



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: United Nations
Convention against Transnational Organized Crime**

Trends and patterns in the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto in relation to cluster I

Report of the Secretariat

I. Introduction

A. Background

1. At its ninth session, held in Vienna from 15 to 19 October 2018, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime adopted resolution 9/1. In that resolution, the Conference established the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto and adopted the procedures and rules for the functioning of the Mechanism.¹ In the same resolution, the Conference decided that the review process should be divided into four thematic clusters and conducted in accordance with the multi-year workplan contained in the appendix to the procedures and rules.

2. In its resolution 10/1, the Conference adopted the self-assessment questionnaires for the review of the implementation of the Convention and its Protocols and the blueprints for the lists of observations and their summaries. In the same resolution, the Conference decided to launch the first review phase of the review process, dedicated to the first thematic cluster, on criminalization and jurisdiction.

3. In accordance with paragraph 19 of the procedures and rules for the functioning of the Mechanism, the responses to the questionnaires and the lists of observations, when available, are to be the basis for a general report on trends, patterns and best practices to be prepared – or updated as appropriate – by the secretariat for consideration by the Conference at its regular sessions. The present report not only serves as an outcome document of the review process, but also provides the Conference with necessary information about the measures taken by States parties in

* [CTOC/COP/2024/1](#).

¹ See CTOC/COP/2018/13, sect. I.A., resolution 9/1, annex.



implementing the Convention and its Protocols and the difficulties encountered in doing so, in accordance with article 32, paragraph 4, of the Convention.

B. Scope of the present report

4. At the time of writing the present report, no country review had been completed. A detailed account of the status of the functioning of the Review Mechanism is contained in document CTOC/COP/2024/10. The present report is based on responses to the self-assessment questionnaires available to the secretariat as at 15 May 2024, which comprised the responses provided in 43 completed self-assessment questionnaires on the Convention; 43 on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; 36 on the Protocol against the Smuggling of Migrants by Land, Sea and Air; and 27 on the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.²

5. Since this report is based on self-assessments rather than completed reviews, it only contains a preliminary analysis of trends and patterns in the implementation of the Convention and its Protocols and does not include references to any specific good practices, and only includes references to challenges specifically identified by the reporting States parties. In reviewing those responses, the secretariat noted that some questions had been left unanswered, which further limited its ability to provide a thorough analysis. For that reason, and given that no lists of observations were considered in the preparation of this report, the analysis should not be considered as representing the full process of country reviews.

II. Preliminary analysis of the implementation of the provisions on criminalization and jurisdiction of the United Nations Convention against Transnational Organized Crime

6. The present section contains a summary and a preliminary analysis of the information provided by States parties in the 43 completed self-assessment questionnaires on the implementation of the Organized Crime Convention.

7. The thematic cluster on criminalization and jurisdiction includes the following articles of the Convention: article 2 (Use of terms); article 5 (Criminalization of participation in an organized criminal group); article 6 (Criminalization of the laundering of proceeds of crime); article 8 (Criminalization of corruption); article 9 (Measures against corruption); article 10 (Liability of legal persons); article 15 (Jurisdiction); and article 23 (Criminalization of obstruction of justice). The analysis contained in this report is limited to selected articles, owing to specific considerations. Article 2 of the Convention, on the use of terms, has been excluded from the analysis owing to its definitional nature, except for subparagraph (b), which contains the definition of “serious crime”. Articles 8 and 9, which address criminalization of and measures against corruption, have been excluded because the implementation of their content is thoroughly reviewed under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. Article 15, on jurisdiction, has been excluded because the implementation of its paragraphs 3, 4, and 5 is covered under the thematic cluster on international cooperation, mutual legal assistance and confiscation.

² The States parties that provided responses to the self-assessment questionnaires on which this report is based represent 23 per cent (43 out of 189) of the States parties to the Convention, 24 per cent (43 out of 178) of the States parties to the Trafficking in Persons Protocol, 24 per cent (36 out of 148) of the States parties to the Smuggling of Migrants Protocol and 23 per cent (27 out of 120) of the States parties to the Firearms Protocol.

A. Criminalization of participation in an organized criminal group (article 5)

8. Almost all reporting States parties confirmed that participation in an organized criminal group was criminalized in their domestic legislation. Diverse national approaches were reported regarding the implementation of article 5. These were the establishment of a conspiracy-type offence in accordance with paragraph 1 (a) (i) of article 5 or the establishment of a criminal association offence in accordance with paragraph 1 (a) (ii), or a combination of both approaches.

9. Ten States parties, while reporting partial implementation of article 5, paragraph 1 (a) (i), indicated that they had taken measures towards the full implementation of that provision. Specifically, the legislation of one State party did not include the element of financial or other material benefit. Another State party included the use of corruption as one of the main requirements for establishing the conduct set forth in article 5, paragraph 1 (a) (i), as a criminal offence. In addition, one State party reported that, in its domestic legislation, the commission of a serious crime was not a requirement for establishing participation in an organized criminal group as a criminal offence; thus it had adopted stricter or more severe measures than those provided for in the Convention, in accordance with its article 34, paragraph 3.

10. Half of the States parties that had criminalized the agreement to commit a serious crime reported that the offence also included the two optional requirements set forth in article 5, paragraph (a) (i), namely, the involvement of an act committed by one of the participants in furtherance of the agreement (or an “overt act”) and the involvement of an organized criminal group.

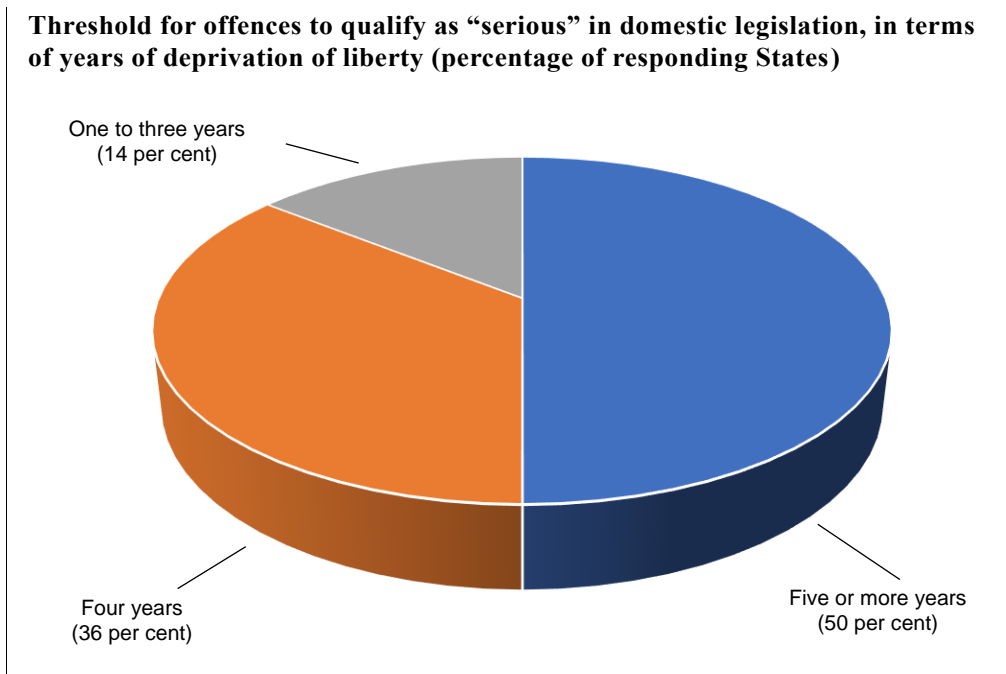
Serious crime

Article 2 of the Organized Crime Convention defines several key terms used in the Convention and Protocols thereto. Although, under article 2 of the Convention, States parties are not required to introduce those definitions into their domestic legal frameworks, in the self-assessment questionnaire, States parties under review are asked whether they have in fact included such definitions in their legal frameworks. The responses to the questions regarding article 2 in the self-assessment questionnaire varied among the responding States parties.

Serious crime is defined in article 2, subparagraph (b), of the Convention as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”. More than half of the responding States parties had defined the term “serious crime” in their legislation. The majority of those States parties had defined serious crime with reference to a penalty threshold prescribed in their domestic laws.

