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**Committee Administering the Mechanism  
for Promoting Implementation and Compliance  
Thirteenth meeting**

Geneva, 7–10 September 2018

Item 4 (b) of the provisional agenda\*

**Review of general issues of compliance and  
implementation under the Convention:  
illegal traffic**

## **Illegal traffic<sup>1</sup>**

### **Note by the Secretariat**

#### **I. Introduction**

1. By its decision BC-13/9, the Conference of the Parties at its thirteenth meeting adopted the work programme for the biennium 2018–2019 of the Committee administering the mechanism for promoting implementation and compliance, attached to that decision, whereby it mandated the Committee, among other things, to consider what additional steps could be taken to improve implementation of and compliance with Article 9 of the Convention on preventing and combating illegal traffic.

#### **II. Implementation**

2. Committee members Geri Geronimo R. Sañez (Philippines), Yocasta Valenzuela Arias (Dominican Republic) and Mario Miranda (Ecuador) took the lead on this activity of the work programme of the Committee.

3. During the Committee's 21 November 2017 consultations, the Chair of the Committee, Juan Simonelli (Argentina), invited the lead members to consider holding a brainstorming session on the matter in advance of their next consultations. Members also agreed to request Secretariat to prepare draft additional steps that could be taken to improve implementation of and compliance with Article 9 of the Convention on preventing and combating illegal traffic, under the guidance of the lead members, for consideration during their next informal consultations.

4. The lead members and the Chair of the Committee held a brainstorming session on 20 February 2018 at which time they discussed a draft note prepared by the Secretariat presenting the activities of the Committee and other Basel Convention bodies over time to improve implementation and compliance with Article 9 of the Basel Convention. A revised version of the note by the Secretariat is set out in the annex to this note.

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\* UNEP/CHW/CC.13/1.

<sup>1</sup> This document has not been formally edited.

5. During their 17 April 2018 consultations, Committee members heard a report from the lead members on their brainstorming session, including information on possible additional steps that could be taken to improve implementation of and compliance with Article 9 of the Convention on preventing and combating illegal traffic. Following an exchange of views, members saw value in developing a questionnaire for Parties, Basel Convention regional and coordinating centres (BCRCs/BCCCs) and others with a view to, among other things, gathering information on their use of existing guidance and tools, scoping the extent of the problem, better understanding Parties' challenges, and seeking their views on additional steps that could be taken improve implementation and compliance with Article 9. Committee members accordingly requested the Secretariat to prepare draft questionnaires for consultation with the members and to consider responses received during the thirteenth meeting of the Committee.

6. Members also saw value in establishing a dialogue with other multilateral environmental agreements, such as the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer, to learn lessons on the steps taken under their framework to prevent and combat illegal traffic and trade. As a first step, members requested the Secretariat to explore with the CITES Secretariat the possible holding of a dialogue session during the thirteenth meeting of the Committee.

7. Following the 17 April 2018 consultations, the Secretariat drafted two questionnaires, one for Parties and the other for BCRCs/BCCCs, the members of the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE) and other relevant organizations. Following consultation with the members of the Committee, the questionnaire for Parties, available in English, French and Spanish, as well as the questionnaire for the BCRCs, members of ENFORCE and other relevant organizations were made available on 7 June 2018 with an invitation to reply by 30 June 2018. Both questionnaires are available on the website of the Convention.<sup>2</sup>

8. A report on additional steps that could be taken to improve implementation of and compliance with Article 9 of the Convention, taking into account the note prepared by the Secretariat presenting the activities of the Committee and other Convention bodies over time to improve implementation and compliance with Article 9 of the Basel Convention as well as the responses received to the questionnaires, is set out in the annex to document UNEP/CHW/CC.13/INF/10.

### **III. Proposed action**

9. The Committee is invited to consider the information contained in the present note, including its annex, and in document UNEP/CHW/CC.13/INF/10, as well as the information exchanged during the dialogue session with the CITES Secretariat with a view to considering what additional steps could be taken to improve implementation of and compliance with Article 9 of the Convention on preventing and combating illegal traffic, for the consideration of the Conference of the Parties at its fourteenth meeting.

