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**Intergovernmental negotiating committee  
to prepare a global legally binding  
instrument on mercury  
First session  
Stockholm, 7–11 June 2010**

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

**Introduction**

1. At its twenty-fifth session, by section III of decision 25/5 of 20 February 2009, the Governing Council of the United Nations Environment Programme (UNEP) agreed to the elaboration of a legally binding instrument on mercury and asked the Executive Director of UNEP to convene an intergovernmental negotiating committee with the mandate to prepare that instrument, commencing its work in 2010.

2. The Governing Council further agreed, in paragraph 27 of the decision, that the task of the intergovernmental negotiating committee was to develop a comprehensive and suitable approach to mercury that included provisions:

- (a) To specify the objectives of the instrument;
- (b) To reduce the supply of mercury and enhance the capacity for its environmentally sound storage;
- (c) To reduce the demand for mercury in products and processes;
- (d) To reduce international trade in mercury;
- (e) To reduce atmospheric emissions of mercury;
- (f) To address mercury-containing waste and remediation of contaminated sites;
- (g) To increase knowledge through awareness-raising and scientific information exchange;
- (h) To specify arrangements for capacity-building and technical and financial assistance, recognizing that the ability of developing countries and countries with economies in transition to implement some legal obligations effectively under a legally binding instrument is dependent on the availability of capacity-building and technical and adequate financial assistance;
- (i) To address compliance.

3. In paragraph 28 of decision 25/5 the Governing Council agreed that in its deliberations the intergovernmental negotiating committee should consider:

- (a) Flexibility in that some provisions could allow countries discretion in the implementation of their commitments;

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

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

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

5. The first session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury was opened at 10.20 a.m. on Monday, 7 June 2010, by Mr. Per Bakken, Head, Chemicals Branch, UNEP Division of Technology, Industry and Economics. Mr. Bakken welcomed the meeting participants and introduced Ms. Angela Cropper, Deputy Executive Director of UNEP, who made opening remarks. Following Ms. Cropper's remarks Mr. Andreas Carlgren, Minister for the Environment of Sweden, made a welcoming statement on behalf of the host Government.

6. Welcoming the meeting participants, Ms. Cropper observed that the committee was starting its work at an appropriate time and place, as Stockholm had hosted the historic United Nations Conference on the Human Environment 38 years earlier almost to the day. Since then, the international community had made great progress in responding to the global challenges posed by the use of hazardous chemicals, including through the Basel Convention on the Control of Transboundary Movements of Hazardous Chemicals and Their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants. Much work remained to be done, however, to achieve the goal set at the 2002 World Summit on Sustainable Development that by 2020 chemicals would be used and produced in ways that led to the minimization of significant adverse effects on human health and the environment.

7. She said that successfully concluding negotiations on global measures to reduce the risks to health and the environment from mercury pollution would be an important step towards achieving the 2020 goal and would address a major health threat to the lives of hundreds of millions of people around the world. All countries agreed that incidents like that which had occurred in Japan's Bay of Minamata more than 40 years earlier must never happen again. Lower-level mercury poisonings nevertheless continued to occur – for example, in the artisanal and small-scale gold mining sector. At a lower level still, both people and animals absorbed mercury into their bodies from everyday products, from industrial processes and coal-fired power stations and through the food that they ate. The consequences of such low-level exposures were of increasing concern.

8. She said that, to facilitate financial contributions to support the process, plans were under way to establish a mechanism, modelled perhaps on the Stockholm Convention's successful POPs Club, for recognizing those Governments, organizations and partners that contributed financially or in other ways

to ensuring the successful outcome of the negotiations. The task and timetable before the committee were considerable and many important issues had to be resolved, including the critical links between implementation and compliance, but the negotiations presented a unique and historic opportunity to establish the means for eliminating anthropogenic releases of mercury to the greatest possible extent.

9. Mr. Carlgren welcomed the meeting participants on behalf of the host country and underscored the important challenge presented by mercury emissions to global efforts to protect the environment and human health from hazardous substances. He expressed the hope that the negotiations would prove to be a milestone in those efforts and would result in an instrument that would stand as a worthy partner to the Basel, Rotterdam, and Stockholm conventions and the Strategic Approach to International Chemicals Management.

10. For several decades, he said, Sweden and other countries had responded to evidence of increasing levels of mercury in the environment with national legislation. Swedish efforts had begun with research on contamination levels, recommendations on food intake limits, especially for pregnant women, and national bans on the use of mercury in some commercial products. Recently Sweden had enacted its strongest policy to date, a general ban on all uses of mercury. The success of the ban, on which Sweden would report at the committee's second session, showed that countries could do without mercury and that concerted global action was feasible. The Nordic Council of Ministers had also been active in tackling the issue of mercury, including through support for the UNEP mercury programme. A recent report by the Council showed that controlling mercury not only benefited the environment and human health but also had important social and economic benefits.

11. The success of Sweden's national measures notwithstanding, he said, national and regional actions were insufficient. Both Sweden and the Nordic Council believed that, owing to the long-range environmental transport of mercury, only coordinated global action could successfully confront the risks that it posed. Likening the negotiation of a mercury instrument to erecting a strong building, he urged the representatives to act as both innovative architects and careful and efficient builders. With committed effort over the coming three years, they could craft a new and much-needed international agreement and help to safeguard the environment and the health of current and future generations.

12. Following Mr. Carlgren's statement a children's singing group, "Next Generation", performed two songs: "Yellow and Blue", whose title recalled both the sun and the sky and the Swedish national colours; and "I Have a Dream" by the well-known Swedish group ABBA.

## II. Election of officers

13. As its first act the committee elected Mr. Fernando Lugris (Uruguay) Chair of the committee by acclamation.

14. Following his election the Chair recalled that at its meeting the open-ended working group had agreed to recommend that the committee should adopt the draft rules of procedure set out in annex I to the report of the working group's meeting, which were before the committee in the annex to document UNEP(DTIE)/Hg/INC.1/3.

15. The Chair explained that it would be necessary to elect the officers of the committee before the meeting could proceed further and that the committee would therefore need to adopt a rule of procedure governing the election of officers. At his suggestion the committee accordingly adopted rule 8 of the draft rules of procedure recommended by the working group. The committee then elected the following vice-chairs of the committee by acclamation:

Mr. Yingxian Xia	(China)
Ms. Katerina Sebkova	(Czech Republic)
Ms. Gillian Guthrie	(Jamaica)
Mr. Mohammed Khashashneh	(Jordan)
Mr. Oumar Diaoure Cissé	(Mali)
Ms. Abiola Olanipekun	(Nigeria)
Mr. Vladimir Lenev	(Russian Federation)
Ms. Nina Cromnier	(Sweden)
Mr. John Thompson	(United States of America)

Ms. Cromnier agreed to serve also as Rapporteur.

### **III. Organizational matters**

#### **A. Adoption of the rules of procedure**

16. Following the election of the Bureau the committee adopted its rules of procedure on the basis of the draft rules of procedure set out in the annex to document UNEP(DTIE)/Hg/INC.1/3, as revised to correct a number of minor editorial errors. The rules of procedure as adopted are set out in annex I to the present report.

#### **B. Adoption of the agenda**

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

1. Opening of the session.
2. Election of officers.
3. Organizational matters:
  - (a) Adoption of the rules of procedure;
  - (b) Adoption of the agenda;
  - (c) Organization of work.
4. Preparation of a global legally binding instrument on mercury.
5. Other matters.
6. Adoption of the report.
7. Closure of the session.

#### **C. Organization of work**

18. At the suggestion of the Chair the committee agreed that it would meet from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. each day and that it would endeavour to carry out its work in plenary session.

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

20. During its deliberations the committee had before it numerous working and information documents prepared by the secretariat pertaining to the provisions listed in paragraph 27 of decision 25/5, which would be discussed under item 4 of the agenda. At the request of the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee, the committee also had before it a number of background documents prepared in response to previous decisions of the Governing Council and requests by the Ad Hoc Open-ended Working Group on Mercury. To assist the committee in keeping track of the documents before it the secretariat had prepared document UNEP(DTIE)/Hg/INC.1/INF/6, which listed those documents according to the paragraph 27 provisions to which they pertained.

21. The committee also had before it a draft matrix prepared by the secretariat in response to a request made during the meeting of the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee, which was set out in the annex to document UNEP(DTIE)/Hg/INC.1/6. The purpose of the matrix was to assist the committee in tracking its progress in developing provisions of the instrument to be negotiated relating to obligations, compliance with those obligations and commitments in respect of financial and technical assistance. One representative said that the matrix should be amended to include specific goals and indicators in respect of the financial and technical assistance necessary to enable implementation of the treaty.