The self-assessment questionnaire does not require States parties under review to outline the purpose for which they have used terms defined in article 2 of the Convention in their domestic legal frameworks. Accordingly, the present report does not include consideration of how States parties have made use of definitions such as “serious crime”, which may vary from one State to another.

The figure below provides an overview of the thresholds used by States parties to determine when a domestic offence is considered serious.



Secondary liability (article 5, paragraph 1 (b))

11. Almost all responding States parties had also taken measures, in accordance with article 5, paragraph 1 (b), of the Convention, to establish as a criminal offence organizing, directing, aiding, abetting, facilitating or counselling the commission of a serious crime involving an organized criminal group. One State party reported partial implementation of that provision.

B. Criminalization of the laundering of proceeds of crime (article 6)

12. Under article 6 of the Convention, States parties are required to establish four offences relating to money-laundering, in accordance with fundamental principles of their domestic law and basic concepts of their legal systems, when they are committed intentionally.

13. Almost all responding States reported having measures in place to criminalize the conversion or transfer of proceeds of crime (in accordance with article 6, paragraph 1 (a) (i)) and the concealment or disguise of proceeds of crime (in accordance with article 6, paragraph 1 (a) (ii)), albeit with some variations with regard to the scope of the offences. In that connection, one State party reported that it was partially compliant with the requirements of the Convention, while another State party did not provide a response.

1. Acquisition, possession or use of proceeds of crime (article 6, paragraph 1 (b) (i))

14. Under article 6, paragraph 1 (b) (i), of the Convention, States parties are required to criminalize the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime. This provision targets not only the direct perpetrators of criminal activities but also those who benefit from or facilitate such activities. In response to that requirement, most of the responding States had taken measures to criminalize such conduct, while three States parties reported having partially implemented the provision in their domestic legal systems. In one case, the legislation establishing such conduct as a criminal offence did not establish direct liability for the acquisition of property obtained in an illicit manner, but only for the possession and use of it. Another State party reported having adopted measures to criminalize the acquisition and use of property derived from a criminal

offence. However, since the measures only related to transactions or transfers, they did not cover the mere possession of such property.

2. Ancillary offences (article 6, paragraph 1 (b) (ii))

15. With regard to the ancillary offences of participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of a money-laundering offence, all responding States reported having measures in place to criminalize such conduct, in accordance with article 6, paragraph 1 (b) (ii), of the Convention, except for two States that reported partial implementation of that provision. In one case, the participation of two or more persons in acts of money-laundering constituted an aggravating circumstance.

3. Predicate offences (article 6, paragraph 2 (a)–(c))

16. Under article 6, paragraph 2, of the Convention, money-laundering offences are to be applied to the widest range of predicate offences, including all serious crimes as defined in article 2 of the Convention and the offences established in accordance with articles 5, 8 and 23 of the Convention. Although most States parties included as predicate offences all the serious crimes and the offences mentioned above, in two cases, obstruction of justice (that is, the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence) was not considered to be a predicate offence. In addition, several States parties reported having adopted an “all crimes” approach to the criminalization of money-laundering, meaning that all proceeds-generating offences under their domestic legal frameworks were considered predicate offences.

17. While the legal framework of each responding State party included predicate offences committed outside the State party’s jurisdiction, in accordance with article 6, paragraph 2 (c), there were variations with regard to the circumstances under which an offence committed in a foreign jurisdiction constituted a predicate offence under domestic law. For example, the legislation of some States parties established as a criminal offence the laundering of proceeds of crime resulting from any of the offences covered by the Convention when committed outside their territory, as long as the underlying criminal activity (the predicate offence) was committed within their territory (the territoriality principle). In other cases, offences committed outside the jurisdiction of a State party constituted predicate offences only when the relevant conduct was also a criminal offence under the domestic law of the State in which it had been committed (dual criminality).

C. Obstruction of justice (article 23)

18. In accordance with article 23 of the Convention, States parties are to criminalize in their domestic law the obstruction of justice in relation to the commission of offences covered by the Convention, in particular in relation to interfering in the giving of testimony or the production of evidence (subparagraph (a)) and interfering with the exercise of official duties by a justice or law enforcement official (subparagraph (b)). All except one of the 43 responding States parties reported having adopted measures to criminalize obstruction of justice in relation to the offences covered by the Convention, in line with article 23.

19. Most States parties had enacted comprehensive legislation to address various forms of obstruction of justice, including the use of force, threats or intimidation to interfere with witnesses, judicial officers or law enforcement officials.

20. In one State party, although the offence of obstruction of justice had been established in the domestic legal framework, the element of “promising, offering or giving of an undue advantage” was limited to acts committed by an organized criminal group and to material benefits derived from such acts, excluding other potential forms of undue advantage.

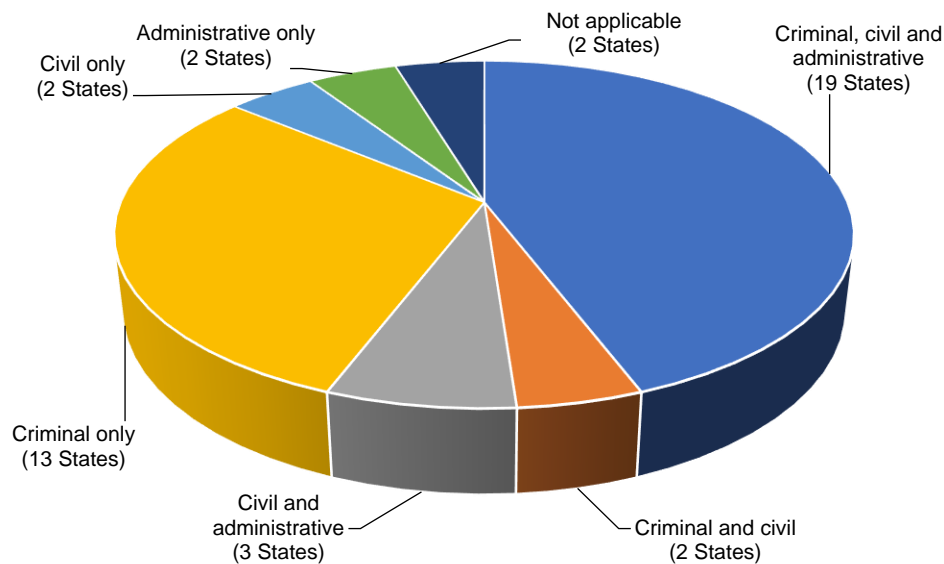
D. Liability of legal persons (article 10)

21. All except one responding State had adopted measures to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for offences covered by the Convention and the Protocols to which they were party, although there was considerable variation in the types and scope of such liability.

22. Almost half of the responding States had established all three types of liability of legal persons (criminal, civil and administrative), while in the others the types of liability established for participation in those crimes and offences varied. Figure I provides an overview of the types, including combined types, of liability of legal persons established by responding States.

Figure I

Types, including combined types, of liability of legal persons established in domestic legal frameworks (number of responding States for each type or combination)



E. General observations on difficulties and challenges encountered and technical assistance needs identified

1. Difficulties and challenges encountered

23. Almost one third of the responding States reported having encountered difficulties or challenges in implementing the Convention. Limited cooperation with other States, the need for further implementing legislation and limited resources for the implementation of existing legislation were among the main difficulties and challenges reported.

