



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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**Review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto: information-gathering and possible mechanisms to review implementation; expert consultation on criminalization; expert consultation on international cooperation, with particular emphasis on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and the establishment and strengthening of central authorities; expert consultation on the marking of firearms, the keeping of records on firearms, trafficking in firearms, their parts and components and ammunition and the identification of competent authorities**

## **Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime: consolidated information received from States**

### **Report of the Secretariat**

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\* CTOC/COP/2008/1.



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## I. Introduction

1. By its resolution 55/255 of 31 May 2001, the General Assembly adopted the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.<sup>1</sup> The Protocol entered into force on 3 July 2005, pursuant to its article 18, paragraph 1. Consideration of its implementation was therefore included in the agenda of the second session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.

2. In its decision 2/5, the Conference decided that, for its third session, the programme of work with respect to the Firearms Protocol would be as follows:

(a) Consideration of the basic adaptation of national legislation in accordance with the Protocol;

(b) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol;

(c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Protocol;

(d) Exchange of views and experience regarding record-keeping, marking of firearms and licensing gained in the implementation of articles 7, 8 and 10 of the Protocol.<sup>2</sup>

3. The present report is an updated version of the analytical report on the implementation of the Protocol that was submitted to the Conference at its third session (CTOC/COP/2006/8). It contains consolidated information and is a first analysis of all the replies received from States to the questionnaire disseminated by the Secretariat. The report also highlights the progress made towards meeting the requirements set out in the Protocol and the difficulties that States sometimes face in implementing the provisions of the Protocol.

4. The Open-ended Interim Working Group of Government Experts on Technical Assistance, at its meeting held in Vienna from 3 to 5 October 2007, requested the Secretariat to develop immediately an efficient and user-friendly information-gathering tool in the form of an interim computer-based checklist (for additional information, see CTOC/COP/2008/2). After the checklist was finalized and sent to States parties and States signatories on 21 May 2008, 6 additional replies and 15 updates were received. As at 6 August 2008, the Secretariat had received responses to the questionnaire from 55 Member States, of which 37 were parties, 10 were signatories and 8 were non-signatories to the Protocol. Many of those States also provided copies or abstracts of their relevant legislation (see annex I). The Secretariat also received a letter from Mauritius indicating that it was in the process of amending its legislation to cover all aspects of multilateral and regional treaties to which Mauritius was a party. A list of the States whose responses had been

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<sup>1</sup> United Nations, *Treaty Series*, vol. 2326, No. 39574.

<sup>2</sup> It was the understanding of the Conference that the questionnaire developed in accordance with guidance provided by it in its decision 2/5 would not include questions on the implementation of articles 7, 8 and 10 of the Protocol.

received by the time of drafting of the present report is presented in Annex II. It should be noted that in cases in which no update was received, the responses submitted previously were assumed to still be valid.

## **II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol**

### **A. Definitions**

#### **1. “Firearms” (questions 1-4)**

##### **(a) Firearms**

5. According to the Protocol, a firearm is a portable and barrelled weapon that expels a projectile by the action of an explosive (art. 3, subpara. (a)). Most of the responding States reported that their national legislation contained definitions of firearms in line with the definition provided for by the Protocol.

6. Of those States which indicated that no definition was contained in their legislation, Belgium, Madagascar and Mexico reported that they were in the process of amending their legislation, which would define a “firearm”. More specifically, Mexico reported that, while there was no general definition in its legislation, its penal code contained an ambiguous and subjective definition applying to prohibited firearms. Mexico added that in its legislation firearms were classified according to categories; similar information reported by Monaco. Serbia indicated that, except for some sports weapons, there was no such definition in its legislation. Spain reported that a dictionary definition was used as a reference in its legislation.

7. Of those States whose domestic definitions of firearms were not in line with that of the Protocol, Belarus, Bulgaria, China, Honduras, New Zealand and the United Kingdom of Great Britain and Northern Ireland reported that their definitions were broader and based on physical characteristics. Albania, Ecuador, Guatemala, Kazakhstan, Kuwait, Slovenia and Tunisia stated that their domestic definitions were either narrower or based on use or intended use and therefore not fully in compliance with the Protocol.

##### **(b) Antiques**

8. The Protocol does not apply to “antique firearms” that were manufactured up to and during 1899.

9. Almost all reporting States whose legislation contained regulations on antique firearms used, for the definition of such firearms, cut-off dates earlier than 1899 or a combination of dates and specific features of the firearm, such as black-powder weapons and muzzle-loading firearms. Paraguay explained that, instead of “antique firearms”, its regulations referred to the “historic value” of firearms, without setting any specific cut-off date. Cyprus stated that all antique firearms were examined by the responsible authority and were certified as such only if they fulfilled the criteria provided in the relevant law.

