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**United Nations  
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**Intergovernmental negotiating committee  
to prepare a global legally binding instrument  
on mercury  
Fifth session**  
Geneva, 13–18 January 2013

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

### **I. 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.
2. The first session of the committee was held in Stockholm from 7 to 11 June 2010, the second in Chiba, Japan, from 24 to 28 January 2011, the third in Nairobi from 31 October to 4 November 2011 and the fourth in Punta del Este, Uruguay, from 27 June to 2 July 2012. The events leading up to the four 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), paragraphs 1–5 of the report of the second session (UNEP(DTIE)/Hg/INC.2/20), paragraphs 1–3 of the report of the third session (UNEP(DTIE)/Hg/INC.3/8) and paragraph 3 of the report of the fourth session (UNEP(DTIE)/Hg/INC.4/8).
3. At its fourth session, the committee agreed that the Chair would prepare a Chair's text, that is, a version of the draft mercury instrument in which the Chair proposed compromise text in an effort to bridge the differences between the various positions espoused by the parties. The Chair would also seek in the Chair's text to harmonize style and terminology and achieve editorial consistency in the draft instrument. The committee also agreed at its fourth session that the secretariat would prepare draft elements of the final act to be adopted at the anticipated diplomatic conference at which the mercury instrument would be opened for signature, which would address, among other things, how to promote and prepare for the early implementation of the mercury instrument; arrangements for the interim period between the signing of the instrument and its entry into force, including arrangements for financial and technical assistance during that period; and secretariat arrangements. In addition, the committee agreed that the co-chairs of the contact group on emissions and releases would prepare for consideration by the committee at its fifth session proposed mercury air emissions thresholds below which the provisions of the mercury instrument might not apply, taking into account the size of emitting installations and information provided by Governments that might assist them, including information about thresholds in use in regulating mercury at the national level. Governments were

\* Reissued for technical reasons on 26 August 2013.

requested to provide the secretariat with additional information on sources of emissions and releases of mercury to land and water, and the secretariat was requested to compile such information for consideration by the committee at its fifth session. Finally, the committee agreed that the secretariat, in cooperation with the World Health Organization (WHO), would analyse the extent to which the provisions of the draft mercury instrument as it stood at the end of the fourth session reflected the content of Article 20 bis of the draft instrument and prepare a report setting out the results of its analysis for consideration by the committee at its fifth session.

## II. Opening of the session

4. The fifth and final session of the intergovernmental negotiating committee was held in Geneva from 13 to 18 January 2013. The session began at 9.45 a.m. on Sunday, 13 January 2013, with Mr. Jacob Duer, UNEP, Coordinator of the mercury negotiations team, serving as master of ceremonies.

5. Mr. Fernando Lugris (Uruguay), Chair of the committee, welcomed the participants to the session, thanking the host Government for its hospitality; he underlined that Switzerland had played a key supportive role since the start of what had been a highly positive drafting and negotiating process. Recalling the various stages of that process, he urged the committee to work together to fulfil the mandate conferred upon it by the Governing Council of UNEP and reaffirmed at the United Nations Conference on Sustainable Development: to finalize a draft mercury instrument for endorsement by the Governing Council at its twenty-seventh session in 2013 and for signature at a diplomatic conference to be held in Japan later that year. Participants needed to step up their efforts, while remaining focused on the task at hand and flexible enough to find solutions adapted to different realities in an effort to achieve consensus.

6. Opening remarks were delivered by Mr. Bakary Kante, Director of the Division of Environmental Law and Conventions, UNEP, who read a statement by the Executive Director of UNEP, who was unable to attend the opening ceremony owing to unforeseen circumstances, and Mr. Bruno Oberle, State Secretary and Head of the Federal Office for the Environment of Switzerland.

7. In his statement, the Executive Director said that the significant progress made on a range of issues over the previous four years gave grounds for optimism for the outcome of the fifth and final session; a way forward on the outstanding issues had been proposed in the Chair's text (UNEP(DTIE)/Hg/INC.5/3, annex II). Mercury had long been known to cause more harm than good to human health and to ecosystems, and exposure through contaminated fish and other sources was unnecessary because many alternative processes and technologies were available. Work was already being done to reduce releases and emissions, including under the UNEP Global Mercury Partnership, and the assistance being provided to Governments to develop inventories of national mercury sources was providing vital baseline data that would be key to the success of the new mercury instrument.

8. International negotiations often boiled down to a question of money, especially at times of economic and financial crisis. Investing in a healthier and more environmentally sustainable world, however, had repeatedly been found to pay dividends, such as the climate protection benefits and technological advances gained through action to protect the ozone layer under the Montreal Protocol on Substances that Deplete the Ozone Layer and the enormous savings in health-care costs resulting from the phase-out of leaded petrol. Thanking the countries and donors that had helped to organize the work of the committee at its sessions and during the intersessional periods, the Executive Director said that he looked forward to welcoming the participants to the twenty-seventh session of the Governing Council in February 2013, confident that they would be presenting a new instrument that could make a difference to millions of lives while contributing to sustainable development.

9. Mr. Oberle welcomed the participants to Geneva, which as the host of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, was a centre for international expertise in chemicals and waste management. He thanked the Chair of the committee for his personal commitment to the negotiations, UNEP for its support and the committee itself for its constructive efforts, which had been key to the feat of bringing the negotiations on a new mercury instrument to its current advanced stage. With the horrific consequences of the mercury contamination of Minamata Bay, Japan, etched into memory, he said, every effort must be made to prevent the recurrence of such a disaster. Mercury raised more complex issues than had previously been thought, but the threat of contamination could be eliminated. Certain that the committee could achieve its objectives at the current session, bearing in mind the need to ensure that the new regime included appropriate financial and technical support for implementation, he invited the participants to

hold the first meeting of the conference of the parties to the future mercury instrument in Geneva once the negotiations were concluded.

10. The master of ceremonies introduced a video on Minamata disease, a neurological syndrome caused by severe mercury poisoning discovered after the contamination of Minamata Bay in the 1950s. After the screening, he concluded the opening ceremony by thanking the guests of honour for attending and joined them in wishing the participants a fruitful session.

### **III. Organizational matters**

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

11. The committee adopted the following agenda on the basis of the provisional agenda (UNEP(DTIE)/Hg/INC.5/1):

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. In accordance with a proposal from the Chair, following extensive consultations with the Bureau, 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, subject to adjustment, and from 8 p.m. to 11 p.m. each day, as necessary. The committee also agreed to establish contact, drafting and other groups as necessary, taking into account both the needs of small delegations and the requirement that the committee finalize the draft instrument at the current session, and would make use of the legal group established at the committee's second session in accordance with its mandate.<sup>1</sup>

13. The committee agreed to use the Chair's text set out in annex II to the note by the secretariat (UNEP(DTIE)/Hg/INC.5/3) as the basis for its discussions under agenda item 3 and to structure its discussions in accordance with a proposal by the Chair, based on consultations with the Bureau, on the order in which the committee would take up the articles of the Chair's text. Annex I to the note contained a general explanation by the Chair of how he had approached the preparation of the text, along with a more detailed explanation of how he had arrived at the text for certain articles. It was understood that the Chair's text was to serve as a starting point and that parties were not limited thereby in their proposals or positions. At the same time, the Chair explained that, with the full support of the Bureau, he did not intend to reopen issues upon which agreement had been reached at previous sessions of the committee.

14. In addition to document UNEP(DTIE)/Hg/INC.5/3, the committee had before it the other documents requested by the committee at its fourth session. They included the draft elements of the final act prepared by the secretariat for adoption at the anticipated diplomatic conference

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<sup>1</sup> The mandate of the legal group is set out in paragraph 251 of the report of the committee on the work of its second session (UNEP(DTIE)/Hg/INC.2/20), which reads as follows: "Following the discussion of the specific draft elements of the proposed mercury instrument, the committee decided to establish a legal group, to be chaired by Ms. Susan Biniiaz (United States of America). The group would examine elements on which substantive agreement had been reached to ensure that the text of the individual elements, and the interplay between them, reflected and gave effect to the committee's intentions in a legally sound manner, highlighting any ambiguities or potential conflicts that might require further consideration by the committee. The group would, as necessary, prepare draft provisions of the instrument based on the policy approaches agreed by the committee; review draft provisions prepared by the committee and other groups; examine the consistency of the various draft provisions, harmonizing them as necessary; and advise the committee or other groups on any legal questions that arose. The group would also consider other issues that the committee might refer to it. The group would start its work during the committee's third session and would meet as required during the sessions and as called for by its chair. The group would be open to all Governments, and, it was hoped, would count among its members an ample number of representatives of all five United Nations regions."

(UNEP(DTIE)/Hg/INC.5/6), proposed mercury air emissions thresholds prepared by the co-chairs of the contact group on emissions and releases during the committee's fourth session (UNEP(DTIE)/Hg/INC.5/4), along with information relevant to such thresholds submitted by Governments (UNEP(DTIE)/Hg/INC.5/INF/1), and an analysis, prepared by the secretariat in consultation with WHO, of the extent to which the provisions of the draft mercury instrument reflected the content of Article 20 bis of the draft text (UNEP(DTIE)/Hg/INC.5/5).

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

### **C. Attendance**

16. Representatives of the following States participated in the session: Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Kyrgyzstan, Lebanon, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Marshall Islands, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saint Kitts and Nevis, Samoa, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, State of Palestine, Sudan, Swaziland, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

17. The following United Nations bodies and specialized agencies were represented: Food and Agriculture Organization of the United Nations, Global Environment Facility, Office of the High Commissioner for Human Rights, United Nations Children's Fund, United Nations Economic Commission for Europe, United Nations Industrial Development Organization, United Nations Institute for Training and Research, World Health Organization.

18. The following intergovernmental organizations were represented: African Union Commission, European Union, International Energy Agency Clean Coal Centre, Regional Activity Centre for Cleaner Production, South-Asia Cooperative Environment Programme, World Organization for Animal Health.

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

20. 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.5/INF/3.

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

21. As it had done at earlier sessions, 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.5/3, containing the Chair's text for a comprehensive and suitable approach to a global legally binding instrument on mercury.

22. Following the arrival of a number of high-level participants, the committee heard statements by those participants on the afternoon of 16 January on the importance of the committee's work and the critical role to be played by the global legally binding instrument on mercury. The committee also heard statements by Mr. Achim Steiner, Executive Director of UNEP, and Ms. Naoko Ishii, Chief Executive Officer and Chairperson of the Global Environment Facility (GEF).

## A. General statements

23. One representative, speaking on behalf of Latin American and Caribbean countries, said that the countries of his region were determined to finalize negotiations on the instrument during the current session and that the Chair's text was a good basis for the work of the session. The mercury instrument to be developed, he said, should be ambitious, balanced, realistic and implementable, and should take into account a number of factors, including the need to ensure that parties had the means to abide by its provisions and the economic inequalities that existed between countries. The financial mechanism would be crucial to the success of the instrument, and his region favoured the establishment of an independent fund similar to the Multilateral Fund for the Implementation of the Montreal Protocol. Such a fund must be capable of providing adequate, sustainable and predictable financing meeting the needs of developing countries. Financing for enabling activities was particularly important, including capacity-building to strengthen national capabilities to meet the obligations of the instrument, while allowing sufficient flexibility to take account of the situations of individual countries. Human health must be at the core of the agreement, and hence should be the subject of specific provisions of the instrument. The experiences of those who suffered from Minamata disease, or those vulnerable to the adverse impacts of artisanal small-scale gold mining, demonstrated the importance of ensuring that future generations were protected from the harmful effects of mercury emissions.

24. One representative, speaking on behalf of the European Union, its member States and Croatia, said that a constructive spirit was evident among the negotiating partners and that the political momentum existed for a successful outcome of the negotiating process. She welcomed the Chair's text as the basis for the negotiations at the current session, noting that her group would suggest textual amendments and additions during discussion of the relevant articles. There was a sense of duty during the final stage of negotiations to agree on a robust and ambitious mercury convention that would contribute in the long term to a better global environment and improved health for all. Priority issues included atmospheric emissions, primary mercury mining and ensuring that any future instrument covered the whole life cycle of mercury. The instrument also needed to contain dynamic provisions for its review and adaptation so that it could adapt to possible future mercury-related issues as they arose.

25. One representative, speaking on behalf of African countries, said that the Chair's text was a sound basis for further negotiations. Saying that she looked forward to the finalization of the mercury instrument at the current meeting, she urged representatives not to reopen text that had already been agreed at previous sessions of the committee. Discussions should keep in mind the overall goal of the instrument, namely, the protection of human health and the environment from anthropogenic releases of mercury, and the instrument should cover all media, given that mercury could bioaccumulate and magnify in the food chain. In addition, WHO and others should be encouraged to work toward the phase-out of mercury in the health-care sector, in line with the precautionary principle. Africa, in common with other developing countries, was particularly vulnerable to health hazards posed by mercury-added products and manufacturing processes in which mercury or mercury compounds were used, and further attention needed to be given to the provisions in the instrument relating to those matters. She stressed the importance of taking account of the principle of common but differentiated responsibilities in developing the instrument and the need for interim financial arrangements to enable developing countries to move forward quickly in formulating national plans for the implementation of the instrument.

26. Speaking on behalf of Asian and Pacific countries, one representative supported the general view that the Chair's text provided a good basis for negotiation at the current session. The provisions of the instrument, he said, should be practicable and implementable to ensure effective protection of human health and the environment in accordance with the Rio principles. The instrument should be flexible in its implementation, including both mandatory and voluntary components. The capabilities and constraints of developing countries, including the least developed countries and small island developing States, should be taken into consideration. Given time constraints, the committee should concentrate on those articles in respect of which a number of outstanding issues remained, including supply and trade, products and processes, emissions and releases and financial resources and technical and implementation assistance.

27. One representative, speaking on behalf of the Central and Eastern European countries, said that the regional consultations held in Brno, Czech Republic, had been very beneficial in assisting the region to prepare for the current session. The region attached great importance to the negotiations and was committed to successfully finalizing the Minamata Convention. For that purpose, the Chair's text constituted a good starting point.

28. Speaking on behalf of Arab countries, one representative stressed the importance of taking account of the Rio principles during the negotiations. He concurred with the view of the Executive Director that the documents “Time to Act” and “Global Mercury Assessment 2013” presented powerful evidence of the urgent need to reach consensus on mercury control. The future mercury instrument should be ambitious and balanced and should include a financial mechanism and capacity-building and technical assistance provisions that met the needs of developing countries. The principles of justice and equity should underlie the process, and the final instrument should recognize the rights of States to achieve social and economic development and to alleviate poverty.
29. Statements were then made by representatives of individual parties.
30. Many representatives expressed their appreciation to the Government of Switzerland for hosting the current session and to UNEP for its effective preparation and support. A number of representatives summarized the work that was being undertaken in their countries to reduce mercury use and emissions through legislation, policies, programmes and partnerships.
31. Many representatives outlined their visions for the mercury instrument and expressed commitment to working towards its finalization. There was general agreement that it needed to be strong and robust, yet comprehensive and balanced enough to ensure the support of all parties in achieving its aims. Several representatives said that enforcement would be facilitated if the instrument took due account of the varying capacities, resources and priorities of individual countries. A number expressed support for the statements of their regional representatives regarding the importance of the Rio principles, in particular the principle of common but differentiated responsibilities. There was general support for the Chair’s text as the basis for negotiations, although several representatives expressed concern, with one saying that it omitted certain provisions that had been agreed upon by the committee at its fourth session and endorsed by the legal group. One representative said that the measures currently contained in the instrument were not sufficient to achieve the reductions in mercury emissions that would significantly benefit human health and the environment.
32. In their statements, many representatives outlined the priorities and key issues of concern to their own countries. Several attached importance to the complex issue of how to deal with mercury-added products and manufacturing processes in which mercury or mercury compounds were used. Other issues identified as important by individual countries included artisanal and small-scale gold mining; the inclusion of steel manufacturing and oil and gas production and processing facilities in the list of emissions sources in Annex F of the chair’s text; primary mercury mining and compensation for loss of production; and the particular challenges facing small island developing States.
33. Other representatives highlighted the importance that developing countries attached to the provision of adequate financial resources, technical assistance, technology transfer and capacity-building to support the implementation of the convention, including through the development of national implementation plans. One representative proposed the establishment of dedicated national units to support the implementation of all chemicals-related multilateral agreements, including the mercury instrument, thus ensuring cost-effective action. A number of representatives said that there was a need for a strong financial mechanism to support the implementation of the convention. One representative proposed a special fund managed by GEF, similar to the Adaptation Fund of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, saying that it should be flexible enough to encourage the private sector to make significant contributions.
34. A number of representatives, some alluding to Minamata disease, spoke of the importance that they attached to health issues, with several supporting the inclusion in the mercury instrument of a stand-alone article on health aspects.
35. There was some discussion of the relative importance of emissions to air and releases to land and water and how they should be treated under the instrument. One representative said that the greatest challenge lay in dealing with the largest source of mercury in the environment, namely, emissions to air, stressing that application of best available techniques offered the opportunity to control such emissions in a strong yet flexible manner that allowed countries to pursue economic and social development, including the development of energy.
36. The representatives of Canada, the Czech Republic, Israel and the United States of America submitted statements for inclusion in the present report. Those statements are reproduced below:

*Canada*

“Canada objects to the status of Palestinian participation in this session. Canada does not recognize a Palestinian state and, as a result, it is concerned that their participation as a ‘State’ will create a misleading impression.

“Canada's position was outlined in the address made in New York on 29 November 2012 by the Hon. John Baird, Minister of Foreign Affairs, in the context of the adoption of General Assembly resolution 67/19. This position remains unchanged.

“Canada also understands that the manner in which the Palestinian delegation will participate at this meeting does not have any effect on the status of the Palestinian delegation at the United Nations.”

*Czech Republic*

“The Czech Republic would like to recall the explanation of vote made by the Permanent Representative of the Czech Republic to the United Nations on November 29, 2012 in connection with the adoption of United Nations General Assembly resolution 67/19, and would like to note that its position reflected in that explanation of vote has not changed.”

*Israel*

“The State of Israel requests to place on the record its reservations regarding the status and the nature of Palestinian participation in the meeting and refers in that context to the positions expressed in the debate of the General Assembly by Ambassador Ron Prosor, in connection to the adoption of resolution 67/19.”

*United States of America*

“The United States would like to recall the explanation of vote made by Ambassador Susan Rice on November 29, 2012 in connection with the adoption of General Assembly resolution 67/19, and would like to note that its position regarding Palestinian status as reflected in that explanation of vote has not changed.”

37. Representatives of intergovernmental organizations then made statements. The representative of WHO said that a number of activities had been under way for some time to address the health and environmental impacts of mercury. To make a difference, she said, a new international instrument would need to result in action that went beyond what would happen anyway, and the greatest gains, by a large margin, would be made by addressing emissions and artisanal and small-scale gold mining. For the current session, WHO had provided an updated version of its document “Index to key information from the World Health Organization”.

38. The representative of the African Union Commission stressed the importance of the proposed instrument to the African continent. The commitment of the Commission to the mercury negotiations was reflected in the prestigious award granted it by the Mercury Club in 2012. The Commission was aware of the growing challenges facing Africa with regard to hazardous chemicals and wastes and had worked with partners, including UNEP and the European Union, to enhance the capacity of African negotiators to promote the agenda of the continent in dealing with such issues. With regard to the current mercury negotiations, the Commission attached particular importance to restricting new mercury-added products, collecting information on existing products that would need to be controlled in the future and controlling exports of mercury-added products through a prior informed consent procedure; long-term financial and technical assistance; and interim financial arrangements to allow the development of implementation strategies, for example national implementation plans.

39. In his statement, the representative of the World Organization for Animal Health said that thiomersal, a mercury-containing compound used in animal vaccines with significant health benefits for both animals and humans, had few properly validated alternatives and that environmental releases were too small to pose a significant threat. It should, therefore, be exempted from the control provisions of the mercury instrument.

40. Several representatives of non-governmental organizations then made statements. One representative said that the preamble of the mercury instrument should make specific reference to indigenous peoples, in accordance with the 2007 United Nations Declaration on the Rights of Indigenous Peoples, given their disproportionate vulnerability to mercury contamination through the build-up of mercury in traditional foods such as fish and other marine animals. Another said that the preamble should include a reference to human rights law because the instrument implicated human rights pertaining to health and the environment. Another representative said that new findings demonstrated that the effects of mercury contamination had previously been underestimated and that bold action was required, including through restricting supply and trade; phasing out the use of mercury in most products and processes; achieving substantial reductions of mercury releases to the environment; prohibiting worst practices, for example through phasing out mercury use in artisanal and small-scale gold mining; enforcing environmentally sound storage and disposal of mercury waste; and adequate financial assistance to developing countries. Another representative said that a number of issues arising from the Minamata disaster remained unresolved, including adequate compensation for the victims, and said that the proposal to call the new instrument the “Minamata Convention” should be rejected until those issues were resolved.

41. One representative said that mercury use in dental amalgam should be phased out by 2025 and that in the meantime measures should be put in place to reduce usage and prepare for the phase-out. The cost of the management and disposal of dental mercury should be subject to the polluter pays principle, with amalgam producers reimbursing the disposal costs sustained by Governments and others in proportion to their share of the market. Another representative said that the use of mercury in the dental sector could no longer be justified, given the environmental costs associated with end-of-life disposal of dental mercury and the availability of durable, less expensive alternatives. Another representative said that environmental mercury, in its methylated form, had been shown to have significant adverse health impacts on pregnant women and small children at low doses and that increased efforts should be made to phase out the use of mercury in sphygmomanometers and thermometers. Making information on the mercury content of materials available to health-care professionals would assist in preventing adverse human health effects. Another representative of a non-governmental organization spoke of the significant threat posed to human health, in particular children’s health, by vaccines containing mercury.

