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**United Nations
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**Intergovernmental negotiating committee
to prepare a global legally binding instrument
on mercury
Fourth session
Punta del Este, Uruguay, 27 June–2 July 2012**

**Report of the intergovernmental negotiating committee to
prepare a global legally binding instrument on mercury on the
work of its fourth 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 took place in Stockholm from 7 to 11 June 2010, the second session took place in Chiba, Japan, from 24 to 28 January 2011 and the third session took place in Nairobi from 31 October to 4 November 2011. The events leading up to the three 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) and paragraphs 1–3 of the report of the third session (UNEP(DTIE)/Hg/INC.3/8).
3. At its third session the committee agreed that the secretariat would prepare for consideration by the committee at its fourth session a revised version of the draft text of the comprehensive and suitable approach to a global legally binding instrument on mercury set out in document UNEP(DTIE)/Hg/INC.3/3. The revised version would include all changes presented in the conference room papers that were submitted by the co-chairs of the contact groups established at the third session and the legal group established by the committee at its second session, which the committee had agreed accurately reflected the discussions within those groups.

II. Opening of the session

4. The fourth session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury took place in Punta del Este, Uruguay, from 27 June to 2 July 2012.
5. The session began at 9.45 a.m. on Wednesday, 27 June 2012, with Mr. Jacob Duer, UNEP, Coordinator of the mercury negotiations, serving as master of ceremonies. Mr. Duer welcomed the delegates and introduced the screening of a video intended to raise awareness of mercury-related environmental and health issues among Uruguayan schoolchildren, which would be made available to the public and distributed through Uruguay's One Laptop per Child programme. There followed a performance by a choir of primary-school children from Montevideo.

6. Mr. Fernando Lugris (Uruguay), Chair of the committee, welcomed the session participants to his country, noting that there were more participants than at previous sessions as the process entered a crucial stage in the run-up to its final session, in 2013. Recalling that the process had been taking place in different regions of the world, he invited the participants to think during the week in Uruguay from a southern perspective, noting that the problem of mercury was a global one requiring a global solution adapted to different realities. Inviting all to make an active contribution, he formally opened the fourth session.

7. Opening remarks were delivered by Ms. Monique Barbut, Chief Executive Officer and Chairperson of the Global Environment Facility (GEF), Mr. Achim Steiner, Executive Director of UNEP, and Mr. Luis Almagro, Minister of Foreign Affairs of Uruguay.

8. Ms. Barbut described recent accomplishments and developments at GEF with regard to chemicals, and mercury in particular, noting that the fifth replenishment of the GEF trust fund had been the largest in its history, with pledges for the chemicals focal area exceeding the previous replenishment by more than \$100 million. She highlighted that the negotiations of the intergovernmental negotiating committee would conclude while the negotiations for the sixth replenishment of the trust fund were under way. That would present the best opportunity for the committee to consider sending a signal to GEF that resources should be made available for the mercury instrument. She further indicated that GEF was prepared to become a financial mechanism of the mercury instrument if asked to do so.

9. Over the past six years, GEF had moved from separate areas focusing on specific groups of chemicals to a consolidated chemicals focal area. This allowed cost-effective and efficient channelling of resources to projects that reached beyond the mandates of individual conventions, embracing action on various chemicals of global concern. With regard to mercury, she noted that the GEF Council had set aside resources earmarked for national and regional mercury projects, and she outlined the Fund's key programmes in areas such as mercury storage, artisanal gold mining, atmospheric emissions and industrial processes, mercury inventories and monitoring. GEF, she said, would continue to work with countries and agencies on technical issues to enable the global reduction of mercury.

10. Mr. Steiner was unable to attend the meeting in person but, in a recorded video message, thanked the Government and people of Uruguay for their hospitality and generosity. A few days after the United Nations Conference on Sustainable Development in Rio de Janeiro, opinions differed as to whether the outcome achieved was sufficient. The current session was important, therefore, as the first since that Conference, to demonstrate that multilateral processes could result in meaningful action. The committee's progress so far augured well for a credible and meaningful result at the planned diplomatic conference at which the mercury instrument was to be signed in Japan in 2013. Acknowledging that the negotiation of a mercury instrument was not easy given countries' highly varied circumstances, he said that the outlines of such an instrument were nevertheless emerging, and he urged all parties to reach for compromise given that the dangers of mercury were uncontested and that there was agreement that the risks posed by the substance must be reduced as far as possible. There was a relatively narrow window of time left in which to prove to the world that the committee could produce a global instrument able to protect the world's citizens. For its part, UNEP was deeply committed to providing the necessary support to the committee during the negotiation process. He expressed the hope that by its fifth meeting the committee would produce an instrument to be proud of that spoke to the rights and needs of future generations.

11. In his opening address, Mr. Almagro welcomed the participants to Uruguay, saying that they came at a historic moment in the process of completing the committee's mandate, with little time left to do so. In hosting the session, Uruguay was reaffirming its deep commitment to multilateralism, environmental protection and the development of international environmental law. He summarized Uruguay's history of commitment to environmental issues, starting with the Montevideo programme of international environmental law, and promised that his country would do its part to achieve a mercury instrument that would protect the environment and human health from the risks of mercury while taking into account the diversity of its parties.

12. He stressed Uruguay's active participation in the chemicals and wastes agenda, highlighting the country's responsibility as an exporter of food and the challenges it faced in industrialization and its expanding mining sector. It had anticipated the entry into force of the convention by taking many measures relating to mercury and as a net importer of mercury-containing products faced significant challenges in managing mercury. The country's largest consumer of mercury and producer of mercury-containing waste had made a proposal to change its technology. Uruguay was in the early stages of developing technologies for decontaminating mercury and would be in a position to carry out proper environmental management of end-of-life mercury-containing products when recently

approved projects would allow access to the required distillation technology. Other projects had enabled the country to learn about mercury-related environmental issues and provided the tools to manage them, and new projects would enable the environmentally sound management of mercury waste.

13. He encouraged the participants at the current session to look beyond the current financial circumstances to find a grand vision of the future and to show flexibility, taking a long-term view and keeping in mind those who were most exposed and vulnerable to mercury. Finally, he acknowledged the fundamental role of civil society in the process and invited Governments to take more ambitious stances within the limits of what was feasible.

14. The master of ceremonies then introduced a video on artisanal and small-scale gold mining from the Global Mercury Partnership of the United Nations Environment Programme, after which he closed the opening ceremony, thanking the guests of honour for attending.

III. Organizational matters

A. Adoption of the agenda

15. The committee adopted the following agenda on the basis of the provisional agenda that had been circulated in document UNEP(DTIE)/Hg/INC.4/1:

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

16. The committee agreed that it would meet from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. each day. It also agreed to establish contact, drafting and other groups as necessary, taking into account the needs of small delegations. In accordance with the rules of procedure, although such groups would be open to Governments and observers, proposals could only be made by Government parties and priority would be accorded to such parties, both in speaking and in gaining access to rooms where space was limited. The committee also agreed that it would consider the work product of any contact group or other small group with the intention of forwarding any draft text agreed by that group to the legal group for review in accordance with the latter's mandate.¹ Any square brackets that remained in such draft text would be retained and addressed at a later stage of the committee's deliberations and would not delay submission of the draft text to the legal group.

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

¹ The mandate of the legal group is set out in paragraph 251 of the report of the committee's second session (UNEP(DTIE)/Hg/INC.2/20), which states 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 Biniaz (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."

18. The committee agreed to use the new draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury (UNEP(DTIE)/Hg/INC.4/3) prepared by the secretariat pursuant to the committee's request at its third session as a starting point for its discussions under agenda item 3 and to structure its discussions in accordance with the arrangement of the draft articles in the document. It was stressed, however, that the draft text was merely a starting point and that parties were not limited thereby in their proposals or positions.

19. In addition to document UNEP(DTIE)/Hg/INC.4/3 the committee had before it other documents prepared by the secretariat to support the discussion under item 3 of the agenda as requested by the committee at its third session. They included a proposal for a conceptual approach and possible text on financial resources and technical assistance prepared by the co-chairs of the contact group on financial resources and technical assistance (UNEP(DTIE)/Hg/INC.4/4), an approach to possible elements of Articles 10 and 11 prepared by the co-chairs of the contact group on emissions and releases (UNEP(DTIE)/Hg/INC.4/5), information on possible transitional arrangements pending phase-out of mercury-added products and manufacturing processes in which mercury was used (UNEP(DTIE)/Hg/INC.4/6), a compilation of reporting obligations and action plans envisaged in the draft negotiating text and a survey of reporting obligations and action plans under other relevant multilateral environment agreements (UNEP(DTIE)/Hg/INC.4/7).

C. Attendance

20. Representatives of the following States participated in the session: Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Chad, Chile, China, Colombia, Comoros, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Egypt, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Jamaica, Japan, Jordan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Mali, Marshall Islands, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tunisia, Tuvalu, 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.

21. An observer for Palestine also attended.

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

23. The following intergovernmental organizations were represented: African Union Commission, European Union, International Energy Agency Clean Coal Centre, Pan American Health Organization.

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

25. 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.4/INF/3.

IV. Preparation of a global legally binding instrument on mercury

26. Following the pattern set at its 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.4/3, containing the revised draft text for a comprehensive

and suitable approach to a global legally binding instrument on mercury prepared by the secretariat as requested by the committee at its third session.

A. Statements

27. One representative, speaking on behalf of Latin American and Caribbean countries, said that the recently concluded United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, had reaffirmed the principles contained in the 1992 Rio Declaration on Environment and Development, including principle 7 on common but differentiated responsibilities, principle 15, the precautionary principle, and principle 16, the polluter pays principle, and that all three principles had to be given full cognizance in the mercury instrument. The mercury negotiations should take into account the different characteristics and situations of countries, and compliance with the instrument should be assisted by the development of an appropriate financial instrument able to deliver predictable, stable and timely funding, particularly for least developed countries and small island developing States. In addition, regional and subregional mechanisms for the delivery of technical assistance and technology transfer, including existing regional centres, should be promoted. The instrument should be flexible and should focus on viable actions and practical measures that could be implemented by all countries. Of particular importance was the matter of artisanal and small-scale gold mining, and efforts to reduce mercury use in that area should be supported by education, information exchange and the promotion of alternatives. Waste storage and contaminated sites were other challenging areas that required financial and technical support. Measures to reduce the supply of mercury and mercury-added products should include a clearly defined timeline for phase-out, taking into account the availability of viable alternatives. Finally, she stressed that a risk-centred approach was important to ensure that concerns for health and the environment were balanced with the need for development and poverty reduction.

28. The representative speaking on behalf of the European Union and its member States expressed support for the organization of work proposed for the meeting and said that the negotiations would be facilitated by the significant progress that had been made intersessionally on selected issues. The documents made available for the present meeting were very helpful and provided a sound basis for negotiations. She highlighted in particular atmospheric emissions, supply and trade and storage and waste as areas in which the European Union looked forward to presenting its views at the current session.

29. Speaking on behalf of Asian and Pacific countries, one representative expressed appreciation to the secretariat and others for the documentation prepared for the current session. He urged participants to pick up the pace of the negotiations to complete the process in line with the timetable called for by decision 25/5, and he said that the mercury instrument should be effective, practicable, flexible and implementable, featuring both mandatory and voluntary measures and taking account of the particular situations of various countries.

30. One representative, speaking on behalf of African countries, said that the current session was critical in making progress towards finalization of the mercury instrument, and he noted that the outcome document of the United Nations Conference on Sustainable Development called for a satisfactory conclusion of the negotiations. The intersessional work had produced a streamlined and workable text that offered a good basis for further discussions aimed at resolving areas of divergence, and participants should finalize those sections on which agreement was close to give more time for discussion on those sections that were further from consensus. Stressing the issue of health, he commended the World Health Organization (WHO) for supplying updated information on the impacts of mercury on human health, which posed a particular challenge for developing countries. In that regard, it was important to ensure that developing countries did not become a dumping ground for mercury-added products that were proscribed in developed countries. Finally, he stressed that the instrument should be viewed as an integral component of continuing efforts to help countries with developing and transitional economies to attain international development targets, including the Millennium Development Goals. In that regard, application of the principle of common but differentiated responsibilities was critical to ensuring adequate financial and technical assistance as a basis for compliance and staged implementation of the instrument.

31. Speaking on behalf of the Central and Eastern European countries, one representative thanked the donors for their support of regional meetings. He praised the progress that had been made through intersessional work, which had led to significant improvements to the text in several sections.

32. One representative, speaking on behalf of Arab countries, said that the negotiations had entered a critical stage. Success depended on a number of factors, including acknowledgement of the relevance of the Rio principles. The sovereign rights of States with regard to the development of their own natural resources should be respected, and the Arab countries were opposed to the view that

thermal energy production using oil or gas was a significant source of mercury emissions. He urged donors to fund training and technology transfer to increase the effectiveness of the instrument and said that developing countries and countries with economies in transition needed a dedicated financial mechanism to ensure timely and predictable funding to enable them to fulfil their obligations under the instrument.

33. Statements were then made by representatives of individual parties.

34. Many representatives expressed their appreciation to the Government of Uruguay for hosting the meeting, to UNEP for its effective preparations, and to all those that had been engaged in or had assisted intersessional work on the various sections of the instrument. A number of representatives summarized the work that was being undertaken in their own countries to reduce mercury use and emissions through legislation, policy, programmes and partnerships.

35. Many representatives who spoke summarized their visions for the form and objectives of the new instrument. There was general consensus that the instrument should be robust and effective, but flexible enough to take account of the different situations and stages of development found in different countries. A number of representatives said that in accordance with decision 25/5 the issues of human health and the environment should be kept at the forefront of the negotiations. One representative said that the need for a risk-centred approach to human health should be the focus of a specific article, as well as a cross-cutting theme of the instrument. Some representatives placed the work of the negotiating committee in a wider context, citing the expectations of the international community, the responsibility to current and future generations, and the lessons of the Minamata disaster. One representative recalled that heads of State attending the United Nations Conference on Sustainable Development had recently outlined their vision for sustainable development in the outcome document of the Conference, entitled *The Future We Want*, and said that the principles contained therein could help guide the present negotiations, particularly with regard to the basic framework of the instrument.

36. There was some discussion of the issue of compliance. Several representatives said that a combination of voluntary and binding measures would prove most effective. One representative, however, said that the calls for voluntary measures were based on the mistaken belief that legally binding obligations might be inconsistent with the need for flexibility and with development priorities; it was possible for countries to achieve their development priorities, including through the combustion of fossil fuels, while applying measures to ensure that development was sustainable. Some representatives spoke of the difficulties faced by developing countries in providing electricity to the poor while controlling the mercury emissions associated with coal-fired power stations.

37. Many representatives said that their countries would need adequate financial and technical assistance to fulfil their obligations under the instrument. Such assistance was needed for the development of regulatory and control measures, implementation of projects and programmes and generation of data to assist monitoring, diagnosis and evaluation, among other things. One representative said that in the absence of such assistance parties could only comply with the control measures of the instrument according to their capabilities and priorities. There was support for an independent, dedicated financial mechanism, with several representatives suggesting the Multilateral Fund for the Implementation of the Montreal Protocol as a suitable model. Others favoured the use of GEF as the host of such a financial mechanism. One representative said that financial support for developing countries should be based on time-tested principles and should not make a distinction between developing and emerging countries. Several representatives stressed that the principle of common but differentiated responsibilities should underpin the negotiations.

38. Various representatives highlighted the issues that were of particular importance to their countries. One representative said that if the instrument was to be effective all parties needed to reduce their emissions to air, given their transboundary effects. One representative said that the objective of the instrument should be finalized without delay and that the instrument needed to provide for effective product labelling and take into account the economic viability of best practices, the cost-effectiveness of alternatives and the need for realistic, implementable measures relating to storage, especially for developing countries. Another representative said that it was necessary to raise awareness of the dangers of mercury, particularly with regard to mercury-added products, and for effective policies and legislation on the control of mercury. Some representatives underscored the negative impacts of artisanal small-scale gold mining in their countries, saying that they needed the support of the international community in identifying and implementing viable solutions. One representative spoke of the importance of introducing measures to curtail supply and to ensure that the costs of mercury pollution were internalized.

39. One representative stressed the situation of small island developing States and least developed countries, saying that they often had small mercury footprints but were disproportionately vulnerable

to the adverse effects of mercury from external sources. The national ozone units developed under the Montreal Protocol on Substances that Deplete the Ozone Layer provided a useful model of how technical assistance could be channelled to assist such countries to comply with their obligations under the mercury instrument.

40. The representative of WHO drew attention to a document that the organization had prepared, entitled "Index to Key Information from the World Health Organization", which listed resources for the committee relevant to sections E, G and J of the draft mercury instrument and was available on the committee's meeting documents webpage. The index also contained information on the use of thiomersal in vaccines: in response to questions from parties on that issue at the committee's third session, WHO had produced new information and had, in April 2012, convened an expert meeting on the issue, which was on the agendas of several WHO standing expert committees. In reference to the draft mercury instrument, she said that to achieve its health objectives and deliver the greatest health benefits it must tackle the major sources of mercury pollution. She also recalled that the instrument contained a number of references to WHO and in that context noted that, while WHO had a substantial programme of work on mercury, its objective and function were set out in its constitution, while its work was governed by the World Health Assembly, comprising 194 member States.

41. Several representatives of non-governmental organizations emphasized the serious impacts of mercury on human health and the environment. One called for a ban on the use of mercury, including in mining and in products and processes; binding requirements for monitoring mercury storage and waste; and financial assistance to developing countries. Several said that the mercury instrument, in recognition of the health impacts of aggregate mercury exposure, should protect public health as well as the environment, for example through provisions on medical training and protection from and treatment of exposure to mercury. Another said that the instrument should address emissions to air, water and land, suggesting that limiting it to air emissions would only encourage operators to shift their mercury releases to land and water systems and thus intensify local mercury pollution and exposure; that vinyl chloride monomer (VCM) production also needed to be addressed, and an update provided on alternative mercury catalysts; and that national implementation plans must be binding, including in relation to current and future mercury waste, and address the identification of contaminated sites.

42. Measures were also needed to protect workers involved in small-scale gold mining and to provide them with alternative means of subsistence. Another said that any reference to vulnerable groups in the future instrument should mention indigenous peoples, who suffered disproportionately from the effects of mercury through their food sources and their close relationship to the environment, and that indigenous peoples must be able to participate fully in all mercury-related decision-making. Citing the right-to-know principle, several representatives emphasized the need for a global, transparent database of information on mercury releases in all environmental media.

43. Several representatives of non-governmental organizations said that mercury in dental amalgams was a primary source of mercury pollution affecting human health, and they argued for the development of alternative dental restorative materials, with another saying that alternatives developed to date were no more costly than mercury-based products and that training was available in all countries to facilitate the transition. One representative, however, said that according to WHO there was no ideal alternative to mercury in dental amalgams; temporary allowable-use exemptions were therefore needed along with support for continuing research into viable and cost-effective alternatives.

44. Several representatives argued that thiomersal, a mercury-containing compound used in vaccines, should be eliminated, outlining what they described as the dangers to health, particularly for children, of vaccines containing the substance. One representative, however, said that the substance had well-established antiseptic and antifungal properties, was considered safe by WHO for use in vaccines and should be included in the list of mercury-added products for possible inclusion in Annex C to the mercury instrument; another representative said that thiomersal-containing vaccines had been proven to be safe and remained crucial to the manufacture of vaccines against diseases prevalent in certain countries. Another added that thiomersal was an important preservative for use in multi-dose vials of inactivated vaccines for use in animals at minimal concentrations and had been shown to be safe for humans and animals.

B. Introduction of the documents before the committee

45. The representative of the secretariat reviewed the documents relevant to the item, which were summarized in paragraphs 7–9 of the annotations to the provisional agenda (UNEP(DTIE)/Hg/INC.4/1/Add.1). The representative also introduced document UNEP (DTIE)/Hg/INC.4/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 revised draft text.

C. Detailed discussion

46. As noted above, the committee agreed to use the revised draft text, as presented in document UNEP(DTIE)/Hg/INC.4/3, as the basis for its discussions at the current session and to structure its discussions in accordance with the sections of that document. The Chair introduced each section of the draft text. During the session, and as discussed further below, various changes to the draft text were proposed in contact groups and by the legal group following discussions in plenary. Those proposed changes, which during the session were presented to the parties in plenary in conference room papers prepared by the chairs of the contact groups and the legal group, have been incorporated into a further revised version of the draft text set out in annex I to the present report. Like previous versions of the draft mercury instrument, the revised version in annex I makes use of square brackets, options and alternatives to capture the competing proposals put forth by the parties without choosing between them.

1. Preamble (section A of the draft text)

2. Introduction (section B of the draft text)

47. Except as described below in respect of definitions, the committee agreed to postpone further consideration of the preamble and articles 1 and 2 until its fifth session, in anticipation of progress on other elements of the draft mercury instrument. The text of those provisions, reproduced without change from document UNEP(DTIE)/Hg/INC.4/3, is included in the revised draft text set out in annex I to the present report.

(a) Definitions (article 2 of the draft text)

48. The committee agreed that definitions could be discussed by contact groups during the current session as necessary in the context of the articles being discussed by those groups. One representative, however, voiced a concern about possible inconsistencies arising from separate discussions on definitions in the different contact groups, and another voiced a preference for consolidating the definitions at the beginning of the draft instrument. In the light of those concerns it was agreed that the contact groups would endeavour to communicate with one another regarding any concerns about consistency. It was also agreed that the definitions would be referred to the legal group, which would consider their consistency, and that the committee would consider at a later time their placement in the instrument. Except for the definition of best available techniques, which was revised as discussed in section IV. C. 6., below, the definitions are included in the revised draft text set out in annex I to the present report without change from document UNEP(DTIE)/Hg/INC.4/3.

3. Supply (section C of the draft text)

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

(a) Mercury supply sources (article 3 of the draft text)

(b) International trade [with Parties] in mercury [or mercury compounds] (article 4 of the draft text)

(c) International trade with non-Parties in mercury [or mercury compounds] (article 5 of the draft text)

49. The committee agreed to discuss sections C and D, articles 3–5, of the draft text together.

50. There was general agreement that supply and trade provisions were important, with some representatives noting in particular the importance of restricting supply in order to reduce mercury use and the close links between mercury supply and mercury use in products and processes.

51. Many representatives, including one speaking on behalf of a group of countries, expressed support for combining elements of the articles on supply and trade in a single article in order to streamline the relevant provisions of the mercury instrument and bolster its effectiveness; two representatives, including one speaking on behalf of a group of countries, submitted conference room papers containing specific proposals to that end. Several representatives said that the supply and trade provisions of the mercury instrument should be in harmony with other provisions of the instrument having a particular impact on supply and trade, such as those in the sections on artisanal and small-scale gold mining and mercury in products and processes.

52. Some representatives, including several speaking on behalf of groups of countries, supported the immediate prohibition of primary mercury mining in order to phase out mercury supply sources.

One representative, speaking on behalf of a group of countries, said that doing so would require technical assistance, technology transfer and capacity-building to enable countries to manage existing stocks, as well as initiatives to promote alternative employment. Some representatives said that mining should cease in each party from the time of signing of the mercury instrument, while others favoured the time of the instrument's entry into force for the party, and still others called for a more gradual phase-out to enable countries to make the necessary social and economic adjustments. Other representatives opposed a ban on mining and therefore expressed support for option 2 of article 3. One, noting that his country was the last known to have a primary mercury mine exporting mercury to the global marketplace, said that it could not eliminate mining without international assistance in developing alternative sources of employment and addressing related social and economic issues, and he thanked a number of countries and international organizations for the constructive discussions of the matter that had taken place to date.

53. Several representatives said that trade provisions would be important in advancing the goals of the mercury instrument. Various views were expressed about whether mercury exports to non-parties should be regulated and to what extent, as well as whether trade in mercury should be subject to prior informed consent. Several representatives highlighted the advantages of following the Stockholm Convention model for the future mercury instrument, stating that it was more in line with World Trade Organization (WTO) rules than other multilateral environmental agreements. Several representatives suggested that the mercury instrument should have separate provisions governing trade with parties and trade with non-parties.

54. Some representatives argued that export restrictions should apply to all sources rather than specified sources, particularly in the light of the difficulty of identifying the source of mercury once it had left its source. One representative said that the mercury instrument should include a provision to ensure that minerals with naturally occurring traces of mercury were not subject to any restrictions on mercury supply or trade.

55. The representatives of two non-governmental organizations expressed support for strong measures to control the supply and trade of mercury, including, among other things, a ban on primary mercury mining to begin upon entry into force of the mercury instrument; the capture and recovery of mercury produced through industrial processes and measures to prevent it from entering the resale market; mandatory inventories of and reporting on mercury supply sources; the prohibition of mercury sales and exports, subject to limited exemptions; and environmentally sound management and robust licensing systems for trade occurring under exemptions. One suggested that such measures would create significant economic incentives leading to reduced demand. The other said that alternatives to the use of mercury in artisanal and small-scale gold mining were available and that arguments about the unfair economic impacts of eliminating it overlooked the significant economic costs to human health and the environment that it caused.

56. The committee agreed to establish a contact group on mercury supply and trade issues, to be co-chaired by Mr. Karel Bláha (Czech Republic) and Mr. Abdullah Al Rasheed (Saudi Arabia). The contact group was requested to examine articles 3, 4 and 5 in the draft text, taking into account the views expressed during the plenary discussion, the conference room papers submitted and other provisions of the draft mercury instrument that could have an effect on supply and trade.

57. Subsequently, Mr. Bláha reported on the work of the contact group, presenting a conference room paper setting forth revised text prepared by the co-chairs of the group in which articles 3, 4 and 5 were consolidated in article 3 and a new article 4. He said that views still diverged on all issues and that some text was closely related to other articles still under discussion; much of the text was therefore in square brackets to indicate that it was not yet agreed. The new article 4, dealing with inventories, had not been discussed by the contact group and was intended as a possible starting point for discussion at the committee's fifth session. The contact group, in line with its mandate, had also discussed paragraph 5 of article 9, dealing with imports and exports of mercury and mercury compounds for use in artisanal and small-scale gold mining. Based on the strong recommendation of the contact group on artisanal and small-scale gold mining, the group had concluded that the paragraph should remain in that article; the group concluded similarly that other trade-related provisions of the instrument should remain in the various articles where they were found and that the committee should discuss all such provisions at its fifth session.

