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## United Nations Environment Programme

### Intergovernmental negotiating committee to prepare a global legally binding instrument on mercury

#### Third session

Nairobi, 31 October–4 November 2011

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

### Introduction

1. The intergovernmental negotiating committee to prepare a global legally binding instrument on mercury was established in accordance with section III of decision 25/5 of 20 February 2009 of the Governing Council of the United Nations Environment Programme (UNEP). By that decision the Council 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 it. The first session of the committee took place in Stockholm from 7 to 11 June 2010 and its second session took place in Chiba, Japan, from 24 to 28 January 2011. The events leading up to the two sessions, and the provisions of section III of decision 25/5 governing the committee's work, are summarized in paragraphs 1–4 of the report of the first session (UNEP(DTIE)/Hg/INC.1/21) and paragraphs 1–5 of the report of the second session (UNEP(DTIE)/Hg/INC.2/20).
2. At its second session the committee agreed that 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 in section III of decision 25/5. The new text would be based upon the draft elements paper on which the committee had based its work at its second session (UNEP(DTIE)/Hg/INC.2/3), revised to reflect the views expressed by parties at the second session and submitted by parties to the secretariat in writing in the weeks after the session. The full range of party views was to be indicated in the new draft text through the use of brackets, multiple options or other appropriate means, and any written views submitted to the secretariat were to be posted on the UNEP mercury programme website.
3. It was also agreed that the secretariat would 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 on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

### I. Opening of the session

4. The third session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury took place at the headquarters of UNEP in Nairobi from 31 October to 4 November 2011.

5. The session was opened at 10 a.m. on Monday, 31 October 2011, by Mr. Fernando Luginis (Uruguay), Chair of the committee, who expressed his gratitude to the Government of Kenya for hosting the session and to UNEP and the Chemicals Branch of its Division of Technology, Industry and Economics, together with its new head, Mr. Tim Kasten, for their support in preparing for the session. He drew attention to the myriad intersessional efforts that had been made in preparation for the session and expressed the hope that the complexities to be discussed would be resolved through creative solutions based on the lessons learned in previous negotiations.
6. Opening remarks were delivered by Mr. Achim Steiner, Executive Director of UNEP, and Mr. Paul Olando, Senior Deputy Permanent Secretary in the Ministry of Environment and Natural Resources of Kenya, on behalf of Mr. John Michuki, Minister of Environment and Mineral Resources of Kenya.
7. In his opening statement, the Executive Director welcomed the representatives to Nairobi. He noted that the United Nations was occasionally given a highly complex or seemingly impossible task that required immediate attention in the quest to protect human life. The continuing discussions on mercury comprised both scientific and ethical aspects, requiring that the body of knowledge on the substance and its impact on human life and the environment should be reconciled with the responsibility to acknowledge and cater to the various realities existing within society. The challenge for the intergovernmental negotiating committee was to elaborate a global legally binding instrument on mercury that was fair in terms of expectations and that would progressively reduce the risks arising from the use of mercury while taking into account countries' differing capacities, resources and uses of mercury, among other things. He highlighted the plight of those who had been exposed to mercury through no choice of their own, leaving them disabled, saying that it was important to bear in mind during discussions the common purpose of protecting human life. Stressing the achievability of the committee's task, he recalled that many had said that lead-based automotive fuels were the lifeblood of national economies, but through national legislation and an international partnership they had been virtually phased out worldwide, preventing an estimated 1.2 million premature deaths and saving some \$4 trillion. The phase-out of leaded fuels bore witness to the effectiveness of international cooperation.
8. As the negotiations were almost at the halfway point, he urged the committee to ensure that the outcome of the current session was a draft treaty text that could be refined at future sessions. He called for the committee to move forward on the basis of sufficient consensus, agreeing initially on aspects that were not contentious and then tackling outstanding issues in a practical and equitable manner. In the lead-up to the United Nations Conference on Sustainable Development, to be held in Rio de Janeiro, Brazil, in 2012, mercury was one of the most important issues being negotiated at the global level. The symbolic value of progress on mercury should not be underestimated as an affirmation of the cooperative agenda on sustainable development. In closing, he highlighted the need to fund future sessions of the committee, welcomed Mr. Kasten and expressed gratitude to the former head of the Chemicals Branch, Mr. Per Bakken, for guiding the process on mercury over the previous two years. He also thanked the Chair and the Government of Uruguay for their strong support for the negotiations.
9. Mr. Olando, on behalf of Mr. Michuki, welcomed the representatives to Kenya. He said that the new instrument on mercury should tackle critical issues concerning the health and environmental impacts of mercury emissions and, to be effective, should contain provisions to reduce emissions from mining, consumer products, industrial processes, wastes and products containing mercury. It was important, he said, to incorporate the use of best available techniques and best environmental practices. The instrument should prohibit the manufacture, import and export of all products containing mercury, except for those subject to essential-use exemptions. The phase-out of emissions from industrial processes should occur forthwith and provisions should be included to ensure that outdated industrial equipment was not exported to developing countries. There was a need, in the case of developing countries and countries with economies in transition, for a sustainable and reliable method of financial assistance, preferably in the form of a new and dedicated fund with new and additional financial resources, to enable them to comply with their obligations. Information exchange, awareness-raising and other activities designed to draw attention to the risks of mercury exposure would also be necessary to protect human health. Although the committee faced many challenges, his Government had great expectations for the outcome and would strive to ensure a successful conclusion.
10. Following the welcoming remarks the Chair displayed a sculpture of a fish by Mr. Nicolás García Uriburu of Argentina that had been presented to the committee at its second session. Symbolizing the irreversible consequences of mercury contamination, the sculpture had become the mascot for the committee and was intended to inspire its deliberations.

## **II. Organizational matters**

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

11. The committee adopted the following agenda on the basis of the provisional agenda that had been circulated in document UNEP(DTIE)/Hg/INC.3/1:

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**

12. 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, drafting and other 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.

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

14. The committee agreed to use the new draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury (UNEP(DTIE)/Hg/INC.3/3) prepared by the secretariat pursuant to its request as its second session as a starting point for its discussions under agenda item 3 and to structure its discussions in accordance with the arrangement of the draft articles in the document. It was stressed, however, that the draft articles were merely a starting point and that parties were not limited thereby in their proposals or positions.

15. In addition to document UNEP(DTIE)/Hg/INC.3/3 the committee had before it other documents prepared by the secretariat to support the discussion under item 3 of the agenda as requested by the committee at its second session. They included a further comparative analysis of options for financial mechanisms to support the global legally binding instrument on mercury (UNEP(DTIE)/Hg/INC.3/4), information on releases of mercury from the oil and gas industry (UNEP(DTIE)/Hg/INC.3/5), information on addressing health in the mercury instrument (UNEP(DTIE)/Hg/INC.3/6) and information on the relationship between the future mercury instrument and the Basel Convention (UNEP(DTIE)/Hg/INC.3/7). 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.3/INF/1). More detailed information on the documents before the committee is provided in paragraphs 6–9 of the annotations to the provisional agenda for the session (UNEP(DTIE)/Hg/INC.3/1/Add.1).

### **C. Attendance**

16. Representatives of the following States participated in the session: Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bhutan, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Gambia, Germany, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Liberia, Madagascar, Malawi, Malaysia, Mali, Marshall Islands, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Samoa, Saudi Arabia, Senegal, Serbia,

Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Tunisia, 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.

17. An observer for Palestine also attended.

18. The following United Nations bodies and specialized agencies were represented: Global Environment Facility, United Nations Industrial Development Organization, United Nations Institute for Training and Research, World Health Organization.

19. The following intergovernmental organizations were represented: African Union Commission, European Union, International Energy Agency Clean Coal Centre, League of Arab States.

20. The following multilateral environmental agreement secretariats were represented: Basel Convention on the Control of Transboundary Movements of Hazardous Chemicals and Their Disposal, Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Stockholm Convention on Persistent Organic Pollutants.

21. 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.3/INF/5.

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

22. The committee began its consideration of the item with general statements 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. There then followed an introduction of the documents before the committee by the secretariat, after which the committee took up document UNEP(DTIE)/Hg/INC.3/3, containing the new draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury prepared by the secretariat as requested by the committee at its second session.

#### **A. Statements**

23. Speaking on behalf of African countries, one representative expressed her appreciation for the openness that had characterized discussions in the committee's sessions to date. The current session would be critical in defining the committee's success and it was crucial, therefore, that discussions should progress towards a draft final document. She thanked those Governments that had supported African countries in undertaking projects and programmes related to mercury and the secretariat for the provision of information and advice, including through technical briefing sessions. She underlined the group's commitment to the success of the process and its willingness to use the draft text set out in document UNEP(DTIE)/Hg/INC.3/3 as a starting point for discussions. She stressed that a global legally binding instrument on mercury should be aimed at the protection of human health and the environment from releases of mercury, targeting the control and management of mercury releases to all media, including land, air and water. While expressing satisfaction with the provisions on health care, she suggested that the phase-out of mercury in vaccines should be approached in line with the precautionary principle. In addition, the ultimate phase-out of mercury in dental amalgam should occur only when viable alternatives were available. Economic aspects of artisanal and small-scale gold mining were of particular importance and concern to the group; due consideration should also be given to large-scale ferrous and non-ferrous mining, which released mercury to the environment. Technical issues and alternative employment were important considerations in the phase-out of primary mining.

24. The provision of mandatory and firm obligations for country-specific reduction goals and national action plans were key to responding to national environmental, social and economic characteristics. Given that the development of comprehensive national action and implementation plans would require significant resources, the obligations of donor parties should be made explicit; furthermore, provisions for capacity-building and financial and technical assistance to enable developing countries and countries with economies in transition to meet their obligations under the mercury instrument should be explicit. Other aspects of the instrument that were of key importance to the group included the restriction of mercury trade and the prohibition of the dumping of mercury waste in developing countries; the application of the polluter pays principle to mercury clean-up programmes; and clear provisions on illegal traffic. She drew attention to the need to provide assistance to help developing countries to deal with mercury stocks. In closing, she stressed that the current session would be fundamental in determining the level of success and effectiveness of a future

mercury instrument; it was important, therefore, to keep in mind the committee's obligation to work for the benefit of current and future generations of humankind.

25. Representatives speaking on behalf of the European Union and its member States thanked the secretariat for its meticulous work in elaborating the new draft text set out in document UNEP(DTIE)/Hg/INC.3/3, and said that the text would serve as a good basis for the discussions at the current session. They said that they would not reiterate in detail the position espoused by the European Union and its member States, as it was well known, and expressed a willingness to enter into bilateral discussions with any interested parties. Expressing support for the proposed structure of the session, they also said that its objective should be to make good progress on all parts of the new draft text. In areas where a number of options had been proposed, it should be possible to agree on one option and identify clearly those aspects requiring further discussion. It was hoped that, by the final day of the current session, parts of the text could be set aside as having been agreed upon, pending agreement on the instrument as a whole. They emphasized that, while a combination of both binding and voluntary measures was acceptable in the agreement, core issues called for legally binding provisions.

26. Speaking on behalf of Asian and Pacific countries, one representative expressed his appreciation for the new draft text presented by the secretariat and emphasized the need to accelerate and finalize negotiations prior to the twenty-seventh session of the Governing Council, to be held in February 2013. He emphasized the importance of ensuring the effectiveness and practicability of the future instrument so that it would protect human health and the environment in a practical and implementable manner. The instrument's implementation should allow for a flexible approach, comprising both binding and voluntary approaches and taking into account countries' differing capacities. He drew attention to the need to consider the particular situation of developing countries, and said that mercury-containing products and processes and emissions and releases should be accorded priority for discussion by contact groups and at intersessional expert consultations, where appropriate.

27. One representative, speaking on behalf of Latin American and Caribbean countries, expressed appreciation for regional consultations that had been held in preparation for the current session. He affirmed that the new draft text constituted a sound basis for the negotiations. He noted, however, that the range of alternatives and options contained therein evidenced the existing divergence of opinions, and he called upon the committee to ensure that the final result of its work was constructive and coherent. He said that the preamble to the mercury instrument should set out guiding principles, that there was a need for cost-effective measures that could be incorporated into national action plans and that the instrument should be negotiated with a realistic and pragmatic approach, ensuring that control measures were accompanied by relevant measures for their implementation and a financial mechanism availing sufficient resources to assist developing countries to substitute viable alternatives for mercury and make the transition to mercury-free technologies. The countries of his region favoured a financial mechanism in the form of a trust fund modelled on the financial mechanism of the Montreal Protocol on Substances that Deplete the Ozone Layer, and he encouraged the establishment of a contact group on measures for implementation and financial mechanisms. He expressed the hope that significant progress would be made on important issues for the region such as artisanal and small-scale gold mining. Measures envisaged by countries in their national policies should be based on gradual reductions through capacity-building and the implementation of best available techniques. He noted that, given the differing realities for countries in the region, challenges had arisen in regional consultations, including the timelines for the introduction of control measures. He thanked the Government of Spain for providing financial support for regional group meetings. Lastly, speaking on behalf of his own Government, he recalled discussions at the recent Ibero-American Summit, which had taken place in Asunción on 28 and 29 October 2011, highlighting paragraph 50 of a statement agreed upon by the Summit participants, in which they expressed support for the mercury negotiations.

28. Speaking on behalf of Central and Eastern European countries, one representative thanked the secretariat for its intersessional efforts, including the elaboration of a draft text that, while lengthy and complex, formed a good starting point for discussions at the current session. He thanked UNEP and the Government of the Czech Republic for making possible a regional meeting held in Brno, Czech Republic, at the end of October 2011.

29. Speaking on behalf of Arab countries, one representative stressed that the future instrument on mercury should be clearly defined, focusing on the protection of human health and the environment from mercury releases. The establishment of procedures, implementation plans and programmes for reducing mercury would be costly, and it was therefore to be hoped that a solid agreement would guarantee the commitment of countries and take into consideration the principle of common but differentiated responsibilities. Capacity-building, technology transfer, information exchange and a suitable financial mechanism would be key to ensuring the implementation of the instrument. The

control of trade in mercury and the movement of mercury waste from developed to developing countries with the objective of reuse and recycling was an important aspect of the instrument for the region. He expressed thanks to the secretariat for its work related to the oil industry and field studies on releases of mercury from the oil and gas industry (UNEP(DTIE)/Hg/INC.3/5), which had concluded, he said, that such releases were negligible. In closing, he noted that the draft text formed a sound basis for work at the current session.

30. Speaking on behalf of the Arctic Council, one representative spoke of the particular fate and impact of mercury in the Arctic. She said that the Arctic Council monitoring working group had a long tradition of monitoring contaminants in the Arctic and that its monitoring data on mercury were a cornerstone of the evolving mercury instrument. Mercury was of particular concern in the Arctic due to its disproportionate impact on the region and the risk for some Arctic peoples from a high dietary exposure to mercury. She drew attention to a recent scientific assessment on mercury and to some of its most salient findings. Monitoring data had demonstrated that mercury was carried by air and water currents into the Arctic via long-range transport from lower latitudes, and climate change was likely to alter the delivery and fate of mercury significantly. Mercury was biomagnified in Arctic wildlife, especially in the marine food web, and mercury in marine species therefore posed a considerable risk to Arctic peoples who relied on traditional marine diets. Levels of mercury in, and its effects on, Arctic wildlife were also of concern. In the absence of global action, mercury from human sources was likely to increase over the coming decades; it was therefore imperative that existing techniques to reduce human source emissions were put to good use.

31. Statements were then made by the representatives of individual parties and observers.

32. Many representatives expressed their appreciation to the Government of Kenya for hosting the meeting and to UNEP for its effective preparations. Many underscored the importance of addressing mercury emissions and the challenges that the committee faced at the halfway point in its negotiations. Several reported on regional meetings that they had attended and efforts within their countries to respond to the challenges posed by mercury, thanking the meeting organizers and donors for their support for those meetings and their national efforts.

33. Many representatives expressed support for the use of the new draft text in document UNEP/(DTIE)/Hg/INC.3/3 as the basis for the committee's deliberations and expressed a willingness to work constructively in the days ahead. One said that some options in the document were internally inconsistent and would need to be eliminated when developing a revised draft. Several expressed support for establishing contact groups to examine particular issues. One said, however, that it was important to keep the number of groups meeting simultaneously to a minimum so that small delegations could participate effectively.

