Earth Negotiations Bulletin

INC5 FINAL

A Reporting Service for Environment and Development Negotiations

Online at http://www.iisd.ca/mercury/inc5

Vol. 28 No. 22 *Published by the International Institute for Sustainable Development (IISD)* *Monday, 21 January 2013*

SUMMARY OF THE FIFTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY: 13-19 JANUARY 2013

The fifth session of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury (INC5) convened from Sunday, 13 January, to Saturday, 19 January, in Geneva, Switzerland. Delegates successfully completed the negotiation of a new global treaty on mercury: the Minamata Convention on Mercury.

Over 750 participants attended the session, representing 137 governments, as well as 57 non-governmental and 14 intergovernmental organizations. Following a round of regional group meetings on Saturday, 12 January, delegates negotiated on the basis of a text prepared by INC Chair Fernando Lugris (Uruguay) during the intersessional period. Marked by a shared sense of purpose and spirit of cooperation, INC5 addressed several complex policy and technical issues, including mercury air emissions and releases to water and land, health aspects, and phase-out and phase-down dates for products and processes. A final compromise was reached late Friday night, based on a package addressing outstanding issues related to the preamble, finance and compliance. The Minamata Convention's major highlights include: the ban on new mercury mines, the phase-out of existing ones, control measures on air emissions, and the international regulation of the informal sector of artisanal and small-scale gold mining.

The Minamata Convention on Mercury will be forwarded to the UN Environment Programme (UNEP) Governing Council, which will meet from 18-22 February 2013, in Nairobi, Kenya, and will be adopted and opened for signature during a diplomatic conference to be held from 7-11 October 2013, in Kumamoto/Minamata, Japan.

A BRIEF HISTORY OF THE GLOBAL ISSUE OF MERCURY

Mercury is a heavy metal that is widespread and persistent in the environment. It is a naturally occurring element and can be released into the air and water through weathering of rock containing mercury ore or through human activities such as industrial processes, mining, deforestation, waste incineration, and burning of fossil fuels. Mercury can also be released from a number of mercury-containing products, including dental amalgam, electrical applications (e.g., switches and fluorescent lamps), laboratory and medical instruments (e.g., clinical thermometers and barometers), batteries, seed dressings, antiseptic and antibacterial creams, and skin-lightening creams. Mercury exposure can affect fetal neurological development and has been linked to lowered fertility, brain and nerve damage, and heart disease in adults who have high levels of mercury in their blood.

Since 2001, the UNEP Governing Council/Global Ministerial Environment Forum (GC/GMEF) has regularly discussed the need to protect human health and the environment from the releases of mercury and its compounds.

IN THIS ISSUE

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Pia M. Kohler, Ph.D., Elisa Morgera, Ph.D., Keith Ripley, Nicole Schabus and Elsa Tsioumani. The Digital Editor is Francis Dejon. The Editors are Jessica Templeton, Ph.D., and Pamela S. Chasek, Ph.D. <pam@iisd.org>. The Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the European Commission (DG-ENV), the Government of Canada (through CIDA), the German Federal Ministry for Economic Cooperation and Development (BMZ), the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), and the Government of Australia. General Support for the *Bulletin* during 2013 is provided by the Ministry of Environment of Sweden, the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, the Swiss Federal Office for the Environment (FOEN), the Finnish Ministry for Foreign Affairs, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES), and the United Nations Environment Programme (UNEP). Funding for translation of the *Bulletin* into French has been provided by the Government of France, the Belgium Walloon Region, Québec, and the International Organization of the Francophone (OIF and IEPF). The opinions expressed in the *Bulletin* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *Bulletin* may be used in non-commercial publications with appropriate academic citation. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <kimo@iisd.org>, +1-646-536-7556 or 300 East 56th St., 11D, New York, NY 10022 USA.

http://enb.iisd.mobi/

24TH SESSION OF THE UNEP GC/GMEF: In February 2007, GC-24/GMEF discussed the issue of mercury extensively. Participants' preferences for international cooperation on mercury ranged from starting a negotiating process for a legally binding instrument, to incorporating mercury into existing agreements, or concentrating on voluntary actions, especially through partnerships. Delegates agreed in Decision 24/3 IV that a "two-track" approach could be employed to take forward actions on mercury, while keeping open the path to a binding instrument in the future. The UNEP Executive Director was requested to prepare a report on mercury emissions and strengthen the UNEP Mercury Partnership. An *ad hoc* open-ended working group (OEWG) of government and stakeholder representatives was established to review and assess options for enhanced voluntary measures and new or existing international legal instruments for addressing the global challenges posed by mercury.

Decision 24/3 IV includes the following priorities: to reduce atmospheric mercury emissions from human sources; to find environmentally sound solutions for the management of waste containing mercury and mercury compounds; to reduce global mercury demand related to use in products and production processes; to reduce the global mercury supply, including considering curbing primary mining and taking into account a hierarchy of sources; to find environmentally sound storage solutions for mercury; to address the remediation of existing contaminated sites affecting human and environmental health; and to increase knowledge on areas such as inventories, human and environmental exposure, environmental monitoring and socioeconomic impacts.

FIRST MEETING OF THE OEWG ON MERCURY: The first meeting of the OEWG to Review and Assess Measures to Address the Global Issue of Mercury was held from 12-16 November 2007 in Bangkok, Thailand. The OEWG discussed options for enhanced voluntary measures, and new or existing international legal instruments on mercury. Delegates agreed on intersessional tasks to be undertaken by the Secretariat, including analyses of: financial considerations of a free-standing convention, a new protocol to the Stockholm Convention on Persistent Organic Pollutants (POPs) and voluntary measures; sustainable technology transfer and support; implementation options; organization of response measures; costs and benefits for each of the strategic objectives; meeting demand for mercury if primary production is phased out; major mercury-containing products and processes for which effective substitutes exist; and funding available through the Global Environment Facility (GEF) and the Strategic Approach to International Chemicals Management.

SECOND MEETING OF THE OEWG ON MERCURY: The second meeting of the OEWG on Mercury convened in Nairobi, Kenya, from 6-10 October 2008. The OEWG discussed: elements to be addressed by a mercury framework; the type of framework to be used; and the capacity-building, financial and technical support required to deliver on identified elements. Delegates agreed on one legally binding option and three voluntary options for consideration by the UNEP GC.

25TH SESSION OF THE UNEP GC/GMEF: UNEP GC-25/GMEF took place from 16-20 February 2009 in Nairobi, Kenya. Decision GC 25/5 agreed to further international action consisting of the elaboration of a legally binding instrument on mercury, which could include both binding and voluntary approaches, together with interim activities, to reduce risks to human health and the environment. It also requested the Executive Director to convene one OEWG meeting in 2009, and an INC commencing its deliberations in 2010 with the goal of completing its work by GC-27/GMEF in February 2013. Agreement could not be reached on "leaving the door open" to consider other heavy metals, but the decision does recognize that the mandate of the INC may be supplemented by future GC decisions.

***AD HOC* OEWG TO PREPARE FOR THE INC ON MERCURY:** This meeting convened from 19-23 October 2009 in Bangkok, Thailand. The *Ad Hoc* OEWG agreed to recommend rules of procedure to the INC, as well as intersessional work for the Secretariat to prepare documentation for the INC, including options for the structure of the instrument and a description of options for substantive provisions.

INC1: The first session of the INC to prepare a global legally binding instrument on mercury convened from 7-11 June 2010 in Stockholm, Sweden. Delegates exchanged views on key elements of a convention, including: objectives; structure of the instrument; capacity building and technical and financial assistance; compliance; issues of supply, demand, trade, waste and storage; atmospheric emissions of mercury; and awareness raising and information exchange. The key outcome of INC1 was a request to the Secretariat to draft "elements of a comprehensive and suitable approach" to a legally binding instrument, which would serve as a basis for negotiation at INC2.

INC2: The second session of the INC convened from 24-28 January 2011 in Chiba, Japan. INC2 marked the first opportunity for delegates to start textual negotiations on potential elements for the mercury instrument, contained in a paper prepared by the Secretariat. INC2 achieved a first full reading of the paper and mandated the Secretariat to prepare a new draft text for further negotiation at INC3.

INC3: The third session of the INC convened from 31 October – 4 November 2011 in Nairobi, Kenya. INC3 completed a comprehensive review of the text of the draft instrument and requested the Secretariat to compile a revised draft text based on plenary negotiations, the reports of the INC3 contact groups, and the work of the legal group.

RIO+20 CONFERENCE: The UN Conference on Sustainable Development (Rio+20) took place in Rio de Janeiro, Brazil, from 20-22 June 2012. The outcome document, "The Future We Want," contains a paragraph on the negotiation of an instrument on mercury stating that countries "welcome the ongoing negotiating process on a global legally binding instrument on mercury to address the risks to human health and the environment and call for a successful outcome of the negotiations."

INC4: INC4 convened from 27 June – 2 July 2012 in Punta del Este, Uruguay. Progress was achieved on artisanal and small-scale gold mining (ASGM), storage, wastes and

contaminated sites, and options were narrowed on articles related to information and reporting. Views diverged on compliance, finance and control measures for products and processes, with discussions focusing on laying out the range of positions. Delegates requested: INC Chair Lugris to clean up the negotiating text and, in cooperation with the Co-Chairs of the contact groups, present possible compromise articles where there was divergence among countries; the Secretariat to analyze in cooperation with the World Health Organization (WHO) the extent to which the other provisions of the draft mercury instrument reflect the content of article 20 *bis* on health aspects; the Secretariat to present a draft of the final act for consideration by INC5 to determine work from the moment of the signature of the instrument until its entry into force; and intersessional work on emissions and releases.

INC5 REPORT

On Sunday, 13 January, Jacob Duer, INC Team Coordinator, UNEP, launched the opening ceremony. INC Chair Lugris urged participants to scale up efforts to find consensus. Bakary Kante, on behalf of UNEP Executive Director Achim Steiner, highlighted the release of the Global Mercury Assessment 2013. Bruno Oberle, Switzerland's State Secretary and Head of the Federal Office for the Environment, urged delegates to establish a legally binding instrument including mechanisms for financial and technical support and monitoring and implementation. Delegates then watched a video on Minamata disease.

Delegates adopted the meeting's agenda without amendments (UNEP(DTIE)/Hg/INC.5/1 and Add.1). Chair Lugris presented the meeting's organization of work, highlighting: plans for morning, afternoon, and evening plenary sessions; specific indications on organization of work in the report of the Bureau meeting held in December 2012 in Beijing, China; consideration of all articles in plenary before establishment of contact, drafting or Friends of the Chair groups; and review of all text by the legal group before final adoption. All regional groups expressed commitment to conclude the negotiations at INC5 and supported the Chair's text as a basis for negotiations (UNEP(DTIE)/Hg/INC.5/3), with the European Union (EU) and Japan, for the Asia-Pacific Group, wishing to draw also on supplementary documents, and the US raising concerns about certain policy choices in the Chair's text and changes to unbracketed text already reviewed by the legal group at INC4.

OPENING STATEMENTS: Mexico, for the Latin American and Caribbean Group (GRULAC), called for: an independent fund similar to the Multilateral Fund of the Montreal Protocol on Ozone-depleting Substances; a specific article on human health; and a holistic and balanced approach to emissions and releases. Nigeria, for the African Group, underscored the need for: an "all-media" control treaty; further efforts towards the phase-out of mercury in health care; guarantees that products exported to Africa are mercury-free and that export of mercury-containing products be subject to prior informed consent (PIC); and an interim financial arrangement.

The EU favored covering the whole mercury lifecycle and ensuring dynamic provisions on the review and adaptation of the instrument and its annexes. The Asia-Pacific Group emphasized: the need for clear science-based criteria to identify sources of mercury and compounds released in the atmosphere; prioritization of areas for financial assistance; and compliance and implementation plans.

The US stressed the need for clear obligations on mercury air emissions. Canada emphasized the global health benefits that could be derived from a strong provision on air emissions. China cautioned against new proposals at this stage. Argentina and Iraq underscored the importance of addressing releases to water and land. Algeria stressed the need for compensation for stopping mercury production. Calling for substantive reductions, Norway cautioned that measures envisaged in the draft may not adequately respond to the serious effects of mercury. Chile called for explicitly excluding mercury compounds arising naturally. Peru stressed the impacts of ASGM.

Morocco underscored the need to develop a list of all mercury-added products, including all vaccines used for human and animal health. Nigeria recommended banning mercury use in cosmetics and pesticides. Bangladesh cautioned against banning all uses of mercury, particularly where substitutes are not available at a similar cost.

Japan identified provisions on financial and technical assistance as the greatest challenge. Saudi Arabia underscored the need for a technical assistance mechanism. India noted that binding compliance provisions need to be accompanied by meaningful financial support and technology transfer. Jordan favored a flexible, dedicated special fund, managed by the GEF, and dedicated national level units.

The WHO stressed the need to address major sources, noting the greatest gains would be from addressing emissions and ASGM. The World Organization for Animal Health (OIE) underscored the importance of thimerosal in animal vaccines. The African Union Commission stressed the importance of capacity and institution building. The Global Indigenous Peoples Caucus expressed concern about lack of reference to indigenous peoples in the text and called for appropriate protections. The Zero Mercury Working Group (ZMWG) underscored the societal benefits of preventing mercury exposure. The Collaboration Center for Minamata Disease Victims and the International POPs Elimination Network (IPEN) highlighted the struggle of Minamata disease victims and opposed calling the instrument the Minamata Convention.

The World Alliance for Mercury-Free Dentistry called for phasing out dental amalgam by 2025 and by 2018 for baby teeth. The International Academy of Oral Medicine and Toxicology said the use of amalgam cannot be justified economically because of environmental costs. Human Rights Watch called for including effective health strategies on mercury in the convention. The Coalition for Mercury-Free Drugs (CoMeD) opposed use of mercury in vaccines.

The INC approved using the Chair's text as the basis for negotiations. Chair Lugris urged delegates not to introduce new text, except to resolve outstanding issues in the Chair's text, and to focus on removing brackets.

NEGOTIATION OF A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY

Delegates engaged in the negotiations of the draft treaty provisions in plenary, drafting groups and informal consultations, and in the following contact groups: selected technical articles, co-chaired by Karel Bláha (Czech Republic), then replaced by Donald Hannah (New Zealand), and Abiola Olanipekun (Nigeria), which addressed articles 3 (supply and trade), 6 (products), 7 (processes), 8 (exemptions) and 9 (ASGM); financial resources, technical assistance and technology transfer, co-chaired by Johanna Lissinger Peitz (Sweden) and Gillian Guthrie (Jamaica); health aspects and national implementation plans, co-chaired by Katerina Sebkova (Czech Republic) and Luis Espinosa (Ecuador); emissions and releases, co-chaired by John Roberts (UK) and Abdulkadir Jailani (Indonesia); and articles of a legal nature, co-chaired by Anne Daniels (Canada) and Jimena Nieto (Colombia), which addressed articles 1 (objective), 2 (definitions) 17 (compliance) and language on the relationship with other agreements. All articles were reviewed by the legal group, chaired by Susan Biniaz (US), and adopted by plenary on Saturday morning. The following summary describes the deliberations and summarizes each article of the Convention, based on the text approved at INC 5. The final compiled text of the Convention, and final numbering of articles, will be available two months after INC5.

