Action on Counter Terrorism (2009), a soft law instrument aimed, among other objectives, at developing and adopting standard operating procedures for the protection of civilians in the event of a terrorist attack, including by providing those affected with adequate support.

However, similarly to other treaties, the ACCT presents at least two weaknesses that hinder its implementation.[25] First, the lack of enforcement

25 H Nasu, R McLaughlin, D Rothwell, S Sang Tan, 'Counter-Terrorism In The Legal Authority of ASEAN as a Security Institution' (Cambridge University Press 2019) 78.

mechanisms, which poses the risk of its provisions remaining dead letter. Second, an overly cautious approach to the exchange of information due to national sensitivities.[26] Arguably, the low level of integration and mutual trust makes ASEAN Member States reluctant to share intelligence at the regional level.[27] Nevertheless, governments tend to conclude bilateral agreements involving a swift exchange of information between the Parties in order to ensure adequate intervention in the aftermath of any terrorist attacks.[28]

### 6.4 *The Inter-American Region*

The main legal instrument dealing with terrorist events is the Inter-American Convention Against Terrorism, adopted in 2002 by the Organization of American States (OAS). The treaty requires States Parties to ratify, among other treaties, the CPPNM and the Terrorist Bombing Convention, and to adopt domestic legislation that criminalises and punishes the offences identified therein. To this end, the Convention obliges States Parties to cooperate in the exchange of information and to afford one another the greatest measure of expeditious mutual legal assistance with respect to the investigation of facts and the prosecution of the offenders. In 1999, the OAS created the Inter-American Committee against Terrorism (CICTE), the only regional body tasked with the promotion and development of coordinated strategies to combat terrorism and its evolving nature, including through the implementation of Resolution 1540 (2004), once adopted. Ten years later, it launched the Inter-American Network on Counter-Terrorism, a project aimed at enhancing the timely exchange of operational information to respond to attacks and manage their consequences. Insufficient attention, however, is paid to the recovery measures to be adopted in the aftermath of terrorist events.

At sub-regional level, a common strategy to counter terrorism was adopted in 2018 within the Caribbean Community (CARICOM). Unlike the OAS framework, the CARICOM strategy includes recovery measures, including the necessity to provide victims with adequate support and the importance of developing rehabilitation and reintegration processes for the offenders. In

26 Ibid.

27 An initiative worth mentioning is 'Our Eyes', a regional intelligence-sharing alliance launched in Bali in 2018. It involves the collection, processing and presentation of strategic information on terrorism through the ASEAN Direct Communication Infrastructure. The initiative aims at coordinating ASEAN's responses against ongoing threats, including CBRN attacks.

28 For example, the Australian-funded Jakarta Centre for Law Enforcement Cooperation (JCLEC) has served as a platform for multilateral intelligence cooperation and collaboration.

order to monitor its implementation, the strategy develops success indicators linked to the actions suggested in the plan and a timeframe for measuring States' progress in the achievement of identified goals.

### 6.5 *The European Region* (*with the Exclusion of the European Union*)

In the aftermath of the 9/11 attacks, the threat of large-scale terrorism involving the use of CBRN weapons led the Council of Europe (CoE) to invite Member States to ratify and implement international treaties against CBRN terrorism, including with the development of emergency intervention and public health relief plans in the event of bioterrorism.[29] With the aim to incorporate 'fragmented legal texts together',[30] the CoE also adopted the Convention on the Prevention of Terrorism (2005) which, despite its title, contains some provisions that are also relevant to the response and recovery phases. Indeed, in addition to the criminalisation of terrorist offences, States Parties are required to investigate the facts, prosecute perpetrators and punish the wrongdoers with 'effective, proportionate and dissuasive'[31] sanctions. The obligation to cooperate in the exchange of information and in criminal investigations is also emphasised in the Additional Protocol to the Convention (2015) which explicitly includes the exchange of 'any available relevant information concerning persons travelling abroad for the purpose of terrorism'.[32]