34. Many representatives underscored the importance of reducing mercury emissions from various sources, including industrial processes, wastes, products containing mercury, energy production and artisanal and small-scale gold mining, with various views expressed regarding possible prioritization of efforts to tackle particular sources. Some representatives voiced support for focusing equal attention on reducing emissions into all media: soil, water and the atmosphere. Another said that priority should be accorded to reducing atmospheric emissions through immediate and binding provisions. A number of representatives said that it was necessary to develop the instrument in line with the objectives, content and principles reflected in the mandate laid out in section III of decision 25/5.

35. Several representatives emphasized the need to develop effective and practical measures that would lead to significant reductions in mercury emissions immediately and in the long term. Various views were expressed regarding the proper balance of mandatory, voluntary and flexible measures. Several representatives said that the instrument should reflect the varied situations in countries with regard to such factors as emissions sources, level of development and availability of cost-effective alternatives.

36. Many representatives 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 also expressed support for a stand-alone, dedicated financial mechanism, modelled on the Multilateral Fund for the Implementation of the Montreal Protocol, funded by sufficient, new, predictable and mandatory contributions. A number of representatives said that provisions on reducing emissions, monitoring and implementation should be considered in tandem with provisions on financial and technical assistance. One said that the impact of external developments on the potential availability of government resources must be recognized and that all actors, including the private sector and civil society, would need to play a part if the instrument was to be successful. Another said that development remained the top priority for many developing countries and that the instrument should reflect that fact. Two representatives underscored the

important role that appropriate provisions for national implementation plans could play in the successful implementation of the instrument, while emphasizing that such plans should be flexible.

37. One representative noted that his delegation had at previous sessions said that there was a need for more information on a number of important issues and proposed specific modalities for obtaining and reporting it through a matrix. The document prepared by the secretariat in response (UNEP(DTIE)/Hg/INC.3/INF/2) was useful but contained no relevant information on costs and financing. He requested that a working group should be formed at the committee's fourth session to examine the issue, and he proposed that the instrument should provide for a transition period to allow for the acquisition of necessary information and the mobilization of sufficient resources before the entry into force of control measures. He also said that national implementation plans should provide clear guidelines and schedules for the implementation of both voluntary and mandatory measures and that certainty regarding the means for implementation of such plans was a prerequisite. Stressing that financial provisions were among the principal provisions of the instrument and noting that many ideas on the subject had been aired, he said that his country could not support any proposal that would base access to financial assistance on any classification of developing countries.

38. Several representatives underscored the challenges of addressing mercury contained in products, with some drawing special attention to the health and consumer product sectors. One said that it would be necessary to develop a list of regulated products, although a number of others said that substitutes should be identified before introducing controls on particular products or other emissions sources.

39. Several representatives said that issues of importance for countries with significant oil, gas or coal industries needed to be considered. A number of representatives highlighted the special challenges faced by small States in dealing with mercury wastes. One representative encouraged Governments to join the UNEP Global Mercury Partnership and emphasized the importance of continuing to raise awareness of the extent of mercury pollution. Another underscored the impact of mercury pollution on countries that consumed or exported significant quantities of fish.

40. The representative of the World Health Organization (WHO) said that the most significant benefits to public health would accrue from taking action on mercury emissions from the burning of coal, industry, large-scale mining and artisanal gold mining and that the mercury instrument should permit those uses of mercury essential for public health. The new instrument could also make a significant impact by facilitating engagement by all sectors and stakeholders, including those in the health sector, who could assist in attaining the instrument's goals by providing evidence and raising public awareness of the health implications of mercury exposure; setting health-based guidelines and targets in relation to mercury exposure; providing clinical management and educating health workers; reducing use of mercury-added products in the health sector; working with other sectors in advocating effective health-positive interventions and safer alternatives, with special emphasis on vulnerable populations; sharing knowledge and participating in international mechanisms to solve problems; and assessing the impacts of policies through monitoring and evaluation. Drawing attention to new WHO publications on mercury as reflected in document UNEP(DTIE)/Hg/INC.3/INF/4, she said that WHO stood ready to assist the committee further on health issues related to mercury.

41. Several representatives of non-governmental organizations emphasized the serious impacts of mercury on the environment and human health. One said that the future mercury instrument should include hard-hitting and binding measures to control mercury emissions, the provision of adequate financial assistance on both an interim and long-term basis and compliance mechanisms. Another said that the instrument would fail to achieve its objectives if potentially effective measures were undermined by excessive flexibility, allowable-use exemptions and voluntary measures. A third called upon Governments to recognize the human rights implications of the disproportionate impacts of mercury pollution and to incorporate relevant aspects of international human rights agreements into the instrument. Another highlighted the vulnerability of small island States to the long-range transport of mercury and the threat posed by bioaccumulation of mercury, particularly in fish and other marine species, a staple diet in many small island States. Of particular concern was the proven negative impact of excessive levels of mercury on the cognitive development of children. The instrument should emphasize the protection of human health and the environment and should ensure that producers bore the full cost of their actions. Another said that vaccines constituted an often-overlooked source of mercury in humans. Stressing the importance of promoting mercury-free vaccines, particularly for children, she said that many developing countries did not have stringent standards pertaining to the use of mercury in vaccines, which constituted a major public health threat. Another expressed the hope that due recognition would be given to those working in the artisanal and small-scale gold mining sector who, the challenges of poverty and other social and economic stresses notwithstanding, supported responsible practices in the industry.

## **B. Introduction of the documents before the committee**

42. The representative of the secretariat reviewed the documents relevant to the item, which were summarized in paragraphs 6–9 of the annotations to the provisional agenda (UNEP(DTIE)/Hg/INC.3/1/Add.1).

43. Another representative of the secretariat outlined in some detail the new draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury prepared by the secretariat as requested by the committee at its second session (UNEP(DTIE)/Hg/INC.3/3). He summarized the consultative process by which the secretariat had developed the draft text and outlined the methodology that had been applied in presenting the textual options and suggestions.

## **C. Detailed discussion**

44. As noted above, the committee agreed to use the new draft text, as presented in document UNEP(DTIE)/Hg/INC.3/3, as the basis for its discussions at the current session. It would structure its discussions in accordance with the sections of that document. The representative of the secretariat introduced each section of the draft text.

### **1. Preamble (section A of the draft text)**

45. A number of representatives said that the preamble was important because it set out the context and principles that would guide implementation of the instrument. One said that there should be clear mention of the principles of the Rio Declaration on Environment and Development, in particular principle 7 on common but differentiated responsibilities, principle 15, the precautionary principle, and principle 16, the polluter pays principle. Another said that the preamble should refer to the disproportionate impact of mercury on the Arctic and vulnerable populations.

46. Most representatives who spoke said that the finalization of the preamble was dependent upon, and should await, further development of the substantive articles of the instrument. One said that from a legal viewpoint the preamble formed part of the context in which the treaty would be interpreted; it was therefore important and its finalization should await completion of the other parts of the instrument. Many representatives said, however, that development of the preambular text should continue in parallel with discussions on the text of the substantive articles, including through informal consultations, to ensure progress.

47. The committee agreed to defer further consideration of the sub-item pending progress on other elements of the draft text.

### **2. Introduction (section B of the draft text)**

#### **(a) Objective (section B, article 1, of the draft text)**

48. There was general consensus on the importance of having a clearly defined objective in order to provide overall guidance for the instrument. As was the case for the preamble, most representatives said that the drafting options should remain open until the substantive provisions of the instrument had taken clearer shape but that that should not preclude discussion of those options. One representative said that the objective should take into account the mandate set out in section III of decision 25/5. Of the options presented in the new draft text, those expressing a preference for the first option said that it was simple and succinct, had a clear focus on human health and the environment and took an action-oriented approach. Those advocating the second option said that its focus on regulation rather than elimination was realistic and that it adopted a strong position on risk reduction strategies; they also praised its adoption of a life-cycle approach and its reference to financial and technical cooperation, which was vital to ensuring that the aims of the instrument were fulfilled.

49. The committee agreed to defer further consideration of the sub-item pending progress on other elements of the draft text.

#### **(b) Relationship with other international agreements (section B, article 1 bis, of the draft text)**

50. Several representatives, including one speaking on behalf of a group of countries, questioned the relevance of and need for the section on the relationship of the mercury instrument with other international agreements. Other representatives, however, said that it usefully clarified that relationship. One representative, supported by others, said that discussion of the item was premature because the scope of the instrument was yet to be clearly defined. Other representatives said that the phrasing of the draft text added more confusion than clarity, particularly as it pertained to avoidance of a hierarchy between the instrument and other international agreements. Several representatives questioned whether the provision's current location in the instrument was the most appropriate.

51. The committee agreed to defer further consideration of the sub-item pending progress on other elements of the draft text.

(c) **Definitions (section B, article 2, of the draft text)**

52. A number of representatives stressed the importance of clear and concise definitions, saying that they would have a significant bearing on the effectiveness of the instrument. Several representatives said that care should be taken to ensure that the definitions were consistent with the way that the defined terms were used in the substantive articles, and to ensure that they were consistent with those used in other international agreements such as the Basel Convention. A number of representatives drew attention to specific definitions that they said required further refinement. Some proposed additional items that might merit inclusion in the list of definitions, while one warned that care should be taken to avoid defining items that were not directly relevant to the instrument.

53. The committee agreed to defer further consideration of the sub-item pending progress on other elements of the draft text, including the identification of definitions during discussions of substantive text in contact groups, which, it was agreed, would be without prejudice to where such definitions might be placed in the text.

**3. Supply (section C of the draft text)**

**4. International trade in mercury [and mercury compounds] (section D of the draft text)**

54. The committee agreed to consider the draft provisions on supply and trade together.

55. Several representatives said that extensive discussion on supply and trade should be deferred until other related provisions had been discussed, but nevertheless provided their initial views on the issues. Some indicated that they were preparing conference room papers that would inform the discussions.

56. One representative, speaking on behalf of a group of countries, recalled that section III of decision 25/5 specifically requested that measures to reduce the supply of mercury should be included in the instrument. She said that primary mercury mining increased the supply of mercury and should therefore be banned, along with other sources that increased the supply of mercury, thus reducing its price and making it more accessible, including through illegal means.

57. Several representatives said that attention should be focused on mercury from primary mining rather than mercury produced as a by-product, of which there was relatively little. Several argued for the prohibition of primary mining, with one adding that there should be sufficient technical and financial assistance and capacity-building to enable countries to manage existing stocks. One representative opposed the prohibition of primary mining, citing legal difficulties in dealing with existing mining permits, in addition to the elimination of trade in elemental mercury on the grounds that the substance was still in demand. One representative proposed the establishment of a register similar to that established under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

58. One representative suggested that for each party to the mercury instrument trade in mercury should be eliminated within five years of the instrument's entry into force for that party and that primary mining should be eliminated within three years to allow for liquidation of stocks; another representative agreed, adding that recycling of mercury could then be prioritized. One representative suggested that an annex should list all potential supply sources of mercury while another said that that was unnecessary and that it would suffice for each country to identify sources of supply in its territory.

59. One representative, speaking on behalf of a group of countries, said that measures to restrict trade in elemental mercury and mercury compounds should complement supply measures. Supported by another representative she said that control of mercury trade should refer to commodity mercury, not mercury waste, and that exports of mercury to non-parties should not be permitted. Another representative stressed the distinction between trade with parties and trade with non-parties, adding that the latter should be allowed only for purposes of environmentally sound storage of mercury and that any movement of hazardous waste should be subject to the relevant provisions of the Basel Convention.

60. Several representatives voiced support for permitting the export of mercury, subject to prior informed consent, for environmentally sound management in the absence of proven and viable alternatives for storage in the exporting country and for purposes consistent with allowable-use exemptions. One representative, while expressing agreement, added that trade should be limited as far as possible.

61. A few representatives suggested that the supply and trade measures should be combined or linked. One enumerated several elements that could be listed in provisions related to trade. Many expressed a preference for one or another option in the draft text and suggested possible additions.

62. One representative expressed support for option 2 of article 3, saying that in contrast to option 1 it respected the sovereign right of countries to exploit their natural resources and was most consistent with the mercury instrument's objective, while option 1 would set a dangerous precedent by restricting that right. He called for the instrument to provide for financial compensation to those countries that decided to renounce their right to exploit their natural resources and further that compliance with the instrument should be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and cooperation as required for capacity-building in accordance with parties' own assessments of their needs and priorities.

63. Two representatives of non-governmental organizations emphasized the environmental benefits to be reaped by constraining the supply of mercury, noting that the rising cost of mercury had already caused some miners and other users of mercury to consider alternatives and arguing that prohibiting primary mining and trade would accelerate the switch to safe alternatives. One representative said that if the annex listing sources of mercury supply was retained in the instrument then mercury as a by-product of oil production should be listed.

64. The committee agreed to defer further consideration of the sub-item pending progress on other elements of the draft text.

## **5. Products and processes (section E of the draft text)**

### **(a) Products (section E, article 6, of the draft text)**

65. Several representatives said that the matter of mercury-added products was of key importance to the instrument and required resolution of various complex issues. The question of what sort of control regime would best serve the instrument's needs was central, with some calling for a strongly enforced mandatory phase-out regime and others for one that was more facilitative and reflective of individual country needs. One representative, speaking on behalf of a group of countries, said that the instrument should contain ambitious measures to send a strong signal to markets that mercury should be phased out from products as soon as viable alternatives became available. A periodic review mechanism, taking account of technical developments, should be in place to ensure that progress was maintained.

66. Several representatives sought to place the issue of mercury-added products in a wider context. One, speaking on behalf of a group of countries, said that any action taken should reflect the principle of producer responsibility and should ensure that developing countries were not used as dumping grounds for mercury-added products that were no longer required elsewhere. Another, also advocating producer responsibility, highlighted the importance of accurate labelling of products so that consumers were aware of their components. Another representative said that any decisions on mercury-added products should be informed by technological assessments, availability of alternatives, the cost implications of phase-out and replacement, consideration of environmental and health impacts, and a review of the comparative advantages and disadvantages of existing and alternative options. Several representatives stressed the importance of ensuring that developing countries had the technological and financial means to meet their obligations under the instrument with regard to mercury-added products, and that transition periods and reporting procedures were feasible.

67. A wide range of opinions was expressed on the four specific options for dealing with mercury-added products presented in article 6 of the draft text.

68. Several representatives, expressing support for the positive-list approach of option 1, said that a definitive list of mercury-added products would assist management and aid research into the availability and cost-effectiveness of alternatives. One said that the approach would allow an unambiguous focus on the product categories of greatest concern. Another expressed reservations concerning the provision in option 1 that would prohibit the export of equipment for producing mercury-added products, stating that it would be difficult to implement as some manufacturing equipment had multiple uses.

69. Several representatives spoke in favour of the negative-list approach of option 2. One said that a general ban on mercury-added products was best suited to achieve the aims of the instrument, would send a strong signal about the dangers of the use of mercury in all contexts and put in place an incentive structure appropriate to long-term implementation of the instrument. Time-limited, allowable-use exemptions would take account of the availability of alternatives and the technical

feasibility of adopting mercury-free solutions. One representative said that the approach adopted in option 2 increased the risk of non-compliance and another that it shifted the burden of proof to parties.

70. One representative said that both options 1 and 2 would create difficulties, particularly for developing countries, as it was unrealistic to propose deadlines for phasing out some uses for which there were no alternatives to date.

71. One representative, speaking on behalf of a group of countries, said that the general approach of option 3 – which would categorize products as prohibited, to be phased out within a specific transition period or allowed for essential uses pending availability of alternatives – held the most promise for the engagement of parties with differing views. While some representatives said that the option merited further investigation, others remarked that it currently lacked clarity. The proponents of the option said that an updated version would be made available.