PREAMBLE: Plenary addressed the preamble on Sunday, when Chair Lugris acknowledged that many countries were yet to make submissions. Japan called for language on Minamata disease, the polluter pays principle and the importance of preventive measures. Canada suggested language on ecosystems and indigenous peoples in the Arctic. Iraq suggested reflecting the Rio principles.

The issue of the relationship with other international agreements was initially addressed in article 1 *bis* of the Chair's text, with delegates debating both language and its placement in the instrument, and GRULAC and Iran suggesting placing it among the final provisions. The EU proposed deleting text on not affecting parties' rights and obligations deriving from any existing international agreement and on implementing the mercury instrument in a mutually supportive manner with other relevant international agreements that do not conflict with its objective, and inserting reference to mutual supportiveness in the preamble. The US proposed: retaining language on not affecting parties' rights and obligations deriving from any existing international agreement; relying on the Stockholm Convention language on mutual supportiveness with other international agreements in the field of trade and the environment; and deleting text on allowing a party to impose additional requirements. GRULAC proposed specifying that a party's additional requirements to protect human health and the environment from mercury exposure are "in accordance with that party's other obligations under applicable international law." Discussions on the issue continued in the contact group on articles of a legal nature, while the rest of the preamble was addressed in informal consultations led by Chair Lugris as part of the compromise package also involving articles 15 (financial resources and mechanism) and 17 (implementation and compliance committee).

On Wednesday, the contact group found common ground on language stating that: the provisions of the mercury convention shall not affect the rights and obligations of any party deriving from existing international agreements; parties recognize that the mercury convention and other international agreements in the field of the environment and trade are mutually supportive; and nothing in the mercury convention prevents a party from taking additional domestic measures consistent with the provisions of the mercury convention in an effort to protect human health and the environment from mercury exposure in accordance with the party's other obligations under applicable international law. Delegates did not reach a conclusion on the placement of the provisions in the preamble or in any of the operative articles.

On Thursday, the group debated and finally accepted an additional proposal to clarify that agreed language on rights and obligations under other agreements is not intended to create a hierarchy between this convention and other international instruments. The group also decided to place all agreed language in the preamble.

On Friday, Chair Lugris presented to plenary the preamble as agreed in informal consultations, containing reference to the Rio principles including common but differentiated responsibilities, and to states' respective circumstances and capabilities, with subsequent deletion of article 8 *bis* of the Chair's text on the special situation of developing countries, as well as language reflecting developing countries' specific circumstances and outstanding references to the need for financial and technical assistance throughout the text. Bolivia requested recording its concerns regarding reference to indigenous "communities" in the preamble, rather than "peoples" as in the UN Declaration of the Rights of Indigenous Peoples. Mauritius, for Small Island Developing States (SIDS), and Paraguay asked for preambular reference to SIDS and landlocked countries, respectively. Plenary approved the preamble without amendment.

When plenary reconvened at 2:40 am on Saturday, Chair Lugris presented the compromise package, covering: the preamble; article 15, setting up a financial mechanism which includes the GEF as well as a specific international programme to support capacity building and technical assistance; and article 17, setting up an implementation and compliance committee. The EU, the US, Canada and the Russian Federation expressed their support for the compromise proposal. China recognized the outcome was a balanced compromise. GRULAC highlighted reference to the Rio principles, particularly the principle of common but differentiated responsibilities, in the preamble, and Japan expressed its appreciation for mentioning the lessons of Minamata disease.

***Final Text*:** The preamble (UNEP(DTIE)/Hg/INC.5/CRP.53) includes references, among others, to:

- the Rio+20 reaffirmation of the Rio principles including common but differentiated responsibilities, and states' respective circumstances and capabilities and the need for global action;

- health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially women, children, and, through them, future generations;
- the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods, and concern about indigenous communities more generally;
- the substantial lessons of Minamata disease and the need to ensure proper management of mercury and the prevention of such events in the future;
- the importance of financial, technical, technological, and capacity-building support, particularly for developing countries, and countries with economies in transition; and
- the WHO activities in the protection of human health related to mercury and the roles of relevant multilateral environmental agreements (MEAs), especially the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal and the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

It is further noted that:

- the Convention and other international agreements in the field of the environment and trade are mutually supportive;
- nothing in this Convention is intended to affect the rights and obligations of any party deriving from any existing international agreement, which is not intended to create a hierarchy between the Convention and other international instruments; and
- nothing in the Convention prevents a party from taking additional domestic measures consistent with the provisions of the Convention in an effort to protect human health and the environment from exposure to mercury in accordance with that party's other obligations under applicable international law.

ARTICLE 1. OBJECTIVE: Plenary discussed the objective on Tuesday. The EU expressed readiness to accept the text in the Chair's draft, which defines the objective as the protection of human health and the environment from anthropogenic releases of mercury and mercury compounds. Brazil requested reference to emissions, in addition to releases. Chile subjected its approval of the objective to defining anthropogenic releases in article 2 on definitions as "all emissions to the atmosphere and releases to water and soil originating or derived from human activity."

On Thursday, Legal Group Chair Biniaz introduced a submission on consistent use of the terms "emissions," "releases" and "emissions and releases," recommending using both terms in the objective.

***Final Text*:** According to Article 1 (UNEP(DTIE)/Hg/INC.5/CRP.15 and 20), the objective of the Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

ARTICLE 2. DEFINITIONS: Plenary addressed the article on Tuesday. Chile introduced two submissions: one aiming to modify the definition of "mercury compound," urging its application to the whole convention; and the other suggesting a definition for "anthropogenic releases" as all emissions and releases originated or derived from human activities. Plenary forwarded the issue to the contact group on articles of a legal nature.

Following agreement on the remaining definitions at INC4, contact group discussions focused on the definitions of "mercury," "mercury compound" and "use allowed." On Wednesday, the contact group discussed the definition of "mercury compound." The Chair's text referred to any substance consisting of identical molecules of mercury and one or more other chemical elements, and Chile's submission referred to any substance that contains atoms of mercury of constant chemical composition and characteristic properties that cannot be separated into components by physical separation methods. The group agreed that "mercury compound" means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions. Chile's additional language that the definition shall not be construed to include naturally occurring quantities of mercury compounds present in soil, minerals, ores and mineral products except those from primary mercury mining, remained in brackets, pending discussions in other contact groups. On Thursday, delegates agreed to accommodate Chile's concerns in Article 13 on mercury wastes, to specify that the definition of "mercury wastes" under Article 13 excludes overburden, waste rock and tailings from mining, except from primary mercury mining, unless they contain mercury or mercury compounds above thresholds defined by the Conference of the Parties (COP).

Following a lengthy debate on whether to include only a general reference to consistency with the Convention, or a comprehensive list of provisions, delegates agreed that the definition of "use allowed" refers to any use by a party of mercury or mercury compounds consistent with the convention, including but not limited to uses consistent with articles 3, 6, 7, 8 and 9.

***Final Text*:** Article 2 (UNEP(DTIE)/Hg/INC.5/CRP.15, 35 and 55) includes definitions of: ASGM; best available techniques (BAT); best environmental practices (BEP); mercury; mercury compound; mercury-added product; party; parties present and voting; primary mercury mining; regional economic integration organization; and use allowed. Among them:

- BAT means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given party or a given facility within the territory of that party, with further definitions provided for "best," "available" and "techniques";
- BEP means the application of the most appropriate combination of environmental control measures and strategies;
- "mercury" means elemental mercury (Hg(0), CAS No. 7439-97-6);
- "mercury compound" means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions;

- "mercury-added product" means a product or product component that contains mercury or a mercury compound that was intentionally added;
- "primary mercury mining" means mining in which the principal material sought is mercury; and
- "use allowed" means any use by a party of mercury or mercury compounds consistent with the Convention, including but not limited to, uses consistent with Articles 3, 6, 7, 8 and 9.

ARTICLE 3. MERCURY SUPPLY SOURCES AND TRADE: This article was first discussed in plenary on Monday, and then referred to the contact group on selected technical articles, which discussed it extensively throughout the week, often in small drafting groups. Discussions focused on: the definition of "mercury" and "mercury compounds"; coverage of mercury compounds under the trade provisions; phase-out provisions on primary mining, and possible use of mercury from such mining; mercury from decommissioned chlor-alkali plants; and written consent and certification prior to trade in covered mercury and mercury compounds, including with non-parties.

On definitions, Japan suggested the exception regarding naturally occurring trace quantities in mineral products also cover unintentional trace quantities and chemical products, while Chile sought to exclude trace quantities in non-mercury minerals and metals.

On the application of trade provisions to mercury compounds, the US argued that compounds should be excluded since there was no evidence of trade problems involving such compounds, while many other delegations hesitated to have an open-ended exemption. A small drafting group worked out a solution on Friday whereby compounds will not be covered by the trade controls for the time being, subject to review by the COP.

On primary mining, the EU, supported by Norway, proposed a phase-out deadline. The US called for eliminating primary mining. China opposed restricting existing mines. Switzerland called for a ban on opening new mines. Chile cautioned against setting a precedent regarding other mining activities. IPEN said primary mercury mining should be banned.

On Thursday, the contact group recommended a ban on new primary mining of mercury upon entry into force for each party and phase-out of existing primary mercury mining within 15 years from entry into force for each party, contingent on agreement on certain provisions in the convention annexes on products and processes.

On mercury from the decommissioning of chlor-alkali facilities, the EU, supported by Norway, offered a proposal for an annex covering supply sources, including chlor-alkali production facilities, while the Philippines stressed the need to prevent mercury from such facilities from entering the market. The National Resources Defense Council noted that only chlor-alkali plants in the EU and US are prevented from sending mercury overseas, and warned against mercury dumping. Following contact group and informal consultations, delegates decided on Friday to leave it to parties to determine when there is "excess" mercury from such operations and to ensure that it is disposed of in line with Basel Convention guidelines or guidance to be adopted by the mercury convention COP on environmentally sound management (ESM).

Consent and certification for trade, including with non-parties, were discussed in plenary and in the contact group. The African Group called for prohibiting trade without prior written consent, and for more stringent conditions for trade with non-parties than with parties. Japan preferred a consent mechanism similar to that of the Stockholm and Rotterdam conventions. Switzerland supported a uniform trade regime for parties and non-parties. The US called for an "alternative general notification procedure" involving notifications of general consent to imports meeting certain terms and conditions to the Secretariat that would be posted on a publicly-available register. IPEN supported a ban on exports, including to non-parties, and required prior informed consent (PIC) procedures. In plenary on Saturday morning, the US offered compromise language providing a time-limited provision allowing a party to decide not to apply a prohibition on the import of mercury from a non-party unless it provides certification that the mercury is from allowed sources. Delegates adopted the article as amended.

***Final Text*:** For the purposes of Article 3 (UNEP(DTIE)/Hg/INC.5/CRP.55), "mercury" is defined to include mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95% by weight, while "mercury compounds" mean mercury chloride, mercury oxide, mercury sulphate, mercury nitrate, cinnabar and mercury sulphide. Article 3 does not apply to: mercury-added products; quantities of mercury or mercury compounds used for laboratory-scale research or as a reference standard; and naturally occurring trace quantities of mercury or mercury compounds present in such products as non-mercury metals, ores, or mineral products, including coal, or products derived from these materials, and unintentional trace quantities in chemical products.

On primary mining, Article 3 prohibits primary mining not being conducted prior to the entry into force of the Convention for that party, and requires the phase-out within 15 years of any primary mining that was being conducted within a party's territory at the date of entry into force for it. During the phase-out period, mercury from such mining shall only be used in manufacturing of mercury-added products or in manufacturing processes in accordance with Articles 6 (products) and 7 (processes), or to be disposed in accordance with Article 13 on wastes, using operations which do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

On stocks, Article 3 requires each party to:

- endeavor to identify individual stocks of mercury or mercury compounds exceeding 50 metric tons, as well as sources of mercury supply generating stocks exceeding 10 metric tons per year that are located within its territory;
- take measures to ensure that, where it determines that excess mercury from the decommissioning of chlor-alkali facilities is available, such mercury is disposed of in accordance with the ESM guidelines developed under the Basel Convention and in accordance with the requirements adopted by the COP, using operations that do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

Article 3 prohibits mercury export, except to a party that has provided the exporting party with its written consent, and even then only for uses allowed under the Convention, or environmentally sound interim storage as set out in Article 12. Export to a non-party is allowed where the non-party has provided the exporting party with written consent, including certification demonstrating that it has measures in place to ensure the protection of human health and the environment and to ensure compliance with the Convention provisions on interim storage and wastes; and that such mercury will be for an allowed use or for environmentally sound interim storage. Article 3 provides that the exporting party may reply on a general notification to the Secretariat by the importing party or non-party that can serve as the written consent, which shall set out any terms and conditions under which the importing party or non-party provide its consent. Such notifications, to be kept in a public register by the Secretariat, can be revoked at any time by the importing party or non-party.

On imports, a party shall not allow mercury imports from a non-party unless the non-party has provided certification that the mercury is not from non-allowed sources. A party that submits a general notification of consent to the Secretariat may decide not to apply this requirement for imports from non-parties, provided that it maintains comprehensive restrictions on mercury exports and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner, and notifies the Secretariat of such a decision, along with information describing its export restrictions and domestic regulatory measures, as well as information on the quantities and countries of origin of mercury imported from non-parties. The Secretariat shall maintain a public register of all such notifications, and the Convention's implementation/compliance committee shall review and evaluate them and their supporting information and may make recommendations, as appropriate, to the COP. Unless the COP decides otherwise, this alternative will only be available until COP2.

Article 3 also requires:

- each party to include in its reports to the COP information on measures taken showing that the supply and trade requirements have been met;
- COP1 to provide further guidance on supply and trade, particularly the provisions on stocks and the import and export consent/notification/certification requirements, and develop and adopt the required certifications referred to in the import and export provisions; and
- the COP to evaluate whether trade in specific mercury compounds compromises the Convention's objectives and should be subject to the import and export consent/notification/certification requirements.