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<http://www.basel.int/Implementation/LegalMatters/Compliance/GeneralIssuesActivities/Activities201819/Illegaltrafficc/tabid/7435/Default.aspx>.

## Annex

# Activities of the Implementation and Compliance Committee and other Basel Convention bodies to improve implementation and compliance with Article 9 of the Basel Convention on illegal traffic

## I. Introduction

1. This note was prepared by the Secretariat to support the Committee's consideration of what additional steps could be taken to improve implementation of and compliance with Article 9 of the Convention, as mandated by decision BC-13/9.
2. Article 9 of the Convention has three main components:
  - (a) The definition of illegal traffic (paragraph 1);
  - (b) Parties' obligations in case of the occurrence of a transboundary movement deemed to be illegal traffic (paragraphs 2, 3 and 4);
  - (c) Parties' obligations to prevent and punish illegal traffic and the obligation to cooperate with one another (paragraph 5).
3. Other provisions particularly relevant to preventing and combating illegal traffic include Article 4 paragraph 3, whereby Parties consider that illegal traffic in hazardous or other wastes is criminal, and Article 4 paragraph 4 whereby Parties are to take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention, including measures to prevent and punish conduct in contravention of the Convention.
4. This note aims at summarizing the challenges faced by Parties in preventing and combating illegal traffic and the steps already taken by the Committee and other Basel Convention bodies to improve the implementation and compliance with Article 9.

## II. Identification of challenges with the implementation and compliance with Article 9

5. Actual authoritative and complete information on the extent of cases of illegal traffic is scarce under the Convention: limited information is officially made available from Parties through the Secretariat, and although several studies have been conducted on the matter, their geographical and substantive scope varies from one to the other.<sup>1</sup>
6. Information on the challenges faced by Parties in preventing and combating illegal traffic is essentially derived from two sources:
  - (a) Information from Parties and others transmitted to the Secretariat in the context of the development of guidance, technical assistance activities, support provided to ENFORCE, development of tools and international cooperation activities;
  - (b) The Secretariat analysis on possible synergies in preventing and combating illegal traffic and trade in hazardous chemicals and wastes (document UNEP/CHW.13/INF/49-UNEP/FAO/RC/COP.8/INF/34-UNEP/POPS/COP.8/INF/51) which was welcomed by the Conferences of the Parties to the Basel Convention, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants in their decisions BC-13/21, RC-8/14 and SC-8/24.
7. Prior to the 2018–2019 biennium, it appears that Parties or others were not directly invited to share with the Committee information on the challenges faced with the implementation and compliance with Article 9 or on their views on how to improve implementation and compliance with Article 9.

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<sup>1</sup> See for instance para 39 of document UNEP/CHW.13/INF/49-UNEP/FAO/RC/COP.8/INF/34-UNEP/POPS/COP.8/INF/51.

### III. Activities to improve implementation and compliance with Article 9

8. Over the years, a range of measures have been undertaken under the Convention with a view to improving the implementation and compliance with Article 9.

#### A. Activities of the Implementation and Compliance Committee

9. As mandated by successive decisions of the Conference of the Parties, the Committee has undertaken tailored activities aimed at improving implementation and compliance with Article 9 of the Convention in the context of its work programmes (see appendix). Such activities include:

- (a) The development of directory of training institutions;
- (b) (b) The development of terms of reference for cooperative arrangements on preventing and combating illegal traffic to bring together and improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity building activities, which led to the establishment of ENFORCE by the eleventh meeting of the conference of the Parties (decision BC-11/8);
- (c) The development of guidance on the implementation of the Basel Convention provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of Article 9), which was adopted by the thirteenth meeting of the conference of the Parties (decision BC-13/9);
- (d) Guiding and reviewing the Secretariat's development of tools and training activities for customs and other enforcement officials.