#### **D. Attendance**

22. Representatives of the following States participated in the meeting: Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Bolivia (Plurinational State of), Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Comoros, Congo, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Egypt, Ethiopia, Finland, France, Georgia, Germany, Guatemala, Guinea, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Kyrgyzstan,

Lao People's Democratic Republic, Latvia, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Tunisia, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

23. An observer for Palestine also attended.

24. The following United Nations bodies and specialized agencies were represented: International Labour Organization, United Nations Industrial Development Organization, United Nations Institute for Training and Research, World Health Organization.

25. The following intergovernmental organizations were represented: Central American Commission of Environment and Development, European Union, Global Environment Facility, International Energy Agency Clean Coal Centre, International Petroleum Industry Environmental Conservation Association, League of Arab States, Nordic Council of Ministers.

26. The following multilateral environmental agreement secretariats or related bodies were represented: Basel Convention on the Control of Transboundary Movements of Hazardous Chemicals and Their Disposal, Basel Convention Regional Centre for Training and Technology Transfer for Arab States, Mediterranean Action Plan, Stockholm Convention on Persistent Organic Pollutants.

27. A number of non-governmental organizations were represented. Their names may be found in the list of participants, which is set out in document UNEP(DTIE)/Hg/INC.1/INF/13.

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

28. At the suggestion of the Chair the committee agreed that it would begin its consideration of agenda item 4 with general statements from regional groups, States, intergovernmental organizations and non-governmental organizations and that it would then proceed to discuss separately and in greater detail each provision listed in paragraph 27 of decision 25/5.

29. Following that agreement the Chair recalled the committee's mandate, as set forth in the introduction above. The representative of the secretariat then briefly reviewed the documents relevant to the item, highlighting in particular document UNEP(DTIE)/Hg/INC.1/5, which presented options for substantive provisions that might be included in the legally binding instrument on mercury other than provisions on financial and technical assistance and compliance. He noted that, in accordance with the ad hoc open-ended working group's request, the document neither pre-empted positions that countries might take nor suggested text for a legally binding instrument, but merely described options for provisions, drawing on relevant existing instruments.

##### **A. General statements**

30. During the general statements the representatives who spoke expressed appreciation to the Government of Sweden for hosting the meeting and to the UNEP secretariat for its preparatory work. They also thanked the Nordic Council of Ministers for its support for the session.

31. There was a general consensus that a robust and comprehensive legally binding instrument on mercury was needed, and many representatives said that their countries would fully support the negotiating process. Several representatives highlighted their countries' experiences in dealing with the harmful impacts of mercury, suggesting that they would be useful in the discussions to come.

32. Several representatives said that the negotiations should involve all stakeholders from the outset. Several said that, given the importance of human health in the negotiations, occupational health and safety organizations should participate in the negotiations. One representative said that regional centres and UNEP regional offices should be involved as they were familiar with current conditions and needs in the regions. Several representatives said that civil society needed to be involved in the negotiation of the instrument and in the process of reducing mercury use. A number of representatives advocated coordination with existing instruments in the chemicals and wastes area so as to seek synergies, avoid overlapping mandates and duplication of efforts and take advantage of relevant experience. Several representatives stressed the need for transparency in the negotiations and said that

all information and documentation should be readily available in the six official languages of the United Nations.

33. Regarding the terms of the instrument to be negotiated, several representatives stressed that it should cover the entire life cycle of mercury, while one said that it should cover only mercury and no other substances. Many representatives said that the instrument should protect the environment and human health for the benefit of future generations and should reduce the risks posed by mercury to especially vulnerable populations, including workers exposed to mercury-related hazards and the inhabitants of the Arctic region. Several said that it should result in the reduction of emissions from the main emissions sources, which would require cooperation by as many countries and organizations as possible. Many representatives also said that the instrument to be negotiated should take into account each country's specific circumstances and priorities. Many said that the instrument should cover products containing mercury, especially in connection with the health-care sector, wastes and the remediation of contaminated sites, and called for a long-term strategy. Several said that the instrument should cover the use of mercury in artisanal and small-scale gold mining, and some described their countries' experiences in that regard.

34. Many representatives said that the instrument should have strategic and realistic goals, with substantial reduction targets, with some adding that it should be developed and ratified as a package, that countries should not be allowed to pick and choose among its provisions and that it should have specific time frames for the reduction targets. Several others, however, said that the instrument should take into account that mercury was economically important and, if managed in an environmentally sound manner, could contribute to sustainable development. In that vein, several suggested that the instrument should provide exemptions for essential uses of mercury. One representative cautioned that a mercury instrument should not become a non-tariff barrier to trade. Many representatives said that the instrument being developed should provide for public information, awareness-raising and education for vulnerable populations, with timely access to data on mercury hazards, sources and alternatives. Many also said that it should control transboundary movements of mercury and mercury-containing products. One representative said that, while binding obligations were important, a framework for flexible and voluntary measures should be included in the mercury instrument.

35. There was considerable support among representatives of developing countries for the principle of common but differentiated responsibilities and for the provision of funding, technology transfer and capacity-building to enable developing countries to fulfil their obligations under the instrument without compromising poverty reduction in pursuit of the Millennium Development Goals. Many representatives of developing countries advocated the establishment of a financial mechanism modelled on existing mechanisms such as the Multilateral Fund for the Implementation of the Montreal Protocol.

36. Several representatives said that the mercury instrument should address the need, in particular of developing countries and countries with economies in transition, for the development of sustainable, non-toxic alternatives to products and processes containing or using mercury. Many representatives said that the "polluter pays" principle should be implemented when dealing with wastes and contaminated sites, with costs being shared by responsible parties, including the private sector. They suggested that extended producer responsibility should be provided for products containing mercury in order to make mercury less economically desirable.

37. There was general agreement that an effective compliance mechanism would be important to the mercury instrument's success. Views differed, however, as to the nature of any such mechanism. Representatives of a number of countries said that there should be implementation of and compliance with any future instrument by all parties and that the elaboration of clear obligations and well-designed implementation and monitoring mechanisms, including specific goals, indicators, targets and time frames, was essential. Some added that any compliance mechanism should be facilitative rather than punitive. Others were of the opinion that a compliance mechanism should be built into the instrument rather than developed afterwards, as experience had shown that the latter approach was not effective. Several representatives said that the compliance provisions applicable to developing countries, in particular least developed countries, should be relatively lenient, providing, for example, grace periods. One representative proposed that a compliance mechanism should reflect the principle of common but differentiated responsibilities and should feature commitments by all parties, including in respect of financial and technical assistance, transfer of technology and capacity-building.

38. One representative described his country's involvement with a subregional consultation on mercury for Arab countries held in Alexandria, Egypt, in April 2010, where a number of recommendations had been drafted for the committee's consideration. The representative of the Basel

Convention regional centre in that country said that the centre had prepared a report on the meeting, which could be downloaded from the UNEP website.<sup>1</sup> He added that the centres could provide useful support for the negotiating process but required funding and technical assistance.

39. The representative of the World Health Organization (WHO) said that mercury constituted a major public health concern and that any new instrument needed to prevent disease attributable to mercury. She described steps taken by WHO to help phase out the use of mercury in blood pressure measuring devices and thermometers and said that the current negotiations should strengthen existing efforts and facilitate new ones in that direction.

40. The representative of the International Labour Organization (ILO) said that his organization was working with member countries towards the elimination of mercury-related occupational diseases. He added that management of mercury in the workplace should be taken into account in developing the mercury instrument, as should the protection from mercury exposure of those who would be involved in decommissioning mercury-related installations and cleaning up mercury wastes. Lastly, he said that communities that depended on mercury for their livelihoods needed to be provided with viable employment alternatives and that ILO would do its best to assist the committee in its work.

41. The representative of the Global Environmental Facility (GEF) said that the current session was being held at a crucial moment in the history of GEF because the fifth replenishment of the GEF trust fund included \$20 million for the sound management of chemicals. He said that GEF would work with UNEP and the United Nations Industrial Development Organization (UNIDO) to propose pilot activities relating to mercury.

42. The representative of a non-governmental organization said that mercury-based amalgam was still used by many dentists, especially in developing countries, expressing the hope that the substance would soon be banned worldwide. The representative of another non-governmental organization, however, said that dental amalgam was a safe and affordable material that served the oral health needs of most communities worldwide. The representative of a non-governmental organization representing indigenous peoples said that their human rights were being violated by exposure to mercury and that relevant human rights treaties should be reflected in any new mercury instrument.

