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**United Nations  
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**Intergovernmental negotiating committee  
to prepare a global legally binding instrument  
on mercury  
Second session  
Chiba, Japan, 24–28 January 2011**

**Report of the intergovernmental negotiating committee to  
prepare a global legally binding instrument on mercury on the  
work of its second session**

**Introduction**

1. At its twenty-fifth session, by section III of decision 25/5 of 20 February 2009, the Governing Council of the United Nations Environment Programme (UNEP) agreed to the elaboration of a legally binding instrument on mercury and asked the Executive Director of UNEP to convene an intergovernmental negotiating committee with the mandate to prepare that instrument, commencing its work in 2010.
2. The Governing Council further agreed, in paragraph 27 of the decision, that the task of the intergovernmental negotiating committee was to develop a comprehensive and suitable approach to mercury that included provisions:
  - (a) To specify the objectives of the instrument;
  - (b) To reduce the supply of mercury and enhance the capacity for its environmentally sound storage;
  - (c) To reduce the demand for mercury in products and processes;
  - (d) To reduce international trade in mercury;
  - (e) To reduce atmospheric emissions of mercury;
  - (f) To address mercury-containing waste and remediation of contaminated sites;
  - (g) To increase knowledge through awareness-raising and scientific information exchange;
  - (h) To specify arrangements for capacity-building and technical and financial assistance, recognizing that the ability of developing countries and countries with economies in transition to implement some legal obligations effectively under a legally binding instrument is dependent on the availability of capacity-building and technical and adequate financial assistance;
  - (i) To address compliance.
3. In paragraph 28 of decision 25/5 the Governing Council agreed that in its deliberations the intergovernmental negotiating committee should consider:
  - (a) Flexibility in that some provisions could allow countries discretion in the implementation of their commitments;

- (b) Approaches tailored to the characteristics of specific sectors to allow transition periods and phased implementation for proposed actions, where appropriate;
- (c) Technical and economic availability of mercury-free alternative products and processes, recognizing the necessity of the trade in essential products for which no suitable alternatives exist and to facilitate the environmentally sound management of mercury;
- (d) Need to achieve cooperation and coordination and to avoid the unnecessary duplication of proposed actions with relevant provisions contained in other international agreements and processes;
- (e) Prioritization of the various sources of mercury releases for action, taking into account the necessity for developing countries and countries with economies in transition to achieve sustainable development;
- (f) Possible co-benefits of conventional pollutant control measures and other environmental benefits;
- (g) Efficient organization and streamlined secretariat arrangements;
- (h) Measures to address risks to human health and the environment as a consequence of anthropogenic mercury releases;
- (i) Any other aspects that the intergovernmental negotiating committee may consider relevant to mercury control.

4. In paragraph 32 of decision 25/5 the Governing Council requested the Executive Director to convene an ad hoc open-ended working group to discuss the negotiating priorities, timetable and organization of the intergovernmental negotiating committee. The ad hoc open-ended working group to prepare for the intergovernmental negotiating committee on mercury met in Bangkok from 19 to 23 October 2009 and agreed on a number of recommendations to the committee. Those recommendations are recorded in the report of the working group's meeting, which is reproduced in document UNEP(DTIE)/Hg/INC.1/INF/1.

5. Subsequently, the first session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury took place in Stockholm from 7 to 11 June 2010. Following consultations within the regional groups and the bureau, the committee agreed that after the first session the secretariat would prepare for consideration by the committee at its second session draft elements of the comprehensive and suitable approach to mercury called for by decision 25/5, including the provisions referred to in paragraph 27 of the decision and taking into consideration the matters listed in paragraph 28 of the decision. The draft elements prepared by the secretariat could include both binding and voluntary measures and would be presented as a means of facilitating the committee's work without in any way prejudging what the committee might decide regarding the mercury instrument. The secretariat would base its work on the views expressed by parties during that session and any views submitted by parties to the secretariat in writing by 31 July 2010. The committee also agreed that the secretariat should prepare, subject to the availability of adequate resources, a number of additional documents to assist the committee at its second session and beyond.

## **I. Opening of the session**

6. The second session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury took place at the Makuhari Messe International Convention Complex in Chiba, Japan, from 24 to 28 January 2011.

7. The session was opened at 9.50 a.m. on Monday, 24 January 2011, by Mr. Fernando Lugris (Uruguay), Chair of the committee, who thanked the Government of Japan for hosting the current session. He also noted with pleasure that Mr. Achim Steiner, the Executive Director of UNEP and the convener of the intergovernmental negotiating committee under decision 25/5, had accepted the offer of Japan to host the diplomatic conference at which the global legally binding instrument on mercury would be signed.

8. Opening remarks were delivered by Ms. Khalida Bouzar, Deputy Director of the UNEP Division of Technology, Industry and Economics; Mr. Shoichi Kondo, Senior Vice-Minister of the Environment, Japan; and Mr. Katsuaki Miyamoto, Mayor of Minamata, Japan.

9. In her opening statement Ms. Bouzar welcomed the session participants and extended the best wishes of the Executive Director. She recalled the challenge stated at the committee's first session by Ms. Angela Cropper, Deputy Executive Director of UNEP, to take advantage of the unique and

historic opportunity to establish the means for eliminating anthropogenic releases of mercury to the greatest possible extent. The task was ambitious, she acknowledged, but the success of other international instruments in controlling harmful chemicals had shown that it was achievable. She was pleased to note the high level of commitment to the process, as indicated by the large increase in the number of participants attending the session. On behalf of UNEP, she thanked the Government of Japan for its support in hosting the session and observed that it was fitting that it should take place in a country that was acutely aware of the terrible human and environmental cost of mercury emissions. She expressed the hope that the draft elements before the committee would help it to meet its challenging timetable. Lastly, she thanked the Government of Japan for its offer to host the diplomatic conference in 2013.

10. Mr. Kondo, in his opening statement, welcomed all participants on behalf of the Government of Japan, noting the significance of holding the current session in Japan in the presence of those suffering from Minamata disease. Japan had learned from the tragedy of Minamata, and continuing efforts were being made to assist victims and revitalize affected communities. New policies and systems were in place for mercury in Japan, and co-benefits had been realized through measures to reduce other pollutants, resulting in significant reductions in the concentration of mercury in the environment. In addition, industrial use and consumption of mercury in Japan had been significantly curtailed, including through the development and introduction of new technologies. The Government believed that measures to prevent mercury pollution should be strengthened throughout the world and, as an indication of its determination to make a positive contribution to the preparation of a legally binding instrument on mercury, had allocated \$500,000 in the budget plan for the coming fiscal year as a voluntary contribution to assist the secretariat in the negotiating process. In conclusion, he reiterated Japan's desire to host the diplomatic conference in 2013 and proposed that the legally binding instrument on mercury should be named the "Minamata Convention".

11. In his opening statement Mr. Miyamoto outlined the history of the disaster that had struck Minamata, noting that many issues remained unresolved. He recalled that Minamata disease had been caused by mercury contamination from polluted wastewater from a factory during the 1950s and 1960s, at a time of rapid industrial growth without proper regulation. The consequences had been severe, both for the victims and for the community as a whole. Nevertheless, lessons had been learned, in particular regarding the need to deal with such problems at the outset in a preventive manner. To assist in spreading the message and ensuring that nowhere else in the world should suffer a similar fate, the Minamata Disease Municipal Museum had been set up and provided a platform for victims of the disease to recount their experiences to visitors. In addition, the city of Minamata had resolved to build a sustainable, environmentally friendly society, and in 2008 had been recognized by the Japanese Government as a model environmental city. In conclusion, he called for human and environmental considerations to be accorded high priority in the mercury negotiations.

12. Following the opening remarks the session participants viewed a video presentation entitled "Minamata disease: memory and prayer", which depicted the events surrounding the contamination of Minamata Bay with mercury in the 1950s and the subsequent development of Minamata disease, a neurological syndrome caused by severe mercury poisoning. After the video presentation Ms. Sumiko Kaneko, whose family had experienced great hardship as a result of the disease and who was a storyteller at the Minamata Disease Municipal Museum, gave an account of her personal experiences.

13. Ms. Lillian Corra, International Society of Doctors for the Environment, then presented the committee, on behalf of her organization, with a sculpture by Nicolás García Urriburu of Argentina symbolizing the irreversible consequences of mercury contamination, intended to inspire the committee in its deliberations. The Chair accepted the sculpture on behalf of the committee and expressed thanks for the gesture.

## **II. Organizational matters**

### **A. Adoption of the agenda**

14. The committee adopted the following agenda on the basis of the provisional agenda that had been circulated in document UNEP(DTIE)/Hg/INC.2/1:

1. Opening of the session.
2. Organizational matters:
  - (a) Adoption of the agenda;
  - (b) Organization of work.

3. Preparation of a global legally binding instrument on mercury.
4. Other matters.
5. Adoption of the report.
6. Closure of the session.

## **B. Organization of work**

15. The committee agreed that it would meet from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. each day. It also agreed to establish contact groups as necessary, taking into account the needs of small delegations. In accordance with the rules of procedure, although such groups would be open to Governments and observers, proposals could only be made by government parties and priority would be accorded to such parties, both in speaking and in gaining access to rooms where space was limited.

16. The session was conducted as a paperless meeting: except upon request, all documents were made available in electronic rather than printed form.

17. The committee agreed to use the draft elements prepared by the secretariat in response to the committee's request at its first session, which were set out in document UNEP(DTIE)/Hg/INC.2/3, as a starting point for its discussions under agenda item 3 and to structure its discussions in accordance with the arrangement of the draft elements in the document. It was stressed, however, that the draft elements were merely a starting point and that parties were not limited thereby in their proposals or positions.

18. In addition to document UNEP(DTIE)/Hg/INC.2/3 the committee had before it other documents prepared by the secretariat to support the discussion under item 3 of the agenda. They included the study called for in paragraph 29 of Governing Council decision 25/5 on mercury-emitting sources and information on current trends in mercury emissions and the cost and effectiveness of alternative control technologies and measures (UNEP(DTIE)/Hg/INC.2/3), and documents providing the information requested by the committee at its first session, as listed in annex II to the report of that session (UNEP(DTIE)/Hg/INC.1/21). The committee also had before it a number of information documents, including a compilation of the views submitted following the committee's first session in relation to draft elements of the future mercury instrument (UNEP(DTIE)/Hg/INC.2/INF/1). More detailed information on the documents before the committee is provided in paragraphs 6–10 of the annotated provisional agenda for the session (UNEP(DTIE)/Hg/INC.2/Add.1).

19. At the invitation of the Chair parties and observers made general statements under the item on the work to be undertaken during the current session. Statements on behalf of regional groups of countries were made first, followed by statements by representatives of individual countries and intergovernmental and non-governmental organizations.

20. All who spoke on behalf of regional groups expressed appreciation to the Government of Japan for hosting the meeting, and many expressed satisfaction that the Executive Director of UNEP had accepted Japan's offer to host the diplomatic conference in 2013. The moving testimony given regarding the victims of Minamata disease was also acknowledged as a poignant reminder of the need for global action on mercury to protect human health and the environment.

21. Speaking on behalf of the group of Latin American and Caribbean countries, one representative reaffirmed those countries' interest in an ambitious and comprehensive instrument for the environmentally sound management of mercury, saying that it should be based on the reduction of risk to human health and the environment while ensuring sustainable development and poverty reduction. He expressed concern that the draft elements paper did not take into account countries' differing capacities nor provide for adequate financial and technical support to enable the instrument's implementation by developing countries, including small island developing States. He called for the development at the current session of a proposal for a robust and independent financial mechanism, similar to the Multilateral Fund for the Implementation of the Montreal Protocol, that would tie obligations under control measures to the mobilization of the necessary financial resources, technology transfer and capacity-building.

22. He also said that there was a lack of information in the documents prepared by the secretariat to inform the negotiations in three areas. First, there was insufficient information on the capacity of most developing countries for the effective and economically viable long-term storage of mercury; that was a matter of great importance, as a reduction in demand would lead to mercury storage problems, especially where no storage facilities existed. Second, urgent cooperation was needed from UNEP and the international community to ensure that developing countries could prepare mercury inventories sufficient to reveal to them the extent of their national issues and the scale of their obligations under a

mercury instrument. Third, there appeared to be no clear indication of what developed countries were willing to undertake regarding mobilization of financial resources and transfer of technology.

23. As to the draft elements themselves he said that a preambular recital providing clear political guidance was needed, recognizing the need for mercury-related measures to be incorporated into national, subregional and international programmes and policies, the human health impact of exposure to mercury and mercury compounds, in particular for most vulnerable populations, and the concept of extended producer responsibility, in particular regarding waste management. There should also be clear mention of the Rio principles, in particular principle 7 on common but differentiated responsibilities, principle 10 on access to information, principle 15, the precautionary principle, and principle 16, the polluter pays principle. The region also considered it important to include a clause on the relationship between the future instrument and relevant multilateral environmental agreements in line with reforms in the international environmental governance process and cooperation and coordination between the chemicals and wastes conventions.

24. He concluded by thanking UNEP and the Government of Spain for their financial assistance in holding a regional meeting in Panama in November 2010 and the Governments of Chile and Panama for hosting regional consultations in 2010, requesting that such support should be continued to ensure the region's effective participation in the negotiations.

25. Speaking on behalf of the European Union and its member States, one representative reiterated the commitment of the organization and its members to the development of a comprehensive multilateral environmental agreement that addressed the entire life cycle of mercury and contained a broad range of elements. She said that close coordination should be ensured with existing chemicals and wastes instruments in the drafting and implementation of the mercury instrument, a matter that was already identified in the draft elements paper, which was a sound basis for the committee's discussions. She suggested that it was premature to discuss the objectives of the instrument at the current time, but indicated support in principle for an objective along the lines of that of the Global Mercury Partnership: to protect human health and the environment from releases of mercury and its compounds to air, water and soil. She said that the region was in favour of the concept of having the control measures in the core text supported by annexes.

26. Speaking on behalf of the group of African countries, one representative thanked those countries that had supported Africa in developing programmes and projects to reduce the impact of mercury on human health and the environment. She confirmed Africa's willingness to use the draft elements paper as a basis for initiating the negotiation process, saying that the instrument's goal should be clear. Most African countries faced the challenge of mercury in products and articles and therefore favoured a ban on mercury in products, subject to time-limited exemptions, and extended producer responsibility, especially for personal care products, whose human health effects were significant. In Africa artisanal and small-scale gold mining played a key role in poverty reduction and the instrument should therefore feature mandatory and firm objectives and goals for reducing the use of mercury in the sector and for developing implementation plans to that end. The cost of such plans had to be provided for, along with technical assistance and employment alternatives.

27. She said that another key area for developing countries was the dumping of mercury-containing products from developed countries for disposal, recycling or reuse. The instrument should therefore provide for mercury clean-up programmes, incorporating the polluter pays principle. Illegal transport of mercury was also an area of concern for the region. In all areas it was critical that developing countries should be able to meet their obligations under the instrument without compromising their poverty reduction goals. A robust instrument that obliged donor countries to provide adequate financial support, and a dedicated financial mechanism channelling new and additional resources, were therefore essential, as were capacity-building and technical assistance. She concluded by noting that the region looked forward to hosting the committee's third session in Burkina Faso.

28. Speaking on behalf of the group of Central and Eastern European countries, one representative stressed the need to do everything possible to prevent a recurrence of the tragic consequences of mercury contamination, as seen in Minamata. He said that the region was prepared to continue working constructively on the basis of the draft elements paper and welcomed the suggestion that the diplomatic conference in 2013 should be held in Japan.

29. Speaking on behalf of the group of Asian and Pacific countries, one representative reiterated those countries' commitment to the preparation of a global legally binding instrument to reduce anthropogenic mercury releases to the environment. Given the many sources of mercury, it was important to develop comprehensive control measures within an integrated framework that enabled many countries to participate in the implementation of the measures. Awareness-raising and

knowledge dissemination on the adverse effects of mercury and related issues were important elements of the process. Capacity-building, technology transfer and technical and financial assistance were indispensable for developing countries to participate effectively in attaining the common goal of minimizing global mercury pollution.

30. Major areas of concern for Asia and the Pacific included atmospheric emissions of mercury; mercury use in artisanal and small-scale gold mining; international trade in mercury; mercury use in industrial processes, such as chlor-alkali production; products containing mercury, especially in the health-care sector; affordability of alternatives; long-term storage; mercury-containing waste; and remediation of contaminated sites. The countries of the region hoped that the mercury instrument would be effective, flexible, practical and implementable, and would take into account a number of factors, including the principles and guidelines identified in Governing Council decision 25/5; the need for cleaner technologies; the legitimate priority needs of developing countries; the specific circumstances and priorities of individual countries; and experiences and lessons learned from other multilateral environmental agreements.