10. As mentioned above, as opposed to other areas of its work (e.g. with respect to national reporting, the development of legal frameworks or the designation of country contacts), the Committee has not, prior to its 2018–2019 work programme, sought from Parties and others information on the challenges faced by Parties with the implementation and compliance with Article 9.

#### B. Other activities undertaken in the framework of the Convention

11. A wide range of activities undertaken in the framework of the Convention contribute directly or indirectly to an improved implementation and compliance with Article 9 of the Convention. Both sets of direct and indirect activities are equally important.

##### 1. Direct activities

12. Examples of direct activities to prevent and combat illegal traffic include:<sup>2</sup>

(a) The adoption of guidance by the Conference of the Parties,<sup>3</sup> such as the Guidance Elements for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes approved at its sixth meeting (decision VI/15), the Instruction manual for the legal profession on the prosecution of illegal traffic approved at its tenth meeting (decision BC-10/18, document UNEP/CHW.10/12/Add.1 ), and the Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of Article 9), adopted at its thirteenth meeting (decision BC- 13/9);

(b) Calls by the Conference of the Parties to Parties with respect to implementing the Convention, for instance Decision BC-13/19 calls on “Parties to fulfil their obligations under paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Basel Convention, including by updating or developing stringent legislation on the control of transboundary movements of hazardous wastes and by incorporating into their national legislation appropriate sanctions or penalties for illegal traffic in hazardous wastes and other wastes”;

(c) The development of capacity building tools by the Secretariat,<sup>4</sup> such as the training manual on illegal traffic for Customs and training agencies, the Interactive manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions, the e-learning tool for

<sup>2</sup> For the latest report of activities undertaken by the Secretariat over the biennium 2016-2017, see document UNEP/CHW.13/10.

<sup>3</sup> <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Guidance/tabid/3423/Default.aspx>.

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<http://synergies.pops.int/Implementation/TechnicalAssistance/ToolsandMethodologies/ManualforCustomsOfficers/tabid/4457/language/en-US/Default.aspx>.

Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions, developed in cooperation with the World Customs Organization (WCO), and the e-learning module for law enforcement officers on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm Conventions, developed in cooperation with INTERPOL;

(d) Activities undertaken by ENFORCE,<sup>5</sup> such as exchange of information among its members and promotion of cooperation among members for the planning and delivery of their technical assistance activities;

(e) Sharing of information<sup>6</sup> for instance on best practices, in particular on coordination mechanisms at the national level (decisions BC-13/21, RC-8/14 and SC-8/24), and on confirmed cases of illegal traffic using the notification form or table 9 in the revised reporting format for 2016 and onwards;

(f) Assistance by the Secretariat to Parties in their identification of cases of illegal traffic (Article 16) and, more generally, provision of advice on matters pertaining to the implementation and enforcement of the Convention, including on the development and updating of national legislation or other measures such as measures to protect themselves from unwanted imports of wastes (decision BC-13/10);

(g) Technical assistance activities by Parties, the Secretariat and BCRCs/BCCCs such as trainings, workshops and support to individual Parties;

(h) Greater policy coherence between the Basel, Rotterdam and Stockholm conventions through the adoption of substantively identical decisions by the conferences of the Parties during their 2017 meetings (decision BC-13/21, decision RC-8/14 and decision SC-8/24);

(i) Improving legal clarity, for instance through the request to the Secretariat to seek, subject to the availability of resources, comments from Parties and others on further areas, including areas common to two or three of the conventions, in which legal clarity could be improved as a means of preventing and combating illegal traffic and trade in hazardous chemicals and wastes and, based on those comments, to prepare a report, including recommendations, for consideration by the Conference of the Parties at its next meeting (decisions BC-13/21, RC-8/14 and SC-8/24);

(j) International cooperation activities,<sup>7</sup> including with respect to enforcement operations (decision BC-13/10 and decisions BC-13/21, RC-8/14 and SC-8/24).

