



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

Distr.: General
16 August 2006

Original: English

Third session

Vienna, 9-18 October 2006

Item 5 of the provisional agenda*

**Review of 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**

**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**

Analytical report of the Secretariat

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-16	3
A. Legislative background	1-5	3
B. Mandate of the Conference of the Parties	6-7	3
C. Reporting process	8-11	4
D. Scope and structure of the report	12-16	5
II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.	17-68	6
A. Definitions	17-32	6
B. Mandatory criminalization requirements	33-49	9

* CTOC/COP/2006/1.



C.	Optional criminalization requirements	50-56	12
D.	International cooperation requirements.....	57-63	14
E.	Difficulties encountered and assistance required (questions 28-32).....	64-67	15
F.	Technical assistance provided (questions 33-35).....	68	16
III.	Concluding remarks	69-72	16
Annex.	List of relevant legislation and website addresses received.....		18

I. Introduction

A. Legislative background

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 (hereinafter the “Firearms Protocol”).
2. In accordance with article 32, paragraphs 1 and 2, of the United Nations Convention against Transnational Organized Crime (hereinafter the “Organized Crime Convention”), a Conference of the Parties to the Convention was established and held its first session from 28 June to 9 July 2004 and its second session from 10 to 21 October 2005 in Vienna. The Firearms Protocol entered into force on 3 July 2005 pursuant to its article 18, paragraph 1, and consideration of its implementation was therefore included in the agenda of the second session of the Conference of the Parties (CTOC/COP/2005/1).
3. In accordance with article 32, paragraphs 1 and 3, of the Organized Crime Convention, the Conference of the Parties is to agree upon mechanisms for achieving the objectives of improving the capacity of States parties to combat transnational organized crime and of promoting and reviewing the implementation of the Convention, focusing in particular on reviewing periodically and making recommendations to improve the implementation of the Convention (art. 32, para. 3 (d) and (e)).
4. For the purpose of achieving those specific objectives, the Conference of the Parties is to acquire the necessary knowledge of the measures taken by States parties in implementing the Organized Crime Convention and the difficulties encountered by them in doing so, through information provided by them (art. 32, para. 4). Furthermore, the Convention requires States parties to provide the Conference with information on their programmes, plans and practices, as well as legislative and administrative measures, to implement both the Convention and its supplementary Protocols (art. 32, para. 5).
5. In accordance with article 37 of the Organized Crime Convention and article 1, paragraph 2, of the Firearms Protocol, the provisions of the Convention apply, *mutatis mutandis*,¹ to the Firearms Protocol unless otherwise provided therein.

B. Mandate of the Conference of the Parties

6. At its second session, by decision 2/5, the Conference of the Parties decided to carry out the functions assigned to it in article 32 of the Organized Crime Convention with respect to the Firearms Protocol by, *inter alia*, establishing a programme of work that it would review at regular intervals (see CTOC/COP/2005/8, chap. I). In the same decision, the Conference of the Parties also decided that, for its third session, the programme of work would cover the following areas:
 - (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.²

7. In the same decision, the Conference of the Parties requested the Secretariat to collect information from States parties and signatories to the Firearms Protocol, in the context of the above programme of work, using for that purpose a questionnaire to be developed in accordance with guidance provided by the Conference of the Parties at its second session; requested States parties to the Firearms Protocol to respond promptly to the questionnaire circulated by the Secretariat; invited signatories to provide the information requested by the Secretariat; and requested the Secretariat to submit an analytical report based on the responses received to the Conference of the Parties at its third session.

C. Reporting process

8. A draft questionnaire was brought to the attention of the Conference of the Parties for review and comments at its second session (CTOC/COP/2005/L.5). The final text of the questionnaire, as approved by the Conference, was disseminated to States parties and signatories to the Protocol with a view to obtaining the required information in accordance with Conference decision 2/5.

