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## **UNSCR 1540 Implementation in Kyrgyzstan: Towards a National Action Plan**

*An unofficial background paper  
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This background paper seeks to review the status of Kyrgyzstan's implementation of the main requirements of UNSC Resolution 1540 and suggest information that might be missing – either because the measures were not carried out or were not reported. By identifying the areas where implementation is incomplete and additional action is needed, the Kyrgyz government will be in a better position to draft a national action plan, establish priorities for implementation, and decide what type of foreign assistance might be needed.

In drafting this paper, the Center has relied on the national report and the matrix submitted by Kyrgyzstan to the 1540 Committee and information available from open sources, such as governmental websites and legislative databases. Therefore, the information may be incomplete and the government of Kyrgyzstan is in a position to identify measures that have been implemented already but which are not yet reflected in open source literature.

### **OP 2: Criminalization of WMD-related activities**

“...all States [...] shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them...”

The [Kyrgyz Constitution](#) stipulates that international agreements to which Kyrgyzstan is a party are directly applicable as laws on its territory. Therefore, the prohibitions under the Nuclear Non-proliferation Treaty (NPT), Biological and Toxin Weapons Convention (BWC), and Chemical Weapons Convention (CWC) apply as a legislative framework. However, while prohibitions listed in the CWC and BWC may be sufficient to cover activities by non-state actors, the NPT provisions are not enough for the purposes of Resolution 1540.<sup>1</sup> Kyrgyzstan might therefore consider adopting additional legislation that specifically addresses the prohibitions required under this paragraph of Resolution 1540.

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<sup>1</sup> Prohibitions under the CWC and BWC include the production, acquisition, stockpiling/storage, development, and transfer of biological weapons and chemical weapons, use of chemical weapons, and assistance in the aforementioned activities, regardless of whether they are carried out by the state or individuals. Prohibitions in the nuclear sphere include, under the NPT, production, acquisition, and transfer of nuclear weapons, and do not address activities of non-state actors.

According to the matrix created by the 1540 Committee, the Kyrgyz Criminal Code (Articles 204 and 374) penalizes the transport, transfer, and use of biological and chemical weapons. There are no specific provisions concerning nuclear weapons, but Articles 239 and 240 penalize unlawful handling of radioactive materials, their theft, and extortion. Other actions currently not penalized by the country's Criminal Code are the production, acquisition, possession, and development of weapons of mass destruction.

### **OP 3 a and b: Accounting, security, and physical protection**

Subparagraph a of the operative paragraph 3 requires states to develop and maintain measures to account for and secure WMD as well as materials related to them, and means of delivery in production, use, storage, or transport. Subparagraph b of the same paragraph requires the development and implementation of physical protection measures for the three WMD categories and related materials.

Kyrgyzstan was the only state in Central Asia and Caucasus to report framework legislation on accounting, security, and physical protection of materials related to chemical weapons (CW) and biological weapons (BW), although the applicability of reported laws requires further clarification. Kyrgyzstan has in place a Safeguards Agreement with the IAEA; it has also signed an Additional Protocol but has not yet ratified it.

Kyrgyzstan's report indicated the Law on Medical and Epidemiological Welfare of the Population as a legal framework for accounting, security, and physical protection of BW and related materials. This is a safety-oriented law and contains provisions for the registration of potentially dangerous chemical, biological, and radioactive materials, but not on securing them in storage, use, and transport.<sup>2</sup> Kyrgyzstan's Criminal Code penalizes the violations of safety regulations in handling microbiological and other biological agents and toxins, but does not contain provisions for penalizing the violation of security, accounting, and physical protection of chemical, nuclear, and/or radioactive materials.<sup>3</sup> Article 266 of the Code also cited by Kyrgyzstan under this paragraph may need to be more specific in penalizing non-state actors' activities involving WMD and related materials. As is the case with main prohibitions under OP2, the Kyrgyz Criminal Code should be reviewed and amended to correspond with the 1540 requirements.