43. During the general statements the representative of the European Union made a statement in which she explained that the European Union had put in place extensive legislation covering almost all the substantive areas in decision 25/5. She further explained that to undertake negotiations on an international agreement, in particular in areas covered by European Union rules and where those rules might be affected, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community required the European Union institutions to adopt an explicit authorization allowing its representatives to negotiate on its behalf. In the absence of the authorization neither the European Union nor its member States could engage in negotiations of an agreement that could affect European Union rules. She said that, while it was fully committed to reaching rapid agreement on a legally binding mercury instrument, the European Union had not been able to complete the procedures necessary to allow its representatives to conduct negotiations on the instrument at the current session.

44. One representative, speaking on behalf of the countries in his region, said that it would be beneficial if the UNEP regional centre for that region could assist those countries in the negotiating process for the development of the instrument.

45. During the general statements, several representatives conveyed offers from their Governments to host future sessions of the committee. The representative of Uruguay said that his Government was offering to host the committee's fourth session, provided that it could secure the necessary financial support. The representative of Brazil reported that his Government wished to host the committee's fifth session. In sequence, the representative of Burkina Faso indicated his Government's wish to host the committee's third session and the representative of Switzerland reported his Government's offer to host the fifth session. The representative of Japan reported an offer by his Government to host the committee's second session. In addition, he said that his Government wished to host the conference of plenipotentiaries at which a new mercury instrument would be adopted. The instrument would be named the "Minamata Convention", thereby reaffirming the resolve of the international community to ensure that the health damage and environmental disaster caused by methyl mercury in the Bay of

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1 [www.unep.org/hazardoussubstances/LinkClick.aspx?fileticket=60zMZC0GTwI%3d&tabid=3323&language=en-US](http://www.unep.org/hazardoussubstances/LinkClick.aspx?fileticket=60zMZC0GTwI%3d&tabid=3323&language=en-US).

Minamata would never be repeated in any other country. The offers by the representatives of Brazil, Burkina Faso, Japan and Uruguay were supported by their respective regions.

46. The representative of the secretariat thanked the representatives for the generous offers of their Governments. He explained that the secretariat would consult those representatives on the necessary details and convey the offers to the Executive Director of UNEP, who as the convener of the intergovernmental negotiating committee would be responsible for deciding on the venues of its remaining sessions and of the diplomatic conference.

## **B. Objectives**

47. Introducing the topic, the Chair invited the committee to begin a general discussion on the objectives of the instrument to be negotiated. Many representatives said that the objectives could not be decided upon without knowing what the other provisions of the instrument would be. Otherwise, they said, the objectives might not accurately reflect the instrument's content. In that context several said that proposed text for the instrument's objectives should not be discussed until its remaining content had been defined.

48. Many representatives suggested that final discussion of objectives would have to await further discussion of control measures and financial and technical assistance. Several said also that when developing a legally binding instrument it was important to take into account national capacities, especially those of developing countries, small island developing States and least developed countries. Many representatives urged that throughout the discussions capacity-building, technology transfer and financial assistance should be borne in mind.

49. Many representatives said that the instrument's objectives should constitute actions rather than outcomes. Many others said that the objectives, in addition to being simple, clear, concise and succinct, should specify realistic goals without detailing the means to achieve those goals. Several others suggested that they might include a combination of both actions and outcomes, while one said that the objectives should take the form of a simple overarching statement.

50. Many representatives said that the objectives should include the protection of human health and the environment and that the instrument should cover the entire life cycle of mercury in all media. Two said that the objectives should include a means for evaluating the instrument's effectiveness. One suggested that the objectives should include the protection of Arctic populations and indigenous people, while another proposed that the objectives should be framed within a set of principles, such as the precautionary principle, and refer to key principles of the Rio Declaration on Environment and Development, such as principles 6, 7, 14 and 15.

51. Several representatives agreed that the instrument's objectives should include the protection of human health and the environment but added that they should also include the elimination of mercury in water, soil and air and the phase-out of all forms of mercury. Others, however, said that the objective should be to reduce rather than eliminate mercury emissions and should reflect that mercury was a naturally occurring element that was sometimes released without human intervention. Several agreed that the objective should be the elimination of mercury releases, but only to the extent that it was feasible. In that context one representative added that the instrument's objectives should be in line with the obligations that parties would have under the instrument.

52. The representative of a group of non-governmental organizations said that the objectives should serve to protect human health, wildlife and ecosystems through the elimination of anthropogenic sources of mercury, should be broad in scope and should recognize the special needs of all vulnerable populations.

## **C. Structure**

53. The representative of the secretariat introduced document UNEP(DTIE)/Hg./INC.1/4, on possible options for the structure of the mercury instrument to be negotiated. The document identified options for how the control measures of the instrument might be contained within an overall structure common to most multilateral agreements.

54. The first option was the inclusion of control measures in the main body of the mercury instrument, supplemented by annexes that might provide additional details but still form an integral part of the instrument. The second option was to have the text of the instrument contained in a convention and one or more protocols. The convention would include the basic structure of the instrument and certain categories of provisions, while some or all of the control measures would appear in separate protocols. The convention text and the protocols would be legally distinct and could be adopted



separately, by different parties. The third option was an umbrella agreement involving a relatively short main text containing no substantive provisions or control measures. The latter would appear in detailed annexes. The umbrella agreement and annexes would be adopted as a single package and the individual parts could not be severed from one another. A fourth option would be to include all provisions in a single document, with no annexes or protocols.

55. The representative of the secretariat explained that the main differences between the options lay in the distribution of the control measures and the method of adoption of the basic instrument and the control measures. The second option was the most distinctive in that most control measures would appear in separate protocols, each of which would be a legally separate treaty. That could allow a country to subject itself to some control measures but not others.

56. From the wide-ranging discussion following the secretariat presentation, a broad consensus emerged that it was necessary to decide on the content of the future instrument before reaching a final decision on its structure. During the discussion, several representatives recommended or supported the idea of defining criteria for deciding on a structure. The following potential criteria were mentioned:

- (a) The objectives and function of the instrument should determine the choice of its form and structure;
- (b) The instrument should be comprehensive, with all parties being bound by the main obligations as a framework for legally binding commitments;
- (c) The instrument should be flexible and needs-oriented and able to be adjusted readily to reflect new information, technology, needs and capacities without resort to complex ratification procedures;
- (d) The instrument should allow for ratification as a single package.

57. Many representatives expressed a preference for the first option, which, it was noted, was akin to the structure of the Basel, Rotterdam and Stockholm conventions. They said that that option could help avoid fragmentation and support the efficient entry into force of a comprehensive instrument. Several representatives said that either option 1 or 2 would be acceptable. A number of representatives said that option 3 should be kept open but several others said that they would not support it. No support was expressed for option 4 and two representatives said that they opposed it.

58. One representative said that a structure involving protocols would reduce time pressure by allowing ratification in stages but several others insisted that the mercury instrument should be ratified as a single package. Several others said that the use of protocols could satisfy the criteria listed above while allowing flexibility in respect of issues that might not apply to all countries. One representative stressed that under option 2 the main convention and protocols could all be adopted simultaneously. It was also noted that aspects of options 1 and 2 could be combined. Several others, however, voiced concern that option 2 might result in an instrument that divided the parties and fragmented the substance of the instrument, and several said that they opposed any system that would allow countries to opt out of core commitments.

59. One representative said that if the secretariat was tasked with preparing a possible text for the committee's second session then it should be as neutral as possible on the instrument's structure.

## **D. Financial and technical assistance**

60. Introducing the sub-item, the Chair recalled that the UNEP Governing Council, when agreeing to go forward with negotiations for a mercury instrument, had clearly recognized that capacity-building and financial assistance would be needed to enable developing countries and countries with economies in transition to comply with some of their obligations under a new global legally binding instrument. He suggested that it would be useful for the committee to focus at the current session on the underlying principles associated with the issue of technical and financial assistance and the general design of delivery mechanisms for such assistance

61. The representative of the secretariat then briefly outlined the extensive documentation relating to the sub-item, as described in document UNEP(DTIE)/Hg/INC.1/INF/6.

62. All the representatives who spoke said that the effective implementation of some features of a new global legally binding instrument would require capacity-building and technical and financial assistance. Many said, however, that it was premature to decide on the final means for delivering such assistance and that the focus at the current session should be on general principles and goals.

63. Many representatives said that developing countries and countries with economies in transition already faced great challenges in implementing the Basel, Rotterdam and Stockholm conventions and were thus understandably reluctant to assume additional obligations under new instruments without specific and long-term arrangements for sufficient capacity-building and technical and financial assistance. Many said also that developing countries lacked the capacity to manage mercury and mercury-containing products in an environmentally sound manner throughout their entire life cycle. Their agreement to particular control measures and other aspects of a new instrument on mercury could thus depend on whether the instrument included provisions for sufficient capacity-building and technical and financial assistance.