10. Malta specified that all weapons manufactured before 1 January 1946 were considered antiques under its legislation. The United Kingdom reported that, while

its legislation did not define “antique”, there was a guideline indicating that the term “antique firearms” should cover those firearms of a vintage and design such that free possession did not pose a realistic danger to public safety. That Government also reported that all antique firearms that were sold, transferred, purchased, acquired or possessed as curiosities or ornaments were excluded from the scope of application of its national legislation. Bulgaria reported that firearms produced as recently as 50 years in the past could be considered antiques according to the country’s Museums and Cultural Monuments Act. Nigeria clarified that it had no national regulations on antique firearms, as before 1899 all firearms had been handled by the British colonial administration and most of the institutions currently authorized to carry firearms had not been in place then.

11. Some of those States that reported having no regulation on antique firearms and their replicas indicated that their firearms legislation and regulations applied to all functional firearms regardless of age. For example, Malaysia stated that under its legislation antique arms continued to be classified as firearms if they still had the mechanical ability to discharge ammunition. Mexico reported that only the possession and sale of antique firearms were subjected to regulation. Thus, both private and legal persons were allowed to possess collections of antique firearms as long as the Ministry of Defence granted them permission. Moldova explained that its legislation did not contain any regulations on antique firearms, but that it relied on a classification of personal arms according to their intended use.

**(c) Replicas**

12. Replicas of antique firearms are also excluded from the definition of firearms under the Protocol, but it should be noted that only functional replicas using modern firing systems need to be considered and that non-firing replicas would be included only if they can be readily converted to discharge projectiles.

13. Of those States whose legislation contained some criteria to exclude replicas of antique firearms, most of them applied criteria that focused on the capabilities of the replica, instead of its appearance. More specifically, Algeria indicated that under its legislation a firearm was any weapon able to discharge ammunition for military purposes, regardless of its designation. Italy explained that replicas of antique arms were excluded from the scope of the law provided that they were manufactured in a way that did not permit their transformation into firearms or the possibility of loading them with ammunition. In any event, the barrel must be closed by a visible red cap. Monaco reported that firearms completely incapable of firing any ammunition were considered replicas under its legislation. Portugal reported that the criteria used in its legislation to define a replica were the date and the historical, technical and artistic value for preservation.

**2. “Parts and components” (question 4)**

**(a) Elements of firearms**

14. According to article 3, subparagraph (b), of the Protocol, “parts and components” means elements that are both designed specifically for a firearm and essential to its operation, including the barrel, frame or receiver, slide or cylinder, bolt or breech block.

15. Two thirds of responding States provided positive responses, including some States whose domestic definitions included “any parts” of a firearm or “parts not essential to its operation”.

16. Of those States that answered otherwise, Latvia and Sweden reported that those elements were subject to some regulations. Finland explained that, under its legislation, “firearm components” meant a chamber detached from a firearm and a corresponding component as well as a barrel and breech-closing device. The Government of Finland further clarified that a frame was in the scope of its legislation if it served as a breech-closing device. Madagascar reported that the definitions contained in the Protocol would be integrated into its national legislation without any modifications. Spain indicated that its legislation referred to “fundamental parts” rather than “parts and components”, including frame, barrel and bolt for pistols; frame, barrel and cylinder for revolvers; bascule and barrel for shotguns; and bolt and barrel for rifles. Peru indicated that it considered it to be necessary to define “parts and components” in its legislation. Paraguay explained that “parts and components” were subject to rules regulating the use of firearms, as the regulations only mentioned the accessories forming an indispensable part of the weapon.

**(b) Silencers**

17. According to article 3, subparagraph (b), of the Protocol, “parts and components” also include any device designed or adapted to diminish the sound caused by the firing of a firearm (silencer).

18. Most of those reporting States whose domestic legislation contained no definition of silencers indicated that silencers were subject to certain regulations (Bulgaria, Guatemala, Peru, Slovakia, Spain and Sweden). Cyprus explained that in its legislation silencers were not considered part of the firearm; however, the possession of devices to diminish the sound caused by firing a firearm was criminalized. Finland reported that, while the export of devices defined as defence material was under licence obligation, the country had no regulatory restrictions on silencers.

**3. “Ammunition” (questions 5 and 6)**

19. According to article 3, subparagraph (c), of the Protocol, “ammunition” includes all finished or assembled types of ammunition and the components if such components are already subject to authorization. Most of the responding States reported that their national legislation contained definitions of ammunition in line with the definition provided for by the Protocol.

20. Of those States that reported not having a definition of ammunition in their legislation, Ecuador and Kuwait explained that their domestic definitions were general. Belgium and New Zealand reported that they were in the process of modernizing their legislation. Cyprus reported that ammunition containing explosive substances fell within its legislative definition of explosives. Guatemala indicated that only the export of ammunition was regulated under its legislation. Mexico explained that its law made a reference to a dictionary definition. Madagascar stated that the relevant definitions were included in pending draft

legislation. Monaco explained that ammunition was subjected to the same regulations as the firearms for which it was used.