58. Following the report of the co-chair, one representative requested that paragraph 4 of option 2 of article 3 in document UNEP(DTIE)/Hg/INC.4/3, on the subject of equitable compensation for those parties renouncing exploitation of existing mercury stocks or mining resources at the date of entry into force of the instrument, be retained in the draft text of the article for further consideration by the committee.

59. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

- 5. Products and processes (section E of the draft text)**
- (a) Mercury-added products (article 6 of the draft text)**
 - (b) Manufacturing processes in which mercury is used (article 7 of the draft text)**
 - (c) Allowable-use exemptions [and acceptable use] (article 8 of the draft text)**
 - (d) Special situation of developing countries (article 8.bis of the draft text)**

60. Following introduction of the item, the representative of Japan explained that in response to concern among some countries that section E of the draft mercury instrument in document UNEP(DTIE)/Hg/INC.4/3, on mercury-added products and processes in which mercury was used, required the resolution of many issues, and in the absence of an agreement to carry out interessional work in this area at the committee's third session, Japan, in consultation with Jamaica and the European Union, had hosted an informal consultation in Tokyo in April 2012. The consultation had involved approximately 20 experts from two countries from each region plus Japan, and had resulted in the preparation of a document setting out an alternative approach, which had been submitted as a conference room paper for the current session as a possible basis for further discussion.

61. The consultation had not involved any negotiation and had not been intended to preempt discussion at the current meeting, and the conference room paper did not necessarily reflect all views expressed at the consultation. The paper covered what products and processes might be subject to the mercury instrument and how they might be regulated through a negative, positive or hybrid list approach.

62. In the ensuing discussion, all speakers supported the use of the paper as a sound basis for further discussion. Several representatives, one speaking on behalf of a group of countries, proposed alternatives and amendments in two conference room papers.

63. There was broad agreement among those who spoke that it was necessary to phase out mercury as soon as possible, and one representative called for a simple solution that was adaptable to changing circumstances. Another representative, speaking on behalf of a group of countries, maintained that the mercury instrument should have no exemptions and that all obligations under the instrument should be binding. Should exemptions prove unavoidable, they should not detract from the objective of the mercury instrument and should be applicable only until alternatives were available. Several other representatives argued for the prioritization of major mercury uses, focusing on those involving the greatest quantities of mercury and causing the most harm, while others called for an outright ban on all new mercury-containing products and processes using mercury. One representative, speaking on behalf of a group of countries, advocated a clearer definition of new products and another called for product labelling in respect of mercury content.

64. Several representatives, including one speaking on behalf of a group of countries, said that they favoured a negative list approach, as applicable control measures would encompass new products automatically unless they were specifically exempted; one added that those wishing to use mercury in products and processes should bear the burden of demonstrating the need for an exemption. Such an approach could work well for all levels of ambition, including for developing countries. Several others advocated a positive list approach, saying that it was more pragmatic for countries with limited resources and allowed a more cost-effective focus on areas of major concern. Another representative spoke in favour of a hybrid list approach.

65. Many representatives argued that essential and allowable use exemptions and transitional arrangements were needed during a phase-out period for cases in which viable and affordable alternatives were not readily available. Such flexibility would allow for developing countries' circumstances and help prevent non-compliance. One representative said that there was a need to determine which mercury-containing products were essential and how they should be used until alternatives were found, and another that the product groups required further development.

66. Several representatives expressed support for a general ban on mercury catalysts and electrodes. One representative, who said that his country aimed to reduce the mercury content of catalysts by half over five years as an indicative policy on a voluntary basis, argued that there was currently a lack of technically and economically viable alternatives to the use of mercury in vinyl chloride monomer production and that allowable-use exemptions would be needed; banning mercury use for this process would considerably increase the use of oil, driving up demand for oil on the world market. Two representatives highlighted the need for exemptions for mercury-containing products,

such as cinnabar, for use in traditional medicines. One representative queried the separate treatment of dental amalgam in the conference room paper emanating from the intersessional consultation.

67. Representatives of several countries drew attention to the need for financial and technical assistance to ensure compliance in respect of mercury use in products and processes.

68. The representative of WHO said that the organization had provided information to the negotiating committee about health sector use of mercury-added products. Action had begun some years ago to replace mercury thermometers and sphygmomanometers in the health sector; validated and affordable alternatives were available for all patient groups, although the transition required careful planning and time. On the matter of mercury-containing dental amalgam, she said that the participants at a 2009 WHO technical meeting had recommended a global phase-down in its use; that would require coordinated action by all stakeholders, in which WHO could play a planning, coordinating and facilitating role.

69. Regarding the use of thiomersal as a preservative in multi-dose vaccine vials, she said that the available evidence on the safety of thiomersal and the availability of alternatives had been examined at a WHO consultation in April 2012. The experts involved had reaffirmed the view that the benefits of using thiomersal-containing multi-dose vaccine vials outweighed any risks. The WHO representative went on to say that restricting the use of thiomersal in multi-dose vaccines would threaten immunization programmes and that a move to preservative-free single-dose products would increase costs and present operational problems, negatively affecting human health. In addition, no alternative preservatives had so far been evaluated as suitable for all vaccine products in which thiomersal was currently used.

70. In conclusion, she said that WHO and its expert advisory committees continued to lead and coordinate international work on vaccine safety, policy and programmatic delivery, and cautioned that the creation of another international mechanism on that subject might give rise to duplication and uncertainty. WHO would continue to develop, implement and promote international recommendations and standards on vaccines, including WHO recommendations on vaccines to ministries of health and vaccine manufacturers.

71. Statements were then made by representatives of a number of non-governmental organizations. One said that mercury products and processes should be prohibited, subject to limited allowable-use exemptions; alternatives were available for most uses, and transitions were already under way. In addition, cross-border trade in mercury products and obsolete equipment should be prevented, especially from developed to developing countries. Another representative of a non-governmental organization expressed support for a negative list approach, the imposition of extended producer responsibility for mercury-added products, and phase-out timelines for mercury-added products and production processes using mercury.

72. One representative of a non-governmental organization said that access to health care products that did not contain harmful ingredients was a basic human right. Currently there was a great disparity between rich and poor countries with regard to access to safe, mercury-free products. Mercury-added products, including thiomersal, had the potential to cause severe adverse health effects, particularly in children, and insufficient efforts were being made to remove them from the market. Another representative said that it was important to take urgent measures to ensure that toxic exposure did not have negative impacts on the neurological health and well-being of children.

73. One representative said that dental amalgam was a mercury-containing, polluting product that should be phased down, with a longer-term aim to phase it out. Atraumatic restorative treatment was a cheap alternative that had significant advantages in low-technology settings, and insufficient efforts were being made to inform consumers of the dangers of amalgam use. Another representative expressed support for phasing down the use of dental amalgam but said that such action posed significant challenges and should take account of national circumstances; in the meantime, all current existing methods of dental restoration would need to remain available to the dental profession in the short and medium term.

74. Following its discussion, the committee agreed to establish a contact group, co-chaired by Mr. Barry Reville (Australia) and Mr. David Kapindula (Zambia). The group would base its work on the conference room papers submitted, document UNEP (DTIE)/Hg/INC.4/6, on transitional arrangements pending phase-out of mercury products and processes, and the views expressed in plenary, and it would aim to develop draft text on products and processes for articles 6, 7, 8 and 8 bis and related annexes.

75. During a subsequent discussion of the progress being made by the contact group, one representative introduced a conference room paper outlining a number of issues. The committee agreed that the contact group would consider the paper during its deliberations.

76. Mr. Reville subsequently reported that the contact group had made significant progress on articles 6 and 7 and related annexes and presented a conference room paper setting forth draft text for those provisions. Some policy issues remained unresolved, however, and there had not been time to give all parts of the two articles equal attention; as a result some text remained in square brackets to indicate a lack of agreement, but the progress made would greatly facilitate the committee's work at its fifth session. A central issue remained the overarching design of the articles, with parties supporting positive, negative and hybrid approaches. Owing to a lack of time, the contact group had not discussed articles 8 and 8 bis.

77. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

6. Artisanal and small-scale gold mining (section F (article 9) of the draft text)

78. The Committee took note of the progress made at its third session and the draft text on artisanal and small-scale gold mining presented in document UNEP(DTIE)/Hg/INC.4/3. The committee agreed to establish a contact group, to be co-chaired by Mr. Felipe Ferreira (Brazil) and Mr. Donald Hannah (New Zealand). The contact group was requested to consider opportunities to resolve issues relating to bracketed text in the draft mercury instrument and to identify issues that could not be resolved because they were linked to unresolved issues in other sections of the instrument.

79. Mr. Hannah subsequently reported that the contact group had succeeded in producing clean text for the first four paragraphs of article 9 and for Annex E. Paragraph 5 of article 9 would require more work to decide between three alternative wordings, while paragraph 6 was linked to the section of the instrument on financial resources and technical and implementation assistance and therefore could not be agreed upon at that stage. The text as it stood at that point was set out in a conference room paper, with the text on which agreement was lacking enclosed in square brackets. The committee agreed that the conference room paper should be submitted for review by the legal group.

80. Following the co-chair's report, a representative of one country advocated developing criteria to guide countries in determining whether or not artisanal and small-scale gold mining in their territories was "more than insignificant", as that term was used in paragraph 3, and hence whether it was subject to mandatory action, saying that without such guidance control measures might be ineffective.

81. The chair of the legal group, Ms. Susan Biniac (United States of America), subsequently reported on the group's work in respect of article 9 and annex E, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

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

(a) [Unintentional] [A][a]tmospheric emissions (article 10 of the draft text)

(b) Releases to water and land (article 11 of the draft text)

82. Introducing the issue, the Chair recalled that a contact group on emissions to air and releases to land and water had been set up at the committee's third session. That contact group had undertaken extensive discussion at a conceptual level but had not discussed any specific proposals regarding the draft text, and it had been agreed that the co-chairs of the group would work intersessionally to prepare an approach to possible elements of articles 10 and 11 for consideration at the committee's fourth session. The outcome of that work was presented in document UNEP(DTIE)/Hg/INC.4/5.

83. Introducing the document, Mr. John Roberts (United Kingdom), co-chair of the contact group, said that all parties recognized the need for action on emissions and releases and a flexible approach that took account of national circumstances, including the need of a number of countries to meet the energy requirements of their populations. Accordingly, two approaches had been developed for the consideration of the committee: approach A, committing parties to taking specified measures to control or reduce emissions but allowing flexibility to reflect national circumstances; and approach B, committing parties to developing nationally determined measures to control or reduce emissions. There were certain elements common to both approaches, including the recognition that application of best available techniques and best environmental practices offered a promising way forward.

84. There was extensive discussion of the issues related to emissions and releases. Many representatives stressed the importance that their countries attached to that part of the mercury

instrument, and there was consensus that the document prepared by the co-chairs offered a solid basis for discussion. A number of representatives, including several speaking on behalf of groups of countries, said that they had submitted conference room papers on the matter.

85. There was also some discussion of the issue of whether releases to water and land should be included in a combined article with air emissions, should be the subject of a separate article or should be covered under other provisions. One representative said that due prominence ought to be given to releases of mercury to water and land, as they had been the main cause of Minamata disease.

86. Regarding the control measures pertaining to emissions and releases, several representatives observed that Governing Council decision 25/5 provided for a flexible approach tailored to the requirements of different countries, taking into account their different capacities and circumstances. One representative, however, said that decision 25/5 set out a clear mandate for the application of binding commitments to reduce risks to human health and the environment, while acknowledging that the implementation of those binding commitments needed to be flexible, to recognize specific national circumstances and to be backed up by appropriate financial and technical assistance.

87. A number of representatives stressed the importance of taking into account the situations of developing countries and countries with economies in transition, particularly with regard to satisfying the energy needs of their populations as they pursued economic development, the principal means of which would continue to be coal-based electricity generation. One representative said that commercially proven technologies for the removal of mercury from combustion emissions were not available, making it impracticable to impose legally binding limits and targets for mercury emissions. A more pragmatic approach would involve the development of national implementation plans, to be reviewed at regular intervals by the conference of the parties, as a vehicle for the control and reduction of atmospheric emissions. He added that the matter of emissions and releases was closely related to the issue of compliance and adequate financial and technical assistance, in line with the principle of common but differentiated responsibilities.

88. A number of representatives said that best available techniques and best environmental practices were promising and useful tools for dealing with emissions and releases, providing the flexibility needed to accommodate the wide range of circumstances found in different countries. One representative, however, speaking on behalf of a group of countries, said that developing countries and countries with economies in transition would need assistance in implementing best available techniques and best environmental practices. Another representative said that guidance on best available techniques should be available early, preferably at the first meeting of the conference of the parties, to facilitate the drawing up of sector-specific guidance and expected reduction values.

89. One representative said that emissions to air should be subject to binding requirements and that all parties should be required to take action to reduce emissions from those sources listed in annex F. Even parties increasing energy production through construction of coal-fired power stations could control emissions through the application of best available techniques. It was important to focus resources on the most significant sources of emissions, with best available techniques providing the flexibility to deal with a wide range of different circumstances. In addition, it was reasonable for the cost of emissions reductions to be borne by the enterprises responsible for the emissions.

90. There was a range of opinions on how best available techniques and best environmental practices would apply to new or existing facilities. A number of representatives said that they should apply in the case of new facilities and that further clarity was required with regard to existing facilities. Some representatives highlighted the role of multi-pollutant control technologies as a cost-effective way of reducing mercury emissions from large installations.

91. There was some discussion of the source categories listed in annex F to the draft instrument. Several representatives said that inclusion of oil and gas production and processing facilities among the source categories was not appropriate, arguing that a number of studies indicated that mercury emissions from that source were insignificant. One representative speaking on behalf of a group of countries said that oil and gas production and processing should be retained in annex F, as evidence did indicate that they produced significant mercury emissions. One representative said that only major sources of emissions should be included in annex F. Another highlighted traditional household stoves as a significant source of harmful emissions, including mercury, with considerable negative impacts on human health; improved, cleaner stoves had the potential to reduce those harmful effects greatly.

92. A representative speaking on behalf of a group of countries called for the production of mercury emissions inventories to enable better prediction of the contributions of countries to global mercury emissions, adding that further discussion was needed on how emissions limit values were

defined and treated under the mercury instrument. Another representative said that inventories were important as a means of establishing a baseline against which to measure emissions reductions.

93. A representative of a non-governmental organization said that it was essential to control emissions and releases to all media; that large-scale mining merited attention as a major source of mercury emissions; that greater efforts should be made to promote alternative, sustainable sources of energy that did not release mercury; and that mercury emissions from extractive industries, including oil and natural gas, and the new technology of fracking, needed to be addressed. Another representative of a non-governmental organization said that when introducing control requirements it was important to ensure that mercury was not transferred between media and that the setting of size thresholds for facilities should only be undertaken once the data needed to do so accurately were available. Another representative of a non-governmental organization highlighted the plight of indigenous peoples inhabiting Arctic regions, who were exposed to concentrated levels of mercury in their traditional food sources due to transport by air and water from outside the region and were further threatened by releases of mercury owing to climate change, for example from the melting of permafrost and increased incidence of wildfires.

94. The committee agreed to establish a contact group on emissions to air and releases to land and water, chaired by Mr. Roberts and Mr. Juan Miguel Cuna (Philippines). The contact group would consider articles 10 and 11 and related annexes, including their scope and their relevance to other articles, and would seek to produce draft text combining the two proposed approaches described in document UNEP(DTIE)/Hg/INC.4/5.

95. Mr. Cuna subsequently reported that the contact group had reached agreement on draft elements of text for defining best available techniques, which was set out in a conference room paper. The draft emphasized that sources of emissions and releases should be addressed holistically and at the enterprise level, that emissions to land, air and water must all be addressed, and that national circumstances must be of paramount consideration. The remaining brackets did not affect the essence of the agreed draft elements.

96. The committee agreed that the conference room paper should be submitted for review by the legal group. The chair of the legal group subsequently reported on the legal group's work in respect of the definition of "best available techniques", the result of which was set out in a conference room paper. She said that the legal group had been able to clarify the word "available" but the final definition of "techniques" would depend on whether the list of techniques set out in the definition was intended to be complete or merely to provide examples. Following that report one representative said that the definition of "techniques" required further consideration at the committee's fifth session. Another said that care should be taken to ensure that words or phrases used in the English version of the mercury instrument had satisfactory equivalents in the other United Nations languages. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

97. Mr. Roberts subsequently reported on the balance of the contact group's work on articles 10 and 11. Explaining that the group had not reached the point of discussing draft text in the body of the mercury instrument, he presented a conference room paper containing a written report that he had prepared with his co-chair outlining the matters discussed by the group, the proposals put forth by participants and proposals for intersessional work. He also noted that the group had revised the lists of mercury release sources in annexes F and G to the draft mercury instrument, which were set out, as so revised, in annexes A and B to the co-chairs' report.

98. Following the co-chair's report one representative, speaking on behalf of a group of countries, said that paragraph 17 of the co-chairs' written report did not fully capture the views expressed by those countries. The committee agreed that the sentence would be amended accordingly, and that the co-chairs' written report on the work of the contact group, as so amended, should be annexed to the meeting report as a basis for further work at its fifth session. The co-chairs' report is set out in annex II to the present report. The revised Annex F and Annex G are reproduced without change in the revised draft text set out in annex I to the present report. The text of articles 10 and 11 is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

- 8. Storage, wastes and contaminated sites (section H of the draft text)**
- (a) Environmentally sound [interim] storage of mercury, other than waste mercury (article 12 of the draft text)**
- (b) Mercury wastes (article 13 of the draft text)**
- (c) Contaminated sites (article 14 of the draft text)**

99. The Committee agreed to consider articles 12, 13 and 14 together.

100. Several representatives, including two speaking on behalf of groups of countries, supported the inclusion of mandatory provisions in articles 12, 13 and 14. One stated that the absence of such provisions could undermine the goals of the mercury instrument and drew attention to a conference room paper that included specific proposals submitted by a group of countries. Another representative, saying that storage and waste issues were challenging, said that facilitative and flexible provisions provided the best way forward. One supported the inclusion of a strong life-cycle approach to managing mercury.

101. Several representatives, including two speaking on behalf of groups of countries, supported the elaboration of guidelines on mercury storage and mercury wastes. One representative said that article 12 should impose a mandatory requirement that parties store mercury safely but the means for doing so should be the subject of voluntary guidance. Another said that article 12 should cover mercury compounds. Two representatives said that clear definitions for storage, waste and other terms should be clearly outlined in the text and one expressed a preference for developing a single article in the convention to delineate relevant definitions.

102. One representative, speaking on behalf of a group of countries, said that the issues surrounding mercury waste were not just technical questions, but also issues of social justice and equality; articles 12 and 13 and related annexes should therefore include requirements to ensure transparency and public participation regarding the siting of storage and treatment facilities. It was also important to provide consistent guidance to ensure that commodity mercury was managed, transported and stored appropriately until it could be properly disposed of.

103. Several representatives, including two speaking on behalf of groups of countries, supported the inclusion of guidelines on addressing contaminated sites in article 14. One representative, speaking on behalf of a group of countries, said that it was important to address existing contaminated sites in Africa and around the world and the risks that they presented to human health and the environment. To address contaminated sites effectively, the mercury instrument needed to include mandatory inventory and site characterization requirements, hold polluters accountable for cleanup costs and for providing appropriate compensation to victims, and ensure that local communities were informed about site characterizations and any imminent health risks. One representative said that only limited information on contaminated sites was available in many developing countries and countries with economies in transition and that global efforts were needed to identify such sites and provide information on the impacts of mercury on human health and the environment.

104. Several representatives, including one speaking on behalf of a group of countries, said that the provisions of articles 12–14 should be consistent with guidelines developed under the Basel Convention. Another representative speaking on behalf of a group of countries said that to prevent future mercury contamination the mercury instrument should include binding requirements that addressed gaps in the Basel Convention and ensured that mercury was controlled at all stages in its life cycle. Another representative said that the purpose of the mercury instrument differed from that of the Basel Convention and that it would therefore be appropriate to develop additional binding guidance specifically relevant to the goals of the mercury negotiations. Another representative said that while the guidelines under the Basel Convention should form the basis for managing mercury wastes, the mercury instrument could establish additional requirements. A flexible approach to the management of mercury wastes, supported by clear guidance, would be most effective, including the development of new treatment options and acknowledgement that some approaches might best be undertaken through regional cooperation.

105. Two representatives of non-governmental organizations said that it was important to establish binding provisions in the mercury instrument in respect of storage and waste. The provisions should also clearly incorporate the polluter pays principle, placing financial responsibility for the remediation of contaminated sites on those responsible for creating them, and national obligations to prepare inventories of contaminated sites and prioritize them in national implementation plans.

106. The committee agreed to establish a contact group on storage, wastes and contaminated sites, to be co-chaired by Ms. Anne Daniel (Canada) and Mr. Adel Shafei Osman (Egypt). The contact group was requested to examine articles 12, 13 and 14 in the draft text, taking into account views expressed during plenary discussion as well as a conference room paper submitted on the issue and to examine the issue of definitions. The contact group was requested to consider opportunities to resolve issues relating to bracketed text and, if necessary, to identify issues that could not be resolved because they were linked to unresolved issues in other sections of the proposed instrument.

107. Ms. Daniel subsequently reported that the contact group had reached agreement on the text of article 14, on contaminated sites, except for a section, enclosed in square brackets, whose finalization would have to await agreement on the provisions of the mercury instrument pertaining to financial resources and technical assistance. The results of the group's work were set out in a conference room paper. The group had not revisited text agreed at earlier sessions of the committee but had added a list of elements of guidance on addressing contaminated sites, which had been an important element for a number of delegations. The group had made progress on article 13, on wastes, but the article needed further work, particularly in respect of compromise text on requirements and guidance. That text was the subject of informal consultations and, once agreed, would aid deliberations on article 12, on storage. The contact group, she said, therefore needed more time to complete its work on both article 12 and article 13.

108. The committee agreed that the conference room paper on article 14 should be submitted for review by the legal group and that the contact group should continue its work in respect of articles 12 and 13.

109. The chair of the legal group subsequently reported on the group's work in respect of article 14, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

110. Ms. Daniel (Canada) subsequently reported on the work of the contact group in respect of articles 12 and 13, saying that the contact group had agreed on a number of relatively uncontroversial issues and highlighting a number of outstanding issues that would have to be addressed at the committee's fifth session. The results of the group's work were set out in a conference room paper.

111. Thus in article 12 the reference to mercury compounds in paragraph 1 might need to be revisited depending on how the term was defined in the instrument, and there was bracketed text in paragraph 3 reflecting a lack of agreement about whether environmentally sound storage would be the subject of binding provisions or guidance. Regarding the latter point, one member of the contact group wanted the present report to reflect the position of some that what constituted "interim" storage should not be defined in the mercury instrument but rather in guidance or binding provisions adopted by the parties, which should include clarification of the extent to which the term encompassed temporal considerations, quantitative considerations or both; another representative similarly asked the present report to note the view of some that it would be necessary to address either in guidelines or binding provisions the short-term storage of mercury-added products allowed under article 6 of the mercury instrument.

112. Regarding article 13, there was tentative agreement in the contact group that the mercury instrument should make use of the definitions in the Basel Convention, but some felt that it was necessary to examine carefully the definition of mercury waste, in particular as it related to elemental mercury. The issues of guidance versus binding requirements in respect of the management of mercury waste, its transboundary movement and trade with non-parties to the Basel Convention were still to be worked out, as reflected by the square brackets in paragraphs 2 and 3. Finally, she noted that Annex H had been deleted as it was no longer referred to in the articles.

113. The committee agreed that the conference room paper on articles 12 and 13 should be submitted for review by the legal group.

114. The chair of the legal group subsequently reported on the group's work in respect of articles 12 and 13, the result of which was set out in a conference room paper. She noted that the conference room paper included a number of notes and questions for the committee's consideration at its fifth session. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

- 9. Financial resources and technical and implementation assistance (section I of the draft text)**
- (a) Financial resources and mechanisms (article 15 of the draft text)**
- (b) Technical assistance and capacity-building (article 16 of the draft text)**
- (c) Partnerships (article 16 bis, of the draft text)**

115. The committee agreed to consider together articles 15, on financial resources and mechanisms, 16, on technical assistance and capacity-building, and 16 bis, on partnerships.

116. The Chair recalled that at its third session the committee had agreed that the co-chairs of the contact group on financial resources and technical and implementation assistance established during that session would conduct intersessional work and prepare, with the support of the secretariat and the chair of the intergovernmental negotiating committee and advice from a meeting of experts, a proposal for articles 15 and 16 of the draft mercury instrument, consisting of a conceptual approach followed by possible text.

117. Mr. Adel Shafei Osman (Egypt) and Ms. Johanna Lissinger Peitz (Sweden), co-chairs of that contact group, outlined the intersessional work that had been undertaken and the proposal that they had prepared for the committee's consideration (see UNEP(DTIE)/Hg/INC.4/4). The conceptual approach, they said, focused on addressing five overarching issues: what implementation activities would receive financial and technical support; when such support should be provided; how such support would be provided, i.e., through what processes, mechanisms and institutions; who would provide such support; and who would receive such support. They noted that the intersessional expert meeting had not been a negotiating meeting; rather, the experts had been nominated and had attended in their expert capacities to discuss issues related to financial resources and technical assistance. Held in an informal setting, the meeting had been aimed at fostering better understanding of the issues. The co-chairs' objective in developing the proposal was not to limit or prejudge any outcome but rather to provide a basis for a focused discussion on the provision of financial resources and technical assistance for activities under a future global legally binding instrument on mercury.

118. Many representatives expressed appreciation for the work of the co-chairs and the intersessional expert group and said that the co-chairs' document provided a useful basis for further discussion; they noted, however, that they did not necessarily agree with all aspects of the conceptual approach or the proposals contained in the document and said that more work needed to be done with regard to financial resources and technical assistance.

119. Many representatives said that the provision of effective financial and technical assistance to developing countries and countries with economies in transition would play an important role in the effective implementation of the instrument. There was also broad agreement that such assistance should focus on enabling implementation of the mercury instrument and related enabling activities, that the special situation of least developed countries and small island developing States should be taken into account, and that the provision of financial and technical assistance prior to the convention's entry into force would yield important benefits. Several representatives, speaking on behalf of groups of countries, introduced conference room papers that contained proposals for draft text for articles 15 and 16.