31. Speaking on behalf of the Arctic Council, one representative drew attention to the special conditions regarding the fate and impact of mercury in remote Arctic regions with vulnerable ecosystems, including the fact that, although emissions from mercury sources in the region were limited, dietary intake of mercury was high as a result of long-range transport from other regions and bioaccumulation. Mercury from activities in lower latitudes was carried into the Arctic in water and air, a phenomenon that was likely to be exacerbated by climate change, and was biomagnified in the food web, with mercury levels increasing in marine mammals and arctic fish. Mercury levels continued to rise in the region and global action was therefore imperative. The Arctic Monitoring and Assessment Programme had a long tradition of monitoring contaminants in the Arctic and the mercury monitoring programme provided data that were important to understanding the fate of mercury in the region and worldwide. New assessments were currently under way and the results would be available in May 2011.

32. Speaking on behalf of Arab countries, one representative noted the region's commitment to developing a legally binding instrument on mercury. He thanked UNEP for its assistance in convening a meeting in Beirut in November 2010 that had provided the region with an opportunity to consider the draft elements paper. He voiced his appreciation that some of the suggestions made at that meeting had been incorporated into the paper, making it stronger and more incisive. He looked forward to the adoption of a mercury instrument, adding that transfer of technology and a strong and independent financial mechanism would enable countries to reach objectives and comply with their obligations.

33. Following the above statements statements were made by the representatives of individual parties and observers. A number of representatives reported on efforts in their countries to respond to the challenges posed by mercury, several thanking donors for their support for those efforts. Many expressed commitment to the process, with several adding that the moving presentations on the effects of Minamata disease bore testimony to the urgent need for action on mercury. There was broad recognition of the progress made to date, as reflected in the documents before the committee. Those documents were generally seen as providing a sound basis for the negotiations, although a number of representatives said that a significant range of views still needed to be accommodated.

34. Several representatives stressed the social and human health aspects of mercury pollution, in addition to the environmental aspects, pointing to the need for a balanced, comprehensive and robust legally binding instrument. Some mentioned artisanal and small-scale gold mining as an area requiring particular attention, given its complexity, social and economic significance and the large volume of emissions that it generated. Several representatives stressed the importance of dealing with mercury wastes and contaminated sites.

35. Several representatives mentioned the particular needs of developing countries and countries with economies in transition, which already faced a wide range of challenges including economic development, poverty reduction and huge unmet needs for energy. A number of representatives stressed that the principle of common but differentiated responsibilities should underlie the discussions. Several said that developing countries would require financial and technical support, including capacity-building and technology transfer, to enable them to comply with their commitments under the mercury instrument. Some representatives said that the new instrument must have a strong financial mechanism, funded by new, predictable and mandatory resources. Several said that such a mechanism should be modelled on the Multilateral Fund. Another, however, expressed concern at the competition for financial resources that might arise with the establishment of a financial mechanism.

36. Several representatives said that the parties to the negotiations should adopt a flexible approach that recognized the specific needs of individual countries, taking into account their different approaches to the management of mercury. In that regard, one said that a combination of binding and voluntary measures would work best in achieving the parties' overall objectives while accommodating national priorities. One representative stressed that responsible, sustainable use of resources was essential for a country's development, and that a risk-based approach should therefore be used in any programme to reduce demand for and supply of mercury, including with regard to mercury storage, to ensure that the development needs of developing countries were not compromised. Another expressed a preference for a more prohibitive approach with regard to mercury in products than that suggested by the draft elements paper, calling for a general ban subject to specific exemptions.

37. One representative said that the draft elements paper laid too much emphasis on specific measures and that more attention should be paid to overall control and a holistic approach, with policy being given due emphasis in addition to technical facets, in accordance with decision 25/5. A third said that the negotiations should be based on solid information, taking into account scientific, environmental and economic considerations. One representative said that to ensure the efficiency of the negotiating process it was important to take advantage of experiences under other multilateral environmental agreements.

38. Some representatives stressed the importance of an effective compliance mechanism to achieving the instrument's objectives; others expressed agreement, but emphasized the need to ensure that such a mechanism was paired with measures to facilitate compliance, including financial and technical support. One said that, in line with other multilateral environmental agreements, the instrument should incorporate the principles of best available techniques and best environmental practices.

39. One representative, speaking on behalf of two non-governmental organizations, said that the mercury instrument should prohibit mercury-containing vaccines and other drugs, arguing that they posed a known and serious health risk and that alternatives were available.

40. Speaking on the issue of mercury in dental amalgams, representatives of two non-governmental organizations voiced support for enhanced primary and secondary prevention of dental caries to enable the phase-down of mercury-containing restorative materials, including dental amalgam, and the use of best environmental practices for the safe handling and recycling of mercury for at least a generation after phase-down. Another said that the number of dentists that eschewed mercury was ever increasing and offered to share his organization's expertise in mercury-free dentistry with all interested parties. Representatives of two other such organizations said that decisions should be based on sound science and evidence; while research into alternative materials and expanded preventive approaches should continue, current scientific evidence showed dental amalgam to be safe, and it should therefore remain an option because effective alternatives were lacking. Another representative suggested that dental amalgam was a major source of mercury for artisanal and small-scale gold mining and needed to be recognized as such in any effort to resolve mercury issues.

41. A sufferer of Minamata disease said that the disease had not run its course and that the Japanese Government and people, by calling for an ambitious mercury instrument, should ensure that it and diseases like it did not strike again.

### C. Attendance

42. Representatives of the following States participated in the session: Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Benin, Bhutan, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Gambia, Germany, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Mali, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Morocco, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saudi Arabia, Serbia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Turkey, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

43. An observer for Palestine also attended.
44. The following United Nations bodies and specialized agencies were represented: United Nations Industrial Development Organization, United Nations Institute for Training and Research, World Health Organization.
45. The following intergovernmental organizations were represented: Central American Commission for Environment and Development, European Union, Global Environment Facility, International Energy Agency Clean Coal Centre, League of Arab States.
46. The following multilateral environmental agreement secretariats or related bodies were represented: Basel Convention Centre for the South American Region, Basel Convention on the Control of Transboundary Movements of Hazardous Chemicals and Their Disposal, Stockholm Convention on Persistent Organic Pollutants.
47. A number of non-governmental organizations were represented. Their names may be found in the list of participants, which is set out in document UNEP(DTIE)/Hg/INC.2/INF/9.

### **III. Preparation of a global legally binding instrument on mercury**

#### **A. Introduction of the documents pertaining to agenda item 3**

48. The committee began its consideration of the item with a review by the representative of the secretariat of the extensive documentation relevant to the item, which was summarized in paragraphs 6–10 of document UNEP(DTIE)/Hg/INC.2/1/Add.1. Particular attention was drawn to document UNEP(DTIE)/Hg/INC.2/4, which set out the study called for in paragraph 29 of decision 25/5 on various types of mercury-emitting sources and current and future trends in mercury emissions, including the cost and effectiveness of alternative control technologies and measures.
49. Following the secretariat's review the Chair invited questions and general comments on the paragraph 29 study and the other documents.
50. In the discussion that ensued one representative stressed the importance of having sufficient information to allow for balanced and well-informed discussions and decisions. In that context he suggested that there remained much room for completing and updating the documents and that it would be useful to set up contact groups on specific themes of the draft elements of the mercury instrument to identify any gaps in the information needed and to suggest how the secretariat could fill them in updated versions of the documents. Governments, he said, should not make specific proposals on the mercury instrument until any such information gaps were filled. Subsequently another representative, speaking on behalf of a group of countries, reiterated the view that much of the information in the documents before the committee required continuing updating. He also said that all contact groups established during the negotiations should be mandated to discuss financial and technical assistance and social and economic costs along with the other aspects of the draft elements under consideration.
51. Discussion of the paragraph 29 study then followed. Some representatives noted that the emission sources covered in the study accounted for only 51 per cent of emissions and asked whether the report could be supplemented to take into account the other 49 per cent. Others said that the report should include more information on mercury releases to other media such as water and soil. One representative requested that additional details should be provided on cost-efficient methodologies that were being proposed, addressing issues such as their potential effect on trade in years to come. More information on mercury captured by various types of equipment and their producers was also needed.
52. In response the representative of the secretariat clarified that paragraph 29 of decision 25/5 called for a study of mercury emissions to air rather than mercury releases to all media. The secretariat was, however, collaborating with the Joint Group of Experts on the Scientific Aspects of Marine Pollution on the production of a report on mercury releases to the aquatic environment, which it was hoped would be ready by the time of the committee's third session. He also explained that the sectors chosen for inclusion in the study were major industrial sectors for which data were available. Although a small part of the remaining 49 per cent of emissions, such as those from iron, steel and chlor-alkali production, came from such sectors, most came from a large number of very small sources for which few data were available. A report including such sources would be very time-consuming to prepare and probably could not be completed in time for use by the committee, and efforts had therefore been concentrated on four principal sectors.

53. Other representatives said that the document provided the necessary information on the techniques available to reduce emissions to air from key source categories, that it responded well to the request of the UNEP Governing Council in paragraph 29 of decision 25/5 and that it provided a sound basis for the committee's deliberations on emissions of mercury to air.
54. In response to a comment by one representative the representative of the secretariat said that it was beyond the secretariat's mandate under paragraph 29 to compile a list of contaminated sites but that others were carrying out studies on that topic. He suggested that bilateral discussions should be pursued with the Jožef Stefan Institute in Slovenia on the inventory that it was preparing.
55. At the Chair's request, the representative of the secretariat reviewed the development and contents of document UNEP(DTIE)/Hg/INC.2/3, which described draft elements of the mercury instrument. The Chair then invited general comments on the document.
56. One representative stated that the mercury instrument, like the Stockholm Convention on Persistent Organic Pollutants, should take the form of control measures in the body of the instrument plus annexes. Another, speaking on behalf of a group of countries, also argued for that structure, saying that the instrument needed to be dynamic and flexible, with a structure that both assisted national implementation and avoided bureaucratic bottlenecks requiring numerous amendments. One representative said that, while the draft elements paper could be used as the basis for discussions, detailed consideration of key structural elements should be left for later stages in the negotiations. Another emphasized that, as several elements of the mercury instrument would be interrelated, there could be no agreement on its structure until all elements of the instrument had been considered.
57. One representative stated that the instrument required a detailed preamble, recalling discussions to that effect during the regional consultations that had been held in preparation for the current session. The committee also needed to discuss more fully the impact of mercury on human health and the environment. Another representative emphasized that the entire instrument needed to reflect the principles identified in Governing Council decision 25/5. One stated that the document should include detailed scenarios for a possible financial mechanism as discussed during the consultations for his region.
58. The representative of a non-governmental organization said that the instrument envisioned in the document was not sufficient to protect the environment and human health and that scientific evidence supported a far more stringent, ambitious and binding agreement.

## **B. Detailed discussion of the possible elements of the global legally binding instrument**

59. Following the discussion of the documents pertaining to the item the committee agreed to discuss the possible elements of a legally binding instrument, beginning with those presented in document UNEP(DTIE)/Hg/INC.2/3 and structuring the discussion in accordance with the sections of that document. It was reiterated, however, that the draft elements set out in the document served only as a basis for discussion and did not preclude any particular outcome and that there would be an opportunity to propose other elements later in the discussions.
60. The Chair expressed the hope that by the end of the week the committee would have identified three types of key issues. The first would be issues on which representatives had reached substantial agreement and which might be transmitted to a legal group, yet to be established by the committee, which could work intersessionally. The second category would involve issues on which further work outside the plenary meetings, for example in contact groups, might be beneficial during the session. The third category would involve issues in respect of which the committee faced significant challenges in reaching agreement and on which it might request additional information to be made available for its third session.

### **1. Preamble**

61. At the suggestion of the Chair the committee agreed that Mr. Oumar Diaouré Cisse (Mali), a member of the Bureau, would facilitate informal discussions regarding the preamble to the mercury instrument. Subsequently Mr. Cisse reported on the results of those consultations. A written version of his report is set out in annex I to the present report. The committee took note of the report, including in respect of further work to be undertaken on the preamble at future sessions of the committee.

### **2. Objective (draft element 1)**

62. Several representatives said that, as suggested by the secretariat, the draft objective element should be seen as a placeholder pending conclusion of the deliberations on other matters. Others, however, said that some preliminary consideration of the objective was necessary to frame the

subsequent discussions and to gain a common understanding of what the instrument was intended to address. There were a number of suggestions of areas where the objective could be expanded and improved, including through embracing the Rio principles but also by reference to the life cycle approach; through the principle of risk reduction; by reference to the means by which the objective was to be achieved; and by inclusion of more specific aims, for example, relating to stockpiling and illicit trade. One representative said that a short, clear statement was the correct approach. Another said that it was important that the convention should relate only to anthropogenic releases of mercury since natural releases, such as from volcanoes, could not be controlled.

### 3. Definitions (draft element 2)

63. There was general agreement on the importance of accurate definitions for the terms used in the mercury instrument and that it would be necessary to revisit the definitions in the light of later discussions. There was extensive discussion on the text of those definitions that were given, and on what might be included in or omitted from the list of definitions. Some representatives suggested that there were inconsistencies within the definitions themselves, for example with regard to “mercury” and “mercury compounds”, or between the definitions element and other elements. One representative said that annex B to the draft elements paper (UNEP(DTIE)/Hg/INC.2/3), on mercury and mercury compounds subject to international trade and environmentally sound storage measures, referred to in the definition of “mercury and mercury compounds”, included only inorganic compounds and should be expanded to include pharmacological and cosmetic products using mercury. One representative suggested that the list of definitions in draft element 2 could be given some structure by grouping the definitions, for example into policy-related and technical categories.

64. On specific matters related to the definitions, many representatives spoke of the difficulty of defining “artisanal and small-scale gold mining”, given the wide range of activities included within that practice. The use of the word “informally” was considered by many to be limiting and inaccurate, with connotations of illegality. In addition, one representative said that the word “rudimentary” was inappropriate for activities that could in fact be extremely complex. Another said that gender issues needed to be reflected in the definition of the sector, given that over half of the workers were women.

65. One representative enquired about the rationale behind using the figure of 95 per cent concentration of mercury within mercury alloys as part of the definition of “mercury”. Another said that there was a need to consider threshold values for various mercury compounds. One, speaking on behalf of a group of countries, said that care should be taken to ensure that the definition of “mercury-added products” did not create loopholes for some mercury-containing products. Regarding the definition of “primary mercury mining”, one representative suggested that the phrase “mercury-containing ore” should be deleted, as it was too vague.

66. Several representatives said that waste-related terms should be consistent with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. One suggested that it was important to define “hazardous wastes” as they applied to mercury and mercury-containing products.

67. With regard to several definitions, including those related to wastes, there was some discussion as to whether they would be better located within an article on definitions or within the substantive provisions to which they related. One representative noted that several defined terms occurred only within one draft element, and did not need therefore to be removed from their context in a separate list of definitions. In addition, some terms, for example “mercury”, might need to be defined differently according to the context in which they appeared, such as supply and trade.

68. There were several suggestions of further terms that might be considered for definition, including waste-related and storage-related terms; mercury-containing products; various types of emissions and compounds; contaminated sites; and best available techniques and best environmental practices.

### 4. Mercury supply sources (draft element 3)

69. Most representatives who took the floor expressed broad support for the draft element, while offering suggestions for its improvement. Views on timing ranged from immediately on entry into force of the instrument to no set time for elimination. Several representatives said that there should be a ban on exports from primary mining.

70. One representative said that dealing effectively with the supply and trade of mercury was crucial to reducing the amount of mercury in the environment. The draft elements generally limited trade in mercury to allowed uses and required excess mercury to be stored in an environmentally sound manner but did not impose such restrictions on mercury from primary mining, other than to ban its

export. He therefore called for the immediate elimination of primary mining, suggesting that in the long term mercury from all sources should be stored, and mercury supply for allowed uses provided from recycling. A gradual cessation of supply from annex A sources could be considered with a specific timetable and targets that would facilitate mobilization of resources. Another representative said that no new primary mining or expansion of existing primary mining were needed given the widespread availability of alternative supply sources and declining demand. She also suggested that it was not necessary for the element to deal with private mercury stocks, as most mercury came from the other listed sources. She voiced support for paragraph 3 (c) of the draft element while suggesting that broader export restrictions might prove more effective than a restriction for specific sources. The issue of whether paragraph 3 (b) was needed in the light of the obligations created by other provisions of the draft elements paper was also raised.

71. One representative suggested a review of the consequences of and alternatives to banning mercury use in artisanal and small-scale gold mining. Another said that the issue of primary mining should be linked with trade and that the future instrument should decrease the supply of and demand for mercury based on countries' capacities. She stressed the need for information on mercury supply sources. The instrument should provide for studies, especially for developing countries, on those issues and the development of plans of action according to need. Synergies should be ensured between those measures and policies related to poverty reduction at the national level according to Global Compact principle 5, on the effective abolition of child labour, and principle 6, on eliminating discrimination in respect of employment and occupation.