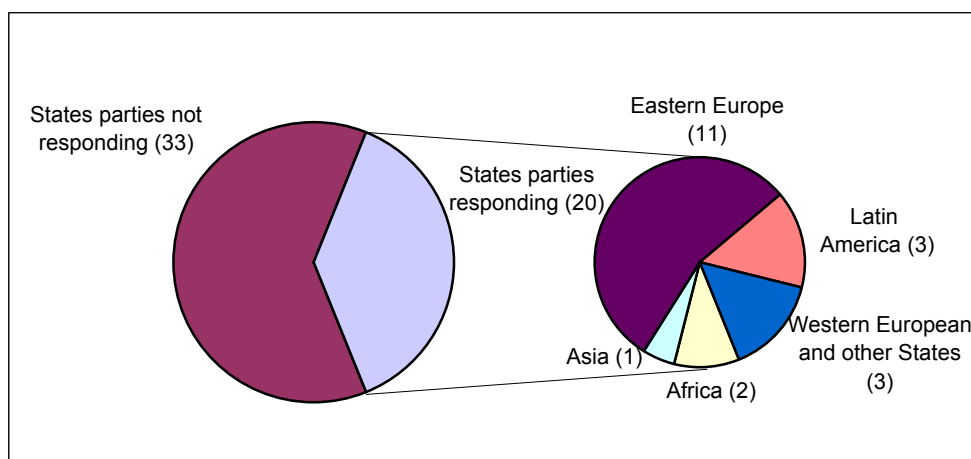
9. The Secretariat considered it appropriate to disseminate the questionnaire also to non-signatory States. The Secretariat was of the view that such dissemination would be in line with the spirit of inclusiveness that characterized the negotiation process of the Organized Crime Convention and its Protocols and with the already stated objective of the General Assembly and the Conference of the Parties of promoting the universal nature of the instruments and striving to achieve universal adherence to the Convention and its Protocols. The Secretariat believed that encouraging non-signatory States to participate in the information-gathering system of the Conference of the Parties would be a way to assist them in gaining experience on how States that were already parties to the Firearms Protocol had adjusted their legal and institutional framework in order to respond to the challenges posed by this criminal activity. Such an experience could be constructive in the context of future discussions at the national level in the process of the ratification of or accession to the Convention and the Firearms Protocol.

10. By means of information circulars, the Secretariat reminded States parties to the Firearms Protocol of their obligation to provide information and invited signatories to do likewise by 20 May 2006.

11. As at 24 July 2006, the Secretariat had received responses to the questionnaire from 38 Member States, of which 20 were parties to the Firearms Protocol, 10 were signatories and 8 were non-signatories (see figure below). As at the same date, the Firearms Protocol had received 52 signatures and 53 ratifications or accessions, which means that 38 per cent of States parties to the Protocol had responded to the

questionnaire, many of them also providing copies of their relevant legislation. In addition to the responses to the questionnaire, the Secretariat also received a letter from Mauritius, indicating that it was in the process of upgrading its legislation to cover all aspects of relevant multilateral and regional treaties to which Mauritius was a party.

Figure
States parties responding to the questionnaire on the implementation of the Firearms Protocol



D. Scope and structure of the report

12. The present analytical report contains a summary and a first analysis of the replies received from States, which highlight the progress made towards meeting the requirements set out in the Firearms Protocol and, at times, the difficulties that States are facing in implementing its provisions.

13. The structure of the report follows the guidance given by the Conference of the Parties in its decision 2/5. The report thus contains information on the main thematic fields for which information on the basic adaptation of national legislation in the light of the Firearms Protocol is required and also addresses the following aspects: (a) examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol; and (b) enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Protocol.

14. Issues relating to the implementation of articles 7, 8 and 10 of the Protocol (record-keeping, marking of firearms and licensing), which, in accordance with decision 2/5, is one of the components of the programme of work for the third session of the Conference of the Parties, were not addressed in the questionnaire and therefore are not reflected in the present report. That was because the decision of the Conference was made on the understanding that the exchange of views on and experience in the implementation of measures on record-keeping, marking of firearms and licensing would not imply collection of information by the Secretariat,

but would serve as a guide for preparation by States parties and observers for the third session of the Conference.