21. Of those States reporting that their domestic definitions of ammunition were not in line with that of the Protocol, Albania explained that the definition included in its relevant military regulation was narrower because of its general character. China indicated that its legislative definition of ammunition was broader than that of the Protocol. Finland reported that its Firearms Act contained the definitions of cartridge, projectile, especially dangerous cartridge and especially dangerous projectile, and explained that conducts of possession of, and trading in, cartridges and especially dangerous projectiles were subject to authorization. Honduras provided a list of substances and materials, including cartridges, to which its firearms control law applied. Slovenia indicated that its domestic definition of ammunition was narrower than that of the Protocol, specifying that its definition of ammunition excluded one for weapons in a certain category, actual projectiles (bullets and pellets) and cases without percussion caps. The United Kingdom, while underlining that its domestic definition was generally in line with the Protocol, reported that its law did not cover component parts, except projectiles for certain types of prohibited ammunition. That Government also indicated that the law was being changed to introduce control over the sale of primers. Zimbabwe reported that its domestic definition of ammunition was broader, including grenades, bombs and missiles.

## **B. Mandatory criminalization requirements**

22. Article 5 of the Protocol establishes six offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, with a view to ensuring that States parties establish a legal framework within which legitimate manufacturing and transfer of firearms can be conducted and which will allow illicit transactions to be identified to facilitate the prosecution and punishment of offenders.

### **1. Offence of manufacture or assembly from illicit parts and components (questions 7 and 8)**

23. Most of the responding States reported that their national legislation established as a criminal offence the manufacturing or assembly of firearms, their parts and components or ammunition from parts and components that had been trafficked.

24. Among those States that provided negative responses, Belgium reported that, while the offence did not exist as such under national legislation, it could be indirectly punishable through the application of other provisions of the country's criminal code. Ecuador explained that, under its domestic legislation, the manufacturing of and other activities related to arms, ammunition, explosives, accessories or other specified materials in violation of the provisions of its law were punishable by imprisonment of three to five years. Finland reported that trafficking in firearms was established as a criminal offence under its legislation, but not the manufacturing or assembly of firearms, their parts and components or ammunition from parts and components that had been trafficked. Guatemala clarified that, while

its legislation established no offence of trafficking parts and components, special permission was required for the import of spare parts. Madagascar referred to draft legislation that would include the offence of manufacture from illicit parts and components. Mexico explained that while it had legislation establishing as a criminal offence the manufacturing or assembly of firearms, their parts and components or ammunition without permission, that legislation did not specifically refer to the use of parts and components that had been trafficked. Monaco reported that the offence was not contemplated in its legislation. New Zealand explained that this type of conduct would be controlled in other ways, citing as an example that, under the Arms Act, it was an offence to import any parts of firearms without a permit issued by the police. Peru indicated that its legislation prohibited the illicit manufacturing of firearms but not specifically from parts and components that had been trafficked. Tunisia explained that the assembly from illicit parts and components fell within the scope of its law that criminalized trafficking in firearms, parts and ammunition.

**2. Offence of unlicensed or unauthorized manufacture or assembly (questions 9 and 10)**

25. The Secretariat assumes that all responding States have established as a criminal offence the unlicensed or unauthorized manufacture or assembly of firearms, their parts and components or ammunition, despite the fact that there were three negative responses. Among them, Serbia and Montenegro<sup>3</sup> indicated that “according to law, it is provided which enterprises and under which conditions they can produce firearms”. Tunisia, although it provided a negative response to this question, indicated in connection with the question on marking (question 12) that its legislation prohibited manufacturing and assembly of firearms. Chad also provided a negative response.

**3. Offence of manufacture or assembly of firearms without marking (questions 11 and 12)**

26. The responses were divided concerning the questions on the offence of manufacture or assembly of firearms without marking. More than half of the responding States provided positive responses, while the rest provided a negative or no response. The Conference is invited to refer to sections 5 and 6 below concerning the other marking-related offences, for there were a number of similarities in the responses to questions 11, 15 and 17.

27. Of those providing negative responses, several States indicated that under their legislation such conduct was not a criminal offence but an administrative offence (Czech Republic, Mexico and Spain) or a misdemeanour (Estonia). Honduras and Tunisia explained that any such manufacturing or assembly constituted a crime under their legislation. Albania, Azerbaijan, Monaco, Morocco, the Netherlands and Peru indicated that they had no regulations on firearms marking. Mexico clarified that, pursuant to a special agreement, firearms used by the Ministry of Defence in

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<sup>3</sup> From 3 June 2006, the membership of Serbia and Montenegro in the United Nations was continued by Serbia. The response to the questionnaire on the implementation of the Firearms Protocol was submitted to the Secretariat before that development and reflected the national position of the former Serbia and Montenegro.



that country bore the national emblem and the inscription “SEDENA” and/or a specific serial number. Sweden reported that it had no obligatory marking system but that, in practice, all firearms were marked at the time of manufacture with the manufacturer’s stamp and a unique number, thus providing a system that allowed the tracing of every weapon to a specific manufacturer. Responding to questions 11, 15 (trafficking unmarked firearms) and 17 (tampering with markings), Finland reported that neglecting the duty to have a firearm proved in accordance with relevant legislation was a criminal offence, but national legislation did not criminalize the marking-related offences. It also explained that, by law, each commercially produced firearm must be proved according to the International Proof Commission regulations, which required every firearm to carry a marking containing the name of the manufacturer and a serial number. Furthermore, possession permits were granted for only those firearms with a serial number, and firearms without serial numbers were marked by the relevant authorities when a possession permit was requested. Serbia and Montenegro explained that under its current regulations each part was marked during the production process. The United Kingdom explained that all manufacturers were required to keep a detailed record that contained the identification number or other distinguishable marking. Belarus reported that an amendment to its criminal code was being drafted. Two States reported the existence of regulations related to the manufacturing of firearms (Ecuador and Guatemala).