72. One representative, speaking on behalf of a group of countries, emphasized the need for strong provisions regarding all mercury sources. The key objective was to ensure that no new mercury was produced. She suggested that some of the sources set out in annex A should be gradually phased out, with the remaining mercury from those sources considered waste and banned as a supply source. Another representative stressed the need to bear in mind the case of supplies for which no alternatives existed and said that realistic timelines should be set for exemptions for essential uses. Another questioned whether the annex was needed, as it might not capture all supply sources, and said that parties to the instrument should be required to identify all sources at the national level.

73. Some representatives said that export of mercury should be permitted as long as there was demand and no economically viable alternatives available and suggested the use of a prior informed consent procedure with exemptions for specific essential or acceptable uses. Another representative said that the issue of supply could not be considered in isolation, and that export bans should not be rushed into.

74. Several representatives said that developing countries would need technical and financial assistance to meet the obligations proposed in paragraph 3 of the draft element. One said that there should be a general provision with exemptions, adding that it would be difficult to meet obligations to ensure that mercury from the sources listed in annex A was not distributed in commerce for uses other than allowable uses. Another mentioned the burden of reporting, suggesting that it should be harmonized with other reporting procedures.

75. One representative suggested that the discussion of supply should heed the principle that supply followed demand and that it should not be further discussed until the control measures relating to mercury-containing products and manufacturing processes using mercury had been identified. He also said that there were serious economic and legal consequences of closing down primary mines in his country owing to vested rights under existing domestic law.

76. One representative drew attention to the difficulties associated with closing down mining and associated facilities and reiterated the need for assistance to complete the work successfully. Some representatives made reference to a specific project supporting the closure of a primary mercury mine, indicating their continued financial support for the work. One representative cautioned against burdening countries not concerned with mercury mining with unnecessary national legal requirements. She said that the approach to reducing supply should be to reduce demand by reducing use in production processes and trade. She suggested that a reference to environmentally sound management should be included in paragraphs 3 (b) and 3 (d) of the draft element.

77. The representative of a non-governmental organization said that strong provisions relating to supply were needed. Alternatives should be encouraged and the use of mercury discouraged. He voiced support for an immediate ban on mercury from primary mining and the termination of all primary mining within three years of an entry into force of the treaty. He suggested that there would be ample supplies of mercury for future uses especially in view of the phase-out of chlor-alkali plants. He also proposed that mercury as a by-product from natural gas production should be included in the list of sources. Another representative of a non-governmental organization said that to stimulate

affirmative action the terms “ban” or “prevent” should be used in place of “not allow” in the draft element.

78. Responding to a request for clarification on the fate of large stocks of mercury if trade were restricted, the representative of the secretariat reiterated the importance of the linkages between elements. Continued manufacture would be permitted for those products with exemptions. Responding to a question on storage he suggested that all excess mercury should be stored in an environmentally sound manner. While there was no global solution, tackling the issue in the near term would require flexibility. Many Governments had stocks but the term “private stocks” was an effort to take into account significant stocks held by mercury traders.

79. At the Chair’s suggestion, the committee agreed that Mr. Vladimir Lenev (Russian Federation), a member of the Bureau, would facilitate informal consultations on supply issues during the remainder of the session. Subsequently Mr. Lenev reported on the results of those consultations. A written version of his report is set out in annex II to the present report. The committee took note of the report, including in respect of further work to be undertaken on the draft element at future sessions of the committee.

## **5. Environmentally sound storage (draft element 4)**

80. Many representatives said that the issue of storage was extremely important and inherently related to the issues of supply and demand, saying that interim storage projects should be undertaken in the short-term while long-term plans and policies were being developed. Many also emphasized the links between draft elements 4, 12 and 13, and the need for different approaches to commodity mercury and waste mercury. Several representatives said that metallic mercury and mercury compounds marked for allowable uses should be stored in an environmentally sound manner under draft element 4 while other mercury, including mercury from banned sources, should be considered waste to be disposed of in an environmentally sound manner. One representative, however, said that it was important to distinguish clearly between storage and disposal and between interim storage and permanent storage.

81. There was also agreement that mercury as waste should be dealt with in close cooperation with the relevant bodies of the Basel Convention. One representative said that duplication of the provisions of that convention and the work carried out under it should be avoided. She suggested that paragraphs 2 and 3 of the draft element could be deleted as they could overlap with work under the Convention, such as the technical guidelines on mercury. She said that guidance from the Convention on prior informed consent provisions for elemental mercury destined for storage would be helpful and could be requested by the conference of the parties. Another representative suggested that paragraph 4 of the draft element was unnecessary as it dealt with a matter of purely national concern.

82. One representative said that the questions of how and where to store mercury posed a challenge, particularly for developing countries with limited financial and technical capacities. It was agreed that there was a need for clear guidance on environmentally sound storage based on best available techniques and best environmental practices, and it was suggested that parties should develop national action plans for safe storage. Many said that the guidance should be developed in close cooperation with the Basel Convention. One representative welcomed the projects on storage, including activities under the storage and supply partnership area of the UNEP Global Mercury Partnership, but noted that experience with mercury storage was limited and said that further discussion of the subject was needed, especially as it related to developing countries. Several representatives suggested that mercury could be stored in stabilized forms such as mercury sulphide and that work on sequestration methods for transforming mercury to its solid form should be undertaken.

83. Many noted the need to take into account the differing circumstances of countries, in particular developing countries. It was therefore suggested that the provisions of the element and the guidance that it called for should be flexible and adaptable. Many noted that technical and financial assistance would be vital for developing countries, such as in setting up interim storage facilities, and that regional or subregional storage solutions might be required as some countries lacked the capacity to develop adequate storage facilities; in the absence of viable national or regional solutions, exports of mercury for storage would be necessary.

84. One representative said that limits should be established on how long supplies from mercury stocks could be made available. Storage of mercury was a key element and might be preferable to safe management options under draft element 12. Another representative said that the storage element should take into consideration Rio principles 7–10, 12 and 13.

85. The representative of a non-governmental organization said that, as large volumes of mercury would result from the decommissioning of chlor-alkali plants, mining and oil and gas extraction, the private sector had an important role to play in storage and its financing. Safe storage of mercury in the short term was possible at reasonable costs while long-term solutions were being explored. Existing facilities where temporary storage could take place should be identified even prior to the entry into force of the instrument. Another representative of a non-governmental organization called for verification of safe storage practices by regional expert teams. A third said that all regions should have storage capacity to avoid inexpensive mercury becoming available for inappropriate uses such as for artisanal and small-scale gold mining. She advocated the polluter pays principle and Rio principle 10, on transparency and the provision of public information. She also noted a need to have a definition of the term “environmentally sound storage”.

#### **6. Mercury wastes (draft element 12)**

86. Many representatives noted the importance of the issue and the value of discussing wastes in a thematic cluster with storage and contaminated sites during the current session. Many voiced support for covering all types of mercury wastes in the instrument’s waste provisions. A number noted the potential value of distinguishing between elemental mercury destined for an allowable use, mercury not designed for such use and considered to be waste, other types of wastes containing mercury and, possibly, other categories. There was discussion of the need to define types of waste and threshold values in identifying wastes containing mercury and the need to undertake risk analyses. Many representatives noted specific aspects of the draft element with which they agreed or with regard to which they would seek improvements and it was broadly acknowledged that discussions would need to continue on those and other issues.

87. Many representatives highlighted the importance of using provisions already available through the Basel Convention and the need to avoid duplicating those provisions. Many others pointed out that, while appropriate cooperation and coordination with the Basel Convention would yield benefits, the Convention was a separate agreement with its own purpose, history, operations and parties. In their view it was necessary for the instrument to identify measures necessary to complement those already existing under the Convention and to ensure comprehensive coverage of mercury as waste and wastes containing mercury. In that regard, the need to update the technical guidelines on environmentally sound management of mercury waste was identified.

88. Several representatives welcomed the background paper on the interaction between the Basel Convention and the future instrument (UNEP(DTIE)/Hg/INC.2/16), which contained important information on how the Convention could inform the instrument, but suggested that the paper would need further work.

89. Several representatives said that additional provisions were required to deal with transfers of waste mercury between countries. A number said that such transfers should be permitted for the purpose of environmentally sound disposal, particularly where regional disposal facilities might be the best solution, such as in the case of developing countries and small island developing States lacking adequate capacity and countries where vulnerability to natural disasters would militate against the siting of disposal facilities. Several representatives underscored the importance of using the Basel Convention prior informed consent procedures for such transfers. One, however, said that the instrument should ban all exports of mercury waste to ensure that developing countries were not burdened by mercury waste from developed countries and that waste would be dealt with in an environmentally sound manner. Another suggested that the instrument should allow for the recovery of mercury from higher-concentration mercury waste, so that it could be placed into sound storage or made available for allowed uses. Several noted the importance of dealing with the export of obsolete products containing mercury to developing countries and taking into account the unique circumstances of small island developing States.

90. Many representatives emphasized the importance of providing sufficient financial and technical assistance, capacity-building and technology transfer to developing countries and countries with economies in transition to enable them to tackle waste issues in an environmentally sound manner and comply with the provisions of the future instrument. Several suggested that if the waste provisions in the instrument were to be legally binding then legally binding financial arrangements should also be made. Many representatives said that the conference of the parties to the future instrument should adopt requirements, taking into account the work on guidelines on the environmentally sound management of mercury waste under the Basel Convention and in close cooperation with its Conference of the Parties. It was suggested that the conference of the parties to the instrument could adopt an additional annex specifying requirements for the storage of waste metallic mercury;

additional requirements on the handling, collection, transport and disposal of mercury waste; and low mercury content thresholds.

91. Representatives of two non-governmental organizations cautioned against an over-reliance on the Basel Convention when drafting or implementing a new international instrument on mercury as the relevant provisions in the Convention might not be sufficiently strong or closely tailored to the instrument's needs. One voiced support for prohibiting waste shipments from developed to developing countries and for placing other restrictions on free movement of waste so as to prevent recovered mercury from being diverted to hazardous uses such as artisanal and small-scale gold mining. Both called for the provision of financial and technical assistance to developing countries and countries with economies in transition to tackle the issue of waste, particularly waste that originated as products in developed countries. One said that incorporating extended producer responsibility into the financial mechanism could greatly aid the allocation of financing to take on the waste issue.

92. One representative of a non-governmental organization suggested that determining mercury thresholds in waste should be handled by the mercury instrument in cooperation with the Basel Convention. Another suggested including in the instrument provisions on non-party trade analogous to those of the Basel Convention.

## **7. Contaminated sites (draft element 13)**

93. Many representatives said that the taking of steps to identify, assess, contain and remediate sites contaminated by mercury and mercury compounds was important to protecting human health and the environment. There was general agreement regarding the interlinkages between the waste, storage and contaminated site issues.

94. Many representatives voiced support for the general approach to dealing with contaminated sites described in the draft elements paper, while recognizing that more work would be necessary during the committee's current and future sessions to develop specific elements. Others suggested stronger and mandatory measures, arguing that the current draft contained important omissions. Some representatives were of the opinion that the development of guidance on best available techniques and best environmental practices might not prove the most effective approach, in part because contaminated sites might contain unique characteristics. Many suggested according priority to sites that posed the greatest threat to human health and the environment.

95. Many representatives called for technical and financial assistance to be provided to developing countries to deal with contaminated sites, including in terms of identification, assessment, management and remediation. Methodologies were needed to assess the risks associated with such sites. It was also necessary to develop reference values for contaminated sites that would allow countries to develop concentration limits for contaminated soil, including for the remediation of sites for future use.

96. The representative of a non-governmental organization, speaking on behalf of several such organizations, said that the Minamata tragedy had taught important lessons for the protection of human health and the environment from mercury pollution at contaminated sites. In particular, action should be taken to deal with contaminated sites immediately upon their identification, to determine and tackle the ultimate source of the contamination, assess and respond to the immediate and long-term health impacts, raise public awareness, implement liability and compensation initiatives in accordance with Rio principle 13, and clean the site in a timely manner.

97. Following the discussion of draft element 13, the committee established a contact group, chaired by Ms. Abiola Olanipekun (Nigeria) and Ms. Kateřina Šebková (Czech Republic), to consider and report back in plenary meeting on: the value of distinguishing between elemental mercury and wastes containing mercury; the possible implications of distinguishing between elemental mercury designated as waste and that destined for an allowable use; the need for, and possible elaboration of, definitions relating to waste; the need for elaboration of terms, processes, guidance to supplement those already applicable under the Basel Convention; the need for threshold values for the mercury content of wastes; and the modality and timing of developing guidance on the environmentally sound treatment of mercury waste.

98. The committee agreed that the group would also consider draft elements 4 and 12.

99. Following the contact group's discussions its co-chair reported that the group had concluded that elemental mercury should come within the scope of the provisions of the instrument relating to both waste and storage.

100. The group had reached tentative agreement on definitions of commodity mercury and waste mercury, subject to possible revision depending upon the outcome of the discussions on the preferred approach to regulating products under draft element 7, and based on the draft element in its current form. The agreed definition of commodity mercury was “elemental mercury that is intended or destined for an allowable use under the mercury instrument”. The agreed definition of waste mercury was as follows: “Elemental mercury waste is a substance that is disposed of or is intended to be disposed of or required to be disposed of by provisions of national law”. There was also a common understanding that permanent storage was a disposal operation under the Basel Convention.

101. Regarding the possible implications of distinguishing between elemental mercury and waste mercury, the group had noted that one reasonable approach might have been to have commodity elemental mercury covered by element 4 and waste elemental mercury covered by draft element 12. There was agreement on a need to define clearly the scope of draft elements 4 and 12, but differing views on how to do it.

102. The group had made good progress on the definition of “mercury wastes” and other definitions related to mercury-containing wastes, but further clarification and discussion were needed. The group cited the Basel Convention definition of mercury wastes, which was as follows: “Mercury wastes are substances or objects which are disposed of or are intended to be disposed of or required to be disposed of by provisions of national law”.

103. With regard to the relationship between the mercury instrument and the Basel Convention, there was agreement that there should be no conflict or duplication between the two instruments; that the instrument should be consistent with and should complement the Convention; and that the development of any guidelines or thresholds under the mercury instrument should be done in consultation with the Convention for use under both instruments.

104. Concerning the scope of draft element 13 and its sufficiency for addressing contaminated sites, the group found that in principle the scope was sufficient but there were differing views on how to resolve the relevant issues. The issue of mandatory versus voluntary requirements under the element was raised.

105. Other ideas and issues that remained unresolved included the obligations of non-parties to the Basel Convention under the mercury instrument; the transition from classification as a waste under the Convention to commodity mercury that could be employed for an allowable use under the mercury instrument; and harmonization of Customs codes to enhance the enforcement of legislation on transboundary movements of mercury waste. The group had agreed that there was a need for further discussions at future sessions of the committee and requested that the preliminary outcome of the discussions should be considered at those sessions.

#### **8. International trade with Parties in mercury or mercury compounds (draft element 5)**

#### **9. International trade with non-Parties in mercury or mercury compounds (draft element 6)**

106. The committee agreed to consider draft elements 5 (international trade with Parties) and 6 (international trade with non-Parties) together.

107. Many representatives endorsed the approach set out in the draft elements paper.

108. One representative, speaking on behalf of a group of countries, said that measures to restrict trade would be a necessary complement to measures on supply. She expressed concern that allowing exports to non-parties would not guarantee environmentally safe storage or related monitoring or reporting. Several said that if supply were not controlled illegal trade would take place and suggested that the draft trade element should be revisited following the committee’s discussion of control measures. Many representatives expressed support for a system of export notification and written consent to ensure traceability of trade for metallic mercury and mercury compounds as commodities, while stressing that such measures should not duplicate related provisions under 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. Many representatives advocated the establishment of a prior informed consent procedure similar to that of the Rotterdam Convention, with one noting the benefits of providing for a single annual export notification and suggesting that reference to the appointment of national authorities to implement that procedure should be included in paragraph 2 of the draft element. One representative said that there was a need to establish threshold values for mercury concentration in traded goods. Other representatives questioned the need for such a system between parties. Many representatives highlighted a need further to examine the implications of banning the use of mercury in artisanal and small-scale gold mining, as such a move might risk stimulating illegal trade.

109. One representative suggested that draft elements 5 and 6 and paragraph 3 of draft element 3, related to mining, should be discussed in combination. Several representatives said that a reduction in mercury use in processes such as vinyl chloride monomer production could lead to increased national mercury stocks.

110. One representative said that mercury for artisanal and small-scale gold mining should be listed under uses that were not allowed as, if such uses were allowed, the abundant amounts of inexpensive mercury likely to be available as a result of the control of mercury-using products and processes would be a significant negative factor that would undermine efforts to promote mercury-free techniques. It would also be difficult to ensure that the obligations on parties with regard to safe storage and allowable uses would be enforceable for non-parties. If it was not possible to ban trade with non-parties a streamlined procedure should be developed to meet those concerns.