15. As also highlighted in the questionnaire itself, the provisions of the Organized Crime Convention on international cooperation apply, *mutatis mutandis*, to the Firearms Protocol and therefore any information received from States related to international cooperation requirements under the Protocol is included in the updated analytical report on the implementation of the Convention (CTOC/COP/2005/2/Rev.1).

16. The present report does not purport to be comprehensive or complete, as it reflects the situation in less than half of the States parties to the Firearms Protocol.

II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

A. Definitions

1. “Firearms” (questions 1-4)

(a) Firearms

17. According to the Protocol, a firearm is a portable and barrelled weapon, and 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.

18. Of those States which indicated that no definition was contained in their legislation, Belgium and Mexico reported that they were in the process of upgrading their legislation, which would define a “firearm”. Spain reported that a dictionary definition was used as a reference in its legislation.

19. Of those States whose domestic definitions of firearms were not in line with that of the Protocol, Belarus, 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. The following reporting States reported that their domestic definitions were either narrower and/or based on use or intended use or both, and therefore not fully in compliance with the Protocol. Guatemala indicated that its definition was broader but based on intended use. Slovenia and Tunisia reported that their definitions were narrower and based on intended use. Ecuador explained that its definition was based on intended use. Kuwait reported that its domestic definition was general but narrower. Serbia and Montenegro³ indicated that, except for some sports weapons, there was no such definition.

(b) Antiques

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

21. All reporting States whose legislation contained regulations on antique firearms used “cut-off” dates earlier than 1899 or a combination of dates and specific features of firearms, such as black-powder weapons and muzzle loading firearms. The United Kingdom reported that, while its legislation did not define “antique”, there was a guideline indicating that “antique firearms” should cover those firearms of a vintage and design such that free possession did not pose a realistic danger to public safety. The 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.

22. Some of those States which reported that there was no regulation on antique firearms and their replicas indicated that their firearms legislation and regulations applied to all functional firearms regardless of their age.

(c) Replicas

23. Replicas of antique firearms are also excluded from the definition of firearms, 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.

24. 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 replicas, instead of their appearance. More specifically, 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. Portugal reported that it used the date in time and the historical, technical and artistic values for preservation as the criteria.

2. “Parts and components” (question 4)**(a) Elements of firearms**

25. According to article 3, subparagraph (b), of the Firearms 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.

26. 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”.

27. 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. 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 reported that it considered it to be necessary to define “parts and components” in its legislation.

(b) Silencers

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

29. 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). Finland reported that, while the export of the devices defined as defence material was under licence obligation, there were no restrictions on silencers.

3. “Ammunition” (questions 5 and 6)

30. According to article 3, subparagraph (c), of the Firearms 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.

31. Of those States that reported that there was no 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. Mexico explained that its law made a reference to a dictionary definition. Guatemala indicated that only export of ammunition was regulated.

32. Of those States which reported that their domestic definitions of ammunition were not in line with that of the Protocol, China indicated that the 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. The 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

33. Article 5 of the Firearms 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)

34. 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.

35. Among those States that provided negative responses, Belgium reported that, while the offence did not exist as such, it could be indirectly punishable through the application of other provisions of the 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, 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 there was no offence of trafficking parts and components, special permission was required for import of spare parts. New Zealand explained that this type of conduct would be controlled in other ways and provided 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 the illicit manufacturing of firearms was prohibited, but not specifically from parts and components that had been trafficked. Tunisia explained that assembling 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)

36. The Secretariat assumes that all responding States have established the unlicensed or unauthorized manufacture or assembly as a criminal offence, despite the fact that there were two negative responses. Among them, Serbia and Montenegro³ indicated “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.

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

37. The responses were divided over the question concerning manufacture or assembly of firearms without marking. Half of the responding States provided positive responses, while the rest provided a negative or no response. The Conference of the Parties 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.