In the **chemical** sphere, the Directives on the Procedures for Standardizing the Handling of Wastes reported by Kyrgyzstan also appear to be a safety regulation and may not be sufficient for the purposes of accounting and protection of scheduled chemicals under the CWC. The text of another decree cited by Kyrgyzstan as a framework for secure use and protection of CW-related materials could not be located through open sources.<sup>4</sup> As a part of national action plan

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<sup>2</sup> The Law of Kyrgyz Republic on Medical and Epidemiological Welfare of the Population, Article 3, <http://www.med.kg/Low/SES.shtml?m=125&sm=125198> (in Russian).

<sup>3</sup> Annex to the Letter dated 15 February 2006 from the Permanent Mission of Kyrgyzstan to the United Nations addressed to the Chairman of the 1540 Committee, p. 16, accessed at <http://disarmament2.un.org/Committee1540/report.html>.

<sup>4</sup> Decree of the Government of Kyrgyz Republic of 29 January 2005 "On the approval of the Package of Measures for protecting the environment, preventing natural disasters and reducing their impact and organizing measures to deal with emergencies in rural areas of the Kyrgyz Republic by 2005."

preparation, this legislation (cited in the previous footnote) could be reviewed on the subject of its applicability to the resolution's requirements on security and physical protection of chemical materials. In this respect, it might also be useful to review the Government Decision of 21 September 1999, which establishes the rules for handling, accounting, sale, and transportation of a number of toxic substances. Only some of the substances listed in this decision are scheduled chemicals under the CWC, so the list could perhaps be expanded.<sup>5</sup>

There are currently no internationally accepted standards on physical protection of materials and facilities under the CWC regime, although in the past there have been discussions between the Organization for the Prohibition of Chemical Weapons (OPCW) and other organizations on the matter. In this respect, the government of Kyrgyzstan could consult with the OPCW and other countries on best practices for providing physical protection.

The International Organizations and Security Department of the Ministry of Foreign Affairs previously acted as Kyrgyzstan's national authority under the CWC. Government Decree #613, adopted in August 2006, designated the Ministry of Economic Development and Trade as the national authority under CWC. This body should be able to participate in the development and implementation of the 1540 action plan where chemical issues are concerned.

In the **nuclear** sphere, Kyrgyzstan reported only the legislation on radiation safety and regulations on health standards and handling of radioactive waste.<sup>6</sup> The cited regulations appear to be focused on safety and may not address physical protection and security. In the context of developing the action plan, it would be appropriate to review this legislation and assess if it sufficiently covers the requirements under the resolution. It should also be noted that as a party to the Central Asian Nuclear Weapon-Free Zone (CANWFZ) Treaty, Kyrgyzstan has committed to adopt physical protection standards that are at least as effective as those outlined by the Convention on Physical Protection of Nuclear Material of 1987 and by the IAEA guidelines. Implementation of this requirement can be included in the national action plan and become one of the areas for assistance.

Although not mentioned in the national report, Kyrgyzstan's Safeguards Agreement with the IAEA creates a framework for the system of accounting and control over nuclear material. More specific regulations, therefore, could be built upon the agreement.

The Decision of the Minister for Transportation and Communication of 25 March 2003 establishes regulations for safe air transportation of toxic, infectious, and radioactive substances, including their declaration and control for leakages.<sup>7</sup> National reports however, did not mention any security regulations for ground transportation of WMD-related materials. It is also not clear from the report and the matrix how the regulation on air transportation is enforced.

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<sup>5</sup> Decision of the Government of Kyrgyz Republic No. 513 of 21 September 1999: Rules for acquiring, selling, stockpiling, accounting for and transporting chemical substances (in Russian), accessed at <http://www.cis-legal-reform.org/document.asp?id=3060>

<sup>6</sup> Act of Kyrgyz Republic "On radiation safety" and the "Health standards and regulations for handling radioactive waste (Sporo 2000), approved by Decision No. 8 of the Chief State Medical Officer of 12 February 2001

<sup>7</sup> Decision of the Minister for Transportation and Communication No. 66 of 25 March 2003 (Rules on Safe Transportation of Dangerous Goods by Air), accessed at <http://www.cis-legal-reform.org/document.asp?id=7852> (in Russian)