## **B. Further statements**

42. Further statements were made by Ms. Doris Leuthard, Head, Federal Department of Environment, Transport, Energy and Communications, Switzerland; the Executive Director; Mr. John McCarthy, Assistant Secretary for the Environment, Ireland, speaking on behalf of the European Union, its member States and Croatia; Ms. Raquel Lejtregger, Vice-Minister of Housing, Land Planning and Environment, Uruguay; Mr. Wang Jian, Deputy Director-General, Department of Pollution Control, Ministry of Environmental Protection, China; Mr. Francisco Orrego, Vice-Minister of Mining, Chile; Ms. Abiola Olanipekun, Assistant Director, Pollution Control and Environmental Health, Federal Ministry of Health, Nigeria, speaking on behalf of African States; Mr. Ryutaro Yatsu, Vice-Minister for Global Environmental Affairs, Japan; Mr. Henrik Eriksen, Senior Adviser, Department for Climate Change and Pollution Control, Ministry of Environment, Norway; and Mr. Nuritdin Inamov, Director, Department of International Cooperation, Ministry of Natural Resources, Russian Federation.

43. In her statement, Ms. Leuthard welcomed the participants on behalf of the Swiss Government. She praised the committee and those supporting its work for their considerable achievements since the start of the negotiations to formulate a legally binding instrument on mercury. She said that despite the clear global threat of mercury to human health and the environment, as exemplified by the Minamata disaster and the damage caused by artisanal and small-scale gold mining, mercury emissions and releases continued to increase, with disproportionate impacts on vulnerable populations, including pregnant women, children and those who were socially and economically marginalized. The efforts of the negotiating committee, through its dedication and pragmatic search for solutions over five meetings, offered hope that that would soon change. It was essential to conclude the negotiations and adopt a robust regime for the control of mercury; for that to be achieved it was essential to mobilize political will to find the most effective common solutions to address the global challenge of mercury.

44. Setting out the basic elements of such an agreement, she said that adequate financial and technical support were fundamental to achieving the objectives of the mercury instrument. Effective delivery of that support was of interest and benefit to all parties, not just particular groups of parties. GEF had a major role to play as a source of financing, but other innovative solutions to financing needed to be explored as well. The Government of Switzerland pledged 1 million Swiss francs to assist during the interim period before ratification of the proposed instrument, and was confident that



other countries would follow its example. On the substance of the agreement, there was a need for substantive commitments that delivered significant reductions in mercury supply and an end to primary mercury mining, following a reasonable transition period. Environmentally sound alternatives existed for most mercury uses, so ambitious phase-out targets could be pursued to reduce emissions and releases. Best available techniques and best environmental practices, as applied to both new and existing sources, were an essential part of the solution. The compliance mechanism under the new instrument must be effective and efficient. In conclusion, she expressed the hope that the courage and political will existed to finalize an instrument that would be of benefit to the world and to present and future generations.

45. The Executive Director, in his statement, said that the current negotiations, while difficult, lived up to, and were a test of, the spirit of multinationalism, in that those engaged were able to put aside their separate interests to converge around a common interest. He thanked the Government of Switzerland for its continued support and commitment to the negotiating process, as reflected in the generous financial contribution announced by Ms. Leuthard. In acting on such mandates as that of the UNEP Governing Council in its decision 25/5, it was important to use science as the basis on which which countries could act, both as sovereign States and as members of the international community. Mercury, he said, was an interesting product – for a long time it had been viewed as a useful element by humanity but, as with many things, its benefits had been found to have a cost. It was able to travel globally and silently poisoned many people. It had also allowed many people to make a living, for example through artisanal and small-scale gold mining, and that fact should be taken into account in addressing its risks.

46. The presence of those attending the current meeting, he continued, was an expression of the duty of care that all Governments owed their citizens. It was certain that there was a strong basis for action to reduce the risks to people and the planet posed by mercury. The question was how to do it in terms of economic reality, technologies, norms and standards, catalysed by an international treaty to assist speedy action. While acknowledging that there were still significant issues, he stressed that the role of UNEP was not to take positions on particular aspects but rather to play the role of facilitator, to provide the science, advise where the scope for negotiation lay and provide the foundation on which negotiations could proceed. For the success of the mercury instrument, certain principles needed to be followed: first, individual States should not be expected to accept something that was not to their benefit; and second, what came out of the negotiations must add value to the actions of individuals. The current negotiations were close to achieving both, and there was no question that all involved wanted to see the mercury instrument finalized. In bridging the final gaps, it should be recognized that the art of negotiation lay mainly in recognizing the interests of others. It was also important that the support leveraged through international cooperation was not the final solution but rather a complement to action taken at the national level. The treaty was a means to accelerate such action and enable parties to fulfil their obligations as part of their shared responsibility to protect human life and the environment.

47. Mr. McCarthy, in his statement, said that the committee was assembled to agree on a mercury instrument worthy of the victims of Minamata disease and to protect others from a similar tragedy. Necessary actions included bringing an end to primary mining of mercury; reducing emissions from main sources such as industry, coal burning and artisanal small-scale gold mining; and dealing with products containing mercury. Affordable alternatives existed for many uses, and it was imperative that use of mercury in products and processes was phased out as rapidly as possible. Countries at all stages of development needed to work together and be accountable to one another within a robust compliance regime. For such an ambitious instrument, donors needed to support the efforts of developing countries through financial and technical assistance and technology transfer. In conclusion, he said that the European Union was committed to working constructively to achieve an effective outcome to the negotiations.

48. Ms. Lejtregger said that the committee was at a historic juncture, as it was close to achieving the mandate set for it by the UNEP Governing Council in decision 25/5. It had a responsibility to conclude its task for the sake of current and future generations. Uruguay, she said, had a long tradition of protecting the environment, and she outlined a number of the actions that the country had taken nationally and internationally as part of its commitment to promote environmental protection at home and globally. The country, for example, had hosted the first meetings of the conferences of the parties to the Basel and Stockholm conventions as well as the fourth session of the intergovernmental negotiating committee to develop a global legally binding instrument on mercury. To achieve the aim of developing an ambitious mercury instrument, effective emission control mechanisms were needed that were balanced, flexible and geared to specific country situations taking into consideration the principle of common but differentiated responsibility. Adequate resources were needed, both in the interim period and after the instrument came into force, to ensure that those aims were realized.

Developing countries required support to identify problems and find appropriate solutions, and it was the responsibility of all to ensure that the financial means were available to allow the world to realize its vision of the future.

49. In his statement, Mr. Wang said that negotiations on the mercury instrument had reached a crucial stage. China, he said, was ready to cooperate proactively to ensure that the instrument was finalized and, to demonstrate its commitment, the Government of China would support the follow-up to the negotiations on the basis of its capability. The country had experienced rapid economic growth and attached importance to the phase-out of products and processes using mercury. It had accordingly adopted measures to restrict certain uses of mercury and had put in place more stringent criteria for emissions. A large technological gap existed between developed and developing countries, and the latter needed more time for the implementation of controls along with greater support from the international community. The principle of common but differentiated responsibilities underpinned the negotiations, and he hoped that parties would continue to work in the spirit of cooperation and accommodate each other's concerns in order to achieve success.

50. Mr. Orrego said that his delegation was committed to showing the flexibility required to achieve consensus while striving to ensure that its national interests were reflected in a finalized instrument that sought to protect human health and the environment. There were still a number of sensitive issues to be resolved in order to achieve a balanced outcome that was acceptable to all, such as the definition of mercury compounds. He urged fellow delegations to make constructive use of the time remaining in order to bring the negotiations, in a spirit of dialogue, to their desired conclusion.

51. Ms. Olanipekun, speaking on behalf of African States, expressed their commitment to fulfilling the mandate received from the Governing Council of UNEP. It was time to build on the progress made at previous sessions of the committee and to find solutions to outstanding issues in order to deliver a strong and comprehensive mercury-control instrument that would liberate the global community from the dangers posed by mercury exposure and, at the same time, help to pave the way towards reaching the goal, set out in the Plan of Implementation adopted at the World Summit on Sustainable Development, that chemicals be used and produced in ways that led to the minimization of significant adverse effects on human health and the environment.

52. African Governments believed that the mercury instrument would give Africa a level playing field in ensuring that the products they imported were as mercury-free as those used in the developed world and that prior informed consent was required for imports of mercury-added products. The instrument would be unique in that it would impact on human health and the environment while allowing small island States, developing countries and countries with economies in transition to attain the Millennium Development Goals and other internationally agreed development goals within the context of common but differentiated responsibilities. The long-term availability of financial and technical assistance was crucial for developing countries to comply with their obligations under the instrument, and their overriding priorities of sustainable economic and social development and poverty eradication should be taken fully into account. Parties had a duty to present and future generations to continue collaborating as stakeholders in the finalization of the instrument to be delivered at the upcoming twenty-seventh session of the Governing Council. It was an opportunity not to be missed.

53. Mr. Yatsu said that Japan, as the host of the anticipated diplomatic conference at which the mercury instrument was to be signed, would do its utmost to ensure that a commonly agreed conclusion to the negotiations was reached at the current session, including with regard to appropriate financial mechanisms, which would constitute a milestone in efforts to bring about global reductions of mercury. It was essential to assist the countries in need of capacity-building to enable them to ratify and implement the instrument; such support was needed especially in the period before it entered into force, and might even bring about entry into force earlier than expected. Accordingly, his Government was prepared to contribute to financing activities in the interim period with a sum that at least matched the amounts pledged by others. It was also considering an additional contribution for the interim period to be announced at the diplomatic conference in response to the level of ambition of the convention.

54. In his statement Mr. Eriksen underscored the need to reduce the risks posed by mercury to human health and the environment, in particular the risk of permanent brain damage in children. Norway remained committed to creating a Convention that set out an ambitious set of obligations to address those risks. Mobilizing financial resources to enable such action was in every country's interest. Such resources would be addressed in Article 15 of the mercury instrument, and interim financing would also be necessary so that new actions could be undertaken prior to the entry into force of the instrument. Norway greatly appreciated the views of Japan and Switzerland regarding the

financing issue. Norway was also committed to supporting the interim phase of an ambitious mercury instrument, and he was pleased to announce that as a first contribution, it would provide \$1 million to support interim arrangements for the convention. Those resources would supplement the financial contributions that might come from other Parties or other financial sources, including, for example, what GEF might provide. Although the discussions on interim arrangements had not been completed, his Government envisaged that the interim financing it was pledging would help support enabling activities, preparations for ratification and early action to implement the provisions of the instrument. Initiatives often referred to as rapid assessments might also be an element of interim activities. Expressing appreciation to the Government of Switzerland for hosting the final session of the negotiations, he urged the representatives gathered in Geneva to seize the opportunity to agree upon a mercury instrument that would make a real difference.

55. Mr. Inamov, in his statement, said that the committee had made considerable progress in its work. A number of matters still required resolution, but there was optimism that the instrument would be finalized, signed and eventually ratified. To conclude the agreement, it was important to address the issue of financing, which was of concern to countries with developing and transitional economies. As additional sources of financing were sought, the new technologies needed to deal with mercury emissions from industry and other sources would require a transitional period for implementation, and flexibility should be shown to countries with developing and transitional economies with regard to compliance issues as solutions were developed. It was essential to keep a balance between economic and ecological considerations when identifying and implementing solutions.

56. Ms. Naoko Ishii, the CEO and Chairperson of GEF, addressed the committee. She said that in accordance with a decision of the GEF Council in November 2012, GEF was ready, willing and able to become a financial mechanism for the future instrument on mercury, noting the Council decision cleared the way for the immediate expansion of existing GEF mercury activities. She informed the committee that a mercury strategy had been developed for the fifth replenishment of the GEF trust fund and that \$15 million had been allocated to nine projects to help countries build institutional and technological capacity to deal with the dangers of mercury. As a result of 15 years of experience in reducing mercury pollution, GEF had the ability to assist immediately with the development of national inventories; reviews of institutional capabilities; development of country action plans; assessments and strengthening of enforcement capacity; development of public outreach; awareness building and sharing of best practices; and demonstration projects on existing technologies and practices for eliminating mercury use.

57. She then spoke about the concerns voiced by some countries regarding GEF, in particular with regard to a lack of accessibility and transparency and excessive bureaucracy. She informed the committee that GEF had streamlined its grant application procedures and assured the committee that continued improvement was a top priority for her. Among other things, she had recently secured the GEF Council's authorization to approve medium-sized projects up to \$2 million. She also spoke about concerns regarding the predictability and availability of new or additional GEF resources, saying that she was personally committed to working closely with donors to secure new, additional resources to support the goals of the convention and to ensuring that mercury was a priority programme with appropriate resources; she also indicated that steps in that direction had already been taken, noting that in connection with the fifth replenishment of the GEF trust fund a dedicated funding stream had been established for mercury on a pilot basis. Alluding to the state of the global economy and its impact on public budgets, she promised to promote public-private partnerships as an important source of new funding. Urging the committee to seize the opportunity to integrate mercury discussions into the imminent sixth GEF replenishment negotiations, she concluded by saying that GEF was proud to work with the committee and looked forward to a continued partnership.

58. Following the high-level statements, the Chair thanked all those who had spoken, and thus set a positive tone and atmosphere for action. He thanked in particular those Governments that had pledged contributions, and he thanked Ms. Ishii for her clear message on the readiness of GEF to serve the future mercury instrument and, noting that GEF mercury projects were already under way in many countries, for its support during the negotiating process.

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

59. The representative of the secretariat presented the documents relevant to the item, which were summarized in paragraph 7 of the annotations to the provisional agenda (UNEP(DTIE)/Hg/INC.5/1/Add.1). The representative also introduced document UNEP(DTIE)/Hg/INC.5/INF/2, which contained a table setting out how the meeting documents prepared during the negotiation process related to the substantive issues listed in paragraph 27 of Governing Council decision 25/5 and to the sections of the Chair's text.

## **D. Detailed discussion**

60. As noted above, the committee agreed to use the Chair's text as the basis for its discussions at the current session and to structure its discussions in accordance with the sections of the text. The Chair gave a general introduction to the document, outlining his approach to its preparation, and recalled that it had been presented and considered at a full set of regional consultations in the intersessional period leading up to the current session. He also introduced each section of the text just prior to its discussion.

### **1. Preamble (section A of the Chair's text)**

61. In the discussion following the Chair's introduction, several representatives said that the preamble of the mercury instrument should be balanced, given its importance in setting the context for the rest of the instrument's text. To that end, several representatives said that the preamble should mention important matters of interest to parties. One requested the inclusion of a reference to Minamata disease, including an indication that it had been caused by the improper management of mercury. In the light of the lessons learned from the Minamata disaster, the preamble should also refer to the polluter pays principle. Other matters raised by representatives for inclusion in the preamble included the vulnerability of arctic ecosystems and indigenous peoples to mercury contamination and the relevant principles of the Rio Declaration on Environment and Development. Other representatives said that they would provide suggestions for the preamble in writing during the current session, and the Chair requested that such suggestions be submitted to him informally.

62. Following that discussion the Chair requested that members of the Committee present informal proposals to him on the preamble, noting that further language for the preamble text could emerge from the work in plenary and in contact groups.

63. At a subsequent meeting, one representative proposed, and the committee agreed, that the Chair should develop a proposal for the preamble, taking into account the informal proposals he had received from delegations and a review of the draft convention.

64. The Chair later presented for the committee's consideration a conference room paper setting out a preamble that he had prepared based on the informal proposals submitted to the Chair and the contributions from the contact groups. One representative suggested that it should make explicit reference to small island developing States.

65. The representative of Japan expressed satisfaction that the Chair's preamble referred to the mercury contamination of Minamata Bay, its tragic consequences and the most important lessons to be drawn from it. Nevertheless, he wished to highlight for inclusion in the present report a number of additional lessons that the Chair, owing to the need for brevity and the need to accommodate the views of others, had not been able to include. One such lesson was that the serious health and environmental effects of the Minamata disaster were the result of the improper management of mercury and delay in the implementation of appropriate measures. Lessons learned from the Minamata experience should lead all to resolve to prevent any such disasters in the future, promote global efforts to prevent mercury pollution and to encourage the local efforts of environmentally friendly communities to revive damaged areas as was the case in Minamata.

66. Another representative, while agreeing that the Chair's preamble text should be sent to the legal group, expressed concern that it referred to "indigenous communities" rather than "indigenous peoples". The latter, he said, was the correct internationally recognized term and he hoped that the use of the former in the mercury instrument would not set a precedent. Another representative proposed additional references to landlocked countries.

67. The Chair indicated that, as the Preamble had been carefully prepared to encompass a range of views in a balanced way, it should be sent without amendment to the legal group. The committee agreed to this approach. It was also agreed that references to the special circumstances of developing countries presented as bracketed text in a number of articles throughout the text would be deleted.

68. The chair of the legal group subsequently reported on the group's work in respect of the preamble, the result of which was set out in a conference room paper.

### **2. Introduction (section B of the Chair's text)**

#### **(a) Objective (Article 1 of the Chair's text)**

69. Introducing Article 1, the Chair requested that members of the committee commence informal consultations on the objective of the mercury instrument.

70. In subsequent discussion, several representatives, including one speaking on behalf of a group of countries, said that they could agree to the proposal contained in the Chair's text. One, however, said that his country's agreement was contingent on the addition of the following definition for the term "anthropogenic releases" in Article 2: "Anthropogenic releases means all emissions to the atmosphere and releases to water and soil originating or derived from human activity".

71. The committee agreed to refer Article 1 to the legal group for review.

72. The chair of the legal group subsequently reported on the group's work in respect of Article 1, the result of which was set out in a conference room paper. She noted that in accordance with the legal group's examination of the usage of the terms "emissions" and "releases" throughout the text of the instrument a change to Article 1 was proposed so that "releases" would read "emissions and releases".

**(b) Relationship with other international agreements (Article 1 bis of the Chair's text)**

73. In the discussion following the introduction of Article 1 bis, one representative, speaking on behalf of a group of countries, proposed that the first two paragraphs be deleted and the concept of mutual support be incorporated into the preamble, while two others expressed support for those paragraphs in the Chair's text. With regard to paragraph three, several representatives expressed support for the Chair's text, although one, speaking on behalf of a group of countries, proposed new text that would limit a party's imposition of requirements additional to those in the mercury instrument to requirements that were "in accordance with that Party's other obligations under applicable international law". One representative, speaking on behalf of a group of countries, proposed to delete the paragraph, saying that it conflicted with paragraph 1, and two others, including one speaking on behalf of a group of countries, proposed changes. One representative asked how the paragraph would interact with the article on reservations. Several representatives suggested that Article 1 bis be moved to section N of the draft instrument, containing final provisions.

74. The committee agreed to establish a contact group, co-chaired by Ms. Anne Daniel (Canada) and Ms. Jimena Nieto (Colombia), to discuss Article 1 bis. The group was to consider whether such an article was necessary and, if so, to agree on its content. The question of the placement of any such article in the mercury instrument would be considered by the legal group following consideration by the contact group.

75. Ms. Nieto subsequently reported that the contact group had reached general agreement on the wording of Article 1 bis but had still not resolved the issue of where in the treaty the paragraphs should be placed. Further discussion was needed before the group could provide clean text to be sent to the legal group for review. Later she reported that the contact group had agreed that Article 1 bis should be deleted and that text on the mercury instrument's relationship with other international instruments should be included in the instrument's preamble. The committee agreed that the text agreed upon by the contact group, which was set out in a conference room paper, should be sent to the legal group for review. The chair of the legal group subsequently reported on the group's work in respect of the preamble, the result of which was set out in a conference room paper that included the text previously contained in Article 1 bis.

**(c) Definitions (Article 2 of the Chair's text)**

76. In the discussion following the Chair's introduction of Article 2, the committee agreed that the definitions of "artisanal and small-scale gold mining", "best available techniques", "best environmental practices", "party", "parties present and voting", "primary mercury mining" and "regional economic integration organization" should be submitted to the legal group for review.

77. The representative of Chile introduced a conference room paper in relation to the definition of "mercury compounds". He indicated that the definition of mercury compounds in Article 2 (e) should expressly exclude naturally-occurring quantities of mercury compounds present in soil, minerals, ores and mineral products, except those present as the result of primary mercury mining, such that the exception set forth in paragraph 2 of Article 3 would apply to the entire text of the mercury instrument. Several other representatives expressed additional reservations about the definition of mercury compounds, as well as the definitions of "mercury" and "mercury-added product".

78. Two representatives, including one speaking on behalf of a group of countries, called for more discussion on the definitions proposed for "use allowed" and its alternative, "use allowed to the Party under this Convention", and others, including one speaking on behalf of a group of countries, proposed alternative or additional wording.

79. As noted above in the discussion of the objective, the representative of Chile said that his delegation would submit a conference room paper proposing a definition for "anthropogenic releases".

80. The committee agreed to refer the definitions of "mercury", "mercury compounds", "mercury-added product" and "use allowed", as they appeared in paragraphs (d), (e), (f), (k) and (k) alt of Article 2, as well as the proposed new definition of anthropogenic releases, to the contact group considering Article 1 bis.

81. As noted in the discussion below of Article 9, following its review of that article the legal group suggested that the committee might wish to request the legal group to review the terms "emissions", "releases" and "emissions and releases" to ensure that they were used consistently throughout the mercury instrument. The committee accordingly requested the legal group to do so.

82. At a subsequent meeting the co-chair of the contact group reported that agreement had been reached within the group on the definitions of "mercury", "mercury compounds", and "mercury-added products", as set out in a conference room paper, which were therefore ready to be sent to the legal group for review. The committee agreed that those definitions should be sent to the legal group for review.

83. With regard to the definition of mercury compounds, she reported that one member of the contact group had expressed concern that the current definition might have unintended consequences in the context of several other articles of the mercury instrument. In the light of that concern the contact group had agreed to flag the issue and requested that it be considered by the contact groups discussing Articles 3, 11, 12 and 13 in the context of those articles. The contact group had also noted the possibility that the definition of mercury-added compounds could change as a result of deliberations related to Article 6. The contact group would continue its work, including with regard to the definitions of the terms "use allowed" and "anthropogenic emissions".

84. The representative of Chile said that his delegation had submitted a conference room paper regarding an additional definition and reiterated his delegation's view that agreement should be reached on definitions before additional policy negotiations took place.