64. Many representatives said that provisions for capacity-building and technical assistance should reflect the priorities of the new instrument, take advantage of lessons learned and harness potential synergies with existing institutions and initiatives, including the Basel, Rotterdam and Stockholm conventions, the Basel Convention regional centres, the regional offices of UNEP, ILO and WHO, the UNEP mercury programme, including the UNEP Global Mercury Partnership, the UNEP consultative process on financing options for chemicals and wastes and other relevant bilateral and multilateral initiatives. At the same time, one representative cautioned that the synergies process for the Basel, Rotterdam and Stockholm conventions remained a work in progress that would not be reviewed until after the committee's final session, in 2013. Regional centres and offices, he said, needed to be strengthened by the synergies process, but it would only be appropriate to expect that to happen if they were provided with additional resources commensurate with any additional work that they might undertake. Many said that the design, funding and implementation of capacity-building and technical assistance programmes also needed to take into account the specific circumstances and priorities of the various countries and regions and not encroach on national authority. Many suggested that further studies would assist in the development of focused and effective capacity-building and technical assistance provisions, including needs assessments, inventories of mercury products, wastes and contaminated sites, and identification of gaps in the infrastructure and human and technical capacities required to implement the instrument.

65. Representatives suggested a number of criteria to use in the development of a financial mechanism for a new mercury instrument. It was said that the financial mechanism should provide sufficient, stable and predictable financial assistance; that it should mobilize resources from multiple sources; that it should spark enhanced action, innovation and financial support by the private sector; that it should be funded with new and additional resources; that it should be transparent, equitable, efficient and timely in its operation; that it should be accountable to the governing body of the new instrument; that it should focus on providing assistance aimed at enabling compliance with specific obligations; that it should tailor assistance to the specific needs of individual countries; that it should be responsive to the needs and priorities of developing countries and countries with economies in transition; and that it should take advantage of operational synergies with relevant institutions and initiatives.

66. Regarding specific models for a financial mechanism, many representatives favoured developing a mechanism along the lines of the Multilateral Fund for the Implementation of the Montreal Protocol, noting its successful track record, stable and predictable funding, independence, issue-specific focus and direct oversight by the parties to the Protocol. Many others said that GEF should play an important role in a future financial mechanism for mercury, suggesting that it had considerable expertise and played an active role on related issues and that it was important to avoid bureaucratic duplication. Some highlighted the potential value of exploring other avenues such as special trust funds and global health initiatives. Some said that it was too early to know what design might be most appropriate or effective but that the final design should reflect the instrument's specific needs, should draw on lessons learned in other contexts and should combine successful features of existing structures.

67. Many representatives said that a financial mechanism should be funded through mandatory contributions from donor countries at specified levels. One representative called for a financial mechanism funded through mandatory contributions based on the United Nations scale of assessments. Many said also that it was important to look at all possible sources of financing, including other multilateral institutions and programmes, bilateral initiatives, the private sector and a broader set of donor countries. A number emphasized that funding levels must be feasible for donor countries.

68. Many welcomed the recent decision by the GEF Assembly to allocate \$10 million for enabling activities in connection with a possible legally binding instrument on mercury. One representative, however, said that while the Assembly's decision was welcome, the amount was clearly insufficient to make a significant start on reducing mercury emissions.

69. A number of representatives highlighted specific areas requiring capacity-building and technical and financial assistance. Many said that developing countries should accord activities developed under the mercury instrument, and supported by adequate assistance, high priority in their social and economic development agendas. Some said that each country should set its own priorities, based on national studies and implementation plans. One suggested that some documents prepared by the secretariat were lacking in certain respects because they failed to include the social costs associated with the transition to mercury-free products and processes. In that context, many representatives stressed the need always to consider the social costs of that transition, which were complex and required a broad approach and the direct and indispensable participation of national Governments. Many representatives suggested that intergovernmental organizations should develop training manuals covering the entire life cycle of mercury and mercury-containing products.

70. The representative of WHO said that country-level partnerships could play an important role in establishing priorities and delivery mechanisms for tackling the mercury issue. WHO had a network of approximately 150 country offices and was willing to provide information and assistance. In addition, the Inter-Organization Programme for the Sound Management of Chemicals (IOMC), of which WHO was a member, could play a coordinating role.

71. The representative of the United Nations Institute for Training and Research (UNITAR) said that the organization, which was also a member of IOMC, had extensive experience in supporting chemicals management in developing countries and countries with economies in transition. UNITAR was prepared to assist Governments and other stakeholders in capacity-building.

## **E. Compliance**

72. In introducing the sub-item, the Chair noted that in decision 25/5 the Governing Council had requested that the issue of compliance should be addressed in the instrument to be negotiated and that in the discussion of financial mechanisms compliance had emerged as a key element of an effective instrument.

73. The representative of the secretariat briefly reviewed the relevant documentation, highlighting in particular document UNEP(DTIE)/Hg/INC.1/11, which included information on experience with compliance mechanisms in the context of a number of multilateral environmental agreements. He noted that most compliance mechanisms were facilitative rather than punitive, aiming to build parties' capacity to comply with their obligations, and that in some cases it had proved difficult to reach agreement on compliance procedures for multilateral environmental agreements after the agreements had been adopted. He suggested that, while it might be premature to expect notable progress on the issue at the current session, consensus regarding the approach to be followed could greatly assist the committee in its work.

74. In the ensuing discussion, there was general agreement regarding the close relationship between compliance and the provision of technical and financial assistance. Many representatives stressed the importance of reaching agreement on a compliance mechanism during the intergovernmental negotiating process. Many said that compliance provisions and a financial mechanism should be developed and adopted in parallel, with some saying that such an approach would enhance the credibility of a new mercury instrument. Many others disagreed, however, saying that the instrument should include an enabling clause instructing the governing body of the instrument to develop and adopt compliance procedures after its entry into force.

75. It was generally agreed that baselines and periodic reporting and performance reviews were fundamental elements of transparency and compliance, that they were needed to determine whether some parties required assistance in strengthening their compliance capacity and that they formed the basis for evaluating the effectiveness of an instrument. Many representatives stressed the importance of a provision for evaluating the instrument's effectiveness in accomplishing its objectives, with one adding that evaluation should include not only technical but also political aspects and another indicating that the provision should refer to monitoring, compliance and reporting as sources of information for the evaluation. One representative, however, noted that reporting posed a considerable burden to some parties, saying that its benefits should be commensurate with the effort that it required.

76. Several representatives stressed that any compliance procedures should apply to all provisions of any mercury instrument and to all parties. While widespread support was expressed for formal compliance mechanisms, one representative said that in his country's view voluntary compliance, underpinned by a strong reporting system, effective information dissemination and the availability of affordable alternatives, would contribute more to the instrument's success.

77. Many representatives, in particular of developing countries, stressed the need for mechanisms that took into account the economic and social costs of compliance. It was suggested that by identifying synergies among the various chemicals and wastes conventions, parties' compliance-related burden could be reduced.

78. The representative of ILO said that reporting helped to identify requirements with which parties were having difficulty so that assistance could be targeted appropriately. He gave an overview of his organization's compliance mechanism, saying that further information about it could be provided to the committee upon request.

79. Many representatives said that it was important to describe all commitments in clear and unambiguous language. Several suggested that a legal drafting group or other contact group should be established to ensure that all the instrument's provisions were clear and achievable; the group could be entrusted with developing all implementation provisions, including those covering financial assistance and compliance.

80. The representative of a non-governmental organization said that data gathered to ensure implementation should be available to the public, as that would aid in ensuring compliance and help to ensure that data were of high quality.

## **F. Supply, demand, trade and wastes**

81. The committee agreed to discuss mercury supply and storage, demand, trade and wastes together, as many representatives expressed the view that those subjects were interrelated cross-cutting issues. At the Chair's suggestion the committee began its consideration of the issues with a separate general discussion of each subject.

### **1. Reducing the supply of mercury and enhancing the capacity for its environmentally sound storage**

82. Introducing the item, the representative of the secretariat suggested that the implementation of measures to reduce the supply of mercury by a small number of countries could provide benefits for all and noted that a number of countries had already taken such steps.

83. In the discussion of the issue many representatives said that provisions on supply and storage of mercury should be among the core provisions of a legally binding instrument, along with provisions on demand for mercury in products and processes. Many representatives said that supply should be considered in conjunction with demand, although one suggested that demand should be discussed before supply. One representative said that supply, demand, trade and wastes were core issues that had to be tackled together, including with regard to the social and economic costs and benefits of international action, and that they could not be resolved in the absence of assured and sufficient financial and technical assistance.

84. Many representatives expressed support for a ban on new and expanded mercury mining and the phase-out of existing mining operations. One representative suggested that new mines were not needed because of global efforts to reduce mercury use, which were causing demand for mercury to decrease.