ARTICLE 6. MERCURY-ADDED PRODUCTS: This item was introduced in plenary on Sunday and addressed in a contact group for the remainder of the week. In plenary, Japan, also on behalf of the EU and Jamaica, presented a submission based on intersessional work on the issue, proposing that annex C on mercury-added products combine elements of a positive and negative list approach, by setting out exclusions from the annex as well as a list of products subject to provisions of the article with accompanying dates after which the production, import, or export of the product shall not be allowed. China preferred the approach taken in the Chair's text and, with Brazil and India, stressed the need to consider the feasibility of phase-out dates, especially in developing countries. The US requested that related annexes focus on those products that use the most mercury.

The Philippines favored an ambitious positive-list approach, stressed the importance of a PIC procedure, and, with the African Group, called for measures discouraging the manufacture of new mercury-added products. Japan supported including a clarification that, for the purpose of article 6, mercury-added products shall not include assembled products. Jamaica called for working with the World Customs Organization to develop harmonized custom codes for mercury-added products. Switzerland suggested providing for a risk assessment prior to listing new products. Nepal called for exemptions for use of mercury for religious purposes, noting use in ceremonies and symbolic idols. Switzerland and Norway preferred including dental amalgam under annex C, part I (mercury-added products subject to phase-out) rather than part II (mercury-added products subject to restriction).

The World Dental Federation supported a phase-down of dental amalgam and, with the WHO, requested preventive oral health programmes. The International Association for Dental Research called for further research on advancement of dental health, alternative dental material and safe disposal of amalgam. The GAVI Alliance and the WHO noted that thimerosal in vaccines is still necessary, and the WHO said it should lead related work. Safeminds urged review of mercury use in vaccines under UNEP rather than the WHO.

In the contact group, participants agreed to work on the basis of the Chair's text of article 6 and the submission on annex C and discussed, *inter alia*, the collection of information on mercury-added products and their alternatives, measures to prevent the incorporation of mercury-added products into assembled products, the manufacture of new mercury-added products, and a suggested provision that parties may implement measures to reduce the manufacture, import and export of mercury-added products to a *de minimis* level. Drafting groups and informal consultations were repeatedly tasked with finalizing text, with extensive deliberations on the listing of products in annex C and the setting of phase-out targets.

On Friday, Chair Lugris introduced the final text of article 6 and annex C on mercury-added products. On the exclusion of replacement parts described in annex C, Japan asked that the report of the meeting reflect that replacement parts include those for maintenance purposes.

***Final Text*:** On restriction of manufacture, import and export, Article 6 (UNEP(DTIE)/Hg/INC.5/CRP.54) requires each party not to allow, by taking appropriate measures, the manufacture, import or export of mercury-added products listed in Part I of Annex C after the phase-out date specified for those products, except where an exclusion is specified in Annex C or the party has a registered exemption pursuant to Article 8 (exemptions available to a party upon request).

Article 6 also provides for parties, as an alternative to the preceding provision, and if they can demonstrate having already reduced to a *de minimis* level the manufacture, import and export of the large majority of the products listed in Part I of Annex C and having implemented measures or strategies to reduce the use of mercury in additional products not listed in Part I of Annex C, to indicate they will implement different measures or strategies to address products listed in Part I of Annex C. Article 6 specifies that parties choosing this alternative shall: report to the COP a description of the measures or strategies implemented, including a quantification of the reductions achieved; implement measures or strategies to reduce the use of mercury in any products listed in Part I of Annex C for which a *de minimis* value has not yet been obtained; consider additional measures to achieve further reductions; and not be eligible to claim exemptions pursuant to Article 8 for any product category for which this alternative is chosen. Article 6 also provides that:

- no later than five years after entry into force, the COP review the progress and the effectiveness of the measures taken under this alternative;
- each party shall take measures for the mercury-added products listed in Part II of Annex C in accordance with its provisions; and
- the Secretariat collect and maintain information on mercury-added products and their alternatives, and make such information, and any other relevant information submitted by parties, publicly available.

On assembled products, Article 6 provides for parties to take measures to prevent the incorporation into assembled products of mercury-added products phased out under the article.

On new products, Article 6 requires parties to discourage the manufacture and the distribution in commerce of mercury-added products not covered by any known use of mercury-added products prior to the date of entry into force of the Convention, unless an assessment of the risks and benefits of the product demonstrates environmental or human health benefits, and provides information on such product and its environmental and human health risks and benefits.

On listing products in Annex C, Article 6 states parties may submit a proposal to the Secretariat for listing a mercury-added product under Annex C, including information related to the availability, technical and economic feasibility, and environmental and health risks and benefits of the non-mercury alternatives to the product.

Article 6 provides for the COP to review Annex C no later than five years after entry into force, and consider its amendment.

Annex C on mercury-added products is structured in two parts, and excludes the following: products essential for civil protection and military uses; products for research, calibration of instrumentation, and for use as reference standard; where no feasible mercury free alternative for replacement is available, switches and relays, cold cathode fluorescent lamps (CCFL) and external electrode fluorescent lamps (EEFL) for electronic displays, and measuring devices; products used in traditional or religious practices; and vaccines containing thimerosal as a preservative.

Part I of Annex C lists those products subject to a phase-out, setting 2020 as the date after which the manufacture, import or export of the product shall not be allowed. Products listed in Part I include specified types of: batteries, switches and relays, compact fluorescent lamps, linear fluorescent lamps, high pressure mercury vapor lamps; mercury in CCFLs and external electrode fluorescent lamps for electronic displays; cosmetics; pesticides, biocides and topical antiseptics. Part I also lists non-electronic barometers, hygrometers, manometers, thermometers and sphygmomanometers, except non-electronic measuring devices installed in large-scale equipment or those used for high-precision measurement, where no suitable mercury-free alternative is available.

Part II of Annex C lists products subject to a phase-down. Dental amalgam is the only product listed in Part II and the annex specifies that measures to be taken by a party to phase down the use of dental amalgam shall take into account the party's domestic circumstances and relevant international guidance and shall include two or more of the following measures:

- setting national objectives aiming at dental caries prevention and health promotion, thereby minimizing the need for dental restoration;
- setting national objectives aiming at minimizing its use;
- promoting the use of cost-effective and clinically effective mercury-free alternatives for dental restoration;
- promoting research and development of quality mercury-free materials for dental restoration;
- encouraging representative professional organizations and dental schools to educate and train dental professionals and students on the use of mercury-free dental restoration alternatives and on promoting best management practices;
- discouraging insurance policies and programmes that favor dental amalgam use over mercury-free dental restoration;
- encouraging insurance policies and programmes that favor the use of quality alternatives to dental amalgam for dental restoration;
- restricting the use of dental amalgam to its encapsulated form; and,
- promoting the use of best environmental practices in dental facilities to reduce releases of mercury and mercury compounds to water and land.

ARTICLE 7. MANUFACTURING PROCESSES IN WHICH MERCURY IS USED: This item was introduced in plenary on Sunday, and discussed in a contact group for the remainder of the week. Japan, also on behalf of the EU and Jamaica, presented a submission based on intersessional work on the issue, proposing that Annex D (manufacturing processes in which mercury or mercury compounds are used) have two parts, the first listing mercury processes to be phased-out and detailing different target phase-out dates, and the second listing processes for which provisions for phase-down are detailed. China preferred the approach taken in the Chair's text and, with Brazil and India, stressed the need to consider the feasibility of phase-out dates, especially in developing countries. The US requested that related annexes focus on those processes that use the most mercury and raised concerns with how vinyl chloride monomer

(VCM) production is currently dealt with, calling for country-specific exemptions. The Philippines preferred employing a negative-list approach. Japan supported a general ban, with exemptions if needed, of processes that use mercury or mercury compounds as electrodes or catalysts. In the contact group, participants agreed to work on the basis of the Chair's text of article 7 and the submission on annex D. Drafting groups and informal consultations were repeatedly tasked with finalizing text.

***Final Text*:** Article 7 (UNEP(DTIE)/Hg/INC.5/CRP.55 and 43) specifies that for its purposes, processes shall not include processes using mercury-added products, processes for manufacturing mercury-added products or processes that process mercury-containing waste.

Article 7 requires parties to:

- not allow, by taking appropriate measures, the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex D after the phase-out date specified in that annex for the individual processes, except where the party has a registered exemption pursuant to Article 8 (exemptions available to a party upon request); and
- take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex D in accordance with the provisions set out there.

Article 7 also requires parties with one or more facilities falling under Annex D to:

- take measures to address emissions and releases of mercury or mercury compounds from those facilities;
- include information on measures taken in their reports submitted pursuant to Article 22 (reporting); and,
- endeavor to identify facilities within their territory that use mercury or mercury compounds for processes listed in Annex D and submit to the Secretariat, no later than three years after the entry into force of the Convention for them, information on the number and types of such facilities and the estimated annual amount of mercury or mercury compounds used in those facilities.

Article 7 also requires each party to:

- not allow the use of mercury or mercury compounds in a facility that did not exist prior to the date of entry into force of the Convention for it, using the manufacturing processes listed in Annex D, specifying that no exemptions shall apply to such facilities; and
- discourage the development of any facility using any other manufacturing process in which mercury or mercury compounds are intentionally used that did not exist prior to the date of entry into force of the Convention for it, except where the party can demonstrate to the COP that the manufacturing process provides significant environmental and health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such benefits.

Article 7 encourages parties to exchange information on relevant new technological developments, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and, where feasible, eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes listed in Annex D.

Article 7 specifies any party may submit a proposal to amend Annex D in order to list a manufacturing process in which mercury or mercury compounds are used, including information related to the availability, technical and economic feasibility, and environmental and health risks and benefits of the non-mercury alternatives to the process.

Article 7 calls on the COP to, no later than five years after entry into force, review Annex D and consider its amendment.

Annex D on manufacturing processes in which mercury or mercury compounds are used is structured in two parts. Part I lists processes subject to phase-out, namely chlor-alkali production to be phased out in 2025 and acetaldehyde production in which mercury or mercury compounds are used as a catalyst to be phased out in 2018. Part II lists mercury-using processes subject to restrictions, and related measures to be taken by parties, including: VCM production, sodium or potassium methylate or ethylate, and production of polyurethane using mercury containing catalysts.

ARTICLE 8. EXEMPTIONS AVAILABLE TO A PARTY UPON REQUEST: The issue was considered in plenary on Sunday, and in the contact group on selected technical articles for the remainder of the week. Switzerland suggested lifting brackets around the need for an explanation to accompany the registration of exemptions and, with the Russian Federation and GRULAC, supported provision for five-year exemptions.

***Final Text*:** According to Article 8 (UNEP(DTIE)/Hg/INC.5/CRP.55), any state may register for one or more exemptions from the phase-out dates listed in Annexes C and D by notifying the Secretariat in writing upon becoming a party to the Convention, or in the case of any mercury-added product that is added by an amendment to Annex C or any manufacturing process in which mercury is used that is added by an amendment to Annex D, no later than the date upon which the applicable amendment enters into force for that party, with a statement explaining the party's need for the exemption. Article 8 also states, *inter alia*, that:

- unless a shorter period is indicated in the register by a party, all exemptions shall expire five years after the relevant phase-out date listed in Annex C or D;
- the COP may, at a party's request, decide to extend the exemption for five years, taking due account of the report from the party justifying the need for the extension and outlining activities undertaken and planned to eliminate the need for the exemption as soon as feasible, and activities planned or underway to provide environmentally sound storage of mercury and disposal of mercury wastes;
- an extension may only be extended once per product per phase-out date;
- no state may register for an exemption five years after the phase-out date for the relevant product or process listed in Annex C or D, unless one or more parties remain registered for an exemption for that product or process, having received an extension, in which case the state may register for an exemption for that product or process that shall expire 10 years after the relevant phase-out date; and

- no party may have an exemption in effect at any time after 10 years after the phase-out date for a product or process listed in Annex C or D.

ARTICLE 9. ASGM: On Monday, plenary provisionally agreed on scope, the requirement to reduce and where feasible eliminate ASGM, a party's steps if it determines that ASGM and processing in its territory "is more than insignificant," and international cooperation on ASGM. Most discussions focused on ASGM-related trade, and the issue was taken up by the contact group on selected technical articles.

The US introduced a submission, supported by the EU, to allow trade in mercury for ASGM with the written consent of the importing party or non-party, and certification that the import is consistent with a party's ASGM action plan and progress reports, or certification that the non-party is taking steps to reduce use of mercury in, and the release to the environment of mercury from, ASGM and processing. Norway, Guyana and Switzerland proposed to gradually reduce trade in mercury for ASGM and for the COP to review and decide when trade is no longer allowed. The Zero Mercury Working Group (ZMWG) underscored the need to clearly indicate that ASGM-related trade and use will not continue indefinitely. IPEN requested prohibiting it.

Based on discussions by a drafting group, the contact group concluded late on Wednesday that a provision on ASGM-related trade was unnecessary, and proposed deleting it, while clarifying in the relevant annex that ASGM national action plans (NAPs) include trade and diversion strategies that take into account both foreign and domestic sources.

***Final Text*:** Article 9 (UNEP(DTIE)/Hg/INC.5/3 and UNEP(DTIE)/Hg/INC.5/CRP.7, 30 and 55) applies to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore. According to Article 9, each party that has ASGM and processing within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the releases to the environment from, such mining and processing. Each party shall notify the Secretariat if at any time it determines that ASGM and processing in its territory "is more than insignificant" and, if it so determines, shall develop and implement a NAP in accordance with Annex E, submit it to the Secretariat no later than three years after entry into force of the Convention for it, and provide progress updates every three years thereafter. Article 9 also encourages cooperation between parties, intergovernmental organizations (IGOs) and other entities, which may include: diversion prevention strategies; partnerships to assist in the implementation of Article 9 commitments; information exchange; technical and financial assistance; education, outreach and capacity building; and research into sustainable non-mercury alternative practices.

Annex E calls for ASGM NAPs to include:

- national objectives and reduction targets;
- actions to eliminate: whole ore amalgamation; open burning of amalgam or processed amalgam; burning of amalgam in residential areas; and cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury;
- steps to facilitate the formalization or regulation of the ASGM sector;
- baseline estimates of the quantities of mercury used and the practices employed in ASGM and processing within its territory;
- strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in ASGM and processing, including mercury-free methods;
- strategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in ASGM and processing;
- strategies for involving stakeholders in the implementation and continuing development of the NAP;
- a public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury;
- strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in ASGM; and
- a schedule for implementation of the NAP.

ARTICLE 10. EMISSIONS: Plenary considered atmospheric emissions on Monday, in conjunction with Article 11 (releases), with John Roberts (UK), Co-Chair of the INC4 contact group on emissions and releases, introducing a document requested by INC4 on mercury air emission thresholds for facilities (UNEP(DTIE)Hg/INC.5/4). The article was subsequently taken up by a contact group with the mandate of, *inter alia*, deciding whether to merge articles 10 and 11. The contact group also tasked a technical group and a drafting group to help it complete its work.