85. At a subsequent meeting the chair of the legal group reported that the group had finished its review of the definitions of "artisanal and small-scale gold mining", "best available techniques", "best environmental practices", "Party", "Parties present and voting", "primary mercury mining" and "regional economic integration organization", as set out in a conference room paper, following which the committee provisionally approved them.

86. The chair of the legal group subsequently reported on the group's work on the use of the terms "emissions", "releases" and "emissions and releases" throughout the draft instrument. The group's recommendations regarding that usage were set out in a conference room paper.

87. Subsequently the contact group was asked to consider further the definition of "mercury compounds" in the context of Articles 3, 11, 12 and 13 following the work of the contact groups discussing those articles. The chair of the contact group later reported that the group had considered the matter together with members of those other contact groups, as a result of which text had been added to Article 13 to clarify the definition of the term "mercury wastes" for the purposes of that article. In addition, "mercury compounds" would be separately defined in Article 3 for the purposes of that article. No other changes had been required. She also reported on the group's work in respect of the term "use allowed", which was set out in a conference room paper.

88. The chair of the legal group reported that the group had finished its consideration of the term "use allowed", the result of which was set out in a conference room paper.

### **3. Supply and trade (Article 3 of the Chair's text)**

89. In the discussion that followed the Chair's introduction of the article, many representatives, including two who spoke on behalf of groups of countries, stressed the importance of reducing the supply and trade of mercury to achieving the objectives of the convention. There was general agreement that the Chair's text provided a good basis for discussion of the articles at the current session, although further work was needed.

90. Some representatives indicated that their delegations could accept most of the article in its current form, while others proposed a number of amendments and said that the article should be discussed in a contact group. Several representatives said that there was a need to improve certain definitions in paragraph 2 and related definitions in Article 2. One representative reiterated support for placing all definitions in Article 2. One representative, speaking on behalf of a group of countries, said that the legal group should review links between elements in Article 3 and Articles 12 and 13. Two representatives said that the Conference of the Parties should be required to develop further guidance in regard to the Article. One representative said that the provisions of Article 3, like those of all

Articles, should be conditional upon the provision to developing countries of sufficient means of implementation.

91. One representative, speaking on behalf of the European Union and its member States and Croatia, introduced a conference room paper on supply, elements of which several representatives supported as an additional basis for discussion of Article 3.

92. Many representatives, including two speaking on behalf of groups of countries, underscored the importance of strong and effective provisions targeting the supply and trade of mercury as a means to reduce the amount of mercury in the global marketplace and to reduce its international movement, its use and its emission and release into the environment. One representative said that it was necessary to allow for continued trade of mercury for use in artisanal and small-scale gold mining, which was of economic importance to his country. GEF had provided funding for projects to demonstrate the viability of alternatives to artisanal and small-scale gold mining in his country and subregion, but additional time was needed for training and to obtain and adopt substitutes. An immediate cessation of mercury imports could have significant and negative economic, social and environmental consequences. One representative called for provisions to ensure the supply of mercury for laboratory research. Another favoured equal treatment of all secondary sources of mercury.

93. Many representatives, including two speaking on behalf of groups of countries, supported the prohibition of new primary mercury mines and the closure of existing mines, given the centrality of such efforts to achieving the goals of the mercury instrument and the large amount of mercury already in the global marketplace or available from recycling. Several underscored the importance of establishing firm dates for such bans. A number of different timeframes were suggested, with some representatives stating that new and existing mercury mining should cease in each party from the time of signing of the mercury instrument, from the time of the instrument's entry into force for the party, or from a specific date. Others supported a more gradual phase-out of existing mines to enable countries to make the necessary social and economic adjustments. One representative said that countries with mining operations or large stocks of mercury remaining from closed mines would require technical and financial assistance to ensure the environmentally sound management of those stocks and closure of the mines. Several representatives said that it was important to ensure that the provisions adopted did not create perverse incentives to open new mines prior to the entry into force of the Convention.

94. One representative said that her country was prepared to discuss possible controls on new mercury mines, provided they were in accordance with relevant national laws, but that restrictions on existing mines would conflict with important domestic law. Existing primary mercury mines were also important sources of employment and provided mercury for many different and appropriate uses and would be difficult to replace if closed. Another representative stated that while no mercury mining occurred in his country, his Government could not yet agree to a global ban on mercury mining because of a concern that such a ban could set a precedent for other mining issues under future multilateral environmental agreements.

95. Many representatives, including two speaking on behalf of groups of countries, supported measures to prevent the introduction into the global market place of mercury from decommissioned chlor-alkali facilities. Several representatives, including one speaking on behalf of a group of countries, supported the creation of a new annex on supply sources to include chlor-alkali facilities, which could be amended as necessary by the Conference of the Parties. One emphasized that given the relatively small number of facilities and amounts of mercury involved, such provisions represented one of the most effective and cost-efficient means of limiting the supply of mercury and its emission into the environment. Another said that financial and technical assistance would need to be provided to some countries in conjunction with efforts to decommission chlor-alkali facilities and manage related mercury supplies. One representative, however, cautioned that the provisions on chlor-alkali facilities must ensure that countries with chlor-alkali facilities did not have compelling incentives to delay ratification of the mercury instrument until such facilities had closed.

96. Several representatives, including one speaking on behalf of a group of countries, supported the inclusion of robust prior informed consent provisions regarding trade in mercury and products containing mercury. They drew attention to the positive impact such measures would have in, inter alia, controlling the trade of mercury; preventing the dumping of mercury and mercury-containing products in developing countries; ensuring that exporting as well as importing countries participated in efforts to reduce the legal and illegal international trade of mercury; and providing information on the sources and end uses of mercury in the global market place to facilitate efforts to limit mercury supply, use and emissions.

97. Several other representatives expressed support for the intent of the proposals outlined above but said that they favoured more practical and economical provisions that would entail fewer administrative burdens, and they suggested that the Conference of the Parties could review and develop additional guidance on such provisions in the future. One representative said that some of the envisaged prior informed consent provisions would require significant expense to implement and would draw funding away from other implementation activities in developing countries. Another said that clearer definitions in the trade provisions were needed and suggested using those found in certain other global agreements.

98. Several representatives, including two speaking on behalf of groups of countries, said that they supported stronger provisions to address trade in mercury between Parties and non-parties to the mercury instrument. Two representatives, including one speaking on behalf of a group of countries, said that such trade should be banned or allowed only under stringent conditions. Two others called for trade provisions that would treat all countries equally. One said that it would be difficult to control mercury supply and trade in terms of the stated end-use of the mercury because once it entered the marketplace mercury was fungible and could be easily diverted.

99. One non-governmental organization representative said that paragraph 5 (b) was critical to preventing trade in mercury from decommissioned chlor-alkali plants, suggesting that the mercury from any such trade would probably be used in artisanal and small-scale gold mining, rendering efforts to reduce mercury use in artisanal and small-scale gold mining useless. Another non-governmental organization representative pressed for trade in mercury for the purposes of artisanal and small-scale gold mining to be permitted, arguing that to prohibit it would jeopardize the livelihoods of many, especially in rural areas, and that illegal trade in mercury would increase considerably.

100. Another non-governmental organization representative said that primary mercury mining should be prohibited from the date that the convention was signed, rather than when it entered into force, so as to prevent the establishment of new mines or expansion of existing mines. He also said that once mines were closed they should be prohibited from reopening, that no trade should be permitted with non-parties and that mercury traders and volumes traded should be listed in a public register.

101. The committee agreed to refer Article 3 to the contact group set up to examine selected technical articles, which had been established as described in the discussion of Articles 6 and 7 below. The contact group was requested to reach agreement on a proposal for final draft text for Article 3, using the Chair's text and the conference room paper submitted by the European Union and its member States and Croatia as the basis for discussion and taking into account the views expressed during the plenary discussion. The Chair also urged delegations to consider, and to hold informal consultations regarding, the policy decisions related to primary mining that would be necessary in reaching agreement on Article 3.

102. At a subsequent meeting, the representative of Algeria said that attempts to submit a proposal contained in a conference room paper, which had been endorsed by a group of countries, for consideration by the contact group had been ruled out of order, and he therefore requested clarification regarding that decision as well as an avenue for presenting the proposal. The contact group co-chair explained that the group's mandate from the committee had limited it to considering the Chair's text, another conference room paper and issues raised in plenary during the committee's initial consideration of Article 3. The contact group co-chairs had therefore considered that the group's mandate did not extend to the additional conference room paper, which had not been considered by the committee prior to its submission in the contact group. The co-chairs of the contact group therefore had no choice but to decline consideration of the conference room paper by the contact group.

103. The chair said that he would consult bilaterally with the proponents of the conference room paper and that consideration of the issue would occur within the context of the discussions on financial resources and technical assistance, which included similar issues.

104. Subsequently, the co-chair of the contact group reported that the group had developed a package of provisions that covered a range of issues. If the package was adopted, Article 3 would include provisions requiring each Party to phase-out primary mercury mining within 15 years of its ratification of the mercury instrument and prohibiting the establishment of any new facilities using mercury from primary mining in processes. It would also place pressure on the demand side.



105. The package, he said, was a major milestone in the mercury negotiations and represented a delicate compromise that could very well be undone by efforts to adjust it. There were nevertheless delegations that had concerns about it, and a way had to be found to address their concerns without undermining the compromise.

106. Following the co-chair's presentation one representative, supported by another, expressed concern about the phase-out dates in the package: allowing parties 15 years to phase out primary mercury mining seemed too generous. He underscored the need to set realistic time frames for all obligations under the convention.

107. Another representative, supported by two others, questioning the procedure by which the package had been developed, stressing the importance of consensus and saying that any compromise or package of provisions needed to reflect the views of all parties.

108. Following the suggestion by another representative, it was agreed that, in the interest of time, the package would be sent to the legal group for review on the understanding that delegations would not be prevented from consulting further on the unresolved issue of phase-out dates.

109. At a subsequent meeting, the co-chairs of the contact group on selected technical issues reported that the group had reached agreement on much of Article 3, Article 6 and Annex C, Article 7 and Annex D, Article 8, paragraph 5 of Article 9, Article 12 and Article 13, as reflected in several conference room papers. There remained a number of unresolved issues, however, that would require high-level political consultations, which were enclosed in square brackets.

110. The committee agreed that Article 3 as set out in the conference room paper should be submitted to the legal group for review. The chair of the legal group subsequently reported on the group's work in respect of Article 3, as the result of which was set out in a conference room paper, noting that the term "excess" in paragraph 5 (b) was undefined. The Chair of the committee noted that the square brackets in the article would be dealt with at the time of its final approval.

#### **4. Products and processes (section E of the Chair's text)**

##### **(a) Mercury-added products (Article 6 of the Chair's text)**

##### **(b) Manufacturing processes in which mercury is used (Article 7 of the Chair's text)**

##### **(c) Exemptions available to a Party upon request (Article 8 of the Chair's text)**

##### **(d) Special situation of developing countries (Article 8 bis of the Chair's text)**

111. The Committee took up Articles 6, 7, 8 and 8 bis together, along with related annexes.

112. Following the Chair's introduction of articles 6 and 7 and the related Annexes C and D, the representative of Japan, speaking also on behalf of the European Union and its member States and Jamaica, introduced a conference room paper setting forth a compromise proposal on Annexes C and D. The proposal was based on the indicative list contained in the Chair's draft text and reflected input received from three regional groups, a group of countries, several individual countries, members of the Bureau, one intergovernmental organization and several non-governmental organizations, including industry. The compromise proposal included clean text where the authors felt that there was broad convergence in the feedback received and, where that was not the case, set out a single compromise proposal or two or more options for solving the issue. The authors reserved their individual positions regarding the bracketed text.

113. Many representatives welcomed the Chair's text for Articles 6 and 7 and the conference room paper on annexes C and D as the basis for further discussions, while indicating that further discussion and refinement would be necessary. A number of representatives offered specific proposals for changing elements of the drafts, suggesting that they be taken up in a contact group. Several noted that, in the spirit of compromise, their delegations could support the positive list approach set out in the Chair's draft.

114. Several representatives expressed concern that the proposed phase-out dates in Annex C were unrealistic, particularly for developing countries, and that appropriate flexibility, the special situation of developing countries and access to sufficient financial resources and technical assistance were not adequately reflected in the articles. Several others supported the proposed phase-out dates.

115. Several representatives, including one speaking on behalf of a group of countries, said that the mercury instrument should restrict the development and introduction of new mercury-added products, should provide for the collection of information on existing mercury-containing products to facilitate their future regulation and should include a prior informed consent mechanism to assist parties in controlling imports of such products. One representative supported the inclusion of labelling

requirements and close consultations with the World Customs Organization to develop universal harmonized custom codes to facilitate the restriction of unwanted imports of mercury-containing products.

116. Several representatives supported strengthening the provisions on dental amalgam, while others spoke of a need to provide certain countries with time and assistance to undertake a transition away from mercury-containing amalgam. One representative proposed the deletion of the provisions on assembled products, saying that it was prohibitively difficult for countries to determine which assembled products contained mercury-added products. Several representatives expressed support for limiting the renewal of exemptions to a single renewal of five years duration. One said that it was necessary to clarify the references to lighting in Annex C. Another said that there was a need for effective reporting on phase-out efforts. One supported providing exemptions for mercury-containing products and substances used for religious activities. One representative said that many of the contemplated exemptions were unnecessary, as effective alternatives were already available, while another said that risk assessments should be undertaken when considering new exemptions.

117. Two representatives underscored the importance of addressing the largest sources of mercury emissions when finalizing the articles on products and processes. One also said that it was necessary to accommodate the regulatory structures of all countries and to provide flexibility for countries that had already done a great deal to reduce mercury emissions from products and processes.

118. Several representatives supported the phase-out of mercury as a catalyst and in other processes as soon as possible while allowing for limited exemptions. Several representatives supported strengthening the provisions that addressed vinyl chloride monomer (VCM) production. One representative, however, emphasized the difficulties that his country faced with regard to VCM and supported maintaining VCM production in part II of Annex D. One representative said that Article 7 should address polyurethane and sodium methylate production.

119. The representative of WHO said that mercury thermometers and sphygmomanometers should be replaced with validated non-mercury alternatives. Some affordable and appropriate alternatives were already available, and WHO was supporting ministries of health in implementing phase-out programmes. A proposed phase-out date of 2020, with the possibility of two five-year exemption periods, seemed achievable. WHO had recommended in 2009 that the phase-down of dental amalgam be pursued; such a phase-down, however, would require optimal dental care to enable the prevention of dental caries, which in turn would require research and development in respect of new high-quality alternative materials, coupled with access to water, electricity and suction and distribution systems for dental materials. Regarding vaccines, WHO underscored that thiomersal-preserved multi-dose vaccine vials were essential in reducing mortality from major diseases. Any restriction on access to thiomersal would have a severe negative impact on public health in return for minimal environmental benefit. She also said that the mercury instrument should not duplicate the functions assigned to WHO in its Constitution with regard to vaccine safety and delivery.

120. Two non-governmental organization representatives expressed support for the WHO approach to dental amalgam, saying that phase-down was needed in conjunction with research on alternatives and best management practices for amalgam waste. Both said that the Chair's text should be further developed, in part II of Annex C, with the aim of strengthening health care and reducing the incidence of disease through prevention programmes, promoting research and development in respect of mercury-free dental material alternatives, encouraging the use of such alternatives through training dental professionals and restricting the trade and use of dental amalgam in its encapsulated form.

121. One non-governmental organization representative expressed support for the WHO position on vaccines, saying that the mercury instrument should exclude any restriction on thiomersal use. Another non-governmental representative, however, said that any exposure to mercury added to a person's body burden and that all sources of mercury should be controlled under the instrument to prevent over-exposure, including for widely adopted uses such as mercury-based preservatives or disinfectants. All such uses, including for vaccines, should be reviewed regularly by expert technical and scientific committees under the mercury instrument. Echoing this view, and citing the precautionary principle, another representative of a non-governmental organization said that thiomersal should not be the subject of an allowable-use exemption, as no research had definitively proved that its use carried no risk of mercury poisoning in patients.

122. Another non-governmental organization representative said that much progress had been made with regard to mercury-added products. While welcoming the conference room paper submitted by Jamaica, Japan and the European Union and its member States as the basis for Annexes C and D, he said that the provisions of the mercury instrument should be simple: to restrict the use of mercury-added products, to create clear obligations with regard to mercury trade and to provide data

on products that had not already been phased out. For control, use and inclusion of mercury in products, it was necessary to ensure that the transition was done properly, especially in respect of batteries and compact fluorescent lamps.

123. The committee agreed to establish a contact group, co-chaired by Mr. Karel Bláha (Czech Republic) and Ms. Abiola Olanipekun (Nigeria), to examine selected technical articles, including Articles 6 and 7. Subsequently, Mr. Donald Hannah (New Zealand) was asked to serve as co-chair instead of Mr. Bláha, who was unable to continue owing to unforeseen circumstances. In respect of products and processes, the contact group was requested to reach agreement on a proposal for final text for Articles 6 and 7 and Annexes C and D, using the Chair's text and the conference room paper submitted by Jamaica, Japan and the European Union and its member States as the basis for discussion, taking into account the views expressed during the plenary discussion. The Chair expressed his expectation that contact group participants would not reopen issues on which agreement had been reached at earlier sessions of the committee.

124. Many representatives expressed general support for Article 8 in the Chair's text, although a number said that further refinements were necessary and that the article should be discussed in a contact group. Several supported the adoption of provisions similar in intent and impact to those employed in the Stockholm Convention, including provisions to the effect that once all parties had ceased using a particular exemption no party could use it in the future. One representative, speaking on behalf of a group of countries, said that the final disposition of Article 8 would depend on the resolution of discussions on products and processes, including the relevant annexes. She also said that it would be important to ensure that parties were not allowed to prolong exemptions in an unjustified manner and to address the availability of exemptions to countries that ratified the instrument many years after it had entered into force. Another representative said that exemptions should not lead to loopholes that would undermine the effectiveness of the mercury instrument and requested that the issue be examined by the legal group.

125. The committee agreed to refer Article 8 to the contact group established to examine selected technical articles, which would consider it in conjunction with Articles 6 and 7. The contact group was requested to reach agreement on a proposal for final text for Article 8, using the Chair's text as the basis for discussion and taking into account the views expressed during the plenary discussion.

126. There was considerable discussion of Article 8 bis. Some representatives expressed support for retaining it in the draft text, saying that it provided the flexibility that developing countries needed to meet the challenges that they would face in phasing out mercury, in particular in products and processes. They also said that the phase-out dates proposed in Articles 6 and 7 made Article 8 bis necessary; that the mercury instrument should include only realistic and implementable control measures; that Article 8 bis was consistent with the mandate given to the committee by the Governing Council of UNEP, which called for consideration of the special needs of developing countries; that it was important to differentiate clearly the obligations of developing countries from those of developed countries; and that the mercury instrument as it stood lacked sufficient commitments regarding the provision of financial and technical assistance to developing countries to assist them in meeting some of their obligations under the instrument.

127. Many other representatives, however, supported eliminating Article 8 bis, with several saying that the broad, comprehensive and flexible approach developed in Article 8 had made Article 8 bis unnecessary. Several representatives said that while many countries, including developing countries, would face challenges implementing various aspects of the instrument there was no basis for a blanket exemption based entirely on development status. One said that a blanket exemption of 10 years as envisaged in the article could become an effective exemption of much greater duration for a country that did not ratify the agreement until many years after it had entered into force.

128. One non-governmental organization representative said that the disproportionate impact of mercury contamination on developing countries would only increase if the mercury instrument allowed them to delay compliance with measures to reduce mercury. The purpose of the instrument was to protect human health and the environment and any such delay would undermine progress towards enacting strong regulatory frameworks in the countries that were most vulnerable to mercury contamination.

129. Noting the close relationship between issues raised by Article 8 bis and those relating to the articles on financial resources and financial mechanisms, technical assistance and transfer of technology (Articles 15, 16 and 16 bis), the committee agreed to discuss Article 8 bis further in conjunction with those articles. The Chair urged delegations to hold bilateral discussions on Article 8 bis and associated issues.

130. At a subsequent meeting the co-chair of the contact group introduced a conference room paper containing new draft text for Article 6, its related Annex C and Article 8. Noting the presence of several brackets and emphasizing that several issues, including with regard to elements of Annex C, were still under discussion, the co-chair said that the proposed articles contained a significant amount of clean text that the contact group believed would be of interest to the committee. One representative underscored that elements of Annex C were still under discussion.

131. The committee agreed that Article 6, Article 8 and Annex C as set out in the conference room paper should be submitted to the legal group for review, noting that the text in the remaining square brackets would be finalized at a later date and that additions, deletions or other changes could occur following the review by the legal group, particularly with regard to Annex C.

132. Subsequently, the co-chair of the contact group reported that a compromise package of provisions had been negotiated relating to Annex C, including dental amalgam. As was the case with a compromise package on the article relating to supply and trade, the development of the package had been a delicate process, and some delegations continued to have concerns that would have to be addressed without jeopardizing the compromise that had been reached.

133. One representative with concerns suggested that the deadlines of 2020 and 2018 set out in Annex C in the package would probably not allow enough time following entry into force of the instrument for many parties to phase out mercury-added products.

134. It was agreed that, in the interest of time, the package of provisions, which was set out in two conference room papers, would be sent to the legal group for review alongside the previous text that had been sent relating to Article 6 and Annex C, on the understanding that delegations would not be prevented from consulting further on elements of the package. The chair of the legal group later reported that the group had completed its review of the package, the result of which was set out in two conference room papers.

135. As described above in respect of Article 3, the co-chairs of the contact group on selected technical articles subsequently reported that the group had reached agreement on much of Article 3, Article 6 and Annex C, Article 7 and Annex D, Article 8, paragraph 5 of Article 9, Article 12 and Article 13, as reflected in several conference room papers. In its discussion of Article 6 and Annex C, the contact group had agreed, among other things, that the listing of biocides in part I of Annex C was not intended to include preservatives in pharmaceuticals and vaccines; that the article and annex did not cover products in use or used goods, including antiques; and that the reference to “replacement” in exclusion (c) in the footnote in Annex C included maintenance and refurbishment. There remained unresolved issues, however, that would require high-level political consultations, including in respect of bracketed text relating to the special circumstances of developing countries in Articles 6, 7 and 8.