85. Many representatives advocated the development of a timeline for the progressive reduction of the mercury supply, with some saying that the pace and extent of reductions should take into account specific national circumstances and that exemptions should be allowed for specific, essential and acceptable uses, similarly to the exemptions available under the Stockholm Convention. The timeline should also feature a procedure for granting extensions for mercury use and should be linked to technical and financial assistance and capacity-building. One representative said that provisions to prohibit mercury use and trade should complement provisions to restrict the mercury supply.

86. Many representatives stressed the need for technical and financial assistance to developing countries during the transition away from mercury use. In that context, several said that an element key to the successful reduction of the mercury supply was the availability of safe and affordable alternatives. Several others suggested that restricting the supply of mercury would make mercury, and the products and processes that relied on it, more expensive and would thereby encourage the identification of alternatives. Another added that the different levels of competence of countries in the environmentally sound management of chemicals had to be considered.

87. Several representatives noted the importance of promoting the capture, recovery and environmentally sound storage of mercury. Some suggested that once primary sources of mercury were discontinued any residual need for the substance should be met through the recovery and re-circulation

of mercury obtained as a by-product. One representative said that mercury recovered from recycling should be stored in an environmentally sound manner unless it was designated for specific uses and that mercury recovered from chlor-alkali plants should not reach the market. Another suggested that care should be taken to minimize the amount of mercury being classified as waste, in particular where no appropriate storage facility was available. The representative of a non-governmental organization said that sequestered mercury would need to be transported from countries having no treatment facilities to those that had them.

88. Several representatives drew attention to the issue of illegal traffic in mercury, particularly in the context of artisanal and small-scale gold mining, saying that such traffic might increase once mercury supplies decreased. To allay that concern, one representative suggested that supply and demand should be reduced concurrently and that supply, demand and trade should be considered holistically.

89. Many representatives said that little information was available on a number of important topics, including how to deal with surplus mercury resulting from restrictions or bans on mercury use or trade and who might bear the costs incurred during the transition away from mercury in products and processes. In the light of that, they said, there was a need to develop a cost-benefit analysis that took into account national conditions and contained an exhaustive analysis of the best available alternative technologies, including their technical feasibility, benefits and social and economic costs. Several representatives suggested that countries should develop national inventories or other means to collect sufficient knowledge on mercury supply, demand, use and trade.

90. Some representatives highlighted activities under way to assist the Government of Kyrgyzstan in its efforts to move away from mercury mining. The representative of Kyrgyzstan reaffirmed his country's intention to proceed with its efforts to close its one remaining primary mercury mine, outlining the social and economic issues that would have to be tackled to do so. He acknowledged the support provided by Norway, Switzerland, the United States and several intergovernmental organizations in drawing up a national action plan and draft project aimed at closing the mine.

## **2. Reducing demand for mercury in products and processes**

91. Introducing the sub-item, the representative of the secretariat noted that viable alternatives existed for most mercury uses and that many uses had already been phased out in certain countries and regions.

92. Many representatives supported a ban on the introduction of new types of products and processes containing or using mercury. Many also expressed broad support for phasing out, limiting or otherwise controlling existing products and processes containing mercury. A number of approaches were suggested for future consideration, including phase-out of all products and processes containing or using mercury, phase-out with time-limited exemptions for certain processes or in certain locations where economically feasible and cost-effective alternatives did not yet exist, banning specific products or processes, requiring the use of best available technologies and best environmental practices, employing public-private partnerships and voluntary approaches within particular sectors, and labelling products to assist consumers and regulators in making informed choices. Several representatives offered initial opinions for or against some of those options, but they and many others said that they were committed to continuing discussion of possible measures with an open mind and to building an effective agreement. Several noted the importance of developing specific criteria and review procedures for evaluating any exemptions that might be included in any mercury instrument adopted.

93. Many representatives outlined efforts in their own countries to eliminate or reduce the amount of mercury used in particular products and processes. Several discussed specific products or processes in their countries that could be difficult to eliminate. Several thanked China for identifying the special challenges that it faced in respect of its use of mercury in the vinyl chloride monomer process. Some representatives noted that, while it remained in use in their countries, the mercury cell process in the chlor-alkali industry was not recognized as the best available technique and was being phased out. Many expressed support for conducting national inventories of processes using mercury and products containing mercury, with some calling for health surveys to address the impact of exposure to mercury released in their countries from products and processes originating in other countries.

94. Many representatives said that the ready availability of cost-effective, nationally and regionally appropriate alternatives for specific products and processes would be needed before they could be eliminated and that capacity-building and financial and technical assistance would be needed in that context. Many representatives expressed support for increased knowledge and information exchange related to environmentally sound, affordable alternatives. Some observed that it would be important to

ensure that alternative processes and products did not introduce additional threats to human health or the environment.

95. Many representatives, especially of developing countries, identified artisanal and small-scale gold mining as a primary concern, notably in view of the very large number of people involved worldwide and the severe environmental and health hazards facing miners and their communities. There was general agreement that the sector had to be addressed in any mercury instrument, and that it should be done separately from other sectors. Representatives of several countries with large artisanal and small-scale gold mining sectors outlined their experiences and highlighted the complexity of the situation. They stressed that social and economic factors were very important, the serious pollution and health hazards notwithstanding.

96. Several representatives from such countries outlined efforts to deal with the effects of mercury in the sector; one, for example, described a successful pilot project under which gold processing plants had reduced mercury use by 80 per cent and increased gold recovery, thereby reducing production costs and helping to combat poverty. Many representatives said that financial and technical assistance were needed to promote such techniques on a wider scale. There was also a need for awareness-raising in mining communities and research into alternative low-cost processes, in addition to consideration of how to combat illegal use in the sector.

97. Representatives of many developed countries said that more information on the sector from the countries in which it was most prominent was needed, including advice as to whether restrictions on supply would be effective. One offered his country's support for regional and national multi-stakeholder action plans. Another, saying that the sector was marginalized and poorly regulated, said that it should be formalized to enhance access to miners and make it possible to improve working conditions and technologies in use. He circulated a conference room paper on his country's experience in the area.

98. The representative of UNIDO outlined its involvement in the UNEP artisanal and small-scale gold mining partnership area, highlighting solutions in respect of mercury recycling, alternatives, chemical-free techniques and formalizing the status of miners in the informal sector.

99. The representative of WHO recommended the withdrawal from the market of blood pressure measuring devices and thermometers containing mercury, saying that those could be replaced with affordable and validated alternatives. Since cost-effective alternatives to dental amalgam were not yet available in all countries, however, WHO recommended a phase-down rather than a ban that would take effect in the near future. There were no safety grounds for changing the current use of mercury-based preservatives in vaccines.

100. The representative of a non-governmental organization said that mercury fungicides remained in use in certain regions where alternatives were available and recommended that the mercury instrument should ban the use of mercury in agriculture. The representative of another non-governmental organization said that millions of indigenous people, whose traditional lands were often adjacent to or above gold mines, were affected by mining and should therefore be included in the search for solutions.

### **3. Reducing international trade in mercury**

101. The representative of the secretariat introduced the sub-item, recalling that decisions to restrict the export of mercury had already been taken by the European Union and the United States. He noted that the options for substantive provisions to reduce trade were presented in the secretariat note under two main headings: trade with parties and trade with non-parties. Additional information on the relevance of international trade law to a mercury instrument and on trade provisions in a number of multilateral agreements was also provided.

102. In the ensuing discussion, several representatives said that international trade should be covered in the core provisions of a future mercury agreement. Several representatives said that any mercury instrument should include provisions relating specifically to trade with non-parties. Many representatives urged that provisions on international trade should be consistent with obligations under the World Trade Organization. Several said that the need for provisions on trade would depend on the content of provisions on supply, demand and storage. Several others said that data on trade in elemental mercury were difficult to obtain and that priority should be given to reducing supply, with the ultimate aim of phasing out trade entirely. Many representatives said that robust provisions on trade could reduce the supply of and demand for mercury.

103. One representative suggested that effective provisions on reporting and modalities for verifying reporting should be included when setting out obligations under trade and that those provisions should be clear and simple and include reporting deadlines.

104. Several representatives said that trade provisions might include an exemption for shipments of mercury destined for environmentally safe storage facilities where such facilities did not exist in the exporting country. Such provisions would be similar to those on exemptions for trade in persistent organic pollutants under article 3 of the Stockholm Convention and should take into account relevant provisions under the Basel Convention.

105. Many representatives said that trade provisions should focus on controlling exports of elemental mercury, mercury-containing compounds and mercury-containing products, suggesting that control of users or importers had had limited success, including in areas where artisanal and small-scale gold mining was already an illicit activity. One representative drew attention to the issue of illegal traffic in mercury, saying that such traffic might increase once mercury supplies decreased.