120. Many representatives, some speaking on behalf of groups of countries, outlined specific activities that in their view should be eligible for financial resources, technical assistance, technology transfer and capacity-building. Some representatives indicated that all developing country parties to the mercury instrument and parties with economies in transition should be eligible for the full range of financial and technical assistance. Other representatives said that the agreed incremental costs of enabling activities and certain implementation activities should be eligible for assistance and that the type and amount of financial and technical assistance received by a particular party should depend on its economy and level of development, private sector activity, governmental capabilities and other factors.

121. Many representatives, some speaking on behalf of groups of countries, said that financial resources should include contributions from many sources, including traditional donor countries, other parties, international organizations, bilateral cooperation, partnerships, mainstreaming within national government budgets, the private sector and civil society. Some representatives said that all parties should contribute some level of financial resources to the implementation of the convention. Others said that developing countries, countries with economies in transition, least developed countries and small island developing States should not have to contribute resources.

122. Several representatives, including two speaking on behalf of groups of countries, said that the private sector should play a clear role in all countries, including developing countries, although the

scope of that role would vary. Some said that it would be appropriate in many developed and developing countries for the private sector to internalize the costs of new pollution control equipment needed to implement the convention, particularly but not exclusively in new facilities, as a similar approach was already employed with regard to other environmental regulations.

123. Many representatives highlighted principles that they said should guide the development of a financial mechanism for the mercury instrument. Thus it was said that the financial mechanism should, among other things, be under the direct authority of the conference of the parties; operate consistently with the goals and principles of the mercury instrument; provide sufficient, new, additional, predictable, sustainable, effective, realistic and long-term funding; provide robust interim funding; focus on compliance with obligations under the instrument, including those delineated in national implementation plans, and be effective in helping to achieve the goals of the instrument; operate transparently; ensure equitable representation in decision-making; mobilize resources from many different sources, including the private sector; provide funds in a timely manner; operate efficiently and economically; support the dissemination of best available techniques and best environmental practices; seek synergies with financing arrangements in the broader chemicals and wastes cluster; and reflect the principles delineated in Governing Council decision 25/5 and relevant passages of the outcome document of the United Nations Conference on Sustainable Development.

124. Many representatives advocated specific approaches to the structure of a financial mechanism. Several, including two speaking on behalf of groups of countries, supported the creation of a stand-alone financial mechanism along the lines of the Multilateral Fund for the Implementation of the Montreal Protocol. Such a mechanism, they said, would among other things provide predictable and adequate funding, transparency, equality in decision-making and operational responsiveness to the conference of the parties. Several other representatives, one speaking on behalf of a group of countries, expressed a preference for a financial mechanism operated by one or more existing entities; some said that GEF should be entrusted with the operation of the mechanism as that would provide opportunities to access financial resources prior to the instrument's entry into force, reduce overhead and duplicative administrative expenses, leverage funds from the private sector and civil society, capitalize on GEF experience in the chemicals and wastes sector, provide synergistic opportunities to address multiple issues through individual projects and allow for clear oversight by, and responsiveness to, the conference of the parties.

125. Several representatives highlighted the importance of mobilizing regional, subregional, South-South and private sector technical assistance, as well as North-South assistance and assistance provided by international organizations. Several representatives stressed the importance of providing clear links between provisions of the mercury instrument on financial and technical assistance and those on national implementation plans. Many representatives said that it was important to develop effective provisions on technology transfer. A number of representatives, one speaking on behalf of a group of countries, said that the polluter pays principle should be reflected in the provisions on financial resources, technical assistance and technology transfer.

126. One representative emphasized the need for technical and financial assistance to address contaminated sites. His country also supported financial compensation, technical assistance and technology transfer to mercury-producing developing countries to offset the costs and economic effects of implementing the mercury instrument.

127. Several representatives, one speaking on behalf of a group of countries, said that the implementation of the mercury instrument by developing countries would depend on the provision of sufficient, predictable and timely financial resources, technical assistance, technology transfer and capacity-building. Several other representatives, however, expressed the view that the obligation to comply with the provisions of the instrument was not contingent on the receipt of particular types or amounts of assistance.

128. The representative of a non-governmental organization expressed support for an independent, dedicated financial mechanism operating under the direct authority of the conference of the parties. The representative of another non-governmental organization said that it was important to consider the significant economic costs associated with the impacts on human health and the environment of mercury pollution. Noting the experience gained under the Stockholm Convention on Persistent Organic Pollutants, he called for funding for enabling activities prior to the convention's entry into force, saying that it would facilitate ratification of the instrument and hasten its implementation. Both representatives said that the polluter pays principle should be incorporated into provisions on financial and technical assistance, that the private sector should bear a share of responsibility for implementing and supporting the instrument and that funding priority should be given to countries with the greatest need and the fewest public and private resources.

129. The committee agreed to establish a contact group on financial resources and technical and implementation assistance, to be co-chaired by Mr. Felipe Ferreira (Brazil) and Ms. Lissinger Peitz. The contact group was requested to examine articles 15 and 16 in the draft text, beginning with article 16, taking into account the views expressed during the plenary discussion and the conference room papers submitted by various parties. The contact group was requested to consider opportunities to resolve issues relating to options presented in the text, as well as bracketed text and, if necessary, to identify issues that could not be resolved because they were linked to unresolved issues in other sections of the proposed instrument. The contact group was also asked to consider article 16 bis, on partnerships; that article had been proposed by a party at an earlier session of the committee and referred to a contact group at the committee's third session, but it had not been discussed owing to a lack of time.

130. Subsequently, Ms. Lissinger Peitz reported on the work of the contact group, indicating that the group had produced a conference room paper setting out text, much of it still in square brackets to indicate that it was not yet agreed, to replace articles 15, 16 and 16 bis of the draft text in document UNEP(DTIE)/Hg/INC.4/3 as the basis for the further work of the committee. The group had agreed that partnerships did not require a separate article of the mercury instrument. In addition to the articles set out in document UNEP(DTIE)/Hg/INC.4/3, the group had extensively discussed a non-paper containing a proposed separate article on transfer of technology, which was set out in the conference room paper as a new article 16 bis. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

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

131. There was general agreement that a mechanism on implementation of and compliance with the mercury instrument was needed and that any such mechanism should be facilitative rather than punitive or confrontational. In that context, one representative said that such a mechanism could be used to enhance compliance with the mercury instrument gradually and that the data obtained through it would enable party compliance and facilitate the optimal implementation of the instrument.

132. There was some difference of opinion regarding the options in the draft text in respect of when a compliance mechanism should be established and the extent to which compliance should be linked to the provision of financial resources, technical assistance, technology transfer and capacity-building to developing country parties and parties with economies in transition.

133. With regard to timing, several representatives, including one speaking on behalf of a group of countries, expressed support for alternative 2 of option 1, providing for the establishment of a compliance committee in the text of the mercury instrument, arguing that it was important to stress the importance of compliance from the outset. Others favoured alternative 1 of option 1, or option 2, providing for the establishment of a compliance committee by the conference of the parties at its first meeting. One argument put forth in support of the latter position was that a compliance mechanism should not be established until experience had been gained in respect of the nature and effect of the provisions of the mercury instrument, the operation of the instrument's financial mechanism and the level of financial resources, technical assistance, technology transfer and capacity-building that would be made available to developing country parties and parties with economies in transition.

134. A number of representatives said that compliance on the part of developing country parties and parties with economies in transition should not be judged without regard to the level of financial and other assistance that they received, arguing that their capacity to comply with their obligations was dependent on such assistance. Others, however, disagreed, saying that a party's obligation to implement the provisions of the mercury instrument should not be contingent upon the receipt of any particular amount or type of assistance.

135. Several representatives said that all obligations under the instrument should be within the committee's purview, including obligations to provide financial and other assistance. Others, however, said that the committee should have limited terms of reference on specific matters. In terms of the mechanism's structure, some representatives voiced support for option 2, which would provide for the establishment of a committee encompassing financial assistance, technical support, capacity-building and implementation, while others supported the structure contemplated by option 1, which would encompass implementation and/or compliance but not explicitly financial and other resources.

136. Following its discussions the committee agreed to establish a contact group on article 17, to be co-chaired by Ms. Jimena Nieto (Colombia) and Mr. Tuomas Kuokkanen (Finland). The contact group was requested to discuss all options and alternatives in the article 17 draft text and to consider in particular the link between compliance and financial and other assistance and the extent to which a

compliance mechanism should be established in the mercury instrument or by the conference of the parties. The committee agreed that the contact group on compliance and the contact group on financial resources and technical assistance would devote the same amount of time to their respective issues.

137. Subsequently, Ms. Nieto and Mr. Kuokkanen reported on the work of the contact group. Following a general discussion of basic concepts to establish areas of convergence and divergence and a more specific discussion of the text of article 17, the group had arrived at two options, both containing bracketed text requiring further discussion, for a revised version of the article to replace that in document UNEP(DTIE)/Hg/INC.4/3 as the basis for the further work of the committee. The options were set out in a conference room paper, which included footnotes indicating areas that, in the view of some, the group had not discussed sufficiently. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

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

(a) Information exchange (article 18 of the draft text)

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

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

138. The Committee agreed to take up articles 18 and 19 of the draft text together before discussing other parts of section J of the draft instrument.

139. Many representatives, including three speaking on behalf of groups of countries, underscored the importance of information exchange and public awareness and expressed support for the general approach set out in the draft text and for using the draft text as the basis for further negotiations.

140. Two representatives, including one speaking on behalf of a group of countries, supported information exchange and the use of international centres but said that it was important to provide for cooperation with existing international initiatives in order to preserve resources and enhance coordination. Two representatives speaking on behalf of groups of countries said that it was important to ensure that relevant information not remain confidential and to provide information effectively to all stakeholders, in particular the most vulnerable populations. One representative highlighted the continued open burning of waste in many parts of Africa and said that it was important to mandate the development and broad publication of an inventory of mercury-containing products so that they could be separated from waste streams more effectively.

141. The representative of Japan informed the committee that copies of the booklet "Lessons from Addressing Minamata Disease and Mercury Management in Japan", prepared by his Government, were available at the current session in all six official languages.

142. Two representatives of non-governmental organizations said that information on the safety of human health and the environment should not be confidential and said that the mercury instrument should accommodate the particular interests of indigenous peoples.

143. Following its discussions, the committee agreed to establish a contact group, to be co-chaired by Mr. Alejandro Rivera Becerra (Mexico) and Mr. Daniel Ziegerer (Switzerland). The contact group was requested to consider opportunities to resolve issues relating to bracketed text and to identify issues that could not be resolved because they were linked to unresolved issues in other sections of the proposed instrument.

144. Mr. Ziegerer subsequently reported that the group had succeeded in agreeing on most of the text of articles 18 and 19 and had produced a conference room paper setting out its work. Square brackets indicating a lack of agreement remained around text whose finalization depended on progress on other sections of the mercury instrument. Brackets also remained around text in paragraph 5 of article 18, relating to whether information on health and safety should be confidential in accordance with national laws. Also, differences regarding paragraph 1 (a) (v) of article 19 could be resolved only after finalizing article 20.

145. Following the co-chair's report the committee agreed to submit the conference room paper for review by the legal group. It also extended the mandate of the legal group to include article 20, on research, development and monitoring, and asked it to continue its work on the bracketed text in the conference room paper.

146. In respect of article 20 one representative, speaking on behalf of a group of countries, said that there was a need for additional monitoring, taking into account the existing knowledge base on

mercury and building on national and international programmes, and that monitoring activities should be tailor-made to achieve the aims of article 23 at a reasonable cost.

147. One representative of a non-governmental organization highlighted the importance of monitoring data from public interest and indigenous groups, public accessibility, biomonitoring and health, social and cultural impacts. She expressed support for the global monitoring programme proposed by WHO, after it had been reviewed, and asked for clarification of the organization's role in the implementation of the mercury instrument. The representative of WHO said that the organization supported global action on mercury, and she expressed the hope that the mercury instrument as adopted would allow WHO to participate fully.

148. Mr. Rivera subsequently reported that the contact group had reached agreement on the text of article 20 and had produced a conference room paper setting forth that text. The committee agreed that the conference room paper should be submitted for review by the legal group.

149. The chair of the legal group reported on the group's work in respect of articles 18–20, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

(d) Health aspects (article 20 bis of the draft text)

150. The representative of Guatemala, on behalf of the group of Latin American and Caribbean countries, presented a conference room paper setting out a revised version of article 20 bis (health aspects) in document UNEP(DTIE)/Hg/INC.4/3. The revised version, she said, reflected the commitment of her region to make a positive impact on the environment and human health through the mercury instrument, in accordance with the mandate in Governing Council decision 25/5.

151. Many representatives expressed strong support for the revised version, some saying that it was essential for the proper implementation of the mercury instrument in view of the serious impact of mercury on health, particularly in developing countries and for vulnerable and indigenous populations.

152. One representative highlighted the need for information on all aspects of the health impacts of mercury. The public needed to understand, for example, how mercury accumulated in food and the risks involved in artisanal and small-scale gold mining. Another representative said that without specific health-care standards such issues might be a low priority for health authorities. A third representative stressed the importance of occupational health, especially for workers exposed to mercury vapour, while another emphasized the need for a comprehensive approach covering not only the commercial aspects of products and processes, but also their social and economic impacts. One representative, speaking on behalf of a group of countries, said that there was a need for each country to develop health guidelines for children and vulnerable populations.

153. Many other representatives, while agreeing that the mercury instrument should have a health focus, said that they did not support including a separate article on the subject, arguing that that would exceed the committee's remit. Several advocated covering the issue in the preamble, with specific provisions on health in other articles already present in the draft instrument. Concern was voiced about the risk of duplicating the efforts of institutions such as WHO and the International Labour Organization, and it was said that it would be preferable to encourage effective cooperation with those organizations, particularly on biomonitoring. In a similar vein, several representatives said that the revised article related to public health financing policies that fell within the remit of national Governments and were not properly the province of a multilateral environmental agreement. One representative expressed the misgiving that too strong a health focus might divert attention and resources away from other important parts of the instrument. Some said that they did not support the revised version set out in the conference room paper but were willing to discuss it further.

154. One representative said that her country did not agree with the view that health matters should be limited to the preamble of the mercury instrument merely because they were covered implicitly by other provisions; nor did her country agree with the suggestion that a separate article on health would conflict with the mandate or activities of WHO. The instrument, she argued strongly, should have an integrated focus, aimed at protecting both environment and health, and should not disguise protectionist measures as environmental measures. In that context she reiterated her country's earlier statement to the effect that financial resources, technical assistance and technology transfer were needed and were matters of great importance to developing countries in the current negotiations.

155. The representative of WHO outlined the position of that organization with regard to the work of national health sectors. She said that any WHO member State could request assistance from the organization through its ministry of health. WHO was represented in many countries and worked nationally through country cooperation strategies. With regard to mercury, WHO had developed a

variety of regularly updated materials, which those negotiating the mercury instrument were encouraged to use.

156. Those representatives of non-governmental organizations who spoke welcomed the conference room paper containing proposed text for article 20 bis on health aspects. Several representatives said that inclusion of the article would assist synergies between WHO, the International Labour Organization and parties to the convention, which would be of particular benefit to vulnerable populations and workers, who suffered a disproportionate impact from mercury pollution. Some representatives of non-governmental organizations said that “populations at risk” was too narrow a term and that the more inclusive term “vulnerable populations and indigenous peoples” was preferable. Some representatives stressed the importance of monitoring, including biomonitoring, with one representative suggesting greater use of technologies to track mercury pollution to its source. One representative said that an article on health aspects would reinforce the notion that public health strategies needed to complement environmental health strategies; would ensure strong involvement of health ministries, health experts and health agencies, including WHO; and would assist in raising public awareness of the dangers of mercury pollution.

157. The committee agreed to refer the matter to the contact group considering other articles of the instrument under section J to consider the proposal, asking it to focus not on the importance of health for the future convention, but rather on the merits and placement of the elements of the proposal and whether or not an independent article on health aspects was needed.

158. Mr. Rivera subsequently reported on the contact group’s work in respect of article 20 bis. The group had held a general discussion but had not discussed text and had not reached consensus on whether the mercury instrument should include a separate article on health issues or address such issues as they arose in the context of provisions on other matters.

159. Following that report and informal consultations, the committee agreed that the text of article 20 bis in document UNEP(DTIE)/Hg/INC.4/3 would be replaced by that in the conference room paper presented by the representative of Guatemala as the basis for the further work of the committee; that the new text would remain in square brackets to indicate that it had not yet been agreed and would include a footnote indicating that it had not been negotiated and that as yet there was no consensus on whether the mercury instrument should include a separate article on health; and that the committee would request the secretariat, in cooperation with WHO, to analyse the extent to which the provisions of the draft mercury instrument reflected the content of the proposed article 20 bis and to report to the committee at its fifth session on the results of that analysis. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

(e) Implementation plans (article 21 of the draft text)

160. There was general agreement on the potential value of national implementation plans but a divergence of views on whether they should be obligatory and when they should be developed. A number of representatives said that the preparation of implementation plans should be discretionary under the instrument, because, among other reasons, the development of such plans was a domestic planning matter and should not be prescribed by an international agreement. In addition, an obligation to develop implementation plans might divert resources away from priority areas. One representative noted that other parts of the draft instrument already called for national action plans, for example in respect of artisanal and small-scale gold mining, and said that such plans should only be required where they added value and not as a matter of course.

161. A majority of representatives, however, said that the development of national implementation plans should be obligatory, as they were essential planning tools that would enable countries to identify the actions that they needed to take to fulfil their obligations under the instrument according to their particular circumstances and requirements. Several representatives said that developed countries had a responsibility to assist developing countries in the preparation and implementation of their plans.

162. Regarding the timing of implementation plans, several representatives said that countries should develop them upon signature of the mercury instrument, thus enabling swift implementation upon ratification. Other representatives said that it was more appropriate for countries to wait to develop their national implementation plans until they had ratified the convention and had a clearer awareness of the action that needed to be taken. One representative questioned the logic of requiring the preparation of plans prior to ratification, saying that developing countries would need financial and technical assistance to develop their plans and comply with their obligations under the mercury instrument.

163. The committee agreed to refer article 21 to the contact group considering other articles of the instrument under section J.

164. Subsequently Mr. Ziegerer reported on the contact group's work on article 21. He said that, as had been the case in plenary, members of the group had expressed a range of views regarding whether national implementation plans should be mandatory (and if so whether they should be mandatory for all parties), when they should be put in place, how financial resources and technical assistance for the preparation of such plans would be provided and how article 21 would relate to other provisions of the mercury instrument, including provisions calling for the development of action plans on various topics. Owing to the number of other matters on its agenda the group had not been able to move beyond a conceptual debate, and it had not discussed any proposed revisions to the text of article 21 itself; it therefore recommended that the text of that article in document UNEP(DTIE)/Hg/INC.4/3 should be the starting point for the committee's work at its fifth session. The committee took note of the co-chair's report on article 21, agreeing that the text of that article in document UNEP(DTIE)/Hg/INC.4/3 would serve as the starting point for the committee's work at its fifth session. That text is accordingly reproduced without change in the revised draft text set out in annex I to the present report.

(f) Reporting (article 22 of the draft text)

165. Some representatives said that it would be difficult to finalize text on reporting at the current moment, given that many of the proposed provisions were linked to provisions in other articles. One representative said that provisions on reporting obligations under other international agreements could serve as useful models in further developing article 22. Another representative said that reporting requirements should relate to specific obligations and should not be so burdensome as to drain resources needed to implement the treaty.

166. The committee decided to refer the matter to the contact group considering other articles of the instrument under section J.

167. Subsequently Mr. Rivera reported that the contact group had eliminated the two options for article 22 in document UNEP (DTIE)/Hg/INC.4/3, replacing them with new text, set out in a conference room paper (which also dealt with article 23), intended to achieve the same objective as the original text in a simpler fashion. Unresolved issues remained, and there was therefore text in square brackets, but progress had been made and it was hoped that the new text would serve as a good basis for the committee's work at its fifth session.

168. The committee agreed that the conference room paper should be submitted for review by the legal group. The chair of the legal group subsequently reported on the group's work in respect of article 22, the result of which is set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

(g) Effectiveness evaluation (article 23 of the draft text)

169. One representative spoke of the importance of evaluation of the mercury instrument to its future development and improvement, and said that the provisions of existing instruments such as the Stockholm Convention should be considered when developing criteria and indicators. Another representative stressed that effectiveness evaluation was not a compliance tool, and also that the provisions of the Stockholm Convention on effectiveness evaluation provided a good model for the mercury instrument.

170. The committee agreed that the contact group considering other articles under section J of the draft text would also take up article 23.

171. Mr. Rivera subsequently reported that the contact group had discussed article 23 and prepared a text to replace that in document UNEP (DTIE)/Hg/INC.4/3, which the group felt was more concise and better reflected the views of the parties on effectiveness evaluation. Some text remained in square brackets pending agreement on other articles and decisions on timelines of a political nature.

172. The committee agreed that the conference room paper should be submitted for review by the legal group. 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. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

11. Institutional arrangements (section K, articles 24, 25 and 25 bis, of the draft text)**Settlement of disputes (section L, article 26, of the draft text)****Further development of the Convention (section M, articles 27 and 28 of the draft text)****Final provisions (section N, articles 31–34 of the draft text)**

173. The committee agreed to consider sections K–N of the draft text, articles 24–28 and 31–34, together. The committee had referred articles 29, 30, 35 and 36 for review by the legal group at its third session. The latter four articles were not discussed at the current session, and they are accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

174. As discussed in more detail in the following paragraphs, following discussion the committee referred a number of these articles for consideration by the legal group, which subsequently produced a conference room paper for consideration by the committee in plenary. For ease of reference, the conference room paper included the text of articles 24–36, including articles that the legal group did not review. The text of the articles that the legal group did not review were reproduced in the conference room paper, as they are in the revised draft text set out in annex I to the present report, without change from document UNEP(DTIE)/Hg/INC.4/3.

(a) Conference of the parties (article 24 of the draft text)

175. The Chair recalled that at its third session the committee had requested the legal group to review paragraphs 1–4 and paragraph 6 of article 24 but not paragraph 5. The text in paragraph 5 set out tasks to be undertaken by the conference of the parties, including the overarching task of keeping the implementation of the mercury instrument under continuous review and evaluation.

176. The committee agreed that paragraph 5 of article 24 should be submitted to the legal group for review and to defer discussion of it to its fifth session pending progress in the discussion of other provisions of the draft text.

177. The chair of the legal group reported on the group's work in respect of article 24, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

(b) Secretariat (article 25 of the draft text)

178. The Chair recalled that at its third meeting the committee had requested the legal group to review paragraphs 1–3 of article 25 but not paragraph 4.

179. Many representatives expressed support for pursuing synergies through cooperation and coordination between the secretariat of the mercury instrument and the secretariats of other chemicals and wastes conventions and instruments, including those of the Basel, Rotterdam and Stockholm conventions. There was a difference of opinion, however, regarding the necessity for a specific reference to such cooperation and coordination as in paragraph 4 of article 25. Some representatives, one speaking on behalf of a group of countries, strongly supported such a reference, while several others, including one speaking on behalf of a group of countries, said that it was unusual and unnecessary and that the same result could be better achieved through a resolution at the time of adoption of the instrument or a decision by the conference of the parties. One representative suggested that such a reference in the instrument could become dated or counterproductive if the parties sought synergies with other conventions not named in the instrument. Some representatives suggested that the committee could consider including such a reference elsewhere in the instrument.

180. Given the diversity of views, the Committee agreed to retain the square brackets around the text of the article and return to the issue at its fifth session. The text of the article is accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

(c) [Expert bodies] (article 25 bis of the draft text)

181. Noting that the question of what types of expert body to establish under the instrument was closely related to other issues under discussion, the committee agreed to defer consideration of article 25 bis to its fifth session. The text of the article is accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

(d) Settlement of disputes (article 26 of the draft text)

182. Recalling that article 26, on the settlement of disputes, had been referred to the legal group at the committee's third session and that revised text prepared by the group had been presented in the

revised draft text in document UNEP(DTIE)/Hg/INC.4/3, the committee agreed to defer further consideration of the article to its fifth session. The text of the article is accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

(e) Amendments to the Convention (article 27 of the draft text)

183. During discussion of article 27, on amendments to the mercury instrument, the committee agreed to remove the text within square brackets in paragraph 1. With regard to paragraph 5, several representatives, including one speaking on behalf of a group of countries, underscored the importance of establishing clear rules with regard to the entry into force of amendments to the instrument, with some supporting a fixed-time approach. Several representatives argued for deleting the bracketed term, and another for retaining it. Several representatives suggested that the legal group could address the language, provided that sufficient consensus existed regarding the intention of the provision. One representative stated that the provision could not be finalized until discussions on other aspects of the instrument were concluded as agreements in those areas might include options for adjusting particular components of the instrument in addition to a formal amendment procedure.

184. The committee agreed that article 27 should be submitted for review by the legal group, taking into account the views expressed and on the understanding that relevant issues could be revisited depending on the outcomes of discussions on other provisions of the draft instrument.

185. The chair of the legal group reported on the group's work in respect of the article, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

(f) Adoption and amendment of annexes (article 28 of the draft text)

186. The Chair recalled that at its third session the committee had requested the legal group to review paragraphs 1–3 and paragraph 5 of article 28 but not paragraph 4. Paragraph 4 contained bracketed text relating to the possibility of parties making declarations with regard to amendments to an annex or annexes, in accordance with article 31. Given the interrelationship of this issue with the discussions on other aspects of the instrument, the committee agreed to defer discussion of paragraph 4, as well as the annexes referred to in that paragraph, pending agreement on the remaining annexes. The text of the article is accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

(g) Ratification, acceptance, approval or accession (article 31 of the draft text)

187. The Chair recalled that at its third meeting the committee had requested the legal group to review paragraphs 1–3 of article 31 and to defer consideration of paragraph 5 pending progress on other provisions of the draft mercury instrument.