72. Several representatives expressed support for option 4, which would require parties to facilitate the development of alternatives and discourage the export of mercury-containing products but would not affirmatively require them to ban any such products. One representative said that it took due account of parties' social and economic conditions, needs and priorities, and gave prominence to issues of crucial importance to developing countries if they were to achieve proper compliance with the instrument, including provision of adequate financial resources, technology transfer, international cooperation and support and capacity-building. Another said that the option allowed scope for countries to tailor action to their individual circumstances by using relevant fiscal instruments, legislation and other measures, including awareness-raising campaigns, civil society involvement, promotion of consumer consciousness and private-sector collaboration, all of which would result in more effective and durable solutions. A number of representatives opposed the option, however, saying that a voluntary approach would not yield strong and effective regulation.

73. With regard to the options for listing mercury-added products in annex C, a number of representatives said that there was considerable scope for further review of both the products listed and the categories under which they were listed, with some suggesting that an intersessional expert group would be an appropriate forum for discussion of the matter. Several said that any such review should be based on the latest technical information and analysis. Some representatives said that a full understanding of the categories and the items listed therein was essential to any discussion of regulatory approaches.

74. A number of representatives said that allowable-use exemptions and related notification procedures needed to take into account individual countries' social and economic development. One said that some exemptions might require more than a single renewal. Two representatives, including one speaking on behalf of a group of countries, said that their delegations would be unable to support a separate compliance regime for a group of countries, as contemplated in article 8 bis of the draft text. Another said that the rationale behind that section was to recognize the special situation of developing countries and the challenges that they faced in obtaining economically and technically viable alternatives. The committee agreed that such issues would be further discussed during the deliberations on financial resources and technical and financial assistance.

75. With regard to the way forward on mercury-added products, one representative, supported by others, said that given the diversity of views on the various options it would be best to focus initially on issues that could be resolved regardless of the option favoured, for example specific products and product categories, and how to deal with newly proposed products.

76. The representative of WHO reported that there was a range of medical uses of mercury about which information had been provided and said that her organization would be happy to continue collaborating with UNEP on the issue.

77. Several representatives of non-governmental organizations made statements on mercury-added products. Two said that the use of mercury-containing dental amalgam had been shown to be harmful to public health and the environment and was unnecessary because effective, affordable alternatives were available such as atraumatic restorative treatment, which was particularly suited to use in developing countries. One representative suggested a phase-down approach to dental amalgam, citing the discussions at a 2009 WHO meeting on the future use of materials for dental restoration. Another, however, said that alternatives to dental amalgam lacked its durability and that further research was needed. One representative, speaking on behalf of several non-governmental organizations, said that there were no proven risks posed by the mercury-based preservative thiomersal in vaccines, as reported in a number of scientific papers and statements by national and international health organizations, and that switching to alternative preservatives would be expensive and burdensome, particularly in developing countries. Two other representatives, however, outlined what they described

as the dangers to health, particularly for children, of vaccines containing thiomersal, and said that thiomersal was a non-essential component of vaccines and that 2-phenoxyethanol constituted a more stable, less harmful alternative. One representative said that there was considerable potential for the phase-out of mercury-containing health-care products such as thermometers and sphygmomanometers. One representative said that mercury increased the energy efficiency of many types of lamps and specialist lighting equipment and thereby reduced their environmental impact, arguing that such lamps should be permitted under an allowable-use exemption. One representative said that mercury-free alternatives existed for most mercury-added products; the phase-out of such products would reduce the dumping of mercury-containing products in developing countries and countries with economies in transition and yield other significant global benefits.

**(b) Manufacturing processes in which mercury is used (section E, article 7, of the draft text)**

78. Many representatives said that it was important to deal with manufacturing processes in which mercury was used. Several, including one speaking on behalf of a group of countries, said that such processes should be phased out, with some noting that a transition period might be required in some situations. Several representatives expressed support for prohibiting or restricting the development of new facilities or manufacturing processes that used mercury. One representative, speaking on behalf of a group of countries, noted that more information might be necessary on mercury-based production processes, including the use of catalysts, when developing control measures. Another representative said that specific manufacturing processes should be carefully reviewed to ensure that any measures adopted were practical.

79. A range of opinions was expressed on the options in paragraph 1 of article 7 of the draft text for dealing with manufacturing processes. Some representatives expressed support for the positive-list approach set out in option 1, saying, among other things, that it was the most practical, would unambiguously identify which industries had to comply with the instrument and would provide the most environmental benefits for the least administrative cost. Others expressed support for the negative-list approach of option 2, saying that it would send the strongest signal to the private sector regarding the need to eliminate the use of mercury in processes. One representative expressed opposition to option 3, saying that it was excessively complicated. Another said that it would be difficult to prohibit the export of equipment that used mercury in manufacturing processes, as contemplated by paragraph 6, because some manufacturing equipment had multiple uses.

80. Some representatives, including one speaking on behalf of a group of countries, said that it was necessary to phase out chlor-alkali production plants and vinyl chloride monomer processes as a priority. Another, however, said that there was a lack of technically and economically viable alternatives to the use of mercury in chlor-alkali production plants in his country, and that an allowable-use exemption would be needed.

81. Several representatives, including one speaking on behalf of a group of countries, said that exemptions might be warranted but should be time limited and be subject to a review procedure that took into account economic and technical developments. One said that allowable-use exemptions should be subject to approval by the conference of the parties to the mercury instrument, perhaps on the basis of information provided by a technical body.

82. Some representatives said that it was necessary to address the use of mercury as a catalyst, which remained widespread notwithstanding the existence of alternatives for many uses. One representative said that his Government supported prohibiting new uses of mercury as a catalyst, including new low-mercury approaches. Another said that it was important to focus on the most practical and effective measures. A third said that best available techniques and best environmental practices were valuable tools for reducing mercury emissions but that it was not cost-effective to require their application to facilities that would be phased out in the near future.

83. Several representatives said that national action plans would be a useful component of efforts to deal with products and processes containing mercury, but one said that flexibility was needed regarding the time required for their preparation and implementation. One representative said that the provisions of the mercury instrument on products and processes should deal with mercury fulminate.

84. A number of representatives expressed support for establishing a contact group to consider issues relating to products and processes in greater detail. One, speaking on behalf of a group of countries, said that, although it was appropriate to discuss products and processes together, each was a distinct issue and different options might be considered to deal with them.

85. The representative of WHO said that there were no alternatives to some uses of mercury in pharmaceutical manufacturing processes. There was no alternative to the use of thiomersal, for example, to kill bordetella pertussis bacteria to make them safe for use in whole-cell pertussis vaccine.

WHO had much relevant information but much information in medicine was also held at the national level, and it was therefore important to communicate with national health regulators to ensure access to essential health technologies.

86. The representative of a non-governmental organization expressed support for the use of a negative-list approach and a ban on trade in mercury-based manufacturing equipment to discourage the development of new mercury-based processes. Another suggested preserving access to lighting products containing small amounts of mercury and allowing the processes involved in their manufacture. A third representative stated that chlor-alkali production was moving away from the use of mercury, although individual conversions were both time-consuming and expensive, and that best available techniques and best available practices could be used to reduce mercury releases in existing facilities where it was still used. To that end, the industry was sharing relevant guidelines with the UNEP Global Mercury Partnership.

**(c) Establishment of a contact group and outcome of its work**

87. Following its discussions, the committee agreed to establish a contact group, to be co-chaired by Ms. Kateřina Šebková (Czech Republic) and Mr. Mohammed Khashashneh (Jordan). The contact group was requested to consider central policy issues raised during the discussions, including whether the instrument should prohibit listed mercury-added products (article 6, options 1–3) or processes using mercury (article 7, paragraph 1, options 1–3), or should instead feature general approaches to regulating them (article 6, option 4); whether, if uses were to be prohibited, a transitional period would be required; and whether to allow exemptions and if so what type.

88. Subsequently Ms. Šebková reported on the contact group's work, saying that in accordance with its mandate the group had made good progress at the conceptual level but had not discussed any specific proposals regarding the draft text in document UNEP(DTIE)/Hg/INC.3/3. As indicated in section A of chapter IV of the present report, on intersessional work, a written version of her report is set out in annex I to the present report.

**6. Artisanal and small-scale gold mining (section F of the draft text)**

89. Those representatives who took the floor, some speaking on behalf of groups of countries, said that artisanal and small-scale gold mining constituted an important and complex subject, raising social, economic, environmental and health issues; many highlighted the special vulnerability of populations living near areas of artisanal and small-scale gold mining and of the workers involved in mining activities.

90. One representative, supported by another, said that the mercury instrument should phase out mercury use in artisanal and small-scale gold mining. Another representative, speaking on behalf of a group of countries and supported by another, said that regulating the use of mercury in artisanal and small-scale gold mining was essential and that the diversion of mercury for use in the sector should be prevented. He also called for the development of a definition of artisanal and small-scale gold mining.

91. Another representative urged caution in tackling the issue, saying that it would be difficult to implement obligations in areas where artisanal and small-scale gold mining was part of a long-standing culture. He, supported by many others, emphasized that measures should be put in place to control the use of mercury in artisanal and small-scale gold mining but not to prevent artisanal and small-scale gold mining itself. One representative, speaking on behalf of a group of countries, suggested that a general ban on artisanal and small-scale gold mining was not likely to be effective but that it would be pragmatic to phase out specific uses with the aim of preventing illegal activities. She proposed that the committee should also discuss the use of mercury in artisanal and small-scale silver mining. Some representatives said that it was necessary to address links between artisanal and small-scale gold mining and trade. Several representatives added that banning the use of mercury in artisanal and small-scale gold mining should not result in an increase in illegal traffic of mercury for that purpose.

92. Some representatives suggested that measures relating to artisanal and small-scale gold mining should be voluntary. One said that control measures should be tied to financial support and linked to alternative activities for affected populations. Any measures, he added, should facilitate the development of alternative options and not be punitive. He called for the provision of sufficient time to allow countries to reduce and where feasible eliminate the use of mercury and mercury compounds in mining. Another representative, speaking on behalf of a group of countries and supported by others, said that measures to reduce the use of mercury should be accompanied by capacity-building, including in respect of best available techniques. One representative stressed the importance of undertaking national inventories to determine the current status of the sector.

93. One representative, speaking on behalf of a group of countries, said that actions should be focused on parties with artisanal and small-scale mining in their territories. Another, however, said that control measures should apply to all countries regardless of whether mercury was used for gold production in their territories.
94. One representative said that mercury use in artisanal and small-scale gold mining should, for the present, be an allowed use and suggested that import controls might not be an effective or efficient way to reduce mercury use in the sector; he advocated instead mandatory controls for specific practices in the sector and the mandatory development and implementation of national action plans and partnerships, among other actions by relevant stakeholders. He, supported by others, called for the inclusion of an article specifically dedicated to artisanal and small-scale gold mining. Several representatives expressed support for the development of national action plans that would address artisanal and small-scale gold mining.
95. One representative said that there should be a combination of voluntary and mandatory measures to deal with mercury use in artisanal and small-scale gold mining, with requirements and incentives to facilitate the involvement of all relevant actors. Another suggested restricting access to low-cost mercury, including through formalization of the sector. Many representatives voiced their preference for one or another option in the draft text or made specific suggestions that they said could be taken up in a contact group.
96. One representative, speaking on behalf of several non-governmental organizations, and supported by another non-governmental organization representative, said that there was a need for mandatory measures in national action plans to protect miners and other populations vulnerable to exposure to mercury in the sector. She also stressed the need to address mercury releases from large-scale mining operations, including at legacy sites. Another representative of a non-governmental organization emphasized the health impact of mining processes, especially on children, and the need for the identification and treatment of poisoned workers and their families and practices for preventing exposure.
97. Following its discussions the committee agreed to establish a contact group, to be co-chaired by Mr. Antonio Ricarte (Brazil) and Mr. Donald Hannah (New Zealand). The contact group was requested to consider, among other things, whether the provisions of the instrument on artisanal and small-scale gold mining would apply to all parties or only those in whose territories it took place beyond an agreed threshold; whether the objective was to reduce the use of mercury in artisanal and small-scale gold mining or to eliminate it altogether; whether specific activities should be prohibited or whether a facilitative approach should be used; whether some or all of the provisions should be mandatory or voluntary and whether there should be an allowable-use exemption to permit import or export of mercury for this use; and whether all provisions related to artisanal and small-scale gold mining should be gathered together in a single article.
98. Subsequently Mr. Hannah reported on the contact group's work. A conference room paper reflecting the group's discussion of article 9 and annex E of the draft text was circulated and is set out in annex II to the present report. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text presented in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session.

## **7. Emissions and releases (section G of the draft text)**

99. All the representatives who took the floor said that the mercury instrument should tackle atmospheric emissions and releases to both water and land. Many, however, said that atmospheric emissions were of paramount importance and posed the most significant threat to human health and the environment. One said that such emissions were the single greatest source of transboundary mercury pollution with the greatest impact on global health, and that coordinated global action was therefore required to obtain the clear global benefits of mitigation.
100. There was a lack of consensus regarding the way in which to deal with emissions and releases. Many representatives favoured option 1 of section G, which treated the two issues separately, while others suggested that it constituted a punitive rather than incentive-based approach. Others voiced support for option 2, which combined emissions and releases. Some suggested that releases to water and land did not require a stand-alone provision as they would be covered under other provisions.
101. While there was unanimous support for holding contact group discussions on emissions and releases, opinions varied as to whether one group should discuss both topics. While some representatives said that the issues could be discussed in tandem by a single group, they suggested

nevertheless separating the issues in the text of the instrument. Some representatives expressed support for intersessional expert consultations to discuss emissions and releases further.

102. Most of the representatives who spoke voiced support for the application of best available techniques and best environmental practices to attain the goals of the instrument. There was, however, a lack of agreement on their specific application, including on whether they should be applied to new or existing facilities or both. One representative said that while best available techniques should be required for both new and existing sources of emissions the same techniques would not necessarily apply to both categories. A number of representatives called for further discussion of the definitions, applications and scope of best available techniques and best environmental practices, and there was broad support for the development of relevant guidelines. One representative said that emissions experts should participate in drafting such guidelines, while another suggested that the conference of the parties to the instrument should aim to adopt them at its first meeting. One representative said that any guidelines should describe the technologies responsible for emissions. Another said that the application of best available techniques and best environmental practices should be mandatory and emissions limits used as a complementary measure. One representative suggested that assessment of compliance would complement the application of best available techniques.

103. Several representatives of developing countries drew attention to their national situations, in which fossil fuels remained the primary source of electricity generation. One said that requiring the application of best available techniques would impose a serious economic burden on such countries. A number of representatives described the lack of capacity and financial and technical resources available in developing countries, underscoring the importance of adequate financial and technical assistance and access to alternative technologies.

104. National action and implementation plans were cited by many representatives as important means of achieving emissions reductions. Many representatives spoke of the importance of considering countries' differing circumstances and tailoring flexible approaches thereto. Several favoured the setting of national emissions limits in accordance with national priorities and realities. A number suggested that each country should determine in its own national implementation plan its objectives for the management of mercury, including, according to one, the reduction of atmospheric emissions over time. Some representatives said that emissions benchmarks should be legally binding. There was some support for the establishment of emission and release limit values for identified sources of emissions, although one representative said that he could not support them.

105. One representative said that emissions sources identified in the instrument should be listed in order of importance, from the most polluting to the least. Another spoke of a need to identify the full range of sources, their nature and the extent of their impacts. One representative, however, said that the inclusion of all sources of emissions to the atmosphere would pose a major challenge to the implementation of and compliance with the instrument.

106. Several representatives voiced support for specific provisions for countries that were sources of significant aggregate emissions. One, underlining the importance of reducing emissions from such emitters, noted that, according to the study on mercury sources and emissions and analysis of the costs and effectiveness of control measures (UNEP(DTIE)/Hg/INC.2/4), three parties accounted for 60 per cent of emissions of mercury to the atmosphere. Several representatives said that countries should not be penalized for the size of their populations, with one saying that assessment of power consumption and mercury emissions should be undertaken on a per capita basis for the sake of equity and that aggregated data should not be used.

107. Several representatives argued that oil and gas production and processing facilities should not be listed as sources of mercury emissions in the instrument, saying that the note by the secretariat on emissions and releases from the oil and gas sector (UNEP(DTIE)/Hg/INC.3/5) showed that such emissions were negligible and posed no genuine threat to human health and the environment.