111. Several representatives said that an immediate ban on trade in mercury would affect the fragile artisanal and small-scale gold mining sector and encourage illegal trade, suggesting that the sector should be encouraged to reduce its reliance on mercury and move towards environmentally safe methods, which would require a transition period and technology transfer.

112. Many representatives called for a ban on trade in mercury except in cases of environmentally sound storage or disposal – with some representatives saying that exporters should be required to demonstrate adherence to guidelines – and for allowable uses. One argued that such a ban would provide an incentive to make the transition to mercury-free processes and that provisions regarding trade with non-parties should cover metallic mercury and mercury compounds, mercury wastes and mercury-containing products. In addition, a certification scheme should be developed for non-parties to ensure that mercury was imported only for environmentally sound storage, as was the case under the Stockholm Convention. He noted too that care should be taken not to contravene rules under the World Trade Organization concerning non-discrimination of trade between countries.

113. One representative suggested that some mercury exports might be necessary for environmentally sound storage, especially where small countries were concerned. Another said that the special situation of transit countries should be taken into account, while a third said that a globally harmonized system of labelling should be introduced for trade in mercury.

114. One representative said that trade with non-parties should be allowed, provided that it met parties' requirements and did not compromise the goal of environmental protection, and could be modelled on provisions under other multilateral environmental agreements. One representative said that trade in mercury and mercury compounds should be allowed where mercury-free alternatives did not exist or required time to implement. Some representatives suggested that if a party complied with provisions related to import under paragraph 1 in the draft element then an export notification as provided for in paragraph 2 might prove redundant. One suggested that the provisions in paragraph 3 might be covered under draft element 9.

115. One representative said that trade between parties for appropriate disposal operations under the Basel Convention should be permitted to facilitate the recovery of mercury for allowable uses and long-term storage. That said, however, import by countries not party to that convention should be allowed only with written consent, taking into account the relevant provisions of the Convention. Similar provisions should apply to trade with non-parties. Annex B to the instrument should include exemptions for mineral products that contained naturally occurring trace quantities of mercury compounds. Export to non-parties should be permitted once written consent had been received that the import was only for allowable uses and according to provisions under the Basel Convention. Some representatives said that provisions under the element should focus on export control firmly based on national and regional legal frameworks. One representative highlighted concerns regarding trade in end-of-life products that might contain mercury that could be designated as wastes. Another recommended that the mercury instrument should feature an annual export notification system similar to that of the Rotterdam Convention.

116. The representative of a non-governmental organization described the particular concerns of small island developing States regarding the effects of mercury on vulnerable populations and ecosystems. She called for a life-cycle approach to trade in mercury and for imports to be permitted only for mercury-free products, highlighting problems associated with tracking mercury from products to wastes. The representative of another non-governmental organization endorsed a ban on trade except for allowable uses or sequestration from the global market and also expressed support for restrictions on mercury for artisanal and small-scale gold mining. He said that trade with non-parties should be banned because the control and monitoring of the fate of mercury traded with non-parties would be difficult.

## 10. Mercury-added products (draft element 7)

117. In the discussion of draft element 7, representatives expressed support for both the positive-list approach (as taken in the draft elements paper) and the negative-list approach, with several voicing interest in a hybrid approach combining characteristics of both. In addition, a number of representatives saw advantages in more than one approach, and expressed their willingness and intention to gather further information before deciding on the best approach.

118. One representative favouring a positive-list approach argued that it was more practical, accessible and cost-effective, and would encourage a swifter decrease in mercury use in products. He suggested that the approach required more specificity in annex C on the products to be included in various categories and on the types of exemptions. Another representative said that a positive-list approach focused on the most important issues and concentrated efforts on major use categories, whereas a negative-list approach led to investment of efforts with minimal environmental or health benefits from smaller product categories. He also suggested the inclusion of an annual amendment arrangement that would allow the addition of further product categories over time. Two representatives said that the positive-list approach would assist ratification by parties as it avoided compliance issues and the management of minor or obscure products.

119. Those favouring a negative-list approach argued that the elimination of mercury-added products could be achieved more swiftly with a general ban in place. One representative proposing such an approach said that the general ban should be accompanied by limited exemptions for agreed essential uses only providing for international standards and limits on mercury content. Those would be time-limited and phased out as alternatives were developed and became available. He suggested that that approach was supported by the fact that there were alternatives to most uses; it would also send out a strong message that the use of mercury was undesirable, and would be an incentive for the development of further alternatives. In addition, a general ban would reduce the risk of development and marketing of new mercury-added products. A mechanism should be established to evaluate the continued need for the use of mercury in exempted products, applicable to both the positive-list and negative-list approaches.

120. One representative, speaking on behalf of a group of countries, proposed a hybrid approach, saying that the positive-list approach made inadequate allowance for a transitional period for the use and sale of mercury-added products and did not reflect the differing capacities of developing countries, including small island developing States. He explained that, under a hybrid approach, annex C would contain three categories: mercury-added products for which there were alternatives, which would be banned under the instrument; mercury-added products that would be subject to a transition period, especially for developing countries; and mercury-added products for which there were no alternatives, which would be classified as essential-use products. The system was intended to be dynamic, with products moving over time from the final category to the first, based on sound technical evidence from recognized bodies. The same approach would be adopted for annex D to the instrument. As under other conventions, parties were free to take more accelerated and stringent action on an individual basis, according to their circumstances. Several other parties expressed interest in the hybrid approach.

121. Several representatives spoke of the needs of developing countries with regard to provisions for mercury-added products, saying that the phase-out of mercury-added products would require careful consideration of the availability of viable and affordable alternatives and the impacts on various economic sectors. The voluntary efforts that many developing countries had already made in reducing mercury consumption should be recognized. Several representatives said that, for any system of dealing with mercury-added products, developing countries required extensive support, including technical assistance, capacity-building and additional funding. One representative, speaking on behalf of a group of countries, outlined the challenges faced by those countries, for example with regard to the illegal dumping of harmful or end-of-life products, and said that the preferred solution was a ban on all mercury-added products other than those subject to time-limited exemptions, supported by a clear prior informed consent procedure. Some representatives highlighted the problems faced by small island developing States, given their limited space and facilities for disposal of toxic products, and the vulnerability of their marine ecosystems. For such States, regulations on the import and export of mercury-added products and associated wastes needed to be carefully framed.

122. One representative, speaking on behalf of a group of countries, said that the goal of the draft element should be to phase out mercury-added products as rapidly and completely as possible, saying that the ultimate goal was to phase out the use of mercury in all products; that where alternatives existed the phase-out should occur as swiftly as possible; that exemptions should be allowed in some technical and economic circumstances but should be limited in number, scope and duration, and should be easily implemented; and that a ban on imports from non-parties should be considered. In

addition, a compulsory periodic review mechanism should be developed. Furthermore, a system of export notifications and written consent was needed for mercury-added products, but information was required to ensure that expenditure on the system was commensurate with the potential benefits.

123. A number of opinions were expressed as to what should be included in annex C. One representative said that with a positive-list approach the current five categories were adequate. Another said that there should be a fully participatory procedure for expanding annex C to include further categories. Representatives discussed the best way to ensure that annex C remained dynamic as mercury-added products were phased out or new products added. One representative said that there was a need for further technical discussion to clarify the situation regarding products containing very small amounts of mercury, and the criteria for their inclusion in an annex. Other representatives echoed the need for additional technical analysis to ensure accurate compilation of the components of annex C. A range of mercury-added products for possible inclusion in annex C was discussed.

124. One representative said that there was a need for more research into and development of alternatives to mercury-added products. Another said that there was a need to harmonize the provisions of a number of multilateral environmental agreements and policies that promoted the use of compact fluorescent lamps.

125. A prominent theme was the relevance of the market mechanism to control mercury-added products. One representative said that a total ban on mercury-added products, with designated exemptions, was the most effective way to encourage the market to offer mercury-free products to consumers. Another representative, speaking on behalf of a group of countries, advocated an extended producer-responsibility approach, which would make mercury less economically desirable. Some representatives said that proper labelling of mercury-added products, with information on the type and quantity of mercury or its compounds, was needed to protect consumers and ensure their rights under national law.

126. Representatives discussed the application of the prior informed consent procedure in various instances, including the movement of mercury-added products from one party to another, and between parties and non-parties. One representative suggested that export notification and consent arrangements could take place once per calendar year in the interests of administrative efficiency. Another spoke of the need for stronger surveillance and Customs regulation. One representative, supported by others, said that such procedures could be bolstered by a guarantee that producers would assume responsibility for disposing of end-of-life mercury products, which would act encourage the development of alternatives. Several representatives said that it was important to ensure harmonization with the provisions of other chemicals-related conventions and to learn from their methodologies for dealing with particular issues. One representative suggested that importing and exporting countries should have specific responsibilities relating to the import and export of mercury-containing products; in particular, countries consenting to imports should indicate that they would be responsible for all necessary follow-up to ensure the environmentally sound disposal of imported products.

127. Representatives of non-governmental organizations on dental amalgam expressed support for a reduction in the use of amalgam in dentistry while acknowledging that its elimination was not feasible. Research into and development of alternatives to dental amalgam was suggested. Representatives of other non-governmental organizations advocated inclusion of other products in the list of mercury-added products, including medical products such as vaccines, topical antiseptics, soaps, skin lightening creams, biocides and pesticides.

#### **11. Manufacturing processes in which mercury is used (draft element 8)**

128. There was general agreement that draft element 8 was important, and that it was closely linked to draft elements 7 and 14. There was a divergence of views on whether to employ a positive-list or a negative-list approach.

129. Many representatives said that it was important to phase out the demand for and use of mercury in industrial and other processes, as they could affect human health and the environment, but there was some discussion over how swiftly it should be done. Several representatives called for a gradual and flexible approach, especially where alternatives were not readily available; many others said that the instrument should explicitly state the time frames for phase-out, and one representative, speaking on behalf of a group of countries, argued for close cooperation with industry bodies in setting phase-out deadlines. Many representatives added that extensions of the phase-out periods should be granted sparingly and only in cases in which they were truly justified. Several representatives called for a strategic approach to the deployment of alternative technologies, where they were available, given their often high cost and potentially serious social and economic consequences.

130. Many representatives said that the processes listed in annex D – chlor-alkali production and vinyl chloride monomer production – should be phased out as a matter of priority, and that best available techniques should be applied to minimize mercury emissions until that had been done. One stressed the importance of including phase-out timescales. Several others, however, said that no feasible non-mercury alternative processes for vinyl chloride monomer production existed in one country and that it should be the subject of a separate acceptable-use clause. Many felt that additional items should be considered for inclusion in annex D over the course of the negotiations and that a mechanism should be designed for adding new items to the annex. One representative called for the prohibition of chemical and polymer production using mercury as a catalyst.

131. Many representatives endorsed the provision prohibiting new manufacturing processes using mercury, and several proposed that it should be extended even to processes that used less mercury, contrary to paragraph 2 of draft element 8. Many representatives voiced support for the preparation of national action plans for the reduction and elimination of mercury in annex D processes. One representative said that such plans should encompass mercury cell chlor-alkali and vinyl chloride monomer production. Another suggested that parties should have two years after the entry into force of the instrument to prepare their national action plans.

132. Several representatives said that the environmentally sound storage of mercury during any exemption period should be obligatory. One said that preventing the sale of surplus mercury from closed or converted facilities for other than allowed purposes under the mercury instrument should be a high priority; another, however, recommended including stocks from vinyl chloride monomer production in annex A.

133. In response to a question, the representative of the secretariat clarified that the prohibition in paragraph 1 of draft element 8 and the national action plan in paragraph 3 applied only to annex D processes, while the requirement to not allow new facilities using mercury extended to all processes.

134. The representative of a non-governmental organization said that some producers were voluntarily committing themselves to closing down mercury cell chlor-alkali production and that sufficient time should be allowed for them to complete what was a costly and time-consuming conversion. He also said that site-specific circumstances should be taken into account and that conversion requirements under the instrument should be based on locally achievable time frames that could be agreed with Governments and incorporated into national action plans.

135. The representative of another non-governmental organization said that mercury-free catalysts for vinyl chloride monomer production should be a high research priority and that mercury-cell sodium methylate production should be phased out. He also said that parties should be prohibited from exporting equipment used in processes that had been phased out to non-parties to avoid increased demand by non-parties.

136. The representative of a third non-governmental organization said that parties should be obliged to implement – not merely prepare – national action plans for reducing and eliminating the use of mercury in annex D processes. She also called for an inventory of industries using mercury-based processes and emissions data. She further noted that the date for disallowing the introduction of new manufacturing processes or facilities in which mercury was intentionally used should be the date of the diplomatic conference at which the instrument was adopted rather than its entry into force.

## **12. Artisanal and small-scale gold mining (draft element 9)**

137. All the representatives who took the floor voiced support for the inclusion in the instrument of provisions to reduce mercury use in artisanal and small-scale gold mining. Numerous representatives emphasized the significant amount of mercury released into the environment from such activities. Many representatives whose countries contained extensive artisanal and small-scale gold mining sectors also highlighted the significant social and economic issues involved in the sector and the importance of taking those issues into account when developing the instrument.

138. Many representatives outlined efforts in their countries, either supported by them financially or under way as part of the UNEP Global Mercury Partnership, that had reduced mercury use in artisanal and small-scale gold mining. One said that the experience that his country had acquired through its involvement in funding projects in the sector had demonstrated the value of involving all stakeholders, legalizing and regulating the sector and subsequently taking specific steps, including the provision of incentives, to reduce and eventually eliminate the use of mercury in such mining. Another drew attention to the Global Forum on Artisanal and Small-scale Gold Mining held in Manila from 7 to 9 December 2010 and its outcomes.

139. Numerous representatives expressed the view that the instrument should contain specific mandatory obligations to reduce mercury use in such mining, although some flexibility would also be necessary to take into account important differences in national and regional circumstances. Others voiced support for a mix of mandatory and voluntary obligations, while some suggested largely voluntary provisions. Several said that specific prohibitions on the most environmentally damaging practices should be included in the draft element, while many opposed the inclusion of import restrictions related to mercury destined for artisanal and small-scale gold mining. A significant number of representatives stressed the need for consensus on key definitions.

140. Many representatives said that the instrument should contain requirements for countries to develop detailed national action plans to reduce releases of mercury from such mining. Many also voiced support for the provision of financial and technical assistance to develop and implement those plans. A good number suggested initiating such activities in the near term, even before the instrument had entered into force, to accelerate efforts to reduce mercury use in the sector.

141. The provision of adequate financial and technical assistance and related capacity-building activities was seen by many representatives as necessary to assist countries to reduce mercury use in the sector. Potential areas requiring such assistance included the development of national action plans; awareness-raising; training; regional and global information exchange; equipment purchases; research and development; strengthening regional cooperation; studying the environmental and human health impacts of the practice; and ensuring access and a successful transition to alternative techniques, processes and technologies. One representative noted that financial assistance need not be provided by Governments alone.

142. Many representatives said that the instrument should focus on reducing the use and release of mercury in the sector while not impeding economic development. Some of those representatives also noted that such efforts would require a flexible regulatory approach and period of gradual reductions for some countries until cost-effective and readily available alternatives were universally available.

143. The representative of the United Nations Industrial Development Organization (UNIDO) outlined its involvement in the artisanal and small-scale gold mining partnership area under the UNEP Global Mercury Partnership, highlighting the recent development of new technical guidelines and the importance of targeting worst practices. The need to tackle those large and unnecessary sources of releases had been agreed upon at the Global Forum on Artisanal and Small-scale Gold Mining.

144. Several representatives of non-governmental organizations emphasized the importance of reducing mercury use in the sector and voiced support for the inclusion in the instrument of binding but flexible control requirements, national action plans and obligations on donor countries to provide adequate financial and technical assistance. One highlighted evidence that important and successful examples of reduction programmes existed that could be replicated and expanded, as discussed at the Global Forum. One emphasized that the instrument should not further marginalize the sector by, for example, restricting trade, as such efforts would prove counter-productive. He called for a holistic approach that would take into account environment, social and justice issues.

145. Following those discussions, the committee agreed to establish a contact group, to be chaired by Mr. Felipe Ferreira (Brazil) and Mr. Donald Hannah (New Zealand). The contact group would consider and report back on the issues discussed in plenary meeting, in particular the appropriate scope of the artisanal and small-scale gold mining element, whether some or all of the provisions should be mandatory or voluntary, the role of national action plans, the definition of artisanal and small-scale gold mining in the instrument, and whether the instrument should contain restrictions on trade in mercury for use in artisanal and small-scale gold mining.

146. Subsequently, the co-chair of the contact group reported that the group had enjoyed the active participation of representatives from many countries, all regions with significant artisanal and small-scale gold mining activity, UNIDO and several non-governmental organizations.