#### **4. Offence of illicit trafficking (questions 13 and 14)**

28. Except for New Zealand and Sweden, all responding States provided positive responses to the questions on the offence of trafficking. Madagascar clarified that the offence was included in draft legislation that was pending adoption. New Zealand explained that, while there was no specific offence matching that specified in the questionnaire, this type of conduct would be covered by the following offences under its legislation: the importing of firearms and their parts without a permit; and the sale or supplying of a pistol, military-style semi-automatic weapon or restricted weapon to an unauthorized person. Sweden explained that under its legislation the import, acquisition, sale, delivery, movement or transfer of firearms without a valid authorization was a criminal offence, while the export of firearms was only considered a criminal offence if the firearms were defined as military equipment under the Military Equipment Act and exported without a valid authorization.

#### **5. Offence of trafficking unmarked firearms (questions 15 and 16)**

29. The Conference is encouraged to take into consideration the high degree of similarity in the responses to the three questions on marking-related offences (manufacturing without marking in question 11, trafficking unmarked firearms in question 15 and tampering with markings in question 17).

30. Of the States providing negative responses, Belarus, the Czech Republic, Estonia, Finland, Mexico, Monaco, the Netherlands and Sweden gave the same answers as those to question 11. Belarus indicated that an amendment to its criminal code was being drafted. Some States indicated that under their legislation such conduct was not a criminal offence but an administrative offence (Czech Republic and Mexico) or a misdemeanour (Estonia). Finland made a cross reference to its

response to question 12. Sweden repeated that it had no obligatory marking system, but referred to the practice detailed in its answer to question 12.

31. Some States reported on identification methods other than marking, such as specifications of firearms (Ecuador) or serial numbers stamped on arms and their essential parts (Peru). Guatemala indicated having a general prohibition on firearms without marking. Mexico referred to its answer to question 12. New Zealand explained that some of the types of conduct listed in question 15 would be covered by the following offences: failure of an importing person to stamp or cause to be stamped in clear view the frame of imported pistols, restricted weapons or military-style semi-automatic firearms within a certain period; and failure of a person transferring pistols, restricted weapons or military-style semi-automatic firearms without a serial number or stamp to stamp or cause to be stamped those firearms before they were handed over. Spain explained that, under its penal code, a lack of marking or serial number was an aggravating circumstance for the offence of possessing prohibited arms without a license or permit but the export and import of unmarked arms was not permitted unless they were sent for marking. Tunisia indicated that, while marking was not required for the import, export, acquisition, sale, delivery, transport or transfer of firearms, manufacturing and registration numbers must be kept in a registry. The United Kingdom explained that amendments were being proposed to European Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, which would align legislation with the requirement under the Protocol. Azerbaijan provided two different responses, but neither contained any further explanation.

#### **6. Offence of tampering with markings (questions 17 and 18)**

32. There were more positive than negative responses to the questions concerning the offence of tampering with markings. As indicated above, there was a high degree of similarity between the responses to these questions and those to questions 11 and 15.

33. Of the States that provided negative responses, Belarus, the Czech Republic, Estonia, Finland, Monaco, Sweden and the United Kingdom gave the same answers as those to question 11 or 15 or both. Belarus indicated that an amendment to its criminal code was being drafted. Some respondents indicated that under their legislation such conduct was not a criminal offence but an administrative offence (Czech Republic) or a misdemeanour (Estonia). Ecuador explained that its legislation referred not to marking but to specifications of a firearm. Finland made a cross reference to its response to question 12. Madagascar clarified that a bill containing relevant provisions was in the process of adoption. Mexico indicated that its legislation established the falsification of commercial or industrial markings as a criminal offence. Poland reported that, under its penal code, it was a felony to remove, forge or distort identification markings on elements of small arms and light weapons that identified the serial number, year of manufacture or producer of the weapon. Sweden repeated that it had no obligatory marking system. The United Kingdom explained that relevant action could be taken under the general criminal law.

34. Belgium, making a cross reference to its response to question 8, indicated that such conduct could be indirectly punishable through the application of other provisions of the country's criminal code and that this criminalization requirement

would be covered by a new law. New Zealand explained that its amended legislation would contain this offence. Mexico, while indicating that its legislation established no specific crime in this regard, explained that the falsification of marking was contemplated in article 242 of the Federal Penal Code. Slovenia emphasized that the non-implementation of this provision of the Protocol was due to the small scale of weapons production in the country; and that it respected the relevant European Union regulations. Tunisia indicated that its legislation did not refer to marking of firearms. Azerbaijan provided two different responses, but neither contained any further explanation.