108. A number of representatives cautioned that the instrument should not stray into the mandate of other multilateral environmental agreements, such as the United Nations Framework Convention on Climate Change. One stressed the importance of such other agreements in reducing atmospheric emissions of mercury.

109. One representative, speaking on behalf of a group of countries, emphasized the need for cooperation between parties in the development and implementation of strategies. He proposed a five-year time frame for the adoption of national strategies and action plans in line with the precedent set by the Stockholm Convention on Persistent Organic Pollutants.

110. One representative drew attention to the particular situation of the Arctic, where mercury levels from long-range transport exceeded safe levels recommended by WHO; in some areas of the Arctic,

levels of mercury in some 72 per cent of Inuit women of childbearing age had been found to be in excess of recommended safe levels.

111. One representative stressed the importance of targets, timelines and reporting requirements in achieving emissions reductions, saying that a recent assessment had suggested that global mercury emissions could be cut by up to 60 per cent by 2020 using available technologies. She underscored the importance, in particular, of total national emissions reduction requirements in addition to national targets.

112. Some representatives expressed support for voluntary actions while others favoured legally binding measures or a combination of the two approaches. One called for due attention to be paid to the guidance set out in section III of Governing Council decision 25/5, including its reference to the mercury instrument featuring a combination of voluntary and legally binding measures. Another called for legally binding obligations to reduce atmospheric emissions to be tempered by flexibility of implementation according to national circumstances. He said that there was a need to link a financial mechanism to obligations, using funding in areas in which the most significant emissions reductions could be achieved.

113. A number of representatives requested clarification of terms, including “significant aggregate emitters” and “unintentional emissions and releases” and some noted their intention to introduce conference room papers. Technical clarifications were also sought by some representatives and specific drafting proposals made by a few.

114. Saying that mercury emissions to the atmosphere were by far the largest source of mercury and a continued and serious threat to the environment and human health, several representatives of non-governmental organizations expressed support for strong binding controls on both new and existing sources. One said that the instrument would be judged by the strength of such provisions, another that mandatory provisions should require States to address emissions and releases in a holistic manner through national plans guided by relevant principles and featuring best available techniques and best environmental practices. Another said that the long-range transport and biomagnification of mercury emissions into the air had rendered some traditional foods of indigenous people unsafe and called upon the committee to recognize the needs and rights of indigenous peoples, who were affected by toxic pollutants that they did not produce, use or release.

115. Following its discussions, the committee agreed to establish a contact group, to be co-chaired by Ms. Rina Soemarno (Indonesia) and Mr. John Roberts (United Kingdom of Great Britain and Northern Ireland). The contact group would consider central policy issues raised during the discussions, including whether there should be separate articles, or a combined article, on emissions and releases; whether the definitions of best available techniques and best environmental practices in the existing draft provision on emissions were adequate; whether the use of best available techniques and best environmental practices should be mandatory and should apply to new facilities, existing facilities or both; whether specific operational details relevant to the application of best available techniques and best available techniques should be developed after the instrument was adopted; whether countries should commit themselves to national limits or goals or emissions or whether the use of best available techniques and best available techniques was sufficient; whether national limits or goals would apply only to large national emitters, all parties or some other subset of parties; whether national limits or goals should be voluntary or mandatory; which sources of mercury releases were or could be addressed under other articles; what types of specific releases should be addressed; and whether issues related to best available techniques would be addressed in other parts of the instrument and how to ensure consistency and avoid duplication.

116. Subsequently Mr. Roberts reported on the contact group’s work, saying that in accordance with its mandate the group had made good progress at the conceptual level but had not discussed any specific proposals regarding the draft text in document UNEP(DTIE)/Hg/INC.3/3. As indicated in section A of chapter IV of the present report, on intersessional work, a written version of his report is set out in annex I to the present report.

## **8. Storage, wastes and contaminated sites (section H of the draft text)**

### **(a) Environmentally sound storage [of commodity mercury] (section H, article 12, of the draft text)**

117. One representative introduced a conference room paper that sought to clarify key concepts and provisions to ensure the environmentally sound management of both commodity mercury and waste mercury. Another introduced a conference room paper on mandatory inventories for parties with significant stockpiles of metallic mercury and mercury compounds listed in annex B to the draft text.

118. Many representatives stressed the importance of environmentally sound storage of both commodity mercury and waste mercury, saying that it was necessary to define each clearly. Noting that commodity mercury could be the subject of allowable uses and that waste mercury should be destined for final disposal they suggested that the instrument should feature separate and consistent articles on the two categories. One representative said that the provisions of the instrument on storage should not apply to mercury compounds and that guidelines should be developed to govern safe storage of mercury awaiting either use or disposal. Another said that the storage provisions should provide for the stabilization of mercury compounds to enable their environmentally sound disposal. A third said that environmentally sound storage was integral to controlling mercury emissions and that emissions from mercury wastes should be examined further.

119. A number of representatives, including several speaking on behalf of groups of countries, said that the instrument should apply the principles set out in the Basel Convention relevant to the storage of commodity mercury and waste mercury, with one calling for further collaboration with the bodies of the Convention to explore the relevant issues. One representative said that the provisions of the instrument on environmentally sound storage should be restrictive and should avoid confusion in respect of terms employed under the Convention such as mercury waste and interim and permanent storage. Supported by another, she noted that at its tenth meeting the Conference of the Parties to the Convention had adopted technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury, which could serve as guidance during the current negotiations. She also noted that the Convention had a protocol on liability and compensation, although it had not yet entered into force. Other representatives also said that it was necessary to avoid duplicating or conflicting with the Convention on matters such as trade with non-parties, compliance and interim storage of mercury for allowable uses and final disposal.

120. Several representatives, including two speaking on behalf of groups of countries, urged that the capacity of developing countries should be considered and that the need for predictable and sufficient financial and technical assistance to address storage, wastes and contaminated sites should be reflected in the instrument. One said that the establishment and management of long-term storage sites would pose a particular challenge for developing countries, and another that flexibility was needed to permit them to transfer mercury to developed countries with the necessary long-term storage facilities. One representative suggested that the development of regional plans for dealing with surplus mercury and the establishment of at least one storage site per region might be difficult to achieve in practice and might also impinge on countries' sovereign rights.

121. One representative, speaking on behalf of several non-governmental organizations, said that environmentally sound storage was vital to the instrument and that the key issues were the classes of mercury to be covered, the development of storage guidelines and national plans that included waste provisions and international and regional cooperation. He called for the adoption of broad storage provisions that would cover matters outside the purview of the Basel Convention and the development without delay of guidelines, saying that those under the Convention were not binding on non-parties to the Convention, were merely recommendations and were limited to wastes.

**(b) Mercury wastes (section H, article 13, of the draft text)**

122. Several representatives voiced support for binding measures to ensure the environmentally sound management of mercury wastes. Support was expressed for a number of policy components, including best available techniques and best environmental practices, basic standards, national action plans, and international cooperation and knowledge-sharing.

123. One representative said that the volume of waste mercury should be reduced through plans to eliminate mercury in products and processes and that developing countries needed assistance in developing legislation to that end. Another representative, speaking on behalf of a group of countries, said that mercury waste should be reduced by restricting trade that resulted in the movement of mercury from developed countries to developing countries for disposal, recycling and reuse. She also reiterated the view that the instrument should have separate articles on commodity mercury and waste mercury.

124. One representative said that the environmentally sound management of mercury wastes, including final disposal, should be mandatory under the instrument and not merely the subject of guidance, that at the outset it should be based on technical guidelines developed under the Basel Convention and that preferred methods for the treatment of mercury waste should be adopted and recycling prohibited. Another representative said that to avoid duplication of efforts transboundary movements of hazardous waste containing mercury should be governed by the Basel Convention.

125. The representative of a non-governmental organization called for the instrument to prohibit exports of mercury wastes, especially from developed countries to developing countries, including in the form of the transfer of obsolete technologies. The representative of another non-governmental organization said that since the mercury instrument was not expected to have the same scope as the Basel Convention it should address mercury-containing waste and not leave it to the Convention. He suggested the inclusion of several provisions on mandatory environmentally sound management, national implementation plans, best available techniques and best environmental practices, limit values for defining hazardous wastes, minimization of mercury waste generation, awareness-raising campaigns and risks associated with legacy exports.

**(c) Contaminated [and polluted] sites (section H, article 14, of the draft text)**

126. Several representatives, including one speaking on behalf of a group of countries, said that contaminated sites were significant for human health and presented significant technical challenges whose solution would require financial and technical assistance. One representative said that domestic legislation to address contaminated sites was needed and should include provisions on preventing exposure and on managing remediation and rehabilitation of contaminated sites. Citing his country's experience in such matters he offered to share technical guidance and information. He suggested that mandatory clean-up of contaminated sites would place a heavy burden on parties and distract efforts from more critical issues such as air emissions. Another representative suggested that decisions on remediation and rehabilitation of such sites should be determined by parties on a case-by-case basis.

127. Several representatives said that countries needed to draw up inventories of contaminated sites, with one, speaking on behalf of a group of countries, stressing that there was a need to assess heavily contaminated sites in particular. One representative said that developing countries required guiding principles for all contaminated sites and awareness-raising campaigns that could be achieved only with technical and financial assistance. Another said that remediation of contaminated sites should be preceded by mandatory risk evaluation, which would also facilitate the prioritization of the most heavily contaminated sites. Noting that risk evaluation and remediation were costly he stressed the need for advice on how to tackle the issue and a financial mechanism that would enable countries to deal with all aspects of contaminated sites, from identification to remediation.

128. The representative of a non-governmental organization recalled the Minamata tragedy, saying that it had resulted in part from contaminated sites. He said that the instrument should provide for the mandatory development of inventories of contaminated sites to provide a baseline for prioritizing sites and other action; should require polluters to pay for remediation and compensate victims and promote international cooperation where responsible polluters could not be identified or lacked sufficient resources; and should include a mechanism for implementing Rio principles 10, 13 and 16 on public access to information, liability and compensation and the polluter pays principle.

**(d) Establishment of a contact group and outcome of its work**

129. The committee agreed to establish a contact group on storage, wastes and contaminated sites, to be co-chaired by Ms. Anne Daniels (Canada) and Ms. Abiola Olanipekun (Nigeria). On storage the contact group was requested to examine options relating to storage of mercury for intended use; whether the storage provisions of the mercury instrument should apply to surplus, commodity or all types of mercury; and temporary, permanent and interim storage. There was also a need to clarify whether regional approaches were viable for all regions. Concerning wastes the contact group was requested to consider whether mercury not permitted for an allowable use should be considered to be waste; the extent to which the instrument should incorporate definitions and rules of the Basel Convention; and whether there should be general obligations on remediation of contaminated sites or a requirement to develop specific rules in that regard.

130. Subsequently Ms. Daniels reported on the contact group's work. A conference room paper reflecting the group's discussion of articles 12–14 and related annexes of the draft text was circulated and is set out in annex II to the present report. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text presented in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session.

**9. Financial resources and technical and implementation assistance (section I of the draft text)**

131. The committee began its consideration of financial matters with several presentations by representatives of the secretariat and the Global Environment Facility (GEF).

132. The representative of the secretariat provided an overview of a note by the secretariat on a further comparative analysis of options for financial mechanisms to support the global legally binding instrument on mercury (UNEP(DTIE)/Hg/INC.3/4), which had been prepared by the secretariat at the request of the committee at its second session.

133. Another representative of the secretariat then reported on progress in the consultative process on financing options for chemicals and wastes, as outlined in the note by the secretariat on the subject (UNEP(DTIE)/Hg/INC.3/INF/3). He provided an overview of the process, explaining that it had been launched by the Executive Director of UNEP and first announced at the fourth meeting of the Conference of the Parties to the Stockholm Convention, in May 2009. The process aimed to assess the current situation on financing for the sound management of chemicals and wastes at the national level with a view to improving it. The consultative process had been informed by a widely shared perception that a gulf existed between what was required for the sound management of chemicals and wastes and the financial means necessary to implement it. The outcome document of the consultative process, contained in annex II to the note by the secretariat, set out the views and contributions of participants based on discussions at five meetings. While it did not represent a consensus document, it described numerous areas of common understanding and presented an integrated approach for financing the sound management of chemicals and wastes, which participants had recognized as representing the best way forward. On behalf of UNEP he expressed his deep appreciation to the representatives of Mexico, Norway, South Africa and Sweden, who had co-chaired the meetings of the consultative process.

134. Ms. Johanna Lissinger Peitz (Sweden), speaking as co-chair of the fourth and fifth meetings in the consultative process, said that participants at the fifth meeting had reached a common understanding that an integrated approach to financing represented a mature understanding of the link between compliance and financing and the need for capacity-building and technology transfer at all levels in developing countries. That outcome could make a significant contribution to the discussions on financing for chemicals and wastes in other forums, including those of the committee, which had an opportunity to make progress on financing for chemicals and wastes and to become a driving force in that regard.

135. A number of representatives said that the documents introduced by the secretariat would usefully inform the negotiations.

136. The representative of GEF described developments in the period between the committee's second and third sessions with regard to funds allocated by GEF to mercury. He recalled that at the Fifth GEF Assembly, in November 2010, countries had adopted a strategy for initiating work on mercury. Funding would be focused on activities aimed at reducing mercury use in artisanal and small-scale gold mining, reducing atmospheric emissions and improving data and scientific information, among other things. GEF had allocated \$15 million from the chemicals and international waters focal areas, with a \$5 million addition to the mercury allocation since the fifth replenishment, for a total of \$20 million. The funding would be channelled through GEF implementing agencies, such as UNEP and the United Nations Industrial Development Organization (UNIDO), which would partner with other United Nations agencies and non-governmental organizations to execute mercury projects. To date, one project, submitted by UNIDO and aimed at reducing mercury use in artisanal and small-scale gold mining in West Africa, had been approved.

137. Discussion of the draft text on financial matters followed the presentations.

**(a) Financial resources and mechanisms (section I, article 15, of the draft text)**

138. Most of the representatives who spoke said that the financial mechanism of the mercury instrument would be of paramount importance in providing the capacity-building, technology transfer and financial and technical assistance necessary to enable developing countries to honour their obligations under the instrument. One, recalling the events that had led to the establishment of the consultative process on financing options for chemicals and wastes, spoke of the need for a dedicated, robust and predictable financial mechanism. Another representative said that the financial mechanism should focus resources on those environmental problems that were global in nature and on those areas where the most significant reductions could be achieved, taking account of the fact that capacity-building needs varied by country.

139. A number of representatives said that they favoured the adoption of an integrated approach to financing such as that described in the outcome document of the consultative process. One said that the financial mechanism should assist parties in applying governing principles, such as equity; allow leveraging of additional funding, including from the private sector; facilitate compliance; harness synergies and co-benefits; build on existing mechanisms; and make effective use of existing resources.

Several representatives stressed the need to mobilize resources from a broad donor base, including civil society and the private sector. One, stressing the importance of promoting sound industrial development and the use of best available techniques, said that the involvement of industry was key to the delivery of resources for compliance with new regulatory standards and technologies.

140. Several representatives, some speaking on behalf of groups of countries, expressed a preference for option 1 in the draft text, which would provide for a financial mechanism that could be operated by one or more existing entities and would provide funding for activities aimed at achieving the objectives of the instrument; they suggested that GEF was the most appropriate entity to entrust with the operation of the mechanism. One representative demurred, however, saying that while GEF had undertaken important work on chemicals and wastes it had limited resources at its disposal. Another said that the mechanism should receive voluntary rather than assessed contributions, an approach that would not preclude GEF financing.

141. Many representatives, some speaking on behalf of groups of countries, said that they favoured option 2, which would provide for a stand-alone financial mechanism along the lines of the Multilateral Fund aimed at providing funding for compliance with obligations under the mercury instrument. One, speaking on behalf of a group of countries, said that the flow of resources from such a mechanism should not be contingent on, but rather enable or facilitate, compliance. Another said that the role of such an entity should include monitoring of financial assistance from developed to developing countries. Yet another said that the criteria for the financial mechanism should be set through a transparent and inclusive process and primarily serve the requirements of developing countries and countries with economies in transition.