## 2. Indirect activities

13. Examples of indirect activities include activities in the following areas:

(a) Improving legal clarity with respect to terminology used in the Convention, for instance through the adoption of the glossary of terms on the clarification of the distinction between wastes and non-wastes (decision BC-13/2);

(b) Improving the quality of legal frameworks and the clarity with respect to Parties' respective legal frameworks implementing and enforcing the Convention (e.g. through the provision by Parties of this information to the Secretariat, through the Secretariat's technical assistance activities, through the provision of information and advice to Parties by the Secretariat, and through the activities of the Committee's 2018–2019 work programme aimed at improving implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention);

(c) Improving the notification of clear national definitions of hazardous wastes and import/export restrictions or prohibitions and their public dissemination (Article 3, paragraph 1 (a) of Article 4, paragraphs 2 and 3 of Article 13 of the Convention);

(d) Improving the designation of country contacts and the transmission of updated and complete contact information to the Secretariat (Article 5, paragraphs 2 and 3 of Article 13 of the Convention);

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<http://www.basel.int/Implementation/TechnicalAssistance/Partnerships/ENFORCE/Overview/tabid/4526/Default.aspx>

<sup>6</sup> <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/Bestpractices/tabid/4282/Default.aspx>,  
<http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/CasesofIllegalTraffic/tabid/3424/Default.aspx>.

<sup>7</sup> <http://www.basel.int/Implementation/LegalMatters/IllegalTraffic/InternationalCooperation/tabid/3425/Default.aspx>.

(e) Improved implementation of the control system (Article 6 in conjunction with Articles 4, 7, 8 and 11 of the Convention);

(f) Harmonization of codes with the WCO, for instance the Secretariat is requested to continue, under the guidance of the Open-ended Working Group, its cooperation with the Harmonized System Committee and relevant subcommittees of the World Customs Organization in order to facilitate the inclusion of wastes covered by the Basel Convention in the Harmonized Commodity Description and Coding System (decision BC-13/7);

(g) Giving strategic directions for the Convention's implementation and evaluating its effectiveness through the work under the strategic framework for the implementation of the Basel Convention for 2012–2021 (decision BC-13/1).

#### **IV. Conclusion**

14. Preventing and combating illegal traffic is a priority under the Basel Convention, however prior to the 2018–2019 work programme of the Committee, limited steps appear to have been taken to gather information directly from Parties and entities supporting Parties in preventing and combating illegal traffic, on the challenges faced with the implementation of Article 9 and on possible additional steps that could be taken to improve implementation of and compliance with Article 9 of the Convention. Despite this, considerable efforts have been made under the Convention, whether directly or indirectly, to support Parties implement and comply with Article 9 of the Convention.

**Appendix: Compilation of the work programmes of the Implementation and Compliance Committee (ICC), activities and documents relevant to illegal traffic–  
Compilation of decisions adopted by the Conference of the Parties (COP) based on ICC recommendations relevant to illegal traffic**