Several delegations supported the Chair's text as a basis for negotiations. Iraq introduced a submission to keep emissions and releases in two separate articles and provide limit values for each source category of emissions. The US introduced a submission on general guidance on BAT as a complement to the definition of BAT developed at INC4.

Early discussions focused on the two options presented in the Chair's text. Option 1 provided that parties shall require: for new sources, the use of BAT and BEP to control emissions; and for existing sources, the control of emissions by implementation of at least one of three listed measures. Option 2 provided that parties shall prepare national plans setting out measures to be undertaken and their expected targets, goal and outcomes, and provides for the plans to include one or more measures from a menu of five measures, one of which provides for the application of BAT and BEP for new sources.

The African Group, the EU and the Republic of Korea preferred Option 1. Japan, Colombia, Norway, the US and Canada also preferred Option 1, expressing openness to considering certain elements from Option 2, with Switzerland suggesting incorporation of national plans within a certain time period, particularly for existing facilities. Canada explained that Option 1 is clear, requires action on both new and existing sources, and provides flexibility. Uruguay called for ambitious and efficient reduction measures to achieve the convention's objective. Brazil, Argentina, Mexico, Cuba, Bolivia, the

Dominican Republic, Chile, China, Nepal and India favored Option 2. The Philippines stressed that flexible measures are still binding.

Norway emphasized the need to: ensure that article 10 delivers the necessary emission reductions; discusses timeframes for reductions; and sets a goal for emission reductions from existing sources. The EU recommended setting timelines for existing sources. Japan stated that implementation of emission limit values not only for existing, but also new, sources of emissions should be deemed of equivalent effectiveness to BAT and BEP; and recommended developing clear and objective criteria for selecting emission sources. The African Group and Switzerland recommended that BAT and BEP be applicable to all new facilities and phased in for existing sources. The US also underscored the need for: mandatory requirements on new and existing sources; thresholds for most significant sources of emissions; and continued economic growth along with emission reductions from listed mercury sources.

Chile cautioned against setting thresholds without taking into account the significance of the source for global mercury emissions. Indonesia cautioned against setting global thresholds, and with Argentina, highlighted difficulties in setting thresholds for specific sectors. China favored focusing on major sources of emissions. Canada, with IPEN, noted that a facility's size is not necessarily an indication of the amount of its mercury emissions. Noting that the Arctic acts as a sink for anthropogenic mercury, the Inuit Circumpolar Council drew attention to measurable health effects on Inuit children and, with ZMWG, urged mandatory action and controls on all, both new and existing, sources of emissions and releases. IPEN cautioned that the current article on emissions will not reduce global mercury pollution.

In the contact group, participants considered the US submission, with some countries noting specific BAT guidance should come at a later date, and the Iraqi submission, notably the proposal to include limit values for each source category of emissions in the associated annex. Participants discussed thresholds, and in light of the lack of consensus on an approach to setting thresholds, agreed to change the annex from a table that would set thresholds for inclusion of listed sources, to a list of sources along with a provision in the article that the COP develop guidelines on establishing thresholds.

The contact group agreed to focus on largest-emitting sources in reviewing the sources to be listed in the annex, agreeing: to specify these are categories of point sources; and to delete references to oil and gas production and processing facilities, manganese production facilities, facilities related to products and processes, and iron and steel manufacturing facilities. Following informal consultations, the contact group agreed to replace reference to lead, zinc, copper and industrial gold production facilities with a single reference to smelting and roasting processes used in the production of non-ferrous metals, with a note specifying that, for the purpose of the annex, non-ferrous metals refer to lead, zinc, copper and industrial gold.

In discussing the provisions to be included in article 10, the contact group debated: which provisions should be mandatory and which discretionary; addressing new and existing sources separately, with agreement emerging that existing sources warrant more flexibility; and definitions, notably "emission limit value" and "new source," and what should constitute substantial modification of an existing source. Throughout the article, there was divergence on whether to provide for emissions to be "controlled," "reduced," or "controlled, and where feasible, reduced," including in paragraphs setting out the purpose of the article and the level of ambition envisaged.

The outcome of the contact group's work was presented to plenary on Friday, with some brackets still outstanding, including around the timeline for submitting discretionary plans to the COP, regarding whether the menu of options for control measures for existing sources include alternate measures to "control" or "reduce" emissions from relevant sources, and on the level of progress parties shall achieve over time in addressing existing sources.

On Saturday in plenary, contact group Co-Chair Roberts proposed that plans, if prepared, be submitted to the COP within four years of entry into force, and reported agreement that the menu of options for existing sources would include alternative measures to reduce emissions from relevant sources. He further introduced compromise text that "the objective shall be for the measures applied by a party to achieve reasonable progress in reducing emissions over time." The article was adopted as orally amended. The African Group stressed the need for additional information on emissions to air from open waste burning, and asked for it to be reflected in the report of the meeting.

***Final Text*:** Article 10 (UNEP(DTIE)/Hg/INC.5/CRP.35 and 55) begins with a statement specifying the article is about controlling and, where feasible, reducing emissions of mercury and mercury compounds, expressed as "total mercury," to the atmosphere through measures to control emissions from the point sources falling within the source categories listed in Annex F (UNEP(DTIE)/HG/INC.5/CRP.35).

Article 10 defines:

- "emissions" as emissions of mercury or mercury compounds to the atmosphere;
- "relevant source" as a source falling within one of the source categories listed in Annex F. Article 10 specifies that a party, if it chooses, may establish criteria to identify the sources covered within a source category listed in Annex F, so long as those criteria include at least 75% of emissions from that category;
- "new source" as any relevant source within a category listed in Annex F, the construction or substantial modification of which is commenced at least one year after the date of entry into force for the party of the Convention or of an amendment to Annex F;
- "substantial modification" as modification of a relevant source that results in a significant increase in mercury emissions, excluding any change in emissions resulting from by-product recovery, specifying the party decides whether a modification is substantial or not;
- "existing source" as any source that is not a new source; and
- "emission limit value" as a limit on the concentration, mass or emission rate of mercury or mercury compounds, often expressed as "total mercury," emitted from a point source.

Article 10 requires:

- a party with relevant sources to take measures to control emissions, adding that the party may prepare a national plan setting out the measures to be taken, and its expected targets, goals and outcomes, specifying any plan is to be submitted to the COP with four years from entry into force;
- for new sources, parties to require the use of BAT and BEP to control, and where feasible, reduce emissions, as soon as practicable but no later than five years after entry into force for each party, providing that parties may use emission limit values that are consistent with the application of BAT; and
- for existing sources, each party to include in any national plan, and implement, one or more of the following measures, taking into account its national circumstances, and the economic and technical feasibility, and affordability of the measures, as soon as practicable but no more than ten years after the Convention's entry into force for it: a quantified goal for controlling and, where feasible, reducing emissions from relevant sources; emission limit values for controlling and, where feasible, reducing emissions from relevant sources; the use of BAT and BEP to control emissions from relevant sources; a multi-pollutant control strategy that would deliver co-benefits for control of mercury emissions; and alternative measures to reduce emissions from relevant sources.

Article 10 provides that parties may apply the same measures to all relevant existing sources, or may adopt different measures in respect of different source categories, and specifies the objective shall be for the measures applied by a party to achieve reasonable progress in reducing emissions over time. The article also calls on parties to establish an inventory of emissions from relevant sources and include information on implementation in reports submitted to the COP.

Article 10 provides for the COP to adopt and update as appropriate:

- at its first meeting, guidance on BAT and BEP, taking into account any difference between new and existing sources, and on the need to minimize cross-media effects; and guidance on measures for existing sources, in particular in determining goals and in setting emission limit values; and
- as soon as practicable, guidance on criteria that parties may develop in identifying relevant sources and on the methodology for preparing inventories.

Annex F lists the following point source categories of emissions of mercury and mercury compounds to the atmosphere: coal-fired power plants; coal-fired industrial boilers; smelting and roasting processes used in the production of non-ferrous metals (lead, zinc, copper and industrial gold); waste-incineration facilities; and cement clinker production facilities.

ARTICLE 11. RELEASES: Plenary considered releases to land and water on Monday, in conjunction with article 10 (emissions), with a contact group addressing both articles meeting throughout the week.

On Monday in plenary, John Roberts, Co-Chair of the INC4 contact group on emissions and releases, introduced a document requested by INC4 on releases (UNEP(DTIE)Hg/INC.5/4). Several delegations supported the Chair's text as a basis for negotiations. Iraq introduced a submission to consider all sources of releases and thus delete the related annex G. The EU noted that article 9 on ASGM addresses the most obvious sources of releases, and that article 11 should cover other sources of major concern. The US and Canada noted that major sources of releases are covered in articles on products and processes, storage and waste, and ASGM.

In the contact group, many supported treating emissions and releases as separate articles. Participants considered whether to base their work on one of the two options presented in the Chair's text, set up to match the options provided under article 10 (emissions), agreeing to base their work on Option 2.

As participants addressed the issue, they debated whether provisions for releases should be adapted from text being developed by the group on emissions, and the extent to which the two articles should mirror each other, especially as the contact group had agreed to eliminate the annex on releases.

Discussions also centered on means of limiting the scope of the article to releases to land and water from relevant sources not covered by other provisions of the convention, and definitions of "relevant source" and "new source." A technical group was tasked with drafting a definition for "release limit value," which the contact group discussed, eventually deciding to adapt text from the definition of "emission limit value" from article 10. On measures, the group agreed to delete a reference to adopting a national goal for controlling releases.

Mirroring their consideration of emissions, the contact group discussed which provisions should be mandatory and discretionary, and how to ensure consistency throughout the article on whether to provide for emissions to be "controlled," "reduced," or "controlled and, where feasible, reduced." The outcome of the contact group's work was presented to plenary on Friday, with some brackets still outstanding, including around the timeline for submitting discretionary plans to the COP, and regarding whether the menu of control measures should include alternative measures to "control" or "reduce" releases from relevant sources.

On Saturday in plenary, Co-Chair Roberts proposed that plans, if prepared, be submitted to the COP within four years of entry into force, and reported agreement that the menu of options for existing sources include alternative measures to reduce releases from relevant sources. The article was adopted as orally amended.

***Final Text*:** Article 11 (UNEP(DTIE)/Hg/INC.5/CRP.55) begins with a statement specifying that the article is about controlling, and where feasible, reducing releases of mercury and mercury compounds, expressed as "total mercury," to the land and water from the relevant point sources not addressed in other provisions of the Convention.

The Article defines:

- "releases" as releases of mercury or mercury compounds to land and water;
- "relevant source" as any significant anthropogenic point source of release as identified by a party, which is not addressed in other provisions of the convention;
- "new source" as any relevant source, the construction or substantial modification of which is commenced at least one year after the Convention's entry into force for the party;

- "substantial modification" as modification of a relevant source that results in a significant increase in mercury releases, excluding any change in releases resulting from by-product recovery, specifying that the party decides whether a modification is substantial or not;
- "existing source" as any relevant source that is not a new source; and
- "release limit value" as a limit on the concentration or mass of mercury or mercury compounds, often expressed as "total mercury," released from a point source.

Article 11 requires parties to:

- identify, no later than three years after entry into force for them, and on a regular basis thereafter, the relevant point source categories; and
- establish, as soon as practicable and no later than five years after entry into force for them, and maintain thereafter, an inventory of releases from relevant sources.

Article 11 also provides that parties with relevant sources shall take measures to control releases, and may prepare a national plan, to be submitted within four years of entry into force for it, setting out the measures to be taken to control releases and its expected targets, goals and outcomes, including one or more of the following, as appropriate:

- release limit values to control, and where feasible, reduce releases from relevant sources;
- the use of BAT and BEP to control releases from relevant sources;
- a multi-pollutant control strategy that would deliver co-benefits for control of mercury releases; and
- alternative measures to reduce releases from relevant sources.

Article 11 provides for the COP to adopt, as soon as practicable, guidance on: BAT and BEP, taking into account any difference between new and existing sources and the need to minimize cross-media effects; and the methodology for preparing inventories.

Article 11 also provides for parties to include information on implementation, and in particular on the effectiveness of measures taken, as part of their national reports submitted under Article 22.

ARTICLE 12. ENVIRONMENTALLY SOUND INTERIM STORAGE OF MERCURY, OTHER THAN WASTE MERCURY: The article was discussed in plenary on Monday and in the contact group on selected technical articles on Thursday. The EU recommended "requesting," rather than "allowing," the COP to adopt requirements for storage. Brazil suggested that guidelines to be adopted by the COP be flexible to accommodate developing countries' diverse circumstances. IPEN proposed that the COP adopt a guidance document on interim storage and provide for capacity building and technology transfer for environmentally sound storage. The draft article was referred to the contact group on selected technical articles when it was finalized. Discussions focused on the definition of mercury and mercury compounds and the eventual adoption of interim storage requirements.

***Final Text*:** As adopted (UNEP(DTIE)/Hg/INC.5/CRP.35), Article 12 applies to mercury and mercury compounds as defined in Article 3 (supply and trade) that do not fall within the meaning of the definition of mercury wastes set out in Article 13. According to Article 12:

- each party shall take measures to ensure that the interim storage of such mercury and mercury compounds intended for a use allowed to a party under the Convention is undertaken in an environmentally sound manner, taking into account any guidelines and in accordance with any requirements adopted by the COP;
- the COP shall adopt guidelines on environmentally sound interim storage of such mercury and mercury compounds, taking into account any relevant guidelines developed by the Basel Convention and other relevant guidance;
- the COP may adopt requirements for interim storage in an additional annex to the Convention; and
- parties shall cooperate, as appropriate, with each other and with relevant IGOs and other entities, to enhance capacity-building for the environmentally sound interim storage of such mercury and mercury compounds.

ARTICLE 13. MERCURY WASTES: The article was first discussed in plenary on Monday, and then assigned to the contact group on selected technical articles, which discussed it on Thursday. Discussions in the contact group included consideration of: the relevance of the provisions of the Basel Convention for transboundary movements of mercury wastes; and the eventual adoption of requirements on mercury wastes in an additional annex to the convention.

The Philippines called for binding requirements for storage and environmentally sound management of mercury wastes. Switzerland recommended making reference not only to the definitions, but also to the procedures on transboundary movements, from the Basel Convention; and clarifying the term "disposal" in accordance with the Basel Convention. Lebanon called for specific standards for mercury waste disposal. Chile called for a clear definition of mercury "wastes." The EU underscored the need to develop guidance, in cooperation with the Basel Convention, to clarify the level of mercury content that would trigger the application of the waste provisions of the mercury treaty.