136. The committee agreed to forward Articles 6, 7 and 8 and Annexes C and D as set out in the conference room papers to the legal group for review.

137. The chair of the legal group subsequently reported on the group's work on Articles 6, 7 and 8 and Annexes C and D, the result of which was set out in two conference room papers.

138. At its final meeting, at the suggestion of the Chair following agreement on text in the preamble and other provisions of the mercury instrument that referred to the differentiated obligations and special circumstances of developing countries, the committee agreed to delete Article 8 bis.

## **5. Artisanal and small-scale gold mining (Article 9 of the Chair's text)**

139. The committee agreed to send paragraphs 1–4 of Article 9 to the legal group for its review.

140. Subsequently the Chair invited comments on the article, recalling that paragraphs 1–4 had been sent for review by the legal group. At the proposal of the Chair the committee agreed that paragraph 6, which was closely linked to financial resources and technical and implementation assistance, would be addressed following the conclusion of the negotiations on Articles 15 and 16.

141. In the ensuing discussion many representatives underscored the importance of effective provisions for reducing the use and release of mercury in artisanal and small-scale gold mining, with some drawing attention to the 2013 mercury assessment,<sup>2</sup> which identified artisanal and small-scale gold mining as the largest source of anthropogenic releases of mercury into the environment. Several representatives emphasized that such provisions did not represent an effort to reduce the practice of artisanal and small-scale gold mining itself, which constituted an important area of employment and economic activity in many countries.

<sup>2</sup> *Global Mercury Assessment 2013: Sources, Emissions, Releases and Environmental Transport*.

142. Many representatives said that significant progress had been made toward reaching agreement on Article 9, and several indicated that their delegations could accept most of the article as set out in the Chair's text. Others proposed a number of specific amendments or described concerns without proposing specific text, in particular in respect of paragraph 5. Some representatives expressed concern regarding the use of particular terms or phrases that they said required additional clarification, such as the phrase "more than insignificant" in paragraph 3. Several delegations supported removing the brackets around paragraph 6, tying the provisions of the article to the provisions of the mercury instrument on financial resources and technical and implementation assistance. One representative expressed support for adding elements to strengthen Annex E. Several said that the only remaining technical issues under discussion involved paragraph 5.

143. There was general agreement that the Chair's text provided a basis for discussions regarding paragraph 5, with several stating they could accept the text largely as it stood while many others said that further work was needed to strengthen it. The representative of the United States of America introduced a conference room paper setting forth a proposal to amend the paragraph, which several representatives supported as an additional basis for discussion. Several representatives said that the relationship between elements of paragraph 5 and elements of Article 3 required clarification.

144. Many representatives, including two speaking on behalf of groups of countries, said that Article 9 should create mechanisms that would facilitate the reduction of the use of mercury in artisanal and small-scale gold mining, with some expressing support for an eventual phase-out of such use and one calling for the establishment of specific phase-out dates, the absence of which his delegation considered a critical omission in the text as it stood. Many also expressed support for effective and comprehensive trade provisions in paragraph 5 that would reduce the unregulated supply of mercury for artisanal and small-scale gold mining.

145. Several representatives expressed concern that reducing the trade and use of mercury in artisanal and small-scale gold mining could have unintended negative consequences. Such reductions should only be pursued gradually to reduce the negative economic and social impacts that would result and should be accompanied by financial and implementation assistance to developing countries. Two representatives said that measures to restrict or reduce the legal trade of mercury for artisanal and small-scale gold mining would also produce incentives for illegal trade, as the demand for mercury in the sector would continue. That could further marginalize the people and communities that worked in the sector and hamper attempts to convert illegal and informal activities into legal activities that would facilitate more effective measures to limit mercury emissions and releases. For those reasons, and because many of the most common, currently used alternatives to the use of mercury in the informal artisanal and small-scale gold mining sector were equally or more harmful to the environment, one representative said that his country opposed any phase-out or restriction on the use of mercury in artisanal and small-scale gold mining.

146. Several representatives expressed support for trade provisions that would address both exports and imports and effectively prevent the diversion of mercury to the artisanal and small-scale gold mining sector. One representative supported listing artisanal and small-scale gold mining as an allowable use under the mercury instrument, thus subjecting the trade of mercury for artisanal and small-scale gold mining to the provisions of Article 3. Several representatives said that the trade provisions should include a review process that would facilitate their improvement in the light of experience and provide the parties with information that would enable them to decide when trade in mercury for use in artisanal and small-scale gold mining was no longer necessary.

147. Two non-governmental organization representatives said that the language of the instrument should be strengthened to ensure that trade in mercury for the purposes of artisanal and small-scale gold mining was prohibited. Artisanal and small-scale gold mining was recognized as the largest source of mercury emissions and releases and to allow such trade under an allowable-use exemption would call into question the value and effectiveness of the instrument. One said that restricting trade, and thus supply, under the mercury instrument would raise prices and create the necessary incentives for finding alternatives.

148. The committee agreed to refer Article 9 to the contact group set up to examine selected technical articles. The contact group was requested to reach agreement on a proposal for final draft text for paragraph 5 of Article 9 and Annex E, using the Chair's text and the conference room paper submitted by the United States of America as the basis for discussion and taking into account the views expressed during the plenary discussion. As paragraphs 1–4 had been sent for review by the legal group and paragraph 6 would be addressed by the contract group on financial resources, technical assistance and technology transfer, the contact group would not address those paragraphs. The contact group was also requested to identify issues related to definitions, with the expectation that

they would be considered as part of a general discussion of definitions and where they should be placed in the instrument.

149. The chair of the legal group subsequently reported on the group's work in respect of paragraphs 1–4 of Article 9, the result of which was set out in a conference room paper. She reported that the group had suggested some minor changes to the Chair's text. The group had also advised that a review be made of references to "emissions" and "releases" throughout the Chair's text to ensure that the scope of each reference was as intended. Paragraphs 1–4 of Article 9 as set out in the conference room paper were provisionally approved by the committee.

150. The co-chair of the contact group later reported that the group had concluded its work on paragraph 5 of Article 9 and Annex E, which was captured in a conference room paper. The group had agreed to delete paragraph 5 of Article 9 and to amend paragraph (f) of Annex E, on national action plans. The committee agreed that paragraph (f) as set out in the conference room paper should be submitted to the legal group for review. The chair of the legal group later reported that the group had concluded its work in respect of that paragraph, which was reflected in a conference room paper.

## **6. Emissions and releases (section G of the Chair's text)**

### **(a) Emissions (Article 10 of the Chair's text)**

### **(b) Releases (Article 11 of the Chair's text)**

151. The committee took up Articles 10 and 11 together, along with related Annexes F and G.

152. Introducing the articles, the Chair recalled that at its fourth session the committee had requested the co-chairs of the contact group on emissions and releases established at that session to prepare a proposal for mercury air emissions thresholds below which the provisions of the mercury instrument might not apply, taking into account the size of emitting installations. Regarding the Chair's draft text, he noted that while some countries had proposed merging Articles 10 and 11 he had decided to keep them separate in his draft text until the committee had reached a decision on the matter.

153. The representative of the secretariat then drew attention to document UNEP(DTIE)/Hg/INC.5/4, which gave a summary of the information submitted by Governments since the previous session to assist the contact group co-chairs in preparing their proposed thresholds. Particular attention was drawn to the information on sources of emissions and releases to land and water.

154. Mr. John Roberts (United Kingdom), co-chair of the contact group on emissions to air and releases to land and water at the committee's fourth session, introduced the co-chairs' proposed thresholds for the categories of mercury emissions into the atmosphere listed in Annex F (UNEP(DTIE)/Hg/INC.5/4, annex). Since many countries tended to regulate installations on a case-by-case basis or to set limits that applied to all sources, there had been relatively little experience to draw upon. The proposals were therefore quite simple, based on the thermal or production capacity of installations, which would provide a straightforward means of identifying those that fell within the scope of Article 10. Given the range of reactions noted at the current session, with some countries preferring thresholds more closely related to the amount of mercury emitted and others preferring not to use any thresholds at all, a detailed technical discussion would be required and should begin as soon as possible.

155. The representative of Iraq introduced a conference room paper containing a number of proposed amendments to the Chair's text on Articles 10 and 11. They included text aimed at narrowing the focus of Article 10 to mercury and excluding other pollutants; broadening the scope of Article 11 to include all possible sources of releases; and adding a new column to the table in Annex F showing minimum acceptable limits for emissions. Emissions and releases should be dealt with in separate articles, as the arrangements for dealing with them differed.

156. The representative of the United States of America drew attention to a conference room paper proposing general guidance and clarification on best available techniques to be incorporated into Annex F. The aim was to provide a set of recommendations to serve until more specific guidelines were adopted at the first meeting of the Conference of the Parties; it would also assist in the task of developing those guidelines. A key point to bear in mind was that countries could achieve emissions reductions while continuing to grow their economies. Given the limited time available at the current session, he requested that the paper be discussed in a contact group.

157. Most representatives who spoke during the ensuing discussion supported the separation in the Chair's text of emissions and releases into discrete articles, saying that they differed with regard to the sources of the problem, their relative complexity and the measures required to deal with them. Some

representatives, however, said that emissions and releases might be better dealt with under one combined article. One representative said that the definitions contained in Articles 10 and 11 might be better placed in Article 2 on definitions.

158. On the subject of emissions to the atmosphere, several representatives stressed that strong substantive provisions were required to control emissions of mercury. One representative recalled the statement by the representative of WHO at the current session that to provide the greatest benefits for health the mercury instrument would need strong provisions on atmospheric emissions of mercury, which were a major contributor to mercury pollution of land and water, with global consequences.

159. A number of representatives expressed support for option 1 of Article 10, making the use of best available techniques and best environmental practices mandatory to control emissions from new sources and an option for controlling emissions from existing sources. Those supporting option 1 were generally of the opinion that it had the greatest potential to enable universal application of the measures needed to achieve substantial emission reductions. One representative recalled that Governing Council decision 25/5 had called for measures to reduce atmospheric emissions, saying that although it needed to be strengthened and clarified option 1 was the best means of responding to that call. In addition, it was important for any system to be transparent, allowing a flow of information to keep Parties and the public informed and able to assess progress in implementation. One representative said that strict measures should apply to new sources of emissions, with greater flexibility when dealing with existing sources, although a clear timeline should be established for the latter. Another representative said that there should be mandatory requirements for both new and existing facilities.

160. A number of representatives expressed a preference for option 2 for Article 10, saying that it allowed greater autonomy for individual countries to apply control measures in line with their economic and social circumstances and priorities, as reflected in their national implementation plans. One representative said that countries should use their own criteria to identify relevant sources in their territories and determine the restrictions that should apply to those sources. A number of representatives saw value in a hybrid approach that combined elements of options 1 and 2.

161. Regarding best available techniques, several representatives stressed that they were not intended to be prescriptive, but rather to offer parties a range of options, taking into account the economic and technical considerations relevant to each Party. One representative said that the word "flexible" in the Governing Council mandate did not mean "voluntary". It referred not to a country's freedom to choose whether to do something, but how to do it, based on its social and economic circumstances and taking account of the principle of common but differentiated responsibilities. One representative said that considerable progress had been made at the fourth session of the committee in developing a definition of best available techniques that was flexible and took the concerns of parties into account. Another representative said that further refinement of the definition of best available techniques and how they might be applied could be of value at a future date, but time pressure meant that it was preferable to base the current negotiations on the definitions that had already been agreed.

162. Several representatives called for further discussion of emissions thresholds, while acknowledging that it was a complex issue that would be difficult to resolve during the current negotiations. Some said that thresholds were crucial to proper enforcement of the mercury instrument, while others said that they were very difficult to determine in countries where information was limited and that application of universal thresholds was not desirable given the range of national circumstances, including with regard to technologies in use.

163. A variety of views were expressed on the emissions sources included in Annex F, whether or not thresholds should be stipulated and the criteria on which any thresholds might be based. Some said that basing thresholds on production capacity, as was done for some sources in document UNEP(DTIE)/Hg/INC.5/4, was not appropriate because emissions levels were influenced by several factors other than production capacity. One representative said that open burning of waste was a potential source of emissions in some countries and should be included in the list of sources. One representative said that steel manufacturing plants were a minor source of emissions and need not be included in Annex F, while another representative said the same of oil and gas production and processing facilities.

164. On releases to land and water, several representatives said that the opinions they had expressed with regard to emissions to air, including on the methodology for dealing with new or existing sources, the interpretation of best available techniques and best environmental practices, the feasibility of introducing thresholds, and their preference for option 1 or option 2 or a combination thereof, applied also to releases to land and water. As with emissions to air, several representatives said that option 1 was the more robust option, with greater potential for enforcement, while others said that

option 2 was preferable because it allowed greater flexibility to accommodate national circumstances, and a number of representatives said that the best way forward lay in a combination of the two options. Some representatives noted that there was overlap between the article on releases to land and water and other articles, including those on artisanal small-scale gold mining, products and processes, and storage, wastes and contaminated sites, and said that care should be taken to avoid duplication.

165. One representative said that further consideration of the proposed source categories in Annex G was required to ensure that only major sources of emissions were included. Another said that, while relatively minor sources could be considered as the instrument evolved, at the present stage it was important to devote more resources to the control of major sources.

166. A representative of a non-governmental organization said that the build-up of mercury in the global environment, including in fish and other aquatic food, posed a threat to human health, particularly for pregnant women and children, and that a collective commitment to mandatory, concrete and meaningful action was required to reduce emissions from all facilities, bearing in mind that for some source categories, such as lead and zinc smelters, smaller facilities could be sources of disproportionately large emissions. Another representative stressed the danger to indigenous peoples of high concentrations of mercury in traditional food sources, and she added her voice to the call for a strong mercury instrument. Another representative said that public opinion regarding the effectiveness of the instrument would turn on how effectively it controlled emissions. Saying that large-scale mining was a major source of co-mined mercury, much of which ended up illicitly on the global market, she argued that the instrument should provide incentives for alternative forms of energy production that did not release mercury.

167. The committee decided to establish a contact group to discuss the matter further, co-chaired by Mr. Roberts and Mr. Abdul Kadir Jailani (Indonesia). The mandate of the contact group would be, first, to consider whether thresholds should be used to screen sources to be addressed in the instrument; second, rather than focusing on option 1 or 2, to look first at how they might be packaged to accommodate the various views expressed to develop a robust yet flexible approach to emissions; and third, with regard to releases, to consider the appropriateness of the sources listed in Annex G, the measures to be adopted and, fourth, whether Articles 10 and 11 should be combined or kept separate.

168. At a subsequent meeting, the co-chair of the contact group reported that the group had agreed on text for Articles 10 and 11 and Annex F, as reflected in three conference room papers, and had agreed to eliminate Annex G. He noted that square brackets remained in Articles 10 and 11 in respect of whether parties would "control" or "reduce" emissions and releases, the timeframe within which parties would submit national plans for controlling emissions and releases and the role of the Conference of the Parties in reviewing information on emissions and releases provided by parties in their national reports under Article 22. He also reported the group's hope that in the period leading up to entry into force of the mercury instrument work could be undertaken to prepare guidance on defining best available techniques and best environmental practices to enable their early adoption and that UNEP could work to improve identification of the main sources of releases to land and water to facilitate Parties in their prioritization of actions in their national implementation plans.

169. The committee agreed to send Articles 10 and 11 and Annex F as set out in the conference room papers to the legal group for review. The chair of the legal group later reported that the group had concluded its work on those articles and Annex F, the result of which was set out in a conference room paper.

**7. Storage, wastes and contaminated sites (section H of the Chair's text)**

- (a) **Environmentally sound interim storage of mercury, other than waste mercury (Article 12 of the Chair's text)**
- (b) **Mercury wastes (Article 13 of the Chair's text)**
- (c) **Contaminated sites (Article 14 of the Chair's text)**

170. The committee took up Articles 12, 13 and 14 together.

171. In the discussion following the Chair's introduction of the articles, several representatives expressed general support for them as they appeared in the Chair's text but said that certain points needed further clarification or refinement.

172. On Article 12, one representative said that any references to Article 13 should be removed from the text of Article 12 and that it was necessary to maintain a clear distinction between storage and waste. A second representative said that rather than including requirements in an annex a more flexible approach would be to attach a set of guidelines to the mercury instrument. As a consequence,



the last sentence of paragraph 3 could be deleted. Another said that language should be inserted reflecting the flexibility of any guidelines or of any action taken pursuant to Article 12 and that the proposed deletion of text relating to future annexes of the convention required further discussion.

173. One representative said that time limits and flexibility with regard to temporary storage required discussion and that the legal group should ensure that the language in the body of the article and its title was consistent.

174. Regarding Article 13, one representative said that paragraph 1 should specify the relevant regulations and procedures of the Basel Convention and, supported by several others, added that Article 2 should contain the specific definitions required for the appropriate strategic management of waste at the transboundary level. The same representative, along with two others, one of whom spoke on behalf of a group of countries, said that the text of paragraph 3 (a), as well as similar text in Article 12, should be strengthened by replacing “may adopt” with “shall adopt”. Several more representatives said that the bracketed text in paragraph 3 (c) should be retained in order to maintain consistency with the Basel Convention in respect of trade with non-parties to that convention.

175. Two representatives said that clarification was needed on the level of mercury content that would trigger the application of the convention’s provisions on waste. Those thresholds should be set out in an annex to the mercury instrument and coordination with the Basel Convention would be needed for the development of appropriate guidance.

176. One representative said that the Chair's text was not flexible enough with regard to waste management, especially in relation to the Basel Convention, and that any non-party to the Basel Convention would find it difficult to ratify the mercury instrument as it currently stood. Another representative, whose country was not a party to the Basel Convention but approved of its provisions for controlling the transboundary movement of waste, said that the text of the mercury instrument should not seek to add to those provisions.

177. One non-governmental organization representative supported the suggestion to attach guidelines relating to Article 12, saying that they should include provisions on capacity-building for environmentally sound storage and a list of appropriate techniques for treating mercury-containing waste and should define performance levels for such techniques.

178. One non-governmental organization representative said that an essential requirement of the mercury instrument was to ensure the elimination of mercury from all areas of activity, from primary mercury mining through to the end processing stages. Controlling transboundary movements of waste was of particular importance if mercury use was to be wholly eliminated.

179. The committee agreed to refer Articles 12 and 13 to the contact group on selected technical articles, encouraging representatives, and in particular wastes experts, to undertake informal consultations on the articles prior to their consideration in the contact group.

180. On Article 14, one representative proposed that paragraph 4 be deleted to avoid duplication of Articles 15 and 16 in respect of financial resources and technical assistance. A few other representatives, however, said that the proposed deletion should not be discussed until other relevant matters had been decided upon. Another representative said that contaminated sites were not well defined in the article and that further specification was required.

181. A non-governmental organization representative said that the mercury instrument should provide for financial assistance to developing countries for the assessment of contaminated sites and that the phrase “endeavour to” should be deleted from paragraph 1.

182. Subsequently the co-chair of the contact group on selected technical articles reported that the group had reached complete agreement on Articles 12 and 13, as reflected in a conference room paper. The committee agreed that the articles as set out in the conference room paper should be submitted to the legal group for review. The chair of the legal group later reported that the group had completed its review of the articles, the result of which was set out in a conference room paper. The committee then provisionally approved both articles as set out in the conference room paper submitted by the legal group.

183. With regard to Article 14, the Chair recalled that the legal group had completed its review of that article at the committee’s fourth session, as reflected in a conference room paper, and that paragraph 4 of the article, which was closely linked to financial resources and technical and implementation assistance, was in square brackets. At the suggestion of the Chair the committee agreed that paragraph 4 would be addressed following the conclusion of the negotiations on Articles 15 and 16.

**8. Financial resources and technical and implementation assistance (section I of the Chair's text)**

**(a) Financial resources and mechanisms (Article 15 of the Chair's text)**

184. In the discussion following the Chair's introduction of Article 15 it was generally agreed that the capacity to implement the provisions of the mercury instrument under negotiation would vary widely among countries and that developing countries, in particular, needed predictable and sustainable funding and capacity-building and technical assistance to enable them to meet their obligations under the instrument. An effective financial mechanism was therefore essential to the success of the instrument and the achievement of a significant reduction in mercury emissions.

185. One representative, supported by another, said that financing was a crucial building block of an effective and efficient mercury regime and that a financial mechanism should include effective, efficient and predictable arrangements with fair burden sharing and targeted support. Financing, he said, was not the objective of the mercury instrument but a tool that should be built by all working together. He said too that, as suggested by the title of Article 15, "Financial resources and mechanisms", the mercury instrument need not be limited to a single financial mechanism.

186. There was some disagreement, however, on several basic issues. Several representatives said that all articles of the mercury instrument had to be agreed simultaneously and that it would not be acceptable to establish control provisions without also reaching definitive agreement on the articles on financial resources, technical assistance and technology transfer. In a similar vein, several representatives, including some speaking on behalf of groups of countries, said that mandatory control measures should be matched by mandatory financial provisions that would ensure that donor countries provided developing countries with the resources they needed to implement the mercury instrument. In the absence of such provisions, it was said, developing countries could not agree to be bound by mandatory provisions.

187. Several other representatives expressed disagreement with those positions, saying that Party compliance with obligations under the mercury instrument should not be tied to the provision of financial and related assistance. They also differed with the notion that only developed countries could provide financial and technical assistance, saying that all countries had a role to play within the limits of their circumstances and that assistance in various forms could come from the UNEP Global Mercury Programme, the World Bank, bilateral funding agreements, South-South cooperation and other sources. Assistance might also be expected from industry. The designation of a financial mechanism for the mercury instrument, they suggested, should not be understood to preclude resort to other sources of assistance.

188. There was also some discussion of the form that the financial mechanism should take. Many representatives called for a dedicated fund operating under the guidance and sovereignty of the conference of the parties to the mercury instrument, with several suggesting that it be modelled on the Multilateral Fund for the Implementation of the Montreal Protocol, which had proved very successful.