188. At the current session many representatives, including one speaking on behalf of a group of countries, supported the deletion of paragraph 4. Several of those representatives suggested that the committee should consider other ways of expressing the principle underlying the paragraph. Most of those opposing the paragraph suggested that it would impose an excessively stringent requirement and could have the unintended effect of delaying ratification of the instrument in certain countries with particular political structures or in which the ratification of a multilateral environmental agreement provided the political impetus or legal basis for developing the legislation and other measures necessary to implement the agreement. Some also said that the provisions were largely unprecedented in multilateral environmental agreements. The representative of the party that had submitted the proposal to the committee strongly supported retaining the principle embodied in the paragraph as a means of promoting implementation and compliance. She said that precedent existed in international treaties outside the environment cluster and that UNEP guidelines on the implementation of multilateral environmental agreements endorsed similar provisions.

189. The committee agreed that interested parties should continue discussion of the issue on an informal basis and that it would revisit it at its fifth session. The text of the article is accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

(h) Entry into force (article 32 of the draft text)

190. One representative said that the mercury instrument should enter into force following deposit of the fiftieth instrument of ratification, acceptance, approval or accession, taking into account the successful experience of the Rotterdam and Stockholm conventions with the same rule. Another representative supported entry into force following the deposit of the thirtieth such instrument, in line

with the rule under the Basel Convention. One representative, speaking on behalf of a group of countries, argued for deleting paragraph 4 of article 32, which was enclosed in square brackets and provided that all legal obligations under the mercury instrument would be "applicable to developing-country Parties on the condition that the stand-alone multilateral fund has been established and provides substantial assistance". Two other representatives, including one speaking on behalf of a group of countries, expressed support for retaining the paragraph. One representative stated that his delegation reserved the right to resume discussion on the entire article, and not simply paragraph 4, until agreement had been reached on other provisions of the instrument, including control measures.

191. 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 to indicate a lack of agreement and that the committee would hold open the option of considering the article at its fifth session pending progress on other provisions of the draft instrument.

192. The chair of the legal group reported on the group's work in respect of the article, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

(i) Reservations (article 33 of the draft text)

193. At the request of the Chair, the UNEP Senior Legal Officer outlined several issues relevant to consideration of article 33, on reservations to the mercury instrument. The final decision on the article was a choice for the parties to the committee. Regarding precedent, reservations were not allowed under the Montreal Protocol, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Basel Convention, the Rotterdam Convention and the Stockholm Convention; they were allowed in specific circumstances under a few other multilateral environmental agreements. The text in the draft article was similar to that in those agreements that did not allow reservations. If reservations were permitted, they should be made in accordance with general international law, pursuant to such existing norms as those expressed in the Vienna Convention on the Law of Treaties. In general, reservations could not conflict with the purpose of a treaty.

194. Several representatives, including one speaking on behalf of a group of countries, expressed support for not allowing reservations. Several representatives, including one speaking on behalf of a group of countries, stated that detailed consideration of the issue should be deferred to the committee's fifth session, with some suggesting that it should await agreement on the substantive provisions of the mercury instrument.

195. The Committee agreed to defer further consideration of the article, including bracketed text, to its fifth session. The text of the article is accordingly reproduced without change from document UNEP(DTIE)/Hg/INC.4/3 in the revised draft text set out in annex I to the present report.

(j) Withdrawal (article 34 of the draft text)

196. One representative, speaking on behalf of a group of countries, supported a provision that would allow a party to the mercury instrument to withdraw at any time after three years after entry into force of the instrument for the party, saying that three years would give the party sufficient information on which to base its decision regarding withdrawal. Another representative expressed support for allowing withdrawal after one year.

197. The Committee referred article 34 to the legal group for review, on the understanding that further discussion was required regarding the number of years required before a party could withdraw.

198. The chair of the legal group reported on the group's work in respect of the article, the result of which was set out in a conference room paper. The text presented in the conference room paper is reproduced without change in the revised draft text set out in annex I to the present report.

V. Other matters

A. Intersessional work

199. A number of representatives said that regional meetings would be of great importance to the regional preparations for the committee's fifth session and expressed the hope that financial support for such meetings would be forthcoming.

200. Following discussions in plenary, the committee agreed on a programme of work to be undertaken in preparation for its fifth session.

201. Following a proposal from a regional economic integration organization, supported by another representative speaking on behalf of a regional group, the Committee requested the Chair to 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 as captured in the draft text set out in the compiled text in annex I to the present report. The Chair would also seek in the Chair's text to harmonize style and terminology and achieve editorial consistency in the draft instrument.

202. Following a request from the floor, the committee agreed 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 signed. The elements would address, among other things, how to promote and prepare for 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.

203. 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. Governments were requested to provide to the secretariat, by 31 August 2012, any relevant information that might assist the co-chairs in preparing the proposed thresholds, including information about thresholds in use in regulating mercury at the national level. Governments were also requested to provide to the secretariat by the same date any 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.

204. The committee also agreed that the secretariat, in cooperation with WHO, would analyse the extent to which the provisions of the draft mercury instrument reflected the content of article 20 bis of the draft text and to prepare a report setting out the results of its analysis for consideration by the committee at its fifth session.

B. Preparations for the fifth session of the committee and the conference of plenipotentiaries

205. The representative of the secretariat reported on preparations to convene the fifth session of the committee, which would take place at the Geneva International Conference Centre during the week of 14 January 2013. The exact dates and duration of the session were not yet known and would be decided by the Bureau. The committee took note of the information presented.

206. The representative of Japan reported on preparations by his Government to host the planned conference of plenipotentiaries for the anticipated signing of the mercury instrument in October 2013. The committee took note of the information presented.

207. Following the discussion of intersessional work one representative, supported by another, requested that the revised version of the draft mercury instrument to be discussed at the committee's fifth session be circulated as early as possible, and by mid-October at the latest, to enable national-level consultations prior to the session. She also said that the intersessional work to be done should be undertaken in an open and transparent manner that took into account the needs and interests of developing countries. She further requested that, as far as practicable, meetings be conducted using the coordination network based in Geneva.

VI. Adoption of the report

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

VII. Closure of the session

209. Following the customary exchange of courtesies, in which thanks to the host Government for the excellent support to the meeting were expressed by many, as well as encouragement to all delegations for further hard work both during the intersessional period and at INC.5, the Chair declared the session closed at 5.50 p.m. on Monday, 2 July 2012.

Annex I

Revised draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury

A. Preamble

Source: The preambular text below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

The Parties to this Convention,

[Reaffirming the principles of the Rio Declaration on Environment and Development, in particular principles 6, 7, 15 and 16,

Recognizing the importance of common but differentiated responsibilities in addressing environmental and human-health problems associated with the improper handling of mercury,

Recognizing also that the improper handling of mercury has adverse impacts on the environment and human health and that international cooperation through the mobilization of sufficient, predictable and appropriate financial resources and transfer of technology to developing countries and countries with economies in transition is essential to ensure that they are in a position to meet their obligations under this Convention,

Reaffirming the urgent need to adopt special measures to meet the needs of developing countries and countries with economies in transition, including the provision of additional financial resources,

Recognizing that the provision of timely and sufficient technical cooperation and the transfer of technologies to address the needs and priorities of developing-country Parties and Parties with economies in transition are necessary for the effective implementation of this Convention,

Reaffirming that it is necessary to provide for the mobilization of sufficient funds for the implementation of the provisions of this Convention by all Parties,]

[Having agreed that the financial mechanism shall be funded by contributions from developed countries to support capacity-building and the requirements of developing countries regarding compliance with the provisions of this Convention, including by means of technology transfer,

Taking account of Parties' obligation to protect human health and the environment against damage caused by mercury and acknowledging the work of the World Health Organization to cooperate with Parties on mercury control and to promote a gradual reduction in its use in the health sector,

Recognizing the activities of the World Health Organization on the protection of human health in relation to the adverse effects associated with the improper handling of mercury and the role of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal in relation to transboundary movements of mercury wastes and their final disposal, and that the contribution of both must be taken into account to achieve the objective and apply the provisions of this Convention,

Recognizing also the underlying synergies between the measures intended in this Convention relating to the reduction of the use of mercury in artisanal and small-scale gold mining and the policies and actions oriented towards the eradication of extreme poverty and hunger, both at the national and global levels, in accordance with the Millennium Development Goals and principles 5 and 6 of the Rio Declaration on Environment and Development,]

Have agreed as follows:

B. Introduction

1. Objective

Source: The text of article 1 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

Option 1: The objective of this Convention is to protect human health and the environment from anthropogenic releases of mercury and its compounds [by minimizing, and where feasible ultimately eliminating, global anthropogenic mercury releases to air, water and land].

Option 2: The objective of this Convention is to minimize, and ultimately to prevent, any potential adverse effects on human health and the environment from exposure to the release of mercury and its compounds by facilitating information dissemination and exchange and the employment of risk reduction strategies [including the environmentally sound management of mercury throughout its life cycle], through financial and technical cooperation, taking into account the relevant principles of the Rio Declaration on Environment and Development, including principles 6, 7, 15 and 16.

[1 bis. Relationship with other international agreements

Source: The text of article 1 bis below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement. This article is not intended to create a hierarchy between this Convention and other international agreements.
2. This Convention shall be implemented in a mutually supportive manner with other relevant international instruments that do not conflict with its objective, as set out in Article 1.]

2. Definitions ²

Source: Except for the definition of best available techniques, the text of article 2 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3. The definition of best available techniques is reproduced without change from the conference room paper on the subject (UNEP(DTIE)/Hg/INC.4/CRP.27) prepared by the legal group.

For the purposes of this Convention:

(a) “Artisanal and small-scale gold mining” means gold mining conducted ~~using rudimentary methods and processes,~~ ~~informally~~ by individual miners or small enterprises, with limited capital investment and production;

~~(b) “Environmentally sound management of mercury wastes” means management of mercury wastes in a manner that includes all practicable steps to ensure that human health and the environment are protected against the adverse effects that may result from such wastes;~~

[(b) bis “Best available techniques” means those techniques that are the most effective to [prevent] [reduce] and, where that is not practicable, to [reduce] [control] 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 [[reasonably] [fully]] accessible to the operator of the facility as determined by that Party; and

² Secretariat note from document UNEP(DTIE)/Hg/INC.4/3, carried through from document UNEP(DTIE)/Hg/INC.3/3: There appeared to be consensus at the committee’s second session that some definitions in Article 2 could be improved by deleting or changing particular words. The secretariat has made these few changes, which are indicated with “strike-through” text (e.g., ~~informally~~).

- (iii) “Techniques” refers³ to technologies used, operational practices and the ways in which installations are designed, built, maintained, operated and decommissioned.

[(b) ter “Best environmental practices” means the application of the most appropriate combination of environmental control measures and strategies;]

[(c) “Environmentally sound storage of mercury and mercury compounds” means storage of mercury and mercury compounds in a manner consistent with the guidance on environmentally sound storage adopted, updated or revised by the Conference of the Parties under Article 12;]

(d) “Mercury” means elemental mercury (Hg(0), CAS No. 7439-97-6) ~~or mixtures of elemental mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight;~~

(e) “Mercury ~~and mercury~~ compounds” means any substance consisting of identical molecules composed of atoms of mercury and one or more other chemical elements ~~means the substances listed in Annex B;~~

(f) “Mercury-added product” means a product or product component that contains mercury or a mercury compound intentionally added [to provide a specific characteristic, appearance or quality, to perform a specific function or for any other reason];

(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 ~~or mercury-containing ore;~~

(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

Subparagraph (k), alternative 1

Comment by the secretariat: If the Committee adopted option 2 of Article 6 and option 2 of Article 7, then clauses (i) and (ii) of subparagraph (k), alternative 1, could be deleted.

(k) “Use allowed to the Party under this Convention” means any use of mercury or mercury compounds:

- [(i) In a mercury-added product that is not listed in Annex C;
- (ii) For a manufacturing process that is not listed in Annex D;]
- (iii) Listed in Annex C or Annex D for which the Party is registered for an allowable-use exemption, as provided in Article 8; or
- (iv) For laboratory-scale research or as a reference standard.

Subparagraph (k), alternative 2

(k) “Use allowed to the Party under this Convention” means any use of mercury or mercury compounds that is generally accepted and would take into consideration the specific needs of the Party and the availability of alternative products and processes.

³ Note: The legal group would recommend changing “refers to” to “means” if the definition is intended to be an exhaustive list. If so, it would also recommend changing “and” to “or”. If it is not intended to be an exhaustive list, the legal group would recommend changing “refers to” to “includes”.

C. Supply and trade

3. Mercury supply sources and trade

Source: The text of article 3 below is reproduced without change from the conference room paper on the article (UNEP(DTIE)/Hg/INC.4/CRP.28) prepared by the contact group on supply and trade. The contact group worked on the basis of combining Articles 3, 4 and 5 of the draft mercury instrument in a revised Article 3 and a new Article 4.

[1. For the purpose of this Article and Article 4:

(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 or calomel, mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar ore, mercury sulphide. Naturally occurring trace quantities of mercury or mercury compounds present in mineral products are excluded from this definition.]

[2. Each Party shall not allow primary mercury mining.]

[2 alt. 1 Each Party with primary mercury mining in its territory shall not allow the export, sale, distribution in commerce of mercury or mercury compounds from primary mercury mining [except for allowable uses]. Each Party with primary mercury mining in its territory [shall] [may] ensure that all mercury from primary mercury mining is not sold, distributed in commerce or used, except for uses allowed under this Convention.]

[2 alt. 2 Existing primary mercury mining after the entry into force will be phased out subject to the demand of exceptional use of mercury.]

[3. Each Party with primary mercury mining within its territory prior to the date of entry into force of this Convention shall ensure that all mercury and mercury compounds produced from this supply source are disposed of as waste and managed in accordance with Article 13.]

[2/3 alt. The export of mercury produced from primary mercury mining shall be allowed only in accordance with the provisions of this Convention. Each Party shall adopt measures to regulate primary mercury mining with a view to prohibiting the production of elemental mercury.]

[4. Each Party shall dispose of all mercury and mercury compounds produced after the entry into force of the Convention for it from:

- (a) Decommissioned chlor-alkali production facilities;
- (b) Decommissioned VCM or VCM/PVC production facilities;
- (c) Natural gas cleaning;
- [(d) Non-ferrous mining and smelting operations;]

and manage such mercury and mercury compounds in accordance with Article 13[except for allowable uses].]

[5. Each Party shall:

(a) [Endeavour to] Identify [major sources of] [other] mercury supply [sources than those identified in paragraphs 3 and 4 generating stocks exceeding [x] metric tons per year] that are located within its territory; and

(b) Ensure that all mercury and mercury compounds from those identified supply sources are:

- (i) Disposed of as waste and managed in accordance with Article 13;
- (ii) Used for the purpose of a use allowed to the Party under this Convention; or
- (iii) Exported only in accordance with paragraph 7.

[(iv) Stored in an environmentally sound manner as set out in Article 12 if intended to be used or exported for the purposes of a use allowed to a Party under this Convention.]]

[5 alt. Each Party shall:

(a) Identify the major sources of mercury supply [generating stocks exceeding [x] metric tons per year] that are located within its territory; and

(b) Ensure that all mercury from those identified supply sources is disposed of in an environmentally sound manner as set out in Article [13] or, if intended to be used or exported for the purposes of a use allowed to a Party under this Convention, is stored in an environmentally sound manner as set out in Article [12] before such use or export.]

[6. Each Party shall ensure that mercury or mercury compounds from the supply sources identified in accordance with paragraphs 4 and 5 that are intended to be used for the purpose of a use allowed to the Party under this Convention or to be exported to another Party in accordance with paragraph 7 are stored in accordance with Article 12 before such use or export.]

[7. Each Party may allow the export of mercury or mercury compounds that are not mercury waste within the meaning of Article 13 to another Party only after it has:

(a) Provided an export notification to the importing Party; and

(b) Received the written consent of the importing Party, including a certification from the importing Party that such mercury or mercury compounds will only be used for a use allowed to the Party under this Convention.]

[7 alt. Each Party shall not allow the export of mercury except:

(a) For the purpose of environmentally sound disposal as set out in Article [13];

(b) To another party for a use allowed to that importing Party under this Convention; or

(c) To a non-Party for any use allowed to a Party under this Convention.]

[8. Each Party shall not allow export of mercury or mercury compounds that are not mercury waste within the meaning of Article 13 to a State not Party to this Convention.]

[9. Notwithstanding paragraph 8, a Party may allow the export of such mercury or mercury compounds to a State not Party to this Convention if:

(a) The exporting Party has received the written consent of the importing State which includes a certification demonstrating that:

(i) Such mercury or mercury compounds will be used only for a use allowed to a Party under this Convention; and

(ii) The State has measures in place to ensure the protection of human health and the environment and to comply with the provisions of Articles 12 and 13;

(b) Upon recommendation from the expert body established under Article 25 bis the Conference of the Parties has determined, on the basis of the notification by the Party or importing State, prior to the first export that that State:

(i) Has measures in place to protect human health and the environment;

(ii) Is able to comply with the provisions of Articles 12 and 13.

The notification shall contain the necessary information to enable this determination to be made, including information on national laws in order to demonstrate that the criteria set out in this subparagraph are met. The notification shall be renewed every five years.]

[10. Each Party shall not allow the import of mercury or mercury compounds that are not mercury waste within the meaning of Article 13 from a State not a Party to this Convention.]

[11. Notwithstanding paragraph 10, a Party may allow the import of such mercury or mercury compounds from a State not Party to this Convention if:

(a) The exporting State has received the written consent of the importing Party which includes a certification demonstrating that:

(i) The mercury or mercury compounds do not originate from one of the sources listed in paragraph 2 or 4 of this Article; and

(ii) The State has measures in place to ensure the protection of human health and the environment and to comply with the provisions of Article 12;

(b) Upon recommendation from the expert body established under article 25 bis the Conference of the Parties has determined, on the basis of the notification by the Party or exporting State, prior to the first import that:

- (i) The mercury or mercury compounds do not originate from one of the sources listed in paragraph 2 or 4 of this Article; and
- (ii) That State has measures in place to ensure the protection of human health and the environment and is able to comply with the provisions of Article 12.

The notification shall contain the necessary information to enable this determination to be made, including information on national laws in order to demonstrate that the criteria set out in this sub-paragraph are met. The notification shall be renewed every five years.]

[12. Any Party allowing imports or exports of mercury or mercury compounds in accordance with the provisions of this article shall annually report on the import and export activities to the Secretariat. This report shall contain appropriate documentation showing that the requirements of this article have been met, especially with regard to the allowed use for which the mercury or mercury compounds have been imported or exported.]

[4. Stocks⁴]

Source: The text of article 4 below is reproduced without change from the conference room paper on the article (UNEP(DTIE)/Hg/INC.4/CRP.28) prepared by the contact group on supply and trade. The contact group worked on the basis of combining articles 3, 4 and 5 of the draft mercury instrument in a revised article 3 and a new Article 4.

[1. Each Party with individual stocks that are identified according to Article 3 (3) and (4) of mercury, mercury compounds, or stabilized mercury exceeding 50 metric tons at one or more sites on its territory, at the date of entry into force of this Convention shall establish a national inventory for the purposes of recording and monitoring these stocks.

2. The first inventory shall include, as a minimum, information on:

- (a) The location and total amount (expressed in metric tons) of the stocks;
- (b) The characterization of the individual stocks in terms of metallic mercury, mercury compounds or stabilized mercury, their classification as commodity or waste, commercial name, trade name and, where appropriate, CAS number;
- (c) For mercury compounds or stabilized mercury, the content of mercury expressed as a percentage of weight.

3. Parties shall update their inventories every [x]⁵ years. The updated inventories shall contain, in addition, information on:

- (a) The amount (expressed in metric tons) of mercury, mercury compounds and stabilized mercury sold or transferred for a use allowed to the Party under this Convention or waste treatment, either within the territory of the Party concerned or to another Party or non-Party in accordance with the provisions of this Convention;
- (b) Which Parties or non-Parties such mercury, mercury compounds have been exported to, or imported from;
- (c) The amount (expressed in metric tons) of mercury, mercury compounds, and stabilized mercury transferred for disposal as waste in accordance with the provisions of this Convention, either within the territory of the Party or to another Party [or non-Party], including, where appropriate, information regarding transboundary movements of mercury, mercury compounds or stabilized mercury considered as waste transmitted in accordance with Article 13 (3) (b) of the Basel Convention.

4. The inventory and its updates shall be made available to the public and submitted to the Secretariat for distribution to all Parties.]

⁴ This text was not negotiated by the contact group on supply and trade during the fourth session of the Committee. The text is drawn from the European Union submission in document UNEP(DTIE)/Hg/INC.4/CRP.7).

⁵ Periodicity to be defined in a way that is compatible with Conference of the Parties periodicity.

[5. International trade with non-Parties in mercury [or mercury compounds]

Note: The contact group on supply and trade worked on the basis of combining articles 3, 4 and 5 of the draft mercury instrument in a revised article 3 and a new Article 4. The current revised version of the draft text accordingly contains no article 5.

E. Products and processes**6. Mercury-added products**

Source: The text of article 6 below is reproduced without change from the conference room paper on the article (UNEP(DTIE)/Hg/INC.4/CRP.31) prepared by the contact group on products and processes.

[Chapeau to be negotiated that reflects the notion of global accessibility affordability and technical feasibility and takes into account country specific needs]

***Restriction of production, import and export*⁶**

1. Each Party shall prohibit or take legal and/or administrative measures to [prevent] [not allow] [eliminate] the manufacture, import or export of mercury-added products listed in Annex C once the phase out date specified for that product for that Party has expired, except where that party has a registered exemption in accordance with Article 8.⁷

1 bis. Parties [shall] [are encouraged to] identify mercury-added products in use and submit this information to the Secretariat. The Secretariat shall maintain an inventory of such products and shall make the inventory publicly available. Other relevant information may also be submitted by the Parties and shall be made publicly available by the Secretariat.

***Assembled products*⁸**

2. Mercury-added products for which the manufacture, import or export is not allowed under this Article [should] [shall] not be incorporated in assembled products.

New products

3. Each Party shall discourage the manufacture of mercury-added products not covered by any known use of mercury-added products prior to the date of entry into force of this Convention for it. [Such a product shall be allowed to be [marketed] only after the Party conducts a domestic assessment of the risks and benefits of the product [and taking into account the availability of any mercury free alternative].] [Parties are encouraged to conduct an assessment of risks and benefits of such a product in informing their approach to the potential marketing of the product.]

4. The Party shall provide to the Secretariat, as appropriate, information on any such product [, including any information] on the environmental and health impacts of the product. The Secretariat shall make such information publicly available.

***Listing of products in Annex C*⁹**

5. Any Party may submit a proposal to the Secretariat for listing a mercury-added product in Annex C, which shall include information related to the availability, technical and economic feasibility of the non-mercury alternatives, taking into account the inventory and information pursuant to paragraph 1bis.

6. The [expert] body established [under Article 25bis] [by the Conference of the Parties] shall examine the proposals made by Parties according to paragraph 5, taking into account the inventory pursuant to paragraph 1bis and the information provided by Parties under paragraph 4, and make recommendations on listing in Annex C to the Conference of the Parties.

6 The contact group agreed to revisit the issue of trade with non Parties at a later date.

7 One country requested to revisit the paragraph once issues about prior informed consent have been addressed.

8 The contact group will revisit the issue of replacement.

9 The contact group noted the desire of a country to include the following text “The implementation of measures for such information shall take into account the social and economic conditions of the Parties, and their compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in Parties in accordance with their own assessments of their needs and priorities”.

7. [[No later than] every [five] years after the entry into force of the Convention,] the Conference of the Parties [shall review and may revise] Annex C, as appropriate, taking into account the recommendations received from the [expert] body pursuant to paragraph 5¹⁰.
8. The rules governing the amendment of this Annex shall be subject to the procedures specified in Article 28.

[Reporting (the content of this paragraph might be moved to Article 22 itself)]

9. Each Party shall include in its reports submitted under Article 22, data on the production and trade of mercury-added products and measures taken in accordance with paragraph 11.

Further efforts by the Parties

10. Nothing in this Article shall prevent a Party from imposing additional requirements in an effort to protect human health and the environment from exposure to mercury, provided that they are consistent with the provisions of this Convention and in accordance with [relevant international obligations][the World Health Organization recommendations and guidance].

Exclusions

11. The following categories of products are not subject to the provisions of this Article:
- (a) Products for essential military uses;
 - (b) Products for scientific research;
 - (c) Products for use as replacement parts for major equipment; and
 - (d) Products for cultural/heritage uses.

Dental Amalgam^{11 12}

12. Each Party shall take measures to reduce the use of dental amalgam taking into account their domestic circumstances and relevant international guidance.]

7. Manufacturing processes in which mercury or mercury compounds are used¹³

Source: The text of article 7 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.31) prepared by the contact group on products and processes.

Restriction of use

1. Each Party shall not allow the use of mercury or mercury compounds [at facilities using] [in] the manufacturing processes listed in Annex D [that were in existence at the time of entry into force of this Convention for a Party][after the prohibition date specified in that Annex for the individual processes][, except in accordance with an exemption [and an acceptable use] [and for which the Party is registered as provided in article 8]].

Measures for facilities

2. Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D shall:
- (a) [Promote][Take] measures to reduce, and where feasible eliminate, mercury emissions and releases from those facilities; and
 - (b) Include in its reports submitted under Article 22, information on the measures taken under this paragraph.*

[*Note] The content of this paragraph might be moved to Article 22 itself.]

- (c) [[Register][Identify] all facilities within its territory no later than [one][three] year[s] after the entry into force of this Convention for the Party, and [submit this register to the Secretariat for

10 The contact group identified the need for possible revision of the language in paragraph 7 in relation to Article 28.

11 Proposals were made by some countries to address dental amalgam in Annex C and some countries indicated that they had text available.

12 Some countries indicated that they would have operative language in reference to including vaccine preservatives in the text of the Convention in a similar manner as that proposed for dental amalgam.

13 Where language is inconsistent with the text of article 6, the text needs to be made consistent.

distribution to all Parties. The registration shall include]] [Inform the Secretariat on] the number and types of facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D, including the estimated annual amount of mercury used;]

VCM

[3. The manufacture of the acetylene based VCM production shall be considered as acceptable use until five years later after the Conference of the Parties determine that mercury free alternatives for that are available. The Parties with acetylene based VCM production facilities prior to the entry into force of this Convention are encouraged to promote measures to reduce the use and release of mercury specifically by adopting guidelines on BAT and BEP, taking into consideration of the Parties' national economic and technical circumstances.]

New facilities

[4. Each Party shall not allow the use of mercury or mercury compounds at new facilities using the manufacturing processes listed in Annex D. Such facilities shall not be eligible for exemptions.]