147. He said that the group had recognized that there was no consensus among technical experts on the definition of artisanal and small-scale gold mining but had agreed that words such as “informal” and “rudimentary” were not apt for the instrument. It had also discussed whether the definition could include reference to processes in which mercury was used.

148. Some representatives had expressed support for mandatory trade restrictions. Others had argued that diversion and illegal trading were already a main source of mercury for the sector and that trade restrictions would be ineffective, difficult to comply with and provide further incentives for illegal trade. Some representatives had argued for an approach based on transition periods and exceptions but it had been pointed out that trade provisions relating to the sector would have to be

consistent with draft elements 5 and 6 and that discussions under all three elements would have to be concluded in a coordinated manner.

149. Regarding scope, the group had discussed whether the element should have a temporal scope, its operation limited to parties having artisanal and small-scale gold mining in their territories at the entry into force of the mercury instrument. Considering that legalizing and regulating artisanal and small-scale gold mining was key to the implementation of the draft element, the group had also discussed whether the committee might consider replacing the word “reduce” with “regulate” in the chapeau of paragraph 1.

150. It had been suggested that the provision referring to recycling needed further clarification based on the discussions on waste and that it might be counter-productive in the draft element on artisanal and small-scale gold mining. It had also been discussed whether the committee should consider excluding activities that were not significant, such as recreational mining.

151. There was agreement that a number of issues, some already covered to some extent in the draft element, should fall within the scope of the element on artisanal and small-scale gold mining. They included national action plans; a prohibition or other control measures to discourage the use of mercury; a prohibition on specific practices such as whole ore amalgamation, open burning and cyanide use after mercury;<sup>1</sup> support for development and attention to the social and economic aspects of artisanal and small-scale gold mining; technical assistance and capacity-building; promotion of best practices and sound measures; promotion of research on alternatives; awareness-raising (including with regard to standards for mercury-free gold); and financial assistance.

152. Recognizing that the draft element was currently premised on voluntary action, the group was open to the possibility that some provisions should be mandatory, particularly in respect of national action plans, which would be important to the implementation of the draft element. As some countries might not need action plans specific to artisanal and small-scale gold mining, however, it had been suggested that the national implementation plans referred to under draft element 21 might include artisanal and small-scale gold mining activities. It was suggested that UNEP, UNIDO and the Global Mercury Partnership might provide valuable references and guidelines for the structure of such action plans, and that such plans might include elements such as minimum requirements and time frames.

153. Subsequently, the co-chair of the contact group said that the group had completed its discussions as far as possible pending further negotiation of other elements of the instrument.

### **13. Atmospheric emissions (draft element 10)**

154. Many representatives, one speaking on behalf of a group of countries, stressed the importance of dealing with the major anthropogenic sources of atmospheric mercury, with a number calling the issue one of the most important to be addressed in the mercury instrument. Several outlined efforts made in their countries to reduce mercury emissions.

155. Several representatives, one speaking on behalf of a group of countries, expressed support for the general approach of the draft element, noting that many techniques, including abatement measures, were available to reduce mercury emissions in key sectors. At the same time, further work was necessary to refine and in some cases strengthen particular provisions. One representative said that paragraph 1 of the draft element should be amended because it was impossible to eliminate all atmospheric emissions.

156. Many other representatives said that the proposed control measures were not sufficiently flexible to allow for important differences in national circumstances, as required by the principle of common but differentiated responsibilities, including with regard to natural resource endowments, energy infrastructure, levels of development, population size, geography and other issues. In that regard some representatives argues that measures should be voluntary, particularly concerning coal-fired power plants.

157. Many representatives suggested changes to the source categories in annex E. Several, one speaking on behalf of a group of countries, advocated additional categories, including artisanal and small-scale gold mining, iron and steel production facilities, aluminium smelters and oil and natural gas facilities. One, speaking on behalf of a group of countries, said that the instrument should also encourage parties to consider appropriate measures for reducing emissions from residential coal burning, but clarified that she was not proposing that best available techniques should be applied to the activity. Several other representatives suggested specifying which types of non-ferrous metal

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<sup>1</sup> The secretariat, in consultation with the co-chairs, inserted the phrase “after mercury”. This is consistent with the report of the Global Forum on Artisanal and Small-scale Gold Mining.

production were covered. One said that only lead, zinc and copper should be listed. Some suggested placing industrial boilers in their own category; or restricting the application of the categories to facilities of a particular size. A few representatives opposed listing oil and natural gas facilities. Several others detailed the technical and economic obstacles that their countries faced in making near-term reductions in mercury emissions from coal-fired power plants, stating that only flexible and voluntary measures should apply to such plants. One representative suggested that emission limit values should be established. Another suggested that it was up to each country to determine those levels.

158. One representative, speaking on behalf of a group of countries, proposed measures to encourage regional strategies for reducing emissions. General support was expressed regarding the provisions pertaining to best available techniques, best environmental practices and the development of goals and national action plans, among others, but there were a number of suggestions for revising them, including to require best available techniques and best environmental practices for existing facilities. Some representatives noted that existing installations might require transition periods for the adoption of new technologies. One suggested that time lines should be mandatory and fixed but another said that they should be flexible and based on individual country situations. One representative added that best available techniques should be applicable to all installations no matter the amount of mercury emitted. Another said that there should be general guidance on best available techniques and best environmental practices similar to that developed under the Stockholm Convention.

159. One representative, speaking on behalf of a group of countries, said that the guidance on best available techniques should also include information on emissions benchmarks, which, among other things, should be used by significant emitters in preparing their action plans and fixing their reduction goals. Another representative stressed that best available techniques could not be implemented without adequate financial assistance and should be voluntary, taking into account national capacities and the age of installations. A third representative stressed the need for financial assistance and sufficient time to implement best available techniques and several suggested that co-benefits of other pollutant controls would be cost-effective. One representative stressed the importance of mandatory targets for existing facilities and said that there was a need for flexibility in timelines and targets and how to achieve them.

160. A few representatives, one speaking on behalf of a group of countries, said that the reports required under the draft element should be submitted directly to the secretariat rather than to an implementation committee.

161. Many representatives underscored the importance of providing financial and technical assistance, capacity-building and technology transfer to developing countries, countries with economies in transition and small island developing States to enable them to reduce atmospheric emissions of mercury and comply with the instrument. Several suggested the addition of a provision detailing the terms of such assistance to facilitate discussion of the issue in detail.

162. One representative stressed the importance of developing transparent and scientifically sound inventories of sources and emissions, including provisions to review those inventories to achieve further progress. It was suggested, however, that only those countries having significant aggregate mercury emissions should maintain such inventories. Several representatives, one speaking on behalf of a group of countries, said that the definition and purpose of the term "significant aggregate mercury emissions" required clarification and further review, one adding that countries listed as having such emissions should represent the great majority of global emissions. A few representatives opposed the concept as being contrary to the principle of common but differentiated responsibilities and suggested deleting the relevant paragraphs, while another suggested a study on emissions from all countries to enable the identification of which countries would be considered to have significant aggregate mercury emissions from particular source categories.

163. One representative suggested that the secretariat should develop a study on cost-effective and environmentally friendly options for reducing and eliminating mercury emissions.

164. Several representatives, one speaking on behalf of a group of countries, underscored the related and important issue of mercury emissions to water and land and requested a further study so that documents could be prepared regarding those issues similar to those prepared on atmospheric emissions. One representative suggested that there was a need for greater balance between draft elements 10 and 11.

165. The representative of a non-governmental organization recalled the effects of the long-range transport of mercury on the environment and people, especially those relying on subsistence and traditional diets. The representative of another non-governmental organization said that existing

facilities should employ best available techniques if they continued to operate after a transitional time limit and advocated accountability through continued monitoring. He suggested that additional information should be gathered on mercury as a by-product of oil and natural gas installations.

166. Another representative of a non-governmental organization said that best available techniques and best environmental practices should be developed by an expert group and adopted by the conference of the parties and be applicable throughout the life cycle of mercury. She said that those techniques should be updated as additional sources were identified, adding that there should be no differentiation between countries with significant aggregate mercury emissions and others to ensure that financial support was available to all. The representative of another non-governmental organization suggested that crematoriums should be included in annex E.

167. The representative of a cement industry association provided information on industry initiatives to inventory and reduce mercury emissions and expressed support for the development of best available techniques and best environmental practices for controlling emissions from cement kilns. He said that the cement industry was committed to contributing to the establishment of a sector-specific mercury partnership that would continue work initiated in the paragraph 29 study.

168. Many representatives suggested that the issues raised by the draft element required further discussions in a contact group and during future sessions of the committee. The committee agreed that following discussion of draft element 11 a contact group would be established to discuss issues related to draft elements 10 and 11.

#### **14. Releases to water and land (draft element 11)**

169. Many representatives expressed support for the general approach of the draft element on releases to water and land, the development of best available techniques and best environmental practices and the source categories listed in annex F. One representative suggested that dental amalgam and non-ferrous metals should be added to annex F and that consideration should be given to requiring the installation of amalgam separators at dental practices, requiring the use of best available techniques and developing related guidelines. Another representative called for the application of best available techniques and best environmental practices similar to those developed under the Stockholm Convention.

170. One representative, speaking on behalf of a group of countries, advocated the development of national implementation plans promoting best available techniques and best environmental practices, where economically feasible, with targets based on national inventories. He said that the issues should be covered with flexibility, as many of the region's countries lacked installed capacities to permit the reduction and control of mercury and its compounds.

171. One representative, noting that releases of mercury from artisanal and small-scale gold mining were difficult to control and quantities hard to establish, said that mercury use should be eliminated gradually and that financial and technical assistance should be provided where necessary. Another representative said that paragraph 3 of the element should include capacity-building.

172. Some representatives said that it was necessary to include releases to land and water in the mercury instrument and to develop related guidance but suggested that duplication might result from including it in a separate element. One representative suggested that all emissions should be included under one element.

173. The representative of a non-governmental organization said that best available techniques should be required for all new sources and phased in within a set time frame for existing sources, and that a single set of guidelines should be developed for all releases. The representative of another non-governmental organization suggested, however, that, as best available techniques might vary for releases to air, water and land, it would be appropriate to cover releases to water and land separately from emissions to air. He said that, in addition to dental amalgam, disposal facilities receiving wastes from manufacturing and combustion processes listed in annexes D and E should also be included in annex F. In addition, the draft element should apply also to mercury compounds and should state that parties should take action in conformity with guidelines on best available techniques.

174. Many representatives suggested that the issues raised by the draft element required further discussions in a contact group and during future sessions of the committee. The committee therefore established a contact group, chaired by Mr. Wijarn Simayacha (Thailand) and Mr. John Roberts (United Kingdom of Great Britain and Northern Ireland), to discuss issues related to draft elements 10 and 11.

175. Following the contact group's discussions, its co-chair reported that although not all issues had been resolved there had been good progress in understanding the issues and a sound basis established

for further discussion. The group had agreed that a definition was needed in the mercury instrument of best available techniques and suggested that the definition in the Stockholm Convention would be a good model from which to begin. There had been considerable discussion of whether best available techniques should be promoted or required for existing facilities. Those opposed to requiring them had argued that it could be too costly and difficult given that national circumstances and existing installations varied widely.

176. Concerning significant aggregate mercury emissions some had said that requiring the establishment of national goals would be inconsistent with the achievement of sustainable development and the provision of energy. One representative, speaking on behalf of a group of countries, had suggested that it might be appropriate to define as “significant” aggregate mercury emissions exceeding 10 tons per year. Using that volume for the definition would mean that the emissions of 26 or 27 parties, representing 85 per cent of total emissions, would be deemed to be significant.

177. For annex E, the group had said the definition of non-ferrous metals should be elaborated to list those metals to be included. Some members of the group had considered that oil and gas extraction should be covered by annex E while others had said that those activities did not give rise to significant mercury emissions and should therefore be left out. The group had agreed that it would be useful to have additional information on the issue. The group had touched on the issue of artisanal and small-scale gold mining but had said that further discussion on whether it should be included in annex E should take place following agreement on other articles related to the issue. The group had also considered whether to deal with residential coal burning.

178. The group had suggested that it was appropriate to maintain the draft text in the element on releases to land and water and to examine the matter further at a later date following consideration of issues related to the management of wastes from products and processes to avoid duplication and gaps.

179. The group had said that contaminated sites should not be included in annex F as they were more difficult to identify and might be better dealt with in a specific related element. One representative had considered that technical assistance, technology transfer and capacity-building were crucial provisions to be included under both that element and the element on air emissions.

180. The committee took note of the report and agreed to consider emissions and releases to water and land further at its subsequent sessions.

#### **15. Allowable-use exemptions (draft element 14)**

181. There was general agreement that allowable-use exemptions were needed for processes that would be listed in the annexes to the instrument; one representative, however, speaking on behalf of a group of countries, argued that they should apply primarily to developing countries. There was also general agreement that the rules for registering exemptions, the procedure and criteria for granting extensions and the number and duration of exemptions and extensions should be clearly defined and would require further discussion.

182. There was disagreement on whether the general approach to exemptions should be based on a negative-list or a positive-list approach, the latter being the approach taken in the draft element. One representative said that the approach taken would of necessity depend on that taken in draft elements 7 and 8 and that it was therefore premature to make any firm decisions on exemptions.

183. One representative, speaking on behalf of a group of countries, said that exemptions should be established before the first meeting of the conference of the parties. Another said that no exemption should be automatic upon registration, but should rather be decided upon by the conference of the parties based on a report justifying it. Another endorsed the idea that a party should make an initial report, which could be useful to provide a baseline for the evaluation of any request for an extension.

184. Many representatives said that extensions should be limited, and several said that only one extension should be allowed. Views on how long exemptions should last varied from as little as possible to five years with five-year extensions. One representative suggested that a key criterion for deciding whether to grant an extension should be whether sufficient financial resources and technology transfer had been made available.

185. One representative, speaking on behalf of a group of countries, said that the provision of paragraph 9 foreclosing new registrations for an exemption if no party was registered for it would be difficult to implement. Another suggested that the operation of the provision should be deferred for parties who acceded to the instrument within a few years of its entry into force.

186. Many representatives said that there was a need for a robust, compulsory but cost-effective mechanism for reviewing exemptions.

187. Responding to questions, the representative of the secretariat clarified that it had left the exemption period undefined and left open whether extensions would be one-time or multiple as a matter to be decided by the committee. The last sentence of paragraph 7 referring to the conference of the parties taking decisions on extensions at intervals of X years was intended to allow the review of all requests for a given exemption at the same time.

188. The representative of a non-governmental organization said that the exemption process should be transparent, taking into account whether a party was taking specific steps to reduce mercury use and ensure environmentally sound disposal, that some exemptions should have set end dates and that exemptions should terminate once alternatives became available.

189. The representative of another non-governmental organization said that exemption periods should take into account that some products provided great energy efficiency through the use of very small amounts of mercury and that time was needed to develop alternatives. He noted that a race for who could demand lower limits sooner would reduce the efficiency, reliability and lifetimes of such products and that it was important for States to undertake appropriate regulation to maintain legal certainty and level playing fields to avoid that scenario. In addition, occupational health and safety should be kept in mind and take-back and recycling schemes were important not only to avoid small amounts of mercury being released into the environment but also for the recovery of other reusable products.

190. The committee agreed that Ms. Gillian Guthrie (Jamaica) and Ms. Nina Cromnier (Sweden) would facilitate informal consultations during the remainder of the session on the interrelated issues relating to draft elements 7, 8 and 14. Subsequently Ms. Cromnier reported on the results of those consultations. A written version of her report is set out in annex III to the present report. The committee took note of the report, including in respect of further work to be undertaken on the elements at future sessions of the committee.

## **16. Financial resources and mechanisms (draft element 15)**

191. There was some discussion of the most appropriate financing mechanism for the instrument, with expressions of support for both a stand-alone model based on the Multilateral Fund and for the Global Environment Facility (GEF) as a source of funding. Several representatives said that there were virtues in both and sought more information to clarify further their advantages and disadvantages. Two representatives suggested that the mechanism could also comprise a number of instruments associated with various institutions. Recognizing the strong link between financial assistance and compliance, a number of representatives suggested that the establishment of a financial mechanism must be accompanied by a compliance mechanism. Several representatives suggested that the form or entity to operate the financial mechanism should be established in the mercury instrument rather than by the conference of the parties at its first meeting. Two representatives said that the establishment of a new financial mechanism should be a precondition to entry into force of the mercury instrument. One representative said that discussions on the financial mechanism should be principle-based and make use of lessons learned.

192. One representative said that no decision on the selection of a financial mechanism could be made until agreement had been reached on criteria for making such a selection. Several representatives suggested such criteria, saying that the mechanism should be synergistic with the overall international environmental governance architecture and complementary to existing mechanisms; that it should ensure the broad sharing of responsibility, mobilizing resources from parties, non-parties and the private sector; should be sustainable, ensuring adequate resources on a long-term basis; should be effective in implementing projects and programmes; should be responsive to the conference of the parties; should focus on measures related to the obligations under the mercury instrument; and should be able to leverage significant investments. Several representatives said that a comparative analysis of possible mechanisms should be undertaken taking into account the criteria.