### **OP 3 c and d: Border and export controls and OP 6: control lists**

Kyrgyzstan reported that border control and security was ensured by an independent Border Guard Service that was created in December 2003 and replaced the old body that used to be a part of the Ministry of Defense. According to the report, the Border Guard Service has been strengthening border crossing checkpoints and conducting special operations to curb the trafficking of weapons, drugs, and other controlled items. In May 2005, President Bakiyev signed an edict renaming the Border Guard Service as the Border Guard Troops and subordinating the agency to the National Security Service (NSS) of the Kyrgyz Republic (now the State Committee for National Security). In a reversal of a May 2005 decision, in May 2006, the country's border control service was renamed back to the Border Guard Service and turned again into an independent government body.

Kyrgyzstan's export control legislation is established through the Act on Export Control of 23 January 2003, the Act on Licensing, and State Regulations on Foreign Trade. The Act on Export Control of 2003 signed by the President of Kyrgyzstan differs quite significantly from the draft Act on Export Control adopted in 2000 by the government of Kyrgyzstan. The 2003 Act is rather general, while the earlier draft Act identified WMD, dual-use technologies, and means of delivery as items subject to export control and contains provisions on re-export, transit, and end-user controls. It may prove useful to revisit the 2000 draft Act and see if it might be necessary to reincorporate its WMD-related provisions into current export control legislation.<sup>8</sup>

A very important development in export controls in Kyrgyzstan was the establishment in 2003 of the Permanent Interagency Working Group of Export Control Experts. The working group was tasked with developing suggestions on the legal foundation for the implementation of a system of export controls over dual-use goods, materials, equipment, technologies, information, and services that could be used in the development of WMD, delivery vehicles, or other weapons.<sup>9</sup> One of the group's achievements was the drafting of Government Decree No. 330, discussed below. Further updates on the group's work and plans would be useful, and the group seems well-placed to participate in the development of a national action plan.

Government Decree No. 330 adopted in May 2004, as stated in Kyrgyzstan's national report, approved a series of legislation that "provides for a uniform export control system and a mechanism for its implementation," along with procedures for coordinating governmental decisions in export controls.<sup>10</sup> The Decree designated the newly-created Ministry of Economic Development, Industry, and Trade (MEDIT) as the government authority to implement export controls and issue licenses for exports, imports, re-exports, and transit of controlled items, as well as end-user import certificates.<sup>11</sup> In October 2005, MEDIT was reorganized into the

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<sup>8</sup> The text of the 2003 Act is available at <http://www.cis-legal-reform.org/document.asp?id=6129>, while the 2000 Act is available at [http://www.nti.org/e\\_research/profiles/Kyrgyzstan/6108.html](http://www.nti.org/e_research/profiles/Kyrgyzstan/6108.html)

<sup>9</sup> NTI Country Profiles, Kyrgyzstan Export Control Developments, accessed at [http://www.nti.org/e\\_research/profiles/Kyrgyzstan/](http://www.nti.org/e_research/profiles/Kyrgyzstan/)

<sup>10</sup> Report of Kyrgyz Republic on the implementation of Security Council resolution 1540 (2004), 14 December 2004, p. 6

<sup>11</sup> The Government Decision No. 330 of 4 May 2004; NTI Country Profiles, Kyrgyzstan Export Control Developments, accessed at [http://www.nti.org/e\\_research/profiles/Kyrgyzstan/](http://www.nti.org/e_research/profiles/Kyrgyzstan/)

Ministry of Industry, Trade and Tourism. In February 2007, following further government reforms, a new ministry was created – the Ministry of Economic Development and Trade (MEDT), which inherited the responsibility of coordinating the implementation of export controls. As a way of aiding its work, the government may consider conducting training sessions for MEDT on specific export control and transit issues related to WMD, with foreign assistance where necessary.