106. Several representatives suggested that transboundary movements of mercury, mercury compounds and mercury-containing products should be subject to a prior informed consent procedure.

107. One representative said that a system for licensing imports and exports of mercury-containing products similar to the licensing systems required under the Montreal Protocol would place additional burdens on countries. Another suggested, however, that such systems could be limited in scope and would not necessarily have to encompass mercury, mercury-containing compounds and mercury-containing products. One representative suggested, as did the representative of ILO, that the committee would do well to consider lessons learned from experience with the Globally Harmonized System of Classification and Labelling of Chemicals.

108. One representative said that it would be necessary to address products that were produced using mercury-based technologies. Mindful of the difficulty of controlling, or in some cases identifying, such products, he suggested exploring solutions such as labelling to indicate that mercury had been used in production processes. Another representative suggested that elemental mercury, mercury compounds and mercury-containing products should be treated separately.

109. Several representatives said that it was important to minimize the risk of conflict between the trade provisions of a mercury instrument and other key provisions such as those relating to arbitration, compliance and other matters.

110. One representative requested information on trade between parties and non-parties to the Montreal Protocol in substances subject to the Protocol. The representative of the secretariat explained that under article 4 of the Protocol, agreement on which had been an important step in reaching final agreement on the Protocol, parties could engage in trade in ozone-depleting substances with non-parties that had demonstrated to the satisfaction of the Meeting of the Parties that their treatment of ozone-depleting substances was consistent with the terms of the Protocol. Since the inception of the Protocol 12 parties had requested and been authorized by the Meeting of the Parties to engage in trade with non-parties pursuant to the terms of article 4.

#### **4. Mercury-containing wastes and remediation of contaminated sites**

111. There was consensus that there was an urgent need to provide for appropriate disposal of mercury wastes to protect human health and the environment and that waste issues were closely linked to issues of supply, demand and trade.

112. Many representatives said that the treatment of mercury wastes should be covered in the core provisions of any mercury instrument, with one saying that the approach should be flexible. Another added that illegal trade in mercury wastes should also be dealt with as those wastes, sometimes mixed with other hazardous wastes, could be transported across borders.

113. Representatives of many developing countries said that technical and financial assistance were needed, in particular in respect of remediation of contaminated sites. They gave examples of specific situations in their countries; of solutions being contemplated or implemented, including nationwide assessment, control and prevention systems; and of the assistance that they required. Some representatives highlighted the high costs associated with remediating contaminated sites and suggested that remediation should be undertaken domestically rather than under a global agreement. The relationship of the waste issue to those of supply and demand was also acknowledged. There was widespread support among developing countries for the “polluter pays” principle.

114. Several representatives said that, while it was necessary to develop threshold values to be used in identifying and assessing contaminated sites, it was difficult to define such values in a way that took into account all relevant considerations. The problem of mixed hazardous wastes was highlighted, with one representative saying that the mercury instrument should include provisions to ensure that mercury wastes were separated from ordinary wastes and to establish threshold values for mercury and its compounds in the overall waste stream.

115. One representative said that his country depended heavily on coal that contained traces of mercury. Countries could not help the chemical composition of their natural resources and the management of such resources should be left to countries and not regulated by treaty. Another representative said that some of the soil in his country contained naturally occurring mercury and that a mercury instrument should take such situations into account.

116. Representatives of several small island developing States said that their countries lacked sufficient land and technical capacity to store mercury waste. One suggested implementing a subregional approach to collecting mercury products and exporting them for proper storage. Another said that GEF should enhance its activities in the Pacific, while a third said that a new mercury instrument should take into account the special situation of small island developing States with regard to the environmentally sound management of mercury and mercury-containing wastes. Another, noting that sites could be contaminated with mercury from industrial operations, mining and domestic and hazardous waste landfill operations, said that the remediation of such sites should be left to individual countries through a voluntary approach.

117. Many representatives said that the prevention of the generation of wastes deserved particular emphasis as it would reduce waste and associated costs. They said that countries should focus on regulatory and other measures to prevent exposure to mercury and should move towards using mercury-free products and processes. Representatives of developing countries emphasized the importance of making affordable mercury-free products available. One representative said that the committee should consider the fact that in some countries there were many mercury-contaminated sites for which there existed no economically viable means of remediation.

118. There were numerous calls for coordinating a new mercury instrument with the provisions of other instruments, particularly the Basel and Stockholm conventions, to avoid regulatory duplication and confusion and reinventing the wheel. It was suggested that a corresponding horizontal provision might be needed. At the same time, it was cautioned that the Basel Convention did not cover mercury comprehensively and that it would be necessary to fill a number of gaps. The representative of a non-governmental organization, observing that the Basel Convention lacked a financial mechanism, said that it was important to ensure that the financial mechanism of any new mercury instrument extended to waste issues.

119. Several representatives praised Japan for its efforts as the lead country in the UNEP waste management partnership area. The representative of Japan said that his Government intended to finish work on a guidance document in time to submit it to the committee at its second session.

120. Representatives of several countries mentioned the need to ensure that the public and professionals were better informed about hazardous waste issues. Many representatives offered to make legislation or other information relating to waste management available to the committee for dissemination via its website, where that considered appropriate.

121. One representative requested that the Basel Convention secretariat should provide additional information not included in document UNEP(DTIE)/Hg/INC.1/INF/3. After listing a number of points that his country wished to see elucidated, including on the classification of substances as waste and definitions of disposal options, he drew attention to a background document that his country had circulated as a conference room paper on mercury in electrical and electronic equipment and electronic waste. The representative of the Basel Convention secretariat said that the secretariat was ready to provide additional information if requested to do so by the committee.



## 5. Storage

122. There was a general consensus that environmentally safe storage of mercury was a complex cross-cutting issue and of particular importance for achieving the objectives of the instrument. Many representatives said that storage should be the subject of a core provision of the convention, although several others said that guidelines that took account of national and regional circumstances were required rather than uniform rules. Several representatives suggested that storage was a key topic to be discussed at the committee's second session.

123. It was generally agreed that mercury storage was a major challenge in the short, medium and long terms, requiring more and better technical knowledge. Many representatives said that it involved not only elemental mercury but also mercury in stockpiles and waste and from other anthropogenic sources. Several said that the reduction in global mercury use would increase the amount of mercury to be stored, making it important to look at storage early in the negotiating process. One said that her country had been storing mercury for many years and looked forward to contributing to the discussion. Another said that insurance, liability and compensation had to be taken into account, while two said that the management of long-term storage should not be so onerous as to discourage the recovery of mercury. The representative of a regional economic integration organization said that the organization was introducing legislation on storage and was working on guidelines for underground storage.

124. Several representatives emphasized the need to prevent the release of stored mercury, for example, if storage sites were neglected and became unsafe. Another advocated the adoption of criteria for mercury storage facilities. It was pointed out that underground facilities were expensive and subject to geological and seismic constraints, while surface storage sites were vulnerable to disasters. The best type of storage also depended on the form of mercury to be stored, and it was generally agreed that no single storage solution could be applied in all countries or circumstances.

125. Several representatives called for inventories to be made of mercury in stockpiles, waste and other forms to determine the volume to be stored. The representative of a non-governmental organization said that dental fillings contained a substantial quantity of mercury worldwide and that their disposal needed to be properly managed. Many representatives said that, while mercury could not be destroyed, research had shown that it could be chemically transformed into stable forms, and progress had been made on converting it back into cinnabar. The representative of a non-governmental organization said that the aim should therefore be sustainable waste management rather than long-term storage.

126. Several representatives called for guidelines on best available technologies and best environmental practices for identifying mercury-containing products, recovery and separation, transportation and safe storage, saying that they should be affordable for developing countries. Many representatives said that financial and technical assistance, awareness-raising and capacity-building would be required to meet the high construction and maintenance costs and technical challenges of storage in developing countries.

127. Many representatives anticipated resistance to mercury storage from local populations and underlined the importance of promoting public acceptance by engaging all stakeholders, notably non-governmental organizations, workers and affected communities, at an early stage.

128. Several representatives called for provisions in the mercury instrument on international cooperation to achieve environmentally sound long-term storage. Several noted that it was not efficient or cost-effective for every country to have its own storage solution. Several representatives suggested that exporting mercury waste might be the best option in the short and medium terms for some countries, although they might need to develop recycling and recovery centres for capturing the mercury to be exported. Several representatives called for special provisions for small island developing States, where local storage was likely to be impossible and export a costly option. Several advocated preparing regional, subregional and national coordination and action plans, and many said that the Basel Convention had a role to play in respect of transboundary movements and interim and permanent storage of mercury residues or metallic mercury, although the Convention did not cover mining waste. Procedures for transboundary transfer, tracking and reporting, including a prior informed consent procedure and provisions to avoid illicit trafficking, were needed. Several representatives recommended developing cooperation with the International Maritime Organization on the control of mercury shipments, and others said that the private sector might play a role in the stewardship of stored mercury.