Switzerland, Norway and the EU, opposed by Japan, proposed to request, rather than allow, the COP to adopt requirements such as those related to waste facility location, design and operation, and adequate treatment before final disposal. Switzerland, Norway, Colombia and the African Group favored lifting brackets around text on applying controls equivalent to those in the Basel Convention to non-parties to that Convention. The US called for a flexible approach based on the development of technical guidance on environmentally sound management, to avoid difficulties for non-parties to the Basel Convention to become parties to the mercury instrument.

***Final Text*:** According to Article 13 (UNEP(DTIE)/Hg/INC.5/CRP.35), the relevant definitions of the Basel Convention shall apply for Basel Convention parties for wastes covered under the Convention, while non-parties to the Basel Convention shall use those definitions as guidance. Article 13 defines "mercury

wastes" as substances or objects consisting of, containing or contaminated with mercury or mercury compounds, in a quantity above the relevant thresholds defined by the COP, in collaboration with the Basel Convention in a harmonized manner, that are disposed of, or are intended to be disposed of, or are required to be disposed of, by provisions of national law or the Mercury Convention. The definition of wastes excludes overburden, waste rock and tailings from mining, except from primary mercury mining, unless they contain mercury or mercury compounds above thresholds defined by the COP.

Article 13 requires each party to take appropriate measures so that mercury waste is:

- managed in an environmentally sound manner, taking into account Basel Convention guidelines and in accordance with requirements that the mercury COP shall adopt in an additional annex, as provided for in Article 28, and in developing requirements the mercury COP shall cooperate closely with the relevant Basel Convention bodies and take into account parties' waste management regulations and programmes;
- only recovered, recycled, reclaimed or directly re-used for a use allowed to a party under the convention or for environmentally sound disposal pursuant to Basel Convention guidelines and the additional annex to be adopted by the COP;
- not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with Article 13 and the Basel Convention, in the case of parties to the Basel Convention; and
- transported across international boundaries in circumstances where the Basel Convention does not apply to transport across international boundaries, only after taking into account relevant international rules, standards, and guidelines.

Article 13 also encourages parties to cooperate with each other and with relevant IGOs and other entities, as appropriate, to develop and maintain global, regional and national capacity for the management of mercury wastes in an environmentally sound manner.

ARTICLE 14. CONTAMINATED SITES: This article was reviewed by the legal group at INC4 and considered in plenary on Monday. Japan, opposed by Brazil, Iran and Morocco, called for deleting the bracketed text calling for the provision of financial and technical assistance in identifying, assessing, prioritizing, managing and, as appropriate, remediating contaminated sites. IPEN urged mandatory language on parties identifying and cleaning up contaminated sites and for financial assistance in that regard. In the final plenary on Saturday, the bracketed text was deleted as part of an overall package on financial and technical assistance.

***Final Text*:** Article 14 (UNEP(DTIE)/Hg/INC.5/CRP.55) requires each party to endeavor to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds, with any actions taken to reduce the risks posed by such sites to 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. In addition, Article 14 requires the COP to adopt guidance on managing contaminated sites that may include methods and approaches for: site identification and characterization; engaging the public; human health and environmental risk assessments; options for managing the risks posed by contaminated sites; evaluation of benefits and costs; and validation of outcomes.

Article 14 also encourages parties to cooperate in developing strategies and implementing activities for identifying, assessing, prioritizing, managing and, as appropriate, remediating contaminated sites.

ARTICLE 15. FINANCIAL RESOURCES AND MECHANISM: This issue was first discussed in plenary on Sunday, addressed through informal consultations until Wednesday, and then negotiated in the contact group on finance, technical assistance and technology transfer. Interim financial arrangements were also discussed in this context, but the outcome in this regard is expected to be reflected in the draft resolutions for the final act. Agreement on financial resources and mechanism was reached as part of the final compromise package.

Interim Finance: On Wednesday the contact group discussed interim financial arrangements, focusing on possible enabling activities, including for ratification, and possible early action, taking into account urgent issues and country-specific priorities. In the afternoon plenary, Federal Councillor and Swiss Minister of the Environment Doris Leuthard emphasized the need for interim support before the mercury instrument enters into force, pledging one million CHF. Japan announced a contribution for interim support at a level at least equivalent to that of the contributions pledged by other countries, and a possible additional contribution relative to the level of ambition of the convention for the period prior to the diplomatic conference. Norway underscored commitment to concluding an ambitious treaty and supporting the interim phase by pledging one million USD for "measures on the ground." In the closing plenary, Switzerland requested, and delegates agreed to, ask the Secretariat to update the draft resolutions for the final act, to reflect discussions on interim financing and other matters at INC5.

Financial resources and mechanism: Many developed countries, opposed by Brazil, Kiribati and the African Group, supported using the GEF as the financial mechanism. Japan called for a reference to South-South cooperation and, with Colombia and ZMWG, to funding from the private sector. The Philippines, with Iran, called for a dedicated fund under the authority of the COP, and, with ZMWG, implementation of the polluter pays principle. IPEN urged imposing extended producer responsibility for mercury-containing products. The US requested reinserting eliminated text on a broad donor base and countries' varying capacities. IPEN said if the GEF is to be the mechanism, it must take developing country concerns fully into account.

In plenary on Wednesday, Brazil reported that several parties had engaged in informal consultations on article 15, but positions remained polarized, which was neither in the interest of the process nor of developing countries. Supported by China, he requested an opportunity for a larger group of developing countries to meet. GRULAC, supported by Switzerland,

called for an inclusive, accessible and effective financial mechanism that enables implementation consistent with national implementation plans. Switzerland then encouraged delegates to move away from a developed-developing country perspective, as finance is in the interest of all wishing for an effective treaty. China called for an innovative financial mechanism and underscored the need to address this issue before consideration of a compliance regime. Colombia suggested building on existing mechanisms, and seeking complementary resources from the private sector. Federal Councillor and Swiss Minister of the Environment Leuthard emphasized: effective financial, capacity and technical support to achieve the convention's objectives; and GEF as an essential, but not the only, element of the financial mechanism for the instrument. On Thursday in plenary, GEF CEO and Chairperson Naoko Ishii reported that the 43rd GEF Governing Council adopted a decision expressing willingness, if so requested by the INC, for the GEF to become a financial mechanism of the future mercury instrument. She committed to securing new and additional financial resources.

On Thursday the contact group considered article 15. On recognizing assistance-related requirements for effective implementation, delegates discussed whether such language is needed, and its placement. They were also presented with alternative language from the non-paper on finance, introduced by Brazil and other developing countries, outlining: a role for GEF; an additional independent fund as a matter of urgency; national entities to strengthen developing countries' capacities to implement the convention; and participation of the private sector and possibly other entities. The non-paper linked the extent of implementation of substantive commitments by developing countries to the extent of implementation of support-related commitments by developed countries, reflecting Article 13.4 of the Stockholm Convention.

Some delegates welcomed text on resources for implementation, highlighting the need for a broad range of sources. Others expressed concern regarding the use of the term "mainstreaming" and unduly prescriptive language, drawing attention instead to language from Stockholm Convention Article 13.2 on financial resources. Several stressed the importance of establishing a mechanism to support implementation by parties, with some reserving their position on whether the mechanism would involve technology transfer. Some called for additional text on the resources needed and the outcomes the mechanism would deliver.

Opposing references to an independent fund, a number of developed countries favored the GEF to run a fund and serve as the financial mechanism. Several developing countries opposed, pointing to difficulties in obtaining GEF funding and restrictive procedures. Some pointed to a "GEF-plus" option, referring to the involvement of other entities as a possible solution. A developed country regional group clarified that "GEF-plus" would use existing channels. A developing country recognized a role for the GEF, but called for additional arrangements to meet urgent needs. A number of countries pointed to a hybrid solution that would include the GEF and a new fund.

Several countries supported the COP deciding on overall policies and procedures and a possible indicative list of categories of activities for funding, as well as determining funding eligibility, with a developed country proposing as a condition the reduction of mercury. Some developing countries stressed that COP guidance should be addressed to the GEF and other entities, respectively.

Delegates generally agreed with text on the level of funding and effectiveness of the mechanism. A developed country regional group proposed that parties other than developed countries "should," rather than "may," provide funding within their capabilities and on a voluntary basis.

The compromise proposal was presented in closing plenary late on Friday. The African Group, supported by Jordan and Switzerland, accepted the proposal, sharing their understanding that the specific international programme to support capacity building and technical assistance will provide for technical units at the national level. Jordan and Switzerland said establishment of the units should be pursued at the next UNEP GC meeting.

***Final Text*:** Article 15 (UNEP(DTIE)/Hg/INC.5/CRP.52) states that:

- each party undertakes to provide, within its capabilities, resources for those national activities that are intended to implement the Convention, in accordance with its national policies, priorities, plans and programmes. Such resources may include domestic funding through relevant policies, development strategies and national budgets, and bilateral and multilateral funding, as well as private sector involvement;
- the overall effectiveness of implementation of the Convention by developing countries will be related to the effective implementation of this article;
- multilateral, regional and bilateral sources of financial and technical assistance, as well as capacity building and technology transfer, are encouraged, on an urgent basis, to enhance and increase their activities on mercury in support of developing countries in the implementation of the Convention relating to financial resources, technical assistance and technology transfer;
- parties, in their actions with regard to funding, shall take full account of the specific needs and special circumstances of SIDS and least developed countries (LDCs);
- a mechanism for the provision of adequate, predictable, and timely financial resources is defined and is to support developing countries, and economies in transition in implementing the Convention's obligations, which shall include the GEF Trust Fund, and a specific international programme to support capacity building and technical assistance;
- the GEF Trust Fund shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation as agreed by the COP, and is to be operated under the guidance of, and be accountable to, the COP;
- the COP shall provide guidance on overall strategies, policies, programme priorities, eligibility for access to and utilization of financial resources, and an indicative list of categories of activities that could receive support from the GEF Trust Fund;

- the GEF Trust Fund shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities, taking into account the potential mercury reductions of a proposed activity relative to its costs;
- the specific international programme to support capacity building and technical assistance will be operated under the guidance of and be accountable to the COP, with COP1 deciding on the host institution for the programme, which shall be an existing entity, and providing guidance to it, including on its duration;
- all parties and other relevant stakeholders are invited to provide financial resources to the programme, on a voluntary basis;
- the COP and the entities comprising the mechanism shall agree on all necessary arrangements for the financial arrangement at COP1;
- the COP shall review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, its guidance to the entities entrusted to operationalize the mechanism and their effectiveness, and their ability to address the changing needs of developing countries and economies in transition, and, based on the review, take appropriate action to improve the effectiveness of the mechanism; and
- all parties are invited, within their capabilities, to contribute to the mechanism, which in turn shall encourage the provision of resources from other sources, including the private sector, and seek to leverage such resources for the activities it supports.

ARTICLE 16. TECHNICAL ASSISTANCE, CAPACITY BUILDING AND TECHNOLOGY TRANSFER: On Sunday, plenary considered two separate articles contained in the Chair's text: article 16 on technical assistance and capacity building and article 16 *bis* on technology transfer, which delegates eventually agreed into merge into one. The issue was addressed in the contact group on financial resources, technical assistance and technology transfer from Monday to Wednesday.

Brazil recommended that developed countries and others within their capabilities provide technical assistance, while Japan and the US noted that developing countries and the private sector may also do so. Norway and Canada called for cooperation with other conventions on chemicals and wastes. The EU and Canada opposed a separate article on technology transfer, noting that some elements could be integrated in Article 16. Japan and the Republic of Korea supported deleting Article 16 *bis*. Many developing countries insisted on a strong free-standing provision on technology transfer. Canada and New Zealand underscored that governments cannot mandate technology transfer. India considered technology transfer a key substantive element of the treaty.

On technology transfer, Co-Chair Guthrie proposed to have a paragraph on the tasks of the COP, such as assessing needs and the current status of technology transfer, and identifying obstacles and best practices. Delegates also discussed whether obligations should be addressed to all parties, or to developed countries and other parties within their capabilities. Delegates debated whether to "provide" or "promote" technology transfer and whether to do so on a "concessional or preferential basis" or on a "mutually agreed" basis. Some indicated that they could agree to compromise language from the Rio+20 outcome document to do so "on favorable terms, including on concessional and preferential terms, as mutually agreed." A number of developed countries opposed, preferring using text on technology transfer from the Stockholm Convention. On Wednesday, Co-Chair Guthrie introduced a compromise proposal on article 16 including paragraphs on technical assistance, capacity building, the tasks of the COP and technology transfer. Discussion focused on whether the provision was directed at "other parties within their capabilities," alongside developed countries, and whether to "promote and facilitate" technology transfer. A number of developing countries favored a direct obligation focused on developed countries. Delegates accepted the compromise proposal.

***Final Text*:** Article 16 (UNEP(DTIE)/Hg/INC.5/CRP.35) provides that:

- parties shall cooperate to provide, within their respective capabilities, timely and appropriate capacity building and technical assistance to developing country parties, in particular LDCs and SIDS, and economies in transition, to assist them in implementing their obligations under the Convention;
- capacity building and technical assistance may be delivered through regional, subregional and national arrangements, including existing regional and subregional centers, through other multilateral and bilateral means, and through partnerships, including partnerships involving the private sector;
- cooperation and coordination with other chemicals and wastes MEAs should be sought to increase the effectiveness of technical assistance and its delivery;
- developed country parties and other parties within their capabilities shall promote and facilitate, supported by the private sector and other relevant stakeholders as appropriate, development, transfer and diffusion of, and access to, up-to-date environmentally sound alternative technologies to developing country parties, in particular LDCs and SIDS, and economies in transition, to strengthen their capacity to effectively implement the Convention; and
- the COP shall, by its second meeting and thereafter on a regular basis: consider information on existing initiatives and progress made in relation to alternative technologies; consider the needs of parties, particularly developing country parties, for alternative technologies; identify challenges experienced by parties, particularly developing country parties, in technology transfer; and make recommendations on how capacity building, technical assistance and technology transfer could be further enhanced.

ARTICLE 17. IMPLEMENTATION AND COMPLIANCE COMMITTEE: This issue was discussed in plenary on Tuesday and then in the contact group on articles of a legal nature. Negotiations were held on the basis of two options in the Chair's text, the first providing for establishment of a facilitative mechanism to review compliance with the convention, and the second including more detailed terms on the composition and mandate of a compliance committee. The Chair's draft also included bracketed references to review implementation with

regard to the committee's mandate. On Tuesday, plenary held an initial discussion, with the EU supporting option 2 in the Chair's text. The contact group on articles of a legal nature addressed the issue mainly on Friday, following one developing country's opposition to discuss the issue on Thursday, pending negotiations on finance. On Friday morning, the contact group eventually held a discussion on compliance, on the basis of a Co-Chairs' text integrating option 1 and several elements from option 2.

