

International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events

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Towards an All-Hazards Approach

Edited by

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Preface

Events and threats involving the release of Chemical, Biological and Radio-Nuclear (CBRN) substances, as well as the threat of malicious use of Explosives, are among the most fearsome risks in contemporary times. Despite not being a new phenomenon, CBRN risks attracted renewed attention following the 2001 anthrax letters case, which occurred only a few weeks after 9/11. Concern over potential CBRN terrorism was also heightened following the terrorist attacks in Paris (2015) and Brussels (2016). Post-9/11 CBRN events include the use of fentanyl by Russian authorities in the 2002 Moscow Theatre hostage crisis and the recent nerve agent poisoning cases in the UK (2018) and in Russia (2020). But CBRN threats and events may also include the use of banned weapons, both by State and non-State actors, as occurred in Syria; the use of CBRN agents for smaller-scale crimes; industrial accidents involving release of CBRN agents into the environment; and natural disasters or other calamities – such as the spread of COVID-19 in 2020 and the ensuing global pandemic.

Despite the increasing relevance of such events and threats, the level of attention paid to developing a common understanding of both the severity and scale of the full range of CBRN risks and how to address them is still limited; indeed, an agreed definition of what constitutes a CBRN event is still far from being crystalised in relevant international instruments. Also, limited attention has been devoted so far to mapping obligations stemming from the wide range of applicable norms of international law. In this respect, while it is evident that traditional areas such as International Humanitarian Law (IHL, limiting the use of CBRN weapons during armed conflicts) and Arms Control and Disarmament Law (ACDL, restricting their development, possession and transfer) play a significant role in shaping relevant obligations, the contribution given by other strands of international law – namely International Disaster Law, Counter-Terrorism Law, International Criminal Law, International Environmental Law, Human Rights Law, and, as made apparent by the COVID-19 crisis, International Health Law – cannot be ignored. Such a highly complex and fragmented legal framework makes it more difficult to clearly identify relevant obligations and may discourage the adoption of cross-cutting approaches. However, an analysis carried out only in the light of a limited selection of areas of international law risks offering an oversimplified picture of the corresponding legal landscape.

The lack of a holistic attitude towards CBRN threats and events in the international law literature is also due to the consolidated and rigid approach of States and International Organisations (IOs). Notwithstanding the diversity

of CBRN agents and events, States and IOs have traditionally used – and are still using – the CBRN label mainly when addressing security issues – or even more narrowly, counter-terrorism issues – whereas the CBRN categorisation is very rarely employed, for instance, when addressing the consequences of natural disasters and public health emergencies. An illustrative example of such an attitude is represented by UN Security Council Resolution 1373 (2001) – the first resolution to refer to CBRN agents, although not under this acronym – where the emphasis is put on the connection between international terrorism and the illegal movement of nuclear, chemical, biological and other potentially deadly materials. The UN's response to the Ebola outbreak of 2014 – with the Security Council qualifying the 'unprecedented extent of the Ebola outbreak in Africa' as a 'threat to international peace and security' (UNSC Res. 2177 of 18 September 2014) – may also be considered a manifestation of such a trend. Even admitting that such a 'securitarian' approach may help to achieve more effective results in CBRN scenarios, it clearly risks downgrading other needs which are duly taken into consideration in other strands of international law (starting from the need to protect human rights and fundamental freedoms).

Against this background, the present volume aims at assessing the current legal framework governing CBRN risks and events and envisaging how this framework might be further developed and better implemented. In particular, filling the above-mentioned gaps, the volume intends to develop a consistent definition of CBRN events, adopting an 'all-hazards' approach, covering both the intentional and accidental release of CBRN substances. Moreover, it seeks to identify in a systematic and comprehensive way all existing obligations, both in times of war and in times of peace. In this respect, the decision has been made to map relevant obligations according to the four phases of the emergency management cycle: namely, prevention (*ie* measures aimed at reducing the risk of a CBRN event), preparedness (eg measures aimed at developing response capabilities should a CBRN emergency occur), response (eg standards and best practices to adopt in order to adequately respond and minimise the risks) and recovery (eg duties to ensure a timely recovery from a CBRN event).