142. One representative, saying that it was important to identify lessons learned from other multilateral environmental agreements, argued that the Multilateral Fund had been key to the success of the Montreal Protocol by providing funding to developing countries for implementation and facilitating compliance. Another praised option 2 as being more detailed and precise and more binding in terms of the provision of assistance from developed to developing countries. In that vein, one representative said that it behoved the committee to ensure that financial resources commensurate with the cost implications of the treaty's legally binding obligations were made available, and that option 2 represented the most pragmatic option in that regard.

143. A number of representatives said that countries should be able to set their own priorities and timelines in relation to mercury. One, speaking on behalf of a group of countries, said that what was needed was a realistic, pragmatic approach to financing and adequate, predictable and stable financing to reflect the realities on the ground and national priorities.

144. A number of representatives, one speaking on behalf of a group of countries, suggested that an interim financial mechanism should be established to tackle the immediate needs of developing countries. A number of representatives, one speaking on behalf of a group of countries, stressed the need for a transitional period to enable the assessment of national situations, including to inform national implementation plans and allow an adequate response thereto. One representative, saying that a conciliatory, flexible and fair approach was needed, expressed concern that mercury mining countries and those with significant mercury stocks were not explicitly mentioned in the draft text. To motivate such countries to sign and ratify the instrument, it was crucial to compensate them for the economic losses that they would incur in renouncing their right to exploit their natural resources.

145. A number of representatives, recalling the provisions of section III of decision 25/5, expressed the view that compliance should be linked to the provision of resources for capacity-building and technology transfer in accordance with countries' assessments of their own needs and priorities. Developing countries, they said, were not in a position to implement the mercury instrument without financial and technical assistance and should therefore not be expected to undertake legal obligations that they could not comply with in the absence of such assistance. Several others, however, said that compliance should not be conditioned upon the provision of financial resources and that obligations under the instrument should not vary according to the availability of financing; countries, it was suggested, should take on legally binding obligations with the full intent of meeting them, particularly with regard to the implementation of national activities, with external funding available to cover the incremental costs of compliance.

146. It was suggested that the development of eligibility criteria would assist in identifying which countries should be eligible for financial and technical assistance, and how much support they might receive. Others, however, objected to such criteria and to the notion of differentiating between developing countries. Several said that the financial and technical assistance needs of developing countries and countries with economies in transition were not being accorded sufficient priority in the negotiations. Several said that the Rio principles, in particular the principle of common but

differentiated responsibility, must be given due prominence, and the mandate outlined in section III of Governing Council decision 25/5 respected. One representative, supported by others, said that the phrase “emerging economies” employed by some parties was not official United Nations terminology and had no bearing on the responsibility of developed countries with regard to the provision of predictable, sustainable and additional funding.

147. With regard to the way forward, several representatives, some speaking on behalf of groups of countries, said that negotiations on the financial mechanism and compliance should proceed jointly. A number of representatives said that it was premature to engage in detailed discussion of the draft text of section I, article 15, of the draft text. A preferable approach would be to discuss broader matters, such as the criteria for a financial mechanism, and its proposed components. One representative said that a “form follows function” approach would allow the development of the overarching issues and would help keep the discussions in line with the consultative process on financing options for chemicals and wastes.

148. Several representatives of non-governmental organizations delivered statements on the issue of financial resources and mechanisms. One said that experience had demonstrated that success in implementing a multilateral environmental agreement was contingent upon the availability of financial resources and technical assistance to developing countries and countries with economies in transition, that the adoption of voluntary measures would tend to block access to financing and invite non-compliance, and that the polluter pays principle should be an important component of the instrument. Another representative spoke in favour of a dedicated fund to facilitate compliance; establishment of an interim fund before the instrument came into force; full private sector involvement, including in developing countries; and financial support and accountability as the twin pillars of the instrument.

**(b) Technical assistance and capacity-building (section I, article 16, of the draft text)**

149. There was general recognition that the matter of technical assistance and capacity-building was of basic importance to the development of the instrument. One representative, speaking on behalf of a group of countries, said that measures related to technical assistance were a cornerstone of cooperation between developed and developing countries and that it was essential to build capacity for effective compliance with and implementation of the instrument.

150. With regard to the three options in the draft text, one representative, speaking on behalf of a group of countries, said that technology transfer should be largely a matter for the private sector rather than Governments, with regional and subregional centres, such as those established under the Basel and Stockholm conventions, playing an important role. Another, however, said that greater clarification was needed on the incentives for technology transfer and on the role of the regional and subregional centres, and that care should be taken in relying on the private sector since Governments were responsible for implementation of the instrument.

151. One representative, speaking on behalf of a group of countries, said that developing countries could not comply with the provisions of the instrument without adequate transfer of technology and capacity-building to enable the adoption of best available techniques. Several representatives said that a number of developing countries had made significant strides in developing technical solutions to the problem of mercury and that the instrument should recognize them as a source of technical assistance, in line with article 12 of the Stockholm Convention. Another representative said that technical assistance was also important for the implementation of best environmental practices and that partnerships were a valuable tool in facilitating the exchange of information and technologies.

152. Opinions varied regarding the options presented in the draft text; some representatives suggested that a hybrid text, combining selected elements of the options, was the best way forward.

**(c) Partnerships (section I, article 16 bis, of the draft text)**

153. One representative said that partnerships could play an important role in implementing the goals and obligations of the instrument. He said that a framework to establish partnerships, as described in article 16 bis of the draft text, should establish basic procedures and requirements for their operation to ensure their effectiveness, transparency and alignment with the objectives of the convention. He added that the legal and financial aspects of including partnerships in the instrument should be further clarified and could build upon the partnership framework that already had been well developed by UNEP under the Global Mercury Partnership.

154. Other representatives voiced support for the partnership work on mercury but said that it was not necessary to make specific reference to partnerships in the mercury instrument; one suggested limiting any such reference to the preamble.

**(d) [[Implementation] [Compliance] committee] [Committee[s] on financial assistance, technical support, capacity-building and implementation] (section I, article 17, of the draft text)**

155. There was general agreement that a mechanism for promoting implementation and determining compliance with the mercury instrument was needed. One stressed in that context that the effectiveness of the instrument, including whether it should be amended, could be assessed only if there was a clear understanding of the extent to which parties were complying with their obligations. There was also general agreement that a compliance mechanism should be facilitative and neither punitive nor confrontational. One representative said that the committee should hold its meetings back-to-back with meetings of the conference of the parties or other meetings and another that it should feature broad representation of parties.

156. There was some discussion of whether the instrument should provide for the establishment of a compliance committee, leaving the details to be worked out by the conference of the parties. One representative said that such issues as the terms of reference and rules of procedure could be decided by the conference of the parties while others, including one speaking on behalf of a group of countries, said that it was important that all elements of a compliance committee should be included in the text of the instrument to avoid the lengthy discussions on compliance that were under way under existing multilateral environmental agreements.

157. Several representatives said that all obligations under the instrument should be within the committee's purview. Another, however, said that the committee should have limited terms of reference on specific matters, and another that obligations should be clear and easily verifiable.

158. Several representatives said that there should be clear links between compliance and the provision of adequate technical and financial assistance, taking into account the principle of common but differentiated responsibility and the differences between developing countries, small island developing States and countries with economies in transition. One representative expressed support for option 2 of the draft text, providing for a committee encompassing both compliance and technical and financial assistance. Another said that discussion of compliance arrangements should take place once discussions had moved forward, with knowledge of national situations, on alternatives to products and processes and technical and financial assistance.

159. Noting that UNEP had developed guidance on the implementation of multilateral environmental agreements, one representative said that prior to ratification States should be ready to comply with their obligations under the instrument and should enact any laws needed to enable implementation, as suggested in article 31 of the draft text.

**(e) Establishment of a contact group and outcome of its work**

160. The Committee agreed to establish a contact group, co-chaired by Mr. Adel Shafei Osman (Egypt) and Ms. Johanna Lissinger Peitz (Sweden). The contact group was requested to discuss financial and technical assistance and a compliance mechanism from a conceptual perspective. It was to explore options for an integrated approach and multiple solutions for diverse situations in respect of financial assistance, and might also examine the type of financial mechanism that would best serve the mercury instrument and address the links between compliance and technical assistance, taking into account the options described in the note by the secretariat on options for a financial mechanism (UNEP(DTIE)/Hg/INC.3/4).

161. Subsequently Ms. Lissinger Peitz and Mr. Osman reported on the contact group's work. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that further intersessional work on the issue was required and that a document capturing the result of that work would be produced for consideration by the committee at its fourth session.

**10. Awareness-raising, research and monitoring and communication of information (section J of the draft text)**

162. One representative, speaking on behalf of a group of countries, expressed support for the general approach set out in the draft text on awareness-raising, research and monitoring and communication of information. He said, however, that, as many elements in the text related to matters of substance that were yet to be agreed upon, consideration of them should be deferred pending agreement on substantive aspects to ensure consistency.

**(a) Information exchange (section J, article 18, of the draft text)**

163. There was general agreement that awareness-raising and information exchange with regard to the risks posed by mercury and alternatives to the substance would play a pivotal role in attaining the instrument's objectives, preventing exposure to mercury and protecting public health.

164. Several representatives said that there was room for improvement in information exchange. For example, one, speaking on behalf of a group of countries, said that there was a lack of clear, accessible and appropriate information for use by local populations.

165. Several representatives, including one speaking on behalf of a group of countries, proposed provisions in the draft text providing for cooperation with existing chemicals and wastes conventions and the Strategic Approach to International Chemicals Management and called for the number of information sources referred to in the instrument to be expanded to include existing national and international centres and civil society organizations with expertise in mercury. One representative highlighted the need for countries to share information on health hazards and epidemiological information with the international community.

166. One representative said that the designated national authority on information exchange contemplated in the draft text could also perform other functions and should therefore be dealt with in some other provision. Another highlighted the particular challenges of disseminating information to Governments and said that, given the wealth of information already disseminated and the limited resources of multilateral environmental agreements, a new information exchange structure was not required.

**(b) Public information, awareness and education (section J, article 19, of the draft text)**

167. A number of representatives said that public access to information and public participation were vital in raising awareness. One, speaking on behalf of a group of countries, welcomed the approach adopted in article 19 of the draft text and requested that an additional paragraph should be included on public access to information on emissions and releases of mercury, modelled on similar text in the Stockholm Convention. One representative expressed support for the development of pollutant release and transfer registers in countries where they did not exist; several said that such registers should be considered further.

168. One representative suggested that the information requested in article 19 was overly broad and should be limited to ensure respect for commercial confidentiality, among other things. Another, referring to article 10 of the Stockholm Convention, said that the instrument should take into account differences between national legal systems with regard to the disclosure of information and access to information.

169. The representative of a non-governmental organization called for the sharing of experiences, the facilitation of capacity-building and the updating and dissemination of scientific information on mercury through a clearing-house mechanism to facilitate the education and participation of a broad range of stakeholders. The representative also cited article 10 of the Stockholm Convention as a useful model. Another representative called for national inventories to be aggregated to gain a clearer understanding of the regional, global and subglobal situations, monitoring of mercury contamination of food and water and biomonitoring to evaluate threats to human health, the need for regulation and the effectiveness of the instrument.

**(c) Research, development and monitoring (section J, article 20, of the draft text)**

170. Several representatives said that research and monitoring were vital to shaping the impact of the instrument and that broad understanding of the importance of health monitoring systems and other information exchange systems was critical to attaining its goals. One representative, however, noted that the draft text contained several provisions under which monitoring data would be reported to the secretariat, suggesting that a separate provision to encourage international cooperation on health-related research was unnecessary.

171. One representative, speaking on behalf of a group of countries, expressed support for additional research and monitoring on mercury, even though considerable information on the subject already existed. The representative also said that the provisions in the draft text on awareness-raising, research and monitoring and communication of information should be viewed as related parts, and that monitoring activities should be tailored to the instrument's objectives and enable an evaluation of its effectiveness. The representative added that the cost of gathering information should be acceptable and coordination with existing monitoring programmes promoted.

172. The representative of WHO recalled the Executive Director's reference to a recent study on the global phase-out of lead in petrol, which she said had relied on the use of human biomonitoring and WHO methods for estimating the burden of disease. Similar means could be employed to provide information on mercury. WHO had published guidance on estimating the burden of disease, which could be undertaken at the national, regional and global levels, relying on the analysis of mercury concentrations in hair.

173. The representative of a group of non-governmental organizations said that research was necessary to develop and improve alternatives to dental amalgam.

**(d) Health aspects (section J, article 20 bis, of the draft text)**

174. Opinion was divided as to whether health aspects warranted the inclusion of a separate article in the mercury instrument.

175. One representative, speaking on behalf of a group of countries and supported by others, said that while mercury's impact on health was important most of the provisions of the draft article could be accommodated within other articles. Another representative said that the committee's mandate had not included reference to a separate article on health, noting that no other multilateral environmental agreement had such an article. It was also worth bearing in mind that the principal focus of UNEP, under whose auspices the preparation of the instrument was taking place, was the environment, and the committee risked losing focus if it went beyond its mandate and that of UNEP. Concerns about human health due to occupational exposure were best addressed by national Governments or through organizations such as WHO and the International Labour Organization. One representative said that, if the article were to be included, its scope should not be limited to vulnerable people, given that the potential damage to health from mercury was universal. Another added that ambiguities in the text of the article required clarification.

176. One representative, speaking on behalf of a group of countries, said that inclusion of a separate article on health was a positive step. Another said that the aim of multilateral environmental agreements was the protection of both human health and the environment; an article on health aspects of mercury was therefore important and references to health should be included where relevant throughout the instrument. One representative said that other multilateral environmental agreements had seen the need, as they matured, to bolster health aspects, which had become diluted through a focus on environmental issues. Another said that inclusion of the article made clear that the focus of the instrument on risks to the environment and human health must be accompanied by action. Another representative, speaking on behalf of a group of countries, said that inclusion of a discrete article on health aspects would assist countries in attaining national goals and that health issues should be kept separate from environmental issues such as those raised by contaminated sites. Occupational health was of particular importance, given the vulnerability of many workers to the effects of mercury. The precautionary principle should form the basis of the instrument.

177. The representative of a non-governmental organization stressed the importance of three related issues: biological environmental markers; workers' health; and the establishment of monitoring centres to monitor mercury levels in populations and to assist in the event of incidents or accidents. Another representative highlighted the vulnerability of indigenous peoples to mercury in the environment, given their reliance on traditional foods and diets, and said that the definition of vulnerability should be extended to take account of that. Another representative drew attention to the danger of mercury to the foetus.

**(e) Implementation plans (section J, article 21, of the draft text)**

178. Many representatives, including one speaking on behalf of a group of countries, said that national implementation plans could play an important role in the effective implementation of the instrument. Some said that the plans should be voluntary, should be submitted upon ratification of the instrument and should not be subject to formal review by the conference of the parties. Two representatives, however, said that the development and submission of the plans should be mandatory, with one suggesting that parties should submit them within three years after the instrument entered into force.

179. Several representatives said that it was important to avoid duplication and conflicts between the provisions of the instrument on action plans, reporting obligations and implementation plans. Some suggested deferring detailed discussion of implementation plans until discussion had progressed further on those other matters. Another said that his delegation and that of another country had submitted a conference room paper proposing an approach to implementation plans that would allow countries flexibility in setting out the measures needed to implement the instrument, that some actions by developing countries should be linked to the provision of financial resources and that parties should develop a comprehensive template for use when preparing and reporting on implementation plans.

180. A representative of a non-governmental organization, speaking on behalf of five other such organizations, expressed support for requiring parties to develop and publish national implementation plans; the relevant provisions of the Stockholm Convention provided an example of such an approach, including with regard to involving stakeholders in the process.

**(f) Reporting (section J, article 22, of the draft text)**

181. Many representatives expressed support for including reporting requirements in the mercury instrument. A wide range of opinions was expressed regarding the specific options presented in article 22 of the draft text. Many representatives, including one speaking on behalf of a group of countries, voiced support for option 1, although reservations were expressed regarding some of its elements, with representatives saying that it was necessary to consider the reporting demands placed on parties, the possible need to streamline reporting requirements and calls for national plans under various sections of the draft text.