129. One representative said that technical and financial assistance would be required to allow for the development of national mercury inventories and the adoption of alternatives and solutions for each country based on the extent of its mercury surplus and its particular economic, social, geographical and technological circumstances.

130. Several representatives said that intersessional work should continue with the involvement of as many players as possible. Many called for clear definitions of the terminology in use, saying that it should be consistent with the provisions of the Basel Convention. The representative of a non-governmental organization suggested that UNEP should prepare an overview of regional long-term storage initiatives that had been conducted in Asia and the Pacific and Latin America.

## **G. Emissions**

131. The representative of the secretariat outlined the documentation relating to the sub-item, as described in document UNEP(DTIE)/Hg/INC.1/INF/6, and updated the committee on work under way relevant to the sub-item. That work included the updating of the 2008 Global Mercury Assessment, including mercury sources, emissions and transport, as requested by the Governing Council in paragraph 36 of decision 25/5; a UNEP study of mercury emissions from coal combustion in the energy sector, focusing on China, India, the Russian Federation and South Africa; a study on types of mercury-emitting sources, current and future trends in mercury emissions and the cost and effectiveness of alternative control technologies and measures, as called for by the Governing Council in paragraph 29 of decision 25/5; and the updating of the UNEP mercury toolkit, which provided a means for assessing national mercury inventories and sectors with significant mercury releases.

132. He noted that the paragraph 29 study, which focused on sources frequently described as producing unintentional emissions, currently incorporated information on coal-fired power plants, industrial metals production, waste incineration and cement production, which contributed about 45 per cent of total global mercury emissions according to the Global Mercury Assessment. The secretariat had received information from 16 countries to date and encouraged further contributions. The study was expected to result in updated emissions inventories, including trends, technical descriptions of emitting sectors, information on the cost and efficiency of emissions controls, scenarios for emissions controls, and guidance for national assessments.

133. Many representatives underscored the importance of the paragraph 29 study and supported the call by the secretariat for countries to provide needed data. Some suggested that releases to additional media such as soil and water should be included. A number noted the wide divergence in the quality and quantity of emissions data within some regions, suggesting that broader efforts to fill data gaps were needed.

134. Many representatives said that atmospheric emissions of mercury were a priority issue to be tackled under the mercury instrument because of the potential for long-range transport and because they were the largest source of global mercury pollution. Many said that the instrument should also pertain to emissions that occurred directly into soil or water, the national and international impact of various types of mercury emissions and the myriad sources of atmospheric emissions, including coal-fired power generation, cement production, metals processing and other industrial sources. Many representatives outlined efforts under way in their countries and regions to reduce such emissions, to gather relevant information and to support research.

135. Support was expressed for a variety of potential control measures, either individually or in combination, including national action and implementation plans, standardized regulatory approaches, defined objectives, binding targets and timetables, goal-oriented voluntary measures, efficiency measures, partnership-based approaches, greater responsibility by the private sector and guidelines or requirements for the use of best available technologies and best environmental practices.

136. Many representatives emphasized that countries possessed very different natural resource endowments and economic and developmental priorities. They said that control measures should not impede developing countries' economic growth, especially in relation to energy production and consumption. In that context, voluntary measures were recommended along with careful consideration of national circumstances.

137. Many representatives highlighted the availability of proven technologies that significantly reduced atmospheric emissions of mercury and could be adopted more widely, noting that many such approaches also reduced emissions of other harmful pollutants. The representative of a regional economic integration organization noted that the European Integrated Pollution Prevention and Control Bureau had developed reference documents on best available techniques in the area.

138. Many representatives underscored the need for capacity-building, financial and technical assistance and access to best available technologies to help developing countries to reduce atmospheric emissions of mercury emissions, regardless of the nature of the control measures adopted in the instrument. One representative emphasized the need for technical and financial support for developing countries in respect of inventories of mercury emissions and the importance of maintaining the will to address the issue throughout the negotiating process and beyond. The need for support for increased monitoring and reporting capacities and for information exchange, awareness-raising among all stakeholders and multi-stakeholder consultations was also emphasized.

139. A number of representatives said that emissions from chlor-alkali manufacture or mining should be discussed separately from emissions from other sources. Several recommended seeking synergies and taking advantage of the work undertaken under other international instruments and processes, including those of the United Nations Economic Commission for Europe. One requested the secretariat to prepare for the committee's second session an analysis of options for a framework for partnership-based approaches as part of the mercury instrument. Another suggested the use of biomonitoring to examine the level and impact of emissions, and one emphasized the importance of control measures in respect of occupational health.

140. The representative of UNITAR said that national implementation strategies or action plans for reducing atmospheric emissions of mercury could play a significant role after entry into force of a legally binding instrument. Parties could draw on lessons learned from the development of such plans under the Stockholm Convention. His organization stood ready to offer its experience in that regard.

141. Representatives from several non-governmental organizations spoke about mercury emissions to the air from human cells and teeth, noting the importance of identifying and addressing emissions to all environmental media, the importance of affordable and accessible technology for controlling emissions and the value of best available techniques and best environmental practices. They stressed the particular concerns of vulnerable indigenous populations of the Arctic and emphasized the need to take into account social and economic issues when identifying appropriate solutions to mercury emissions.

142. The representative of an industry association expressed his association's intention to work with Governments and other stakeholders to minimize and eliminate unintentional releases of mercury from coal, adding, however, that access to affordable and reliable electricity should not be impaired. Rapid global deployment of technologies to reduce mercury emissions therefore needed to be encouraged.

## **H. Awareness-raising and information exchange**

143. The representative of the secretariat introduced the relevant documents, adding that an information pack about mercury, covering topics discussed under the current agenda item, was available in English, French and Spanish in printed form and on the UNEP mercury programme website.

144. There was consensus that effective awareness-raising and exchange of scientific information were crucial for the future mercury instrument's success. Increasing public awareness of mercury could boost public support for efforts to reduce exposure to the chemical, and countries should not wait until the instrument's entry into force to initiate or enhance efforts in that area. Several representatives described related actions taken in their countries, while others said that their Governments were willing to share information and experiences. Many mentioned the cross-cutting nature of the issue, saying that it was linked to monitoring and reporting as well as to financing issues.

145. It was agreed that a mercury instrument should explicitly promote awareness-raising and the exchange of scientific information with regard to the health and environmental hazards of mercury. Many representatives said that it should provide for the active involvement of international organizations, civil society, including workers' organizations, the private sector, non-governmental organizations and other stakeholders in the efforts to confront the risks posed by mercury. Two representatives expressed their countries' support for a clear role for the instrument's secretariat in awareness-raising and exchange of scientific information on the subject. Several said that it might be advisable to take advantage of existing mechanisms for exchanging and disseminating scientific information before devising new ones.

146. Groups identified as needing targeted information campaigns included women, children, the poor, health-care workers, indigenous peoples, producers of mercury-containing products, operators of plants, and workers handling products and processes involving mercury. One representative stressed that confidentiality by producers and operators on matters relating to human health and the environment should be discouraged. It was said that different audiences required different approaches and that information should be provided in appropriate formats and languages. It was suggested that

disseminating information about products and processes involving alternatives to mercury could enhance public willingness to use such products and processes.

147. Many representatives stressed the importance of synergies among related conventions and urged cooperation with ILO and WHO as key stakeholders with extensive relevant experience in the areas under discussion. The regional centres of the Basel and Stockholm conventions could also play an important role if the necessary financial and technical resources were provided.

148. The secretariat was requested to make the information pack on mercury available in Chinese. It was also asked to compile a global inventory of mercury cell chlor-alkali facilities, including information on their capacity and locations and any plans for conversion or closure, drawing on information developed under the UNEP Global Mercury Partnership.

149. The representative of ILO, suggesting that the tripartite nature of his organization gave a voice to workers, said that the organization had developed training and awareness-raising materials for workers handling mercury and could provide that material to the committee, should that be considered useful. He added that materials relating to the Globally Harmonized System of Classification and Labelling of Chemicals could easily be adapted.

150. The representative of WHO drew attention to the existence of many relevant international mechanisms, including the FAO/WHO Provisional Tolerable Weekly Intake guidelines for mercury and the Codex Alimentarius guideline levels for methyl mercury in fish. She said that her organization had developed a training package for health-care workers on mercury and was developing a publication on mercury and children's health that would be available in time for the committee's second session. WHO stood ready to offer guidance on awareness-raising and information dissemination in the health field and how they related to risk management.