24. Table 1 provides a comprehensive overview of the main difficulties and challenges reported by States.

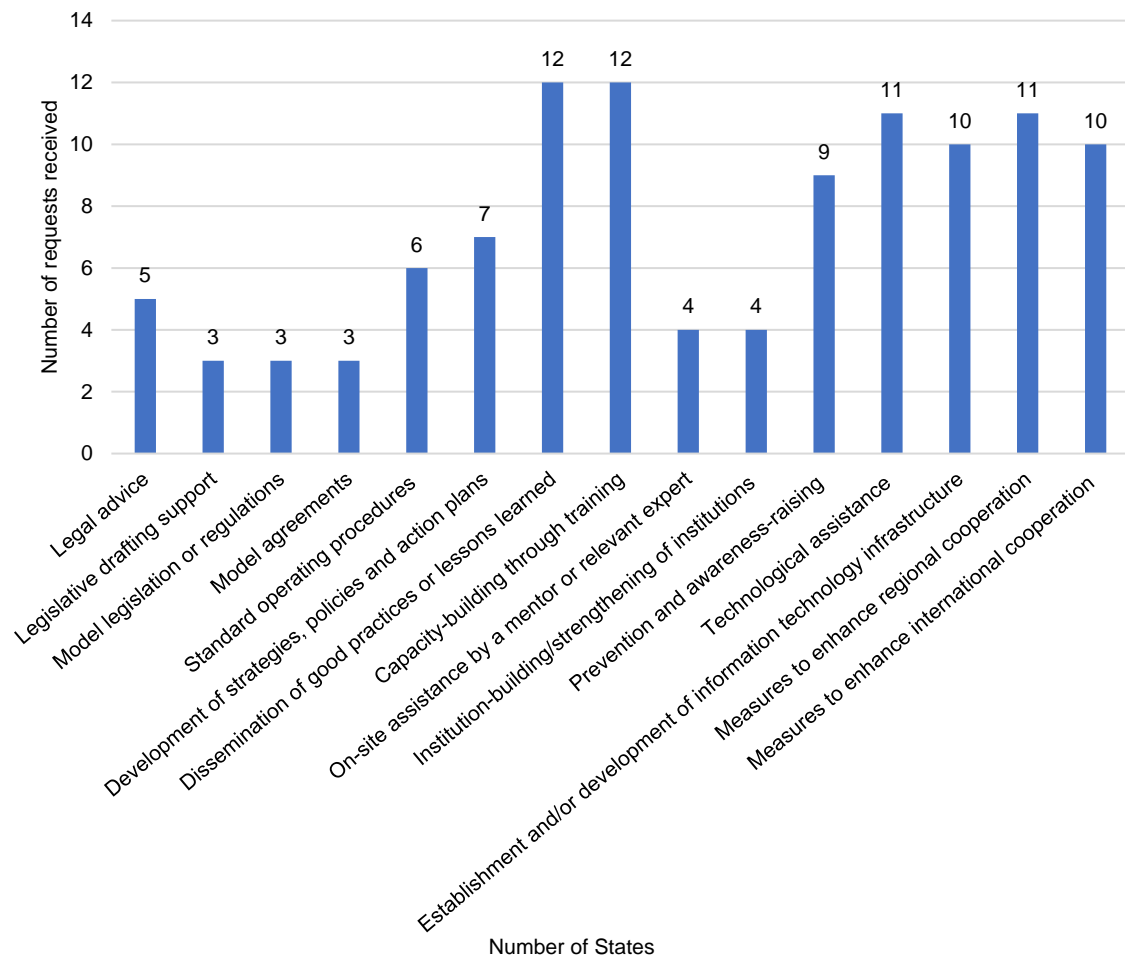
Table 1
Difficulties and challenges encountered in the implementation of the Convention

<i>Number of States reporting difficulties and challenges</i>	<i>Difficulties and challenges reported</i>
8	Limited cooperation with other States
7	Need for further implementing legislation (e.g. laws, regulations or decrees)
7	Limited resources for the implementation of existing legislation
6	Insufficient dissemination of existing legislation
6	Problems with the formulation of legislation
5	Limited inter-agency coordination
5	Competing priorities for national authorities
5	Lack of awareness of existing legislation
4	Specificities of the legal system
2	Reluctance of practitioners to use existing legislation

2. Technical assistance needs identified

25. One third of the responding States reported having needs for technical assistance in promoting greater implementation of the Convention. The dissemination of good practices or lessons learned and capacity-building through training, as well as technological assistance and measures to enhance regional and international cooperation, were the areas in which technical assistance was most frequently requested. Figure II provides an overview of the main technical assistance needs relating to the implementation of the Convention as identified by States in their responses to the self-assessment questionnaire.

Figure II
Needs for technical assistance in the implementation of the Organized Crime Convention



III. Preliminary analysis of the implementation of the provisions on criminalization and jurisdiction of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

26. The present section contains a summary and a preliminary analysis of the information provided by States parties in the 43 completed self-assessment questionnaires on the implementation of the Trafficking in Persons Protocol.

A. Use of Terms (article 3)

27. Under article 5, paragraph 1, of the Trafficking in Persons Protocol, States parties are required to establish as criminal offences the conduct set forth in article 3

of the Protocol.³ All responding States indicated that trafficking in persons was criminalized in their domestic legal frameworks. Moreover, almost all States stated that that offence had been established in accordance with the definition contained in article 3, paragraph (a), of the Protocol. The other States noted the absence in their domestic law of means as a constituent element and of provisions relating to certain criminal acts.

1. Constituent elements of trafficking in persons (article 3, paragraph (a))

28. All but two responding States⁴ confirmed that, in their domestic law, the act of trafficking in persons included, as a minimum, all the acts referred to in article 3 (a) of the Trafficking in Persons Protocol. Notably, one State reported that it did not detail the different acts in its national legislation but referred to a broader term (“transaction”). Some States also indicated that they used additional terms and acts to define trafficking acts, such as sale, purchase, providing, obtaining, enticing, advertising, patronizing, concealing a person, and exercising control, direction or influence over the movement of a person.

29. Most of the responding States reported that the specific means referred to in article 3 (a) of the Protocol were included in their domestic legal frameworks. A considerable number of those States further noted, however, that those means were not constituent elements of trafficking in persons in their domestic law but rather aggravating circumstances.

30. In their responses, States also elaborated on the exploitative purposes of the trafficking offence included in their domestic legislation. The exploitation of prostitution or other forms of sexual exploitation and servitude were criminalized by all responding States, and most States also criminalized forced labour or services,⁵ slavery or practices similar to slavery and the removal of organs. In addition to the exploitative purposes set forth in article 3 (a) of the Protocol, almost a third of the responding States indicated that they had criminalized trafficking for the purpose of forced marriage, and approximately a quarter of them had criminalized forced begging and forced criminality. Additional forms of criminal conduct reported were illegal adoption; surrogacy; removal of tissue cells, genetic material or bodily fluids (in addition to the removal of organs); forced recruitment for armed conflicts; and appropriation of social assistance, allowances or benefits. The domestic legislation of some States included a non-exhaustive list of purposes for exploitation. In that context, one State noted that that approach had been chosen in order to address forms of exploitation that might emerge in the future.

2. Consent of a victim (article 3, paragraph (b))

31. Pursuant to article 3 (b) of the Trafficking in Persons Protocol, the consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means set forth in article 3 (a) have been established. All responding States, except one, which did not reply to the relevant question, confirmed that their legislation was in line with the requirement regarding the irrelevance of consent, thus ensuring that, under national law, traffickers could not use consent as a defence against trafficking

³ As set forth in article 3 of the Trafficking in Persons Protocol, the offence of trafficking in persons consists of three elements: criminal acts (the recruitment, transportation, transfer, harbouring or receipt of persons), the means used to commit those acts (the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) and the purpose of exploitation (at a minimum, exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs).

⁴ One State reported that it had not criminalized recruitment as an act of trafficking in persons but had criminalized all the other acts referred to in article 3 (a) of the Protocol.

⁵ All States replying to the relevant question identified forced labour or services as forms of exploitation under their domestic law, while one State left the question unanswered.

charges. In addition, some States indicated that the consent of children had no effect, irrespective of any means used against them. Moreover, two States expressly mentioned that the consent of parents or guardians was irrelevant in cases of child trafficking.

3. Child trafficking (article 3, paragraph (c))

32. Under article 3 (c) of the Trafficking in Persons Protocol, States parties are not required to establish any of the means set forth in article 3 (a) as an element of the offence of trafficking in persons when the victim is a child as defined in article 3 (d). While most responding States reported that they did not require the means element to establish a child trafficking case, a few responding States criminalized trafficking in children in the same manner as trafficking in adults, requiring in both cases means as a constituent element. In one State, means as a constituent element were not needed for persons under 21 years of age. In responding States that had not established a distinct offence of trafficking in children, domestic laws provided for aggravating circumstances when the crime of trafficking in persons was committed against a child.