<b>ICC work programme</b>	<b>Activities to be undertaken by the ICC and relevant ICC document</b>	<b>ICC reports to COP and COP decisions</b>
2005-2006	No specific activity	<ul style="list-style-type: none"> <li>➤ ICC-4 report (April 2006) UNEP/CHW/CC/4/4</li> <li>➤ ICC-5 report (Sept 2007) UNEP/CHW/CC/5/6</li> <li>➤ Report of ICC to COP-8 (Nov 2006) UNEP/CHW.8/12</li> <li>➤ COP 8 decision VIII/32: adoption of 2007-2008 work programme</li> </ul>
2007-2008	(b) The Committee shall undertake work on the issue of illegal traffic, which could <b>include identifying available existing resources</b> from a number of institutions, working in collaboration with such institutions and the Basel Convention regional and coordinating centres, and assisting Parties through <b>training</b> , taking into account that such work would assist in ensuring the environmentally sound management of wastes.	<ul style="list-style-type: none"> <li>➤ ICC-6 report (February 2008) UNEP/CHW/CC/6/7</li> <li>➤ ICC-7 report (June 2009) UNEP/CHW/CC/7/10</li> <li>➤ Report of ICC to COP-9 (June 2008) UNEP/CHW.9/2</li> <li>➤ COP 9 decision IX/2: adoption of 2009-2011 work programme</li> </ul>
2009-2011	<p>No specific activity, but continuation of implementation of activity of 2007-2008 work programme</p> <p><i>Document UNEP/CHW/CC/7/3 (draft directory of training institutions offering activities aimed at improving capacity for detection, prevention and prosecution of cases of illegal Traffic)</i></p> <p><i>During ICC-7, information exchange with GCI and IMPEL (regrets sent by WCO, INTERPOL and INECE) and discussion on possible <b>opportunities of cooperation on capacity building activities</b> for customs and other entities in the area of illegal traffic. Issues discussed included: how to ensure the</i></p>	<ul style="list-style-type: none"> <li>➤ ICC-7 report (June 2009) UNEP/CHW/CC/7/10</li> <li>➤ ICC-8 report (March 2011) UNEP/CHW/CC/8/25</li> <li>➤ Report of ICC to COP-10 (Oct 2011) UNEP/CHW.10/9/Rev.1 and UNEP/CHW.10/INF/11</li> <li>➤ COP 10 decision BC-10/11: adoption of 2012-2013 work programme and:</li> </ul> <p><b>“2. Also takes note of the directory of institutions offering activities aimed at improving the capacity to detect, prevent and prosecute</b></p>

ICC work programme	Activities to be undertaken by the ICC and relevant ICC document	ICC reports to COP and COP decisions
	<p><i>repatriation of waste; how to improve the use of communication systems between Parties; the level of sophistication of illegal traffic operations; the development of intelligence, risk profiling and the understanding of the waste chain so as to focus on the prevention of illegal traffic; the possibility of exchange programs for inspectors; a waste-stream specific approach; and the need for an overarching coordination of capacity building projects and training activities.</i></p> <p><i>Document UNEP/CHW/CC/8/2: Chair proposal to establish a partnership on preventing and combating illegal traffic.</i></p>	<p><b>cases of illegal traffic</b> and encourages Parties and relevant entities to provide updated information on its content;</p> <p>3. <i>Requests</i> the Committee to prepare a first draft of <b>terms of reference for cooperative arrangements on preventing and combating illegal traffic</b> to bring together and improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities on preventing and combating illegal traffic, such as the World Customs Organization, the International Criminal Police Organization, the United Nations Environment Programme, individual Parties, the Basel Convention regional and coordinating centres, networks and the Secretariat, with a focus on the development of tools and training materials, the hosting of workshops and information exchange;</p> <p>4. <i>Invites</i> Parties and others to submit comments on the draft terms of reference by 30 April 2012;</p> <p>5. <i>Requests</i> the Committee, in the context of its 2012–2013 programme of work, to prepare, in cooperation with relevant entities and for the consideration of the Conference of the Parties at its eleventh meeting, a draft decision including detailed draft terms of reference for the cooperative arrangements, taking into account the comments received; “</p>
2012-2013	<p>(a) Undertake the activities mentioned in paragraphs 3 (Requests the Committee to prepare a <b>first draft of terms of reference for cooperative arrangements on preventing and combating illegal traffic</b> to bring together and improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities on preventing and combating illegal traffic, such as the World Customs Organization, the International Criminal Police Organization, the United Nations Environment Programme, individual Parties, the Basel Convention regional and</p>	<ul style="list-style-type: none"> <li>➤ ICC 9 report (November 2012) UNEP/CHW/CC.9/16</li> <li>➤ Report of ICC to COP-11 (May 2013) UNEP/CHW.11/10</li> <li>➤ COP 11 decision BC-11/8: adoption of 2014-2015 work programme and:</li> </ul> <p>“15. <i>Adopts</i> the terms of reference for cooperative arrangements on preventing and combating illegal traffic, also referred to as the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (<b>ENFORCE</b>), set out in annex I to the present</p>