193. Many representatives said that, to implement any new instrument effectively, developing countries or countries with economies in transition would require significant support, including capacity-building, financial resources, technical assistance and technology transfer, with several stressing the importance of the principle of common but differentiated responsibilities. Most said that a stand-alone mechanism modelled on the Multilateral Fund would be best suited to providing such support. One representative, speaking on behalf of a group of countries, said that a capacity and needs assessment should be undertaken to identify priority areas for assistance. She said that a Multilateral Fund-style mechanism would give parties more control over the allocation of funds to parties and

would be more transparent, equitable and responsive to the needs of developing countries and countries with economies in transition. Lastly, she said that further study was required of the role that regional centres might play in assisting in the implementation of the instrument. Another representative echoed the view that a financial mechanism should be under the parties' control. One representative said that it would be necessary to evaluate the effectiveness of any mechanism established. Another, speaking on behalf of a group of countries, said that the linkage between regulatory measures and mobilization of the resources needed for implementation was of central importance, including to enable countries to develop effective national implementation plans. Some representatives suggesting a stand-alone fund said that experience had shown GEF not to be an effective financial mechanism for developing countries.

194. One representative, speaking on behalf of a group of countries, recalled that decision 25/5 had explicitly recognized that the ability of developing countries and countries with economies in transition to implement some legal obligations effectively under the instrument would depend on the availability of capacity-building and technical and adequate financial assistance and said that GEF would be a suitable mechanism to satisfy that requirement. GEF was already working on the issue and could exploit synergies through its financing for related areas such as biodiversity and climate change. She stressed that there was no merit in a stand-alone fund if it was not linked to compliance or incremental costs, and expressed concern about the time and costs involved in establishing a new mechanism for one substance. More information was required on how a free-standing mechanism would function to enable an accurate assessment of its merits. In addition, detailed deliberation on the various models would only be possible once a clearer picture emerged of which provisions of the instrument were likely to engender a need for financial assistance. One representative said that the establishment of an effective financial mechanism should be linked with the entry into force of the instrument.

195. One representative said that it was the shared goal of all parties to ensure that the resources available were most effectively applied. All countries would have to mobilize their own resources to the extent possible, with the private sector playing an important role. It was recognized, however, that some donor countries were better placed to make voluntary contributions to meet the incremental cost of measures that would bestow global benefits. The great variations in domestic capacity needed to be taken into account when considering where the limited resources available could be employed most effectively. Another representative said that all countries accepted that an effective response to the mercury problem would involve application of their own resources; there nevertheless remained a need for a financial mechanism to ensure the mobilization of further resources; an independent mechanism was most likely to achieve that and to enable implementation according to the conditions and realities of individual countries. He stressed the importance of responding to the mandate of Governing Council decision 25/5 on capacity-building and technical and financial assistance and said that immediate measures were needed to support developing countries in such activities as formulating national inventories.

196. Several representatives stressed the role of the private sector as a source of finance for the instrument, including through public-private partnerships. One representative drew attention to the polluter pays principle and extended producer responsibility as incentives for industry to meet its obligations under the new instrument. Another said that a long-term reduction in mercury pollution depended upon the willingness of industry to fulfil its responsibilities and engage in relevant initiatives such as cost-recovery schemes.

197. Several representatives underlined the importance of evaluating how a mercury financing mechanism fitted in with the broader agenda for financing the sound management of chemicals and wastes. The co-chairs of the third meeting of the consultative process on financing options for chemicals and wastes, which had recently taken place in Pretoria, South Africa, updated the committee on the progress of those consultations. One representative pointed out that mercury management could take advantage of co-benefits of other activities and said that the efficiency of existing environmental schemes on issues such as air pollution and climate change should be taken into account in deciding on the scale of a financial mechanism for the mercury instrument. He also argued strongly against the creation of a new mechanism, saying that it would entail the establishment of a new secretariat and additional overhead costs, and said that contributions to any mechanism should be voluntary.

198. One representative suggested that in preparation for the committee's third session the secretariat should undertake a further analysis of how financial mechanism options might achieve specific aims, for example with regard to responsiveness to the needs of parties under the instrument, compliance, mobilization of resources from a broad donor base, ease of replenishment, access to funding for projects and synergies with other components of the chemicals and wastes cluster.

199. The representative of UNIDO said that GEF had already supported a pilot project on artisanal and small-scale gold mining under the third GEF replenishment and that, under the current GEF cycle, a window had been opened specifically for the development of mercury projects. He noted that until the committee concluded its negotiations GEF provided one of the few options for multilateral assistance for mercury projects.

200. The representative of GEF noted that \$15 million had been allocated for pilot projects to reduce mercury use. Furthermore, it was expected that additional contributions would be leveraged from other parties to allow a doubling or tripling of the resources dedicated to piloting projects on mercury. A readjustment of funding for the fifth replenishment had made an additional \$5 million available for chemical products, and GEF had decided to put those funds towards the implementation of mercury projects. The intention was to cover as many of the issues to be discussed by the committee as possible, namely, the reduction of mercury use in products and industrial procedures; the reduction of mercury use and exposure risks in artisanal and small-scale gold mining; the improvement of environmentally friendly storage capacities; the reduction of atmospheric emissions; the assessment of data and scientific information at the national level; and the management of waste and contaminated sites. The GEF secretariat was working closely with its implementing agencies, including UNEP and UNIDO, on the rapid implementation of pilot projects in those areas.

201. The representative of a non-governmental organization said that, for financial resources to be adequate and predictable, donor countries would need to be obligated to provide financing under the provisions of the mercury instrument. In addition, if access to funding were linked to compliance with many of the voluntary measures, including those relating to large sources of mercury emissions such as artisanal and small-scale gold mining, would not be eligible for financing. It was also important that the instrument should provide privileged access to the financial mechanism for least developed countries and small island developing States, which could, for example, take the form of assistance in the development of funding proposals or relaxed application of the mercury release control measures.

202. The representative of another non-governmental organization endorsed the idea of a dedicated fund similar to the Multilateral Fund, but said that even with a dedicated fund the instrument would require a mix of financial mechanisms to achieve its objectives. Furthermore, an interim funding source would be needed to finance action plan development and mercury use and release reduction activities before the instrument came into force. The effectiveness of whichever financial mechanisms were included in the instrument would need to be rigorously evaluated on a periodic basis, preferably using performance indicators developed by the conference of the parties. It was important that the private sector should assume its fair share of financial responsibility in achieving the instrument's objectives, even within the developing world. Accordingly, well-financed private-sector entities such as utilities, chemical companies and product manufacturers should not be eligible for the limited resources available for the instrument, no matter where they were located.

#### **17. Technical assistance (draft element 16)**

203. Several representatives, one speaking on behalf of a group of countries, said that technical assistance would be needed by developing countries. One representative said that technical assistance should be strengthened, another that it should be effective, sustainable in the long term and cost-efficient. One representative, speaking on behalf of a group of countries, suggested that the word "country" should be deleted from the reference to "developed-country Parties" since non-country parties also provided technical assistance for mercury-related projects. She further noted that technical assistance measures were a cornerstone of cooperation between developed and developing countries and were essential to building capacity for effective compliance with and implementation of the instrument. One representative welcomed communication from developing countries on the types of assistance that they felt were most effective and on whether they had any institutional preferences. Another representative said that cutting-edge technologies led to reliable results and partnerships between countries that had the necessary technology and those that needed to carry out the work were critical.

204. While recognizing that technical assistance from developed countries to developing countries was very important, many representatives said that the provision of technical assistance should not be limited to that type of assistance. One representative, speaking on behalf of a group of countries, emphasized that GEF could play an important role in financing capacity-building within its mandate and another suggested including United Nations organizations, such as UNEP, UNIDO and the United Nations Institute for Training and Research and non-governmental and private organizations as sources of technical assistance, along with the Basel Convention and Stockholm Convention regional centres, so as to benefit from their technical expertise. Another representative asked whether the private sector could play a part in providing technical assistance by creating training centres to help

countries to maintain compliance with the mercury instrument. One representative recommended that the mercury instrument should have a provision akin to paragraph 2 of article 12 of the Stockholm Convention, which stated that “the Parties shall cooperate to provide timely and appropriate technical assistance”.

205. One representative, speaking on behalf of a group of countries, welcomed the reference in draft element 16 to cooperation at the regional and subregional levels, which had proven to be useful and should be promoted. Another said that technical assistance should be considered at the regional level, mentioning a project under way in his region to quantify annual mercury use country by country.

206. Several representatives, one speaking on behalf of a group of countries, said that it was crucial to build synergies with efforts under the Basel, Rotterdam and Stockholm conventions at every opportunity in providing technical assistance under the new instrument. In that regard, several representatives said that the specific needs of each country needed to be taken into account and noted that the Basel and Stockholm conventions had significant experience of dealing with the needs of Latin American and Caribbean countries in implementing those conventions, including carrying out awareness-raising activities, which was why it was important to include regional centres under technical assistance.

207. One representative, noting that the importance of technology transfer had been recognized in a number of important instruments and resolutions, including General Assembly resolutions 2997 of 15 December 1972 and 3436 of 9 December 1975, Chapter 34 of Agenda 21, Governing Council decision SS.VV/1 of 15 February 2002, the Plan of Implementation of the World Summit on Sustainable Development and the Bali Strategic Plan for Technology Support and Capacity-building, said that the mercury instrument should feature a separate article on technology transfer.

#### **18. Implementation committee (draft element 17)**

208. There was general consensus on the need for a mechanism for promoting implementation and determining compliance, but there was also agreement that significant work remained before agreement could be reached on the draft element. A number of representatives, including two speaking on behalf of groups of countries, expressed general support for a mechanism that was flexible and facilitative. Several representatives, including one speaking on behalf of a group of countries, said that an implementation committee should be established within the instrument itself, while others representatives suggested leaving the committee’s creation to the conference of the parties.

209. A number of representatives, including one speaking on behalf of a group of countries, acknowledged that, while the provision of financial and technical assistance was linked to the implementation of the instrument, the provision of external financing should not be viewed as a general condition of compliance. Others said that the draft element should explicitly state that compliance with the obligations of the instrument by developing-country parties and parties with economies in transition was dependent on the provision of adequate financial and technical assistance, capacity-building and technology transfer.

210. Two representatives, one speaking on behalf of a group of countries, said that the draft element should assist implementation and compliance, be based on the principle of common but differentiated responsibilities and be flexible. One also advocated the inclusion of a flexible approach that could include both binding and voluntary measures and mechanisms to reflect the possibility that developed-country and developing-country parties could have different and specific obligations or timetables with regard to controlling mercury.

211. One representative expressed disagreement with the broad mandate given to the committee in the draft element and argued for more limited and specific responsibilities, suggesting that the element should specify that the committee members should be appointed with regard to the principle of equitable geographic representation. Another representative said that the draft element should be based on a comprehensive and balanced view of all factors related to compliance, including financial and technical assistance.

212. One representative, speaking on behalf of a group of countries, said that the implementation committee and mechanism for financial assistance should be given equal weight in the instrument and that their development by the committee should proceed at an even pace. Another said that the issue of compliance was not limited to draft element 17 but rather should be reflected throughout the entire instrument. Consideration should thus be given to how countries could comply with each provision, as it was developed, and how such compliance could be verified.

213. The committee agreed that Ms. Kerstin Stendahl (Finland) and Mr. Damaso Luna Corona (Mexico) would facilitate informal consultations on issues related to draft elements 15–17.

Subsequently Mr. Luna Corona reported on the results of those consultations. A written version of his report is set out in annex IV to the present report. The committee took note of the report, including in respect of further work to be undertaken on the elements at future sessions of the committee.

- 19. Information exchange (draft element 18)**
- 20. Public information, awareness and education (draft element 19)**
- 21. Research, development and monitoring (draft element 20)**

214. The committee agreed to consider elements 18–20 together.

215. There was consensus that effective information exchange, awareness-raising, public education, research and development and monitoring were integral to the long-term success of the instrument. Many representatives mentioned the cross-cutting nature of the draft elements. Some also said that the provisions were connected to other aspects of the instrument, such as compliance and technical and financial assistance. There was agreement that the draft elements were a solid starting point but further discussions were necessary.

216. With regard to information exchange, several representatives, one speaking on behalf of group of countries, said that further work was needed to define, clarify, develop and perhaps remove some concepts in the draft element, including the designation of national authorities and the concept of unintentional sources. One representative said that the draft element should include specific references to artisanal and small-scale gold mining and that the alternatives referenced in paragraph 18 (c) should be economically viable. One representative, speaking on behalf of a group of countries, expressed support for the provisions on confidential information.

217. The representative of Japan drew attention to his country's historical experiences and development of scientific expertise in addressing mercury contamination and its impacts on human health and the environment, noting that his country was prepared to play an active role in exchanging information. In that spirit, a publication entitled "Lessons from Minamata Disease and Mercury Management in Japan" had been distributed to all parties and observers.

218. Many representatives noted the great importance of effective awareness-raising and education efforts to inform the public of the dangers associated with mercury pollution, especially with regard to those most at risk of exposure to mercury or particularly vulnerable to its effects. One representative, speaking on behalf of a group of countries, advocated locally targeted consumer awareness campaigns on issues such as mercury levels in fish, cosmetics and other products, the effects of mercury exposure and steps that could be taken to reduce particular risks.

219. One representative, speaking on behalf of a group of countries, welcomed the inclusion of non-governmental organizations in the draft element and requested an additional paragraph, based on similar language in the Stockholm Convention, on public access to information on new releases of mercury.

220. One representative said that subparagraph (b) should refer to the World Health Organization. Another underscored the value of integrating public information, awareness and education efforts under the mercury instrument with similar efforts under way under the Basel, Rotterdam and Stockholm conventions.

221. Several representatives said that the draft element on research, development and monitoring was of considerable importance to the provisions on effectiveness evaluation. Several representatives offered specific suggestions for amending the draft element, including by inserting references to artisanal and small-scale gold mining; making mandatory the monitoring and reporting of mercury levels in environmental media; including efforts to improve risk analysis related to mercury exposures; and deleting or altering particular paragraphs. Several representatives said that the monitoring provisions should be coupled or coordinated with those under the Stockholm Convention. Several emphasized the need to continue efforts to harmonize monitoring methods and data at both the regional and global levels. One representative enquired about the ability to distinguish between mercury emitted from natural sources and that emitted from anthropogenic sources, asking whether, if it were difficult, parties could rely on the monitoring envisaged under subparagraph (b) as a method for evaluating the effectiveness of the instrument. Another representative highlighted his country's efforts to improve a mercury emission toolkit that countries could use to prepare emissions inventories, its active research and monitoring programme on mercury transport and fate and its willingness to share its experiences in those areas.

222. Several representatives of non-governmental organizations outlined how such entities were particularly well equipped to assist with public education and awareness-raising as a result of their

expertise in relevant issues and their affinity with local cultures, languages and practices. Such organizations also often possessed, as demonstrated in the past, the ability to conduct important and relevant research related to the instrument. One representative said that the provisions on information exchange should ensure that relevant scientific information was updated in a timely manner and that it included information from the private sector. A clearing-house mechanism should be developed to assist in disseminating information on mercury, especially to the most vulnerable populations, with information provided to the public in accessible formats and languages. Another representative highlighted his organization's work to change public paradigms regarding dental care and reduce the demand for amalgam through enhanced preventive care.

## **22. Implementation plans (draft element 21)**

223. Many representatives said that the development and submission of national implementation plans had played a useful role in the implementation of other conventions. For the mercury instrument, several representatives, including one speaking on behalf of a group of countries, said that the development of national implementation plans should be voluntary. Such flexibility was appropriate in the light of significant differences in national circumstances with regard to mercury and would preserve resources for implementation activities in countries in which such plans were not truly necessary. Another representative said that the preparation of national implementation plans should be mandatory. Others expressed support for delaying detailed discussions of national implementation plans until the instrument's control obligations were better developed, with one saying that it was important to avoid redundant or counter-productive provisions given that issue-specific national action plans were under consideration as part of the discussion on processes, emissions to air and artisanal and small-scale gold mining.

224. One representative, speaking on behalf of a group of countries, said that countries should be encouraged to develop implementation plans before the instrument's entry into force and welcomed the availability of resources for such plans under the fifth GEF replenishment period. One representative said that there were potential synergies with other conventions and initiatives in the chemicals and wastes cluster with regard to preparing national implementation plans. Another said that it was necessary to allow parties flexibility regarding the content and priorities of their plans in addition to the time frames for their development and submission. He identified a variety of issues requiring more discussion, including interrelations between implementation plans and compliance and financial and technical assistance,

225. The representative of a non-governmental organization said that the development and submission of national implementation plans should be mandatory and, consequently, explicitly eligible for financial and technical assistance. Based on experience gained with the Stockholm Convention, mandatory provisions would also enhance the prospects for both broad ratification and more effective implementation of the mercury instrument.