33. In relation to children, as defined in the Trafficking in Persons Protocol (persons under 18 years of age), most responding States confirmed that their national legislation provided for the same age limit as that provided for in the Protocol. Several States reported deviations from that practice, defining “child” using a different age threshold (under 12, 13, 14 or 19 years of age). Some of those States used the terms “minors” and “adolescents” to define additional age groups, which also fell under the offence of trafficking in children.

B. Criminalization (article 5)

34. Under article 5, paragraph 1, of the Trafficking in Persons Protocol, States parties are required to establish as a criminal offence the intentional conduct of trafficking in persons as defined in article 3 of the Protocol. All responding States indicated that such conduct was criminalized in their domestic legal frameworks. How that provision had been transposed into national law varied and included, in most cases, the inclusion of a separate trafficking in persons offence in the national criminal code. However, some States had opted for a distinct act regulating all aspects of trafficking in persons. Existing criminal offences also covered different elements of trafficking in persons, such as in relation to the means element (e.g. abduction, threats and fraud) and the purpose of the trafficking (e.g. illicit work).

35. Most of the States had established in their national laws penalties for aggravated trafficking in persons of between 8 and 20 years of imprisonment; however, the respective penalties among all the reporting States varied considerably and ranged from eight years to life imprisonment and also included corporal punishment.⁶ The aggravating circumstances could derive from the characteristics of the offenders (e.g. if they were public officials or family members of the victim) or the victims (e.g. if they were children, pregnant women, persons with disabilities or older adults), the means used (e.g. extreme cruelty), specific aspects of the crime (e.g. if it was national or international in nature or committed by an organized criminal group) and the consequences of the offence for the victim (e.g. severe injury or death). In many States, in addition to imprisonment, fines and exclusion from holding certain positions or carrying out specific activities were additional penalties.

36. Further trends can be tentatively identified on the basis of analysis of the legislative texts provided by States parties. For example, the domestic legislation of some responding States regulated the criminal liability of legal persons and corresponding penalties, including fines and, in certain States, the dissolution or

⁶ One State reported that, in its national law, the death penalty had been established as a penalty. However, since that State had a moratorium on the death penalty, no reference has been made to that form of punishment in paragraph 35 of the present report.

liquidation of the legal entity. Further, a few States parties also regulated the application of the non-punishment principle in their domestic legislation. In one case submitted by a reporting State party, several persons had been arrested for violating that State party's national narcotic drug law and were later identified as victims of trafficking in persons on the basis of reports requested by the defence counsel and the court from a victim assistance entity. Those persons were consequently exempted from punishment for the criminal offences that they had committed as direct result of being trafficked.

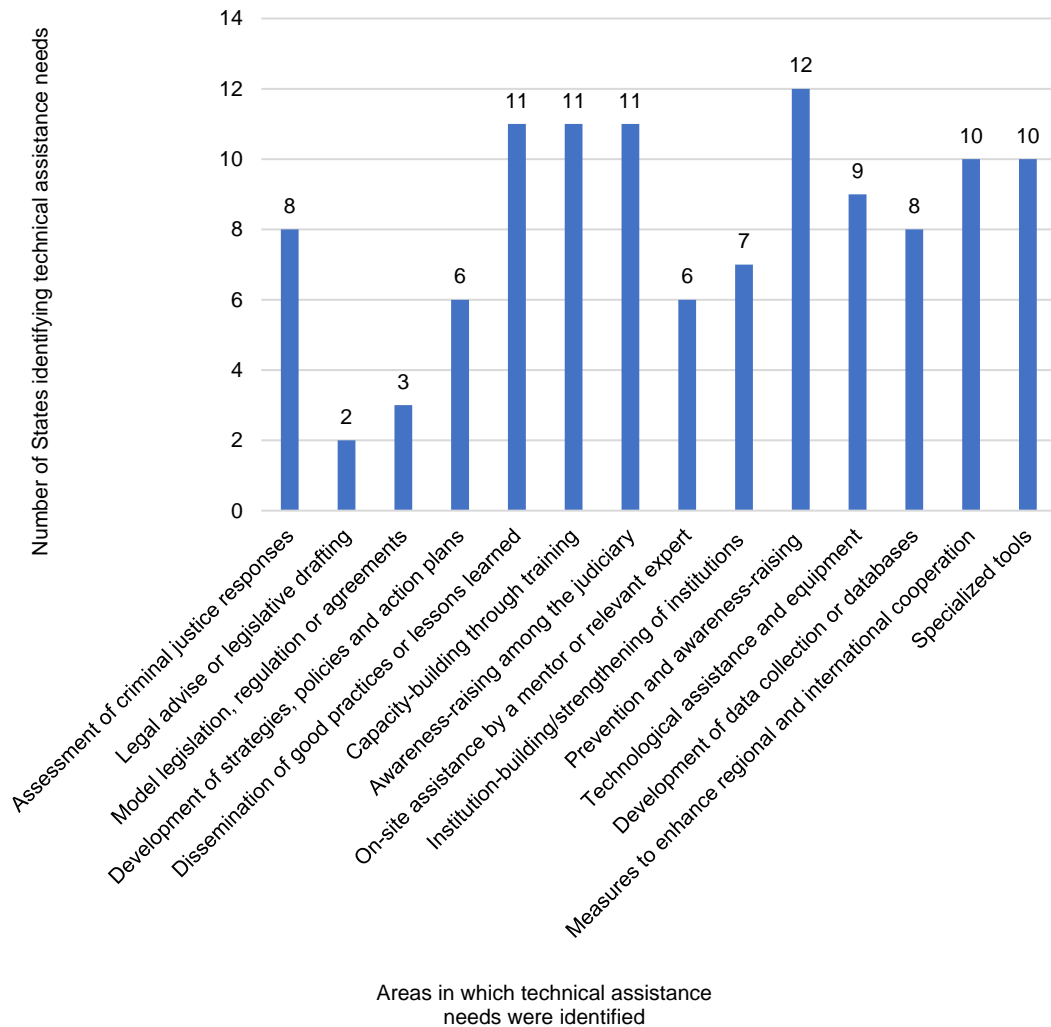
C. General observations on difficulties and challenges encountered and technical assistance needs identified

37. Several States referred to specific difficulties and challenges that had limited the adequate implementation of the Trafficking in Persons Protocol. Many of the difficulties and challenges reported were practical in nature, and some related to other thematic clusters of the Review Mechanism. Few States parties reported on concrete legal challenges that might require amendments to legal norms. However, several responding States, specifically those that were members of the European Union, noted that they might need to introduce legal amendments in the coming years, as Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims needed to be transposed into their national law.

38. Practical challenges encountered included the following: high rates of attrition of cases as they progressed through the criminal justice system; the limited number of formal proceedings on trafficking in persons due to the complexity of the provisions and a tendency to prosecute related conduct under other criminal offences (e.g. illicit work or the withholding of wages and salaries rather than labour trafficking); the lack of specialized prosecutors and judges; limited cooperation of victims with law enforcement authorities and overreliance on the testimony of victims to initiate and prove cases of trafficking in persons; the misconception of vulnerabilities and consent as they relate to financial vulnerability; and overrepresentation of certain groups, for example, Indigenous groups, in trafficking in persons cases. Other difficulties and challenges encountered were in relation to the need for additional data and research; cooperation with other actors; coordination, especially when responsibilities were shared between federal Governments and lower jurisdictions; and challenges in assisting and supporting victims of trafficking in persons, including in relation to their access to justice. In addition, it was noted that technology-facilitated trafficking dynamics were a matter of concern.

39. Figure III provides a comprehensive overview of the main areas in which technical assistance needs were identified by 12 States in their responses to the self-assessment questionnaire.

Figure III
Technical assistance needs identified



40. The responses provided by States parties with regard to the implementation of the Trafficking in Persons Protocol demonstrated that all responding States parties had taken legislative action to counter trafficking in persons. However, further efforts are required to promote the consistency of national legislative responses with the key concepts and requirements of the Protocol, and to facilitate international cooperation.