182. Several other representatives said that they supported option 2, drawing attention to the inherent links between provisions on national implementation plans and those on reporting. Others argued against option 2, saying that it did not provide sufficiently clear requirements or could make compliance with the reporting requirements dependent on undefined levels of financial and technical assistance. One representative said that, while financial assistance should not be a condition for fulfilling reporting requirements, the special situation of developing countries should be taken into consideration.

183. A number of representatives, including one speaking on behalf of a group of countries, said that determining the specific terms of an article on reporting would require both resolution of the discussions on other sections of the instrument and a concerted effort to avoid duplication with the provisions of other multilateral environmental agreements. One representative said that reporting provisions developed under the instrument should focus on information directly relevant to party obligations, serve clear and specific purposes and not divert resources from implementation activities. Another called for the development of clear and consistent reporting formats and capacity-building to facilitate effective reporting by all countries. A third expressed support for the development of and reporting on pollutant release and transfer registers. Several representatives said that the committee should consider leaving the development of specific reporting requirements to the conference of the parties at its first meeting, as had been done for several other multilateral environmental agreements.

184. The representative of a non-governmental organization said that reporting would play an important role in the effectiveness of the mercury instrument and in providing information to the general public. He expressed support for option 1, saying that option 2 did not provide sufficient clarity and might also delay the introduction of effective reporting.

**(g) Effectiveness evaluation (section J, article 23, of the draft text)**

185. Several representatives voiced support for the inclusion in the mercury instrument of provisions on the evaluation of the instrument's effectiveness; two said that monitoring would play a crucial role in the process. One representative, speaking on behalf of a group of countries, endorsed the general approach set forth in article 23 of the draft text, including the development of specific criteria, and said that the first evaluation should occur three years after the instrument's entry into force. One representative said that the first evaluation should take place four years after entry into force, rather than three, to allow additional time to build the monitoring capacity of developing countries. Another said that lessons could be drawn from the relevant provisions of the Stockholm Convention, including on issues related to cost-effectiveness, reducing redundancies and closing data gaps.

186. One representative said that selecting the matters to be monitored would require careful consideration, as would the relationship or non-relationship between the provision of financial and technical assistance and compliance. Another said that any effectiveness evaluation should include the examination of all aspects of the instrument, including its control measures, environmental impact and provisions on financial and technical assistance.

187. Two representatives of non-governmental organizations called for a robust effectiveness evaluation. They expressed support for gathering information on trends in mercury exposure and impacts in the biosphere and vulnerable human populations; establishing mechanisms for monitoring global fish populations; cooperating to develop accurate regional and global inventories of mercury releases; ensuring that data were reported in comparable measures and formats; and prompting industry and other non-State actors to provide relevant information.

**(h) Establishment of a contact group and outcome of its work**

188. Following its discussions, the committee agreed to establish a contact group, to be co-chaired by Mr. Alejandro Riviera Becerra (Mexico) and Mr. Daniel Ziegerer (Switzerland). The group was requested to discuss the issues raised in plenary meeting, taking into account the conference room papers that had been introduced and additional views that might be presented by individual delegations and regional groups. The group was also requested to discuss whether it was possible to achieve

consensus on the bracketed text in articles 18–20 and 23 of the draft text; the role of national implementation plans and the potential role of the conference of the parties in reviewing them; and whether it was possible to reconcile the two reporting options in article 22.

189. Subsequently Mr. Becerra reported on the contact group's work. A conference room paper reflecting the group's discussion of articles 18 and 19 and related annexes of the draft text was circulated and is set out in annex II to the present report. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text presented in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session.

## **11. Institutional arrangements (section K of the draft text)**

### **(a) Conference of the Parties (section K, article 24, of the draft text)**

### **(b) Secretariat (section K, article 25, of the draft text)**

### **(c) Expert bodies (section K, article 25 bis, of the draft text)**

190. Many representatives, one speaking on behalf of a group of countries, voiced broad support for the provisions of article 24 on the conference of the parties but expressed opposition to any requirement that national implementation plans should be evaluated and endorsed by the conference of the parties. One representative, while not objecting to the content of article 24, suggested using text from existing instruments such as the Stockholm Convention. Others said that it was premature to discuss options for reviewing the annexes to the convention.

191. Some representatives, one speaking on behalf of a group of countries, expressed support for the inclusion of a provision on synergies with other multilateral environmental agreements. Others suggested that such a provision was unnecessary but if retained might be refined and placed elsewhere in the instrument. One representative said that it should not be left to the conference of the parties to provide for enhanced synergies and that further discussion on the issue should be deferred until an analysis of options for addressing administrative and substantive synergies between the mercury instrument and existing instruments in the chemicals and wastes cluster had been prepared in accordance with the committee's request at its first session (UNEP(DTIE)/Hg/INC.1/21, annex II, section B (a)). Several representatives said that whether to entrust secretariat functions to other international organizations should be decided by a three-fourths majority vote. One representative, speaking on behalf of a group of countries, said that a decision on the issue should await the resolution of other measures under discussion.

192. Several representatives, including one speaking on behalf of a group of countries, expressed support for the establishment of a committee on technological progress and said that they were open to discussion regarding whether it should be established by the conference of the parties or established in the mercury instrument. Others said that it was premature to establish such a committee, one adding that if established it could be based on existing models under other multilateral environmental agreements and that it would be necessary to involve civil society and industry to ensure transparency. One representative expressed support for such a committee but cautioned that the establishment of a standing committee would entail substantial administrative costs.

193. The Committee agreed that the legal group that it had established at its second session would examine in accordance with its mandate paragraphs 1–4 and 6 of article 24 and paragraphs 1–3 of article 25, as those paragraphs had not generated any disagreement. A conference room paper reflecting the group's discussion of those articles and paragraphs was circulated and is set out in annex II to the present report. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text presented in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session. The committee also agreed to defer further discussion of the remaining paragraphs of those two articles and article 25 bis pending progress in the discussion of other provisions of the draft text.

## **12. Settlement of disputes (section L of the draft text)**

194. The Committee agreed that the legal group would examine in accordance with its mandate article 26 and annex J of the draft text, relating to settlement of disputes and arbitration and conciliation procedures, and that the results of the legal group's work would be presented to the committee for further consideration.

195. Subsequently Ms. Sue Biniiaz (United States of America), chair of the legal group, reported on the group's work. A conference room paper reflecting the group's discussion of article 26 and annex J

of the draft text was circulated and is set out in annex II to the present report. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text presented in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session.

### **13. Further development of the Convention (section M of the draft text)**

#### **(a) Amendments to the convention (section M, article 27, of the draft text)**

#### **(b) Adoption and amendment of annexes (section M, article 28, of the draft text)**

196. There was general agreement that whatever approach to the entry into force of amendments was adopted it should be clearly articulated in the mercury instrument to avoid a situation of uncertainty such as that affecting the Ban Amendment under the Basel Convention. One representative, speaking on behalf of a group of countries, argued in favour of the fixed-time approach. Other representatives said that they favoured the current-time time approach. Several representatives, citing national law that made the ratification of international agreements relatively time-consuming, argued against automatic entry into force and said that the instrument should contain a provision similar to that of the Stockholm Convention allowing each party to declare that any amendment would enter into force for it only upon submission of an instrument of ratification, acceptance, approval or accession.

197. One representative, speaking on behalf of a group of countries and echoed by others, expressed support for the overall approach of the draft text but said that, while decision-making by consensus was always desirable, it was essential that the parties should be able to amend the instrument by a three-fourths vote when all efforts to reach consensus failed. Other representatives said that amendments to the instrument should be permitted only by consensus.

198. Many representatives, one speaking on behalf of a group of countries, questioned the bracketed second sentence in paragraph 1 of article 27 of the draft text, which provided that no amendment to the mercury instrument would “prejudice the interests of any Party”, suggesting that its import was unclear and that it added no value.

199. Many representatives said that it was premature to decide on the details of an amendment procedure while the details of other provisions to be adopted remained unclear.

200. The committee agreed that the legal group would examine in accordance with its mandate paragraphs 1–3 and 5 of article 28, as those paragraphs had not generated any disagreement. A conference room paper reflecting the group’s discussion of those paragraphs was circulated and is set out in annex II to the present report. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text presented in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session. The committee also agreed to defer further consideration of article 27 and paragraph 4 of article 28 until its fourth session.

### **14. Final provisions (section N of the draft text)**

201. The committee agreed to refer to the legal group several final provisions that had generated no disagreement. They related to matters such as the right to vote; signature; ratification acceptance, approval and accession; the depository of the mercury instrument and official texts. The results of the legal group’s work would be presented to the committee for further consideration.

202. Subsequently Ms. Biniiaz reported on the group’s work. Conference room papers reflecting the group’s discussion of articles 26 and 29–36 were circulated and are set out in annex II to the present report. In accordance with its mandate the group had not considered several specific paragraphs in those articles. As noted in section A of chapter IV of the present report, on intersessional work, the committee agreed that the secretariat would incorporate the text set out in the conference room paper into a revised version of the draft text of the mercury instrument set out in document UNEP(DTIE)/Hg/INC.3/3 for consideration by the committee at its fourth session.

## **IV. Other matters**

### **A. Intersessional work**

203. A number of representatives said that regional meetings would be of great importance to the regional preparations for the committee’s fourth session and expressed the hope that financial support for such meetings would be forthcoming. Two representatives, each speaking on behalf of a group of

countries, thanked the Governments of Spain and Japan for providing financial support for regional meetings before the current session.

204. Following discussions in plenary meeting and informal consultations the committee agreed on a programme of work to be undertaken in preparation for its fourth session.

205. In accordance with that work programme, the secretariat would prepare for consideration by the committee at its fourth session a revised version of the draft text set out in document UNEP(DTIE)/Hg/INC.3/3. The revised text would include any changes presented in the conference room papers coming from the contact group co-chairs and the legal group, and as agreed by the committee as being an accurate reflection of the discussions within the contact groups.

206. The secretariat would also compile reports to the committee by the co-chairs of those contact groups whose progress was not presented formally in conference room papers annexed to the present report, i.e., the contact group on emissions and releases and the contact group on products and processes. The purpose of the compilation would be to allow the parties easily to reference the progress made by those two contact groups.

207. The co-chairs of the contact group on financial resources and technical and implementation assistance, with the support of the secretariat, would prepare a proposal for articles 15 and 16 of the draft text, consisting of a conceptual approach followed by possible text. The proposal would take into account the views expressed by parties at the current session and views submitted in writing to the secretariat by 31 December 2011. Parties were encouraged to focus their submissions, which would be posted on the UNEP mercury programme website, on new approaches. The proposal would also take into account the possible approaches to financial mechanisms set out in document UNEP(DTIE)/Hg/INC.3/4 and the outcomes of the consultative process on financing options for chemicals and wastes.

208. In preparing the proposal the co-chairs would benefit from a meeting of experts who would take into account the submissions and provide advice to the co chairs on the development of the proposal. The meeting would be chaired by the co-chairs and would be attended by experts from each of the five United Nations regional groups as follows: three from Africa, five from Asia and the Pacific, two from Central and Eastern Europe, three from Latin America and the Caribbean and six from the Western European and other States. The meeting would be supported by the presence of the Chair of the committee and assisted by the secretariat. By 15 December 2011, the regions would nominate their experts for the meeting through their Bureau members. The outcome of the meeting would be a co-chairs' document, which would be circulated to all parties and considered by the committee at its fourth session.

209. The co-chairs of the contact group on emissions and releases, with the support of the secretariat, would develop an approach to possible elements of articles 10 and 11. The approaches would include approaches that committed parties to taking particular measures to control and/or reduce emissions but allowed flexibility to reflect national circumstances, along with approaches that committed parties to developing nationally determined measures to control and/or reduce emissions.

210. The secretariat would prepare, for consideration by the committee at its fourth session, information on possible transitional arrangements pending phase-out of mercury-added products and manufacturing processes in which mercury was used. The information would include ideas expressed at the current session and experiences under other multilateral environmental agreements, including the Montreal Protocol and the Stockholm Convention, in dealing with products and processes that have continuing use. The information would also include options for how the conference of the parties could manage such transitional arrangements.

211. The secretariat would also prepare, for consideration by the committee at its fourth session, a compilation of reporting obligations and action plans envisaged in the draft negotiating text, accompanied by a survey of reporting obligations and action plans under other relevant multilateral environment agreements.

#### **B. Fourth session of the committee**

212. The representative of Uruguay introduced a short video presentation on Punta del Este, Uruguay, the planned location of the committee's fourth session. She expressed delight that the committee's mascot would extend its travels to a new country and continent and thus symbolize the importance of taking into account country and regional situations in relation to mercury control. The committee took note of the information presented.

**V. Adoption of the report**

213. The committee adopted the present report on the basis of the draft circulated during the session, on the understanding that it would be finalized by the Rapporteur, in consultation with the Chair and with the assistance of the secretariat.

**VI. Closure of the session**

214. Following the customary exchange of courtesies and closing remarks by the Executive Director of UNEP, in which he reiterated his expression of appreciation to Mr. Bakken, and also extended thanks to Mr. Matthew Gubb for his work on the negotiations, the Chair declared the session closed at 6.40 p.m. on Friday, 4 November 2011.

## Annex I

### Reports by the co-chairs of the contact groups on products and processes and emissions and releases<sup>1</sup>

#### I. Products and processes

The contact group on products and processes met three times at INC 3. About 100 people participated in the contact group, representing all regions as well as a cross section of non-government organizations.

The main focus of the discussions was on the scope of products and processes which would be covered within the articles. In addition, the group touched upon the definition of ‘mercury-added product’ and worked to clarify the following concepts: the types of product categories, the rationale behind any suggested category and the types of transition approaches that would be most effective in meeting the objectives of the future Convention.

It was agreed that the group would not tackle which option for the control of products would be used at INC 3. There was broad consensus within the group on the need to identify key product categories for consideration as well as the key processes which should be considered.

#### A. Products

In discussing products, a range of views were expressed on the product categories that should be considered for action. Some additional categories of products were identified, including fireworks, toys, jewellery, packaging materials, laboratory chemicals, lighthouses, tyre balances as well as cultural and ritual uses. The rationale given for their inclusion was that non-mercury-containing alternatives were available and that the products were therefore not necessary. There was a limited discussion on the means of their proposed control through the instrument. The secretariat took note of the additional categories as bracketed text, with a view to including them in a revised version of Annex C at the appropriate time.

In the discussion, some delegations expressed a preference for addressing the largest mercury source categories and did not want to address minor sources categories. In this context, one country indicated their priority product categories for listing included: measuring devices, electric switches and relays, mercury-containing lamps, soaps and cosmetics, paints, pesticides. One country expressed concern for the listing of traditional medicines as well as paints in the context of the use for maintenance of heritage buildings. Divergent views were expressed regarding the listing of antiseptics, pharmaceutical products and cosmetics. The contact group did not discuss dental amalgam.

A group of countries referred to CRP18 that outlined their approach to products of concern through, identifying prohibited products, products requiring a transition period for phase-out and products for which restrictions would remain under review. Also, the group of countries indicated a possible need to cover certain products that use mercury but that do not necessarily have mercury in them when manufactured (e.g. porosimeters).

One country outlined its discussion paper on the scope of mercury-added products in the context of assembled products in which mercury-added products are used as their parts which was detailed in CRP4. In addition, the country noted the concept of threshold values introduced in CRP2 and how this concept relates to mercury-added products.

A number of additional concerns were expressed regarding source categories including issues of practicability, customs codes and labeling as well as new products-containing mercury.

The group had a brief exchange of views on the Options. One delegation expressed preference for Option 4. A small group of countries highlighted CRP14 that set out further clarification on Option 3.

In terms of the definition, a broad range of views were expressed. Overall, there was agreement that the text should be kept simple. The group discussed some specific text proposals and ideas that have been captured by the secretariat. One area of divergence was whether and how the

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<sup>1</sup> The reports in the present annex are presented as submitted by the contact group co-chairs, without formal editing.

definition of mercury-added product could be linked to the actual products listed in the Annex to the Convention. The reasoning behind the proposed link is to show clearly to individuals who are looking at the Convention what products are subject to control measures under the Convention.