[4.alt Each Party shall not allow a new facility using the processes listed in Annex D without exception, or any new facility using any other manufacturing process in which mercury or mercury compounds are intentionally added except where the Party can demonstrate to the satisfaction of the Conference of the Parties that the manufacturing process provides an important societal benefit and that there are no economically viable mercury free alternatives available to provide such benefit taking into account the national and economic circumstances of that Party.]

Information exchange

5. Parties are encouraged to exchange information on [technology transfer,] economically and technically feasible mercury free alternatives, and possible measures and techniques to reduce and where feasible to eliminate use, emissions and releases of mercury and mercury compounds from the manufacturing processes listed in Annex D.

Review of Annex D

[6. [No later than] every [five] years from the date of entry into force of the Convention, the Conference of the Parties shall decide, based on recommendations received from the [expert] body established under Article [25bis], taking into account recent technical and economic developments and any other relevant available information, to review and revise Annex D as appropriate.]¹⁴

Clarification of definition

[7. "Manufacturing processes in which mercury or mercury compounds are used" shall not include processes using mercury-added products and manufacturing processes of mercury-added products [and processes that process mercury containing waste.]]¹⁵

8. Allowable-use exemptions [and acceptable use]

Source: The text of article 8 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

Article 8, option 1

Comment by the secretariat: This option is compatible with options 1 and 2 of Article 6 and options 1 and 2 of paragraph 1 of Article 7 as presented in document UNEP(DTIE)/Hg/INC.4/3..It is noted that these options are not present in the revised versions of these articles. .

Paragraph 1, alternative 1 (exemptions available to a Party upon request)

1. Any State or regional economic integration organization may register for one or more allowable-use exemptions listed in Annex C or Annex D by notifying the Secretariat in writing:
 - (a) No later than the date upon which this Convention enters into force for it; or
 - (b) In the case of any mercury-added product that is added by amendment to Annex C or any manufacturing process in which mercury is used that is added by amendment to Annex D, no later than the date upon which the applicable amendment enters into force for the Party.

14 To be reviewed.

15 Could be moved to the chapeau of Annex D or to the Article on definitions.

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

Paragraph 1, alternative 2 (exemptions available to a Party upon request, subject to approval by the Conference of the Parties)

1. Any State may, upon becoming a Party, by means of a notification submitted in writing to the Secretariat, request one or more types of allowable-use exemptions listed in Annex C or Annex D. Each Party requesting an allowable-use exemption shall submit a report to the Secretariat justifying its need for it. The report shall be circulated by the Secretariat to all Parties. Based on this report and on all available information the Conference of the Parties shall decide whether to grant the requested exemption.
2. [Parties that have allowable-use exemptions listed in Annex C or Annex D] [Parties for which allowable-use exemptions listed in Annex C or Annex D have been granted] shall be identified in an allowable-use register. The register shall be maintained by the Secretariat and be available to the public.
3. The register shall include:
 - (a) A list of the allowable-use exemptions set forth in Annex C and Annex D;
 - (b) A list of the Parties that have [registered] [been granted] allowable-use exemptions listed in Annex C or Annex D; and
 - (c) A list of the expiration dates for all registered allowable-use exemptions for all Parties.

Paragraph 4, alternative 1

4. Unless an earlier date is indicated in the register by a Party at the time that it registers for an exemption, or an extension is granted pursuant to paragraph 7, all allowable-use exemptions shall expire [10] years after the date of entry into force of this Convention [with regard to a particular use] [for the Party].

Paragraph 4, alternative 2

4. Unless a shorter period is decided upon by the Parties, all allowable-use exemptions shall expire after five years.
5. The Conference of the Parties shall decide at its first meeting upon a process for reviewing allowable-use exemptions. [Criteria for the review shall include [*to be completed later in the negotiations*], [in addition to consideration of activities planned or under way to eliminate such use as soon as feasible and to provide environmentally sound storage of mercury and disposal of mercury wastes.]]
6. Before the review of an allowable-use exemption, a Party [wishing to extend] [requesting an extension of] the exemption shall submit a report to the Secretariat justifying its continuing need for it. The report shall be circulated by the Secretariat to all Parties. The review of an allowable-use exemption shall be carried out on the basis of all available information, including the availability of alternative products and processes that are free of mercury or that involve the consumption of less mercury than does the exempt use. Thereupon, the Conference of the Parties may make such recommendations to the Party concerned as it may deem appropriate.
7. The Conference of the Parties may[, upon request from the Party concerned,] decide to extend an allowable-use exemption for [a period] [periods] of up to [five] [10] years. In making its decision, the Conference of the Parties shall take due account of the special circumstances of developing-country Parties[, especially least-developed-country Parties,] and Parties with economies in transition[, in addition to activities undertaken and planned to eliminate such use as soon as feasible, and activities planned or under way to provide environmentally sound storage of mercury and disposal of mercury wastes.] [Unless it decides otherwise, the Conference of the Parties shall take decisions pursuant to this paragraph at intervals of [10] years after the entry into force of this Convention with regard to a particular allowable use.]
8. A Party may at any time withdraw an allowable-use exemption upon written notification to the Secretariat. The withdrawal of an allowable-use exemption shall take effect on the date specified in the notification.

Paragraph 9, alternative 1

[9. [When] [If, at any time after X years after the entry into force of this Convention,] there are no longer any Parties registered for a particular type of allowable-use exemption, no new registrations may be made with regard to it.]

Paragraph 9, alternative 2

9. No exemption requests or new registrations for a particular use may be made upon determination by the Conference of the Parties that such registrations or requests are no longer needed, or when there are no longer any Parties registered for an allowable-use exemption for the particular use, whichever comes first.

[10. “Acceptable use” in this Convention means any use of mercury or mercury compounds that is generally accepted due to the special needs of one or more Parties and because cost-effective alternatives for the use are unavailable. Any mercury-added product listed in Annex C or mercury process listed in Annex D identified as an acceptable use shall be subject to the provisions on acceptable use set out in the applicable annex.]

Article 8, option 2

Comment by the secretariat: This option is compatible with option 4 of Article 6 as presented in document UNEP(DTIE)/Hg/INC.4/3. It is noted that this option is not present in the revised version of this article.

1. For the purposes of this article, “essential-use exemptions” shall mean limited exceptions designed to allow a sufficient and reasonable period of time for the adoption of alternatives to mercury use that are feasible from an environmental, social and economic standpoint.
2. Production or consumption involving mercury shall qualify as an essential use where:
 - (a) The use is necessary for health or safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and
 - (b) Restriction of the use could significantly disrupt markets because there are no alternatives or substitutes that are acceptable from an environmental, social or economic standpoint.
3. In accordance with the criteria in paragraph 2 of this article, Parties shall notify the Secretariat of essential uses at least X months before each ordinary meeting of the Conference of the Parties. Notifications must be accompanied by information on:
 - (a) The essential use (substance, quantity, quality, expected duration of essential use, duration of production or consumption necessary to meet such essential use);
 - (b) Economically feasible methods to control releases related to the proposed essential use;
 - (c) Sources of already produced controlled substances for the proposed essential use (quantity, quality, timing); and
 - (d) Steps necessary to ensure that alternative products or processes are available as soon as possible for the proposed essential use.
4. The measures envisaged in the preceding paragraphs shall be implemented taking account of Parties’ social and economic conditions, particularly those of least-developed-country Parties, and compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in parties in accordance with their own assessments of their needs and priorities.

[8 bis. Special situation of developing countries]

Source: The text of article 8 bis is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

[Any Party that is a developing country shall be entitled to delay for ten years its compliance with the control measures set out in Articles 3–14 of this Convention.]

F. Artisanal and small-scale gold mining

9. Artisanal and small-scale gold mining

Source: The text of Article 9 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.20) prepared by the legal group.

1. The measures in this article and in Annex E shall apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.¹⁶
2. Each Party that has artisanal and small-scale gold mining and processing subject to this article within its territory shall¹⁷ take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the releases to the environment of mercury from, such mining and processing.
3. Each Party shall report to the Secretariat¹⁸ whether the artisanal and small-scale gold mining and processing in its territory is more than insignificant. If it determines¹⁹ at any time that it is more than insignificant, the Party shall:
 - (a) Develop and implement a national action plan in accordance with Annex E;
 - (b) Submit its national action plan to the Secretariat no later than three years after entry into force of the Convention for it;²⁰ and
 - (c) Thereafter, provide a review every three years of the progress made in meeting its obligations under Article 9 and include such reviews in the reports that it submits pursuant to Article 22.
4. Parties may cooperate with 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;²¹
 - (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.

[5. OPTION 1: No Party may allow the import or export of mercury or mercury compounds listed in Annex B for use in artisanal and small-scale gold mining and processing[, except in accordance with an allowable-use exemption available under this article for which the Party is registered, as provided in Article 8].]

[5. OPTION 2: No Party may allow the import or export of mercury or mercury compounds for use in artisanal and small-scale gold mining and processing, except if actions for eliminating the practices listed in paragraph 1 (b) of Annex E have been taken on the territory of the importing country and the

¹⁶ Note: The legal group observed that the sentence limits the article and Annex E to processing in which mercury is used to extract gold from ore. To the extent that the intent is to cover other forms of processing, some editing will be required.

¹⁷ One representative expressed a need to reflect whether the degree of flexibility provided by this paragraph was sufficient for its domestic purposes.

¹⁸ Note: The legal group noted that it is unclear when this is to be reported, e.g. upon ratification or as part of reporting under article 22.

¹⁹ One representative voiced her concern regarding the determination of “more than insignificant” as given in this paragraph stating it required further clarification through, for example, inclusion of criteria to determine what was insignificant.

²⁰ The contact group agreed to delete the last phrase in this sub-paragraph on the understanding that countries had the flexibility to include their national action plans on artisanal and small scale gold mining into any national implementation plan that might be developed under Article 21.

²¹ Note: The legal group noted that, depending upon the answer to its question in footnote 15, further editing may be required.

imported mercury is destined to practices other than and having lesser environmental and health impacts than those listed in that paragraph.]

[5. OPTION 3: A Party or non-Party may submit a declaration to the Secretariat containing the following information:

- a. A statement that it does not allow the use of mercury in artisanal and small-scale gold mining within its territory and also does not allow any imports of mercury for such use, and
- b. The specific measures it has taken to implement these restrictions.

The Secretariat shall establish and maintain a registry of the Parties and non-Parties that make such a declaration. Each Party shall not allow the export of mercury for use in artisanal and small-scale gold mining to the Parties and non-Parties on the registry.]

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

G. Emissions and releases

Option 1 (retain separate Articles 10 and 11)

10. [Unintentional] [A]tmospheric emissions

Source: The text of article 10 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. Each Party shall [take steps as provided in this article to] reduce [, and where feasible eliminate,] [unintentional] atmospheric emissions of mercury from the source categories listed in Annex F, subject to the provisions of that annex.
2. For new [unintentional] emissions sources among the source categories listed in Annex F, each Party [shall] [should]:
 - (a) [Require] [Encourage] the use of best available techniques [for such sources as soon as practicable, but no later than [four] [five] years after the entry into force of the Convention for it; and
 - (b) Promote the use of best environmental practices] [; and]

[(b) bis Require that emissions from such sources not exceed the emission limit values listed in that annex].
3. For existing [unintentional] emissions sources among the source categories listed in Annex F, each Party [shall] [is encouraged to] [promote] [require] the use of best available techniques [and best environmental practices] [for such sources as soon as practicable, but no later than X years after the entry into force of the Convention for it] [, and require that emissions from such sources not exceed the emission limit values listed in that annex as soon as practicable, but no later than X years after the entry into force of the Convention for it].
4. The Conference of the Parties shall at its first meeting [adopt] [develop] guidelines on best available techniques [and best environmental practices] for reducing [unintentional] atmospheric emissions of mercury[, and maximize potential co-benefits of such reductions,] from the source categories listed in Annex F. [The guidelines shall include emission benchmarks reflecting the reductions that can be achieved by applying the best available techniques. They shall also include an explanation of how to use the benchmarks to derive the goals referred to under subparagraph (a) of paragraph 5.] [Best available techniques should be made available free of charge to Parties.] [The guidelines may be updated as necessary by the Conference of the Parties.] Parties [shall] [are encouraged to] take the guidelines [and benchmarks] [and the guidance provided in Annex F] into account when implementing the provisions of this article.
5. Each Party with significant aggregate mercury emissions from the source categories listed in Annex F shall, within the later of [two] years of entry into force of this Convention for it or [two] years of becoming a source of significant aggregate mercury emissions from such sources:
 - (a) Adopt a [numerical] [national] goal [that is at a minimum consistent with the application of best available techniques and best environmental practices] for reducing [, and where feasible eliminating,] atmospheric mercury emissions from the source categories listed in Annex F[, using the benchmarks referred to under paragraph 4];

[(a) bis Develop and maintain an initial inventory of sources and reliable emissions estimates for the source categories listed in Annex F. Thereafter, the inventory of sources and emissions estimates shall be updated no less frequently than every X years;]

(b) Submit its [initial national inventory of sources and emissions and its] [national] goal to the Secretariat for dissemination to the Parties and consideration by the Conference of the Parties at its next meeting; and

(c) Develop [and implement], in accordance with Part II of Annex F, an action plan for reducing, and where feasible eliminating, its atmospheric mercury emissions from the source categories listed in Part I of Annex F.]

[(d) Paragraph 3 notwithstanding, for existing emission sources among the source categories listed in Annex F:

(i) Require the use of best available techniques to reduce emissions from such sources as soon as practicable, but no later than $[4 + X]$ $[5 + X]$ years [*i.e., later than the number of years listed in paragraph 2 (a) above*] after the entry into force of the Convention for it; and

(ii) Promote the use of best environmental practices.]

[5 bis. A Party may use release limit values or performance standards to fulfil its commitments in respect of best available techniques under this article.]

6. For the purposes of this article and Annex F:

[(a) “Unintentional emissions” means atmospheric mercury emissions that result from human industrial, residential or agricultural activities in which the production of such emissions is not the main intent of such activities. For the purposes of this article and Annex F, “unintentional emissions” shall not exclude emissions and releases that may result from negligent, reckless or illegal behaviour;]

(b) “Atmospheric mercury emissions” and “atmospheric emissions of mercury” means emissions to the atmosphere of gas-phase oxidized mercury (Hg²⁺), gas-phase elemental mercury (Hg⁰) or solid-phase particulate-bound mercury (Hg_p); [and]

[(c) “New emissions source” means any emissions source for which construction or substantial modification is begun one or more years after the entry into force for the Party concerned:

(i) Of this Convention; or

(ii) Of an amendment to Annex C where the emissions source becomes subject to the provisions of this Convention only by virtue of that amendment] [;]

[(d) “Existing emissions source” means any emissions source that is not a new emissions source under this article] [; and]

[(e) “Significant aggregate mercury emissions” means the annual atmospheric mercury emissions of a Party from the source categories listed in Annex F that, in total, equal [10] or more tons].

7. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

Option 1, continued

[11. Releases to water and land

Source: The text of article 11 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. Each Party shall reduce[, and where feasible eliminate,] releases of mercury and mercury compounds to water and land from the source categories listed in Annex G, [subject to] [as provided in] the provisions of that annex[and the provisions of Articles 3, 6, 7, 9, 13 and 14].

Paragraph 2, alternative 1

2. The Conference of the Parties shall develop and adopt guidelines on best available techniques and best environmental practices for reducing releases of mercury and mercury compounds to water and land from the source categories listed in Annex G. The guidelines shall complement and avoid duplication with the provisions of Articles 3, 7, 9, 13 and 14 and any guidelines developed thereunder that are relevant to the achievement of reductions of releases of mercury and mercury compounds to water and land. Parties shall take these guidelines into account when implementing the provisions of this article.

Paragraph 2, alternative 2

2. Each Party shall promote the use of best available techniques and best environmental practices to reduce releases of mercury and mercury compounds to water and land from the source categories listed in Annex G, taking into account any guidelines developed under the provisions of Articles 3, 6, 7, 9, 13 and 14 that are relevant to the achievement of reductions of mercury releases to water and land.

[2 bis. A Party may use release limit values or performance standards to fulfil its commitments in respect of best available techniques under this article.]

[3. Parties may cooperate in developing and implementing strategies and methodologies for achieving the objectives of this article [, including through the provision of financial and technical assistance].]

4. Each Party shall include in its reports submitted pursuant to Article 22 information [required under the provisions of Articles 3, 6, 7, 9, 13 and 14] sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.]

Option 2 (combine Articles 10 and 11 and Annexes F and G into a single Article 11.alt and a single Annex G.alt)

11.alt Unintentional emissions and releases

Source: The text of article 11.alt below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. This article shall apply to unintentional anthropogenic emissions and releases of mercury and mercury compounds to the atmosphere, water and land. For the purposes of this article and Annex G.alt:

- (a) “Unintentional emissions and releases” means atmospheric mercury emissions and releases of mercury or mercury compounds to water and land that result from human industrial, residential or agricultural activities in which the production of such emissions or releases is not the main intent of such activities. For the purposes of this article and Annex G.alt, “unintentional emissions and releases” shall not exclude emissions and releases that may result from negligent, reckless or illegal behaviour;
- (b) “Atmospheric mercury emissions” and “atmospheric emissions of mercury” mean emissions to the atmosphere of gas-phase oxidized mercury (Hg²⁺), gas-phase elemental mercury (Hg⁰) or solid-phase particulate-bound mercury (Hgp); and
- (c) “Significant aggregate mercury emissions” means the annual atmospheric mercury emissions of a Party from the source categories listed in Part I of Annex G.alt that, in total, equal [10] or more tons.

2. Each Party [shall] [may take measures to] reduce, and where feasible eliminate, atmospheric emissions of mercury and releases of mercury and mercury compounds to the water and land from the source categories listed in Annex G.alt, subject to the provisions of that annex.

3. For new emissions and release sources among the source categories listed in Annex G.alt, each Party shall:

- (a) [Require] [promote] the use of best available techniques for such sources as soon as practicable, but no later than X years after the entry into force of the Convention for it; and
- (b) [Promote] [Require] the use of best environmental practices.

4. For existing emissions and release sources among the source categories listed in Annex G.alt, each Party shall [require] [promote] the use of best available techniques and best environmental practices.
5. A Party may use release limit values or performance standards to fulfil its commitments for best available techniques under this article.
6. The Conference of the Parties shall at its first meeting adopt guidelines on best available techniques and best environmental practices for reducing atmospheric emissions of mercury and releases of mercury and mercury compounds from the source categories listed in Annex G.alt[, taking into account any guidelines developed under the provisions of Articles 3, 6, 7, 9, 13 and 14 that are relevant to the achievement of reductions of releases of mercury and mercury compounds to water and land]. Parties shall take these guidelines into account when implementing the provisions of this article.
7. Each Party [with significant aggregate mercury emissions from the source categories listed in Part I of Annex G.alt shall, within the later of X years of entry into force of this Convention for the Party or X years of becoming a source of significant aggregate mercury emissions from such sources] [may]:
 - (a) Adopt a national goal for reducing, and where feasible eliminating, atmospheric mercury emissions from the source categories listed in Part I of Annex G.alt;
 - (b) Submit its national goal to the Secretariat for distribution to the Parties and consideration by the Conference of the Parties at its next meeting; and
 - (c) Develop, in accordance with Part III of Annex G.alt, a national action plan for reducing, and where feasible eliminating, its atmospheric mercury emissions from the source categories listed in Part I of Annex G.alt.
8. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

H. Storage, wastes and contaminated sites

12. Environmentally sound interim storage of mercury, other than waste mercury

Source: The text of article 12 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.32) prepared by the legal group.

1. This article shall apply to the storage of mercury and mercury compounds that do not fall within the meaning of the definition of mercury waste set out in article 13.²²
2. Each Party shall take measures to ensure that the 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. The storage of such mercury and mercury compounds shall be on an interim basis only.
3. The Conference of the Parties shall adopt [guidance] [requirements in the form of an additional annex to this Convention²³] on the environmentally sound storage²⁴ 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.
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 storage of such mercury and mercury compounds.

²² The Contact Group agreed to un-bracket “mercury compounds”, but noted there may be a need to consider whether to retain “mercury compound” depending on the definition that is agreed on.

²³ The legal group observed that, if this option is chosen, language will need to be added to make clear that Parties must follow such requirements.

²⁴ The legal group observed that the currently bracketed definition in art. 2 (c) is probably not necessary because the concept of what is environmentally sound storage will be elaborated by the Conference of the Parties through the guidance or requirements.

13. Mercury wastes

Source: The text of article 13 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.32) prepared by the legal group.

[1. The [relevant] definitions [and provisions] of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention.²⁵]

1 bis. [Notwithstanding paragraph 1,²⁶] mercury waste means:

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

that are disposed of or are intended to be disposed of or are required to be disposed of by provisions of national law or this Convention.²⁷

2. 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 on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal²⁸ [and in accordance with [any] requirements related to waste facility location, design and operation, and adequate treatment before final disposal that the Conference of the Parties [may] adopt[s] in an additional annex];

(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 2 (a);

(c) Not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with this article and, if it is a Party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, in conformity with that Convention.²⁹ [In circumstances where the Basel Convention does not apply to transport across international boundaries, a Party shall allow such transport only where an equivalent control to that laid down in the Basel Convention, in particular regarding prior informed consent and take-back obligations apply³⁰].

3. The Conference of the Parties shall seek to cooperate closely with the relevant bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal in the review and update, as appropriate, of the guidelines referred to in paragraph 2 (a).

4. 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 waste in an environmentally sound manner.

25 The legal group raised the question, if this paragraph is retained, whether this reference to the Basel Convention is meant to refer to the Basel Convention at a fixed time, or the Basel Convention as it evolves.

26 The legal group noted that, if the bracketed text is retained, further editing would be required to reflect the relationship between paragraph 2 and paragraph 1.

27 One regional group was of the view that the definition of “mercury wastes” as outlined in Article 1bis does not fully reflect the types of mercury wastes included in the relevant Annexes of the Basel Convention, or is consistent with the definition of “mercury wastes” in the Basel Convention Technical Guidelines on the environmentally sound management of mercury wastes. In this regard, the Group requested that the contact group that will be convened at INC.5 on Article 13 revisit paragraph 1bis.

28 See footnote 24 above.

29 The legal group considered that this text more clearly reflects what it believed to be the policy intention behind the words “as applicable”.

30 The legal group noted that if the bracketed text is retained, further editing will be required.

14. Contaminated sites

Source: The text of article 14 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.20) prepared by the legal group.

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 characterisation;
 - (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 [, including through the provision of capacity-building, financial and technical assistance].

I. Financial resources and technical and implementation assistance

15. Financial resources and mechanisms

Source: The text of article 15 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.24) prepared by the contact group on financial resources and technical assistance.

Pre 1. [The parties recognize that the provision of capacity building and technical and adequate financial assistance is essential to the effective implementation of the Convention]

[1. [The ability of][The extent to which] developing countries [in particular SIDs and LDCs,]and countries with economies in transition [will effectively] to implement [effectively] [some][the] legal obligations arising under this Convention [effectively]is [in part] dependent on the availability [accessability]of capacity-building [,technology transfer]and [adequate] technical and [adequate] financial [assistance][resources].[, which is predictable ,sufficient and timely]]³¹

2. [Financial resources shall be [made available][provided] by [all]Parties, [within their capabilities[and responsibilities.],] for the implementation of activities under the Convention, [including][within] from domestic resources, [especially from mainstreaming in national budgets and development strategies and private sector involvement as well as] multilateral and bilateral funding [, mainstreaming in national budgets and development strategies and private sector involvement].

[2 alt.1 Financial resources shall be made available by developed country parties [to enable developing country parties and parties with economies in transition to implement][for the implementation of] the convention. Other parties may also, on a voluntary basis and in accordance with their capabilities, provide additional financial resources. Complementary contributions may also be provided from other sources, including from the private sector, in order to support activities under this convention.]

[2 alt.2 Each party undertakes to provide within it capabilities, financial resources in respect of those national activities which are intended to implement this convention, in accordance with its national plans, priorities and programmes. Such financial resources shall include domestic multilateral and bilateral funding mainstreaming in national budgets and development strategies and private sector involvement.]

[3. A mechanism for the provision of [timely, adequate and sustainable]financial [resources][on a grant or concessional basis] and technical assistance [and technological transfer] [within the assigned time frame] is hereby [established][defined][as an integral part of the multilateral environmental

31 Note: There was a suggestion to switch the order of paras. 1 and 2.

financial structure] to [support][assist] developing country Parties [in particular SIDS and LDCs] and Parties with economies in transition [to assist them in implementing] in [meeting][implementing] [to comply with] [some of] their obligations under this Convention. [While financial and technical assistance [and technological transfer] may be available to enhance parties' implementation, each party remains responsible for complying with its obligations under this convention]]

[3 alt. A mechanism for the provision of financial resources and technical assistance is hereby established to support developing country parties [in particular SIDS and LDCs] and parties with economies in transition in meeting their obligations under this convention.]

4. The mechanism shall provide [sufficient]funds to meet the [full or] [agreed] [incremental costs of][global environmental benefits] [activities under the Convention] [as agreed by the conference of the parties], the costs of capacity-building, the costs of enabling activities,[the elaboration and implementation of national implementation plans.] and[the agreed incremental costs of measures to implement some legal obligations] [other technical and financial assistance for] [some][the][legal obligations] [arising] [under the Convention][, as well as other costs as determined by the Conference of the Parties].

[4 alt. The mechanism shall provide funds to meet the agreed incremental costs of activities which enable compliance with priority legal obligations under the convention, as agreed between a recipient party and an entity participating in the mechanism described in paragraph 3. Those legal obligations shall receive funding priority from the mechanism and an indicative list of the categories of incremental costs shall be determined by the conference of the parties at its first meeting, and adjusted by it from time to time to reflect progress made under this convention in addressing mercury emissions and releases of global concern.]

[4 bis. The mechanism includes funds to meet the agreed costs for the implementation of some legal obligations arising under the convention, taking into consideration a party's domestic capacity to address mercury challenges.]

[5 option 1. The mechanism shall be accountable to the Conference of the Parties, which shall at its first meeting decide on its overall policies and procedures. The mechanism shall include an independent fund.]