**7. Attempt (questions 20 and 21), participation as an accomplice (questions 22 and 23) and organizing, directing, aiding, abetting, facilitating or counselling (questions 24 and 25) the commission of an offence**

35. Despite the fact that the obligation to criminalize both the attempt to commit and the participation as an accomplice in the offences covered by the Protocol is subject to the basic concepts of the legal systems of States parties (art. 5, para. 2 (a)), many of the responses received from States confirmed the establishment of criminal liability at the domestic level for persons attempting to commit and participating as an accomplice in the basic offences. The Protocol further creates an obligation for States parties to criminalize any acts of organizing or directing other persons to commit any of the offences covered by the Protocol (art. 5, para. 2 (b)); in that regard, a majority of the responding States reported that domestic legislation to that effect had already been put in place.

36. Many of those States which indicated otherwise clarified that not all the offences covered by the Protocol had been established in their national legislation, and therefore the attempt to commit, participation as an accomplice in, and organizing, directing, aiding, abetting, facilitating or counselling such acts could not be criminalized (Czech Republic, Estonia, Guatemala, New Zealand, Peru and Sweden).

37. Belgium, which provided a negative response to the criminalization of the offence of organizing and other conduct in respect of the commission of an offence, explained that the organizing of offences punishable by imprisonment of more than three years was a criminal offence under its legislation, while firearms-related crimes were punishable by imprisonment for periods of between four months and three years.

38. Ecuador, referring to attempt to commit an offence covered by the Protocol, explained that under its legislation criminal liability was not established for early preparatory acts that might not lead to the commission of the basic offences. The Government further clarified that its legislation defined “accomplice” as anyone who indirectly cooperated with the commission of an offence by previous or simultaneous acts. Moreover, the acts of organizing, directing, aiding, abetting, facilitating or counselling were covered by articles 147 (on promoting, directing and participating in guerrilla, combat and terrorist groups) and 371 (on taking part in a group by providing it arms and ammunition, as well as indirect support, to commit a crime) of the country’s penal code.

## C. Optional criminalization requirements

### 1. Overview of optional offences (question 19 (a) (i)-(vi))

39. The table below provides an overview of the status of the optional offences reported to have been established in the responding States.

#### Establishment of optional offences in responding States

<i>Type of offence</i>	<i>Established as an offence</i>		
	<i>Yes</i>	<i>No</i>	<i>No answer/others</i>
Failure to keep records of firearms or the falsification or destruction of such records	40	13	1
Providing of false information to influence the issuance of a licence or authorization for manufacture or for export, import or transit	42	11	1
Falsification or misuse of documents for the issuance of a licence or authorization for manufacture or for export, import or transit	45	8	1
Possession or use of fraudulent licences for manufacture or for export, import or transit	45	7	1
Illicit reactivation of deactivated firearms	34	16	3
Illicit brokering and failure to provide required information about brokerage activities	37	15	2

### 2. Other offences (question 19 (a) (vii))

40. Taking into account that States parties could adopt stricter measures than those provided for in the Protocol, several States reported that their legislation established as criminal or administrative offences acts related to unauthorized possession of firearms (for instance, underage possession or lack of end-use certificate in the United Republic of Tanzania), use of firearms in violation of law, inappropriate storage of firearms and sale of firearms to organized criminal groups.

41. In addition, a number of minor and administrative offences were reported, including failure to meet safety standards and failure to report to the police.

### 3. Places of firearms to be marked (question 19 (b))

42. Many responding States indicated that their domestic legislation stipulated which part of a firearm should be marked. New Zealand explained that under its legislation an identifying number was to be stamped on the frame of a firearm.

43. Most of the States which answered otherwise explained that this was because of the lack of marking systems in their domestic legislation.

44. Belarus indicated that visible marking was required by its legislation. Malta stated that its law merely required that the firearm carry the manufacturer's stamp. Mexico reported that the place of marking was decided by the Ministry of Defence. Moldova indicated that under its legislation the insignia system of the manufacturing country was used for light small arms designed for military purposes and that for light small arms designed for non-military purposes the requirements of the Permanent International Commission for the Proving of Small Arms were

applied. Paraguay reported that under its legislation several components, such as the barrel, were to be marked with an indication of their origin. Poland indicated that manufacturers and importers were obliged by law to mark weapons and their key parts by using an individual serial number. The United Kingdom explained that its law required the marking of barrel, action or breech, but requirements to mark all components could be confusing because of the lack of definition in its legislation. Zimbabwe indicated that, since it did not manufacture firearms, all imported firearms would be marked in the country of origin.

#### **4. Applicability of marking offences to parts and components (question 19 (b) (i))**

45. Of those States which provided negative responses to the question concerning the applicability of marking offences to parts and components, the Czech Republic explained that the marking obligations set forth in its domestic legislation were also applicable to each of the principal parts of firearms, indicating at the same time that the acts referred to in questions 11, 15 and 17 were administrative offences. New Zealand indicated that such explicit extension of applicability was not considered necessary. Spain explained that the offence of tampering with markings extended to the fundamental parts that must be marked in accordance with applicable regulations.

