Chapter 9

Other Planning and Preparation of Terrorism

9.1. Introduction

Compared with the detailed regulation of the financing of terrorism, the obligation in Resolution 1373 to criminalise other preparatory acts appears to be very minimalistic. Article 2 (e) states that ‘planning’ and ‘preparation’ of terrorist acts should also be established as serious criminal offences in domestic law. In the Counter-Terrorism Committee’s supervision of the national implementation, this obligation has received considerably less attention than the obligations to counter the financing of terrorism. Nevertheless, this part of Resolution 1373 has also had an impact on the national legislation in some states.

In the further analysis, we will consider both national rules adopted in order to implement these obligations and already existing rules that contribute to fulfilling them. The focus will be on preparatory offences of a similar general nature as the UN obligations, meaning that they are applicable to all or most kinds of terrorist offences. We do not intend to cover national rules that are relevant to specific types of terrorist offences only. Moreover, the analysis is limited to the planning and preparation of concrete terrorist acts. It will not include offences the criminalisation of which is intended to counter the general readiness or ability to support terrorism, such as public provocation to commit terrorism, general recruitment to and training for terrorism.\(^{1546}\) To the extent that training or recruitment is part of the planning and preparation of concrete terrorist acts, such activities may nevertheless be covered by the rules we will deal with here.

\(^{1546}\) The latter group of offences has been especially pursued through the 2005 Council of Europe Convention on the Prevention of Terrorism and the amendments of the EU Framework Decision of 28 November 2008 (OJ 2008 L 330/2), which we do not aim to cover in this study, see supra 1.5.
As in the previous chapters, the analysis will begin with a general overview of the duty to criminalise planning and preparation and the responses by the states studied here (9.2). Thereafter, we will study the national rules in more depth. They can be roughly divided into two categories. The first group comprises what can be called mental preparations, such as planning, declarations and decisions that do not require any other activities than the individual or collective deliberations involved. As most national legislators have chosen to partly implement these obligations through the separate criminalisation of conspiracy to engage in terrorism, this will be the focus here (9.3). The second group, which can be called physical preparations, involves the use of various objects for the purpose of preparing a crime. Some states have chosen to criminalise such acts through general rules that require further analysis (9.4). Although none of the groups of crimes requires the substantive offence (here, the terrorist offence) to be completed or any harm to result, the question of whether criminalisation of attempts (9.5), aiding and abetting (9.6) and incitement (9.7) adds to the criminalisation of these ‘inchoate’ offences should nevertheless be analysed. Finally, we will provide an overview of the applicable penalties (9.8), before some brief conclusions are drawn (9.9).

9.2. The duty to ensure criminalisation

9.2.1. Resolution 1373

The obligation in Resolution 1373 to criminalise the planning and preparation of terrorist acts is new in international law. It extends far beyond the duty to criminalise preparatory acts even in the most expansive terrorism conventions, which, in addition to the financing of terrorism, covers the organisation and direction of others to commit certain terrorist acts. The term ‘planning’ primarily comprises mental steps towards the commission of the crime, whereas the term ‘preparation’ covers both mental and physical activities to this end. Together, the terms cover all methods of preparation, both preparatory acts by lone offenders and preparatory acts committed collectively by persons conspiring together or within a terrorist group.

The obligation to establish planning and preparation as ‘criminal offences’ does not mean that the national rules must necessarily use these or similar words. As mentioned supra 8.2.1, it is sufficient that the acts described in

1547 On the concept of an inchoate offence, see Ashworth 2006 p. 444.
1548 See Art. 2 (3) (b) of the 1997 Convention on Terrorist Bombings and Art. 2 (4) (b) of the 2005 Convention on Nuclear Terrorism, discussed supra 5.8.1. See also Art. 2 (4) (a) and (b) of the 1999 Convention on Financing Terrorism, discussed supra 8.7.