189. Several other representatives, however, including some speaking on behalf of groups of countries, said that an existing entity should serve as the financial mechanism, notably because an existing entity could be operational as soon as the Convention entered into force and would avoid the cost inherent in establishing a new entity. There was broad agreement among those representatives that GEF was the most appropriate entity to serve as the financial mechanism. Its advantages, they said, included the fact that since 1995 it had been working on issues relating to mercury; that it was sustainable, with an established replenishment regime; that it provided opportunities for synergies with other chemicals-related conventions; that it had an experienced governance structure; and that it, through the GEF Council, would accept full guidance from the Conference of the Parties. Funding for the mercury instrument, moreover, including interim and post-ratification funding, could be discussed in the very near future in the context of the impending discussions on the sixth replenishment of the GEF Trust Fund. One representative also said that GEF was the largest supporter of environmental remediation projects, had proved to be very effective and spent a lower percentage of its resources on administration than did the Multilateral Fund.

190. Many other representatives, some speaking on behalf of groups of countries and developing countries, said that their countries had found GEF funding to be very complicated, bureaucratic and difficult to access. One representative said that GEF funds for addressing persistent organic pollutants and other chemicals amounted to less than a fifth of its total resources and that its priorities were focused elsewhere.

191. One representative called for an open and genuine discussion of developing country concerns about having GEF as the financial mechanism. It was also suggested, however, that the committee should consider the views of countries that had benefitted from GEF funding, and it was suggested that GEF was in a process of continual improvement to address developing country concerns.
192. Several representatives suggested that not all activities under the Convention would require assistance. In that context one suggested that private-sector companies should bear the cost of complying with any new regulations and two, including the representative of a non-governmental organization, said that the “polluter pays” principle should be incorporated into the operation of the financial mechanism.
193. The representative of a non-governmental organization said that the governance structure of the financial mechanism should provide for transparency and the participation of developing countries, while another said that the financial mechanism should provide privileged access to small island developing States and least developed countries, for example through the relaxation of co-financing requirements and latitude in the preparation of funding proposals.
194. Following discussion of Article 15, the Chair called for views on financing for the interim period between adoption of the mercury instrument and its entry into force, noting that the draft resolutions for the final act set out in document UNEP(DTIE)/Hg/INC.5/6 contained provisions relevant to the matter.
195. Several representatives, including one speaking on behalf of a group of countries, said that some countries would need help in preparing domestic legislation and building capacity to enable them to ratify the Convention, supported the inclusion of references to the need for interim financing in the text of the resolutions. One representative said that the countries for which she spoke were pleased that GEF was already providing help that would allow countries to prepare in the interim period for entry into force, but said that there would also be a need for funding for an interim secretariat until the first meeting of the Conference of the Parties, which could possibly come through the existing UNEP Mercury Trust Fund.
196. At a subsequent meeting, one representative said that while informal consultations on Article 15 were continuing, Parties’ positions remained polarized. Such a situation was in the interests neither of the developing countries nor of the negotiations as a whole. As a step towards eliminating that polarization, he called for a meeting of a wide group of developing countries to act as a starting point in the search for common ground.
197. That suggestion was supported by several representatives. One representative added that the committee should consider the question of how mercury-producing countries were to be compensated if they ceased production. Another representative said that, while the Chair had urged the finalization of technical issues, they were intimately bound up with financial assistance, which was still far from resolved. Consequently, work should concentrate on Article 15, since it had a significant impact on all other parts of the proposed mercury instrument. Another representative seconded that view, pointing to the danger of running out of time to resolve Article 15, while another said that innovative solutions were needed, including arrangements for resources to be contributed by the private sector.
198. The Chair said that as it appeared that significant progress was being made on Articles 16 and 16 bis a major effort should be made to finalize Article 15.
199. One representative voiced support for the position of the Chair in that regard. He also said that the negotiators must learn from previous negotiations if the mercury instrument was to have sufficient, accessible and sustainable financing. A second representative said that he endorsed the views regarding the need to intensify the negotiations on financial matters but nevertheless would not call for a meeting of donor countries; an effective financial regime, he said, was critical to the effective functioning of the mercury instrument and thus in the interest of all. Noting progress in the negotiations on Articles 16 and 16 bis, he said that the discussions to date on financing had benefitted from the views of all and that it would be a pity to lose that strength at the current moment in the negotiations.
200. One representative subsequently reported that a group of developing country representatives had met to exchange views on Article 15 and had drafted a non-paper on their outcomes for review by the whole committee, for which support was expressed by a number of other delegations. Through the non-paper, the group proposed text for Article 15 and also highlighted a number of conceptual elements that it hoped would be taken into consideration in the subsequent discussions on that article.

201. It was agreed that the contact group that had discussed Articles 16 and 16 bis (as described in sections (b) and (c) below) and arrangements for financing in the interim period would also discuss Article 15. The Chair requested the group to review the Chair's text as it currently stood and to assess which parts could be strengthened and whether any important elements were missing. He said that the Chair's text should form the basis of those discussions, but invited all representatives to look at the non-paper that had been made available, which could be used when thinking about conceptual elements of the article.

202. Following several interim reports by the contact group co-chairs over the course of the session, and taking into account the linkages between Articles 15 and Article 17, the committee on the last day of the session agreed that the Chair, working together with the co-chairs of the contact groups on Articles 15 and 17, respectively, should prepare compromise proposals for those articles.

203. The Chair subsequently presented compromise text for the two articles, as set out in conference room papers, which the committee agreed should be submitted to the legal group for review.

204. Several representatives made statements when agreeing that the Chair's compromise text should be submitted for review by the legal group. One, speaking on behalf of a group of countries, said that her region understood the capacity-building and technical assistance referred to in paragraph 6 (b) of Article 15 to mean that a specific international programme would provide technical units at the national level, including for the implementation of legally binding obligations, that would assist in the preparation of national plans under Articles 9, 10, 11 and 21 and reporting under Article 22. She said that such units were very important for developing countries, especially least developed countries and small-island developing States, and the final act should reflect the work to be done to establish them. Supporting the first representative on every point, another representative said that the UNEP Governing Council should begin work on the establishment of the units referred to in paragraph 6 (b) of Article 15 at its next session. A third representative expressed support for the statements of the first two, saying that paragraph 6 (b) did include the possibility of the establishment and support of units and that his country looked forward to discussing the matter at the next session of the Governing Council.

205. Another representative, speaking on behalf of a group of countries, expressed satisfaction that the Rio Principles, especially principle 7 on common but differentiated responsibilities, were reflected in the preamble and other provisions of the mercury instrument, including in particular Articles 15 and 17, the latter of which recognized the varying capacities of countries and their national circumstances. He expressed regret that it had not been possible to agree to a more ambitious financial mechanism but said that Article 15 gave the Parties the capacity to strengthen it in the future.

206. Another representative, asking that his remarks be reflected in the present report, said that while his country agreed to the submission of the Chair's proposal to the legal group his country had serious concerns that he wished to be recorded in the present report. Given the binding nature of the mercury instrument and the apparent support for a provision that would prohibit reservations, he said, the financial mechanism should pay particular attention to the needs of countries that had primary mercury mining in their territories to help them to deal with the social and economic consequences of halting it. His country was doubly concerned because it would be affected by the provisions of the mercury instrument that would reduce mercury use and because it had invested heavily in existing and future mineral exploitation, which made a significant contribution to its social and economic development. Meeting its obligations under the instrument would result in significant consequences for his country.

207. The chair of the legal group subsequently reported that the group had completed its work on the articles, the result of which was set out in two conference room papers.

**(b) Technical assistance [and capacity-building] (Article 16 of the Chair's text)**

**(c) Transfer of technology (Article 16 bis of the Chair's text)**

208. The committee considered Articles 16 and 16 bis together.

209. In the discussion that followed the Chair's introduction of the articles, all representatives who spoke stressed the importance of technical assistance, capacity-building and transfer of technology for the successful implementation of the convention. There was agreement that the Chair's text provided a good basis for discussion of the articles at the current session, but several representatives indicated that more work was needed.

210. Many representatives, one speaking on behalf of a group of countries, said that there was no need for a separate article on technology transfer, such as Article 16 bis. Most of them, however, suggested that elements of the article could be incorporated into Article 16.

211. With reference to Article 16 on technical assistance, a few representatives said that the article should refer to “Parties” providing transfer of technology rather than “developed country Parties,” on the basis that technical assistance was important to all Parties and could be provided by developed and developing countries, as well as the private sector. One representative, however, argued for a specific reference to developed countries, saying that they had a differential responsibility to provide for the transfer of technology as they held most of the relevant patents on the technologies relevant to mercury.

212. Several representatives noted in response that the technologies in question constituted private property that Governments could neither transfer nor force to be transferred, particularly free of charge. Others, including one expressing a strong preference for a separate article on the transfer of technology, said that there was a need to transcend purely private interests, and one cited the Stockholm Convention as a successful convention that included provisions on technology transfer that were not hampered by intellectual property rights. Another representative reiterated the idea aired in the discussion on the financial mechanism that the mercury instrument must strike a balance between control measures and means of implementation and that binding commitments on the latter were needed in parallel with the former.

213. Several representatives supported the mention of capacity-building in the title of Article 16 and expressed the desire to see it more broadly captured in the text.

214. One representative said that it was important to recognize and build on technical assistance and capacity-building efforts already under way, including through South-South cooperation, and others said that it was desirable to cooperate with other conventions on chemicals and to make use of the regional centres under the Basel and Stockholm conventions.

215. The committee agreed to establish a contact group on technical assistance, capacity-building and transfer of technology, to be co-chaired by Ms. Johanna Lissinger Peitz (Sweden) and Ms. Gillian Guthrie (Jamaica). The contact group was requested to commence its work by trying to find the best possible language on technical assistance and transfer of technology for Article 16 and Article 16 bis and then to have a first exchange of views on financing for the interim period.

216. Subsequently, the co-chair of the contact group reported that the group had reached agreement on a new Article 16 to replace Articles 16 and 16 bis in the Chair's text, which had been made available in a conference room paper. The title of the new article would be “Capacity-building, technical assistance and technology transfer”. The Committee agreed to send Article 16, as set out in the conference room paper, to the legal group for review.

217. The other co-chair of the contact group reported that the group had held its first exchange of views on interim financing, focusing in particular on enabling activities and early actions and possible examples of both. The group had agreed that the purpose of enabling activities should be the provision of the basic level of information required to enable ratification of the treaty, the taking of policy decisions and the assessment of national situations. Preparation of national implementation plans, such as those under the Stockholm Convention, was a good example of an appropriate enabling activity. Institutional strengthening would be an important factor in enabling activities. Regarding early actions, the group felt that they had a broader scope than enabling activities and could include pilot projects, regional solutions and the testing of possible solutions.

218. In a general discussion on interim financing arrangements, the group cited the arrangements under the Montreal Protocol and the Stockholm Convention as relevant examples and said that the arrangements should take into account the importance of synergies and the possibility of using several sources, such as the UNEP mercury trust fund, GEF and the UNEP Global Mercury Partnership. The arrangements also needed to reflect the need for accessibility and the urgency that needed to be in place from the start. The group had not yet reached a consensus on the matter but the discussions on Article 15 and other related issues would inform its continued deliberations.

219. The chair of the legal group subsequently reported that the group had completed its work on Article 16, the result of which was set out in a conference room paper that the committee then provisionally approved.

**(d) [Implementation] [Compliance] [Implementation and compliance] committee (Article 17 of the Chair's text)**

220. In the discussion following the Chair's introduction of Article 17, two representatives, including one speaking on behalf of a group of countries, expressed support for option 2 in the Chair's text. At the request of the Chair, and in response to a question from one representative, the UNEP Senior Legal Officer clarified that the committee provided for by the article would be a subsidiary body of the

Conference of the Parties and that its decision-making procedures could be set out in Article 17 or established by the Conference of the Parties at a later date. Decision-making procedures for the Conference of the Parties with regard to the work of the committee could be set out in Article 17 or Article 24, on the Conference of the Parties, or could be established by the Conference of the Parties at a later date.

221. The committee agreed to refer Article 17 to the contact group discussing Articles 1 bis and 2. The contact group was requested to reach agreement on a title for Article 17, a common understanding of the committee and related procedures, the options set out in the draft text and final text for Article 17, using the Chair's text as the basis for its discussions and taking into account the views expressed during the plenary discussion.

222. As described above in respect of Article 15, the committee on the last day of the session agreed that the Chair, working together with the co-chairs of the contact groups on Articles 15 and 17, should prepare compromise proposals for those articles.

223. The Chair subsequently presented compromise text for the two articles, as set out in conference room papers, which the committee agreed should be submitted to the legal group for review. The chair of the legal group subsequently reported that the group had completed its work on the articles, the result of which was set out in conference room papers.

**9. Awareness-raising, research and monitoring, and communication of information (section J of the Chair's text)**

**(a) Information exchange (Article 18 of the Chair's text)**

224. Introducing the article, the Chair recalled that it had been reviewed by the committee at its fourth session and explained that he had made minor changes in the Chair's text to improve consistency with other articles.

225. Following the Chair's introduction, there was some discussion on whether the article should state, as it currently did, that the confidentiality of information on the health and safety of humans and the environment should be subject to the national laws of each country. One representative said that certain information on health should never be confidential and that there was no requirement within the article to divulge confidential information, making the caveat regarding national laws unnecessary; furthermore, other conventions, including the Rotterdam and Stockholm conventions, contained no such caveat.

226. The committee agreed to delete the caveat and to send Article 18 to the legal group for its review.

227. The chair of the legal group subsequently reported on the group's work in respect of Article 18, the result of which was set out in a conference room paper. She said that few changes had been made to the text of the article as submitted to the group. The committee then provisionally approved the article as set out in the conference room paper in respect of all unbracketed text.

**(b) Public information, awareness and education (Article 19 of the Chair's text)**

228. The committee agreed to send Article 19 as it appeared in the Chair's text to the legal group for review.

229. The chair of the legal group subsequently reported on the group's work in respect of Article 19, the result of which was set out in a conference room paper. She reported that the group had made no changes to the article as contained in the Chair's text, and the committee then provisionally approved the article as set out in the conference room paper.

**(c) Research, development and monitoring (Article 20 of the Chair's text)**

230. Following the Chair's introduction of Article 20, there was some discussion of whether the word "shall" in the Chair's text, as it related to cooperation between parties with regard to research, development and monitoring, should be replaced by "should" or "shall endeavour to" and whether such cooperation should be subject to Parties' national circumstances. Following informal consultations the proposed amendments were accepted. The committee agreed that finalization of the text relating to information on commerce and trade, enclosed in square brackets in paragraph 1 (f), was dependent on the deliberations of the contact group on selected technical articles. With that understanding, Article 20 was submitted to the legal group for its review.

231. The chair of the legal group subsequently reported on the group's work in respect of Article 20, the result of which was set out in a conference room paper. She said that the only changes suggested by the legal group were some additions to the text of the chapeau. The Chair of the committee added

that some text on information on commerce and trade remained bracketed, pending the outcome of discussions in the contact group on trade. The article was provisionally approved by the committee in respect of all unbracketed text.

**(d) Health aspects (Article 20 bis of the Chair's text)**

232. The representative of the secretariat introduced document UNEP(DTIE)/Hg/INC.5/5, which presented the findings of an analysis that the secretariat had carried out in cooperation with WHO on the extent to which the provisions of the draft mercury instrument were reflected in the content of Article 20 bis (health aspects). Annex II to the document contained a further contribution from WHO providing an overview of the Organization's objectives and functions and the elements of its mercury programme that might serve to assist countries in complying with the provisions of Article 20 bis.

233. In the ensuing discussion, general appreciation was expressed for the cooperation with WHO in producing document UNEP(DTIE)/Hg/INC.5/5, which some representatives said had been useful in guiding their consideration of Article 20 bis. Several representatives called for the further development of such synergies with WHO and the International Labour Organization (ILO), especially in the area of biomonitoring, while bearing in mind the need to respect their fields of competence and to avoid duplication.

234. All representatives who spoke said that a focus on health would be crucial to the work under the mercury instrument. Several representatives said that the main purpose of the instrument was to protect human health from exposure to mercury and its compounds. Two representatives pointed to Minamata disease as evidence of the importance of that goal. A number of other representatives, however, said that having a separate Article 20 bis on health aspects was unnecessary as most of its provisions were duplicated in substance in other articles, giving rise to the prospect of duplication, and they suggested that the committee could consider how to capture those elements that were not duplicated elsewhere in the mercury instrument. One of those representatives said that the best way to prevent adverse health impacts of mercury exposure was to strengthen other relevant articles such as Article 10 on atmospheric emissions. Another expressed concern that, as worded, Article 20 bis might result in burdensome reporting requirements. One representative, speaking on behalf of a group of countries, said that the text as it stood seemed inappropriate for a multilateral environmental agreement. Another representative questioned the feasibility of the article and called for a flexible approach instead of a set of uniform measures applicable to all parties without regard to their differences.

235. Overall, a majority of those who spoke supported the inclusion of a separate article on health in the mercury instrument. Many expressed a willingness to discuss the content of such an article and urged those opposed to reconsider their positions. One representative said that Article 20 bis gave the instrument an integrated focus and clear guidelines, without which its approach to mercury-related health issues would be fragmented and confused; another said that the absence of a dedicated article on health aspects might leave a loophole that would render standard setting pointless. Another, responding to the concern about duplication of other articles, said that such concern should give way to a concern for the welfare of communities affected by mercury exposure. Other representatives said that Article 20 bis would protect public health through measures to identify vulnerable groups and raise awareness of the health impacts of mercury exposure; to ensure that those impacts were acknowledged and that affected communities had access to proper health care by properly trained providers; and to facilitate the provision of the technical and financial resources that developing countries needed to implement health-related measures. One representative said that the provisions of Article 20 bis should be incorporated into national action plans in accordance with the principle of common but differentiated responsibilities, among others.

236. One representative, speaking on behalf of Latin American and Caribbean countries, introduced a conference room paper setting out proposed amendments to Article 20 bis that aimed to clarify the links between the mercury instrument and WHO and ILO; to give parties greater flexibility in meeting their obligations; to ensure that populations affected by mercury exposure had adequate access to health care; and to strengthen scientific research.

237. The representative of WHO said that WHO, if so requested, would be pleased to provide technical assistance during the committee's further consideration of Article 20 bis, including in a contact group.

238. All representatives of non-governmental organizations who spoke expressed support for a separate article on health. One representative highlighted elements of the article that she said were not included in any other article, including provisions relating to diagnosis, medical protocols and access to treatment; she also argued that a separate article on health would facilitate the application of the

health-related provisions of Annex E to all vulnerable groups in addition to artisanal miners. Another representative called for the identification of those groups to be considered a prerequisite for implementation of the instrument; and another said that Article 20 bis should refer specifically to indigenous peoples, who were especially vulnerable on account of their diets, customs and traditions.

239. The committee agreed that the contact group established to consider Article 21 (as described in section (e) below) would also consider the issues raised in respect of Article 20 bis. The group would discuss the conference room paper submitted by Mexico on behalf of Latin American and Caribbean countries and consider the question of whether the mercury instrument should include a separate article on health.

240. At a subsequent meeting the co-chair of the contact group reported that the group had agreed that the mercury instrument should feature a separate article on health aspects and the content of such an article, which he presented to the committee in a conference room paper.

241. The committee agreed to forward Article 20 bis as set out in the conference room paper to the legal group for review. The chair of the legal group subsequently reported that the group had finished its review of the article, the results of which were set out in a conference room paper. The committee then provisionally approved Article 20 bis as set out in the conference room paper prepared by the legal group.

**(e) Implementation plans (Article 21 of the Chair's text)**

242. In the discussion following the Chair's introduction of Article 21, one representative, speaking on behalf of a group of countries, expressed a preference for option 2, saying that it provided flexibility in implementation plans. Another, also speaking on behalf of a group of countries, said that there were strong linkages between Article 21 and other articles on which agreement had yet to be reached. She also said that it was important to distinguish between implementation plans, which should be discretionary, and mandatory obligations under other provisions of the mercury instrument relating to matters such as atmospheric emissions, national plans regarding artisanal and small-scale gold mining under Article 9 and inventories under Article 3.

243. The committee agreed to establish a contact group, chaired by Mr. Luis Espinoza (Ecuador) and Ms. Katerina Sebkova (Czech Republic), to discuss Article 21.

244. Subsequently the co-chair of the contact group reported that the group had reached agreement on the text of Article 21, as reflected in a conference room paper, except for certain bracketed text that was the subject of informal consultations and other bracketed text whose final resolution depended on the outcome of the negotiations under way in respect of other articles of the mercury instrument. The committee agreed that the article, as set out in the conference room paper, should be submitted to the legal group for review.

245. The chair of the legal group subsequently reported that the group had finished its review of the article, the results of which were set out in a conference room paper. The committee then provisionally approved Article 21 as set out in the conference room paper prepared by the legal group.

**(f) Reporting (Article 22 of the Chair's text)**

246. In the discussion following the Chair's introduction of Article 22, one representative said that the reference in paragraph 1 of the Chair's text to national implementation plans was not appropriate because such plans were proposals for action, while reporting was based on how plans were actually implemented. Furthermore, pursuant to paragraph 3 of Article 22, what parties would have to report would be determined by the Conference of the Parties at its first meeting, which meant that paragraph 2 was unnecessary. Finally, she said that no multilateral agreement made reporting conditional on capacity-building and financial and technical assistance and that to do so in the mercury instrument would set an unfortunate precedent. Reporting was the backbone of compliance, and the provision of information was essential to inform parties and the public. Other conventions had developed methodologies to assist parties with reporting, which was a preferable approach. The reference to capacity-building and financial and technical assistance in paragraph 3 should therefore be deleted.

247. Another representative said that while the obligations imposed under many articles of the mercury instrument should be contingent upon financial support and technical assistance that should not be the case with reporting. Reporting was essential to the operation of any compliance mechanism established under the instrument, and a party's compliance should only be considered on the basis of its own national reporting. She also expressed agreement that there was no need for paragraph 2 in the Chair's text detailing the information to be reported.