As far as recovery is concerned, the Convention requires the Parties to adopt domestic measures to protect and support the victims and their families, including with financial assistance, compensation, psychological support and effective access to criminal procedures (art 13). Guidance on victims' protection is also provided by the CoE soft law 'Guidelines on Human Rights and the Fight against Terrorism' (Guideline No XVII) and the additional 'Guidelines on the protection of victims of terrorism' (Principle No 1). Rules specifically concerning witness protection are also in place, as those who 'stand up for truth and justice must be guaranteed reliable and durable protection, in particular legal and psychological support and robust physical protection before, during and after the trial' (CoE Res 2038 (2015)). They are included in the Criminal Law Convention on Corruption; the CoE Convention on Action against Trafficking in Human Beings; the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; and Committee of Ministers Recommendations No R(97)13 concerning intimidation of witnesses and the

29 CoE Res 1367 (2 March 2004).

30 CoE Rec 1644 (29 January 2004).

31 CoE Convention on the Prevention of Terrorism (2005).

32 Additional Protocol to the CoE Convention on the Prevention of Terrorism (2015) art 7.

rights of the defence, Rec(2001)11 concerning the fight against organised crime, and Rec(2005)9 on the protection of witnesses and collaborators with justice.

More generally, the CoE Committee on Counter-Terrorism (CDCT) has also developed the Counter-Terrorism Strategy 2018–2022.[33] Based on the three Pillars 'Prevention, Prosecution and Protection', the Strategy assists States with non-binding guidelines concerning, among other issues, the conduct of investigations into terrorist offences, the prosecution of the offenders and the provision of adequate compensation and assistance to the victims of terrorism and their families.

## 7 Concluding Remarks

The analysis of the international legal framework reveals a plurality of instruments, either binding or non-binding on States, dealing with the short- and long-term consequences of CBRN terrorist offences. The proliferation of tools shows great commitment at the international level to counter CBRN terrorism. However, it also carries the risk of resulting in a broad and complex picture wherein all required efforts remain dead letter.

A first finding that emerges from this chapter is the difference in clarity between the definition of international obligations concerning the response phase and the recovery one.

Indeed, in order to respond to CBRN terrorist events, States are required to investigate the facts and ensure that perpetrators are brought to justice. To this end, States must criminalise terrorist offences at the national level, including with the provision of sanctions that are adequate to the severity of such acts. Also, States are required to cooperate in the exchange of information, in the conduct of criminal proceedings and to afford mutual assistance both at the legal and operational level.

On the contrary, the framework concerning the recovery from CRBN terrorism is not consistent, as different instruments provide different views. Arguably, this phase can be considered as involving three interconnected steps: the recovery of CBRN materials unlawfully taken and/or used; the assistance for the victims; and the rehabilitation of the wrongdoers.

In addition to the confusion stemming from the plurality of instruments and views, domestic implementation is also problematic.

33 CoE Counter-Terrorism Strategy 2018–2022, activity 3.3.

Despite the efforts towards the adoption of a comprehensive convention on international terrorism,[34] the implementation of the existing framework is far from being effective. Resolution 1540 is paradigmatic in this regard. Indeed, the overall 30,632 domestic measures recorded in 2016 – with an increase of approximately 7% compared to 2011 – have been commended by the 1540 Committee as an indicator of great success. However, the lack of any substantial assessment excludes the existence of a qualitative analysis of such measures, leaving space for obsolete or false information in States' reporting, as already happened in the case of Syria.

In conclusion, while the proliferation of international instruments against CBRN terrorism reveals a general commitment to respond to the phenomenon and recover from its manifestations, the confusing plurality of legal tools and the gaps in their implementation hinder the effectiveness of such a framework.

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34 See UNGA Res 51/210 (16 January 1997) UN Doc A/RES/51/210 and UNGA Res 71/151 (20 December 2016) UN Doc A/RES/71/151.

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