41. Clear definitions and explicit requirements and their application in national law are also crucial to ensuring that victims of trafficking are recognized as such, because such recognition has far-reaching consequences for the enjoyment of their rights to assistance and compensation under the Trafficking in Persons Protocol. Often, being recognized as a victim of trafficking in persons is central to the victim's eligibility to legally reside or remain in a country. Thus, not convicting traffickers for the offence of trafficking in persons but rather for other offences hampers the implementation of the Protocol.

IV. Preliminary analysis of the implementation of the provisions on criminalization and jurisdiction of the Protocol against the Smuggling of Migrants by Land, Sea and Air

42. The present section contains a summary and a preliminary analysis of the information provided by States parties in the 36 completed self-assessment questionnaires on the implementation of the Smuggling of Migrants Protocol.

43. The smuggling of migrants and trafficking in persons are distinct offences that are regulated by two different Protocols to the Organized Crime Convention. Accordingly, all but one of the responding States parties reported making a distinction between the smuggling of migrants and trafficking in persons in their legal frameworks.

A. Use of Terms (article 3)

44. Under article 6, paragraph 1 (a), of the Smuggling of Migrants Protocol, States parties are required to establish as a criminal offence the smuggling of migrants, which is defined in article 3, paragraph (a), of the Protocol as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.⁷

45. A total of 21 out of the 36 responding States reported having included the obtaining of a financial or other material benefit as a constituent element of the offence, in accordance with article 6, paragraph 1, of the Protocol, in their national legal frameworks. Some States did not require such a benefit as a constituent element but rather as an aggravating circumstance. The presence of a financial or other material benefit constituted an aggravating circumstance in the legislation of 24 responding States. In contrast, the laws of other States allowed for conviction for a domestic smuggling offence without the element of financial or material benefit and did not consider such a benefit to constitute an aggravating circumstance.

B. Criminalization (article 6)

46. Under article 6, paragraph 1, of the Smuggling of Migrants Protocol, States parties are to criminalize the following acts when committed in order to obtain a financial or other material benefit: (a) the smuggling of migrants; (b) producing, procuring, providing or possessing fraudulent travel or identity documents to enable the smuggling of migrants; (c) enabling a person who does not meet the necessary legal requirements to remain in a State. Furthermore, under article 6, paragraph 2, of the Protocol, States parties are required to establish as criminal offences attempting to commit, participating as an accomplice in, and organizing and directing others to commit, an offence established in accordance with article 6, paragraph 1.

1. Smuggling of migrants (article 6, paragraph 1 (a))

47. All but one of the reporting States parties indicated that the smuggling of migrants was criminalized in their domestic legal frameworks. While some had adopted a legislative approach almost identical to that provided in the Smuggling of Migrants Protocol, others had adopted an approach that was only partially in line with the Protocol and had not included a financial or other material benefit as an element of the criminal offence. The modality used to transpose the provisions of article 6, paragraph 1 (a), into national law varied among States parties and included, in several cases, the inclusion of a separate offence in the national criminal code; in some

⁷ The Smuggling of Migrants Protocol does not contain definitions of the terms “procurement” and “financial or other material benefit”.

instances, offences already established in legislation regulating immigration covered some elements of the offence of smuggling of migrants.

48. Further trends can be tentatively identified on the basis of analysis of the legislative texts and court cases provided by States parties. For example, States have prosecuted a broad spectrum of actors for smuggling of migrants offences, including coordinators, transporters, drivers, skippers and persons facilitating the smuggling process by escorting or providing accommodation for those being smuggled. However, in the context of a large-scale investigation, one State noted difficulties encountered in prosecuting higher-level organized criminal actors. In contrast, a few responding States parties reported that their national laws explicitly provided exemption from criminal liability for acts committed for acceptable reasons, such as those relating to the perpetrator's humanitarian motives or motives related to close family members. Similarly, in one State party, the Supreme Court held that the purpose of the national provision on the smuggling of migrants was to prosecute such smuggling in the context of organized crime and that any punitive goal of prosecuting people with no connection to organized crime was inconsistent with national and international obligations.

2. Producing, procuring, providing or possessing fraudulent travel or identity documents (article 6, paragraph 1 (b))

49. As reported in the completed questionnaires, the offences of producing, procuring, providing or possessing a fraudulent travel or identity document for the purpose of enabling the smuggling of migrants were criminalized in 33 out of 36 responding States. In one State, although there were no specific provisions criminalizing the production, procurement, provision or possession of documents for the purpose of enabling the smuggling of migrants, a general provision on the forgery of documents and the use of such forged documents, which were criminalized, could also be applied to smuggling of migrants offences involving the falsification of documents. Examples of fraudulent documents noted by the responding States included counterfeit university enrolment certificates for irregular entry, forged identification cards for irregular stay and genuine documents of the biological children of the alleged perpetrator used to deceive border control authorities by concealing the actual identity of the smuggled children.

3. Enabling the stay (article 6, paragraph 1 (c))

50. Pursuant to article 6, paragraph 1 (c), of the Smuggling of Migrants Protocol, States parties are to criminalize the enabling of a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in article 6, paragraph 1 (b), or any other illegal means, in order to obtain a financial or other material benefit. Most of the responding States reported that they had criminalized such conduct.

4. Aggravating circumstances (article 6, paragraph 3)

51. In article 6, paragraph 3, of the Smuggling of Migrants Protocol, endangering the lives or safety of migrants and subjecting them to inhuman and degrading treatment are included as aggravating circumstances to those offences. Most of the responding States parties reported that their domestic laws included aggravating circumstances to any of the offences under article 6, paragraph 1. In one State party, those aggravating circumstances were recognized only when they related to irregular entry. Some States parties also reported additional aggravating circumstances, as detailed in table 2.

Table 2
Aggravating circumstances (indicated at least by three responding States)

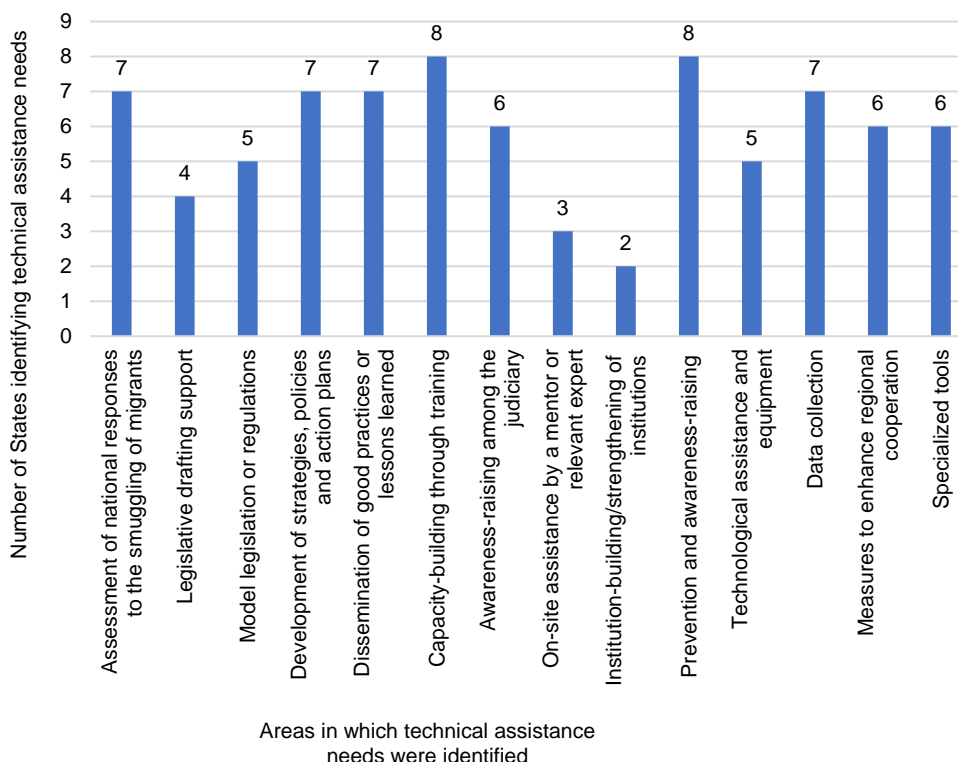
<i>Number of States including aggravating circumstances in their legislation</i>	<i>Aggravating circumstances</i>
5	Activity by an organized criminal group
4	Causing severe consequences for the victim, for example, bodily harm with lasting effects
3	Abuse of an official position
3	Use of arms
3	The offence is conducted with extreme cruelty or in substantial violation of the human dignity of the victim
3	The offence is committed against a child, a pregnant woman, a person with a disability or an older adult
3	Other serious crimes are also committed, for example, trafficking offences