248. Several other representatives said that they favoured retention of the text referring to capacity-building and financial and technical assistance in paragraph 3. Another representative said that it was important to retain the reference in paragraph 1 to implementation plans, while another said that if the latter were deleted some reference to the possible challenges of meeting the objectives of the convention should be inserted.

249. The committee agreed to send Article 22 to the legal group for its review and to retain the brackets around the text in paragraph 3 discussed above and to consider that text further following conclusion of the negotiations on Articles 15 and 16.

250. The chair of the legal group subsequently reported on the group's work in respect of Article 22, the result of which was set out in a conference room paper. Noting the discussion of the committee on whether or not to retain paragraph 2 of the article, stipulating the articles under which each party should report, the legal group recommended that the paragraph be retained, as it could be a useful aid to Parties. The committee provisionally approved Article 22 as set out in the conference room paper prepared by the legal group and, following its agreement on Articles 15 and 21, the committee elected in paragraph 1 to retain the bracketed text referring to challenges in meeting the objectives of the mercury instrument while deleting the bracketed text referring to implementation plans.

**(g) Effectiveness evaluations (Article 23 of the Chair's text)**

251. Introducing the item, the Chair said that there was agreement on the concept of the article, but the methodology required further development.

252. During the ensuing discussion, various proposals were made regarding the period after the date of entry into force of the convention after which effectiveness evaluations would commence. Various proposals were discussed pertaining to paragraph 2 of the Chair's text, providing that the Conference of the Parties at its first meeting would initiate arrangements for providing itself with comparable monitoring data, including whether to include a more generic reference to methodologies, given the difficulties that many parties might face in providing comparable monitoring data, and whether to add text about baseline conditions and trends. There was also some discussion of whether to retain the reference to financial assistance, technology transfer and capacity-building in paragraph 3.

253. The committee agreed that informal consultations among interested parties should take place prior to further consideration of Article 23 in plenary.

254. At a subsequent meeting it was announced that following those consultations agreement had been reached to accept Article 23 as set out in the Chair's text. One representative, however, requested clarification regarding the relationship between elements of paragraph 3 (d) of Article 23 and the evaluations referred to in Articles 15 and 16, which were still under discussion. He requested that the legal group examine and report on the issue.

255. The committee agreed to send Article 23 to the legal group, which would, in addition to its usual review, consider the request for clarification referred to above.

256. The chair of the legal group subsequently reported on the group's work in respect of Article 23, the result of which was set out in a conference room paper. She noted that paragraph 2 of that article referred to the Conference of the Parties making arrangements to provide itself with information on the presence and movement of mercury in the environment, whereas paragraph 3 appeared to assume that the information referred to in paragraph 2 would also include information on levels of mercury in vulnerable populations. She also noted that subparagraphs (a)–(c) of paragraph 3 referred to specific articles pursuant to which information should be provided, while subparagraph (d) did not. The Chair requested the legal group to present proposals for fixing the inconsistencies that it had noted.

257. The chair of the legal group subsequently presented a further conference room paper reflecting its work on Article 23.

**10. Institutional arrangements (section K of the Chair's text)**

**(a) Conference of the Parties (Article 24 of the Chair's text)**

258. Following the Chair's introduction of Article 24, one representative proposed the deletion of paragraph 5 (f). Another representative, speaking on behalf of a group of countries, opposed that suggestion.

259. The committee agreed that Article 24 should be submitted to the legal group for review. The committee also agreed to refer paragraph 5 (c) bis and paragraph 5 (f) to the contact group discussing Articles 1 bis, 2 and 17. The Chair called for interested delegations to hold informal consultations so that agreement could be reached on the issues as expeditiously as possible.

260. The chair of the legal group subsequently reported on the group's work in respect of Article 24, the result of which was set out in a conference room paper. She said that the group had made no changes to the article and that brackets remained around text that was dependent on the outcome of discussions on other articles.

**(b) Secretariat (Article 25 of the Chair's text)**

261. The committee agreed to send Article 25 as it appeared in the Chair's text to the legal group for review.

262. The chair of the legal group subsequently reported on the group's work in respect of Article 25, the results of which was set out in a conference room paper. She reported that the group had made no changes to the article as set out in the Chair's text. The committee therefore provisionally approved the article as set out in the conference room paper prepared by the legal group.

**11. Settlement of disputes (section L, Article 26, of the Chair's text)**

263. The Chair, recalling that Article 26, following its review by the legal group at the committee's third session, had not been discussed at the committee's fourth session and had been included in the Chair's text without change, presented a conference room paper setting out the article without referring it to the legal group for further review. The Committee provisionally approved Article 26 as it appeared in the conference room paper.

**12. Further development of the Convention (section M of the Chair's text)**

**(a) Amendments to the Convention (Article 27 of the Chair's text)**

264. In the discussion following the Chair's introduction of Article 27, several representatives, including one speaking on behalf of a group of countries, expressed support for a decision-making procedure in which Parties would make efforts to reach consensus regarding proposed amendments but could, in the absence of consensus, adopt them by a two-thirds vote of the Parties present and voting. They thus called for the removal of the brackets in paragraph 3. In paragraph 5, they supported the entry into force of amendments following the deposit of instruments of ratification, acceptance or approval of two thirds of the number of Parties that were Parties at the time the amendment was adopted, rather than three fourths the number of those Parties as provided for in the Chair's draft. Two other representatives said that amendments should be adopted by vote in the absence of consensus but the vote required should be three fourths of the Parties present and voting rather than two thirds. Another representative said that amendments should be approved only by consensus, and therefore called for deleting the bracketed text in paragraph 3 rather than the brackets. In respect of paragraph 5 he suggested deletion of the phrase "number of" and said that ratification by three fourths of the Parties that were Parties at the time an amendment was adopted should be required for the amendment's entry into force. Two other representatives expressed support for a three-fourths majority in paragraph 5.

265. The Committee agreed that interested delegations would hold informal consultations in an effort to agree on a proposal for paragraphs 3 and 5 of Article 27.

266. Following those consultations it was reported that agreement had been reached that in the absence of consensus amendments could be adopted by a three-fourths vote of the Parties present and voting and that the phrase "the number of" should be deleted from paragraph 5.

267. In the light of that agreement the committee agreed that Article 27 should be referred to the legal group for review.

268. The chair of the legal group subsequently reported on the group's work in respect of article 27, the result of which was set out in a conference room paper. She said that the group had made no changes to the article as submitted to the group. The committee provisionally approved the article as set out in the conference room paper prepared by the legal group.

**(b) Adoption and amendment of annexes (Article 28 of the Chair's text)**

269. In the discussion of Article 28 three representatives expressed support for lifting the brackets in paragraph 4, stating that the bracketed language was necessary for their domestic treaty ratification processes and that precedent existed for doing so under other multilateral environmental agreements. Another representative, speaking on behalf of a group of countries, said that her delegation supported an expedited procedure for adopting and amending annexes so that the convention could respond to new developments in a timely and effective fashion. For that reason, and because paragraph 3 (b) offered sufficient safeguard to countries wishing not to be bound by any additional annex, her

delegation favoured deletion of the bracketed text referred to above but would accept its inclusion in a spirit of compromise.

270. The Committee agreed that Article 28 should be submitted to the legal group for review, noting that the text in the remaining square brackets would be finalized following the conclusion of the negotiations on other articles and annexes of the mercury instrument.

271. The chair of the legal group subsequently reported on the group's work in respect of article 28, the result of which was set out in a conference room paper. She said that the group had made no changes to the article as submitted to the group. She suggested that, as the committee appeared to have reached agreement on Article 27, the brackets in paragraph 3 (a) of Article 28 could be deleted.

272. Following agreement to delete the brackets in paragraph 3 (a) as suggested by the legal group chair, the committee provisionally approved Article 28 as set out in the conference room paper prepared by the legal group.

### **13. Final provisions (section N of the Chair's text)**

#### **(a) Right to vote (Article 29 of the Chair's text)**

273. The Chair, recalling that Article 29, following its review by the legal group at the committee's third session, had not been discussed at the committee's fourth session and had been included in the Chair's text without change, presented a conference room paper setting out the article. The Committee then provisionally approved Article 29 as set out in the conference room paper.

#### **(b) Signature (Article 30 of the Chair's text)**

274. Introducing Article 30, the Chair recalled that, following its review by the legal group at the committee's third session, the article had not been discussed at the committee's fourth session and had been included in the Chair's text without change. He noted that the details would need to be completed following agreement on the date and place for signature of the mercury instrument.

#### **(c) Ratification, acceptance, approval or accession (Article 31 of the Chair's text)**

275. In the discussion following the Chair's introduction of Article 31, one representative, speaking on behalf of a group of countries, proposed an amendment to the bracketed language in paragraph 4, saying that it would better take into account varying national circumstances. Another representative said that language similar to paragraph 4 was not found in other relevant multilateral environmental agreements and that his delegation favoured deleting the paragraph entirely. In a spirit of compromise, however, his delegation could accept the text with the proposed amendment. Another representative, however, said that her delegation was not ready to reach agreement on paragraph 4.

276. Two representatives said that in the light of the parties' agreement on Article 28 the brackets in paragraph 5 of Article 31 should be deleted. In doing so, one noted his country's understanding that the "X" enclosed in brackets in the second line of that paragraph referred to multiple annexes.

277. The Committee agreed that paragraph 5 of Article 31 should be the subject of informal consultations. The Committee also agreed to submit the remaining elements of Article 31 to the legal group for review. The legal group was also requested to examine the issue of which annexes would be referred to in the bracketed text in paragraph 5 should agreement be reached to remove the brackets around the entire paragraph.

278. At a subsequent meeting, one representative said that following consultations with his capital he wished to propose a minor amendment to paragraph 4 and was in favour of submitting it to the legal group as so amended.

279. The chair of the legal group subsequently reported on the group's work in respect of Article 31, the result of which was set out in a conference room paper, noting that finalization of the article was dependent on discussions taking place in a contact group in respect of paragraph 4. She also said that, consistent with the rationale of those proposing the text where it was found, the legal group was of the view that the "X" in paragraph 5 should be understood to refer to all annexes to the mercury instrument.

#### **(d) Entry into force (Article 32 of the Chair's text)**

280. In the discussion of Article 32 several representatives expressed support for the mercury instrument's entry into force following deposit of the fiftieth instrument of its ratification, acceptance, approval or accession. One representative argued that it should enter into force following deposit of the thirtieth such instrument but said that, in the spirit of compromise, his delegation would accept the higher number. Another representative expressed support for considering procedures to allow for the

provisional implementation of certain elements of the convention prior to its formal entry into force and requested that the legal group examine relevant legal precedent and modalities.

281. The Committee agreed that Article 32 should be submitted to the legal group for review, on the understanding that paragraph 4 would remain in square brackets pending conclusion of the negotiations on Articles 15 and 16.

282. The chair of the legal group subsequently reported on the group's work in respect of Article 32, the result of which was set out in a conference room paper, noting that finalization of the article was dependent on discussions taking place in respect of paragraph 4.

**(e) Reservations (Article 33 of the Chair's text)**

283. Following the Chair's introduction of Article 33, two representatives said that they could not agree to remove the brackets around the article until agreement was reached regarding other provisions of the mercury instrument.

284. The committee agreed to return to the article following progress in other areas. The Chair encouraged delegations to engage in informal consultations in a bid to achieve consensus.

285. One representative, speaking on behalf of a group of countries, asked for an explanation of the legal foundation for the prohibition on reservations by Parties to provisions of the convention set out in Article 33 of the Chair's text. He asked whether the provision was in line with Article 19 of the Vienna Convention, which did allow reservations. If that were the case, his delegation could accept Article 33, but he anticipated that it would be difficult to respect certain obligations if Parties did not work together to eliminate difficulties. His delegation believed that a degree of flexibility should be allowed as it was not certain that all Parties, developed or developing, would have the capacity to fulfil all of the provisions of the convention and if Article 33 were retained there would be a need for mechanisms and guarantees to eliminate those concerns.

**(f) Withdrawal (Article 34 of the Chair's text)**

286. Following the Chair's introduction of Article 34, one representative expressed support for the text in its current form. Another representative, speaking on behalf of a group of countries, proposed to change the one-year period in paragraph 2 to three years to allow Parties time to become familiar with the mercury instrument and its implementation before contemplating withdrawal. In the spirit of compromise, however, her delegation could accept the Article in its current form.

287. The Committee agreed that Article 34 should be submitted to the legal group for review.

288. The chair of the legal group subsequently reported on the group's work in respect of article 34, the result of which was set out in a conference room paper. She said that the group had made no changes to the article as submitted to the group. The committee then provisionally approved the article as set out in the conference room paper.

**(g) Depositary (Article 35 of the Chair's text)**

289. The Chair, recalling that Article 35, following its review by the legal group at the committee's third session, had not been discussed at the committee's fourth session and had been included in the Chair's text without change, presented a conference room paper setting out the article. The Committee provisionally approved Article 35 as it appeared in the conference room paper.

**(h) Authentic texts (Article 36 of the Chair's text)**

290. The Chair, recalling that Article 36, following its review by the legal group at the committee's third session, had not been discussed at the committee's fourth session and had been included in the Chair's text without change, presented a conference room paper setting out the article. The Committee provisionally approved Article 36 as it appeared in the conference room paper.

**E. Formal approval of the legally binding instrument on mercury**

291. Following the review by the legal group of the preamble, articles and annexes of the draft legally binding instrument on mercury, the committee formally approved the preamble, articles and annexes on the basis of the text prepared by the legal group and submitted to it in conference room papers as described in section D immediately above. As formal approval of the preamble and each article and annex was subject to formal agreement on all other provisions of the mercury instrument, the committee first gave formal approval to the preamble and each article and annex and then to all of them as a whole.

292. Except as described in the following paragraphs, the committee formally approved the preamble, articles and annexes on the basis of the text prepared by the legal group and set out in conference room papers submitted to the committee, without change.
293. In formally approving the objective set out in Article 1, the committee agreed to amend the term "emissions" to read "emissions and releases" as recommended by the legal group.
294. In formally approving Article 3 the committee agreed to remove the square brackets from paragraph 7, to change "are" to "is" in the third line of paragraph 7 and to replace bracketed paragraphs 7 alt and 7 bis with new paragraphs 7 bis and 7 ter, which read as follows:
- “7. Each Party shall not allow the import of mercury from a non-party to whom it will provide its written consent unless the non-party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 or paragraph 5 (b) of this article;
- “7 bis. A Party that submits a general notification of consent under paragraph 6 bis may decide not to apply paragraph 7, provided that it maintains comprehensive restrictions on the export of mercury and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner. The Party shall provide a notification of such decision to the Secretariat, including information describing its export restrictions and domestic regulatory measures as well as information on the quantities and countries of origin of mercury imported from non-parties. The Secretariat shall maintain a public register of all such notifications. The Implementation and Compliance Committee shall review and evaluate any such notifications and supporting information in accordance with Article 17 and may make recommendations as appropriate to the Conference of the Parties.
- “7 ter. Paragraph 7 bis shall be available until the conclusion of the second meeting of the Conference of the Parties. After that time it shall cease to be available unless the Conference of the Parties decides otherwise by simple majority, except with respect to a Party that has provided a notification under paragraph 7 bis before the end of the second meeting of the Conference of the Parties.”
295. In formally approving Article 6, the committee agreed, consistent with the agreement reached on the Preamble, to delete the bracketed text in paragraph 9 (c).
296. In formally approving Article 7, the committee agreed to delete the words “for it” from paragraph 5 bis in accordance with the recommendation of the legal group. The committee also agreed, consistent with the agreement reached on the Preamble, to delete the bracketed text in paragraph 9 (c).
297. In formally approving Article 8, the committee agreed, consistent with the agreement reached on the Preamble, to delete bracketed subparagraph 5 (c).
298. In formally approving Article 9, the committee agreed, consistent with the agreement reached on Article 15, that the article as finally approved would not include bracketed paragraph 6 of the Chair’s text set out in document UNEP(DTIE)/Hg/INC.5/3.
299. In formally approving Article 10 the committee agreed to replace the bracketed “X” in paragraph 3 with “four”; to delete the bracketed word “control” and the brackets around the word “reduce” in subparagraph 5.1 (e); to replace the second sentence in paragraph 5.2 with the following: “The objective shall be for the measures applied by a Party to achieve reasonable progress in reducing emissions over time”; and to delete the bracketed last sentence in paragraph 9.
300. In formally approving Article 11 the committee agreed to replace the bracketed “X” in paragraph 4 with “four”; to delete the brackets around subparagraph (d) of paragraph 5; to delete the bracketed word “control” and the brackets around the word “reduce” in subparagraph (d) of paragraph 5; and to delete the bracketed last sentence in paragraph 8.
301. In formally approving Article 14, the committee agreed, consistent with the agreement reached on Article 15, to delete the bracketed text in paragraph 4.
302. In formally approving Article 18, the committee agreed to delete the brackets around the word “trade” in subparagraph 1 (b).

303. In formally approving Article 20, the committee agreed to delete the brackets around subparagraph 1 (f).
304. In formally approving Article 20 bis, the committee agreed that in the mercury instrument as finally approved the content of the article should be located between current sections I (Articles 15–17) and J (Articles 18–23).
305. In formally approving Article 22, the committee agreed, consistent with its agreement on Article 15, to delete the bracketed text in paragraph 3.
306. In formally approving Article 24, the committee agreed to delete subparagraph 5 (c) bis, consistent with its agreement on Article 21; to delete the bracketed word “Implementation”, the bracketed word “Compliance” and the brackets around the words “Implementation and Compliance” in subparagraph 5 (d); and to delete the brackets around subparagraph 5 (f).
307. In formally approving Article 25, the committee agreed to delete the brackets around the phrase “17 and 22” in subparagraph 2 (e).
308. In formally approving Article 30, the committee agreed to fill in the blanks in the article as set out in the Chair’s text to provide that the mercury instrument would be opened for signature at Kumamoto, Japan, on 10 and 11 October 2013 and subsequently at United Nations Headquarters.
309. In formally approving Article 31, the committee agreed to replace paragraph 4 with the following: “Each State or regional economic integration organization is encouraged to transmit to the Secretariat at the time of its ratification, acceptance, approval or accession to the Convention, information on its measures to implement the Convention.”
310. In formally approving Article 32 the committee agreed, consistent with its agreement on Article 15, to delete the bracketed text in paragraph 4.
311. In formally approving Article 33 the committee agreed, following agreement on the other provisions of the mercury instrument, to delete the brackets around the article as set out in the Chair’s text.
312. The Preamble, articles and annexes of the legally binding instrument on mercury as formally approved by the committee are set out in the annex to the present report. In accordance with a proposal by the representative of Japan, the committee agreed that the instrument should be called the Minamata Convention on Mercury.

### **Statements made during formal approval of the mercury instrument**

313. At the time of formal approval of Article 10, one representative, speaking on behalf of African States and asking that his comments be reflected in the present report, recalled that at the current session a proposal to include open burning in Annex F had been opposed on the grounds that it had not been supported by sufficient scientific information. Reiterating his region’s belief that open burning was an important source of mercury emissions to the atmosphere, he called on UNEP, in connection with its global mercury assessment, to gather sufficient information to support decision making on the issue and to report on its efforts in that regard to the Conference of the Parties at its first meeting or as soon as possible.
314. Following formal approval of the provisions of the mercury instrument, one representative said that while his country was committed to protecting human health and the environment it took the position that the prohibition of primary mercury mining in the instrument did not constitute a precedent with regard to the banning of other primary mining activities under future conventions. His country also wished to see the secretariat of the mercury instrument join the secretariat of the Basel, Rotterdam and Stockholm conventions.
315. A number of delegations said that there was a need for consultations on the translation of the final text to ensure complete consistency between language versions.
316. The representative of Japan gave a presentation, including a video programme, on the venues and preparations for the diplomatic conference and the preparatory meeting for the conference to be held in his country for the signing of the mercury instrument.

## **V. Other matters**

317. The committee agreed that the secretariat would prepare draft elements of the final act to be adopted at the diplomatic conference at which the mercury instrument would be opened for signature. In doing so, the secretariat would draw on the elements set out in document UNEP(DTIE)/Hg/INC.5/6, updating them to reflect the outcomes of the current session. In particular, and in addition to preparations for the implementation of the mercury instrument and arrangements for the period between adoption of the instrument at the conference of plenipotentiaries and its entry into force, the elements would address arrangements for financial and technical assistance during that period and the development of arrangements necessary for the operation of the financial mechanism and mercury programmes.

## **VI. Adoption of the report**

318. The committee adopted the present report on the basis of the draft report 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.

## **VII. Closure of the session**

319. In closing, many delegations praised the work of the Chair, the Bureau and the secretariat, as well as the dedication of delegates that had resulted in the success achieved. Many also extended their thanks to the host Government, indicating that the level of support provided during the session had contributed to the ability of delegates to continue negotiations for extended periods. Many observed further that agreement on the text of the mercury instrument was just the start of further work to ensure the operation of an effective convention. Welcoming those remarks, the Chair encouraged all present to commence the further work on mercury and said that he looked forward to meeting them all in Japan in October to celebrate the signing of the Minamata Convention on Mercury. The Chair declared the session closed at 7.40 a.m. on Saturday, 19 January 2013.