On the chapeau of the paragraph detailing terms for the compliance committee, delegates discussed whether the clause "unless otherwise decided by the COP" implies amendment of the convention text by a simple COP decision or through the amendments procedure contained in article 27, and decided to raise the issue to the attention of the legal group. Discussion then focused on: the number of committee members, with some noting that ten, as suggested by the Co-Chairs, is too small a number. Delegates reached agreement on 15 members, as in the Basel Convention and Biosafety Protocol compliance mechanisms; and a general reference to equitable geographical representation, with delegates agreeing to add specific reference to the five UN regions.

Delegates discussed at length the required competence of the committee members, debating whether the focus of the committee should be on technical aspects of mercury reduction or legal issues. A delegate stressed that committee members should have the technical capacity to go in the field and check on application of the convention; while another noted that legal experts are needed to clarify obligations under the convention. A delegate suggested that the committee would be useful in promoting the cooperation of legal and technical experts. It was then suggested that financial expertise is also required, as the committee would ensure compliance with all provisions of the convention, including financial obligations. Delegates reached an initial understanding on a general formulation but not final agreement on language, that committee members shall have competence in the field of mercury or other related fields and reflect an appropriate balance of expertise, without further specifications. On triggers, delegates debated whether a party could make a submission only with respect to itself or also with respect to other parties, drawing examples from existing mechanisms.

A developing country proposed additional language, specifying that implementation difficulties of a developing country party shall not be regarded as non-compliance, if they are due to failure to have full access to adequate financial resources in a timely manner. Another developing country added reference to lack of access to adequate technology. During a lengthy debate, several developing countries highlighted the links between means of implementation and implementation/compliance, and stressed that the principle behind the proposal is included in Article 13.4 of the Stockholm Convention. Developed countries opposed, highlighting that compliance should not be differentiated between developed and developing countries.

Proposing deletion as a way forward, delegates suggested similar text was under consideration in the contact group on financial issues (article 15); that the committee would address in any case the reasons behind the party's non-compliance; and that the committee would address all obligations under the convention, including financial obligations. A developing country suggested adding explicitly in the committee's mandate the review of compliance with financial obligations, in which case the proposed language would not be required. Developed country delegates preferred to leave the issue under the consideration of the finance group. The contact group was then adjourned, pending consultations on financial issues, leaving this and other issues pending.

Final agreement was achieved on Friday in informal consultations, as part of the final compromise package. During the ensuing discussion, GRULAC drew attention to language requiring the implementation and compliance mechanism to pay particular attention to the respective national capabilities and circumstances of parties.

***Final Text*:** According to Article 17 (UNEP(DTIE)/Hg/INC.5/CRP.51), a mechanism, including a committee as a subsidiary body of the COP, is established to promote implementation of, and review compliance with, all provisions of the Convention. The mechanism shall be facilitative in nature and pay particular attention to the respective national capabilities and circumstances of parties. The committee shall examine both individual and systemic issues of implementation and compliance and make recommendations to the COP. It shall consist of 15 members, with competence in a field relevant to the Convention and reflecting an appropriate balance of expertise, nominated by parties and elected by the COP, with due consideration to equitable geographical representation based on the five UN regions. The first members will be elected at COP1.

The committee may consider issues on the basis of written submissions from any party with respect to its own compliance, national reports, and requests from the COP. It will make every effort to adopt its recommendations by consensus and, as a last resort, by a three-fourths majority vote of the members present and voting, based on a quorum of two-thirds of the members. The COP may adopt further terms of reference for the committee.

ARTICLE 18. INFORMATION EXCHANGE: This article was briefly discussed in plenary on Tuesday, when Chair Lugris explained that the Chair's text lifted brackets around a provision that information on the health and safety of humans shall not be regarded as confidential, subject to national laws. Canada noted that confidentiality should never apply to public health information under MEAs. Delegates agreed to delete the reference to national laws.

Final Text: Article 18 (UNEP(DTIE)/Hg/INC.5/CRP.15 and 20) requires each party to facilitate the exchange of:

- scientific, technical, economic and legal information concerning mercury and mercury compounds, including toxicological, ecotoxicological and safety information;
- information on the reduction or elimination of the production, use, trade, emissions and releases of mercury and mercury compounds;
- information on technically and economically viable alternatives to mercury-added products, manufacturing processes in which mercury or mercury compounds are used,

and activities and processes that emit or release mercury or mercury compounds, including information on the health and environmental risks and economic and social costs and benefits of such alternatives; and
- epidemiological information concerning health impacts associated with exposure to mercury and mercury compounds, in close cooperation with the WHO and other relevant organizations.

Article 18 further provides that:
- parties may exchange such information directly, through the Secretariat, or in cooperation with other relevant organizations, including the secretariats of chemicals and wastes conventions;
- the Secretariat shall facilitate cooperation in the exchange of information, as well as with relevant organizations, including the secretariats of MEAs and other international initiatives; and information from IGOs and NGOs with expertise in the area of mercury, and from national and international institutions;
- each party shall designate a national focal point for the information exchange under the Convention, including with regard to the consent of importing parties under Article 3; and
- information on the health and safety of humans and the environment shall not be regarded as confidential, and that parties that exchange other information pursuant to the convention shall protect any confidential information as mutually agreed.

ARTICLE 19. PUBLIC INFORMATION, AWARENESS AND EDUCATION: Delegates agreed to retain this article as in the Chair's text, as amended by the legal group to ensure consistency in the use of the terms "emissions" and "releases."

***Final Text*:** Article 19 (UNEP(DTIE)/Hg/INC.5/CRP.7) requires each party, within its capabilities, to promote and facilitate provision to the public of available information on:
- health and environmental effects of mercury and mercury compounds;
- alternatives to mercury and mercury compounds;
- the topics identified in Article 18.1 for information exchange among parties, such as information on alternatives and epidemiological information on health impacts associated with exposure to mercury and mercury compounds;
- the results of its research, development and monitoring activities under Article 20; and
- activities to meet its obligations under the Convention.

Each party, also within its capabilities, is to promote and facilitate 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 IGOs, NGOs and vulnerable populations, as appropriate. Article 19 further requires that each party 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 and emitted, or disposed of through human activities.

ARTICLE 20. RESEARCH, DEVELOPMENT AND MONITORING: The article was briefly discussed in plenary on Tuesday, when Chair Lugris indicated that the provision had been modified so that parties "shall," rather than "should," cooperate in research, development and monitoring. The US, opposed by Brazil, Colombia and Madagascar, preferred the earlier formulation. China proposed that parties "shall endeavor to cooperate," with Brazil adding "taking into account respective national circumstances and capabilities." Following consultations, the EU accepted these amendments. The legal group suggested amendments to ensure consistency in the use of the terms "emissions" and "releases."

***Final Text*:** Article 20 (UNEP(DTIE)/Hg/INC.5/CRP.15 and 20) requires parties to endeavor to cooperate to develop and improve, taking into account their respective circumstances and capabilities:
- inventories of use, consumption, and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds;
- modeling and geographically representative monitoring of levels of mercury and mercury compounds in vulnerable populations and in environmental media;
- assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly with respect to vulnerable populations;
- harmonized methodologies for such activities;
- information on the environmental cycle, transport, transformation and fate of mercury and mercury compounds in a range of ecosystems, taking appropriate account of the distinction between anthropogenic and natural emissions and releases of mercury and of remobilization of mercury from historic deposition;
- information on commerce and trade in mercury, mercury compounds and mercury added products; and
- information and research on the technical and economic availability of mercury-free products and processes and on BAT and BEP to reduce and monitor emissions and releases of mercury and mercury compounds.

Article 20 further foresees that parties should, where appropriate, build on existing monitoring networks and research programmes in undertaking such activities.

ARTICLE 20 *BIS*. HEALTH ASPECTS: This article was discussed in plenary on Tuesday, and then addressed by the contact group on implementation plans and health aspects. The Secretariat presented to plenary the analysis of the extent to which the content of article 20 *bis* is reflected in the other provisions of the draft mercury instrument (UNEP(DTIE)/Hg/INC.5/5). Debate focused on whether the instrument should include a dedicated article on health. Canada, Australia and New Zealand opposed such an article, with the EU considering article 20 *bis* as included in the Chair's draft text inappropriate for an MEA and cautioning against duplication of work by other international organizations. Switzerland expressed concern with the practical feasibility and regulatory burden of the provision. GRULAC, the African Group, Marshall Islands, Jordan, Cook Islands, the Philippines, the Global Indigenous Peoples Caucus,

IPEN and Human Rights Watch supported keeping a separate article on health aspects. Egypt supported preventive measures in article 20 *bis*, but cautioned against overlap with WHO and International Labour Organization (ILO) mandates. GRULAC introduced a submission: clarifying the respective competence of the mercury COP, WHO and ILO; increasing flexibility in binding requirements; and retaining provisions on access to health care and on scientific, technical and analytical capacities. Argentina requested focus on national implementation plans and, with Honduras, protection of health professionals.

Pointing to exposure of indigenous peoples to mercury including through traditional foods, the Global Indigenous Peoples Caucus called for specific references to indigenous peoples in the text. The ZMWG called for language on programmes to protect vulnerable populations, and IPEN on assessment of cumulative impacts and financial support for fighting mercury exposure. Human Rights Watch requested provision for research, surveillance and monitoring, and cooperation with the WHO and other UN agencies.

Negotiations continued in the contact group on implementation plans and health aspects and mainly in an informal "Friends of Health" group. On Thursday, plenary was presented with agreed text to, *inter alia*, encourage parties to promote the development and implementation of strategies and programmes on populations at risk and occupational exposure, and promote appropriate healthcare services, while the COP should consult and collaborate with the WHO, ILO and other relevant organizations.

***Final Text*:** According to Article 20 *bis* (UNEP(DTIE)/Hg/INC.5/CRP.35), parties are encouraged to:

- promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, including science-based health guidelines, targets for mercury exposure reduction and public education;
- promote the development and implementation of science-based educational and preventive programmes on occupational exposure to mercury and mercury compounds;
- promote appropriate healthcare services for prevention, treatment and care for populations affected by the exposure to mercury or mercury compounds; and
- establish and strengthen the institutional and health professional capacities for the prevention, diagnosis, treatment and monitoring of health risks related to the exposure to mercury and mercury compounds.

In considering health-related issues or activities, the COP should consult and collaborate with the WHO, the ILO and other relevant IGOs, and promote cooperation and exchange of information with these organizations.

ARTICLE 21. IMPLEMENTATION PLANS: The plenary addressed Article 21 on Tuesday. Negotiations were based on the Chair's text, including two options. The first option included heavily bracketed text stating that each party "may or shall" develop and execute a national implementation plan (NIP), and included a bracketed provision that parties may refer to a menu-based template developed by the COP in preparing their NIPs. The second option would require parties to prepare a NIP with the COP determining the criteria for drafting and updating NIPs, and specifies compliance with the provisions shall be subject to the mobilization of financial resources and technology transfer in accordance with parties' own assessments of their needs and priorities. GRULAC favored option 2, arguing it provides more flexibility for implementation. The EU underscored the distinction between discretionary general implementation plans and parties' obligations, such as on emissions and inventories.

Discussions continued in the contact group and then in a drafting group. Among other issues, debate revolved around the timing for NIP development, possible submission to the Secretariat, the content and focus of the implementation plan, and linkages with financial issues. Consultations continued until Friday evening, when plenary was presented with the agreed compromise.

***Final Text*:** According to Article 21 (UNEP(DTIE)/Hg/INC.5/CRP.50), each party:

- may, following an initial assessment, develop and execute an implementation plan, taking into account its domestic circumstances, for meeting the obligations under the Convention, and transmit it to the Secretariat as soon it is developed; and
- should include a consultation with national stakeholders in the development, implementation, review and updating of NIPs.

Article 21 also stipulates that parties may coordinate on regional plans to facilitate Convention implementation.

ARTICLE 22. REPORTING: Plenary addressed this issue on Tuesday. Canada, opposed by Brazil, suggested deleting reference to taking into account the contents of implementation plans in relation to parties' obligation to report on their implementation measures and their effectiveness. China requested reference to possible challenges in meeting the treaty's objectives. Plenary provisionally adopted the article on Thursday and, on Saturday morning, agreed to delete reference to "national implementation plans."

***Final Text*:** Article 22 (UNEP(DTIE)/Hg/INC.5/CRP.15) requires: each party to report to the COP on measures taken to implement the convention and their effectiveness in meeting the convention's objectives; and COP1 to decide upon the timing and format of the reporting, taking into account the desirability of coordinating reporting with other relevant chemicals and wastes conventions.

ARTICLE 23. EFFECTIVENESS EVALUATION: Plenary discussed this issue on Tuesday. The EU proposed that the first evaluation take place no later than COP3, rather than six years after the convention's entry into force, as proposed in the Chair's text. On COP1 initiating the establishment of arrangements for obtaining comparable monitoring data, China, opposed by Canada and Morocco, suggested reference to "sound methodologies, such as" monitoring data. The US suggested reference to baseline conditions and trends. The EU, supported by Japan and opposed by China, Brazil and Canada, requested removing reference to financial and technology transfer-related information as the basis of the evaluation. Following consultations, the EU accepted retaining the Chair's text.

***Final Text*:** Article 23 (UNEP(DTIE)/Hg/INC.5/CRP.26) requires:

- the COP to evaluate the Convention's effectiveness, beginning no later than six years after the day of its entry into force and periodically thereafter at intervals to be determined;
- COP1 to initiate the establishment of arrangements for providing itself with comparable monitoring data on the presence and movement of mercury and mercury compounds in the environment, as well as trends in levels of mercury and mercury compounds observed in biotic media and vulnerable populations; and
- the evaluation to be conducted on the basis of available scientific, environmental, technical, financial and economic information, including: reports and monitoring information provided to the COP; national reports; information and recommendations provided in the framework of the compliance committee; and reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under the convention.

ARTICLE 24. CONFERENCE OF THE PARTIES: Plenary addressed this article on Tuesday. Among the list of tasks for the COP, the US and the EU requested deletion of bracketed language on review of NIPs. The US, opposed by the EU, also requested eliminating review of Annexes C (mercury-added products) and D (manufacturing processes in which mercury or mercury compounds are used). On Saturday morning, plenary agreed to delete reference to the review of NIPs and lift brackets around text regarding the implementation and compliance committee and the review of Annexes C and D.

***Final Text*:** According to Article 24 (UNEP(DTIE)/Hg/INC.5/CRP.15), COP1 shall be convened no later than one year after the entry into force of the convention, with ordinary meetings of the COP being held at regular intervals to be decided by the COP. Article 24 also requires the COP to:

- keep under continuous review and evaluation the convention's implementation;
- establish subsidiary bodies that it considers necessary for the convention's implementation;
- regularly review all information made available to the Secretariat under Article 22;
- consider any recommendations submitted to it by the implementation and compliance committee;
- consider and undertake any additional action that may be required for the achievement of the Convention's objectives; and
- review Annexes C and D.