### **D. International cooperation requirements**

46. With regard to the application of the relevant provisions of the United Nations Convention against Transnational Organized Crime<sup>4</sup> with regard to extradition and mutual legal assistance in cases covered by the Protocol, reference is made to the updated analytical report on the implementation of the Convention, which reflects additional responses received from States for the first reporting cycle (CTOC/COP/2005/2/Rev.2).

#### **1. Mutatis mutandis application of article 16 of the Organized Crime Convention (question 26)**

47. The obligations under the Organized Crime Convention require States parties to, inter alia, treat offences established in accordance with the Firearms Protocol as extraditable offences under their treaties and laws and to submit such offences to competent authorities for domestic prosecution where extradition has been refused on the grounds of nationality (art. 16 of the Convention). A total of 36 responding States indicated that they had been able to apply, mutatis mutandis, article 16 of the Convention to the offences established in accordance with the Protocol.

48. Croatia explained that the offences covered by the Protocol were punishable and extraditable under its domestic legislation and that extradition was not conditional on the existence of a treaty on extradition. The Czech Republic reported that the Convention provisions on extradition were directly applicable in its jurisdiction and had precedence over its domestic legislation. Ecuador clarified that the Convention, the Protocol and national legislation on extradition provided the legal basis for granting extradition requests. Malta provided a negative response but

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<sup>4</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

indicated that, upon its ratification of the Protocol, it would be in a position to apply, *mutatis mutandis*, article 16 of the Convention. Nigeria excluded the possibility of applying, *mutatis mutandis*, article 16, because it had no extradition treaty with most States parties to the Convention. While emphasizing that the dual criminality requirement was not met for the offences of manufacture or assembly from illicit parts and components, manufacture and assembly without marking, trafficking unmarked firearms and tampering with markings in the country, Peru explained that an amendment to its legislation on international judicial cooperation was pending entry into force. The United Republic of Tanzania reported the use of the offices of the International Criminal Police Organization (INTERPOL) to exchange crime-related information between States parties. Several responding States explicitly emphasized that they required dual criminality for the granting of an extradition request (Peru, Portugal and Sweden). Furthermore, Slovakia referred to the application of the European arrest warrant.

## **2. Mutatis mutandis application of article 18 of the Organized Crime Convention (question 27)**

49. According to the *mutatis mutandis* application of the Organized Crime Convention, mutual legal assistance shall be afforded to other States parties in investigations, prosecutions and judicial proceedings for the offences covered by the Firearms Protocol (art. 18 of the Convention). A majority of responding States provided positive responses to this question.

50. Croatia explained that mutual legal assistance might be afforded wherever consistent with the legal system and public order. The Czech Republic reported that the Convention provisions on mutual legal assistance were directly applicable in its jurisdiction and had precedence over its domestic legislation. Germany indicated that national implementation was being prepared. Peru explained that the Convention provisions on mutual legal assistance were applicable to the criminal offences established under domestic law (unlicensed or unauthorized manufacture or assembly and illicit trafficking). Sweden emphasized that it required dual criminality for granting a request for assistance involving coercive measures.

## **3. Responses covering both extradition and mutual legal assistance**

51. Several States provided responses that covered questions on both extradition and mutual legal assistance. Finland clarified that the full ability to apply, *mutatis mutandis*, articles 16 and 18 of the Convention to the offences covered by the Firearms Protocol required the country's ratification of the Protocol. New Zealand reported that the Arms Amendment Bill (No. 3) before the Parliament included provisions that would enable it to comply with those requirements.

52. Some States also reported on bilateral and regional treaties on extradition and mutual legal assistance (Honduras, Latvia, Thailand and the former Yugoslav Republic of Macedonia). Slovakia indicated that a broader scope of cooperation was provided to some Member States on the basis of the European Convention on Mutual Legal Assistance in Criminal Matters and its two Additional Protocols and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

## E. Difficulties encountered and assistance required (questions 28-32)

53. Many States indicated that they were in the process of amending their legislation in line with the provisions of the Protocol (Albania, Belarus, Belgium, Croatia, Czech Republic, Finland, Germany, Guatemala, Honduras, Mexico, Moldova, Netherlands, New Zealand, Norway, Peru, Romania and Zimbabwe).

54. Finland further indicated that since some of the provisions of the Protocol fell within the scope of the community legislation of the European Union, its ratification of the Protocol was subject to the adoption of the amendments to European Council Directive 91/477/EEC on control of the acquisition and possession of weapons, submitted on 30 March 2006. Sweden also referred to the competence of the European Commission in connection with the implementation of the Protocol. The United Kingdom further indicated that the amended European Council Directive 91/477/EEC could be incorporated into domestic legislation.

55. Other difficulties reported to have hampered the adoption of adequate national legislation included the lack of internal regulations (Ecuador); the need to address constitutional issues (Germany); the lack of consensus on the proposed reform of legislation (Guatemala); and the lack of coordination among ministries and their unclear areas of responsibility (the former Yugoslav Republic of Macedonia).