C. General observations on difficulties and challenges encountered and technical assistance needs identified

52. A total of 9 out of the 36 responding States reported having encountered difficulties or challenges in implementing the provisions of the Smuggling of Migrants Protocol or related national legislation. The practical challenges encountered included lack of familiarity with the subject matter among prosecutors and judges, limited cooperation of migrants with law enforcement authorities and lack of implementation of the principle of non-criminalization. Other repeatedly reported areas of difficulty were the need for cooperation with other actors; coordination, especially when responsibilities were shared between federal Governments and lower jurisdictions; and challenges in investigating cases of smuggling of migrants, such as limited possibilities to use certain investigative techniques and to prove that the activities in question had generated profits. Two States reported using legislative reviews to align their domestic legislation with the Smuggling of Migrants Protocol, and one State reported that it was about to finalize the legislative process in that regard.

53. Figure IV provides a comprehensive overview of the main areas in which technical assistance needs were identified by 11 reporting States.

Figure IV
Technical assistance needs in the implementation of the Smuggling of Migrants Protocol



54. Greater assistance for and protection of migrants and better detection of technology-facilitated smuggling of migrants were reported as critical areas of technical assistance needs within the criminal justice systems of responding States. A total of 15 out of the 36 responding States also identified the need for more capacity-building among border, immigration and law enforcement officials in the areas listed in table 3. In addition, one State reported on the growing challenges it was facing related to climate change, which was facilitating the creation of new smuggling routes as smugglers exploited previously inaccessible areas.

Table 3
Areas of need for capacity-building among border, immigration and law enforcement officials

<i>Number of States reporting needs</i>	<i>Areas of need for further capacity-building and exchange of best practices and lessons learned</i>
5	General training on relevant legislation and conduct
5	Inspection and detection of forged documents
5	Evidence-gathering, including interviewing techniques
4	Knowledge and data on emerging trends and routes
4	National, regional and international cooperation instruments
3	Human rights and gender considerations related to the smuggling of migrants
2	Response to technological advancements
2	Raising awareness among border control, immigration and law enforcement officials of the smuggling of migrants

<i>Number of States reporting needs</i>	<i>Areas of need for further capacity-building and exchange of best practices and lessons learned</i>
1	Detection and identification of cases
1	Formal and informal mechanisms for information-sharing
1	Financial investigations

55. The information provided by States in response to the questionnaire on the implementation of the Smuggling of Migrants Protocol demonstrated that all responding States had taken legislative action to counter the smuggling of migrants. However, further efforts are required to promote the consistency of national legislative responses with the key concepts and requirements of the Protocol and to facilitate international cooperation, the sharing of information and intelligence, and joint investigations among countries.

56. A wide variety of approaches regarding whom to charge with the crime of smuggling of migrants were reported by States in their responses. If obtaining a financial or other material benefit is not a constituent element of the offence of smuggling of migrants in national law, the breadth of the definition of the crime can result in the criminalization of groups in vulnerable situations that are protected from prosecution under other international legal instruments and in the criminalization of acts committed with a humanitarian motive.

V. Preliminary analysis of the implementation of the provisions on criminalization and jurisdiction of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition

57. The present section contains a summary and a preliminary analysis of the information provided by States parties in the 27 completed self-assessment questionnaires on the implementation of the Firearms Protocol.

A. Use of terms (article 3)

58. Article 3 of the Firearms Protocol contains definitions of key terms used throughout the Protocol, in particular the terms that fall within its specific scope of application, namely, “firearm”, “parts and components” and “ammunition”. Furthermore, it contains definitions of the criminal offences of illicit manufacturing and illicit trafficking (addressed below in section B, on criminalization) and of the term “tracing”.

1. Firearm

59. In article 3 (a) of the Firearms Protocol, a firearm is defined as “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”. All 27 responding States reported that their national legal frameworks included a definition of the term “firearm”, which also extended to convertible weapons, that was in line with the definition contained in the Firearms Protocol. However, an in-depth analysis of the responses shows that the national definitions varied significantly. In some jurisdictions, the definition of a firearm was quite broad and did not contain all elements of the definition set forth in the Firearms Protocol, while other jurisdictions had gone beyond the requirements of the Protocol and had, for example, also established standards that defined when a gas or alarm pistol is considered to be readily convertible or had classified different types of firearms under different categories.

60. Furthermore, although more than half of the responding States indicated that they had not excluded antique firearms from the definition of firearms in their legal frameworks, an in-depth analysis of the responses shows that most of those States had in fact established a definition of antique firearms, often classifying them as “collector firearms”. In defining antique firearms, most responding States had established cut-off dates close to the date set forth in the Firearms Protocol (the year 1899), typically before the years 1870, 1890 or 1900. Other States had based the definition on less specific terms, for instance, “historic value”, “age”, “design”, “model” or “other characteristics”.

2. Firearm parts and components and ammunition

61. With regard to the definitions of firearm parts and components and ammunition contained in the Firearms Protocol, all but one of the responding States parties had included corresponding definitions in their national legal frameworks. However, some States parties had not explicitly defined ammunition components as provided for in the definition of ammunition in the Protocol.

62. With regard to the definition of parts and components, some States had simply included firearm parts and components in the definition of a firearm. Other States had explicitly defined “essential components” but had extended that definition to different items, thereby creating potential loopholes because of the discrepancies between jurisdictions that could be exploited by criminals.

3. Tracing

63. A total of 8 out of the 27 responding States had not established a definition of tracing. However, according to the responses to the self-assessment questionnaire, law enforcement authorities of those States typically had the investigative authority to conduct tracing operations, despite the lack of a specific definition of tracing.

B. Criminalization (article 5)

64. Article 5 of the Firearms Protocol establishes three groups of offences: those relating to illicit manufacturing, those relating to illicit trafficking and those relating to tampering with firearm markings.

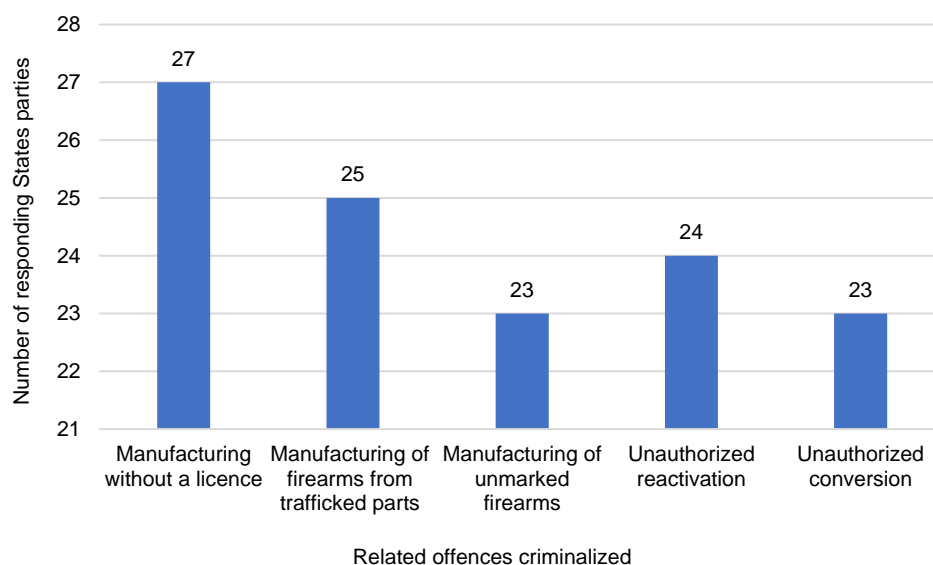
1. Offence of illicit manufacturing

65. The offence of illicit manufacturing of firearms, their parts and components and ammunition, as set out in article 5, paragraph 1 (a), in conjunction with article 3 (d), of the Firearms Protocol, refers to a group of three individual but related offences: the manufacture or assembly (a) from trafficked parts and components; (b) without licence or authorization; and (c) without marking the firearms in accordance with article 8 of the Protocol. While all responding States had criminalized the manufacture without a licence or authorization, two States either had not criminalized or had not fully criminalized the manufacture or assembly of firearms, their parts and components or ammunition from trafficked parts and components; and four States had not established the offence of manufacturing of firearms without the required markings.