ARTICLE 25. SECRETARIAT: Plenary briefly considered this article on Tuesday, and lifted brackets around text related to other articles in the convention on Saturday.

***Final Text*:** According to Article 25 (UNEP(DTIE)/Hg/INC.5/CRP.7), the functions of the Secretariat shall be, *inter alia*, to:

- make arrangements for COP meetings;
- facilitate assistance to parties, particularly developing country parties and economies in transition, upon request, in the implementation of the convention;
- coordinate, as appropriate, with the secretariats of relevant international bodies, particularly other chemicals and waste conventions;
- assist parties in the exchange of information related to the convention's implementation; and
- prepare and make available to parties periodic reports based on information received pursuant to Articles 17 and 22 and other available information.

Article 25 also states that:

- the Secretariat functions shall be performed by the UNEP Executive Director, unless the COP decides, by a three-fourths majority of parties present and voting, to entrust the Secretariat functions to one or more other international organizations; and
- the COP, in consultation with appropriate international bodies, may provide for enhanced cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions.

ARTICLE 26. SETTLEMENT OF DISPUTES: Plenary provisionally approved the article on Tuesday on the basis of the Chair's text, including Annex J (arbitration and conciliation procedures).

***Final Text*:** Article 26 (UNEP(DTIE)/Hg/INC.5/CRP.37) requires parties to, *inter alia*, seek to settle any dispute between them concerning convention interpretation or application through negotiation, arbitration, conciliation or other peaceful means of their own choice. The article is complemented by Annex J on arbitration and conciliation procedures.

ARTICLE 27. AMENDMENT TO THE CONVENTION: Plenary considered this article on Tuesday. Switzerland, supported by the EU and Senegal, recommended: a two-thirds majority vote to adopt an amendment in case consensus cannot be reached; and ratification by two-thirds, instead of three-fourths, of parties for an amendment to enter into force. The US and China supported the former proposal, but opposed the latter.

On Wednesday, the US reported to plenary on agreement reached through informal discussions, whereby a three-fourths majority vote is needed for adopting an amendment to the Convention when consensus is not attainable; and at least "three-fourths of the parties that were parties at the time of the amendment" have to ratify the amendment for it to enter into force.

***Final Text*:** According to Article 27 (UNEP(DTIE)/Hg/INC.5/CRP.19), amendments to the Convention:

- may be proposed by any party;
- shall be adopted at a COP meeting by consensus, or if all efforts to reach consensus have been exhausted and no agreement reached, as a last resort by a three-fourths majority vote of the parties present and voting at the meeting; and
- shall enter into force for the parties that consented to be bound by it on the 90th day after the date of deposit of instrument of ratification by at least three-fourths of parties that were parties at the time at which the amendment was adopted.

ARTICLE 28. ADOPTION AND AMENDMENT OF ANNEXES: On Tuesday, plenary considered this article. Canada, Australia and the US suggested lifting brackets around text whereby an amendment to an annex shall not enter into force for a party that has made a declaration regarding the amendment,

in which case it will only enter into force 90 days after such a party has deposited an instrument of ratification for such amendment. The article was provisionally adopted on Thursday.

***Final Text*:** According to Article 28 (UNEP(DTIE)/Hg/INC.5/CRP.26), annexes shall form an integral part of the convention; and any additional annexes shall:

- be restricted to procedural, scientific, technical or administrative matters;
- be proposed and adopted subject to the same procedures of amendments to the convention; and
- enter into force for all parties that have not submitted a notification of non-acceptance on the expiry of one year from the date of the communication by the depositary of the adoption of the additional annex.

Article 28 also states that the proposal, adoption and entry into force of additional annexes to the convention shall be subject to the same procedure as for amendments to the convention, except that an amendment to an annex shall not enter into force with regard to any party that has made a declaration with regard to amendment of annexes, in which case any such amendment shall enter into force for such a party on the 90th day after the date it has deposited with the depositary its instrument of ratification with respect to such amendment.

ARTICLE 29. RIGHT TO VOTE: Plenary provisionally approved the article on Tuesday on the basis of the Chair's text.

***Final Text*:** According to Article 29 (UNEP(DTIE)/Hg/INC.5/CRP.37), each party will have one vote; while 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 the Convention, and shall not exercise its right to vote if any of its member states exercises its right to vote, and vice versa.

ARTICLE 30. SIGNATURE: On Saturday, delegates agreed to open the convention for signature from 10 October 2013 for a period of one year.

***Final Text*:** According to Article 30, the Convention shall be open for signature at Kumamoto, Japan, from 10 October 2013 for a period of one year

ARTICLE 31. RATIFICATION: Plenary discussed this article on Tuesday. The EU, supported by Japan and the US, proposed to simplify language that upon ratification parties shall submit a declaration "identifying legislative or other measures taken to implement the convention." The US and Canada suggested lifting brackets around text on declarations regarding amendments. On Saturday, delegates agreed that "any state or regional economic integration organization is encouraged to transmit to the Secretariat at the time of its ratification information on its measures to implement the convention."

***Final Text*:** Article 31 (UNEP(DTIE)/Hg/INC.5/CRP.15), *inter alia*, states that:

- the convention shall be subject to ratification, acceptance or approval by states and regional economic integration organizations;
- any state or regional economic integration organization is encouraged to transmit to the Secretariat at the time of its ratification information on its measures to implement the convention; and
- any party may declare in its instrument of ratification that with regard to it any amendment to an annex shall enter into force only upon the deposit of its instrument of ratification.

ARTICLE 32. ENTRY INTO FORCE: On Tuesday, plenary considered the article. Switzerland proposed amending the number of required ratifications from 50 in the Chair's text to 30. Following concerns expressed by Colombia, China and the EU, the Swiss proposal was withdrawn. Morocco proposed adding language on provisional application pending entry into force.

***Final Text*:** According to Article 32 (UNEP(DTIE)/Hg/INC.5/CRP.15), the convention shall enter into force on the 90th day after the date of deposit of the 50th instrument of ratification; and for each state that ratifies after the deposition of the 50th instrument of ratification, on the 90th day after the date of deposit by such state.

ARTICLE 33. RESERVATIONS: On Saturday, delegates agreed to remove the brackets around the article, which had remained pending until agreement had been reached regarding other provisions of the mercury instrument.

***Final Text*:** According to Article 34 (UNEP(DTIE)/Hg/INC.5/3), no reservations may be made to the convention.

ARTICLE 34. WITHDRAWAL: This article was provisionally approved by plenary on Thursday.

***Final Text*:** According to Article 34 (UNEP(DTIE)/Hg/INC.5/CRP.15), at any time after three years from the date of entry into force of the convention for a party, that party may withdraw from the convention by giving written notification to the depositary, with effect upon expiry of one year from the date of receipt of the notification or on such later date as may be specified in the notification.

ARTICLE 35. DEPOSITARY: Plenary provisionally approved the article on Tuesday on the basis of the Chair's text.

***Final Text*:** According to Article 35 (UNEP(DTIE)/Hg/INC.5/CRP.37), the UN Secretary-General shall be the depositary of the convention.

ARTICLE 36. AUTHENTIC TEXTS: Plenary provisionally approved the article on Tuesday on the basis of the Chair's text.

***Final Text*:** According to Article 36 (UNEP(DTIE)/Hg/INC.5/CRP.37), the original of the convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.

CLOSING PLENARY

On Saturday morning, 19 January, plenary adopted the meeting report (UNEP(DTIE)/Hg/INC.5/L.1 and Add.1-2) with minor amendments. Delegates adopted the convention at 7:00 am. Japan inquired when the full text of the convention would be available, with the Secretariat indicating it would take about two months. China and GRULAC stressed the importance of accurate and consistent translation into official languages.

Japan presented a video on the health damage and environmental degradation caused by mercury pollution in Minamata and Kumamoto Prefecture, and reported on preparations to host the diplomatic conference on 10-11 October at Kumamoto City, with a ceremonial opening in Minamata on 9 October. Delegates agreed to name the instrument the "Minamata Convention on Mercury," with Japan welcoming it

as a tool to avoid mercury pollution and Minamata disease in the future. "Those are the moments for which UNEP staff live," said UNEP Executive Director Steiner, thanking Chair Lugris for his passionate and calm leadership, the UNEP Chemicals team, and all delegates.

GRULAC welcomed the convention as an instrument to address global challenges related to mercury and mercury compounds for human health and the environment. The US called it an important step in addressing the dangers of mercury. The EU called on delegates to ensure that the convention is translated into a fully signed, ratified and implemented instrument by the largest number of countries. The African Group called INC5 a historic session for international chemical management. China compared the negotiations to the Long March. Canada said that the convention will be important for its country, the Arctic and indigenous peoples. Calling it a success for multilateralism, Chile praised the convention for reflecting the realities of various nations and containing firm commitments to protect human health and the environment. Algeria expressed concerns as a producing country having to meet the socioeconomic consequences of ceasing its mining activities, and requested that its statement be recorded in the meeting's report.

Kyrgyzstan called for its implementation in harmony with other conventions. Brazil welcomed the convention as the first MEA after Rio+20 and its reaffirmation of the principle of common but differentiated responsibilities. The Russian Federation recalled the process leading up to the adoption of the convention and thanked all involved. IPEN and Citizens against Chemical Pollution expressed disappointment that the treaty was named after Minamata, despite the appeal from survivors not to do so because the convention does not reflect the lessons from the Minamata tragedy and dishonors victims of Minamata disease. Upon his request, delegates observed a moment of silence for all victims of Minamata disease.

The ZMWG welcomed the Convention and pointed to implementation challenges ahead, especially in relation to ASGM and emissions, in order to protect new and future generations. Chair Lugris thanked the UNEP Chemicals team, NGOs, IGOs, the private sector and all negotiators for their constructive work allowing the conclusion of the best possible treaty at this point in time. Switzerland invited delegates to toast with champagne and celebrate with cake. Chair Lugris gaveled the meeting to a close at 7:42 am to the sound of "We are the Champions" by Queen's Freddie Mercury.

A BRIEF ANALYSIS OF INC5

It's the terror of knowing, What this world is about
[Under Pressure, Queen – the song played at the end of plenary on Tuesday and throughout the rest of the week]

"The World Health Organization has concluded there are no safe limits in respect to mercury and its organic compounds," UNEP Executive Secretary Achim Steiner reminds us in the introduction to UNEP's recent report "Mercury: Time to Act." This stark fact contributed to the sense of urgency so often voiced by delegates working day and night throughout the fifth and final session of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury (INC5). Negotiators were clearly eager to fulfill the task set for them in 2009 by the 25th UNEP Governing Council, to complete negotiations by its 27th meeting in February 2013. At the outset, this was not an easy target in the face of an imposing agenda. While progress had been made at INC4, much remained to be finalized at INC5, including the scope and objective of the treaty and the details of control measures and institutional and financial arrangements. These elements would establish the framework necessary to reduce atmospheric emissions and the global supply of and demand for mercury, while allowing for flexibility in implementation of measures to achieve these aims. Following an intense week of negotiations, during which multiple contact groups tried to find resolution to the complex and interconnected issues that would comprise the Minamata Convention, it was not surprising that the final solution presented to plenary late Friday night was a carefully crafted package that addressed the preamble, financial provisions, arrangements for an implementation and compliance committee, as well as stubborn brackets on the issues of trade, emissions to air, and releases to land and water.

This brief analysis will analyze the scope of the Minamata Convention on Mercury, as finally adopted at 7:00 am on Saturday, 19 January 2013, examining the implications of the compromise reached at INC5 for achieving the objective of the Convention: to protect the environment and public health from mercury pollution.

BOHEMIAN RHAPSODY – WHAT IS IN THE CONVENTION?

At the start of INC5, the scope of the Convention was not delineated. As mercury is virtually ubiquitous and widely used, the Convention could have extended from thermometers, watch batteries and computer screens to power generation and steel production facilities. Delegates had in fact left their fourth meeting still disagreeing on whether provisions on mercury-added products and manufacturing processes in which mercury is used would employ a positive list (listing only prohibited uses) or a negative list (banning all uses and listing exceptions to the ban) approach. The final outcome was particularly important to industry and NGOs, as widely-used products such as vaccines, dental amalgam, and compact fluorescent lamps were at stake. On processes, countries eventually agreed on a positive-list approach, setting out a two-part annex that distinguishes between those mercury-using processes slated for phase-out, such as chlor-alkali by 2025, and those for which measures are provided for restriction, such as VCM production. On products, delegates agreed on a hybrid approach: the mercury-added products to be controlled are listed in the relevant annex, but the annex also specifies a range of excluded products, including vaccines containing thimerosal, a mercury-containing preservative.

Negative health effects of mercury were key arguments and contributed to delineating the scope and objective of the Minamata Convention on Mercury. The health dimension of the convention has both public policy and human rights relevance, in particular for vulnerable communities and indigenous peoples,

prompting extended negotiations on a stand-alone health provision. These concerns were often counter-balanced by the common-place use of mercury in health applications, which led to close attention to the availability of feasible, affordable and accessible mercury-free alternatives.

One of the most publicly salient issues in the negotiations was consideration of thimerosal, which, when used in vaccines, eliminates the need for refrigeration. While organizations like the WHO argued thimerosal is safe and essential to global vaccination campaigns, some NGOs argued that the preservative is dangerous to human health and should be banned. The eventual exclusion of thimerosal from the scope of the convention was seen by many as justified, as the amount of mercury used is miniscule in comparison with other sources of mercury pollution, such as coal-fired power plants and artisanal and small-scale gold mining (ASGM). Discussions of control measures ultimately emphasized the need to ensure that the Convention targets the largest sources of mercury pollution.

The question of dental amalgam, which contains mercury, was also divisive, even within the dental community, which was represented by various associations that played an active role at INC5. Some groups pointed to the risks posed to dental professionals and patients alike by the use of mercury in fillings, while others stressed the public health benefits represented by the contribution of amalgam to dealing with cavities. The viability of alternatives was heavily contested. Against this backdrop, countries agreed to follow the approach taken by the Stockholm Convention to control DDT, which is restricted rather than banned due to its ongoing importance for malaria vector control. Along these lines, the Mercury Convention offers a menu of steps for parties to take towards a phase-down of dental amalgam.

Where such health trade-offs were not at play, delegates committed to a phase-out, rather than a phase-down, by 2020 for a number of other mercury-added products, ranging from compact fluorescent lamps to non-electronic medical instruments. The mere fact that some of these products are now listed may send an important signal regarding their risks and might in itself serve as a motivator to decrease use ahead of schedule. The 2020 target, however, seemed to others not ambitious enough, especially as the convention provides for two five-year exemptions should a party request them.