## **23. Reporting (draft element 22)**

226. Many representatives underscored the importance of including reporting provisions in the mercury instrument. One stated that all reporting obligations should be mandatory. Several representatives, including one speaking on behalf of a group of countries, said that it would be necessary to draft the reporting requirements so that they did not create undue administrative and financial burdens, avoided duplication and took advantage of potential synergies. In that context suggestions were made to coordinate and harmonize, where feasible and appropriate, the reporting requirements of the mercury instrument with those of existing conventions, potentially including the Basel, Rotterdam and Stockholm conventions.

227. While it was widely observed that the final terms of the reporting provision would depend on the contents of other aspects of the instrument, a number of suggestions were made regarding potential additions to the list of information that parties would report, including information on progress in reducing releases to land and water; the implementation of best available technologies to reduce atmospheric emissions; experience with technical assistance; stockpiles; and artisanal and small-scale gold mining. One representative said that there was a need for clear, precise and purposeful reporting provisions related to specific obligations under the instrument.

228. Representatives of two non-governmental organizations expressed support for mandatory and comprehensive reporting provisions, noting that timely and accurate reporting was necessary for monitoring and improving the instrument's effectiveness. Suggestions included additional reporting requirements on releases to land and water and other matters, earlier and more frequent reporting and the possible coordination and improvement of reporting provisions and analysis with other entities such as environmental conventions and Customs unions.

**24. Effectiveness evaluation (draft element 23)**

229. Many representatives expressed support for the inclusion of effectiveness evaluation in the instrument. Several representatives, one speaking on behalf of a group of countries, said that the provisions should be linked to those developed for other aspects of the instrument, including reporting, monitoring and compliance. Several said that they favoured creating formal links with the mechanisms for monitoring and effectiveness evaluation under the Stockholm Convention to promote effectiveness and synergies and reduce costs. One suggested using language similar to paragraph 2 of article 16 of the Stockholm Convention. Another emphasized that the evaluation procedure should not be financially burdensome to the parties or the financial mechanism.

230. Many representatives expressed support for the further development of the information sources that would be used to evaluate the effectiveness of the mercury instrument, including additional scientific and monitoring data and compliance information and goals established in national implementation plans, among others. Several representatives stated that evaluations of the performance and impact of the financial mechanism and provision of technical assistance should be part of the effectiveness evaluation. One representative, speaking on behalf of a group of countries, stated that the conference of the parties would need to develop specific criteria and indicators for use in the evaluations. One representative suggested that the review should begin eight years after the date of entry into force of the instrument. Several representatives said that consideration should be given to the establishment of a harmonized global monitoring plan to ensure that comparable, cost-effective monitoring data were obtained to provide adequate global coverage.

231. The representative of a non-governmental organization said that an evaluation of the effectiveness of the instrument should be conducted on the basis of available information; the evaluation should involve developing countries and countries with economies in transition by ensuring participation in monitoring programmes and data collection, for which capacity-building was essential. She suggested that, once the instrument was in place, global monitoring programmes featuring the participation of public stakeholder groups should be established for determining mercury levels in humans and fish and for assessing whether the instrument had succeeded in reducing mercury content in the environment and in populations relying on fish consumption. She also suggested that pollutant release and transfer registers were a good means of gathering information on mercury releases, particularly in developing countries and countries with economies in transition, which might lack other data on national mercury sources.

232. In response to a request for clarification the representative of the secretariat said that the intention in drafting subparagraph (b) of draft element 20, on research, development and monitoring, had been to provide for the monitoring of contamination in all environmental media, especially biotic media such as fish and marine mammals, but not sources of mercury pollution. With regard to paragraph 1 (c) of draft element 22, on implementation plans, he noted that the implications of missing the deadline for transmitting national implementation plans within one year were dependent on whether those plans were mandatory or voluntary. The draft elements paper set out the provision as being voluntary but that was a matter for the committee to decide.

233. The committee agreed that Ms. Noluzuko Gwayi (South Africa) and Mr. Daniel Ziegerer (Switzerland) would facilitate informal consultations on draft elements 18–23. Subsequently Ms. Gwayi reported on the results of those consultations. A written version of her report is set out in annex V to the present report. The committee took note of the report, including in respect of further work to be undertaken on the elements at future sessions of the committee.

**25. Conference of the Parties (draft element 24)****26. Secretariat (draft element 25)**

234. The committee agreed to consider draft elements 24 and 25 together.

235. There was general support for the draft elements as they stood. Several representatives, however, said that further consideration should be given to paragraph 4 of the draft element on the conference of the parties. Several representatives, one speaking on behalf of a group of countries, welcomed the reference to enhanced cooperation and coordination with secretariats of other chemicals and wastes treaties in draft element 25. One representative said that given recent developments in respect of synergies between the Basel, Rotterdam and Stockholm conventions it was not sufficient to leave enhanced cooperation and coordination to the conference of the parties upon the instrument's entry into force. Others said that it was premature to discuss the issue until it was clear how the instrument might overlap with other multilateral environmental agreements. One representative recalled that at its first session the committee had called for a background document on the issue and said that further discussion could take place once that document had been prepared.

236. One representative said that draft elements 24 and 25 should be revisited once agreement had been reached on all other draft elements to ensure that appropriate institutional arrangements were in place. Another said that the provision for selecting a new secretariat in paragraph 3 of draft element 25 should be considered at a later stage, once the final form of the instrument was known. One representative suggested that UNEP should function as the secretariat for the instrument. Another proposed that a finance committee should be established.

**27. Settlement of disputes (draft element 26)**

237. One representative said that a provision for non-binding reconciliation in the event of an unresolved dispute was acceptable, although the draft element as it stood required further review. Another said that the purpose of conciliation needed clarification. In response to a question as to the applicability of the dispute system to regional organizations, the representative of the secretariat said that, in accordance with the statutes of the International Court of Justice, only parties were permitted to submit disputes to that body.

**28. Amendments to the Convention (draft element 27)**

**29. Adoption and amendment of annexes (draft element 28)**

238. The committee agreed to consider elements 27 and 28 together.

239. One representative said that, given the experience of other conventions in the chemicals and wastes cluster, it was important to ensure that the provisions governing the entry into force of amendments to the instrument were clear. In that context one representative, supported by others, noted that the provisions on ratification, acceptance or approval of amendments were similar to those of the Basel Convention. The latter had proved to be open to various interpretations and had led to a long-standing difference of opinion among parties to the Basel Convention over whether that convention's so-called Ban Amendment had been ratified by a sufficient number of parties to enter into force.

240. Some representative said that procedures for amendments to annexes should be simple and streamlined to allow timely adjustment in response to scientific progress and advances in technology, for example with regard to lamps. Another said that, whatever the nature of the instrument, the future would bring possibilities for reducing further anthropogenic emissions of mercury and that to make full use of those possibilities the parties should consider establishing a scientific committee to play an advisory role.

241. There was some discussion of whether a majority vote was acceptable for the adoption of amendments where agreement was not possible by other means, with several arguing in favour of decision-making by consensus only. One representative suggested consideration of a provision contained in some agreements that amendments could be offered only after a specific time period, for example five years, following the instrument's entry into force. Some representatives noted that the procedures for the adoption of amendments under the instrument were subject to the provisions of their national treaty legislation.

**30. Right to vote (draft element 29)**

242. The committee had no comments on draft element 29.

**31. Signature (draft element 30)**

243. The committee had no comments on draft element 30.

**32. Ratification, acceptance, approval or accession (draft element 31)**

244. Some representatives, including one speaking on behalf of a group of countries, called for the inclusion in the instrument of a paragraph similar to paragraph 4 of article 25 of the Stockholm Convention, allowing a party to declare that an amendment only came into force for it upon deposit of its instrument of ratification, acceptance, approval or accession with respect thereto. One such representative said that such a provision would allow parties to take the actions necessary under domestic law to ratify any amendments to the instrument.

245. One representative suggested that the matter of compliance was central to a new instrument, and should be built into the current element by requesting signatories to make non-binding declarations at the time of signing the instrument in which they identified the national measures that they had taken to enable their compliance with the instrument, for example through legislative or institutional actions.

**33. Entry into force (draft element 32)**

246. One representative expressed the view that that the mercury instrument should not enter into force until 50 parties had ratified, accepted, approved or acceded to it; another argued for a lesser number of parties, such as 30.

**34. Reservations (draft element 33)**

247. One representative, acknowledging that the draft text on reservations was merely a placeholder, said that it was premature to decide that the new instrument would not allow reservations. Another said that there was a contradiction between not allowing reservations and allowing, under draft element 27, amendments to be decided by vote. In response to a question about whether the Vienna Convention on the Law of Treaties prevented the inclusion of an element prohibiting reservations, the representative of the secretariat said that the Vienna Convention provided rules to fill gaps where treaties did not address particular issues explicitly; where parties had adopted explicit provisions, however, those provisions would prevail. Indeed, article 19 of the Vienna Convention specifically acknowledged that parties to a treaty could not make reservations if reservations were prohibited by the treaty.

**35. Withdrawal (draft element 34)**

248. One representative endorsed in general the approach taken in the draft element on withdrawal from the mercury instrument, but said that the three-year period before the vesting of the right to withdraw was too long.

**36. Depositary (draft element 35)**

249. The committee had no comments on draft element 35.

**37. Authentic texts (draft element 36)**

250. The committee had no comments on draft element 36.

**C. Establishment of a legal group**

251. Following the discussion of the specific draft elements of the proposed mercury instrument, the committee decided to establish a legal group, to be chaired by Ms. Susan Biniiaz (United States of America). The group would examine elements on which substantive agreement had been reached to ensure that the text of the individual elements, and the interplay between them, reflected and gave effect to the committee's intentions in a legally sound manner, highlighting any ambiguities or potential conflicts that might require further consideration by the committee. The group would, as necessary, prepare draft provisions of the instrument based on the policy approaches agreed by the committee; review draft provisions prepared by the committee and other groups; examine the consistency of the various draft provisions, harmonizing them as necessary; and advise the committee or other groups on any legal questions that arose. The group would also consider other issues that the committee might refer to it. The group would start its work during the committee's third session and would meet as required during the sessions and as called for by its chair. The group would be open to all Governments, and, it was hoped, would count among its members an ample number of representatives of all five United Nations regions.

**D. Proposals for further additions to the draft elements**

252. Following its discussion of the draft elements paper prepared by the secretariat, the committee discussed what additional elements might be considered for inclusion in the subsequent iteration of that document. One representative, speaking on behalf of a group of countries, said that it was extremely important to include an element on human health. That issue was included in the Governing Council's mandate to the committee and had been mentioned on many occasions as the principal reason for the current negotiations. He suggested setting up a working group on human health and mercury including representatives of various Governments and international organizations, particularly the World Health Organization and the International Labour Organization. Such a working group could operate intersessionally and propose elements for consideration by the committee at its third session. Particular attention should be given to populations that were vulnerable, owing either to their physical condition or the extent of their exposure to mercury. The mandate of the working group could include such issues as cooperation, scientific research, exchange of information on socially and economically viable alternatives, assistance to workers and support for developing countries in biomonitoring. The proposal was supported by several other representatives.

253. Other suggestions for elements that might be considered, or considered further, related to stocks of commodity mercury and waste mercury; national action plans for artisanal and small-scale gold mining; partnerships, particularly involving the private sector; trade in products that had been manufactured using processes involving mercury; synergies between conventions; compensation mechanisms for people exposed to mercury; and products and processes, including adjustments to annexes C and D.

## **IV. Other matters**

### **A. Future sessions of the committee**

254. The representative of the secretariat informed the committee of the current status of planning for future sessions. He recalled, among other things, the offer made by the Government of Burkina Faso to host the committee's third session in Ouagadougou. The session was scheduled to take place from 31 October to 4 November 2011. The secretariat had already undertaken a site visit but it remained to be confirmed whether the host Government would be able to cover the incremental costs of having a session of the committee outside a United Nations conference centre. The secretariat had therefore made backup arrangements to hold the session at UNEP headquarters in Nairobi, thus ensuring that the committee's third session would take place in Africa even if it did not take place in Ouagadougou as hoped.

255. He also recalled that at the committee's first session the Government of Uruguay had offered to host the committee's fourth session, in June 2012. The venue, timing and financial issues, however, were still being finalized.

256. Two offers had been received to host the committee's fifth and final session: one from the Government of Switzerland and the other from the Government of Brazil. The session would take place from 4 to 8 February 2013. A full financing commitment had been received from Switzerland and Geneva had been selected as the venue city. Similar information was expected from Brazil, on the basis of which the Executive Director of UNEP, as convener of the committee, would make a decision.

257. He welcomed once again the offer of the Government of Japan to host the diplomatic conference in Japan in 2013.

258. With regard to funding for the mercury negotiations he noted that strong support had been received from many Governments, as reflected by awards made through the Mercury Club, established to recognize the contributions and support of those providing substantial financial support for the mercury negotiations. There remained a need for funding however, to cover expenses including intersessional activities such as regional meetings, future sessions of the committee and secretariat operations. He expressed thanks for the contributions received to date.

259. The representative of Burkina Faso provided information on national planning under way to ensure that the committee's third session was a success. At the national level, local mining societies had committed themselves to providing resources to combat problems posed by mercury but help was needed from international donors to assist in making up any shortfall.

260. One representative, noting that the dates set for the committee's fifth session coincided with the Spring Festival celebrated in several Asian and Pacific countries, urged the secretariat to examine whether the session could be rescheduled.

### **B. Intersessional work**

261. Following discussion of a proposal from the Chair, the committee agreed to the following programme of work to be carried out in preparation for its third session. The secretariat would prepare for consideration by the committee at its third session a new draft text of the comprehensive and suitable approach to mercury called for by Governing Council decision 25/5. The new text would be based upon the draft elements paper (UNEP(DTIE)/Hg.INC.2/3) and would reflect the views on the possible content of the mercury instrument expressed by parties at the current session and submitted by parties to the secretariat in writing in the weeks after the session.<sup>2</sup> The full range of party views could be indicated in the new draft text through the use of brackets, multiple options or other appropriate means. Any written views submitted to the secretariat would be posted on the UNEP mercury programme website.

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2 The deadline for the submission of written views was 25 March 2011.

262. It was also agreed that the secretariat should prepare for consideration by the committee at its third session a further comparative analysis of options for financial mechanisms to support the global legally binding instrument on mercury; information on releases of mercury from the oil and gas industry; information on health aspects of mercury issues and the use of mercury preservatives in medicine, including vaccines; and an updated version of document UNEP(DTIE)/Hg/INC.2/16, on the relationship between the future mercury instrument and the Basel Convention. The Chair noted that during its first session the committee had proposed a number of additional documents be prepared at a later stage in the negotiations process.

263. The committee noted requests from the African, Asian and Pacific, Central and Eastern European and Latin American and Caribbean regions for the secretariat to organize regional consultations in the lead-up to the committee's third session. The Chair advised the committee of his intention to convene a meeting of the Bureau and other representatives who during the second session had performed roles such as chairing groups and facilitating consultations on issues. The principal purpose of the meeting would be to guide the secretariat as it began the task of preparing the new draft text of the comprehensive and suitable approach to mercury.

**C. Proposed open-ended working group on health aspects of mercury**

264. One representative, speaking on behalf of a group of countries, drew attention to a proposal to create an open-ended working group that would meet between sessions of the committee to discuss the health aspects of mercury. After consultations with other representatives, his group had decided not to present the proposal at the current session and had requested that the secretariat should prepare a document, for consideration by the committee at its third session, on human health aspects of mercury. The committee took note of the request.

**D. Regional preparatory meetings**

265. Several representatives expressed gratitude to the Governments of Japan and Switzerland for providing financial support to defray the cost of interpretation at regional meetings held in preparation for and during the current session and voiced the hope that further such support would be forthcoming in connection with the committee's third and later sessions.

**V. Adoption of the report**

266. The committee adopted the present report on the basis of the draft circulated during the session, on the understanding that the finalization of the report would be entrusted to the Rapporteur, in consultation with the Chair and with the assistance of the secretariat.

**VI. Closure of the session**

267. Following the customary exchange of courtesies the Chair declared the session closed at 6.15 p.m. on Friday, 28 January 2011.