## Annex

### Draft Minamata Convention on Mercury

The Parties to this Convention,

*Recognizing* that mercury is a chemical of global concern owing to its long-range atmospheric transport, its persistence in the environment once anthropogenically introduced, its ability to bioaccumulate in ecosystems and its significant negative effects on human health and the environment,

*Recalling* decision 25/5 of 20 February 2009 of the Governing Council of the United Nations Environment Programme to initiate international action to manage mercury in an efficient, effective and coherent manner,

*Recalling* paragraph 221 of the outcome document of the United Nations Conference on Sustainable Development “The future we want”, which called for a successful outcome of the negotiations on a global legally binding instrument on mercury to address the risks to human health and the environment,

*Recalling* the United Nations Conference on Sustainable Development’s reaffirmation of the principles of the Rio Declaration on Environment and Development, including, inter alia, common but differentiated responsibilities, and acknowledging States’ respective circumstances and capabilities and the need for global action,

*Aware* of the health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially women, children, and, through them, future generations,

*Noting* the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods, and concerned about indigenous communities more generally with respect to the effects of mercury,

*Recognizing* the substantial lessons of Minamata Disease, in particular the serious health and environmental effects resulting from the mercury pollution, and the need to ensure proper management of mercury and the prevention of such events in the future,

*Stressing* the importance of financial, technical, technological, and capacity-building support, particularly for developing countries, and countries with economies in transition, in order to strengthen national capabilities for the management of mercury and to promote the effective implementation of the Convention,

*Recognizing also* the activities of the World Health Organization in the protection of human health related to mercury and the roles of relevant multilateral environmental agreements, especially the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

*Recognizing* that this Convention and other international agreements in the field of the environment and trade are mutually supportive,

*Emphasizing* that nothing in this Convention is intended to affect the rights and obligations of any Party deriving from any existing international agreement,

*Understanding* that the above recital is not intended to create a hierarchy between this Convention and other international instruments,

*Noting* that nothing in this Convention prevents a Party from taking additional domestic measures consistent with the provisions of this Convention in an effort to protect human health and the environment from exposure to mercury in accordance with that Party’s other obligations under applicable international law,

Have agreed as follows:

#### Article 1

#### Objective

The objective of this Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.



## Article 2

### Definitions

For the purposes of this Convention:

- (a) “Artisanal and small-scale gold mining” means gold mining conducted by individual miners or small enterprises with limited capital investment and production;
- (b) “Best available techniques” means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party. In this context:
  - (i) “Best” means most effective in achieving a high general level of protection of the environment as a whole;
  - (ii) “Available” techniques means, in respect of a given Party and a given facility within the territory of that Party, those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration the costs and benefits, whether or not those techniques are used or developed within the territory of that Party, provided that they are accessible to the operator of the facility as determined by that Party; and
  - (iii) “Techniques” means technologies used, operational practices and the ways in which installations are designed, built, maintained, operated and decommissioned;
- (c) “Best environmental practices” means the application of the most appropriate combination of environmental control measures and strategies;
- (d) “Mercury” means elemental mercury (Hg(0), CAS No. 7439-97-6);
- (e) “Mercury compound” means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions;
- (f) “Mercury-added product” means a product or product component that contains mercury or a mercury compound that was intentionally added;
- (g) “Party” means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;
- (h) “Parties present and voting” means Parties present and casting an affirmative or negative vote at a meeting of the Parties;
- (i) “Primary mercury mining” means mining in which the principal material sought is mercury;
- (j) “Regional economic integration organization” means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention; and
- (k) “Use allowed” means any use by a Party of mercury or mercury compounds consistent with this Convention, including, but not limited to, uses consistent with Articles 3, 4, 5, 6 and 7.

## Article 3

### Mercury supply sources and trade

1. For the purposes of this Article:
  - (a) References to “mercury” include mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight; and
  - (b) “Mercury compounds” means mercury (I) chloride (known also as calomel), mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar and mercury sulphide.
2. The provisions of this Article shall not apply to:

- (a) Quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard; or
  - (b) Naturally occurring trace quantities of mercury or mercury compounds present in such products as non-mercury metals, ores, or mineral products, including coal, or products derived from these materials, and unintentional trace quantities in chemical products; or
  - (c) Mercury-added products.
3. Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of the Convention for it.
4. Each Party shall only allow primary mercury mining that was being conducted within its territory at the date of entry into force of the Convention for it for a period of up to fifteen years after that date. During this period, mercury from such mining shall only be used in manufacturing of mercury-added products in accordance with Article 4, in manufacturing processes in accordance with Article 5, or be disposed in accordance with Article 11, using operations which do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.
5. Each Party shall:
  - (a) Endeavour to identify individual stocks of mercury or mercury compounds exceeding 50 metric tons, as well as sources of mercury supply generating stocks exceeding 10 metric tons per year, that are located within its territory;
  - (b) Take measures to ensure that, where the Party determines that excess mercury from the decommissioning of chlor-alkali facilities is available, such mercury is disposed of in accordance with the guidelines for environmentally sound management referred to in paragraph 3 (a) of Article 11, using operations that do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.
6. Each Party shall not allow the export of mercury except:
  - (a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:
    - (i) A use allowed to the importing Party under this Convention; or
    - (ii) Environmentally sound interim storage as set out in Article 10; or
  - (b) To a non-Party that has provided the exporting Party with its written consent, including certification demonstrating that:
    - (i) The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11; and
    - (ii) Such mercury will be used only for a use allowed to a Party under this Convention or for environmentally sound interim storage as set out in Article 10.
7. An exporting Party may rely on a general notification to the Secretariat by the importing Party or non-Party as the written consent required by paragraph 6. Such general notification shall set out any terms and conditions under which the importing Party or non-Party provides its consent. The notification may be revoked at any time by that Party or non-Party. The Secretariat shall keep a public register of all such notifications.
8. Each Party shall not allow the import of mercury from a non-Party to whom it will provide its written consent unless the non-Party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 or paragraph 5 (b).
9. A Party that submits a general notification of consent under paragraph 7 may decide not to apply paragraph 8, provided that it maintains comprehensive restrictions on the export of mercury and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner. The Party shall provide a notification of such decision to the Secretariat, including information describing its export restrictions and domestic regulatory measures, as well as information on the quantities and countries of origin of mercury imported from non-Parties. The Secretariat shall maintain a public register of all such notifications. The Implementation and Compliance Committee shall review and evaluate any such notifications and supporting information in accordance with Article 15 and may make recommendations, as appropriate, to the Conference of the Parties.

10. The procedure set out in paragraph 9 shall be available until the conclusion of the second meeting of the Conference of the Parties. After that time, it shall cease to be available, unless the Conference of the Parties decides otherwise by simple majority of the Parties present and voting, except with respect to a Party that has provided a notification under paragraph 9 before the end of the second meeting of the Conference of the Parties.

11. Each Party shall include in its reports submitted pursuant to Article 21 information showing that the requirements of this Article have been met.

12. The Conference of the Parties shall at its first meeting provide further guidance in regard to this Article, particularly in regard to paragraphs 5 (a), 6 and 8, and shall develop and adopt the required content of the certification referred to in paragraphs 6 (b) and 8.

13. The Conference of the Parties shall evaluate whether the trade in specific mercury compounds compromises the objective of this Convention and consider whether specific mercury compounds should, by their listing in an additional annex adopted in accordance with Article 27, be made subject to paragraphs 6 and 8.

## Article 4

### Mercury-added products

1. Each Party shall not allow, by taking appropriate measures, the manufacture, import or export of mercury-added products listed in Part I of Annex A after the phase-out date specified for those products, except where an exclusion is specified in Annex A or the Party has a registered exemption pursuant to Article 6.

2. A Party may, as an alternative to paragraph 1, indicate at the time of ratification or upon entry into force of an amendment to Annex A for it, that it will implement different measures or strategies to address products listed in Part I of Annex A. A Party may only choose this alternative if it can demonstrate that it has already reduced to a de minimis level the manufacture, import, and export of the large majority of the products listed in Part I of Annex A and that it has implemented measures or strategies to reduce the use of mercury in additional products not listed in Part I of Annex A at the time it notifies the Secretariat of its decision to use this alternative. In addition, a Party choosing this alternative shall:

- (a) Report at the first opportunity to the Conference of the Parties a description of the measures or strategies implemented, including a quantification of the reductions achieved;
- (b) Implement measures or strategies to reduce the use of mercury in any products listed in Part I of Annex A for which a de minimis value has not yet been obtained;
- (c) Consider additional measures to achieve further reductions; and
- (d) Not be eligible to claim exemptions pursuant to Article 6 for any product category for which this alternative is chosen.

No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall, as part of the review process under paragraph 8, review the progress and the effectiveness of the measures taken under this paragraph.

3. Each Party shall take measures for the mercury-added products listed in Part II of Annex A in accordance with the provisions set out therein.

4. The Secretariat shall, on the basis of information provided by Parties, collect and maintain information on mercury-added products and their alternatives, and shall make such information publicly available. The Secretariat shall also make publicly available any other relevant information submitted by Parties.

5. Each Party shall take measures to prevent the incorporation into assembled products of mercury-added products the manufacture, import and export of which are not allowed for it under this Article.

6. Each Party shall discourage the manufacture and the distribution in commerce of mercury-added products not covered by any known use of mercury-added products prior to the date of entry into force of the Convention for it, unless an assessment of the risks and benefits of the product demonstrates environmental or human health benefits. A Party shall provide to the Secretariat, as

appropriate, information on any such product, including any information on the environmental and human health risks and benefits of the product. The Secretariat shall make such information publicly available.

7. Any Party may submit a proposal to the Secretariat for listing a mercury-added product in Annex A, which shall include information related to the availability, technical and economic feasibility and environmental and health risks and benefits of the non-mercury alternatives to the product, taking into account information pursuant to paragraph 4.

8. No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall review Annex A and may consider amendments to that Annex in accordance with Article 27.

9. In reviewing Annex A pursuant to paragraph 8, the Conference of the Parties shall take into account at least:

- (a) Any proposal submitted under paragraph 7;
- (b) The information made available pursuant to paragraph 4; and
- (c) The availability to the Parties of mercury-free alternatives that are technically and economically feasible, taking into account the environmental and human health risks and benefits.

## **Article 5**

### **Manufacturing processes in which mercury or mercury compounds are used**

1. For the purposes of this Article and Annex B, manufacturing processes in which mercury or mercury compounds are used shall not include processes using mercury-added products, processes for manufacturing mercury-added products or processes that process mercury-containing waste.

2. Each Party shall not allow, by taking appropriate measures, the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B after the phase-out date specified in that Annex for the individual processes, except where the Party has a registered exemption pursuant to Article 6.

3. Each Party shall take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex B in accordance with the provisions set out therein.

4. The Secretariat shall, on the basis of information provided by Parties, collect and maintain information on processes that use mercury or mercury compounds and their alternatives, and shall make such information publicly available. Other relevant information may also be submitted by Parties and shall be made publicly available by the Secretariat.

5. Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex B shall:

- (a) Take measures to address emissions and releases of mercury or mercury compounds from those facilities;
- (b) Include in its reports submitted pursuant to Article 21 information on the measures taken pursuant to this paragraph; and
- (c) Endeavour to identify facilities within its territory that use mercury or mercury compounds for processes listed in Annex B and submit to the Secretariat, no later than three years after the date of entry into force of the Convention for it, information on the number and types of such facilities and the estimated annual amount of mercury or mercury compounds used in those facilities. The Secretariat shall make such information publicly available.

6. Each Party shall not allow the use of mercury or mercury compounds in a facility that did not exist prior to the date of entry into force of the Convention for it using the manufacturing processes listed in Annex B. No exemptions shall apply to such facilities.

7. Each Party shall discourage the development of any facility using any other manufacturing process in which mercury or mercury compounds are intentionally used that did not exist prior to the date of entry into force of the Convention, except where the Party can demonstrate to the satisfaction of the Conference of the Parties that the manufacturing process provides significant environmental and

health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such benefits.

8. Parties are encouraged to exchange information on relevant new technological developments, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and where feasible to eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes listed in Annex B.

9. Any Party may submit a proposal to amend Annex B in order to list a manufacturing process in which mercury or mercury compounds are used. It shall include information related to the availability, technical and economic feasibility and environmental and health risks and benefits of the non-mercury alternatives to the process.

10. No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall review Annex B and may consider amendments to that Annex in accordance with Article 27.

11. In any review of Annex B pursuant to paragraph 10, the Conference of the Parties shall take into account at least:

- (a) Any proposal submitted under paragraph 9;
- (b) The information made available under paragraph 4; and
- (c) The availability for the Parties of mercury-free alternatives which are technically and economically feasible taking into account the environmental and health risks and benefits.

## **Article 6**

### **Exemptions available to a Party upon request**

1. Any State or regional economic integration organization may register for one or more exemptions from the phase-out dates listed in Annex A and Annex B, hereafter referred to as an "exemption", by notifying the Secretariat in writing:

- (a) On becoming a Party to this Convention; or
- (b) In the case of any mercury-added product that is added by an amendment to Annex A or any manufacturing process in which mercury is used that is added by an amendment to Annex B, no later than the date upon which the applicable amendment enters into force for the Party.

Any such registration shall be accompanied by a statement explaining the Party's need for the exemption.

2. An exemption can be registered either for a category listed in Annex A or B or for a sub-category identified by any State or regional economic integration organization.

3. Each Party that has one or more exemptions shall be identified in a register. The Secretariat shall establish and maintain the register and make it available to the public.

4. The register shall include:

- (a) A list of the Parties that have one or more exemptions;
- (b) The exemption or exemptions registered for each Party; and
- (c) The expiration date of each exemption.

5. Unless a shorter period is indicated in the register by a Party, all exemptions pursuant to paragraph 1 shall expire five years after the relevant phase-out date listed in Annex A or B.

6. The Conference of the Parties may, at the request of a Party, decide to extend an exemption for five years unless the Party requests a shorter period. In making its decision, the Conference of the Parties shall take due account of:

- (a) A report from the Party justifying the need to extend the exemption and outlining activities undertaken and planned to eliminate the need for the exemption as soon as feasible;

(b) Available information, including in respect of the availability of alternative products and processes that are free of mercury or that involve the consumption of less mercury than the exempt use; and

(c) Activities planned or under way to provide environmentally sound storage of mercury and disposal of mercury wastes.

An exemption may only be extended once per product per phase-out date.

7. A Party may at any time withdraw an exemption upon written notification to the Secretariat. The withdrawal of an exemption shall take effect on the date specified in the notification.

8. Notwithstanding paragraph 1, no State or regional economic integration organization may register for an exemption after five years after the phase-out date for the relevant product or process listed in Annex A or B, unless one or more Parties remain registered for an exemption for that product or process, having received an extension pursuant to paragraph 6. In that case, a State or regional economic integration organization may, at the times set out in paragraphs 1 (a) and (b), register for an exemption for that product or process, which shall expire ten years after the relevant phase-out date.

9. No Party may have an exemption in effect at any time after 10 years after the phase-out date for a product or process listed in Annex A or B.

## **Article 7**

### **Artisanal and small-scale gold mining**

1. The measures in this Article and in Annex C 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 take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing.

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

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

(b) Submit its national action plan to the Secretariat no later than three years after entry into force of the Convention for it or three years after the notification to the Secretariat, whichever is later; and

(c) Thereafter, provide a review every three years of the progress made in meeting its obligations under this Article and include such reviews in its reports submitted pursuant to Article 21.

4. Parties may cooperate with each other 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) Use of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.

## Article 8

### Emissions

1. This Article concerns controlling and, where feasible, reducing emissions of mercury and mercury compounds, often expressed as “total mercury”, to the atmosphere through measures to control emissions from the point sources falling within the source categories listed in Annex D.
2. For the purposes of this Article:
  - (a) “Emissions” means emissions of mercury or mercury compounds to the atmosphere;
  - (b) “Relevant source” means a source falling within one of the source categories listed in Annex D. A Party may, if it chooses, establish criteria to identify the sources covered within a source category listed in Annex D so long as those criteria for any category include at least 75 per cent of the emissions from that category;
  - (c) “New source” means any relevant source within a category listed in Annex D, the construction or substantial modification of which is commenced at least one year after the date of:
    - (i) Entry into force of this Convention for the Party concerned; or
    - (ii) Entry into force for the Party concerned of an amendment to Annex D where the source becomes subject to the provisions of this Convention only by virtue of that amendment;
  - (d) “Substantial modification” means modification of a relevant source that results in a significant increase in emissions, excluding any change in emissions resulting from by-product recovery. It shall be a matter for the Party to decide whether a modification is substantial or not;
  - (e) “Existing source” means any relevant source that is not a new source;
  - (f) “Emission limit value” means a limit on the concentration, mass or emission rate of mercury or mercury compounds, often expressed as “total mercury”, emitted from a point source.
3. A Party with relevant sources shall take measures to control emissions and may prepare a national plan setting out the measures to be taken to control emissions and its expected targets, goals and outcomes. Any plan shall be submitted to the Conference of the Parties within four years of the date of entry into force of the Convention for that Party. If a Party develops an implementation plan in accordance with Article 20, the Party may include in it the plan prepared pursuant to this paragraph.
4. For its new sources, each Party shall require the use of best available techniques and best environmental practices to control and, where feasible, reduce emissions, as soon as practicable but no later than five years after the date of entry into force of the Convention for that Party. A Party may use emission limit values that are consistent with the application of best available techniques.
5. For its existing sources, each Party shall include in any national plan, and shall implement, one or more of the following measures, taking into account its national circumstances, and the economic and technical feasibility and affordability of the measures, as soon as practicable but no more than ten years after the date of entry into force of the Convention for it:
  - (a) A quantified goal for controlling and, where feasible, reducing emissions from relevant sources;
  - (b) Emission limit values for controlling and, where feasible, reducing emissions from relevant sources;
  - (c) The use of best available techniques and best environmental practices to control emissions from relevant sources;
  - (d) A multi-pollutant control strategy that would deliver co-benefits for control of mercury emissions;
  - (e) Alternative measures to reduce emissions from relevant sources.
6. Parties may apply the same measures to all relevant existing sources or may adopt different measures in respect of different source categories. The objective shall be for those measures applied by a Party to achieve reasonable progress in reducing emissions over time.

7. Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of emissions from relevant sources.
8. The Conference of the Parties shall, at its first meeting, adopt guidance on:
  - (a) Best available techniques and on best environmental practices, taking into account any difference between new and existing sources and the need to minimize cross-media effects; and
  - (b) Support for Parties in implementing the measures set out in paragraph 5, in particular in determining goals and in setting emission limit values.
9. The Conference of the Parties shall, as soon as practicable, adopt guidance on:
  - (a) Criteria that Parties may develop pursuant to paragraph 2 (b);
  - (b) The methodology for preparing inventories of emissions.
10. The Conference of the Parties shall keep under review, and update as appropriate, the guidance developed pursuant to paragraphs 8 and 9. Parties shall take the guidance into account in implementing the relevant provisions of this Article.
11. Each Party shall include information on its implementation of this Article in its reports submitted pursuant to Article 21, in particular information concerning the measures it has taken in accordance with paragraphs 4 to 7 and the effectiveness of the measures.

## **Article 9**

### **Releases**

1. This Article concerns controlling and, where feasible, reducing releases of mercury and mercury compounds, often expressed as “total mercury”, to land and water from the relevant point sources not addressed in other provisions of this Convention.
2. For the purposes of this Article:
  - (a) “Releases” means releases of mercury or mercury compounds to land or water;
  - (b) “Relevant source” means any significant anthropogenic point source of release as identified by a Party that is not addressed in other provisions of this Convention;
  - (c) “New source” means any relevant source, the construction or substantial modification of which is commenced at least one year after the date of entry into force of this Convention for the Party concerned;
  - (d) “Substantial modification” means modification of a relevant source that results in a significant increase in releases, excluding any change in releases resulting from by-product recovery. It shall be a matter for the Party to decide whether a modification is substantial or not;
  - (e) “Existing source” means any relevant source that is not a new source;
  - (f) “Release limit value” means a limit on the concentration or mass of mercury or mercury compounds, often expressed as “total mercury”, released from a point source.
3. Each Party shall, no later than three years after the date of entry into force of the Convention for it and on a regular basis thereafter, identify the relevant point source categories.
4. A Party with relevant sources shall take measures to control releases and may prepare a national plan setting out the measures to be taken to control releases and its expected targets, goals and outcomes. Any plan shall be submitted to the Conference of the Parties within four years of the date of entry into force of the Convention for that Party. If a Party develops an implementation plan in accordance with Article 20, the Party may include in it the plan prepared pursuant to this paragraph.
5. The measures shall include one or more of the following, as appropriate:
  - (a) Release limit values to control and, where feasible, reduce releases from relevant sources;
  - (b) The use of best available techniques and best environmental practices to control releases from relevant sources;



- (c) A multi-pollutant control strategy that would deliver co-benefits for control of mercury releases;
  - (d) Alternative measures to reduce releases from relevant sources.
6. Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of releases from relevant sources.
7. The Conference of the Parties shall, as soon as practicable, adopt guidance on:
- (a) Best available techniques and on best environmental practices, taking into account any difference between new and existing sources and the need to minimize cross-media effects;
  - (b) The methodology for preparing inventories of releases.
8. Each Party shall include information on its implementation of this Article in its reports submitted pursuant to Article 21, in particular information concerning the measures it has taken in accordance with paragraphs 3 to 6 and the effectiveness of the measures.

## **Article 10**

### **Environmentally sound interim storage of mercury, other than waste mercury**

1. This Article shall apply to the interim storage of mercury and mercury compounds as defined in Article 3 that do not fall within the meaning of the definition of mercury wastes set out in Article 11.
2. Each Party shall take measures to ensure that the interim storage of such mercury and mercury compounds intended for a use allowed to a Party under this Convention is undertaken in an environmentally sound manner, taking into account any guidelines, and in accordance with any requirements, adopted pursuant to paragraph 3.
3. The Conference of the Parties shall adopt guidelines on the environmentally sound interim storage of such mercury and mercury compounds, taking into account any relevant guidelines developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and other relevant guidance. The Conference of the Parties may adopt requirements for interim storage in an additional annex to this Convention in accordance with Article 27.
4. Parties shall cooperate, as appropriate, with each other and with relevant intergovernmental organizations and other entities, to enhance capacity-building for the environmentally sound interim storage of such mercury and mercury compounds.

## **Article 11**

### **Mercury wastes**

1. The relevant definitions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention for Parties to the Basel Convention. Parties to this Convention that are not Parties to the Basel Convention shall use those definitions as guidance as applied to wastes covered under this Convention.
2. For the purposes of this Convention, mercury wastes means substances or objects:
- (a) Consisting of mercury or mercury compounds;
  - (b) Containing mercury or mercury compounds; or
  - (c) Contaminated with mercury or mercury compounds,
- in a quantity above the relevant thresholds defined by the Conference of the Parties, in collaboration with the relevant bodies of the Basel Convention in a harmonized manner, that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law or this Convention. This definition excludes overburden, waste rock and tailings from mining, except from

primary mercury mining, unless they contain mercury or mercury compounds above thresholds defined by the Conference of the Parties.