The analysis carried out in this volume is structured into five complementary parts. Part 1 sets the general scene: it firstly identifies a working definition of CBRN events that may be adapted according to the all-hazards approach adopted in the volume; then it investigates the role that different actors may play and develops a taxonomy of the general obligations to prevent, prepare for, respond to and recover from CBRN emergency situations.

Moving from this general framework, Part 2 zooms in to identify specific prevention, preparedness, response and recovery obligations incumbent on

States and other relevant actors in relation to different CBRN scenarios. In particular, the corresponding chapters investigate the state of the art related to CBRN terrorism, industrial and nuclear accidents, and natural disasters (including epidemic outbreaks).

In Part 3, the focus is on CBRN weapons. Here, the existing obligations under IHL and ACDL are carefully examined, together with obligations concerning nuclear disarmament and testing, transfer of CBRN weapons, and existing mechanisms elaborated to ensure their enforcement by States.

Following the analysis of sectoral contexts where specific CBRN obligations may be identified, Part 4 considers some horizontal issues that are recurring more and more in the legal discourse surrounding CBRN events. Here, the interplay with Human Rights Law (HRL) is explored in depth with the aim of identifying both legitimate restrictions to human rights and positive obligations under HRL in the context of CBRN events. The interaction with International Environmental Law and the increasing (and problematic) role of private actors and new technologies are also taken into consideration.

Part 5 examines enforcement mechanisms and remedies. The analysis includes consideration of international criminal law obligations and also the international law framework imposing criminal repression at municipal level of CBRN-related violations that do not amount to international crimes. The part is completed by a study of the IHL and HRL obligations concerning access to remedies for the victims of CBRN events.

Significantly, the analysis carried out in the volume combines the study of general international law and universal instruments with consideration of the cooperation established in specific fora and IOs. A particular emphasis, in this respect, is placed on the solutions elaborated by the European Union (EU). This is not only due to the well-known authority EU law enjoys *vis-à-vis* the municipal law of the Member States, leading in turn to the emergence of harmonised solutions at supranational level. Also relevant is the fact that the law of the European Union has led to the introduction of a plethora of tools which may contribute to minimising CBRN risks (also in the context of the reaction to the COVID-19 pandemic), thus representing a (possible) benchmark for other frameworks of cooperation. In light of the foregoing, and considering the systematic approach the volume adopts in dealing with the different domains of international law, the choice has been made to incorporate the analysis of relevant EU instruments into the above-mentioned parts of the volume, instead of isolating it in a self-contained section.

The volume closes with a concluding chapter where Andrea Gioia, in light of the preceding analyses, offers a broad assessment of the current state of international obligations related to CBRN events.

This volume is one of the outcomes of the project ‘International legal obligations related to Prevention, Preparedness, Response and Recovery from CBRN events and status of their implementation in Italy – CBRN-Italy’ (ref. no. 20175M8L32), which has been funded by the Italian Ministry of University and Research as a Research Project of National Relevance. The CBRN-Italy project has been carried out since 2019 by the Scuola Superiore Sant’Anna (which is also the lead partner of the Project), the University of Bologna, the University of Florence and the University of Turin. It involves more than 30 researchers (also from other Italian universities), investigating and mapping the legal obligations related to CBRN events and assessing the adequacy of the Italian legal and operative frameworks. This volume traces its origin to a number of events organised (in person and online) within the framework of the CBRN-Italy project to discuss the findings of research activities carried out by contributors with national and international practitioners and subject matter experts, and to the subsequent scholarly dialogue established under the project. We hope that the decision to publish this volume in Open Access format will further support the strengthening of studies and reflections on CBRN risks.

The editors express their gratitude to all those who have contributed to the volume, COVID-19 pandemic notwithstanding, to the members of the Advisory Board of the project for their precious suggestions, and to all participants who, while not appearing in the volume, took part in the events and discussions that have made it possible. We are deeply grateful to Andrea Gioia, who agreed to write the conclusions to this volume. Many thanks also go to Silvia Venier for her invaluable support in all stages of the production process of the volume, to Enrico Tinti for the preparation of the analytical index, and to Anthony Wenton for the language revision. The editors of this volume are greatly indebted to BRILL for their enthusiastic support for this editorial project.

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