## Report of the facilitator on the development of the preamble of the global legally binding instrument on mercury

1. As proposed by the Chair of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury, Mr. Fernando Lugris (Uruguay), Mr. Oumar Diaouré Cisse (Mali), member of the Bureau, was chosen in plenary meeting on 25 January 2010 in Chiba, Japan, to conduct informal consultations to solicit the views of delegations for the forthcoming drafting of the preamble of the future treaty.
2. After the delegations present in plenary meeting had approved the appointment, the Chair invited interested parties to contact the facilitator, to whom he gave specific terms of reference. These were to gather and compile opinions and highlight their distinctive characteristics. He stressed that the task did not yet consist of drafting a preamble, but rather of laying the groundwork for it.
3. The consultations began the same day and concluded on 28 January 2011. Participants spoke on behalf of regional groups, a regional economic integration organization and individual delegations. Both oral and written opinions were received.
4. The following observations may be made on the basis of the compilation of submissions to the facilitator:
  - (a) Four (4) government delegations submitted written contributions;
  - (b) Four (4) government delegations, one (1) delegation representing a regional economic integration organization and one (1) regional group expressed orally that it was still too early to work on the preamble, saying that it was necessary first to develop the text of the treaty and its goals and structure, and that other environmental initiatives under way could influence the process. These delegations are of the opinion that the secretariat should not draft the preamble at this stage and would like this task to be postponed.
  - (c) One (1) government delegation said that it would like the environment to be listed first when the protection of health and the environment was mentioned since the treaty related to the environment.
5. Prominent among the proposals is the inclusion in the preamble of the points mentioned by the Governing Council of the United Nations Environment Programme (UNEP) in its decision 25/5 relating to the elaboration of a legally binding instrument on mercury.
6. The repetition in the preamble of principles 6, 7, 14 and 15 of the Rio Declaration on Environment and Development was proposed by two government delegations.
7. Two government delegations said that they would like to see one or more of the provisions of the Stockholm Convention on Persistent Organic Pollutants echoed or adapted, in particular:
  - (a) The provision of the Convention preamble on the Arctic ecosystems and indigenous communities;
  - (b) The provision of the Convention preamble on taking into account the circumstances and particular requirements of developing countries, in particular the need to strengthen their national capabilities for the management of chemicals, including through the transfer of technology, the provision of financial and technical assistance and the promotion of cooperation among the Parties;
  - (c) The provision of paragraph 4 of article 13 on taking into account the fact that sustainable economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties, giving due consideration to the need for the protection of human health and the environment.
8. One government delegation requested that reference should be made to certain international texts, such as Agenda 21, United Nations General Assembly resolutions and UNEP Governing Council decisions, as the basis for taking into account capacity-building, financial and technical assistance, and technology transfer in the instrument.
9. Lastly, one delegation said that it would like the preamble to reflect the importance of developing measures at the global, regional and national levels, in addition to international and regional cooperation between States and governmental and non-governmental organizations, to

promote the environmentally friendly management of mercury and to reduce its effects on the environment and human health.

10. The same delegation said that it would like it to be recalled that the provision of adequate, new and additional financial resources and access to environmentally friendly and economically viable technologies was a prerequisite for the implementation by developing countries of the instrument's regulatory measures.

11. The need to adopt specific measures in this area to respond to the needs of these countries should also appear in the preamble, as should the consideration of the specific needs and the particular situation of the least developed countries and small island developing States.

12. In conclusion, these views appear to echo or complement the statements made in plenary meeting and the written contributions of several delegations following the first session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury, held in June 2010 in Stockholm, Sweden.

13. We would like to suggest that these various proposals be reflected in the draft treaty document that will be introduced at the committee's third session. Given that several delegations did not want a preamble text, a footnote should be added to specify the particular nature of this part of the text. This footnote proposal was agreed on by the interested parties.

Done at Chiba, Japan, on 28 January 2011.

Facilitator

ADVANCED

## Annex II

[Original: Russian]

### Report on the outcomes of consultations on primary mercury mining

[Mr. Vladimir **Lenev** (Russian Federation)]

1. At the outset, I should like to thank all the representatives of national delegations and non-governmental organizations who actively participated in the consultations on measures relating to primary mercury mining.
2. During the consultations, country representatives reiterated the principled position that primary mercury mining was the least desirable source of mercury for the remaining uses.
3. Countries are prepared to continue working on the basis of the relevant section of the draft document on elements of the future agreement on the restriction of mercury proposed by the secretariat. In that regard, I should like once again to thank the secretariat for its high level of professionalism in preparing the draft document on the draft elements of the future agreement.
4. One delegation expressed the wish to postpone the discussion on restricting primary mercury mining until after consensus had been reached on an international trade regime for mercury, which would make it possible to assess the feasibility of meeting national industrial needs for mercury without primary mining. In addition, this country faces some challenges pertaining to legal issues connected with rights that have already been granted for the development of mercury deposits.
5. The representative of a country in which the primary mining of mercury for export is still being carried out reiterated the willingness of the country, in principle, to cease primary mining if donor assistance were provided for the creation of alternative jobs for people currently employed in the industry and for the reclamation of extensive areas of land contaminated by mercury.
6. Another country has some legal challenges related to the federal structure of the State and the right of the State's constituent entities, rather than federal executive bodies, to issue licences for mining activities. Currently, primary mercury mining is not being carried out in this country, and there are no future plans for it.
7. Some differences of opinion also remain regarding time lines for ceasing primary mercury mining after the entry into force of the future agreement.
8. Taking into account the above-mentioned comments, it would be advisable to consider organizing a meeting of representatives of interested countries during the committee's third session to continue to seek possible solutions to issues related to primary mercury mining and to reflect them in the relevant section of the draft future agreement. I suggest, however, that it would be premature to create a separate contact group on this issue at this stage.

## Annex III<sup>3</sup>

### Products, processes and transitional measures (articles 7, 8 and 14)

#### Facilitation by Ms. Gillian Guthrie and Ms. Nina Cromnier

1. Following the mandate from the chairman we had informal consultations with a number of delegations that were actively participating in the plenary discussions on articles 7, 8 and 14 in the elements paper.

#### I. Regulatory approaches

2. On products there was no consensus as to which approach to follow. Some strongly favored a negative list approach arguing that it would provide a holistic approach with a clear goal, that it would be simpler to implement and put less of a burden to the governments. However, others were of the opinion that this approach would be too restrictive.

3. Some other delegations strongly favored a positive list approach arguing that it would focus the attention to the larger sources of mercury in products and that it would be cost effective and easier to implement than the negative list approach. Some delegations mentioned that future new uses in products should not be regulated under the instrument, while others supported such a proposal.

4. Yet other delegations supported the GRULAC proposal for a hybrid list approach which would divide the products into 3 categories; those for which accessible, affordable and effective alternatives are not available, those for which a transition period is required and those that are deemed essential uses that would be allowed without a time limit. Some other delegations thought that the hybrid approach might be cumbersome to work with.

5. A number of the consulted delegations showed flexibility as to which approach to take.

#### II Annex C

6. Several delegations stressed the importance of allowing mercury in lamps, but were open to concentration limits for mercury in lamps. One delegation suggested that mercury in batteries should be considered as an essential use and that the use of mercury for traditional religious purposes should not be covered by the instrument.

7. One delegation representing a regional group proposed that cosmetic products should be regulated while another delegation opposed such an addition to annex C. Some delegations thought that dental products should be covered by the instrument while others did not see the need to cover dental products.

#### III. Annex D

8. On processes, the delegations consulted agreed that mercury used in chlor-alkali plants should be phased out over time. Most delegations also agreed that the use of mercury in VCM should be covered by the instrument. One delegation did not see a possibility to regulate VCM production because of lack of available alternatives. One other delegation proposed to add processes that use mercury as a catalyst to annex D. One region recommended the inclusion of ASGM under annex D, however this recommendation was opposed by others on the basis that it was a complex issue and should be dealt with separately.

9. The proposal from GRULAC on a hybrid list approach also cover a similar approach to processes.

#### IV. Transitional measures

10. Several delegations have pointed to the need for a process for allowing and reviewing exemptions. Necessary time for transition into non-mercury products has been suggested to be up to 10-15 years.

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11. Some delegations have proposed to establish a subsidiary body to evaluate nominated exemptions. Others have suggested that criteria should be established for allowing exemptions. Yet others have proposed that the COP should decide on exemptions as well as review and determine transition period based on proposals from the secretariat. The secretariat could base their proposals on nominations from parties or intergovernmental organizations.

## **V. Way forward**

12. The consulted delegations agreed that a contact group on products and processes should be set up at INC3 to further develop the articles on articles 7, 8 and 14. One delegation suggested that a technical expert meeting should take place prior to INC3, but others opposed this suggestion. Another delegation proposed informal consultations could take place between INC2 and INC3. Most delegations however felt that it would be sufficient to have a contact group at INC3.

Chiba January 27

ADVANCE

## Annex IV

### Financial resources and technical and implementation assistance<sup>4</sup>

Facilitation by Ms. Kerstin Stendahl (Finland) and Mr. Dámaso Luna (Mexico)

1. The co-facilitators suggest that a comparative analysis be undertaken of the different forms of a financial / mechanisms for a legally binding instrument on mercury. The analysis should consider the most suitable mechanism/mechanisms for the individual control measures required.
2. The analysis would be undertaken by the secretariat, taking into account the work by the consultative process on financing options for chemicals and waste, and would be reported back to the INC 3. INC 3 may consider establishing a Contact Group on a financing mechanism / mechanisms.
3. The co-facilitators have through informal consultations with governments and based on the discussions on financial resources and technical and implementation assistance during INC 2 collected the criteria below for the sole purpose of informing the comparative analysis.
4. The co-facilitators find that there is a general understanding of the need for and importance of a financial mechanism/mechanisms for a legally binding instrument on mercury, to provide financial resources for technical assistance, technology transfer and capacity building and to promote compliance of the legally binding instrument on mercury.
5. In the discussions in plenary at INC 2, two main approaches as to the form of the financial mechanism/mechanisms emerged: setting up a self-standing financial mechanism such as the Multilateral Fund of the Montreal Protocol, and designating the Global Environment Facility as the financial mechanism of the legally binding instrument on mercury. In addition to these two, the option of a financial mechanism/mechanisms consisting of a mix of the above two mechanisms was also raised.
6. In assessing the suitability of a financial mechanism / mechanisms there was general agreement that consideration should be given both to its general criteria and specific areas of focus. Some countries evoked principles such as common but differentiated responsibilities and the polluter pays principle.
7. The below represents a collection of distinct criteria for a financial mechanism/mechanisms as suggested by Governments during the Plenary discussions.
8. A financial mechanism/mechanisms could:
  - (a) be under the guidance of the governing body of the LBI;
  - (b) be accountable to the governing body of the LBI;
  - (c) facilitate implementation of the LBI, through funding activities in the form of projects and programmes;
  - (d) respond to the needs of Parties to the LBI as determined by the Parties;
  - (e) focus on measures related to obligations;
  - (f) meet the agreed incremental costs linked to the global benefits of protecting human health and/or the global environment from the release of mercury and its compounds;
  - (g) meet the agreed incremental costs of developing country Parties in moving from mercury-added products and processes to alternatives;
  - (h) provide resources to support national activities to implement the regulatory/control measures agreed under the LBI;
  - (i) provide funding for the development and implementation of the various national implementation plans as required;
  - (j) recognize that fulfilment of some legal obligations arising out of a new global legally binding instrument will require capacity-building and technical and financial assistance in order to be effectively implemented by developing countries and countries with economies in transition;

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- (k) recognize that funding will come foremost from within countries;
- (l) take into account the variation in domestic capabilities to implement effective measures;
- (m) facilitate compliance with both specific and general obligations of the Parties;
- (n) provide a link between funding of activities and verifiable compliance with specific binding obligations based on regular reporting by the Parties;
- (o) provide funding under both legally binding/voluntary approaches or both;
- (p) consist of funding from various sources;
- (q) be cost effective and –efficient;
- (r) able to leverage funds in a sustainable manner;
- (s) able to leverage significant investments;
- (t) be based on a fair burden sharing between developed parties in providing the resources based on assessed contribution;
- (u) involve voluntary contributions;
- (v) assess and decide on, at regular intervals, with the involvement of Parties, the level of funding needed;
- (w) have as broad a donor base as possible so as to mobilize resources from Parties, non-parties and the private sector, recognizing the responsibility of industry;
- (x) provide sound and sustained support through a system for replenishment of funds and long-term implementation of activities;
- (y) full operation of the financial mechanism / mechanism is a key element for implementation of the LBI;
- (z) fit into the International Environmental Governance (IEG) structure and be supportive of and complementary to existing mechanisms;
- (aa) enhance cooperation and coordination among chemicals and waste related MEAs, programmes and processes and SAICM through an integrated approach;
- (bb) complement and link to existing mechanisms in the area of chemicals and wastes management;
- (cc) optimize co-benefits with, for example, waste management, climate and water.

## Annex V

## Awareness-raising, research and monitoring, and communication of information<sup>5</sup>

Co-facilitators: Noluzuko (Zukie) Gwayi (South Africa) and Daniel Ziegerer (Switzerland)

- (18) Information exchange**
- There was a general agreement by participants in terms of the importance of information exchange in advancing the primary objectives of the mercury instrument as this could reduce exposure and potential harm.
  - Taking cognizance of the currently existing relevant structures such as the SAICM and clearing house mechanisms of other chemicals MEAs such as the PIC of the Rotterdam Convention; synergies need to be identified and utilised.
  - Paragraph 5 on confidential information as adopted from paragraph 5 of Article 9 of the Stockholm Convention was appreciated by some participants.
  - A clear definition of and more information on unintentional source was requested by some participants.
  - Information on the clear role of the current regional centres under other MEAs is lacking.
- (19) Public information, awareness and education**
- Some participants indicated a lack of readily available appropriate information for the various stakeholders, and recommended that this Article needs to go further than similar Articles of the other MEAs. Thus this Article should include provisions on advice to consumers on mercury products and processes.
  - Provision 19b should make reference to WHO since it already provides reliable scientific information on mercury.
- (20) Research, development and monitoring**
- The value of research and monitoring to inform activities to be undertaken in meeting the primary objectives of the mercury instrument cannot be emphasized enough.
  - Monitoring was also identified as essential for evaluating the effectiveness of the agreement.
  - Participants expressed the need of harmonizing research methodologies and data as this would add value to monitoring activities.
  - Research cost should be kept minimal without compromising the quality of scientific data generated.
  - The current UNEP Mercury toolkit can be improved upon and an offer based on experience to improve its efficiency was made. The following requests were made by some participants:
    - Need to distinguish between obligatory and voluntary activities listed under this Article.
    - Guidance on how to take into account unpredictable natural sources in monitoring
    - Provision 20b should not translate into an obligatory notification to other Parties
    - Provisions should refer to emissions
    - To add the following provisions under this Article: Parties shall cooperate to develop and improve:
      - (g) risk assessment on Hg
  - IGOs committed themselves to continue with their work towards achieving the primary objective of protecting human health and the environment from the possible adverse effects of Hg.

<sup>5</sup> The annex has been reproduced without formal editing.

- (21) Implementation plans**
- General agreement that implementation plans could be useful instruments for parties and relevant stakeholders.
  - Differing views to whether the implementation plans should be an obligation or left to the discretion of the parties as well as on the timeframe for their submission.
  - General agreement that implementation plans should allow for a certain flexibility and should take into account country's specific circumstances.
  - Full agreement that national implementation plans should not present an excessive burden to countries.
  - Participants suggested that experiences and lessons learned from other chemical MEAs should be considered.
  - Implementation plans should provide a reliable basis and standardized methodology for estimating incremental costs and needs for technical and financial assistance. Need to further clarify the relationship between implementation plans and national action plans requested in other articles, in particular Art. 8, 9 and 10 including obligatory and non-obligatory activities.
- (22) Reporting**
- It was observed that reporting should be balanced with benefits derived.
  - Some delegations suggested that reporting needs to be based on National Implementation Plans.
  - It was suggested that the provisions should be added regarding:
    - mercury releases to water and land (reference to Art. 11),
    - stock of metallic mercury, and
    - implementation of BAT to achieve reductions in atmospheric emissions.
  - Reporting should be harmonized with existing reporting mechanisms of other MEAs, in particular the Stockholm, Basel and Rotterdam Conventions
  - The importance of reporting for the work of the implementation committee was highlighted.
- (23) Effectiveness evaluation**
- There were suggestions to have a strong link to the effectiveness evaluation of the Stockholm Convention, such as including a provision similar to POPs Convention Art 16.2 regarding the establishment of the arrangements for effectiveness evaluation.
  - Differing views regarding when the first evaluation should be undertaken.
  - It was suggested to link the effectiveness evaluation not only to monitoring, reporting and compliance, but also to financial resources (Art. 15).
  - Suggestions were made on the need for adequate global coverage of monitoring networks as well as consistency of data collection and quality.
- General remarks**
- Awareness-raising, research and monitoring and communication of information offer ample opportunities for cooperation and collaboration with other relevant MEAs
  - Instruments being used under other MEAs could serve as a model such as the Global Monitoring Plans established under the POPs Convention. The open and productive manner in which the articles were discussed reflected the enthusiasm of participants to develop an effective mercury instrument.
  - Formation of a contact group is not foreseen during INC-2, but the secretariat is requested to expand the text of these articles and take these issues into account.
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