66. The production process can entail different modalities, including reactivation of deactivated firearms and conversion of gas and alarm weapons. Regardless of the production modality, where a licence for firearms manufacturing is required, the manufacture of a firearm without a licence typically constitutes the offence of illicit manufacturing. However, three States parties under review reported that the unauthorized reactivation of deactivated firearms either did not constitute or only partially constituted a criminal offence in their jurisdiction, and four States parties reported that the unauthorized conversion of weapons into a firearm also either did not constitute or only partially constituted a criminal offence in their jurisdiction. Figure V provides an overview of the offences related to the illicit manufacturing of

firearms, their parts and components and ammunition that States had criminalized, as reported in their responses to the self-assessment questionnaire.

Figure V
Criminalization of illicit manufacturing



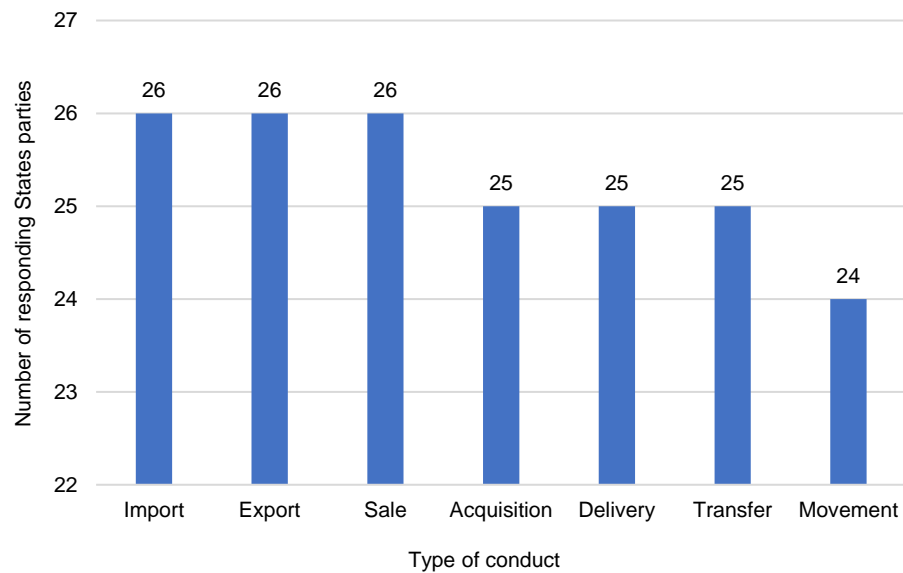
2. Offence of trafficking

67. As defined in article 3 (e) of the Firearms Protocol, “illicit trafficking” means the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State party to that of another State party if any one of the States parties concerned does not authorize it in accordance with the terms of the Protocol or if the firearms are not marked in accordance with article 8 of the Protocol.

68. A comparative analysis of the trafficking offence highlighted some significant discrepancies among responding States: while all responding States confirmed that trafficking in firearms, their parts and components and ammunition constituted an offence in their jurisdiction, some regarded the offence as a customs offence (smuggling of firearms) criminalized in customs codes focused on the customs revenue interests of States or similar laws rather than in criminal codes or legislation on firearms focused on public security. Furthermore, an in-depth analysis of the legislative texts provided in response to the self-assessment questionnaire shows that some countries had in fact only criminalized the possession of firearms and the domestic trade in firearms without the respective authorizations. Unlike the trafficking offence, the offence criminalizing the trade in firearms typically required the commercial transfer from one person to another, thus limiting the scope of the offence criminalizing the trade in firearms.

69. With regard to the means of trafficking, eight States reported that they either had not criminalized or had only partially criminalized unauthorized transfers, while six States reported that they either had not criminalized or had only partially criminalized the transfer of unmarked firearms. Moreover, the responses indicated differences in the implementation of the transfer element of the offence, as shown in figure VI.

Figure VI
Types of conduct included in the trafficking offence

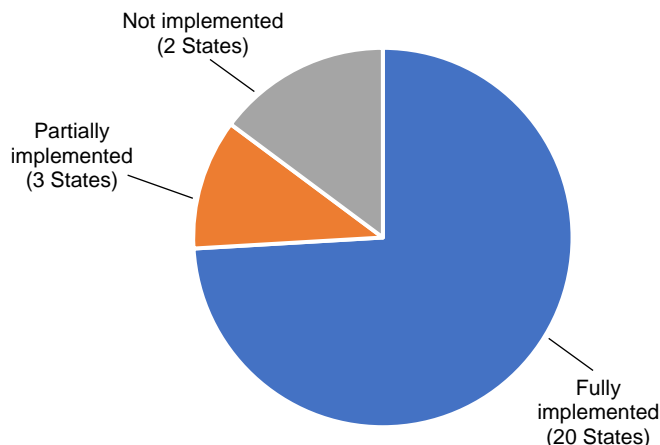


70. A total of 17 out of the 27 responding States had also criminalized unauthorized domestic transfers or “internal trafficking”, thereby going beyond the requirements of the Protocol, under which States parties are only required to criminalize transnational trafficking; however, those measures were in accordance with article 34, paragraph 3, of the Convention, under which States parties are permitted to adopt more strict or severe measures than those provided for in the Convention for preventing and combating transnational organized crime.

3. Offence of tampering with markings

71. Article 5, paragraph 1 (c), of the Firearms Protocol criminalizes activities that render the markings on a firearm unintelligible or inaccurate. The offence involves tampering with the markings at any time after the manufacturing or assembly process, including (a) the falsification of newly applied markings and (b) the obliterating, removing or altering of existing markings. As indicated by the responses to the self-assessment questionnaire, the offence of tampering with markings is the least implemented offence under the Firearms Protocol. Four States parties had not criminalized the offence, while three States parties had only partially implemented it (see figure VII).

Figure VII
Implementation of the offence of tampering with markings (number of responding States for each level of implementation)



4. Ancillary offences

72. Under article 5, paragraph 2, of the Firearms Protocol, States parties are required to establish ancillary criminal offences, comprising attempt and different forms of participation and complicity. Since domestic criminal law systems treat those forms of criminal liability very differently, States parties have considerable discretion as to how to establish them.

Attempt

73. Three of the responding States reported having only partially implemented the requirement to criminalize attempts to commit the offences set forth in article 5, paragraph 1, of the Firearms Protocol. In two States, the attempt to tamper with firearm markings (art. 5, para. 1 (c)) was not criminalized, and in one of them, the attempt to commit the offence of illicit manufacturing (art. 5, para. 2 (a)) was also not criminalized. Another State had not criminalized attempts to commit certain offences ancillary to the offences of illicit manufacturing and illicit trafficking.

Participation and complicity

74. While all responding States had criminalized the participation as an accomplice in any of the offences covered by article 5, paragraph 1, of the Firearms Protocol (art. 5, para. 2 (a)), one responding State did not apply the different forms of complicity set out in article 5, paragraph 2 (b), to certain types of conduct included in the offences established under the Protocol for which its law did not prescribe mandatory imprisonment. That included, for instance, tampering with markings on firearms.

5. Additional offences

75. In accordance with article 34, paragraph 3, of the Convention, States parties to the Firearms Protocol are free to go beyond the mandatory offences contained in the Protocol and establish additional offences. Table 4 provides an overview of additional firearms-related criminal offences that have been established by responding States.