56. Albania, Chad, Croatia, Ecuador, Guatemala, Honduras, Moldova, Paraguay, the former Yugoslav Republic of Macedonia, the United Republic of Tanzania and Zimbabwe explicitly indicated the need for technical assistance to overcome difficulties as follows:

<i>State</i>	<i>Area where assistance is needed</i>
Albania	Assistance in carrying out legislative reform Assistance in filling out the questionnaire
Chad	Assistance in judicial matters
Croatia	Financial means for the overall implementation of the law in accordance with the requirements of the Protocol
Ecuador	Assistance in the development of relevant legal reforms to implement the instruments Capacity-building in the administration of justice
Guatemala	Need to study other States' legislation and control measures on arms and ammunition
Honduras	Assistance in establishing an effective system to identify firearms Training of personnel

<i>State</i>	<i>Area where assistance is needed</i>
Moldova	Specialized equipment for detection, transport and elimination of arms, ammunition and explosives
Paraguay	Technical assistance in the marking and identification of weapons and the development of a modern database system Easier access to the Internet
The former Yugoslav Republic of Macedonia	Assistance in the establishment of a national weapons database
United Republic of Tanzania	Firearm marking instrument
Zimbabwe	Assistance in marking, record-keeping, tracing, destruction of firearms, as well as public-awareness programmes

## **F. Technical assistance provided (questions 33-35)**

57. The United Republic of Tanzania reported that it had provided, bilaterally and through international organizations, technical assistance specifically related to the implementation of the Protocol. More precisely, it reported that technical assistance in drafting legislation and policies, preparing databases and ensuring stockpile management had been provided through subregional organizations such as the Southern African Development Community and the East African Community). Regarding technical assistance provided through international organizations, Moldova reported that in 2007 the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons had provided financial assistance to the Ministry of the Interior of Moldova for efforts to eliminate light small arms. In more general terms, Portugal referred to study tours on the implementation of the Organized Crime Convention and its Protocols.

## **III. Concluding remarks**

58. The attention of the Conference is drawn to the significant gaps in compliance with the mandatory provisions of the Firearms Protocol in the area of establishing the three marking-related criminal offences: the offence of manufacture or assembly of firearms without marking; the offence of trafficking unmarked firearms; and the offence of tampering with markings. As the marking of firearms is a key to success in combating the illicit manufacturing of and trafficking in firearms, the lack of corresponding criminal offences in domestic legislation of States parties may hinder subsequent cooperation in accordance with the Organized Crime Convention and the Firearms Protocol.

59. At the same time, account should be taken of the fact that many responding States also indicated that they were in the process of amending their legislation in order to implement the provisions of the Protocol. The Conference may wish to consider ways of assisting States in reviewing or further adjusting and streamlining their legal frameworks to that effect.

60. Moreover, several member States of the European Union pointed out that some of the provisions of the Protocol fell within the scope of competence of the European Union and referred to European Council Directive 91/477/EEC on control



of the acquisition and possession of weapons, to which an amendment had been proposed. Serious consideration should be given to the issue of the concurrent competence between the European Union and its member States in implementing the provisions of the Protocol.

61. The effectiveness of the assistance that the Conference can provide depends to a large extent on the availability, comprehensiveness and accuracy of appropriate information on national programmes, plans and practices, as well as on domestic legislative and administrative measures to implement the Protocol. Consequently, States that have not responded to the questionnaire are called upon to facilitate the work of the Secretariat and to provide the information required by the Conference. States parties to the Protocol, in particular, should recall their reporting obligations under the Convention (art. 32, para. 5). The efficiency of the reporting mechanism in support of the function of the Conference can only be ensured when the information available is comprehensive and representative of as many national approaches as possible and not only a portion of them covering less than half the States parties to the Protocol.

## Annex I

### Relevant legislation and website addresses received

1. The Secretariat received information from a number of States in response to its request for a copy of relevant legislation and/or website addresses for relevant online information. The following States sent copies or abstracts of relevant legislation:

<i>State</i>	<i>Legislation</i>	<i>Language</i>
Belarus	Criminal Code of the Republic of Belarus	Russian
Bulgaria	Abstracts of the Law on the Control of Explosives, Firearms and Munitions	English
	Abstracts of the Penal Code	English
Ecuador	Law on Arms, Ammunition, Explosives and Accessories	Spanish
	Regulation on the Law on Arms, Ammunition, Explosives and Accessories	Spanish
Finland	Firearms Act	English
Honduras	Abstracts of the Penal Code	Spanish
Latvia	Procedures for the acquisition, registration, record-keeping, possession, transportation, forwarding, carrying, and realization of firearms, ammunition and gas pistols (revolvers) and building up of collections thereof	English
New Zealand	Arms Act of 1983, Arms Regulations of 1992 and Crimes Act of 1961	English
Paraguay	Abstracts of the Regulation on weapons	Spanish
Romania	Law No. 595/2004 for the approval of Government Emergency Ordinance No. 158/1999 on the regime of exports and imports of strategic goods	English
	Emergency Ordinance on the regime of exports and imports of strategic goods	English
Serbia	Criminal Code of the Republic of Serbia	English
Slovenia	Weapons Act (with a list of prohibited weapons)	English