38. Of those providing negative responses, several States indicated that such a conduct was not a criminal offence but an administrative offence (Czech Republic, Mexico and Spain) or misdemeanour (Estonia). Honduras and Tunisia explained that any manufacturing or assembly constituted a crime. Peru indicated that there was no regulation on firearms marking and Sweden reported that it had no obligatory marking system. Answering 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, while its legislation did not criminalize the marking-related offences. It also explained that each commercially produced firearm must be proved according to the International Proof Commission regulations and any firearm not carrying a marking containing the name of the manufacturer and a serial number would not be accepted. Furthermore, possession permits would be granted for only those firearms with a serial number and firearms without serial numbers would be marked by relevant authorities when a possession permit was requested. Serbia and Montenegro³ explained that each part would be marked in the production process under current regulations. The United Kingdom explained that, although it was not a specific requirement, all manufacturers were required to keep a detailed record that contained the identification number or other distinguishable marking. Belarus reported that an amendment to the Criminal Code was being drafted. Two States reported on the existence of some regulations related to the manufacturing of firearms (Ecuador and Guatemala).

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

39. Except New Zealand and Sweden, all responding States provided positive responses. 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: an offence to import firearms and their parts without a permit; and an offence to sell or supply a pistol, military style semi-automatic weapon or restricted weapon to an unauthorized person. Sweden explained that export, acquisition, sale, delivery, movement or transfer of firearms without a valid authorization was a criminal offence, while import of firearms defined as military equipment under the Military Equipment Act without a valid authorization was not.

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

40. The Conference of the Parties is encouraged to take into consideration a 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).

41. Of those providing negative responses, Belarus, the Czech Republic, Estonia, Finland, Mexico and Sweden gave the same answers as those to question 11. Belarus indicated that an amendment to the Criminal Code was being drafted. Several States indicated that such a conduct was not a criminal offence but an administrative offence (Czech Republic and Mexico) or misdemeanour (Estonia). Finland made a cross reference to its response to question 12. Sweden repeated that it had no obligatory marking system.

42. 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 that there was a general prohibition on firearms without marking. New Zealand explained that some of the conduct listed in question 15 would be covered by the following offences: an offence if an importing person did not stamp or cause to be stamped in clear view on the frame of imported pistols, restricted weapons or military style semi-automatic firearms within a certain period; and an offence if a person transferring pistols, restricted weapons or military style semi-automatic firearms without a serial number or stamp, did not stamp or cause to be stamped those firearms before they were handed over. Spain explained that, under the 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 the 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)

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

44. Of those that provided negative responses, Belarus, the Czech Republic, Estonia, Finland, Sweden and the United Kingdom gave the same answers as those to questions 11 and/or 15. Belarus indicated an amendment to the Criminal Code was being drafted. Several respondents indicated that such a conduct was not a criminal offence but an administrative offence (Czech Republic) or 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. Sweden repeated that it had no obligatory marking system and the United Kingdom explained that action could be taken under the general criminal law.

45. Belgium, making a cross reference to its response to question 8, indicated that it could be indirectly punishable through the application of other provisions of the Criminal Code and that this criminalization requirement would be covered by a new law. New Zealand also explained that its amended legislation would contain this offence. Mexico, while indicating that there was no specific crime, explained that

the falsification of marking was contemplated in article 242 of the Federal Penal Code. Slovenia emphasized that non-implementation of this provision 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

46. Despite the fact that the obligation to criminalize the attempt to commit, and participation as an accomplice in, the Firearms Protocol offences is subject to the basic concepts of the legal system 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 also for those 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 Protocol offences (art. 5, para. 2 (b)) and a majority of the responding States reported that domestic legislation to that effect had already been put in place.

47. Many of those States which indicated otherwise clarified that not all Firearms Protocol offences were established domestically, 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).

48. Belgium, which provided a negative response to the criminalization of the offence of organizing and other conducts, explained that the organizing of the offences punishable by imprisonment of more than 3 years was a criminal offence under its legislation, while firearms-related crime was punishable by imprisonment for 4 months to 3 years.