[5 option 2. The mechanism shall function under the [authority, as appropriate, and] guidance of, and be accountable to the Conference of the Parties for the purposes of this convention, which shall at its first meeting adopt appropriate guidance to be provided to the mechanism and shall agree with the mechanism on arrangements to give effect thereto. The guidance shall, [taking into consideration developments in the Basel, Rotterdam and Stockholm Conventions, the Montreal Protocol and SAICM] address: {to be completed later in the negotiations}.]

[5 option 3. The mechanism shall operate under the authority, as appropriate, and guidance of, and be accountable to the conference of the parties. Its operation shall be entrusted to [the Global Environment Facility] one or more existing entities. The mechanism may also include other entities providing multilateral and bilateral financial assistance. The conference of the parties shall at its first meeting decide on the policy, programme priorities and eligibility criteria relating to access to and utilization of such resources.]

[6. [The mechanism [may include entities providing multilateral, regional and bilateral financial and technical assistance][shall include a fund]][the Global Environment Facility shall be entrusted with the fund][The conference of the parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs. Such arrangements shall include dedicated funding to enable compliance with some legal obligations of the convention, and][. It] may also include other means of multilateral, regional and bilateral financial and technical assistance.

[6 alt. The conference of the Parties shall review, no later than at its third meeting, and thereafter in a regular basis the level of funding, the effectiveness of the mechanism established under this article and its ability to effectively address the needs of developing country parties, in particular SIDS and LDCs and parties with economies in transition. It shall, based on such review, take appropriate action, if necessary, to improve the effectiveness of the mechanism , including by means of recommendations and guidance on measures to ensure sufficient and sustainable funding to meet the needs of developing country parties.]*{To replace paragraphs 6, 7 and 8}*

[6 bis. The mechanism shall include a stand-alone fund and a timetable for fund allocations dedicated to each specific activity for the implementation of the respective legal obligation should be set up for the conference of the parties to be adopted at its first meeting. (Note: this timetable should be set up before the conclusion of the negotiations.)]

[6 ter. The mechanism shall be in accordance with the commitment to an approach to the sound management of chemicals and wastes at all levels, that responds in an effective, coherent, efficient and coordinated manner to new and emerging issues and challenges.]

[6 quat. The mechanism shall have the institutional possibility to provide financial assistance for other chemicals of global concern, pending any international identification of such substances.]

[7. Contributions to the mechanism shall be made by all Parties within their capabilities.]

[7 alt. All parties are encouraged to contribute to the fund.]

8. The [entity or entities operating the] mechanism shall encourage the provision of financial resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.]

[8 bis. The assistance to be provided should take into account the capacity of the country receiving assistance, as well as the activity's potential for mercury reductions.]

16. Technical assistance

Source: The text of article 16 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.24) prepared by the contact group on financial resources and technical assistance.

Pre 1. The Parties recognize that the provision of timely and appropriate technical assistance in response to requests from developing country Parties in particular LDCs and SIDs and Parties with economies in transition [is the condition for] [is essential to] the successful implementation of this convention and should address the varied and specialized nature of the activities required by this instrument [and]the specific needs of each Party. (Note: some delegations have indicated they would prefer to have this text in the preamble.)

Pre 1.alt. The Parties recognize that the provision of timely and appropriate technical assistance in response to requests from developing country Parties in particular LDCs and SIDs and Parties with economies in transition should address the varied and specialized nature of the activities required, and [is the condition for] [is essential to] the successful implementation of this convention.

1. [Developed country Parties and other Parties within their capabilities][Parties] shall [cooperate to] [provide][promote transfer of technology] [technology transfer .] [as mutually agreed] { *There was a proposal for a separate article for technology transfer*}[and provide] [timely and appropriate] technical assistance and capacity-building to developing country Parties in particular LDCs and SIDs and Parties with economies in transition to assist them in implementing their obligations under this Convention.[Further guidance in this regard shall be [provided][adopted] by the Conference of the Parties.] { *There was an indication that commitments related to technology transfer as mutually agreed and technical assistance should not be restricted from 'north to south' and wanted a more general opening with specific mention of developing countries.* }

2. Technical assistance may be provided [at][through]regional, subregional and [national][level][arrangements] [delivery mechanisms], using existing [and new] [structures][mechanisms] where possible [and exploring other delivery proposals as appropriate],[and other multilateral and bilateral means] [as well as partnerships, including those involving the private sector][, and bilateral and other multilateral means] [Partnerships, including those involving the private sector are considered an [important] means of implementation and should build on experience from other MEAs]. { *There was a suggestion that multilateral means should come first*}. Further guidance [in][on] this [paragraph][regard]shall be provided by the Conference of the Parties. [Cooperation and coordination with other multilateral environmental agreements in the field of chemicals and wastes should be [leveraged][sought] to increase[the effectiveness of] the delivery of technical assistance.]

[16 bis. Transfer of technology

Source: The text of article 16 bis below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.24) prepared by the contact group on financial resources and technical assistance.

1. [The Conference of the Parties in its first meeting shall create a mechanism under the Convention for the purpose of transfer of technology to developing countries, in particular Least Developed Countries and Small States Developing Countries and countries with economies in transition, in order to enhance their capacity in implementing this convention, under which the secretariat will:
 - (a) assess the contribution of existing activities in transfer of technology and know-how and assess the means of improving the quality of international transfer of technology and know-how for that purpose;
 - (b) review the status of technology transfer and the need for technology transfer of the mentioned countries;
 - (c) develop the arrangements to overcome the barriers and obstacles to technology transfer;
 - (d) present the best practices for transfer of environmentally sound technologies;
 - (e) establish a procedure for the acceleration of technology transfer.
2. The developed country parties shall:
 - (a) establish arrangements for the purpose of transfer of technology to developing country Parties, in particular LDCs and SIDS and Parties with economies in transition relating to the implementation of this Convention;
 - (b) provide access to and transfer of environmentally sound technologies on a concessional or preferential basis to developing country Parties, in particular LDCs and SIDS and Parties with economies in transition;
 - (c) provide substitute, relevant and updated technologies to mercury with an urgency to developing country Parties, in particular LDCs and SIDS and Parties with economies in transition.
3. To achieve the objectives of the Convention, the obligation of the concerned parties under this article shall be examined by the compliance mechanism.]

[16 bis. alt. The conference of the parties at its first meeting shall consider the technology challenges of developing country parties [in particular LDCs and SIDS] with a view to identify activities to improve the capacity and urgently promote the development of substitutes of relevant and updated technologies to mercury, and identify options and opportunities for parties to cooperate to promote technology transfer[as mutually agreed] [to LDCs].]

17. [[Implementation] [Compliance] committee] [Committee[s] on financial assistance, technical support, capacity-building and implementation]

Source: The text of article 17 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.26) prepared by the contact group on compliance.

Option 1

1. [A mechanism, including a committee as a subsidiary body of the Conference of the Parties, to promote [implementation of] and review [compliance with] all provisions of the Convention is hereby established.
2. The mechanism shall be facilitative in nature. [The Committee shall review the implementation of and compliance with all the provisions of the Convention.] The Committee may examine both individual and systemic issues of compliance and [shall] [may] make recommendations as appropriate to the Conference of the Parties.³²

³² This paragraph was not negotiated by the contact group on compliance during the fourth session of the Committee.

3. The Conference of the Parties at its first meeting shall adopt the terms of reference for the Committee.^{33]}

Option 2

1. [A mechanism, including a committee as a subsidiary body of the Conference of the Parties, to promote [implementation of] and review [compliance with] all provisions of the Convention is hereby established.

2. The mechanism shall be facilitative in nature. [The Committee shall review the implementation of and compliance with all the provisions of the Convention.] The Committee may examine both individual and systemic issues of compliance and [shall] [may] make recommendations as appropriate to the Conference of the Parties.^{34]}

[3. Unless otherwise decided by the Conference of the Parties:^{35]}

(a) The Committee shall consist of 10 members nominated by Parties and elected by the Conference of the Parties with due consideration to equitable geographical representation; the first members shall be elected at the first meeting of the Conference of the Parties;

[(a alt) The Committee shall consist of 10 members with competence in the field of mercury or other relevant fields nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation of the five regional groups of the United Nations;]

(b) The Committee shall reflect an appropriate balance of legal and technical expertise;

(c) The Committee may consider issues on the basis of:

- (i) Written submissions from any Party;
- (ii) National reports and reporting requirements; and
- (iii) Requests from the Conference of the Parties;

(d) A Party shall be entitled to participate in the consideration by the Committee of issues relating to its compliance with the Convention, but shall not take part in the consideration of any recommendations relating to such issues;

[(d bis) A Party shall not be entitled to participate in voting if the case which is under consideration of the committee relates to that Party;]

(e) The Committee may elaborate rules of procedure, which shall be subject to approval by the Conference of the Parties; the Conference of the Parties may adopt from time to time any further terms of reference for the Committee that it deems appropriate; and

(f) The Committee shall report at each ordinary meeting of the Conference of the Parties on the work that it has carried out since the last such meeting.

[(f bis) 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.]

33 This paragraph was not negotiated by the contact group on compliance during the fourth session of the Committee.

34 This paragraph was not negotiated by the contact group on compliance during the fourth session of the Committee.

35 This paragraph was not negotiated by the contact group on compliance during the fourth session of the Committee.

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

18. Information exchange

Source: The text of Article 18 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.20) prepared by the legal group.

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, [trade³⁶], emissions and release 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 secretariats such as those of existing 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 the secretariats of relevant multilateral environmental agreements and other international initiatives. In addition to information from Parties, this information shall include information from intergovernmental and non-governmental organisations 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 export notifications and the consent of importing Parties under paragraph 2 of Article 4 and paragraph 2 (b) of Article 6.]³⁷

5. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential [, subject to the national laws of each country]. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.

19. Public information, awareness and education

Source: The text of Article 19 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.20) prepared by the legal group.

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) Domestically produced products that contain mercury³⁸ and domestic processes that use mercury, and activities under way or planned to reduce or eliminate the same;]³⁹

³⁶ Note: The contact group noted that this issue will be resolved according to the discussions on trade issues elsewhere in the draft text.

³⁷ Note: The contact group supports the deletion of this paragraph provided its content is reflected elsewhere in the draft text.

- (iv) The topics identified in paragraph 1 of Article 18;
- [(v) The results of their research, development and monitoring activities under Article 20;]⁴⁰ [and]
- (vi) 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/populations at risk], 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 released or disposed of through human activities.

20. Research, development and monitoring

Source: The text of Article 20 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.20) prepared by the legal group.

Parties should, building on existing monitoring networks and research programmes, cooperate to develop and improve:

- (a) Inventories of use, consumption,⁴¹ and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds;
- (b) Modelling and geographically representative monitoring of mercury levels in vulnerable populations and 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) above;
- (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 releases of mercury and of remobilization of mercury from historic deposition;
- [(f) Information on commerce and trade in mercury 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 releases of mercury and mercury compounds.

[20 bis. Health aspects

Source: The text of article 20 bis below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.19) submitted by the group of Latin American and Caribbean countries.

1. Each Party shall:
 - (a) Establish and implement programmes to identify vulnerable populations and/or populations at risk from the exposure of mercury and its compounds;
 - (b) Develop and implement strategies and programmes to protect the above-mentioned identified populations from risk, which may include, inter alia, adopting health-based guidelines

38 The Legal group notes that if this text is to be included further edits of a drafting nature will be required.

39 To be kept in brackets pending the discussion on products and processes.

40 Note: The paragraph remains bracketed by the contact group subject to the discussions of Article 20.

41 Note: The legal group wondered whether the terms “use” and “consumption” mean different things. The legal group also noted that the term “consumption” is also used in article 8.

relating to the exposure of mercury and mercury compounds, setting targets for mercury exposure reduction and public and worker education, with the participation of health and other involved sectors;

(c) Apply the programmes, recommendations and guidelines at national level to inform and communicate the risks, as well as to monitor, review and verify that risk prevention and mitigation measures are achieving the intended results, including, where appropriate and feasible, through the use of biomonitoring;

(d) Implement programmes, recommendations and guidelines on the prevention of occupational exposure relating to permitted uses where potential exposures are of concern;

(e) Facilitate and assure proper access to health care to populations affected by the exposure to mercury or its compounds;

(f) Establish the scientific, technical and analytical capacity and strengthening of health professional capacity for the prevention, diagnosis, monitoring and treatment of the exposure of mercury and its compounds.

2. The Conference of the Parties shall:

(a) Adopt decisions, recommendations and guidelines for the implementation of the activities mentioned in the paragraph 1 supra. These recommendations and guidelines shall be prepared by the Parties, if necessary, with the assistance of international organizations, such as the World Health Organization or the International Labour Organization;

(b) Assure the flow of scientific, technical and financing resources under this Convention, in order to support the activities mentioned in paragraph 1 supra.

21. Implementation plans

Source: The text of article 21 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

Article 21, option 1

[0./ The Conference of the Parties at its [first] meeting shall develop a menu-based template to which Parties may refer in their development of implementation plans under this article.]

1. Each Party [in a position to do so] [may] [shall]:

(a) Develop and execute a plan for meeting its obligations under this Convention[, based on the template developed under paragraph 0./ and according to its specific situation];

(b) Declare its intentions in respect of the plan referred to in subparagraph (a) by submitting a notification to the Secretariat not later than [two years after] the date of entry into force of this Convention for it;

(c) Transmit its implementation plan to the Conference of the Parties within [one] [three] year[s] of the date on which [this Convention enters into force for it] [it submits its notification to the Secretariat];

(d) Review and update its implementation plan periodically and in a manner to be specified by a decision of the Conference of the Parties; and

(e) Include its reviews under subparagraph (d) in its reports submitted pursuant to Article 22.

2. Parties shall, where appropriate, consult their national stakeholders to facilitate the development, implementation, review and updating of their implementation plans, and may cooperate directly or through global, regional and subregional organizations.

[3. The Conference of the Parties shall review and evaluate implementation plans transmitted by developing-country Parties pursuant to subparagraph (c) of paragraph 1 and shall endorse the provision of financial resources through the financial mechanism of this Convention sufficient to fund those activities set out in such implementation plans that are aimed at compliance with the obligations established under this Convention. Such implementation plans may include any national action plans required under Annex D[, E] or [F] [G.alt].]

Article 21, option 2

1. No later than five years after the entry into force of this instrument Parties shall devise implementation plans with a view to complying with their obligations under this Convention;

2. Parties shall consider updating their implementation plans taking into account, among other things, the findings of studies and scientific and technical developments;
3. The Conference of the Parties at its [X] meeting shall determine the criteria for drafting and updating implementation plans; and
4. The measures envisaged in the preceding paragraphs shall be implemented taking into account Parties' social and economic conditions, and compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in Parties in accordance with their own assessments of their needs and priorities.

22. Reporting

Source: The text of Article 22 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.33) prepared by the legal group.

Article 22

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 in meeting the objectives of the Convention[, taking into account the contents of its implementation plan⁴²].
2. Each Party shall include in its reporting the information as called for in articles [X, Y, Z] of this Convention.⁴³
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, [recognizing that the ability of developing countries and CEITs to implement this provision [may][shall] be dependent on the availability of capacity-building, and adequate financial and technical assistance].

23. Effectiveness evaluation

Source: The text of Article 23 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.33) prepared by the legal group.

1. The Conference of the Parties shall evaluate the effectiveness of this Convention, beginning [three][four][eight] years after the date of entry into force of the Convention and periodically thereafter at intervals to be decided by it.
2. The evaluation shall be conducted on the basis of available scientific, environmental, technical [, financial]⁴⁴ and economic information, including:
 - (a) Reports and other monitoring information provided to [or requested by] the Conference of the Parties [pursuant to paragraph 3], including trends in mercury⁴⁵ levels observed in biotic media and vulnerable populations;⁴⁶
 - (b) Reports referred to in Article 22; [and]
 - (c) Information and recommendations provided pursuant to Article 17 [; 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]⁴⁷[Information submitted pursuant to Article 10].]

42 Resolving this bracket will depend on the decision made on art. 21.

43 Provisions outlining specific reporting requirements could be listed here. The decision on final placement on provisions related to reporting will be taken at a later stage.

44 The contact group decided to keep the brackets pending the outcome of discussions under other Articles in the Convention.

45 The legal group raised the question about whether "mercury levels" is the appropriate term, given that the current definition of mercury is elemental mercury and would not include mercury compounds such as methyl mercury. The same question arises with respect to art. 20(b).

46 The legal group draws attention to the fact that the term "vulnerable populations" is referenced throughout the text, whereas in art. 19, para. 1(b) there is a bracketed reference to "vulnerable populations/populations at risk".

47 The contact group decided to keep the brackets pending the outcome of discussions under other Articles in the Convention.

3. To facilitate the evaluation, the Conference of the Parties shall, at its [first/second] meeting, adopt criteria and a methodology for this purpose, including [the gathering of monitoring data, and] indicators where relevant, taking into account the effectiveness evaluations under related multilateral environmental agreements.

K. Institutional arrangements

24. Conference of the Parties⁴⁸

Source: The text of Article 24 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.22) prepared by the legal group.

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme no later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.
3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.
4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any of its subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.
5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by 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 22;

[(c) bis Review, evaluate and endorse the national implementation plans submitted by Parties pursuant to Article 21;]
 - (d) Consider any recommendations submitted to it by the [Implementation] [Compliance] Committee; [and]
 - (e) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention[; and]
 - (f) Review Annexes C and D every [five] years, taking into account recent technical and economic developments, with a view

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

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

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

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

Final sentence of subparagraph (f)

Following each such review the Conference of the Parties may decide to amend the annexes accordingly, in accordance with the provisions of Article 28.]

⁴⁸ The legal group noted that it may need to revisit certain aspects of these provisions in the light of other provisions that have not yet been referred to it for consideration.

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.

25. Secretariat⁴⁹

Source: The text of Article 25 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

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

[25 bis. Expert bodies

Source: The text of Article 25 bis below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

Option 1 (Committee on technological progress)

1. A Committee on Technological Progress is hereby established as a subsidiary body of the Conference of the Parties to provide it with assessments of existing and alternative technologies that may reduce the use of mercury in products and processes and unintended releases of mercury and mercury compounds. The Committee shall base its assessments on available scientific, health, environmental, technical and economic information. The Committee shall submit a report to the Conference of the Parties at its second meeting, and thereafter at each ordinary meeting, unless the Conference decides otherwise.

⁴⁹ Note by the legal group at the committee's third session: The legal group noted that it may need to revisit certain aspects of these provisions in the light of other provisions that have not yet been referred to it for consideration.

2. The Committee shall be multidisciplinary and open to the participation of all Parties. It shall comprise government representatives competent in relevant fields of expertise and observers.
3. The Conference of the Parties shall decide at its first meeting on the Committee's terms of reference.

Option 2 (Expert body for scientific, environmental, technical and economic issues)

The Conference of the Parties shall, at its first meeting, decide on an appropriate body of experts qualified to assist it in its tasks, in particular those referred to in Articles 8, 11–13, 23 and 28, by assessing the matters related to those tasks on the basis of scientific, environmental, technical and economic information. The Conference of the Parties shall determine the composition and terms of reference of the body of experts. The body of experts shall report its conclusions to the Conference of the Parties one year after having been convened, and thereafter according to its terms of reference.]

L. Settlement of disputes

26. Settlement of disputes

Source: The text of Article 26 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

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

M. Further development of the Convention

27. Amendments to the Convention

Source: The text of Article 27 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.22) prepared by the legal group.

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 X 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 [number of] 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.

28. Adoption and amendment of annexes⁵⁰

Source: The text of Article 28 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Any additional annexes adopted after the entry into force of this Convention shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in [paragraphs 1–3 of Article 27];

(b) Any Party that is unable to accept an additional annex shall so notify the 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 [Annex X] shall not enter into force with regard to any Party that has made a declaration with regard to amendment of [that Annex] [those Annexes] in accordance with paragraph 5 of Article 31, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date it has deposited with the Depositary its instrument of ratification, acceptance, approval or accession with respect to such amendment.]

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.

N. Final provisions

29. Right to vote

Source: The text of Article 29 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2.

⁵⁰ Note by the legal group at the committee's third session: The legal group noted that it may need to revisit certain aspects of these provisions in light of other provisions that have not yet been referred to it for consideration.

2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

30. Signature

Source: The text of Article 30 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

This Convention shall be open for signature at ___ by all States and regional economic integration organizations from __ to __⁵¹, and at the United Nations Headquarters in New York from __ to __.

31. Ratification, acceptance, approval or accession

Source: The text of Article 31 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.

[4. States and regional economic integration organizations shall include in their instruments of ratification, acceptance, approval or accession a declaration identifying the legislation or other measures that permit them to implement the obligations set forth in Articles 3–14 of this Convention.]

[5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to [Annex X] shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

32. Entry into force

Source: The text of Article 32 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.22) prepared by the legal group.

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

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

⁵¹ Note by the legal group at the committee's third session: If it is decided that the Convention will be open for signature for only one day before being open for signature at the United Nations, the words "from ___ to ___" would be changed to "on".

33. Reservations

Source: The text of Article 33 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

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

34. Withdrawal

Source: The text of Article 34 below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.22) prepared by the legal group.

1. At any time after [three] [one] year[s] from the date on which⁵² 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.

35. Depositary

Source: The text of Article 35 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

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

36. Authentic texts

Source: The text of Article 36 below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

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 _____ on this ___ day of __, two thousand and thirteen.

⁵² Note: The legal group noted that the outer brackets in paragraph 1 were removed in reliance on the discussion in plenary where there was no proposal to remove all of the bracketed text.

Annex A

Sources of mercury supply

Deleted by the contact group on supply and trade

Annex B

Mercury and mercury compounds subject to international trade measures

Deleted by the contact group on supply and trade

Annex C

Source: The text of Annex C below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.31) prepared by the contact group on products and processes. Note that the original draft Annex C is included as Appendix A to Annex C at the request of some delegations.

[Annex C: Products subject to article 6 paragraph 1

This table is indicative only and does not represent final text.

Mercury-added Products	Phase out date
Precise description of the product	Date of entry into force of the Convention for the Party + grace period, X years + Party specific exemption
	Date of entry into force of the Convention for the Party + grace period, X years + Party specific exemption

Note: The organization of the grace period and the Party specific exemption will be discussed under article 8.]

Note: Some countries asked that the Contact Group revisits 1 bis to confirm that Part III of the document in Appendix A is captured in that paragraph 1 bis.

APPENDIX A

Annex C: Mercury-added products

[Note: Changes have been made to the Annex only to further clarify its structure.]

Part I: Prohibited: products for which non-mercury alternatives are globally accessible as well as economically and technically feasible

Mercury-added Products
Batteries, except button batteries with a mercury content less than 2%wt
Switches and Relays except switches exclusively for maintenance purposes
Compact fluorescent lamps below 30 watt with a mercury content exceeding [X] mg
Linear fluorescent lamps - Triband phosphor - T2, T5, T8, T12 & long life > 25.000 hours with a mercury content exceeding [X] mg
General purpose high pressure sodium (vapor) lamps with a mercury content exceeding [X] mg
Soaps and cosmetics
Pesticides and biocides

Part II: Phase out: Products for which a transition period is needed to allow Parties to phase out their use based on their social and economic circumstances

Mercury-added Products	[Phase-out Date]
Sphygmomanometers	[20XX] [X years after the entry into force of the instrument for the Party]*
Thermometer for medical use	[20XX] [X years after the entry into force of the instrument for the Party] *

[*Note] This is one possible form of a transitional arrangement. It is a grace period of X years given to each Party for the specific product concerned.]

Part III: Other mercury-added products for which further development and use of non-mercury alternatives are encouraged

Mercury-added Products
Measuring devices for industrial use
All lamps except those listed in Part I
Pharmaceutical products (human and veterinary uses) including topical antiseptics
[Other products including fireworks, jewellery, photographic films and paper, wheel weights, gyroscopes, telescopes, recoil softeners in rifles, tire balancers, medical equipment other than measuring devices as mentioned in Part II.]

Annex D

Manufacturing processes in which mercury or mercury compounds are used

Source: The text of Annex D below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.31) prepared by the contact group on products and processes.

The following draft list is proposed as a possible starting point for the discussion of listing of processes in the Annex.

Manufacturing process not allowed under Article 7	[Allowable-use] [Exemptions]	[Phase-out date]
1. Chlor-alkali production		[2020][2025] [X years after the entry into force of the instrument for the Party]*
[2. Vinyl chloride monomer production]		[20XX] [X years after the entry into force of the instrument for the Party]*
[3. Other production processes in which mercury or mercury compounds are used as [catalysts] [electrodes or catalysts]]	[describe allowable-use or exemption and the period for which it is valid]	[20XX] [X years after the entry into force of the instrument for the Party]*
[3. alt List of specific processes, if any] [1. Widely available non mercury alternative technology 2. Utilisation of large volume of mercury either as an electrode or as a catalyst] ⁵³		

[*Note] This is one possible form of a transitional arrangement. It is a grace period of X years given to each Party for the specific process concerned.]

⁵³ Additional requirements similar to Article 6 may need to be added to deal with new processes.

Annex E

Artisanal and small-scale gold mining

Source: The text of Annex E below is reproduced without change from the conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.20) prepared by the legal group.

National action plans

1. Each Party that is subject to the provisions of paragraph 3 of Article 9 shall include in its national action plan:
 - (a) National objectives and reduction targets;
 - (b) Actions to eliminate:
 - (i) Whole ore amalgamation;
 - (ii) Open burning of amalgam or processed amalgam;
 - (iii) Burning of amalgam in residential areas; and
 - (iv) Cyanide leaching in sediment, ore or tailings to which mercury has been added 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 or preventing the [import and] diversion of mercury and mercury compounds for use in artisanal and small-scale gold mining and processing;⁵⁴
 - (g) Strategies for involving stakeholders in the implementation and continuing development of the 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 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 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.

⁵⁴ Note: The legal group noted that, depending upon the answer to the question in footnote 15, further editing may be required.