3. Each Party shall take appropriate measures so that mercury waste is:
  - (a) Managed in an environmentally sound manner, taking into account the guidelines developed under the Basel Convention and in accordance with requirements that the Conference of the Parties shall adopt in an additional annex in accordance with Article 27. In developing requirements, the Conference of the Parties shall take into account Parties' waste management regulations and programmes;
  - (b) Only recovered, recycled, reclaimed or directly re-used for a use allowed to a Party under this Convention or for environmentally sound disposal pursuant to paragraph 3 (a);
  - (c) For Parties to the Basel Convention, not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with this Article and with that Convention. In circumstances where the Basel Convention does not apply to transport across international boundaries, a Party shall allow such transport only after taking into account relevant international rules, standards, and guidelines.
4. The Conference of the Parties shall seek to cooperate closely with the relevant bodies of the Basel Convention in the review and update, as appropriate, of the guidelines referred to in paragraph 3 (a).
5. Parties are encouraged to cooperate with each other and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the management of mercury wastes in an environmentally sound manner.

## **Article 12**

### **Contaminated sites**

1. Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or 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 or mercury compounds they contain.
3. The Conference of the Parties shall adopt guidance on managing contaminated sites that may include methods and approaches for:
  - (a) Site identification and characterization;
  - (b) Engaging the public;
  - (c) Human health and environmental risk assessments;
  - (d) Options for managing the risks posed by contaminated sites;
  - (e) Evaluation of benefits and costs; and
  - (f) Validation of outcomes.
4. Parties are encouraged to cooperate in developing strategies and implementing activities for identifying, assessing, prioritizing, managing and, as appropriate, remediating contaminated sites.

## **Article 13**

### **Financial resources and mechanism**

1. Each Party undertakes to provide, within its capabilities, resources in respect of those national activities that are intended to implement this Convention, in accordance with its national policies, priorities, plans and programmes. Such resources may include domestic funding through relevant policies, development strategies and national budgets, and bilateral and multilateral funding, as well as private sector involvement.

2. The overall effectiveness of implementation of this Convention by developing country Parties will be related to the effective implementation of this Article.
3. Multilateral, regional and bilateral sources of financial and technical assistance, as well as capacity- building and technology transfer, are encouraged, on an urgent basis, to enhance and increase their activities on mercury in support of developing country Parties in the implementation of this Convention relating to financial resources, technical assistance and technology transfer.
4. The Parties, in their actions with regard to funding, shall take full account of the specific needs and special circumstances of Parties that are small island developing States or least developed countries.
5. A Mechanism for the provision of adequate, predictable, and timely financial resources is hereby defined. The Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention.
6. The Mechanism shall include:
  - (a) The Global Environment Facility Trust Fund; and
  - (b) A specific international Programme to support capacity-building and technical assistance.
7. The Global Environment Facility Trust Fund shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties. For the purposes of this Convention, the Global Environment Facility Trust Fund shall be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources. In addition, the Conference of the Parties shall provide guidance on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund. The Global Environment Facility Trust Fund shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities.
8. In providing resources for an activity, the Global Environment Facility Trust Fund should take into account the potential mercury reductions of a proposed activity relative to its costs.
9. For the purposes of this Convention, the Programme referred to in paragraph 6 (b) will be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall, at its first meeting, decide on the hosting institution for the Programme, which shall be an existing entity, and provide guidance to it, including on its duration. All Parties and other relevant stakeholders are invited to provide financial resources to the Programme, on a voluntary basis.
10. The Conference of the Parties and the entities comprising the Mechanism shall agree upon, at the first meeting of the Conference of the Parties, arrangements to give effect to the above paragraphs.
11. The Conference of the Parties shall review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to the entities entrusted to operationalize the Mechanism established under this Article and their effectiveness, and their ability to address the changing needs of developing country Parties and Parties with economies in transition. It shall, based on such review, take appropriate action to improve the effectiveness of the Mechanism.
12. All Parties, within their capabilities, are invited to contribute to the Mechanism. The Mechanism shall encourage the provision of resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.

## **Article 14**

### **Capacity-building, technical assistance and technology transfer**

1. Parties shall cooperate to provide, within their respective capabilities, timely and appropriate capacity-building and technical assistance to developing country Parties, in particular Parties that are least developed countries or small island developing States, and Parties with economies in transition, to assist them in implementing their obligations under this Convention.

2. Capacity-building and technical assistance pursuant to paragraph 1 and Article 13 may be delivered through regional, subregional and national arrangements, including existing regional and subregional centres, through other multilateral and bilateral means, and through partnerships, including partnerships involving the private sector. Cooperation and coordination with other multilateral environmental agreements in the field of chemicals and wastes should be sought to increase the effectiveness of technical assistance and its delivery.
3. Developed country Parties and other Parties within their capabilities shall promote and facilitate, supported by the private sector and other relevant stakeholders as appropriate, development, transfer and diffusion of, and access to, up-to-date environmentally sound alternative technologies to developing country Parties, in particular the least developed countries and small island developing States, and Parties with economies in transition, to strengthen their capacity to effectively implement this Convention.
4. The Conference of the Parties shall, by its second meeting and thereafter on a regular basis, and taking into account submissions and reports from Parties including those as provided for in Article 21 and information provided by other stakeholders:
  - (a) Consider information on existing initiatives and progress made in relation to alternative technologies;
  - (b) Consider the needs of Parties, particularly developing country Parties, for alternative technologies; and
  - (c) Identify challenges experienced by Parties, particularly developing country Parties, in technology transfer.
5. The Conference of the Parties shall make recommendations on how capacity-building, technical assistance and technology transfer could be further enhanced under this Article.

## **Article 15**

### **Implementation and Compliance Committee**

1. A mechanism, including a Committee as a subsidiary body of the Conference of the Parties, is hereby established to promote implementation of, and review compliance with, all provisions of this Convention. The mechanism, including the Committee, shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.
2. The Committee shall promote implementation of, and review compliance with, all provisions of this Convention. The Committee shall examine both individual and systemic issues of implementation and compliance and make recommendations, as appropriate, to the Conference of the Parties.
3. The Committee shall consist of 15 members, nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation based on the five regions of the United Nations; the first members shall be elected at the first meeting of the Conference of the Parties and thereafter in accordance with the rules of procedure approved by the Conference of the Parties pursuant to paragraph 5; the members of the Committee shall have competence in a field relevant to this Convention and reflect an appropriate balance of expertise.
4. The Committee may consider issues on the basis of:
  - (a) Written submissions from any Party with respect to its own compliance;
  - (b) National reports in accordance with Article 21; and
  - (c) Requests from the Conference of the Parties.
5. The Committee shall elaborate its rules of procedure, which shall be subject to approval by the second meeting of the Conference of the Parties; the Conference of the Parties may adopt further terms of reference for the Committee.
6. The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a three-fourths majority vote of the members present and voting, based on a quorum of two-thirds of the members.

## Article 16

### Health aspects

1. Parties are encouraged to:
  - (a) Promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, and which may include adopting science-based health guidelines relating to the exposure to mercury and mercury compounds, setting targets for mercury exposure reduction, where appropriate, and public education, with the participation of public health and other involved sectors;
  - (b) Promote the development and implementation of science-based educational and preventive programmes on occupational exposure to mercury and mercury compounds;
  - (c) Promote appropriate health-care services for prevention, treatment and care for populations affected by the exposure to mercury or mercury compounds; and
  - (d) Establish and strengthen, as appropriate, the institutional and health professional capacities for the prevention, diagnosis, treatment and monitoring of health risks related to the exposure to mercury and mercury compounds.
2. The Conference of the Parties, in considering health-related issues or activities, should:
  - (a) Consult and collaborate with the World Health Organization, the International Labour Organization and other relevant intergovernmental organizations, as appropriate; and
  - (b) Promote cooperation and exchange of information with the World Health Organization, the International Labour Organization and other relevant intergovernmental organizations, as appropriate.

## Article 17

### Information exchange

1. Each Party shall facilitate the exchange of:
  - (a) Scientific, technical, economic and legal information concerning mercury and mercury compounds, including toxicological, ecotoxicological and safety information;
  - (b) Information on the reduction or elimination of the production, use, trade, emissions and releases of mercury and mercury compounds;
  - (c) Information on technically and economically viable alternatives to:
    - (i) Mercury-added products;
    - (ii) Manufacturing processes in which mercury or mercury compounds are used; and
    - (iii) 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; and
  - (d) Epidemiological information concerning health impacts associated with exposure to mercury and mercury compounds, in close cooperation with the World Health Organization and other relevant organizations, as appropriate.
2. Parties may exchange the information referred to in paragraph 1 directly, through the Secretariat, or in cooperation with other relevant organizations, including the secretariats of chemicals and wastes conventions, as appropriate.
3. The Secretariat shall facilitate cooperation in the exchange of information referred to in this Article, as well as with relevant organizations, including the secretariats of multilateral environmental agreements and other international initiatives. In addition to information from Parties, this information shall include information from intergovernmental and non-governmental organizations with expertise in the area of mercury, and from national and international institutions with such expertise.

4. Each Party shall designate a national focal point for the exchange of information under this Convention, including with regard to the consent of importing Parties under Article 3.
5. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.

## **Article 18**

### **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 and mercury compounds;
    - (ii) Alternatives to mercury and mercury compounds;
    - (iii) The topics identified in paragraph 1 of Article 17;
    - (iv) The results of its research, development and monitoring activities under Article 19; and
    - (v) Activities to meet its obligations under this Convention;
  - (b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and non-governmental organizations and vulnerable populations, as appropriate.
2. Each Party shall use existing mechanisms or give consideration to the development of mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are emitted, released or disposed of through human activities.

## **Article 19**

### **Research, development and monitoring**

1. Parties shall endeavour to cooperate to develop and improve, taking into account their respective circumstances and capabilities:
  - (a) Inventories of use, consumption, and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds;
  - (b) Modelling and geographically representative monitoring of levels of mercury and mercury compounds in vulnerable populations and in environmental media, including biotic media such as fish, marine mammals, sea turtles and birds, as well as collaboration in the collection and exchange of relevant and appropriate samples;
  - (c) Assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly in respect of vulnerable populations;
  - (d) Harmonized methodologies for the activities undertaken under subparagraphs (a), (b) and (c);
  - (e) Information on the environmental cycle, transport (including long-range transport and deposition), transformation and fate of mercury and mercury compounds in a range of ecosystems, taking appropriate account of the distinction between anthropogenic and natural emissions and releases of mercury and of remobilization of mercury from historic deposition;
  - (f) Information on commerce and trade in mercury and mercury compounds and mercury-added products; and
  - (g) Information and research on the technical and economic availability of mercury-free products and processes and on best available techniques and best environmental practices to reduce and monitor emissions and releases of mercury and mercury compounds.

2. Parties should, where appropriate, build on existing monitoring networks and research programmes in undertaking the activities identified in paragraph 1.

## **Article 20**

### **Implementation plans**

1. Each Party may, following an initial assessment, develop and execute an implementation plan, taking into account its domestic circumstances, for meeting the obligations under this Convention. Any such plan should be transmitted to the Secretariat as soon as it has been developed.
2. Each Party may review and update its implementation plan, taking into account its domestic circumstances and referring to guidance from the Conference of the Parties and other relevant guidance.
3. Parties should, in undertaking work in paragraphs 1 and 2, consult national stakeholders to facilitate the development, implementation, review and updating of their implementation plans.
4. Parties may also coordinate on regional plans to facilitate implementation of this Convention.

## **Article 21**

### **Reporting**

1. Each Party shall report to the Conference of the Parties, through the Secretariat, on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures and the possible challenges in meeting the objectives of the Convention.
2. Each Party shall include in its reporting the information as called for in Articles 3, 5, 7, 8 and 9 of this Convention.
3. The Conference of the Parties shall, at its first meeting, decide upon the timing and format of the reporting to be followed by the Parties, taking into account the desirability of coordinating reporting with other relevant chemicals and wastes conventions.

## **Article 22**

### **Effectiveness evaluation**

1. The Conference of the Parties shall evaluate the effectiveness of this Convention, beginning no later than six years after the date of entry into force of the Convention and periodically thereafter at intervals to be decided by it.
2. To facilitate the evaluation, the Conference of the Parties shall, at its first meeting, initiate the establishment of arrangements for providing itself with comparable monitoring data on the presence and movement of mercury and mercury compounds in the environment as well as trends in levels of mercury and mercury compounds observed in biotic media and vulnerable populations.
3. The evaluation shall be conducted on the basis of available scientific, environmental, technical, financial and economic information, including:
  - (a) Reports and other monitoring information provided to the Conference of the Parties pursuant to paragraph 2;
  - (b) Reports submitted pursuant to Article 21;
  - (c) Information and recommendations provided pursuant to Article 15; and
  - (d) Reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under this Convention.

## Article 23

### Conference of the Parties

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 date of 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 this Convention and, to that end, shall:
  - (a) Establish such subsidiary bodies as it considers necessary for the implementation of this 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 21;
  - (d) Consider any recommendations submitted to it by the Implementation and Compliance Committee;
  - (e) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention; and
  - (f) Review Annexes A and B pursuant to Article 4 and Article 5.
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 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.

## Article 24

### Secretariat

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 15 and 21 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 three-fourths 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 cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions. The Conference of the Parties, in consultation with appropriate international bodies, may provide further guidance on this matter.

## **Article 25**

### **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 E;
  - (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 E shall apply to conciliation under this Article.

## **Article 26**

### **Amendments to the Convention**

1. Amendments to this Convention may be proposed by any Party.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least

six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. An adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having consented to be bound by it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties that were Parties at the time at which the amendment was adopted. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

## **Article 27**

### **Adoption and amendment of annexes**

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 26;
  - (b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication by the Depositary of the adoption of such 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 an annex shall not enter into force with regard to any Party that has made a declaration with regard to amendment of annexes in accordance with paragraph 5 of Article 30, 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.
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.

## **Article 28**

### **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.

## **Article 29**

### **Signature**

This Convention shall be opened for signature at Kumamoto, Japan, by all States and regional economic integration organizations on 10 and 11 October 2013, and thereafter at the United Nations Headquarters in New York until 9 October 2014.

## **Article 30**

### **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. Each State or regional economic integration organization is encouraged to transmit to the Secretariat at the time of its ratification, acceptance, approval or accession of the Convention information on its measures to implement the Convention.
5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to an annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

## **Article 31**

### **Entry into force**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the 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 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.

### **Article 32**

#### **Reservations**

No reservations may be made to this Convention.

### **Article 33**

#### **Withdrawal**

1. At any time after three years 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 Depositary.

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

### **Article 34**

#### **Depositary**

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

### **Article 35**

#### **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 Depositary.

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

Done at Kumamoto, Japan, on this tenth day of October, two thousand and thirteen.

## Annex A

### Mercury-added products

The following products are excluded from this Annex:

- (a) Products essential for civil protection and military uses;
- (b) Products for research, calibration of instrumentation, for use as reference standard;
- (c) Where no feasible mercury-free alternative for replacement is available, switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays, and measuring devices;
- (d) Products used in traditional or religious practices; and
- (e) Vaccines containing thiomersal as preservatives.

### Part I: Products subject to Article 4, paragraph 1

Mercury-added products	Date after which the manufacture, import or export of the product shall not be allowed (phase-out date)
Batteries, except for button zinc silver oxide batteries with a mercury content < 2% and button zinc air batteries with a mercury content < 2%	2020
Switches and relays, except very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay	2020
Compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner	2020
Linear fluorescent lamps (LFLs) for general lighting purposes: (a) Triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; (b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp	2020
High pressure mercury vapour lamps (HPMV) for general lighting purposes	2020
Mercury in cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays: (a) short length (≤ 500 mm) with mercury content exceeding 3.5 mg per lamp (b) medium length (> 500 mm and ≤ 1 500 mm) with mercury content exceeding 5 mg per lamp (c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp	2020
Cosmetics (with mercury content above 1ppm), including skin lightening soaps and creams, and not including eye area cosmetics where mercury is used as a preservative and no effective and safe substitute preservatives are available <sup>1/</sup>	2020
Pesticides, biocides and topical antiseptics	2020
The following non-electronic measuring devices except non-electronic measuring devices installed in large-scale equipment or those used for high precision measurement, where no suitable mercury-free alternative is available: (a) barometers; (b) hygrometers; (c) manometers; (d) thermometers; (e) sphygmomanometers.	2020

<sup>1/</sup> The intention is not to cover cosmetics, soaps or creams with trace contaminants of mercury.

**Part II: Products subject to Article 4, paragraph 3**

Mercury-added products	Provisions
Dental amalgam	<p>Measures to be taken by a Party to phase down the use of dental amalgam shall take into account the Party's domestic circumstances and relevant international guidance and shall include two or more of the measures from the following list:</p> <ul style="list-style-type: none"> <li>(i) Setting national objectives aiming at dental caries prevention and health promotion, thereby minimizing the need for dental restoration;</li> <li>(ii) Setting national objectives aiming at minimizing its use;</li> <li>(iii) Promoting the use of cost-effective and clinically effective mercury-free alternatives for dental restoration;</li> <li>(iv) Promoting research and development of quality mercury-free materials for dental restoration;</li> <li>(v) Encouraging representative professional organizations and dental schools to educate and train dental professionals and students on the use of mercury-free dental restoration alternatives and on promoting best management practices;</li> <li>(vi) Discouraging insurance policies and programmes that favour dental amalgam use over mercury-free dental restoration;</li> <li>(vii) Encouraging insurance policies and programmes that favour the use of quality alternatives to dental amalgam for dental restoration;</li> <li>(viii) Restricting the use of dental amalgam to its encapsulated form;</li> <li>(ix) Promoting the use of best environmental practices in dental facilities to reduce releases of mercury and mercury compounds to water and land.</li> </ul>

**Annex B****Manufacturing processes in which mercury or mercury compounds are used****Part I: Processes subject to Article 5, paragraph 2**

<b>Manufacturing processes using mercury or mercury compounds</b>	<b>Phase-out date</b>
Chlor-alkali production	2025
Acetaldehyde production in which mercury or mercury compounds are used as a catalyst	2018

**Part II: Processes subject to Article 5, paragraph 3**

Mercury using process	Provisions
Vinyl chloride monomer production	<p>Measures to be taken by the Parties shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>(i) Reduce the use of mercury in terms of per unit production by 50 per cent by the year 2020 against 2010 use;</li> <li>(ii) Promoting measures to reduce the reliance on mercury from primary mining;</li> <li>(iii) Taking measures to reduce emissions and releases of mercury to the environment;</li> <li>(iv) Supporting research and development in respect of mercury-free catalysts and processes;</li> <li>(v) Not allowing the use of mercury five years after the Conference of the Parties has established that mercury-free catalysts based on existing processes have become technically and economically feasible;</li> <li>(vi) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.</li> </ul>
Sodium or Potassium Methylate or Ethylate	<p>Measures to be taken by the Parties shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>(i) Measures to reduce the use of mercury aiming at the phase out of this use as fast as possible and within 10 years of the entry into force of the Convention;</li> <li>(ii) Reduce emissions and releases in terms of per unit production by 50 per cent by 2020 compared to 2010;</li> <li>(iii) Prohibiting the use of fresh mercury from primary mining;</li> <li>(iv) Supporting research and development in respect of mercury-free processes;</li> <li>(v) Not allowing the use of mercury five years after the Conference of the Parties has established that mercury-free processes have become technically and economically feasible;</li> <li>(vi) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.</li> </ul>
Production of polyurethane using mercury containing catalysts	<p>Measures to be taken by the Parties shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>(i) Taking measures to reduce the use of mercury, aiming at the phase out of this use as fast as possible, within 10 years of the entry into force of the Convention;</li> <li>(ii) Taking measures to reduce the reliance on mercury from primary mercury mining;</li> <li>(iii) Taking measures to reduce emissions and releases of mercury to the environment;</li> <li>(iv) Encouraging research and development in respect of mercury-free catalysts and processes;</li> <li>(v) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.</li> </ul> <p>Paragraph 6 of Article 5 shall not apply to this manufacturing process.</p>



## Annex C

### Artisanal and small-scale gold mining

#### National action plans

1. Each Party that is subject to the provisions of paragraph 3 of Article 7 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 without first removing the mercury;
  - (c) Steps to facilitate the formalization or regulation of the artisanal and small-scale gold mining sector;
  - (d) Baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory;
  - (e) 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;
  - (f) Strategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small scale gold mining and processing;
  - (g) Strategies for involving stakeholders in the implementation and continuing development of the national action plan;
  - (h) A public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury. Such a strategy should include, inter alia, the gathering of health data, training for health-care workers and awareness-raising through health facilities;
  - (i) Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining;
  - (j) Strategies for providing information to artisanal and small-scale gold miners and affected communities; and
  - (k) A schedule for the implementation of the national action plan.
2. Each Party may include in its national action plan additional strategies to achieve its objectives, including the use or introduction of standards for mercury-free artisanal and small-scale gold mining and market-based mechanisms or marketing tools.

## **Annex D**

### **List of point sources of emissions of mercury and mercury compounds to the atmosphere**

**Point source category:**

Coal-fired power plants;

Coal-fired industrial boilers;

Smelting and roasting processes used in the production of non-ferrous metals;<sup>1/</sup>

Waste incineration facilities;

Cement clinker production facilities.

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<sup>1/</sup> For the purpose of this Annex, “non-ferrous metals” refers to lead, zinc, copper and industrial gold.

## Annex E

### Arbitration and conciliation procedures

#### Part I: Arbitration procedure

The arbitration procedure for purposes of paragraph 2 (a) of Article 25 of this Convention shall be as follows:

##### Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 25 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 25 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

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.

##### 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

The conciliation procedure for purposes of paragraph 6 of Article 25 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 25 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.

### 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.