There was also an exchange of views of the characteristics of possible product categories that could be most effectively developed for the Convention and how to approach the issue of timing for transition for the categories.

There was consensus within the group that a transition process is required. Questions remain about how this should be handled. This includes how to most effectively support national situations while taking a practical approach in a global context. In terms of timing of transition, three concepts emerged:

- i) products that could be prohibited now;
- ii) other product categories that could be phased out within an agreed timeframe (which do not necessarily have economically or socially viable substitutes today);
- iii) products that would need a longer term allowable use given their importance for a specific use.

In addition to these timing of transition concepts, the contact group, very importantly, acknowledged that a Party would have the ability to accelerate its own phase out of a particular product.

Furthermore, it was noted that a dynamic approach may be needed to allow for smooth adaptation and to address effectively the unique characteristics of mercury-added products addressed in Article 6.

The group noted that the Convention could also identify (i) cases where timelines for transition would be useful, (ii) thresholds for levels of mercury and (iii) identified allowed uses. In other cases, a country specific exemption could be requested. The group briefly exchanged views on other criteria such as affordability, accessibility and practicability.

The group discussed product categories with a specific and important global use that may require an allowable use. The contact group acknowledged that there are some examples of transition approaches used for allowable uses for time and specific purposes in other Conventions that could be drawn upon.

Overall, there is an understanding within the group that there is a need to re-visit Article 8 once Article 6 is clarified in order to ensure that there are no loop-holes.

One delegation noted the link to the proposed Article 25bis Expert Bodies.

## **B. Processes**

In terms of processes, the contact group agreed that the aim of Article 7 was to reduce mercury demand. There was support for the individual listings in the Annex to be as specific as possible to ensure both industry and regulators were well aware of what the restrictions applied to. Equally, there was support for the coverage of processes listed to be as broad as possible to ensure there are no gaps in coverage.

Overall, the general approach to processes included in Article 6 Option 4 was not supported. Based on reports of the discussion in the ASGM contact group, the group agreed that ASGM could be deleted from the list of processes to be covered.

The group also discussed the relationship between Articles 6 and 7. It was agreed that Article 7 would not include the process of producing mercury-added products or of processing mercury-containing waste. Rather, these issues would be covered under the specific articles related to products and waste.

There was some discussion about whether there is a need to be more explicit about the listing of processes in the Annex, including where mercury is used as a catalyst. A small number of additional processes for the list in the Annex were identified, and the secretariat took note of these as bracketed text.

## **C. Co-chairs' concluding remarks**

Overall, there was a promising start on work on products and processes at INC 3 and progress was made. Negotiators are coming to a common understanding of the issues, and although the contact

group wasn't successful in making major changes to the draft text, there were some small but significant changes put forward by the contact group that the secretariat has noted.

New information and approaches to this issue was presented by a number of delegations at INC 3, and all delegations need more time to consider the information. The co-chairs of the contact group would encourage governments to share this information both nationally and regionally and to include NGOs and industry in the engagement process.

There is still much work to be done in the intersessional period in order to work through the treaty text at INC 4. The intersessional work identified for the secretariat is welcomed by the co-chairs of the contact group. The development of information on possible transitional arrangements pending phase-out of mercury-added products and manufacturing processes in which mercury is used is viewed as a valuable piece of information for consideration by the committee at its fourth session.

The Co-Chairs also suggest that delegations, in preparing for INC 4, will need to consider further a number of issues, including:

- the definition of mercury-added products;
- the concepts behind the Options put forward for article 6;
- means of inclusion at a later stage of new products-containing mercury;
- concepts of practicability; and
- assembled products in which mercury-added products are used as their parts.

## II. Emissions and releases

The contact group on emissions to air and releases to land and water met four times. The group examined articles 10, 11 and 11alt, and the associated annexes. All parties agreed that the instrument needed to deal with emissions and releases, and a number described steps which they had taken within their own countries to control or reduce them, for example by applying best available techniques.

The group recognized the importance of covering both emissions and releases, and that it would be helpful to consider the relevant articles together in order to ensure consistency and to avoid duplication or gaps. While there were differing views as to whether the provisions should be combined into one article (as illustrated in draft article 11alt) or covered in separate articles (draft articles 10 and 11), the group decided to work on the basis of separate articles. The question of whether they might be combined could be considered later in the negotiation if necessary.

The term 'unintentional' used in the title of the article and extensively through the text was agreed to be unnecessary as the differentiation between emissions arising from the deliberate use of mercury and those arising from the presence of mercury in raw materials or fuels was adequately captured in the items listed for coverage in Annex F. The word unintentional could therefore be deleted.

A range of views were expressed on whether provisions should be voluntary or mandatory. The need to accommodate differing national circumstances was highlighted by a number of delegations. Concerns were raised that an article with mandatory provisions to reduce mercury emissions would limit development, particularly in countries with growing needs for electrical power. In some developing countries, electricity consumption per person currently was well below the level in developed countries, and for some coal was the main potential source of energy. The group recognized that the instrument would need to be consistent with encouraging sustainable development.

The concept of flexibility within the instrument was also discussed, with consideration of whether this should focus on flexibility between mandatory and voluntary measures, or whether there should be mandatory measures with greater flexibility in implementation at the national level. Some expressed concerns that a system of mandatory measures with voluntary implementation may result in differing levels of implementation in different countries.

The group discussed the use of best available techniques, with there being general acceptance that this would be a useful approach. The definition of best available techniques as set out in Article 2 b bis was considered and no objections were raised to this definition, although one delegation indicated they would like to take some further time to consider this rather than adopting it immediately. There was discussion about the way in which BAT/BEP would be applied, and one delegation could not accept its application in relation to releases to water and land. Others noted that the concept of best available techniques itself included sufficient flexibility to accommodate different

technological and economic circumstances. One delegation suggested that emission limit values could have a central role in defining requirements.

The issue of national action plans and national implementation plans was discussed. Some raised concerns about targets or goals being established only at the national level, feeling that this could lead to a lack of consistency in the approach to reduction, while others welcomed the flexibility that could occur with a national plan focused on national priorities. It was noted that, in growing economies, efforts to reduce mercury emissions may result in slower increases than would be seen without controls, rather than actual reduction in total emissions.

One delegation highlighted an approach in which there would be no mandatory targets or legally binding timelines, but under which countries would be required to prepare National Plans which would set out their own goals and strategies for controlling or reducing emissions, which would be submitted to the Conference of the Parties. This approach, it was suggested, would be as effective and would better allow the individual circumstances of countries to be accommodated.

The group considered the proposal for controls on significant aggregate emitters, with some supporting this as a good way of focusing action where the greatest reductions would be possible. Others indicated that any differentiation between parties should be consistent with Rio Principle 7 on common but differentiated responsibilities.

In Annex F, the group included some additional clarification on a number of the items listed. Based on the reports of the discussions in the contact group on artisanal and small scale gold mining, which had tentatively agreed that all the provisions on ASGM would be captured in article 9, it was agreed that point 6 of the annex could be deleted. On point 8, on residential coal combustion, the proponent of this clarified their intentions, and it was agreed that, if this emission source were to be covered, it might be better reflected as an additional specific paragraph in Article 10 rather than being included in the annex.

A number of delegations argued the emissions and releases from oil and gas extraction and processing should be excluded from Annex F, but one delegation speaking on behalf of a regional group opposed this.

In considering releases to water and land, some indicated they were not convinced that a separate article would be required, or whether releases would be adequately controlled by measures in other articles. In Annex G on release sources, the group agreed to delete the reference to ASGM, but did not reach any other clear agreement.

## Annex II

### Conference room papers setting out draft text of the proposed mercury instrument discussed by contact groups as it stood at the conclusion of the third session of the intergovernmental negotiating committee<sup>2</sup>

#### I. Outcome text of the contact group on artisanal and small-scale gold mining

##### “F. Artisanal and small-scale gold mining

##### 9. Artisanal and small-scale gold mining

1. The measures in this article and in Annex E shall apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.

2. Each Party that has artisanal and small-scale gold mining and processing subject to this article within its territory [shall] [should] take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the releases to the environment of mercury from, such mining and processing.

[2 bis. Each Party shall take steps to phase out the practices listed in paragraph 1 (b) of Annex E.]

3. Each Party shall report to the Secretariat whether the artisanal and small-scale gold mining and processing in its territory is more than insignificant. If it determines at any time that it is more than insignificant, the Party shall:

(a) Develop and implement a national action plan in accordance with Annex E;

(b) Submit its national action plan to the Secretariat no later than [three] years after entry into force of the Convention for it[, among other things, as part of its implementation plan under Article 21]; and

(c) Thereafter, provide a review every three years of the progress made in meeting its obligations under Article 9 and include such reviews in the reports that it submits pursuant to Article 22.

4. Parties may cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to achieve the objectives of this article. Such cooperation may include:

(a) Development of strategies to prevent the diversion of mercury or mercury compounds for use in artisanal and small-scale gold mining and processing;

(b) Education, outreach and capacity-building initiatives;

(c) Promotion of research into sustainable non-mercury alternative practices;

(d) Provision of technical and financial assistance;

(e) Partnerships to assist in the implementation of their commitments under this article; and

[(f) Establishment of an information clearing house to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.]<sup>3</sup>

[5. No Party may allow the import or export of mercury or mercury compounds listed in Annex B for use in artisanal and small-scale gold mining and processing[, except in accordance with an allowable-use exemption available under this article for which the Party is registered, as provided in Article 8]. ]

<sup>2</sup> The draft text in the present annex is presented as submitted by the contact group co-chairs, without formal editing.

<sup>3</sup> Paragraph 4 (f) is bracketed because it was considered that it could be more appropriate to place it under a general clearing-house mechanism, such as the one proposed in Article 18, under section J.

[6. The implementation of measures under this article and Annex E shall be subject to the provisions of the articles of this Convention on financial resources and technical and implementation assistance.]

## Annex E

### Artisanal and small-scale gold mining

#### National action plans

1. Each Party subject to the provisions of paragraph 3 of Article 9 shall include in its national action plan:
  - (a) National objectives and reduction targets;
  - (b) Actions to eliminate:
    - (i) Whole ore amalgamation;
    - (ii) Open burning of amalgam or processed amalgam;
    - (iii) Burning of amalgam in residential areas; and
    - (iv) Cyanide leaching in sediment, ore or tailings to which mercury has been added [or for processing mercury-contaminated tailings without first removing the mercury in the short term];
  - (c) Baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory [. The development of such baseline estimates should be completed and provided to the Secretariat within [one][three] year[s] and not delay action on other elements of the action plan];
  - (d) Strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale gold mining and processing, including mercury-free methods;
  - (e) Strategies for managing or preventing the [import and] diversion of mercury and mercury compounds for use in artisanal and small-scale gold mining and processing;
  - (f) Strategies for involving stakeholders in the implementation and continuing development of the action plan;
 

[(f) bis A public health strategy on how to tackle the long-term effects of chronic mercury exposure on artisanal miners, with particular focus on children's health. Such a strategy should include the gathering of health data, training for health-care workers and awareness-raising through health facilities;]
  - (g) Strategies for providing information to small-scale gold miners and affected communities; and
  - (h) A schedule for the implementation of the action plan.
2. Each Party may include in its national action plan additional strategies to achieve its objectives, such as:
  - [(a) The taking of steps to formalize or regulate the artisanal and small-scale gold mining sector;]<sup>4</sup>
  - (b) The use or introduction of standards for mercury-free gold mining and market-based mechanisms [such as, but not limited to, fair trade approaches]; and
  - [(c) The prevention of exposure of vulnerable populations, including children and [pregnant] women [of childbearing age], to mercury used in artisanal and small-scale gold mining.]<sup>5</sup>

4 It was proposed that this paragraph should be moved to paragraph 1 of Annex E. The contact group agreed to bracket the subparagraph until a decision was made.

5 It was proposed that this paragraph should be moved to paragraph 1 of Annex E. The contact group agreed to bracket the subparagraph until a decision was made.

## II. Contact group on storage, waste and contaminated sites Version as of 3 November 2011

### “Article 12. Environmentally sound [interim] storage of mercury, other than waste mercury”<sup>6</sup>

1. This article shall apply to the storage of mercury [and mercury compounds] for which the definition of mercury waste set out in article 13 of this Convention does not apply.
2. Each Party shall take measures to ensure that the storage of such mercury intended for a use allowed to a Party under this Convention is undertaken in an environmentally sound manner. The storage of such mercury shall be on a temporary basis only.
3. The Conference of the Parties shall [consider] [adopt] [guidance] [requirements in the form of an additional annex to this Convention] on the environmentally sound storage of such mercury, taking into account any [relevant] [related] guidelines developed under the Basel Convention and other relevant guidance<sup>7</sup>.
- [4. To achieve the objectives of this article, the Conference of the Parties shall periodically review the effectiveness of [any guidance][requirements] adopted under paragraph 3 and may update or revise it as is deemed necessary.]
- [5. Parties [may] [are encouraged to] [shall] cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate [, to enhance capacity for the environmentally sound storage of such mercury].]

### Article 13. Mercury wastes

[1. [All] [Relevant] definitions and provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention<sup>8</sup>.]

1. bis [Notwithstanding paragraph 1,] mercury waste means:

- (a) Elemental mercury and mercury compounds;
- (b) Substances or objects containing mercury or mercury compounds; and
- (c) Substances or objects contaminated with mercury or mercury compounds,

which are disposed of or are intended to be disposed of or are required to be disposed of by provisions of national law or this Convention<sup>9</sup>.

2. Each Party shall take appropriate measures [to ensure] [so] that mercury wastes are<sup>10</sup>:

(a) Managed [, including handling, collection, transport and disposal,] in an environmentally sound manner, taking into account [but not limited to] [the [guidance][requirements] pursuant to paragraph 3] [the guidelines developed under the Basel Convention];

(b) Only recovered, recycled [, reclaimed] [or directly re-used] for [a use allowed to the Party under this Convention];

(c) Not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with the provisions of this article and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal [for Parties to the Basel Convention] [and its amendments]. [For Parties that are not

6 The group noted that the term “mercury, other than waste mercury” may need to be reconsidered.

7 A member of the contact group suggested that the issue of short term and small size storage on the way of distribution and at the production site of mercury-added products allowed under article 6 is to be addressed in the requirement or guidance under paragraph 3.

8 The contact group agreed to return to the issue of whether a definition of disposal should be included, and whether suitable disposal operations for mercury wastes need to be defined.

9 The contact group has not yet fully developed this paragraph and will need to revisit it at the next session. There was general agreement that we want to be consistent and not conflict with the Basel Convention.

10 The contact group agreed to discuss at the next session the possibility of a separate paragraph on the prevention and minimization of mercury waste.

party to the Basel Convention, such transport may occur only after the exporting Party has received the prior informed consent of the importing State.]

[3. Alt 1 The Conference of the Parties shall cooperate closely with the relevant bodies of the Basel Convention to maintain appropriate guidance on the environmentally sound management of mercury wastes.]

[3. Alt 2 The Conference of the Parties shall cooperate closely with the relevant bodies of the Basel Convention to review and update as appropriate the guidelines referred to in paragraph 2 a.]

[3. bis The Conference of the Parties shall consider adopting requirements on environmentally sound management of mercury wastes, in the form of an additional annex.]

[4. Parties may cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the environmentally sound management of mercury waste[, including through the further development of relevant guidelines that may be considered under the Basel Convention].]

#### **Article 14. Contaminated sites**

1. Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury and mercury compounds.

2. Any actions to reduce the risks posed by such sites shall be performed in an environmentally sound manner incorporating [, where appropriate,] an assessment of the risks to human health and the environment from the mercury and mercury compounds they contain.

3. Alt 1 The Conference of the Parties [shall adopt] [may develop] guidance on principles of contaminated site management.

3. Alt 2 The Conference of the Parties [shall adopt] [may develop] guidance on principles of contaminated site management that includes:

(a) Identifying and assessing contaminated sites[, including through the use of reference values and concentration limits [as applicable] [where feasible];

[(a) bis Methodologies for the development of local and national reference values and concentration limits [and levels of exposure] ,where feasible;]

(b) Preventing mercury contamination from spreading; and

(c) Managing and, where feasible and economically viable, remediating and rehabilitating contaminated sites, especially those where the site presents a significant risk to human health and the environment].