Table 4
Additional firearms-related offences established by States parties under review to supplement the offences set forth in the Firearms Protocol

<i>Number of States establishing the offence</i>	<i>Additional firearms-related offences</i>
17	Falsification or misuse of documents for the purpose of achieving the issuance of licences, authorizations, or end use or end user certificates
16	Possession or use of fraudulent licences, authorizations, or end use or end user certificates
14	Giving false or misleading information likely to unduly influence the issuance of licences, authorizations, or end use or end user certificates
13	Illicit brokering of firearms, their parts and components or ammunition and failure to provide the required information about brokering activities
12	Failure to keep firearms-related records, and the falsification or destruction of such records
12	Illicit reactivation of deactivated firearms

C. General observations on difficulties and challenges encountered and technical assistance needs identified

76. Although not explicitly established as a requirement under the Firearms Protocol, half of the responding States reported having developed or adopted national or regional strategies or action plans to counter the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In two States, the development of an action plan or strategy was in the planning stage. The national action plan of one State also included an annual plan for the inspection of armouries, firearms manufacturing facilities and firearms depots.

1. Difficulties and challenges encountered

77. A total of 6 out of the 27 responding States reported having encountered difficulties or challenges in implementing the provisions of the Firearms Protocol or related national legislation. Among the main challenges and difficulties reported were the lack of inter-agency coordination, the need for further implementing legislation and problems associated with the formulation and application of national legislation (see table 5).

Table 5
Difficulties and challenges encountered in the implementation of the Firearms Protocol or related national legislation

<i>Number of States reporting difficulties and challenges</i>	<i>Difficulties and challenges reported</i>
6	General difficulties in the implementation of the Protocol
5	Lack of inter-agency coordination
3	Problems associated with the formulation of legislation
3	Need for further implementing legislation
3	Difficulties encountered by practitioners in using legislation

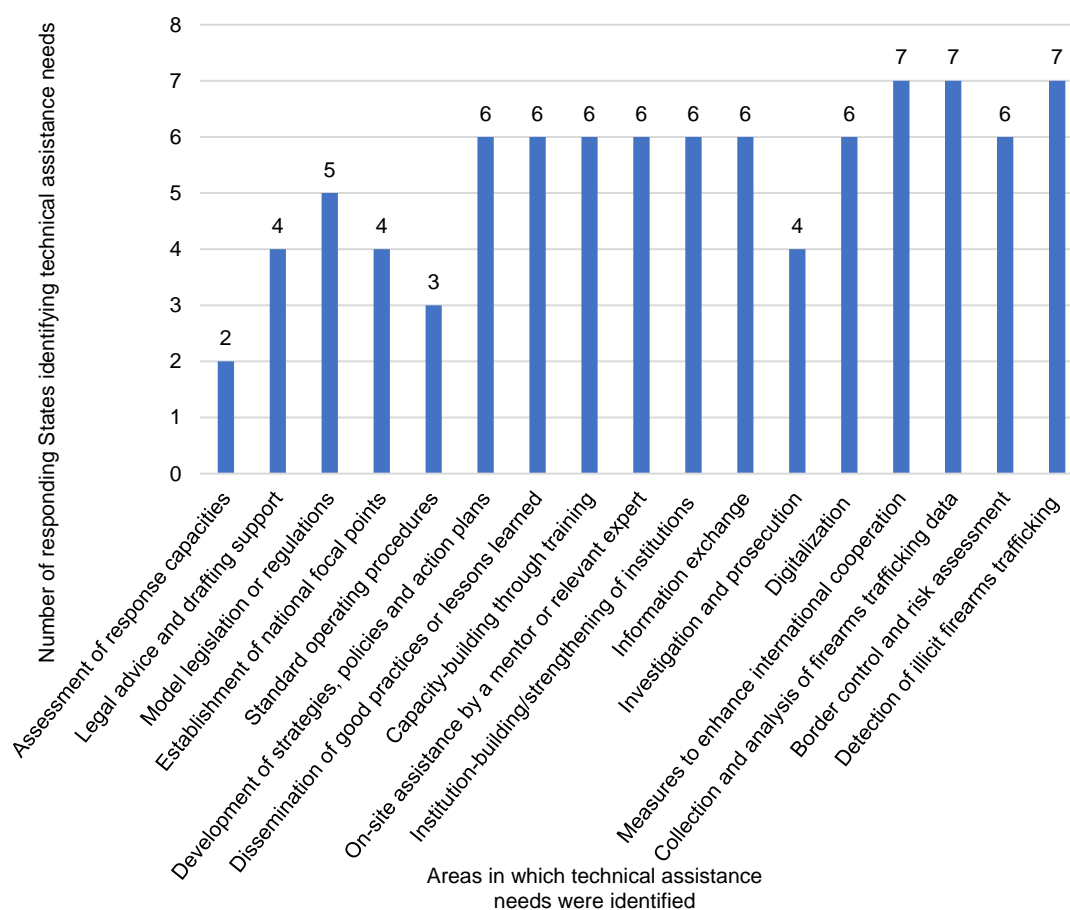
<i>Number of States reporting difficulties and challenges</i>	<i>Difficulties and challenges reported</i>
2	Need for institutional reforms or the establishment of new institutions
2	Lack of awareness
2	Limited resources for implementation
1	Limited or no cooperation from other States
1	Specificities of the legal system
1	Lack of technical knowledge and skills

2. Technical assistance needs identified

78. A total of 7 out of 27 responding States reported that they had needs for technical assistance to overcome difficulties in implementing the Firearms Protocol. Those needs encompassed various areas, ranging from legal reform to capacity-building and technological support. The most pronounced technical assistance needs were those related to enhancing regional and international cooperation, the collection and analysis of firearms trafficking data and the detection of firearms trafficking (see figure VIII).

Figure VIII

Needs for technical assistance in the implementation of the Firearms Protocol



VI. Conclusions

79. The present report reflects the analysis of the implementation of the Convention and its Protocols by a total of 43 States parties. It is based solely on the responses to the self-assessment questionnaires and not on the findings of completed country reviews. In addition, several responses to the self-assessment questionnaires were found to be incomplete or unclear. That limited even more the ability of the secretariat to generate a complete and representative analysis of States parties' compliance with the provisions of the Convention and the Protocols thereto under review.

80. With that necessary caveat, the analysis contained in the present report identifies certain trends and patterns that the Conference may wish to consider. First, responses to the self-assessment questionnaires indicate that most of the responding States are in compliance with most of the mandatory provisions of the Convention and its Protocols included the thematic cluster under review. Nonetheless, one third of the responding States reported having needs for technical assistance.

81. An analysis of such needs indicates that greater compliance with the Convention and its Protocols could be achieved by providing training and capacity-building to relevant national authorities, as well as technological assistance and support in establishing or developing information technology infrastructure. The requests for those two forms of technical assistance indicate that obstacles to the implementation of the four instruments, where they exist, are primarily due to insufficient human and technical capacity. An analysis of how organized criminal groups exploit modern technologies is contained in a background paper prepared by the Secretariat on organized fraud (CTOC/COP/WG.2/2024/3). In that connection, the findings of the preliminary analyses contained in the present report suggest that Governments should be enabled to harness the same level of technology as do organized criminal groups in order to ensure that their efforts in preventing and countering transnational organized crime are more effective. Other forms of technical assistance most frequently requested were in relation to good practices, lessons learned and measures to enhance regional and international cooperation. All the States parties to the Trafficking in Persons Protocol that had requested technical assistance reported having the need for support in relation to prevention and awareness-raising activities.

82. The Conference may wish to take note of these findings and to urge the United Nations Office on Drugs and Crime and other multilateral and bilateral technical assistance providers to respond to such needs, upon request and subject to the availability of extrabudgetary resources, in an efficient, effective and coordinated manner.

83. This report also reflects the efforts of the secretariat to use preliminary information generated under the Review Mechanism to demonstrate the potential of the Mechanism and of the wealth of actionable findings that completed country reviews could generate to enable States parties to better prevent and fight transnational organized crime in line with the Convention and its Protocols.

84. To realize the full potential of the Review Mechanism, the Conference may wish to urge States parties to complete the country reviews, the findings of which are essential for understanding aspects of the implementation, gaps and good practices, as well as assessing technical assistance needs, in relation to the Convention and its Protocols. To support such efforts, the Conference may wish to consider reinforcing the role of the secretariat and ensuring that adequate and predictable extrabudgetary resources are provided to that end.