The Commission on Military-Technical Cooperation and Export Control (CMTCEC) was designated as the national coordinating authority for export control, but further information is needed to clarify how the Commission interacts with governmental agencies and industry to monitor compliance with the international agreements and regulations in this area.<sup>12</sup> The Commission's activities could also relate to the implementation of operative paragraph 8 – informing industry and the public, as the Commission might be the appropriate body to communicate export control requirements and regulations to audiences outside the government.

According to its report, Kyrgyzstan had been working on a new national control list, based on the models used by the European Union, Russian Federation, Belarus, Kazakhstan and lists and guidelines of international export control regimes. In April 2006, the government of Kyrgyzstan adopted draft national controls list, and it was submitted for the Parliament's. Should the adoption of the controls list by the Parliament be delayed, the work on overcoming such difficulties should be an important part of the national plan.

The CANWFZ Treaty requires its parties to refrain from providing any source or special fissionable material or equipment designed for their production to a non-nuclear-weapon state that does not have in place an IAEA Safeguards Agreement and Additional Protocol. Introduction of an Additional Protocol as condition of supply in the nuclear sphere could be another component of the action plan.

Enforcement measures for the export control framework were not cited in Kyrgyzstan's report, and it appears that apart from the article on smuggling, the country's Criminal Code does not penalize export control violations. Kyrgyzstan's national report, however, indicates that the country's Parliament was considering a proposal on the establishment of criminal and administrative liability for violating export control regulations. At present, the lack of export control enforcement regulations (penalizing violations) appears to be a weak point in the implementation of OP 3d of the resolution, and should be noted in the national action plan.

#### **OP7: Assistance**

In its report to the 1540 Committee, Kyrgyzstan indicated an urgent need for technical resources and financial and practical assistance in making its export control system fully functional. A careful assessment of the existing export control system should identify the main shortcomings and needs, and help formulate a more focused request for assistance. Such request would specify the exact areas that need improvement (i.e. enforcement) and what kind of assistance is needed most.

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<sup>12</sup> Decree of the Government of Kyrgyz Republic No. 330 On Measures Establishing a National System of Export Control in Kyrgyz Republic of 4 May 2004; The Statute on the Commission on Military-Technical Cooperation and Export Control (CMTCEC).

Along with other states in the Central Asian region, Kyrgyzstan participates in various nonproliferation programs funded from abroad. The United States, for example, provides aid through its Cooperative Threat Reduction (CTR), Export Control and Related Border Security (EXBS), and other programs. Kyrgyzstan has been receiving assistance through the EXBS program to enhance border security and export control. The country's customs and border guards had received special equipment and training to "detect, interdict, and seize WMD and components and dual-use items."<sup>13</sup> The program helped construct and equip ports for inspection of commercial vehicles at several key border crossings. Kyrgyzstan also cooperated with the United States through the Department of Energy's International Nonproliferation Export Control Program (INECP), and in November 2004, a workshop was held in Bishkek, where U.S. experts shared experience on export controls.<sup>14</sup> Several other workshops on export and border controls were organized within this and other programs.

Other countries and international organizations contribute to various nonproliferation efforts as well. Canada, for example, is actively involved in projects related to biosafety and biosecurity. However, a closer look at demands and resources to meet them, including with foreign assistance, would be necessary to develop a roadmap to fully implement UNSCR 1540 requirements in the Kyrgyz Republic.

#### **OP 8: Inform Industry and Public**

Kyrgyzstan did not provide any information on how industry and the public are informed about the regulations and measures related to the nonproliferation of WMD, and which agencies are in charge of disseminating such information. Lack of communication with industry may lead to problems in implementing export controls and other important measures, and should be addressed.

One should note, though, that certain steps have already been taken to improve the government-industry communication. In May 2007, MEDT and the government of USA organized a forum in Bishkek, focused on interaction and cooperation in export controls between governmental agencies and business. The forum was financed through the EXBS program.

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<sup>13</sup> <http://www.state.gov/p/eur/rls/rpt/63176.htm>

<sup>14</sup> [http://www.nti.org/e\\_research/profiles/Kyrgyzstan/index\\_5208.html](http://www.nti.org/e_research/profiles/Kyrgyzstan/index_5208.html)