49. Ecuador, referring to attempt, explained that the 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 those 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 article 147 of the Penal Code on promoting, directing and participating in guerrilla, combat and terrorists groups, as well as by article 371 of the same Code on taking part in a group by providing it arms and ammunition, as well as indirect support, to commit a crime.

C. Optional criminalization requirements

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

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

Table
Establishment of optional offences in responding States

<i>Type of offence</i>	<i>Establishment of the offence</i>		
	<i>Yes</i>	<i>No</i>	<i>No answer/others</i>
Failure to keep records of firearms and the falsification and destruction of such records	26	11	1
False information to influence the issuance of licence or authorization for either the manufacture or export, import or transit	28	9	1
Falsification or misuse of documents for the issuance of license or authorization for either the manufacture or export, import or transit	32	5	1
Possession or use of fraudulent licenses for manufacture or export, import or transit	32	5	1
Illicit reactivation of deactivated firearms	23	12	3
Illicit brokering and failure to provide required information about brokerage activities	27	9	2

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

51. Taking into account that States parties could adopt more strict or severe measures than those provided for in the Firearms Protocol, several States reported that their legislation established as criminal or administrative offences acts related to unauthorized possession of firearms, use of firearms in violation of law, inappropriate storage of firearms and sales of firearms to organized criminal groups.

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

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

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

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

55. Belarus indicated that visible marking was required. Mexico reported that the place of marking was decided by the Secretariat of National Defence. 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))

56. 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

acts referred to in questions 11, 15 and 17 were administrative offences. New Zealand indicated that it was not considered necessary. Spain also explained that the offence of tampering with markings was extended to the fundamental parts that must be marked by its regulation.

D. International cooperation requirements

57. With regard to the application of the relevant provisions of the Organized Crime Convention on extradition and mutual legal assistance in cases covered by the Firearms Protocol, reference should be also made to the analytical report on the implementation of the Organized Crime Convention, which has been updated to provide information based on additional responses received from States for the first reporting cycle (CTOC/COP/2005/2/Rev.1).

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

58. 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 to competent authorities such offence for domestic prosecution where extradition has been refused on the ground of nationality. A total of 27 responding States indicated that they were able to apply, mutatis mutandis, article 16 of the Convention to the offences established in accordance with the Firearms Protocol.

59. Croatia further explained that the Firearms Protocol offences were punishable and extraditable under its domestic legislation and the Government did not make extradition conditional on the existence of a treaty on extradition. The Czech Republic reported that the provisions of the Organized Crime Convention on extradition would be directly applicable in its jurisdiction and have precedence over its domestic legislation. Ecuador clarified that both treaties and its domestic legislation on extradition were a legal basis for granting extradition requests. 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 would enter into force shortly. 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)

60. 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 Firearms Protocol offences. A majority of responding States provided positive responses to this question.

61. Croatia additionally explained that mutual legal assistance might be afforded wherever consistent with the legal system and public order. The Czech Republic reported that the provisions of the Organized Crime Convention on mutual legal assistance would be directly applicable in its jurisdiction and have precedence over its domestic legislation. Germany indicated that national implementation was currently being prepared. Peru explained that the provisions of the convention on mutual legal assistance would be applicable to the criminal offences domestically established (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

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

63. 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 further indicated that the broader scope of cooperation was provided to other 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)

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

65. Finland further indicated that since some of the provisions of the Firearms Protocol fell in 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 Firearms Protocol. The United Kingdom further indicated that the amended European Council Directive 91/477/EEC could be incorporated into domestic legislation.

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

67. Croatia, Ecuador, Honduras, the former Yugoslav Republic of Macedonia and Zimbabwe explicitly indicated the need for technical assistance to overcome difficulties as follows:

<i>State</i>	<i>Description of areas where assistance is needed</i>
Croatia	Financial means for the overall implementation of the law in accordance with the requirements of the Firearms Protocol
Ecuador	Assistance in the development of relevant legal reform 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
The former Yugoslav Republic of Macedonia	Assistance in the establishment of a national weapons database
Zimbabwe	Assistance in marking, record-keeping, tracing, destruction of firearms, as well as public-awareness programmes

F. Technical assistance provided (questions 33-35)

68. No State reported that it had provided technical assistance specifically designed for the implementation of the Firearms Protocol. In more general terms, Portugal referred to study tours on the implementation of the Organized Crime Convention and its Protocols.