ICC work programme	Activities to be undertaken by the ICC and relevant ICC document	ICC reports to COP and COP decisions
	<p>coordinating centres, networks and the Secretariat, with a focus on the development of tools and training materials, the hosting of workshops and information exchange) and 5 (Requests the Committee, in the context of its 2012–2013 programme of work, to prepare, in cooperation with relevant entities and for the consideration of the Conference of the Parties at its eleventh meeting, a draft decision including detailed draft terms of reference for the cooperative arrangements, taking into account the comments received of the present decision pertaining to the development of draft terms of reference for the cooperative arrangements on preventing and combating illegal traffic;</p> <p>➤ <i>Document UNEP/CHW/CC.9/11</i></p> <p>(b) Review Parties' implementation of and compliance with the <b>take-back provision set forth in paragraph 2 of Article 9</b> of the Convention, including the difficulties faced by Parties, and develop a guidance document based on best practices and suggesting a harmonized approach to the implementation of this provision;</p> <p>➤ <i>Document UNEP/CHW/CC.9/12</i></p> <p>(c) Guide and review the <b>Secretariat's development of tools and training activities</b> for Customs and other enforcement officials.</p> <p>➤ <i>Document UNEP/CHW/CC.9/13</i></p>	<p>decision;</p> <p>16. <i>Elects</i>, in accordance with the terms of reference, the following representatives of the four Parties to the Basel Convention in the cooperative arrangements on preventing and combating illegal traffic...”</p>
2014-2015	Finalize, including through consultations with the Open-ended Working Group, the development of <b>guidance on the take-</b>	➤ ICC-10 report (December 2013, May 2014) UNEP/CHW/CC.10/14 and Add.1

ICC work programme	Activities to be undertaken by the ICC and relevant ICC document	ICC reports to COP and COP decisions
	<p><b>back provision</b> for consideration and possible adoption by the Conference of the Parties at its twelfth meeting.</p> <ul style="list-style-type: none"> <li>➤ <i>Document UNEP/CHW/CC.10/9</i></li> <li>➤ <i>Document UNEP/CHW/CC.11/10</i></li> </ul>	<ul style="list-style-type: none"> <li>➤ ICC-11 report (September 2014) UNEP/CHW/CC.11/16</li> <li>➤ Report of ICC to COP-12 (May 2015) UNEP/CHW.12/9 and Add.1</li> <li>➤ COP-12 decision BC-12/7: adoption of 2016-2017 work programme</li> </ul>
2016-2017	<p>Continue to develop, including through consultations with the Open-ended Working Group, <b>guidance on the take-back provision under paragraph 2 of Article 9, and develop guidance on the implementation of paragraphs 3 and 4 of Article 9 of the Convention</b> and integrate the two sets of guidance into one document, for consideration and possible adoption by the Conference of the Parties at its thirteenth meeting.</p> <ul style="list-style-type: none"> <li>➤ <i>Document UNEP/CHW/CC.12/8</i></li> </ul>	<ul style="list-style-type: none"> <li>➤ ICC-12 report (June and October 2016) UNEP/CHW/CC.12/13 and Add.1</li> <li>➤ Report of ICC to COP-13 (May 2017) UNEP/CHW.13/9 and Add.</li> <li>➤ COP 13 decision BC-13/9: adoption of 2018-2019 work programme and:</li> </ul> <p><b>“Illegal traffic</b></p> <p><i>15. Adopts the <b>guidance on the implementation of the Basel Convention provisions dealing with illegal traffic (paragraphs 2, 3 and 4 of Article 9)</b><sup>8</sup> and encourages Parties to use it and to provide information to the Secretariat on their experiences with the guidance for the consideration of the Committee;</i></p>
2018-2019	Consider what <b>additional steps</b> could be taken to improve implementation of and compliance with Article 9 of the Convention	

<sup>8</sup> UNEP/CHW.13/9/Add.1/Rev.1.