4. Parties [may] [shall] cooperate in developing and implementing strategies and methodologies for identifying, assessing, prioritizing, managing and [as appropriate] remediating contaminated sites [[subject to] [, including through] the provision of capacity-building, financial and technical assistance].”

### III. Submission by the co-chairs of the contact group on awareness raising, research and monitoring, and communication of information

#### “J. Awareness-raising, research and monitoring, and communication of information

##### 18. Information exchange

1. Each Party shall facilitate the exchange of:

(a) Scientific[and] technical,[ economic and legal ]information concerning mercury and its compounds, including toxicological, ecotoxicological and safety information;

(b) Information on the reduction or elimination of the production, use, [trade<sup>11</sup>], emissions and release of mercury and mercury compounds; and

(c) Information on technically and economically viable alternatives to mercury-added products, manufacturing processes in which mercury is used and activities and processes that emit or release mercury or mercury compounds, including information on the health and environmental risks and economic and social costs and benefits of such alternatives.

[(c) bis Epidemiological information, upon recognition, regarding health impacts associated with mercury exposure, with close communication with the World Health Organization.]

2. Parties shall exchange the information referred to in paragraph 1 directly or through the Secretariat.

2(bis) The Secretariat shall facilitate the exchange of information referred to in this article, including information provided by Parties, intergovernmental organizations and [non-governmental organizations,][existing national and international centres with expertise in the area of mercury]. Likewise the Secretariat shall also facilitate cooperation in the exchange of information with the secretariats of relevant multilateral environmental agreements and other international initiatives.<sup>12</sup>

3. Each Party shall designate a national focal point for the exchange of information under this Convention, [ including with regard to export notifications and the consent of importing Parties under paragraph 2 of Article 4 and paragraph 2 (b) of Article 6.]<sup>13</sup>

4. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential [, subject to the national laws of each country]. Parties that exchange other information pursuant to this Convention shall protect any confidential information as agreed among those parties.<sup>14</sup>

##### 19. Public information, awareness and education

1. Each Party shall, within its capabilities, promote and facilitate:

(a) Provision to the public of available information on:

(i) The health and environmental effects of mercury;

(ii) Alternatives to mercury;

[(iii) Domestically produced products that contain mercury and domestic processes that use mercury, and activities under way or planned to reduce or eliminate the same;]

(iv) The topics identified for information exchange in paragraph 1 of Article 18;

[(v) The results of their research, development and monitoring activities under Article 20;]<sup>15</sup> [and]

(vi) Their activities to meet their obligations under this Convention;

11 This issue will be resolved according to the discussions on trade issues elsewhere in the text.

12 Formerly paragraph 4. Moved here to have a logical sequence after paragraph 2 which talks about the secretariat.

13 Ready to delete it provided it is reflected elsewhere in the text.

14 Formerly paragraph 5.

15 Remains bracketed subject to the discussions of Article 20.

(b) Education, training and public awareness related to mercury and encourage broad participation [in the implementation of the Convention], [including that of [the World Health Organization<sup>16</sup> and] non-governmental organizations [and vulnerable populations] [; and]]

[(b) alt Education, training, awareness and / or disclosure of the population about the effects of exposure to mercury and its compounds on human health, cooperate in these efforts and encourage maximum participation in the implementation of the Convention, including participation of the World Health Organization, nongovernmental organizations and vulnerable populations.]

[2. Each Party shall [give sympathetic consideration to developing] [use existing or consider to develop ]mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of the annual quantities of mercury and mercury compounds that are released or disposed of through human activities].

[3. Each Party shall, within its capabilities, conduct assessments of the effects of mercury and mercury compounds on human health and the environment, as well as the social[,][and] economic [and cultural] rights, specifically in regard to vulnerable communities[, as well as establish scientific centers of information exchange in cooperation with WHO].]"

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<sup>16</sup> A concern was raised regarding how to adequately reflect WHO's possible involvement in the implementation of the convention.

## IV. Conference of the Parties, Secretariat and adoption and amendment of annexes: draft text prepared by the legal group

### “K. Institutional arrangements

#### 24. Conference of the Parties<sup>17</sup>

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme no later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.
3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.
4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any of its subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.
5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by the Convention and, to that end, shall:
  - (a) Establish such subsidiary bodies as it considers necessary for the implementation of the Convention;
  - (b) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies;
  - (c) Regularly review all information made available to it and to the Secretariat pursuant to Article 22;
  - [(c) bis Review, evaluate and endorse the national implementation plans submitted by Parties pursuant to Article 21;]
  - (d) Consider any recommendations submitted to it by the [Implementation] [Compliance] Committee; [and]
  - (e) Consider and undertake any additional action that may be required for the achievement of the objectives of the Convention[; and]
  - [(f) Review Annexes C and D every [five] years, taking into account recent technical and economic developments, with a view
 

Alternative 1 (applying to option 2 of Article 6 and option 2 of paragraph 1 of Article 7)

to reducing within a specified time limit the number of generally applicable exemptions set out in these annexes or restricting the duration of such exemptions.

Alternative 2 (applying to options 1 and 3 of Article 6 and options 1 and 3 of paragraph 1 of Article 7)

to, within a specified time limit, adding further products and manufacturing processes to these annexes or restricting the number and duration of the exemptions set out therein.

Final sentence of subparagraph (f)

Following each such review the Conference of the Parties may decide to amend the annexes accordingly, in accordance with the provisions of Article 28.]<sup>18</sup>
6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not a Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or

<sup>17</sup> The legal group noted that it may need to revisit certain aspects of these provisions in light of provisions that it has not yet reviewed.

<sup>18</sup> This paragraph was not considered by the legal group on 4 November 2011.

non-governmental, that is qualified in matters covered by this Convention and has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

## 25. Secretariat<sup>19</sup>

1. A Secretariat is hereby established.
2. The functions of the Secretariat shall be:
  - (a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;
  - (b) To facilitate assistance to Parties, particularly developing country Parties and Parties with economies in transition, on request, in the implementation of this Convention;
  - (c) To coordinate, as appropriate, with the secretariats of relevant international bodies, particularly other chemicals and waste conventions;
  - (d) To assist Parties in the exchange of information related to the implementation of this Convention;
  - (e) To prepare and make available to the Parties periodic reports based on information received pursuant to Articles [17 and 22] and other available information;
  - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
  - (g) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.
3. The secretariat functions for this Convention shall be performed by the Executive Director of the United Nations Environment Programme, unless the Conference of the Parties decides, by a [X] majority of the Parties present and voting, to entrust the secretariat functions to one or more other international organizations.
4. [The Conference of the Parties, in consultation with appropriate international bodies, may provide for enhanced] [Building on the enhanced cooperation and coordination between the secretariats of the Basel, Rotterdam and Stockholm conventions, possibilities for] cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions[ and instruments shall be explored and used to the greatest extent possible. The Conference of the Parties, in consultation with appropriate international bodies, may provide further guidance on this matter].<sup>20</sup>

## M. Further development of the Convention

### 28. Adoption and amendment of annexes<sup>21</sup>

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.
2. Any additional annexes adopted after the entry into force of this Convention shall be restricted to procedural, scientific, technical or administrative matters.
3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:
  - (a) Additional annexes shall be proposed and adopted according to the procedure laid down in [paragraphs 1–3 of Article 27];
  - (b) Any Party that is unable to accept an additional annex shall so notify the Depository, in writing, within one year from the date of communication by the Depository of the adoption of such

<sup>19</sup> The legal group noted that it may need to revisit certain aspects of these provisions in light of provisions that it has not yet reviewed.

<sup>20</sup> This paragraph was not considered by the legal group on 4 November 2011.

<sup>21</sup> The legal group noted that it may need to revisit certain aspects of these provisions in light of provisions that it has not yet reviewed.

annex. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time notify the Depositary, in writing, that it withdraws a previous notification of non-acceptance in respect of an additional annex, and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification of non-acceptance in accordance with the provisions of subparagraph (b).

4. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention[, except that an amendment to [Annex X] shall not enter into force with regard to any Party that has made a declaration with regard to amendment of [that Annex] [those Annexes] in accordance with paragraph 5 of Article 31, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date it has deposited with the Depositary its instrument of ratification, acceptance, approval or accession with respect to such amendment.]<sup>22</sup>

5. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.”

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22 This paragraph was not considered by the legal group on 4 November 2011.

## **V. Settlement of disputes: draft text prepared by the legal group**

### **“L. Settlement of disputes**

#### **26. Settlement of disputes**

1. Parties shall seek to settle any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with regard to any dispute concerning the interpretation or application of this Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
  - (a) Arbitration in accordance with the procedure set out in Part I of Annex J;
  - (b) Submission of the dispute to the International Court of Justice.
3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with paragraph 2.
4. A declaration made pursuant to paragraph 2 or 3 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
5. The expiry of a declaration, a notice of revocation or a new declaration shall in no way affect proceedings pending before an arbitral tribunal or the International Court of Justice, unless the parties to the dispute otherwise agree.
6. If the parties to a dispute have not accepted the same means of dispute settlement pursuant to paragraph 2 or 3, and if they have not been able to settle their dispute through the means mentioned in paragraph 1 within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The procedure set out in Part II of Annex J shall apply to conciliation under this Article.

## Annex J

### Arbitration and conciliation procedures

#### Part I: Arbitration procedure

The arbitration procedure for purposes of paragraph 2 (a) of Article 26 of this Convention shall be as follows:

##### Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 26 of this Convention by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim, together with any supporting documents. Such notification shall state the subject matter of arbitration and include, in particular, the articles of this Convention the interpretation or application of which are at issue.

2. The claimant party shall notify the Secretariat that it is referring a dispute to arbitration pursuant to Article 26 of this Convention. The notification shall be accompanied by the written notification of the claimant party, the statement of claim, and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

##### Article 2<sup>23</sup>

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.

2. Each party to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by agreement the third arbitrator, who shall be the President of the tribunal. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement. The President of the tribunal shall not be a national of any of the parties to the dispute, nor have his or her usual place of residence in the territory of any of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

##### Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations, who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

##### Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

##### Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

##### Article 6

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

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23 The legal group recommends that the following paragraph, as contained in bracketed paragraph 5 of Article 2 of Part I of Annex J in UNEP (DTIE)/Hg/INC.3/3, be deleted: "If the Parties do not agree on the subject matter of the dispute before the President of the arbitral tribunal is designated, the arbitral tribunal shall determine the subject matter." The group considered it either inconsistent with paragraph 1 of Article 1 or unnecessary.

**Article 7**

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

**Article 8**

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information or documents that they receive in confidence during the proceedings of the arbitral tribunal.

**Article 9**

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs and shall furnish a final statement thereof to the parties.

**Article 10**

A Party that has an interest of a legal nature in the subject matter of the dispute that may be affected by the decision may intervene in the proceedings with the consent of the arbitral tribunal.

**Article 11**

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

**Article 12**

Decisions of the arbitral tribunal on both procedure and substance shall be taken by a majority vote of its members.

**Article 13**

1. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its decision. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.
2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

**Article 14**

The arbitral tribunal shall render its final decision within five months of the date on which it is fully constituted, unless it finds it necessary to extend the time limit for a period that should not exceed five more months.

**Article 15**

The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

**Article 16**

The final decision shall be binding on the parties to the dispute. The interpretation of this Convention given by the final decision shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. The final decision shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

**Article 17**

Any disagreement that may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that final decision, may be submitted by any of them for decision to the arbitral tribunal that rendered it.

## **Part II: Conciliation procedure<sup>24</sup>**

The conciliation procedure for purposes of paragraph 6 of Article 26 of this Convention shall be as follows:

### **Article 1**

A request by a party to a dispute to establish a conciliation commission pursuant to paragraph 6 of Article 26 of this Convention shall be addressed in writing to the Secretariat, with a copy to the other party or parties to the dispute. The Secretariat shall forthwith inform all Parties accordingly.

### **Article 2**

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, comprise three members, one appointed by each party concerned and a President chosen jointly by those members.
2. In disputes between more than two parties, parties in the same interest shall appoint their member of the commission jointly by agreement.

### **Article 3**

If any appointment by the parties to the dispute is not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1 above, the Secretary-General of the United Nations shall, upon request by any party, make such appointment within a further two-month period.

### **Article 4**

If the President of the conciliation commission has not been chosen within two months of the appointment of the second member of the commission, the Secretary-General of the United Nations shall, upon request by any party to the dispute, designate the President within a further two-month period.

### **Article 5**

The conciliation commission shall assist the parties to the dispute in an independent and impartial manner in their attempt to reach an amicable resolution.

### **Article 6**

1. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking fully into account the circumstances of the case and the views the parties to the dispute may express, including any request for a swift resolution. It may adopt its own rules of procedure as necessary, unless the parties otherwise agree.
2. The conciliation commission may, at any time during the proceedings, make proposals or recommendations for a resolution of the dispute.

### **Article 7**

The parties to the dispute shall cooperate with the conciliation commission. In particular, they shall endeavour to comply with requests by the commission to submit written materials, provide evidence and attend meetings. The parties and the members of the conciliation commission are under an obligation to protect the confidentiality of any information or documents they receive in confidence during the proceedings of the commission.

### **Article 8**

The conciliation commission shall take its decisions by a majority vote of its members.

### **Article 9**

Unless the dispute has already been resolved, the conciliation commission shall render a report with recommendations for resolution of the dispute no later than twelve months of being fully constituted, which the parties to the dispute shall consider in good faith.

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<sup>24</sup> The legal group considered it advisable to remove brackets around, and revise, several paragraphs (5 bis and 5 ter) in order to better reflect the purpose and method of conciliation.

**Article 10**

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

**Article 11**

The costs of the conciliation commission shall be borne by the parties to the dispute in equal shares, unless they agree otherwise. The commission shall keep a record of all its costs and shall furnish a final statement thereof to the parties.<sup>25</sup>

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25 The legal group considered that it was advisable to provide a default rule for how costs would be shared, rather than leaving it completely up to the parties. In the absence of such a rule, if the parties were not able to agree on how costs would be shared, it would not be clear how the conciliation would be paid for.

## **VI. Final provisions: draft text prepared by the legal group at its meeting on 1 November 2011**

### **“N. Final provisions**

#### **29. Right to vote**

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2.
2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

#### **30. Signature**

This Convention shall be open for signature at \_\_\_ by all States and regional economic integration organizations from \_\_\_ to \_\_\_<sup>26</sup>, and at the United Nations Headquarters in New York from \_\_\_ to \_\_\_.

#### **31. Ratification, acceptance, approval or accession**

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.
- [4. States and regional economic integration organizations shall include in their instruments of ratification, acceptance, approval or accession a declaration identifying the legislation or other measures that permit them to implement the obligations set forth in Articles 3–14 of this Convention.]<sup>27</sup>
- [5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to [Annex X] shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.<sup>28</sup>

#### **32. Entry into force<sup>29</sup>**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

<sup>26</sup> If it is decided that the Convention will be open for signature for only one day before being open for signature at the United Nations, the words “from \_\_\_ to \_\_\_” would be changed to “on”.

<sup>27</sup> This paragraph was not considered by the legal group on 1 November 2011.

<sup>28</sup> This paragraph was not considered by the legal group on 1 November 2011.

<sup>29</sup> This article was not considered by the legal group on 1 November 2011.

[4. All legal obligations under this Convention shall be applicable to developing-country Parties on the condition that the stand-alone multilateral fund has been established and provides substantial assistance.]

**33. Reservations<sup>30</sup>**

[No reservation] [Reservations] may be made to this Convention.

**34. Withdrawal<sup>31</sup>**

1. At any time after [[three] [one] year[s] from the date on which] this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

**35. Depository**

The Secretary-General of the United Nations shall be the Depository of this Convention.

**36. Authentic texts**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depository.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at \_\_\_\_\_ on this \_\_ day of \_\_, two thousand and thirteen.”

\_\_\_\_\_

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30 This article was not considered by the legal group on 1 November 2011.

31 This article was not considered by the legal group on 1 November 2011.