III. Concluding remarks

69. Attention should be paid to the significant gaps in the compliance with mandatory provisions 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 marking of firearms is 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 might hinder subsequent cooperation in accordance with the Organized Crime Convention and the Firearms Protocol.

70. At the same time, the Conference of the Parties should take into account the fact that many responding States also indicated that they were in the process of upgrading their legislation in order to implement the provisions of the Firearms Protocol. The Conference may wish to consider ways of assisting States in reviewing or further adjusting and streamlining their legal framework to that effect.

71. Moreover, several member States of the European Union pointed out that some of the provisions of the Firearms Protocol fell into the scope of the 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 was

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.

72. The effectiveness of the assistance that the Conference of the Parties can provide depends to a large extent on the availability, comprehensiveness and accuracy of appropriate information on the national programmes, plans and practices, as well as the domestic legislative and administrative measures to implement the Firearms 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 of the Parties. States parties to the Firearms Protocol, in particular, should recall their reporting obligations under the Convention itself (art. 32, para. 5). The efficiency of the reporting mechanism in support of the function of the Conference of the Parties 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.

Notes

- ¹ The words “mutatis mutandis” mean “with such modifications as circumstances require” or “with the necessary modifications”. Provisions of the Organized Crime Convention that are applied to the Firearms Protocol under its article 1, paragraph 2, would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention (see the interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the Organized Crime Convention and the Protocols thereto, note on art. 1, para. 2, of the Protocol (A/55/383/Add.3, para. 2)).
- ² It was the understanding of the Conference of the Parties that the questionnaire developed in accordance with guidance provided by it in decision 2/5 would not include questions on the implementation of articles 7, 8 and 10 of the Firearms Protocol.
- ³ Following the Declaration of Independence by the National Assembly of Montenegro on 3 June 2006, the President of the Republic of Serbia notified the Secretary-General that the membership of the state union Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system, was continued by the Republic of Serbia, which remained responsible in full for all the rights and obligations of the state union Serbia and Montenegro under the Charter of the United Nations. By its resolution 60/264 of 28 June 2006, the General Assembly admitted the Republic of Montenegro to membership in the United Nations. The response to the questionnaire on the implementation of the Firearms Protocol, dated 9 May 2006, was submitted to the Secretariat before those developments and reflected the national position of the former state union Serbia and Montenegro.

Annex

List of relevant legislation and website addresses received

The Secretariat has received the following information in response to its request for a copy of relevant legislation and/or website addresses for relevant online information.

A. Copy of legislation received

<i>State</i>	<i>Legislation</i>	<i>Length</i>	<i>Language</i>
Belarus	Criminal Code of the Republic of Belarus	2 pages	Russian
Ecuador	Law on Arms, Ammunition, Explosives and Accessories	13 pages	Spanish
	Regulation on the Law on Arms, Ammunition, Explosives and Accessories	34 pages	Spanish
Finland	Firearms Act	44 pages	English
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	111 pages	English
New Zealand	Arms Act of 1983, Arms Regulations of 1992 and Crimes Act of 1961	8 pages	English
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	8 pages	English
	Emergency Ordinance on the regime of exports and imports of strategic goods	10 pages	English
Slovenia	Weapons Act (with a list of prohibited weapons)	39 pages	English

B. Website addresses for online information

<i>State</i>	<i>Website address</i>
Belarus	www.ncpi.gov.by
Belgium	www.just.fgov.be
Estonia	www.legaltext.ee
Guatemala	www.congreso.gob.gt
Italy	www.normeinrete.it
South Africa	www.gov.za