Annex F**Option 1 (retain separate Annexes F and G)**

Source: The table in part I of Annex F below is reproduced from annex A to the report of the co-chairs of the contact group on emissions and releases (UNEP(DTIE)/Hg/INC.4/CRP.29) without change except for the addition of a blank column for thresholds, which the co-chair of the group, introducing the report, indicated would need to be added. The text of part II of Annex F below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

[Unintentional] Atmospheric emissions**Part I: Source categories**

Technical group proposed entry	Thresholds
Coal-fired power plants	
Coal-fired industrial boilers	
Lead, zinc, copper, industrial gold, [manganese] production facilities	
Waste incineration facilities*	
Cement production facilities	
[Iron and steel manufacturing facilities] [, including secondary steel plants]	
[Oil and gas production and processing facilities]	

Part II: Action plans

Each Party [with significant aggregate mercury emissions from the source categories listed in Part I] [shall] [should on a voluntary basis] develop and implement an action plan for reducing[, and where feasible eliminating,] its atmospheric mercury emissions from [those] [the] source categories [listed in Part I] [taking into account the impacts of mercury emissions and emission reductions on human health and the environment within its territory]. The action plan shall [take into consideration the Party's specific situation and] include, [at a minimum] [as appropriate]:

- (a) [An evaluation of current and projected atmospheric mercury emissions from the source categories listed in Part I, including the development and maintenance of source inventories and emissions estimates;]
- (b) Strategies [and timetables] for achieving the Party's national atmospheric mercury emissions reduction goal [adopted pursuant to paragraph 5 of Article 10];
- (c) [Consideration of the use of] [E]missions limit values for new[,] and [where feasible] existing[,] emissions sources[, taking into account the emission benchmarks specified in paragraph 4 of Article 10];
- (d) Application of best available techniques [and best environmental practices], as specified in paragraphs 2–5 of Article 10, including the consideration of substitute or modified fuels, materials and processes;
- [(e) Provision for monitoring and quantifying emissions reductions achieved under the action plan;]
- (f) A review every five years of the Party's emissions reduction strategies and their success in enabling the Party to meet its obligations under Article 10; such reviews shall be included in reports submitted pursuant to Article 22[, or, if applicable, in reviews of the Party's implementation plan pursuant to that article and paragraph 1 of Article 21]; and
- [(g) A schedule for implementation of the action plan.]

Option 1, continued**[Annex G****Sources of mercury releases to water and land**

Source The text of Annex G below is reproduced without change from annex B to the report of the co-chairs of the contact group on emissions and releases (UNEP(DTIE)/Hg/INC.4/CRP.29).

Facilities that manufacture mercury-added products.

Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.

Facilities for mercury recovery, recycling and reprocessing and facilities where mercury is produced as a by-product of non-ferrous metals mining and smelting, as listed in Annex A.*

Facilities for the storage and/or disposal or valorization of mercury wastes.

* As Annex A has been deleted, this reference to Annex A will need to be amended to read "Article 3".

Option 2 (combine Annexes F and G into a single Annex G.alt)

Source: The text of Annex G.alt below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

Comment by the secretariat: This option is associated with Article 11.alt, which is a combination of Articles 10 and 11 as presented in document UNEP(DTIE)/Hg/INC.4/3.

Annex G.alt**Unintentional emissions and releases****Part I: Atmospheric emissions source categories**

1. Coal-fired power plants.
- 1 bis. Coal-fired industrial boilers [that exceed a minimum capacity of X].[*]
- [1 ter. Process heaters in industrial institutional and commercial use.]
2. [Non-ferrous metals] [Lead, zinc, copper] [, industrial gold] [, manganese] production facilities.
3. Waste incineration facilities [that exceed a minimum capacity of X].
4. Cement production factories.
- [5. Iron and steel manufacturing facilities] [, including secondary steel plants].
- [6. Artisanal and small-scale gold mining.]
- [7. Oil and gas production and processing facilities.]
- [8. Residential combustion of coal.*]

[Note: This note shall apply to any atmospheric emissions source category that has an asterisk following its name in Part I of this Annex. Paragraphs 3–7 of Article 11.alt notwithstanding, best available techniques and best environmental practices shall be encouraged, rather than required, for any such source category.]

Part II: Mercury releases to water and land source categories

1. Facilities that manufacture mercury-added products.
2. Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.
3. Facilities for mercury recovery, recycling and reprocessing and facilities where mercury is produced as a by-product of non-ferrous metals mining and smelting, as listed in Annex A.
4. Artisanal and small-scale gold mining.
5. Facilities for the disposal of mercury wastes.
- [6. Each Party shall ensure the installation of amalgam separators at dental practices within its territory at the latest by 20[xx]. The separators shall have an efficiency of no less than [xx] per cent.]

Part III: Action plans

Each Party [with significant aggregate mercury emissions from the source categories listed in Part I] [shall] [may] develop and implement an action plan for reducing, and where feasible eliminating, its atmospheric mercury emissions from those source categories. The action plan [shall] [should] include, at a minimum:

- (a) An evaluation of current and projected atmospheric mercury emissions from the source categories listed in Part I, including the development and maintenance of source inventories and emissions estimates;
- (b) Strategies and timetables for achieving the Party's national atmospheric mercury emissions reduction goal adopted pursuant to paragraph 7 of Article 11.alt;
- (c) Consideration of the use of emissions limit values for new, and where feasible existing, emissions sources;
- (d) Application of best available techniques and best environmental practices, as specified in paragraphs 3–6 of Article 11.alt, including the consideration of substitute or modified fuels, materials and processes;
- (e) Provision for monitoring and quantifying emissions reductions achieved under the action plan;
- [(e) bis Measures to promote education, training and awareness-raising with regard to the action plan];
- (f) A review, every five years, of the Party's emissions reduction strategies and their success in enabling the Party to meet its obligations under Article 11.alt; such reviews shall be included in reports submitted pursuant to Article 22; and
- (g) A schedule for implementation of the action plan.

Annex H

[Guidance] [Development of requirements] on environmentally sound storage⁵⁵

This annex was deleted by the contact group on storage, waste and contaminated sites.

⁵⁵ Secretariat note: This annex was associated with Article 12, option 1, of document UNEP(DTIE)/Hg/INC.3/3. As that option was deleted in preparing the current revised draft text there is no reference to this annex in the main body of the draft text.

Annex J

Arbitration and conciliation procedures

Source: The text of Annex J below is reproduced without change from document UNEP(DTIE)/Hg/INC.4/3.

Part I: Arbitration procedure

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

Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 26 of this Convention by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim, together with any supporting documents. Such notification shall state the subject matter of arbitration and include, in particular, the articles of this Convention the interpretation or application of which are at issue.
2. The claimant party shall notify the Secretariat that it is referring a dispute to arbitration pursuant to Article 26 of this Convention. The notification shall be accompanied by the written notification of the claimant party, the statement of claim, and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

Article 2

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 26 of this Convention shall be as follows:

Article 1

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

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.⁵⁶

⁵⁶ Note by the legal group at the committee's third session: The legal group considered that it was advisable to provide a default rule for how costs would be shared, rather than leaving it completely up to the parties. In the absence of such a rule, if the parties were not able to agree on how costs would be shared, it would not be clear how the conciliation would be paid for.

Annex II

Emissions to air and releases to land and water

Paper prepared by the co-chairs of the contact group on emissions and releases

1. The co-chairs of the contact group have prepared this paper to set out the areas discussed during INC.4, and to facilitate further negotiation of the text of the instrument. The paper reflects points discussed, but is neither a negotiated nor a legal text. While it reflects some areas of convergence, parties reserved their position on the whole text until they have seen the final outcome of the negotiation.
2. Some parties stressed strongly that the instrument should give equal consideration and make similar provisions for emissions to air and releases to land and water. Others argued that releases to land and water from most activities can be sufficiently covered by other articles, and hence that a separate article on land and water is not needed.
3. To avoid duplication, the note is in the form of a joint text for emissions and releases where it appears that the provisions are likely to be common. For the control measures and other provisions where the provisions may differ the note has separate points for emissions and for releases. This is without prejudice to the decision of the committee whether to have a joint or separate articles in the instrument.

I. Provisions which could cover both emissions and releases

A. Subject of the article or articles

4. The articles are about the measures that parties should take to control or reduce mercury emissions and releases, which may be set out in either a joint article or articles. This could be achieved in a number of different ways, and the options are explored in the paragraphs that follow.
5. The contact group noted that, while the application of control measures will produce an absolute reduction in emissions or releases from individual installations, the aggregate emissions or releases from a source category within a party might increase as a result of an expansion in capacity. Nothing in these articles is intended to prevent such an increase in capacity.

B. Preliminary assessment

6. In order that a country can understand its situation, and the extent to which it has sources listed in Annexes F and G, it could be beneficial for it to undertake at least a preliminary, high level assessment, possibly as part of its preparation for ratification. It should be noted that funding for this purpose is available. Further discussion on preliminary assessments is required.

C. Best Available Techniques

7. The contact group has agreed an amended definition of Best Available Techniques, subject to two points where alternative wording has been proposed. This makes clear the degree of flexibility which parties have in making decisions in the light of national circumstances, and that, in applying BAT, parties should take account of potential emissions and releases to all environmental compartments. This definition was submitted to the legal group through the Committee. The legal group has made this available in CRP.27 which is available in Annex C. Whether the definition is to be located within Article 2 (Definitions) or in Articles 10 and 11 is to be decided by the INC with the advice of the Legal Group.
8. The Contact group agreed that the Conference of the Parties shall adopt, at its first meeting, guidelines to assist parties in determining BAT/BEP, and parties shall take account of these guidelines. The Conference of the Parties could update the guidelines as required.
9. The Contact group noted that, if the guidelines were to be agreed at the first COP, work will need to be undertaken during the period between the Diplomatic Conference and the first COP.

II. Control measures for emissions to the atmosphere

10. The contact group recognised that while it might be useful to have different approaches for new and existing installations, certain approaches tackle new and existing installations in a similar

manner under a menu approach. The contact group did not form a view on which approach should be followed.

A. New installations within the source categories and exceeding the thresholds shown in Annex F

11. One approach, for new installations within the source categories and exceeding the thresholds shown in Annex F, would be that each party would require that, from no later than [X] years after the treaty comes into force for that party, new installations shall apply BAT/BEP. Installations which have been substantially modified shall also be required to apply BAT/BEP. The obligations on BAT may be fulfilled by the use of emission limit values.

12. Another approach would be that such installations should be covered under the menu approach, discussed in the following section.

13. “New” and “substantially modified” need to be defined.

B. Existing sources of emissions and exceeding the thresholds shown in Annex F

14. A number of mechanisms for dealing with existing sources were identified. In the first of these, each Party with existing installations on its territory falling within the source categories and exceeding the thresholds specified in Annex F shall prepare and implement an action plan.

15. In the second, each party shall take at least one of the following actions – the menu approach (Note: not listed in a priority order):

- adopt and implement a [national] goal [or target or outcome] for controlling and/or reducing emissions to the atmosphere from these sources (either in aggregate or by source category);
- establish emission limit values (or equivalent technical measures to be applied to these installations);
- require or encourage the use of BAT/BEP at these installations, which could include multi-pollutant control strategies.

16. Some parties suggested that the actions taken should result in an environmental outcome which is broadly comparable with BAT.

17. Another approach considered a differentiated treatment for existing sources versus new sources, and in this context to encourage the use of best available techniques/best environmental practices as an option.

18. The contact group did not have the opportunity to discuss time scales for preparation of action plans, time scales for implementation or the consideration by the COP.

III. Control Measures for releases to land and water

19. It was noted that a number of issues with releases are dealt with elsewhere in the treaty.

20. The contact group did not have the opportunity to explore all these issues in detail.

A. New sources falling within the categories listed in Annex G

21. One approach would be that, for new installations shown in Annex G, each party shall require that, from no later than [X] years after the treaty comes into force for that party, new installations shall apply BAT/BEP. Installations which have been substantially modified shall also be required to apply BAT/BEP. The obligations on BAT may be fulfilled by the use of emission limit values.

22. Another approach would be that new installations should be covered under the menu approach, discussed in the following section.

23. “New” and “substantially modified” would need to be defined.

B. Existing sources falling within the categories listed in Annex G

24. A number of mechanisms for dealing with existing sources were identified. In the first of these, each Party with existing installations on its territory falling within the source categories specified in Annex G shall prepare and implement an action plan. Parties might be required to include within their action plans some or all of the actions set out below.

25. In the second, each party shall take at least one of the following actions (Note: not listed in a priority order):

- establish emission limit values(or equivalent technical measures to be applied to these installations);
- require or encourage the use of BAT/BEP at these installations, which could include multi-pollutant control strategies.

26. The third mechanism would require parties to prepare an action plan, in which they might adopt a variety of measures or strategies, in accordance with national domestic circumstances. These would be drawn from options, including a requirement for BAT/BEP for new sources, the use of limit values and multi pollutant control strategies. Measures would be designed at the installation level, allowing for growth and the sector level, and could include regulating thresholds for installations which possible allow for progressive improvement. These actions could be supported by requirements for monitoring and quantifying reductions, a schedule for implementation of the activities, along with measures to promote education, training and awareness raising.

IV. Further provisions covering both emissions and releases

A. Inventories

27. Some parties proposed that those parties with sources listed in Annex F and G should establish and maintain an inventory of emissions and releases, in accordance with guidance to be developed by the COP. Some noted that the development of inventories could be included within the action plans. Others noted that inventory development should not be a mandatory requirement, and could be covered under the preliminary assessment.

B. Reporting

28. The contact group noted that parties would need to establish information requirement on the article or articles under consideration. This information would need to be taken forward in the light of development of Article 22. Some parties believed that the article or articles on emissions and releases should set out itself, or in the related annex, some minimum reporting requirements.

29. Some parties suggested that decisions on this should await progress in finalising Article 22 before reaching any views on this provision.

C. Financial resources, transfer of technology, and technical assistance

30. Some parties suggested that the articles should contain a provision that while each party shall take all possible measures to achieve the objectives of the convention with its own resources, the review of implementation and compliance related to measures under this article shall be integrally linked to provision of adequate financial resources, transfer of technology and technical assistance under the convention. It was noted that the obligations under these articles should be in line with parties' capabilities and priorities.

31. Some others suggested that the article should contain a provision to indicate that while financial and technical assistance may be available to enhance parties' implementation, each Party remains responsible for complying with obligations under this article.

32. Others argued that these issues would be more appropriately covered in Articles 15 and 16, dealing with financial resources, technology transfer, and technical assistance.

D. Annexes F and G

33. The contact group noted that there remains uncertainty about the relative importance of different source categories.

34. The group was able to review and revise the potential list of source categories for emissions to air in an objective way, taking account of scientific data about the relative importance of different sources, and the feasibility of implementing control measures. The revised list agreed by the group is in Annex A. Thresholds remain to be defined.

35. The provisional list of source categories for releases to land and water shown in Annex G of INC4/3 as amended remains the best available, and the group agreed that it would undertake a final review of both annexes at INC5. The group noted however, that ASGM should be removed from annex G since this is covered by agreed text in Article 9. The group requested the secretariat to

assemble any information which may assist the committee in its review at INC5, and to request governments to submit relevant information. The amended list is in Annex B.

V. Proposals submitted by parties

36. Annex D to this paper set out the CRPs containing elements which might be used, These are not agreed texts, but might provide a resources or further insight into how the elements described below might be set out into formal language, including in some cases more detailed proposals. It should be noted that not all parties offered CRPs, and may therefore have other suggestions which they may wish to offer when the text is negotiated.

37. Also included in this Annex is the nonpaper developed by the co-chairs to assist the work of the group.

VI. List of definitions which may be required

BAT – see Annex C

BEP

New

Existing

Substantially modified

Mercury

Mercury compounds

Multi-pollutant control strategies

Releases

Threshold capacity

Mercury elimination limits

VII. List of possible intersessional work

- The secretariat to compile information submitted by governments to assist in the development of thresholds.
- The secretariat to gather relevant available information on emissions and releases, as well as any new and relevant information submitted by governments.

List of possible work to be undertaken between the Diplomatic Conference and the Entry into force

38. The Contact group noted that, if the guidelines are to be agreed at the first COP, work will need to be undertaken during the period between the Diplomatic Conference and the entry into force of the instrument.

Annex A: List of sources of emissions of mercury to the atmosphere

Technical group proposed entry
Coal-fired power plants
Coal-fired industrial boilers
Lead, zinc, copper, industrial gold, [manganese] production facilities
Waste incineration facilities*
Cement production facilities
[Iron and steel manufacturing facilities] [, including secondary steel plants]
[Oil and gas production and processing facilities]

Annex B: Source categories of releases of mercury and its compounds to land and water for the purpose of Annex G

Facilities that manufacture mercury-added products.

Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.

Facilities for mercury recovery, recycling and reprocessing and facilities where mercury is produced as a by-product of non-ferrous metals mining and smelting, as listed in Annex A.*

Facilities for the storage and/or disposal or valorization of mercury wastes.

* To be reviewed following finalization of Annex A.

Annex C: Definition of BAT

**Draft definition of the term “best available techniques” submitted by the legal group
(UNEP(DTIE)/Hg/INC.4/CRP.27)**

NOTE: this CRP will be included following its adoption in plenary.

Annex D: Non-papers and conference room papers

Non-Paper 3 - SUGGESTED DRAFT TEXT BY CO-CHAIRS AS AN INITIAL BASIS FOR NEGOTIATION: WITH ELEMENTS OF CRPs 4, 11 AND 12 INCORPORATED

The following non-paper contains the text of articles 10, and 11, reflecting the current status following discussions in the contact group. It is made available to inform participants and to facilitate discussions.

SUGGESTED DRAFT TEXT BY CO-CHAIRS AS AN INITIAL BASIS FOR NEGOTIATION: WITH ELEMENTS OF CRPs 4, 11 AND 12 INCORPORATED

The following compilation prepared by the Co-Chairs is based on CRP.17 and includes those sections of CRPs 4, 11 and 12 that were identified by the sponsors of those CRPs for inclusion. The reference at the end of those paragraphs provides the link back to the CRP from which it was taken.

The Co-Chairs have also included, in some places, observations based on the discussions in the Contact Group. These are contained in *italics*.

Control and /or reduce emissions

The Co-Chairs observed the issues raised include the need for growth in the essential sectors, and the concept of relative, rather than absolute, reductions.

1. Each Party shall reduce emissions of mercury to the atmosphere from the sources listed in Part I of Annex F which exceed the relevant capacity threshold set out in that Annex.
2. Each Party shall take measures to control [and/or reduce],(CRP.11 para 1) minimize, and where feasible eliminate or prevent, atmospheric mercury emissions, from the source categories listed in the Annex. (CRP.12 para 2)

Inventories

2. Each Party with sources of emissions of mercury to the atmosphere from the categories listed in Part I of Annex F which exceed the relevant capacity threshold set out in that Annex shall establish, within [X] years of entry into force of the Convention, and maintain thereafter, an inventory of atmospheric emissions of mercury. The inventory shall be updated at least every [Y] years.

New sources

For new emissions sources among the source categories listed in the Annex, each Party shall be required to use of Best Available Techniques and of Best Environmental Practices applicable for such sources.

See section 6. Letter (f) in Action Plan. (CRP.12 para 3)

3. Each Party shall require the use of the best available techniques for all new emission sources falling within the source categories listed in Part I of Annex F which have a capacity exceeding the relevant threshold set out therein, as soon as practicable, [but no later than [X] years after the entry into force of the Convention for it].(CRP.4 para 3)
4. Each Party with existing emission sources falling within the source categories listed in Part I of Annex F on its territory which have a capacity exceeding the relevant threshold set out therein, shall take at least one of the following actions: (CRP.4 para 4)
 - (a) Adopt a [national] goal [or target or outcome] for reducing atmospheric mercury emissions from such sources in accordance with Part III of Annex F using the benchmarks referred to under paragraph 5 and take measures to achieve that goal; (CRP.4 para 4(a))
 - (b) Establish emission limit values for mercury or equivalent technical measures or parameters for such sources which will limit mercury emissions from all source categories, using the benchmarks referred to under paragraph 5; (CRP.4 para 4(b))
 - (c) Require the use of the best available techniques as soon as practicable, but no later than X years after the entry into force of the Convention for it (CRP.4 para 4(c))
 - (d) Develop and implement, in accordance with Part IV of Annex F, a BAT implementation plan for reducing, its atmospheric mercury emissions from such sources. (CRP.4 para 4(d))

4bis The actions taken pursuant to paragraph 4 shall ensure that the best available techniques are gradually phased in for existing emission sources. (CRP.4 para 4bis)

4ter When requiring the use of the best available techniques in accordance with paragraphs 3 and 4(c), parties shall take into account the guidelines adopted pursuant to paragraph 5. (CRP.4 para 4ter)

National Action/Implementation Plans

3. Each Party with sources of emissions of mercury to the atmosphere from the categories listed in Annex F which exceed the relevant capacity threshold set out in that Annex shall develop and implement a national action plan to reduce the emissions of mercury from those sources.

Each party with any emission source falling within the source categories listed in part I of Annex F with a capacity exceeding the threshold value [X] set out in the annex will prepare within [X] years of entry of the force of convention, a National Implementation Plan indicating the measures to be undertaken by it to control or/reduce atmospheric emissions of mercury and the expected targets or goals or outcomes. (CRP.11 para 2)

The National Implementation Plan would be submitted by each party to the COP within [x] years of coming of the force of the convention; (CRP.11 para 3)

NIP shall contain an inventorisation of the sources of atmospheric emissions of mercury in the country and an assessment of the total atmospheric emissions, based on the methodology agreed by the COP, or prepared by a subsidiary body established by the COP but approved by the COP. (CRP.11 para 4)

For existing emissions sources among the source categories listed in Annex, each Party shall consider in its Action Plan, as well as, promote the use of Best Available Techniques and Best Environmental Practices.

See section 6. Letters b) and e) in Action Plan. (CRP.12 para 4)

4. The action plan shall include an assessment of current and projected aggregate atmospheric mercury emissions from each of the source categories listed in Part I, the Party's national atmospheric mercury emissions reduction goal, the strategies and schedules for achieving that goal, and a requirement for a review every [X] years of the Party's progress in implementing the plan.

Each Party shall develop, within 4 years of entry into force of this Convention for the concerned Party an Action Plan of its obligations under this Convention. (CRP.12 para 5)

5. The action plan [shall require][may include]:

(a) for all new sources falling within the source categories listed in Annex F which exceed the relevant capacity threshold set out in that Annex, the use of best available techniques and best environmental practice;

(b) for existing emissions sources, [at least one][one or more] of the following measures:

(i) emissions limit values

(ii) application of best available techniques and best environmental practices, including the consideration the use of substitute or modified fuels, materials and processes;

(iii) multi-pollutant control strategies

6. The Action Plan shall include the measures the Party will implement in accordance with paragraph 1 above. To comply with its obligations, each Party may adopt a variety of measures or strategies, in accordance to, its national/domestic circumstances, at a minimum: (CRP.12 para 6)

(a) Requirements of BAT/BEP for new emission sources;

(b) Set limit values, with the choice of value and technology left to the Party and/or regulated entities;

(c) Multi-pollutant control strategies to meet mercury emissions values, or percentage reductions at facilities, including through the application of multi-pollutant control strategies, noting that this would apply also to existing facilities;

(d) Designing measures at the installation level, thereby allowing for growth at the sector level;

(e) Regulating thresholds for installations, possibly allowing for progressive improvement over time;

- (f) Provision for monitoring and quantifying emissions and releases reductions, on the basis of agreed methodologies;
- (g) Measures to promote education, training and awareness-raising; and
- (h) A schedule for implementation of the activities. (CRP.12 para 6).

The NIP shall include one or more of the following actions: (CRP.11 para 5)

- (i) adopting a national goal for reducing/ controlling atmospheric mercury emissions from all source categories of atmospheric emissions;
- (ii) establishing emission limit value for mercury or equivalent technical measures to reduce/ control mercury emission from all source categories;
- (iii) adopting, for all new emission sources, the most appropriate BAT/BEP for reduction/ control of atmospheric emissions of mercury as determined by each party taking into consideration its national technical, social and economic circumstances and the composition of its natural resources;
- (iv) encouraging adoption, for existing sources, of measures to control/reduce atmospheric emissions of mercury, depending upon their economic and technical feasibility, affordability and the national circumstances;
- (v) adopting multi pollutant control strategies in order to optimise environmental benefits and financial resources. (CRP.11 para 5).

Guidance on BAT/BEP

6. The Conference of the Parties shall adopt, at its first meeting, guidelines for determining best available technique and best environmental practice. The guidelines may be updated as necessary by the Conference of the Parties.

These guidelines shall consider multi-pollutant approaches as well as the potential cross-media effects of the techniques described, such as releases to water. The guidelines shall include emission benchmarks illustrating the emission reductions that can be achieved by applying the best available techniques. The guidelines may be updated as necessary by the Conference of the Parties. (CRP.4 para. 5)

In order to assist parties, the Conference of the Parties, at its first meeting, shall adopt guidelines on Best Available Techniques and Best Environmental Practices for reducing atmospheric emissions of mercury from the source categories listed in the Annex. Parties shall take these guidelines into account when implementing the provisions of this article. (CRP.12 para 7)

Reporting

7. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

Financial resources, transfer of technology and technical assistance

While each party shall take all possible measures to achieve the objectives of the convention with its own resources, the review of implementation and compliance related to measures under this article shall be integrally linked to provision of adequate financial resources, transfer of technology and technical assistance under the convention. (CRP.11 para 8)

Annex F

Part I

Atmospheric emissions: Source categories

Major Source Category	Capacity Threshold*
Coal-fired power plants.	Rated thermal input of [x] MW
Coal-fired industrial boilers	
Process heaters in industrial institutional and commercial use.	
[Non-ferrous metals] [Lead, zinc, copper] [, industrial gold] [, manganese] production facilities.	Melting capacity of [x] tonnes per day
Waste incineration facilities	Capacity of [x] tonnes per day
Cement production factories.	Production capacity of [x] tonnes per day
[Iron and steel manufacturing facilities] [, including secondary steel plants].	
[Oil and gas production and processing facilities.]	[none]

*CRP.4 Part I of Annex F

Part II: Inventory Methodology (CRP.4 Part II of Annex F)

To be identified/decided

Part III National Goals (CRP.4 Part III of Annex F)

The national goal referred to in paragraph 4(a) of Article 10 shall be defined as an objective to be achieved by [the year XXXX][X years after entry into force of the Convention] with reference to the emissions or emission factors in [a base year tbd] in one of the following ways:

- (a) as a percentage reduction of the total emissions of all existing sources within the source categories listed in Part I]; or
- (b) as a percentage reduction of the average emission factors (relative to fuel use or production output) for existing emission sources within each of the source categories listed in Part I; or
- (c) as a percentage reduction of the total emissions of all emission sources (new and existing) within the source categories listed in Part I; or
- (d) as a percentage reduction of the average emission factors (relative to fuel use or production output) for all emission sources (new and existing) within each of the source categories listed in Part I.