2. The following States sent website addresses:

<i>State</i>	<i>Website address</i>
Belarus	<a href="http://www.ncpi.gov.by">www.ncpi.gov.by</a>
Belgium	<a href="http://www.just.fgov.be">www.just.fgov.be</a>
Estonia	<a href="http://www.legaltext.ee">www.legaltext.ee</a>
Guatemala	<a href="http://www.congreso.gob.gt">www.congreso.gob.gt</a>
Italy	<a href="http://www.normeinrete.it">www.normeinrete.it</a>
Malta	<a href="http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf">http://docs.justice.gov.mt/lom/legislation/english/leg/vol_1/chapt9.pdf</a>
South Africa	<a href="http://www.gov.za">www.gov.za</a>
Switzerland	<a href="http://www.admin.ch/ch/d/sr/sr.html">http://www.admin.ch/ch/d/sr/sr.html</a>

## Annex II

**Status of responses to the questionnaire on the  
implementation of the Protocol against the Illicit  
Manufacturing of and Trafficking in Firearms,  
Their Parts and Components and Ammunition,  
supplementing the United Nations Convention  
against Transnational Organized Crime**

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification or accession (a)</i>	<i>Year response received</i>	<i>Year update to response received</i>
Albania	-	8 Feb. 2008 (a)	2006	-
Algeria	-	25 Aug. 2004 (a)	2006	-
Australia	21 Dec. 2001	-	2006	-
Austria	12 Nov. 2001	-	2008	-
Azerbaijan	-	3 Dec. 2004 (a)	2006	-
Belarus	-	6 Oct. 2004 (a)	2006	-
Belgium	11 June 2002	24 Sept. 2004	2006	2008
Bulgaria	15 Feb. 2002	6 Aug. 2002	2006	2008
Burkina Faso	17 Oct. 2001	15 May 2002	2008	-
Chad	-	-	2008	-
China	9 Dec. 2002	-	2006	-
Croatia	-	7 Feb. 2005 (a)	2006	2008
Cyprus	14 Aug. 2002	6 Aug. 2003	2006	-
Czech Republic	-	-	2006	2008
Ecuador	12 Oct. 2001	-	2006	-
Estonia	20 Sept. 2002	12 May 2004	2006	2008
Finland	23 Jan. 2002	-	2006	2008
Germany	3 Sept. 2002	-	2006	2008
Guatemala	-	1 Apr. 2004 (a)	2006	2008
Honduras	-	1 Apr. 2008 (a)	2006	-
Italy	14 Nov. 2001	2 Aug. 2006	2006	-
Kazakhstan	-	31 July 2008 (a)	2006	-
Latvia	-	28 July 2004 (a)	2006	-
Lebanon	26 Sept. 2002	13 Nov. 2006	2006	-
Madagascar	13 Nov. 2001	15 Sept. 2005	2006	2008
Malaysia	-	-	2006	-
Malta	-	-	2007	2008
Mauritius	-	24 Sept. 2003 (a)	2006	-
Mexico	31 Dec. 2001	10 Apr. 2003	2007	-
Moldova	-	28 Feb. 2006 (a)	2008	-

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification or accession (a)</i>	<i>Year response received</i>	<i>Year update to response received</i>
Monaco	24 June 2002	-	2007	-
Morocco	-	-	2006	-
Netherlands	-	8 Feb. 2005 (a)	2006	-
New Zealand	-	-	2006	-
Nigeria	13 Nov. 2001	3 Mar. 2006	2006	-
Norway	10 May 2002	23 Sept. 2003	2006	-
Paraguay	-	27 Sept. 2007 (a)	2008	-
Peru	-	23 Sept. 2003 (a)	2006	-
Poland	12 Dec. 2002	4 Apr. 2005	2006	2008
Portugal	3 Sept. 2002	-	2006	-
Republic of Korea	4 Oct. 2001	-	2006	-
Romania	-	16 Apr. 2004 (a)	2006	2008
Serbia <sup>a</sup>	-	20 Dec. 2005 (a)	2006	-
Slovakia	26 Aug. 2002	21 Sept. 2004	2006	2008
Slovenia	15 Nov. 2001	21 May 2004	2006	-
South Africa	14 Oct. 2002	20 Feb. 2004	2006	-
Spain	-	9 Feb 2007 (a)	2006	2008
Sweden	10 Jan. 2002	-	2006	2008
Thailand	-	-	2006	-
The former Yugoslav Republic of Macedonia	-	14 Sept. 2007 (a)	2006	-
Tunisia	10 July 2002	10 Apr. 2008	2006	-
Turkey	28 June 2002	4 May 2004	2006	-
Turkmenistan	-	28 Mar. 2005 (a)	2006	-
United Kingdom of Great Britain and Northern Ireland	6 May 2002	-	2006	-
United Republic of Tanzania	-	24 May 2006 (a)	2008	-
Zimbabwe	-	-	2006	-
European Community	16 Jan. 2002	-	2006	-

<sup>a</sup> From 3 June 2006, the membership of Serbia and Montenegro in the United Nations was continued by Serbia.