The approach of designing a menu of options among which parties can choose to implement one or more was used in other sections of the treaty as well, notably on emissions to air from existing sources and releases to land and water. Such flexibility, which was called for in the UNEP GC 25 mandate for these negotiations, prompted some participants to worry about the level of ambition of the treaty and underscore that the UNEP GC mandate also called for reductions, notably of atmospheric emissions and of supply.

DON'T STOP ME NOW – FLEXIBILITY VERSUS LEVEL OF AMBITION

This tension between to "control" or to "reduce" was a recurrent theme throughout these negotiations, compounded by sharp divides over what parties "shall" or "may" undertake under the instrument. Some countries emphasized a need to give parties discretion in setting priorities, especially in light of the broad array of measures and sectors affected by the treaty, and also recognizing the special needs of developing countries and their right to development. Other delegates underscored the clear threat to human and environmental health posed by any mercury exposure and called for a treaty that would provide clear added value to existing voluntary programmes such as UNEP's Global Mercury Partnership. Ultimately, countries agreed that the convention aims to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds, and address the dilemma of whether to "control" or to "reduce" on a case-by-case basis in relevant articles.

The need for flexibility also shaped the outcome on emissions to air. The Chair's text had provided for the annex to set emission thresholds above which a source would fall within the scope of the treaty, prompting early technical discussions about where to draw the line between which operations would be "in" or "out." In the end, countries agreed to postpone the delineation of thresholds to an eventual amendment to the relevant annex at a later date. Resolution of this issue hinged on first limiting those source categories listed in that annex to the largest contributors, thus excluding oil, gas, iron and steel production facilities, while allowing parties to determine independently which sources to impose measures upon within those categories.

As a result, some countries and NGOs were concerned that the emissions of too many facilities would continue unabated. Some observers, however, took the absence of detailed thresholds as opening the door for some parties to take a comprehensive approach to tackle all emitters within each of the listed categories. They were optimistic that it would be better to add thresholds to the annex later, once it has been determined which installations are actually the largest contributors to global mercury air pollution, rather than to immediately set an abstract threshold that could prove too high to achieve meaningful progress on emissions.

The level of ambition in addressing emissions to air was closely tied to the approach employed for addressing releases to land and water. Negotiators considered the attention specifically paid to atmospheric emissions understandable, as they sought to create mercury controls applicable not only to existing coal-fired power plants and industrial boilers, but also to the numerous power plants scheduled to be constructed in coming years. However, many developing countries called for equally stringent controls on releases, recalling that Minamata disease, after which the treaty is named, was brought about by releases of mercury to water. Several NGOs lamented that the provisions related to releases, including specific articles on ASGM and contaminated sites, lack the "teeth" needed to ensure that vulnerable populations will never again bear the brunt of negative impacts. Several suggested that the push for balance between the emissions and releases provisions had further weakened the final treaty. Others, however, took a more optimistic view, noting that the agreed text provides an institutional framework that will allow for obligations to be increased over time.

WE WILL ROCK YOU – BUILDING ON LESSONS LEARNED?

While certainly tied to provisions on control measures, the final package that allowed for the treaty's adoption really centered on establishing an institutional framework that will shape not only the treaty's short-term operations but also its long-term evolution, while capitalizing on lessons learned from other MEAs.

The agreement on the financial mechanism reflects experience gained under the Montreal Protocol on ozone-depleting substances and the chemicals and wastes MEAs. Like the Stockholm Convention, the Minamata Convention entrusts the Global Environment Facility with the administration of financial resources for implementation by developing countries. However, unlike the Stockholm Convention, this centralized assistance will be supplemented by a specific international programme to support capacity building and technical assistance. The terms of this programme have yet to be set out, but it is understood that it may be modeled on the Montreal Protocol's national ozone units. Innovating on other chemicals conventions, national mercury units may, in the eyes of participants experienced with practical implementation challenges, focus attention on "ground-level" action and possibly bring about co-benefits by also improving national implementation capacity for all chemicals and wastes treaties.

Another key component of the final package was an agreement to establish an Implementation and Compliance Committee, thus ensuring that the Minamata Convention will not find itself in the quandary still faced by the Stockholm and Rotterdam Conventions, under which compliance mechanisms have yet to be established, despite being called for in the texts of both conventions. It remains to be seen whether this committee, in conjunction with the financing and technical assistance arrangements, will lay the groundwork to meaningfully address mercury emissions and monitor effective implementation of all the convention requirements, including provision of financial and technical assistance.

Some participants also saw potential for the Minamata Convention to bring attention and visibility to previously unrecognized sources of mercury, and particularly to ASGM. Some delegates also reiterated their hope that the Minamata Convention could serve as a template for addressing other heavy metals such as cadmium and lead, recalling discussions that preceded the UNEP GC setting the mandate for the INC. They also drew parallels to the evolution of the Stockholm Convention from a treaty addressing largely "dead" chemicals that are no longer in widespread use to one that, now that its annexes have been twice amended, addresses a suite of "live" substances. Some expect that similar momentum will build within this Convention, as UNEP and, eventually, parties fulfilling inventory and reporting requirements, continue to gather information on health impacts and on sources of mercury emissions and their alternatives, thereby building support for broadening the scope of the Minamata Convention.

WE ARE THE CHAMPIONS

The Minamata Convention is a remarkable development in international environmental cooperation. The convention draws attention to a global challenge that was barely recognized 10 years ago, and includes some global provisions that were unthinkable until very recently, such as phasing down the use of dental amalgam. The Convention embodies a legally-binding agreement—an increasingly rare breed in environmental multilateralism—that covers the whole life-cycle of mercury and has multi-faceted implications for several key economic sectors, such as health and cosmetics, construction, heavy manufacturing and electronics. The "homecoming" of the Minamata Convention for the Diplomatic Conference in October 2013 to the place where the effects of mercury poisoning were so devastating, is not only symbolic; it will also serve as a reminder of the essential motivation that enabled the finalization of the convention in record time. And, even though the timelines foreseen by the Convention stretch over decades, the instrument includes significant measures, such as a ban on new mercury mines, phase-out of existing mines, measures to control air emissions, and regulation of the informal sector of ASGM.

The strength of the outcome crafted by INC5 will no doubt be better evaluated at the implementation stage. Some delegations were indeed hopeful that entry into force would come sooner rather than later, thanks to a well-structured intersessional process and the interim funding pledged by Japan, Norway and Switzerland. Meanwhile, the upcoming UNEP Governing Council will offer an opportunity to evaluate the place and impact of the Minamata Convention in the broader context of the chemicals conventions cluster, its governance and financing.

UPCOMING MEETINGS

3rd Technical Expert Group Meeting on Environmentally Sound Management of Hazardous and Other Wastes: The Expert Group will further develop the draft framework for the ESM of hazardous and other wastes, building on progress made at its first and second meetings. The draft framework is to be submitted to Basel Convention COP11, in May 2013, for consideration and possible adoption. **dates:** 21-23 January 2013 **location:** Montreux, Switzerland **contact:** Susan Wingfield, Programme Officer **phone:** +41-22-917-8331 **fax:** +41-22-797-3454 **email:** susan.wingfield@unep.org **www:** http://www.basel.int

Workshop on Guidelines for the Development, Review and Updating of National Waste Management Strategies: This workshop, organized by the UNEP International Environmental Technology Centre in cooperation with UNITAR, will review and finalize the "Guidelines for the Development, Review and Updating of National Waste Management Strategies" developed by IETC and UNITAR, in response to decisions by the UNEP GC and the Rio+20 outcome document. **dates:** 5-7 February 2013 **location:** Osaka, Japan **contact:** Ainhoa Carpintero **phone:** +81-6-6915-4521 **fax:** +81-6-6915-0304 **email:** ainhoa.carpintero@unep.org **www:** http://www.unep.org/ietc/Portals/136/News/GuidelinesForDevelopmentOfNWMS/Draft_Programme_161112.pdf

UNEP GC/GMEF: The first universal session of the UNEP GC/GMEF is scheduled to convene from 18-22 February 2013, in Nairobi, Kenya. Among other things, the UNEP GC is expected to discuss the Executive Director's report on financing options for chemicals and wastes. **dates:** 18-22 February 2013 **location:** Nairobi, Kenya **contact:** Secretary, Governing Bodies, UNEP **phone:** +254-20-7623431 **fax:** +254-20-7623929 **email:** sgc.sgb@unep.org **www:** http://www.unep.org/gc/gc27/

Global Workshop on Updating National Implementation Plans, including Updating and Revising PCDD/PDCF Inventories: This workshop is organized by the Secretariat of the Stockholm Convention and the Environmental Company of the State of São Paulo (CETESB), which serves as a Stockholm Convention Regional Center. It is targeted at national offices that have started the process of reviewing and updating their country's NIP and dioxin/furan inventories to address the POPs listed in 2009 and 2011. **dates:** 26 February - 1 March 2013 **location:** São Paulo, Brazil **contact:** Lady Virginia Traldi Meneses, CETESB **phone:** +55-11-3133-3862 **fax:** +55-11-3133-4058 **email:** ladyr@cetesbnet.sp.gov.br **www:** http://chm.pops.int/Portals/0/download.aspx?d=WorkshopNIP_Brazil_26.Feb-1.Mar.2013.pdf

Second Global Workshop on Updating National Implementation Plans, Including Updating and Revising PCDD/PDCF Inventories: This workshop is organized by the Secretariat of the Stockholm Convention and the Basel and Stockholm Convention Regional Centre for French-speaking countries in Africa in Senegal (BCRC-Senegal). It is targeted at national offices that have started the process of reviewing and updating their country's NIP and dioxin/furan inventories to address the POPs listed in 2009 and 2011. **dates:** 19-22 March 2013 **location:** Dakar, Senegal **contact:** Michel Seck, BCRC-Senegal **phone:** +221 33 864 6818 **fax:** +221 33 822 62 12 **email:** michel.seck@crcbs-afr.org **www:** http://chm.pops.int/Portals/0/download.aspx?d=SenegalNIPsWorkshop_announcement.pdf

Coordinated Ordinary and Extraordinary Meetings of the Conferences of the Parties to the Basel, Rotterdam and Stockholm Conventions: The ordinary and extraordinary meetings of the COPs to the Basel, Rotterdam and Stockholm Conventions will convene back-to-back from 29 April-10 May 2013, in Geneva, Switzerland. Regional consultations are scheduled for 28 April. **dates:** 28 April - 10 May 2013 **location:** Geneva, Switzerland **contact:** Secretariat phone: +41-22-917-8729 fax: +41-22-917-8098 **email:** synergies@unep.org **www:** http://synergies.pops.int/Implementation/ExCOPs/ExCOPs2013/tabid/2747/language/en-US/Default.aspx

GEF 44th Council Meeting: The GEF Council meets twice per year to approve new projects with global environmental benefits in the GEF's focal areas, and provide guidance to the GEF Secretariat and Agencies. The Council is also expected to discuss the GEF's possible role vis-à-vis the global mercury agreement. **dates:** 18-20 June 2013 **location:** Washington, DC, USA **contact:** GEF Secretariat **phone:** +1-202-473-0508 **fax:** +1-202-522-3240 **email:** secretariat@thegef.org **www:** http://www.thegef.org/gef/events/gef-44th-council-meeting

25th Session of the ECOSOC Sub-Committee of Experts on the Globally Harmonized System of Classification and Labeling of Chemicals: The ECOSOC Sub-Committee of Experts on the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) will discuss draft amendments to the GHS, GHS implementation, guidance on the application of GHS criteria and the issuance of the 5th revised edition of the GHS. **dates:** 1-3 July 2013 **location:** Geneva, Switzerland **contact:** Rosa Garcia Couto **phone:** +41-22-917-2435 **fax:** +41-22-917-0039 **www:** http://www.unece.org/trans/main/dgdb/dgsubc4/activities.html

Eleventh International Conference on Mercury as a Global Pollutant: The theme of the conference is "Science informing global policy." The meeting aims to exchange information on the science of mercury behavior and release, and its effect on ecosystems. **dates:** 28 July - 2 August 2013 **location:** Edinburgh, Scotland **contact:** Marcus Pattison **phone:** +44-1727-858840 **fax:** +44-1727-840310 **email:** info@mercury2013.com **www:** http://www.mercury2013.com/

Diplomatic Plenipotentiary Conference on the Global Legally Binding Instrument on Mercury: The Conference will adopt the Minamata Convention on Mercury and a final act that addresses, among other things, how to promote and prepare for the early implementation of the convention; 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. **dates:** 9-11 October 2013 **location:** Kunamoto/Minamata, Japan **contact:** Jacob Duer, UNEP **phone:** +254-2076-24011 **fax:** +254-2076-24300 **email:** Jacob.Duer@unep.org **www:** http://www.unep.org/hazardoussubstances/Mercury/Negotiations/tabid/3320/Default.aspx

GLOSSARY

ASGM	Artisanal and small-scale gold mining
BAT	Best available techniques
BEP	Best environmental practices
COP	Conference of the Parties
ESM	Environmentally sound management
GC/GMEF	UNEP Governing Council/Global Ministerial Environment Forum
GEF	Global Environment Facility
GRULAC	Latin American and Caribbean Group
ILO	International Labour Organization
INC	Intergovernmental Negotiating Committee
IPEN	International POPs Elimination Network
LDCs	Least developed countries
MEAs	Multilateral environmental agreements
NAPs	National action plans
NIPs	National implementation plans
PIC	Prior informed consent
POPs	Persistent organic pollutants
SIDS	Small Island Developing States
UNEP	United Nations Environment Programme
VCM	Vinyl chloride monomer
WHO	World Health Organization
ZMWG	Zero Mercury Working Group

Chemicals Policy & Practice

http://chemicals-l.iisd.org/

A knowledge management project carried out by the International Institute for Sustainable Development Reporting Services (IISD RS) in collaboration with the UN System Chief Executives Board for Coordination (CEB).

New posts to the knowledgebase are circulated via the Chemicals and Wastes Update, which is distributed exclusively through the CHEMICALS-L listserv.

CHEMICALS-L is a companion project managed by IISD RS. This community listserv offers subscribers an opportunity to post announcements regarding their own organizations' publications and meetings.

To receive the Chemicals and Wastes Update and to subscribe to the CHEMICALS-L community listserv: http://chemicals-l.iisd.org/about-the-chemicals-l-mailing-list/

To subscribe to the iCal of Chemicals and Wastes-related events: http://chemicals-l.iisd.org/icalendar/

Chemicals and Wastes Policy & Practice is supported by the Swiss Agency for Development and Cooperation, Global Program Climate Change

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development and Cooperation SDC