Article 11: Releases

1. Each Party shall reduce releases of mercury and mercury compounds to water and land from the sources in the categories listed in Annex G.

Each Party shall take measures to control, minimize, and where feasible eliminate or prevent releases of mercury and mercury compounds to the water and land from the source categories listed in the Annex. (CRP.12 para 2)

2. Each Party with sources in the categories of releases listed in Annex G shall establish, within [X] years of entry into force of the Convention, and maintain thereafter, an inventory of releases of mercury. The inventory shall be updated at least every [Y] years.
- For new release sources among the source categories listed in the Annex, each Party shall be required to use of Best Available Techniques and of Best Environmental Practices applicable for such sources.
- See section 6. Letter f) in Action Plan.(CRP.12 para 3)*
3. Each Party with sources in the categories of releases listed in Annex G shall develop and implement a national action plan to reduce its releases of mercury from those sources.
- For existing release sources among the source categories listed in Annex, each Party shall consider in its Action Plan, as well as, promote the use of Best Available Techniques and Best Environmental Practices.
- See section 6. Letters b) and e) in Action Plan. (CRP.12 para 4)*
4. The action plan shall include an assessment of current and projected releases from the source categories listed in Annex G, the Party's national releases reduction goal, and the strategies and schedules for achieving that goal.
- Each Party shall develop, within 4 years of entry into force of this Convention for the concerned Party an Action Plan of its obligations under this Convention. (CRP.12 para 5)
5. The action plan [shall require][may also include]:
- (a) for all new releases sources falling within the source categories listed in Part II of Annex F, the use of best available techniques;
 - (b) for existing emissions sources, [at least one][one or more] of the following measures:
 - (i) application of best available techniques and best environmental practices, including the consideration the use of substitute or modified fuels, materials and processes;
 - (ii) multi-pollutant control strategies
- The Action Plan shall include the measures the Party will implement in accordance with paragraph 1 above. To comply with its obligations, each Party may adopt a variety of measures or strategies, in accordance to, its national/domestic circumstances, at a minimum: (CRP.12 para 6)
- (a) Requirements of BAT/BEP for new releases sources;
 - (b) Set limit values, with the choice of value and technology left to the Party and/or regulated entities;
 - (c) Multi-pollutant control strategies to meet mercury emissions values, or percentage reductions at facilities, including through the application of multi-pollutant control strategies, noting that this would apply also to existing facilities;
 - (d) Designing measures at the installation level, thereby allowing for growth at the sector level;
 - (e) Regulating thresholds for installations, possibly allowing for progressive improvement over time.
 - (f) Provision for monitoring and quantifying emissions and releases reductions, on the basis of agreed methodologies;
 - (g) Measures to promote education, training and awareness-raising; and
 - (h) A schedule for implementation of the activities. (CRP.12 para 6).
6. The Conference of the Parties shall adopt, at its first meeting, guidelines for determining best available techniques and best environmental practices. The guidelines may be updated as necessary by the Conference of the Parties.
- In order to assist parties, the Conference of the Parties, at its first meeting, shall adopt guidelines on Best Available Techniques and Best Environmental Practices for reducing atmospheric emissions of mercury and releases of mercury from the source categories listed in the Annex. Parties shall take these guidelines into account when implementing the provisions of this article. (CRP.12 para 7).

7. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

Annex G

Sources of mercury releases to water and land

1. Facilities that manufacture mercury-added products.
2. Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.
3. Facilities for mercury recovery, recycling and reprocessing and facilities where mercury is produced as a by-product of non-ferrous metals mining and smelting, as listed in Annex A.
Facilities as listed in Annex A (CRP.12 para Part II of the Annex)
4. Facilities for the disposal or valorisation of mercury wastes. (CRP.12 para Part II of the Annex)

Definition of Best Available Techniques and Best Environmental Practices

Note: the content to be reviewed by the Contact Group, and the Legal Group to recommend placement

“Best available techniques” means the most effective and advanced stage in the development of activities and the methods for their operation that indicate the practical suitability of particular techniques for providing in principle the basis for release limitations designed to eliminate, and where that is not practicable generally to reduce, emissions and releases of mercury and their impact on the environment as a whole. In this context:

- (i) “Best” means most effective in achieving a high general level of protection of the environment as a whole;
- (ii) “Techniques” refers both to technologies used and the ways in which installations are designed, built, maintained, operated and decommissioned; and
- (iii) “Available”, in respect of a given Party and a given facility within that Party, means those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration costs and benefits, whether or not the techniques are used or produced inside the territory of the Party in question, provided that they are reasonably accessible to the operator of the facility;

“Best environmental practices” means the application of the most appropriate combination of environmental control measures and strategies;

The BAT/BEP concepts allow the selection of technology and its application to meet national circumstances – what is “available” would be determined nationally in the light of local technical, economic and social considerations and not at the global or regional level, and could include multi-pollutant approaches.

BAT and BEP will be determined by each Party based on its national, technical, social and economic circumstances (CRP.11 para 5(iii)).

Submission by the European Union on article 10 and annex F, on atmospheric emissions of mercury (UNEP(DTIE)/Hg/INC.4/CRP.4)

<p>Draft EU conference room paper Atmospheric emissions</p>

This CRP proposes the EU's views on possible ways forward for finding an agreement on the text of Article 10 on Atmospheric Emissions.

It takes into account the approaches set out in the paper from the co-chairs of the Emissions Contact Group (document UNEP(DTIE)/Hg/INC.4/5)¹, building upon the consensual elements mentioned therein and acknowledging the necessary flexibility for parties in choosing the most appropriate action.

The CRP consists of two parts:

- (1) a description of the EU's proposal; and
- (2) proposed legal text for Article 10 and Annex F

1. Description of proposal

Objective

The objective of the LBI should be an overall global reduction of anthropogenic mercury emissions to air by establishing a framework obliging parties to take demonstrable action to achieve such reduction, while allowing flexibility on how to do so.

Inventory of emissions

Without reliable estimates of mercury emissions to air, the viability and success of measures to control them cannot be assessed. It is therefore essential that each of the parties understands their emission levels (at least from the major source categories identified in Annex F) using an agreed international methodology. However, there should be flexibility, depending on the extent of national source emissions, as to whether an assessment should remain at a high level and cover all anthropogenic sources (e.g. UNEP studies that provide quantitative estimates of atmospheric emissions) or require more in depth investigation through the compilation of an inventory (e.g. Level 1 or 2 of the UNEP toolkit)

Scope of obligations

All parties with sources falling within the major source categories defined in Annex F and exceeding the capacity thresholds to be specified therein should be required to take action. There should be a differentiation in requirements between new and existing emission sources.

Best Available Techniques (BAT)

The application of techniques that are most effective in achieving a high level of environmental protection and that are both economically and technically feasible for facilities within each of the source categories in Annex F within that Party (Best Available Techniques, BAT) should be a core element of the provisions.

Applying BAT does not mean prescribing a specific technique. When assessing the BAT for a specific source a variety of techniques may be considered, taking into account the age, size, inputs and operational characteristics of the source. BAT covers both the design and the operation of installations including environmental management as well as abatement measures. This may include measures primarily intended to abate other pollutant emissions, which also have the co-benefit of reducing mercury emissions (multi-pollutant approach). BAT should also take into consideration possible cross-media effects from the application of certain techniques (e.g. releases to water resulting from the cleaning of waste gases).

¹ http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/INC4/4_5_emissions.doc

Obligations

For each **new source** within the major categories and exceeding a certain capacity threshold, the application of BAT should be **mandatory** as soon as possible to ensure that action is taken where it is most cost effective and practicable.

For **existing sources** within the major categories there could be greater **flexibility**. The provisions should allow parties to choose one or more actions from a defined list to reduce their emissions. The **action list** could include options such as (i) the setting of a national emission reduction goal, (ii) the establishment of Emission Limit Values or (iii) the development of a BAT implementation plan. All actions should reflect a gradual phase in of BAT for existing sources taking into account their diversity in age and lifespan.

The BAT for the various sectors and situations should be described in separate **guidelines** to be developed and adopted by the first COP. The documents should also set out mercury emission levels that can be achieved by applying each of the techniques, i.e. benchmarks (e.g. expressed as concentrations in the discharge to air or as an emission factor). The guidelines should be regularly revised.

Reporting

Standardised reporting on implementation of these actions should be required to demonstrate compliance with the provisions of the treaty. The reporting frequency should take into account the COP cycle and the reporting requirements should avoid unnecessary administrative burden, and be in proportion to the emissions to air for the Party.

2. Draft amended text for the Convention

10. Atmospheric emissions

1. Each Party shall reduce atmospheric emissions of mercury from the source categories listed in Part I of Annex F in accordance with the provisions of this article and that annex.
 2. Each Party with any emission source falling within the source categories listed in Part I of Annex F on its territory which has a capacity exceeding the relevant threshold set out therein shall establish, within [three] [four] years of entry into force of the Convention, and maintain thereafter, an inventory of atmospheric emissions of mercury from each of the source categories listed in Part I of Annex F. These inventories shall be drawn up using the agreed international methodology set out in [Part II of Annex F][guidelines to be adopted by the COP]. The inventories shall also include [a record of] emissions from sources within the source categories listed in Part I of Annex F that do not exceed the capacity thresholds listed therein. The inventory shall be updated at least every [X] years.
 3. Each Party shall require the use of the best available techniques for all new emission sources falling within the source categories listed in Part I of Annex F which have a capacity exceeding the relevant threshold set out therein, as soon as practicable, [but no later than [four] [five] years after the entry into force of the Convention for it].
 4. Each Party with existing emission sources falling within the source categories listed in Part I of Annex F on its territory which have a capacity exceeding the relevant threshold set out therein, shall take at least one of the following actions:
 - (a) Adopt a [national] goal for reducing atmospheric mercury emissions from such sources in accordance with Part III of Annex F using the benchmarks referred to under paragraph 5 [and take measures to achieve that goal];
 - (b) Establish emission limit values for mercury or equivalent technical measures or parameters for such sources which will limit mercury emissions from all source categories, using the benchmarks referred to under paragraph 5;
 - (c) Require the use of the best available techniques as soon as practicable, but no later than X years after the entry into force of the Convention for it
 - (d) Develop [and implement], in accordance with Part IV of Annex F, a BAT implementation plan for reducing, its atmospheric mercury emissions from such sources.
- 4bis. The actions taken pursuant to paragraph 4 shall ensure that the best available techniques are gradually phased in for existing emission sources.
- 4ter. When requiring the use of the best available techniques in accordance with paragraphs 3 and 4(c), parties shall take into account the guidelines adopted pursuant to paragraph 5.
5. The Conference of the Parties shall at its first meeting [or as soon as possible thereafter] adopt guidelines describing the best available techniques for reducing atmospheric emissions of mercury from the source categories listed in Part I of Annex F, taking into account the recommendations of the expert body established under Article 25bis on the content of such guidelines. These guidelines shall consider multi-pollutant approaches as well as the potential cross-media effects of the techniques described, such as releases to water. The guidelines shall include emission benchmarks illustrating the emission reductions that can be achieved by applying the best available techniques. [The guidelines may be updated as necessary by the Conference of the Parties]
 6. For the purposes of this article and Annex F:
 - (a) “Atmospheric mercury emissions” and “atmospheric emissions of mercury” means emissions to the atmosphere of gas-phase oxidized mercury (Hg²⁺), gas-phase elemental mercury (Hg⁰) or solid-phase particulate-bound mercury (Hg_p); [and]
 - (b) “New emissions source” means any emissions source for which construction or substantial modification is begun one or more years after the entry into force for the Party concerned:
 - (i) Of this Convention; or
 - (ii) Of an amendment to Annex C where the emissions source becomes subject to the provisions of this Convention only by virtue of that amendment] [;]
 - (c) “Existing emissions source” means any emissions source that is not a new emissions source under this article]

7. Each Party shall consider taking appropriate national measures to reduce atmospheric mercury emissions resulting from the residential combustion of coal.
8. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article and such information shall include as a minimum the items listed in Part V of Annex F. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

Annex F - Atmospheric emissions

Part I: Major source categories

Major source category	Capacity threshold
Coal-fired combustion plants	rated thermal input of [50] MW
[Lead, zinc, copper] [, industrial gold] [, manganese] production facilities involving: (a) production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes; or (b) non-ferrous metal foundries and other installations melting and alloying non-ferrous metals, including recovered products	(a) none (b) melting capacity of [20] tonnes per day
Waste incineration facilities	capacity of [3] tonnes of waste per hour
Cement clinker production in (a) rotary kilns (b) other kilns	(a) production capacity of [500] tonnes per day (b) production capacity of [50] tonnes per day
Iron and steel manufacturing facilities involving: a) integrated steel mills for primary steel production starting from iron ore, coal and fluxes as raw materials, including coke ovens, blast furnaces and iron ore sinter plants; or b) Electric arc furnaces for secondary steel production from scrap metal	(a) none (b) capacity of [2,5] tonnes per hour
[Oil and gas production and processing facilities.]	[None]

Part II: Inventory methodology

The inventory of atmospheric emissions of mercury referred to in paragraph 2 of Article 10 shall be drawn up using [Reference to UNEP Toolkit Level 1/Level 2]

Part III: National goal

The national goal referred to in paragraph 4 (a) of Article 10 shall be defined as an objective to be achieved by [the year XXXX][X years after entry into force of the Convention] with reference to the emissions or emission factors in [a base year tbd] in one of the following ways:

- (a) as a percentage reduction of the total emissions of all existing sources within the source categories listed in Part I; or
- (b) as a percentage reduction of the average emission factors (relative to fuel use or production output) for existing emission sources within each of the source categories listed in Part I; or
- (c) as a percentage reduction of the total emissions of all emission sources (new and existing) within the source categories listed in Part I; or
- (d) as a percentage reduction of the average emission factors (relative to fuel use or production output) for all emission sources (new and existing) within each of the source categories listed in Part I.

Part IV: BAT implementation plans

The BAT implementation plan referred to in paragraph 4(d) of Article 10 shall include, [at least] the following:

- (a) An assessment of current and projected atmospheric mercury emissions from the source categories listed in Part I;
- (b) Emission limit values for new and existing emissions sources [, taking into account the emission benchmarks referred to in paragraph 5 of Article 10];
- (c) Assessment and application of the best available techniques as specified in paragraph [3 and 4] of Article 10, including the consideration of substitute or modified fuels, materials and processes;
- [(d) Arrangements for monitoring and quantifying emissions reductions achieved under the plan, with reference to the inventory established under paragraph 2 of Article 10;]
- (e) A review every five years of the Party's progress in implementing the best available techniques;
- [(f) A schedule for implementation of the plan.]

Part V: Reporting

The information referred to in paragraph 8 of Article 10 shall include as a minimum the following

- (a) The emission inventories referred to in paragraph 2 of Article 10, as well as projections of the emissions over the next 5 years, reflecting implementation of the Party's obligations under this Convention;
- (b) General information on the best available techniques applied for new and existing sources within each of the source categories listed in Part I;
- (c) Where applicable, the national goal, how it was established and the trajectory for meeting it.
- (d) Any emission limit values or equivalent technical measures or parameters to limit mercury emissions applied for new or existing sources within each of the source categories listed in Part I;
- (e) Where applicable, the BAT implementation plan and how it was established;
- (f) A review every five years of the Party's measures to reduce emissions and how successfully these measures have contributed to implementation of its obligations under Article 10.

Submission by China and India on Article 10 on atmospheric emissions of mercury (UNEP(DTIE)/Hg/INC.4/CRP.11)

Submission by India and China of Draft Text on Articles related to Atmospheric Emissions

1. The impact of atmospheric emission of mercury on human health and environment is, no doubt, a common challenge for the global community and all countries must take appropriate measures to address this challenge comprehensively.
2. At the same time, it must be recognized that electricity is one of the most basic needs of the mankind and nations, especially the developing ones, are duty bound to provide adequate electricity to their citizens. For many developing countries, coal based electricity generation is and will continue to be the dominant source of energy. This is a crucial imperative for economic development. The quality and composition of a country's natural resources and the access to the alternate sources of fuel/ energy at affordable cost is also important and must be kept in view. Several countries may have no option but to continue with further capacity addition based on coal to meet their basic needs.
3. Since commercially proven technologies for separation of mercury are not available, setting legally binding emission reduction targets or emission limits is not practicable at this stage.
4. In this regard, we would like to recall the Governing Council Decision (GC25/5 of UNEP) which mandated the negotiation of mercury instrument. Paragraph 28 of the decision explicitly states that the Intergovernmental Negotiating Committee should consider "flexibility in that some provisions could allow countries discretion in the implementation of their commitments" and "approaches tailored to the characteristics of specific sectors" as well as "prioritization of the various sources of mercury release for action". Thus, it is clear that the mercury instrument is intended to be a combination of binding and voluntary approaches. This is based on the different capacities and circumstances of different countries.
5. While the control measures under the instrument would generally be applicable to all the countries, the specific circumstances of different countries have to be taken into consideration. Also, the principle of common but differentiated responsibilities must form the foundation of the proposed instrument. An essential feature of the proposed instrument must, therefore, be that the implementation of legally binding obligations by developing countries will be contingent upon the availability of adequate financial resources and technological support.
6. Given the above considerations, a National Implementation Plan (NIP) to be supported by the Convention should be the mechanism for measures related to reducing / controlling atmospheric emission of mercury. The implementation and monitoring of the national implementation plan must be integrally linked with provision of funding and technical assistance required by the developing country parties. Such a mechanism will help promote implementation of the measures envisaged under the instrument and facilitate compliance.
7. It is, therefore, suggested that, each country party is encouraged and facilitated to develop an implementation plan, taking into consideration its own specific circumstances, covering the obligations to be fulfilled. The countries' National Implementation Plan could be a combination of one or more of possible actions to reduce/control atmospheric emission of mercury.
8. The element of equity should not be left out while developing this instrument. The provisions of the instrument related to emissions should be based on an approach which encourages the use of best available technologies and best available environmental practices in the nationally appropriate manner. Further, the adoption of BAT/ BEP must be directly related to the availability of adequate financial and technical assistance required to be provided under the provisions of this convention.
9. It is expected that the NIP would be submitted to a Technical and Economic Expert Group (TEEG), to be set up for this purpose, which would review the NIP and provide its recommendations for a final review by COP. The NIP will contain an action plan including the targets or outcomes to be achieved, the timeframe for doing so, the budget required for implementing the measures and will cover all the reporting elements provided under the relevant articles. While reviewing the NIP, the COP will also simultaneously approve the funding for the implementation of the legally binding obligations.

The draft of the Text:

10. Atmospheric Emissions

1. Each party would be encouraged to take measures to control and/or reduce atmospheric emissions of mercury from the source categories listed in part I of Annex F in accordance with the provisions of this article and that annex.
2. Each party with any emission source falling within the source categories listed in part I of Annex F with a capacity exceeding the threshold value [X] set out in the annex will prepare within [X] years of entry of the force of convention, a National Implementation Plan indicating the measures to be undertaken by it to control or/reduce atmospheric emissions of mercury and the expected targets or goals or outcomes.
3. The National Implementation Plan would be submitted by each party to the COP within [x] years of coming of the force of the convention;
4. NIP shall contain an inventorisation of the sources of atmospheric emissions of mercury in the country and an assessment of the total atmospheric emissions, based on the methodology agreed by the COP, or prepared by a subsidiary body established by the COP but approved by the COP.
5. The NIP shall include one or more of the following actions:
 - (i) adopting a national goal for reducing/ controlling atmospheric mercury emissions from all source categories of atmospheric emissions;
 - (ii) establishing emission limit value for mercury or equivalent technical measures to reduce/ control mercury emission from all source categories;
 - (iii) adopting, for all new emission sources, the most appropriate BAT/BEP for reduction/ control of atmospheric emissions of mercury as determined by each party taking into consideration its national technical, social and economic circumstances and the composition of its natural resources;
 - (iv) encouraging adoption, for existing sources, of measures to control/reduce atmospheric emissions of mercury, depending upon their economic and technical feasibility, affordability and the national circumstances;
 - (v) adopting multi pollutant control strategies in order to optimise environmental benefits and financial resources.
6. In order to facilitate the implementation of measures to reduce / control atmospheric emissions under the national implementation plans, the convention shall develop technical guidelines within [X] years of coming into force of the convention which shall include BAT and BEP specifically to reduce mercury into atmosphere in techno-economically feasible manner.
7. The COP would review at regular intervals [X years] the progress achieved by the country towards the goals of the convention, taking in to account the availability of adequate financial and technical assistance required to be provided under the provisions of the Convention;
8. While each party shall take all possible measures to achieve the objectives of the convention with its own resources, the review of implementation and compliance related to measures under this article shall be integrally linked to provision of adequate financial resources, transfer of technology and technical assistance under the convention.

Submission by the group of Latin American and Caribbean countries on articles 10 and 11 on emissions and releases of mercury (UNEP(DTIE)/Hg/INC.4/CRP.12)

G. Emissions and Releases

The Group of Latin America and the Caribbean presents this conference room paper on Emissions and Releases (articles 10 and 11) for the consideration of INC4. This paper is based on concepts outlined in UNEP (DTIE)/Hg/INC 4/5 and reflects GRULAC issues and recommendations as an approach to be taken related on this articles. In this regard:

- (a) Atmospheric emissions (Article 10) and releases to land and water (Article 11) should be dealt with under one article, and
- (b) We support the general issues as outlined by the UNEP (DTIE)/Hg/INC 4/5.

Areas with general agreement at INC3

- (a) There is a need for the mercury instrument to address emissions and releases and for parties to take action on emissions and releases;
- (b) The term “**unintentional**” is an unnecessary qualifier of “emissions” and should be deleted;
- (c) The mercury instrument must be compatible with the need for developing countries and countries with economies in transition to develop their power generation capacity;
- (d) The articles on emissions and releases are not intended to impose restrictions that would impede the process of development. Reduction of emissions may therefore need to be in relative rather than absolute terms;
- (e) There is a need for flexibility, in that some provisions could allow countries discretion in the implementation of their commitments (i.e., consistent with paragraph 28 (a) of decision 25/5 of the Governing Council of the United Nations Environment Programme);
- (f) Emissions and releases from artisanal and small-scale gold mining should be addressed in the specific articles on that subject and not in Article 10 or Article 11.

Emissions and releases

1. This article shall apply to anthropogenic emissions and releases of mercury and mercury compounds to the atmosphere, water and land. For the purposes of this Convention and the Annex:

- (a) The term “*atmospheric mercury emissions*” means emissions to the atmosphere of gas-phase oxidized mercury (Hg²⁺), gas-phase elemental mercury (Hg⁰) or solid-phase particulate-bound mercury (Hg_p).
- (b) The term “*releases of mercury to water and land*” means releases of mercury and mercury compounds to water and land from the sources categories listed in the Annex.
- (c) The term “*new atmospheric mercury emissions source*” means any emissions source for which construction or substantial modification is begun one or more years after the entry into force for the Party concerned:
 - (i) Of this Convention; or
 - (ii) Of an amendment to Annex X where the emissions source becomes subject to the provisions of this Convention only by virtue of that amendment;
- (d) The term “*existing atmospheric emission source*” means any emissions source that is not a new emission source under this article.
- (e) For releases of mercury to water and land “*new source*” means any release source listed in the Annex for which construction or substantial modification is begun one or more year after the entry into force for the Party concerned:
 - (i) Of this Convention; or
 - (ii) Of an amendment to Annex X where the release source becomes subject to the provisions of this Convention only by virtue of that amendment;

(f) For releases of mercury to water and land “existing release source” means any release source listed in the Annex that is not a new release source under this article.

2. Each Party shall take measures to control, minimize, and where feasible eliminate or prevent, atmospheric mercury emissions, and releases of mercury and mercury compounds to the water and land from the source categories listed in the Annex.

3. For new emissions and release sources among the source categories listed in the Annex, each Party shall be required to use of Best Available Techniques and of Best Environmental Practices applicable for such sources.

4. For existing emissions and release sources among the source categories listed in Annex, each Party shall consider in its Action Plan, as well as, promote the use of Best Available Techniques and Best Environmental Practices.

5. Each Party shall develop, within 4 years of entry into force of this Convention for the concerned Party an Action Plan of its obligations under this Convention.

6. The Action Plan shall include the measures the Party will implement in accordance with paragraph 1 above. To comply with its obligations, each Party may adopt a variety of measures or strategies, in accordance to, its national/domestic circumstances, at a minimum:

- (a) Requirements of BAT/BEP for new emission and releases sources;
- (b) Set limit values, with the choice of value and technology left to the Party and/or regulated entities;
- (c) Multi-pollutant control strategies to meet mercury emissions values, or percentage reductions at facilities, including through the application of multi-pollutant control strategies, noting that this would apply also to existing facilities;
- (d) Designing measures at the installation level, thereby allowing for growth at the sector level;
- (e) Regulating thresholds for installations, possibly allowing for progressive improvement over time.
- (f) Provision for monitoring and quantifying emissions and releases reductions, on the basis of agreed methodologies;
- (g) Measures to promote education, training and awareness-raising; and
- (h) A schedule for implementation of the activities.

7. In order to assist parties, the Conference of the Parties, at its first meeting, shall adopt guidelines on Best Available Techniques and Best Environmental Practices for reducing atmospheric emissions of mercury and releases of mercury from the source categories listed in the Annex. Parties shall take these guidelines into account when implementing the provisions of this article.

Annex

Emissions and Releases

Part I: Atmospheric Mercury Emissions Sources

1. Coal-fired power plants.
- 1 bis. Coal-fired industrial boilers [that exceed a minimum capacity of X].[*]
[1 ter. Process heaters in industrial institutional and commercial use.]
2. [Non-ferrous metals] [Lead, zinc, copper] [, industrial gold] [, manganese] [production facilities] [smelting facilities].
3. Waste incineration facilities [that exceed a minimum capacity of X].
4. Cement production factories.
- [5. Iron and steel manufacturing facilities] [, including secondary steel plants].
- [6. Residential combustion of coal.*]

Part II: Sources Categories of potential mercury releases to water and land

1. Facilities that manufacture mercury-added products.
 2. Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.
 3. Facilities as listed in Annex A.
 4. Facilities for the disposal or valorisation of mercury wastes.
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