151. The representative of UNIDO noted that workers typically had basic education levels and would benefit from appropriately designed awareness-raising material. He said that scientific information should be available via a single platform to ensure the efficient delivery of information and use of resources. UNIDO had published protocols relating to artisanal and small-scale gold mining, which it could supply on request.

152. One representative said that a system should be established to explore the use of scientific information exchange as a means of capacity-building and promoting the transfer of technology to developing countries. He also said that established regional centres under existing multilateral environmental agreements should be used to achieve synergies.

153. The representative of the Basel Convention Regional Centre for the Arab Region outlined work done by his centre related to capacity-building, awareness raising, information exchange and other activities and how the centre could play a role in assisting implementation of a mercury instrument.

154. Representatives of two non-governmental organizations expressed support for the inclusion of provisions in the instrument providing for awareness-raising campaigns designed to inform the public of the mercury content in dental amalgam and the threat that it posed to human health and the environment.

## **I. Final provisions**

155. The representative of the secretariat introduced document UNEP(DTIE)/Hg/INC.1/7, setting out draft final provisions for the instrument to be negotiated. He explained that the provisions had been prepared in response to a request from the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee. He said that they were based on similar provisions from existing agreements and could be amended as the committee required, depending on the mercury instrument's final structure, and recalled that only an initial discussion on the provisions was contemplated at the current session.

156. Several representatives said that agreement could be reached readily on many of the draft provisions but others, such as on the adoption and amendment of annexes, would require further discussion once the structure of the legally binding instrument had been established.

157. Some representatives said that agreement on some provisions, such as on voting, signature, ratification, withdrawal and the various language versions of the instrument, could be reached with the expectation that they would be reviewed by a drafting group. Other provisions, such as on entry into force of the instrument, would need additional discussion. One representative suggested that options for entry into force other than the number of ratifications might be examined, such as those of the conventions under the auspices of the International Maritime Organization, which took into account

certain characteristics of countries. One representative suggested that the provision on ratification might also call upon States to identify steps taken to implement the convention prior to ratification, such as the passage of any necessary implementing legislation.

158. Several representatives said that provisions similar to paragraphs 4–6 of article 22 of the Stockholm Convention should be included in respect of the adoption and amendment of annexes. Citing the Stockholm Convention as a model, one representative said that it would be helpful to have an option for parties to be bound by amendments to annexes only after submitting declarations of acceptance of those annexes rather than after the passage of a specified time, in the light of the fact that domestic processes to ratify treaties were sometimes time-consuming. One representative said that existing multilateral environmental agreements should be examined to identify advantages and disadvantages of current practices regarding amendments to annexes. Another said that it would be important to specify the type of amendment that could be made. Several representatives called for a provision similar to paragraph 4 of article 25 of the Stockholm Convention, which allowed parties to stipulate that amendments would enter into force for them only upon the deposit of an instrument of ratification, acceptance, approval or accession.

159. Many representatives said that the proposals contained in the note by the secretariat could serve as starting points for the negotiations and that the final provisions should provide clear and flexible procedures that facilitated implementation and compliance and avoided creating constraints that would inhibit ratification or impede parties in their efforts to meet their obligations.

## **J. Synergies**

160. The representative of the secretariat recalled that the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee had requested the secretariat to prepare for the current session materials relating to synergies and institutional cooperation and coordination with related multilateral agreements and policies. He then outlined the note by the secretariat (UNEP(DTIE)/Hg/INC.1/17) prepared in response to that request.

161. Many representatives welcomed the outcome of the simultaneous extraordinary meetings of the conferences of the parties to the Basel, Rotterdam and Stockholm conventions and the possibility of achieving synergies between the mercury instrument and related agreements. One said that building a mercury instrument as a synergistic part of a larger set of international agreements focused on hazardous substances and wastes would benefit the further development and integration of international environmental policy. Several representatives said that it would be preferable to include synergies provisions in the mercury instrument rather than leave the matter to be addressed later by the instrument's governing body.

162. One representative, however, said that the committee should focus solely on creating an effective mercury instrument, rather than on how its elements might be applicable to activities in other issues. Another cautioned that the synergies process begun in Indonesia was continuing to evolve and that the results might be neither effective nor relevant for the mercury instrument. Several representatives suggested that further analysis was needed to demonstrate how administrative and substantive synergies might be achieved for the mercury instrument within the chemicals cluster. Another said that the Heavy Metals Protocol to the Convention on Long-Range Transboundary Air Pollution should not be seen as a model because it did not include developing countries or countries from all regions.

## **K. Glossaries of key terms**

163. The representative of the secretariat recalled that the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee had requested the secretariat to prepare for the current session a glossary of key terms pertinent to the work of the committee. In response the secretariat had prepared document UNEP(DTIE)/Hg/INC.1/14, annex I of which reproduced selected entries from the UNEP *Glossary of Terms for Negotiators of Multilateral Environmental Agreements* and annex II of which set out a list of additional terms prepared by the secretariat. Governments and observers were requested to submit feedback on the definitions and any suggestions for additional coverage.

164. The committee took note of the document prepared by the secretariat, with many representatives saying that at an early stage in the negotiating process the committee should formally agree on definitions for many of the terms listed in the document.

## **L. Essential uses**

165. The representative of the secretariat recalled that the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee had requested the secretariat to compile for the current session information on essential-use exemptions under various multilateral environmental agreements. He then outlined document UNEP(DTIE)/Hg/INC.1/13, which the secretariat had drafted in response to that request and which described essential-use and other exemptions to the control provisions of the Stockholm Convention and the Convention on Long-range Transboundary Air Pollution, among others.

166. Many representatives said that it would be necessary to consider carefully and define precisely the criteria that would govern the application of any exemptions that might be adopted for the mercury instrument, including in respect of mercury uses related to public health.

167. One representative said that the committee should focus on permitted uses rather than essential uses, with the possibility of staggered entry into force. Another echoed that view, saying that the concept of essential use might be too narrow and that a rubric of “acceptable use” would be better suited to products and processes that were difficult to phase out but were not necessarily essential. The design of the instrument was of crucial importance, so the options under consideration should not be limited.

168. One representative suggested that the provisions governing permitted, acceptable or essential uses could draw on experience under the Montreal Protocol and that the best approach would be to exempt specific mercury-containing products rather than to allow blanket exemptions. He stressed the need to consider the financial, social and economic implications for developing countries.

169. The representative of a non-governmental organization said that the availability of alternatives was an important factor in determining whether exemptions were necessary. In that context he said that alternatives should be deemed adequate if they were functional equivalents and did not need to be direct substitutes; commercial availability was a good indicator of technical feasibility. He also said that all relevant impacts should be included in studies of costs, including economies of scale and qualitative factors such as human health.

## **V. Other matters**

### **A. Tracking tool**

170. One representative, speaking on behalf of a group of the group of Latin American and Caribbean countries, introduced a revised version of the tracking tool set out in the annex to document UNEP(DTIE)/Hg/INC.1/6, saying that many representatives had recognized the need for a strong link in the mercury instrument between implementation and control measures and capacity-building, technology transfer and financial assistance and that the negotiations should be guided by the principle of common but differentiated responsibilities and should seek to balance environmental, social and economic demands, the three pillars of sustainable development. He said that, if used, the tracking tool would need to be complemented by countries and supported by the secretariat as the negotiations proceeded.

### **B. Work to be undertaken by the secretariat for the second session of the intergovernmental negotiating committee and beyond**

171. Following consultations within the regional groups and the bureau, the committee agreed that after the current session the secretariat would undertake to prepare for consideration by the committee at its next session draft elements of the comprehensive and suitable approach to mercury called for by decision 25/5, including the provisions referred to in paragraph 27 of the decision and taking into consideration the matters listed in paragraph 28 of the decision. The elements prepared by the secretariat could include both binding and voluntary measures and would be presented as a means of facilitating the committee’s work without in any way prejudging what the committee might decide regarding the mercury instrument. The secretariat would base its work on the views expressed by parties during the current session and any views submitted by parties to the secretariat in writing by 31 July 2010. Any written views submitted to the secretariat would be posted on the UNEP mercury programme website ([www.unep.org/hazardoussubstances](http://www.unep.org/hazardoussubstances)).

172. The committee also agreed that the secretariat should prepare, subject to the availability of adequate resources, a number of additional documents to assist the committee at its second session and beyond. Those documents are listed in annex II to the present report.

173. During discussion of the documents to be considered by the committee one representative, speaking on behalf of his region, stressed the importance of comprehensive and high-quality information, in all six official languages of the United Nations, to the ability of the committee to make informed decisions and said that currently there was a lack of information on a number of issues under discussion. He also said that those who prepared the documents, including consultants, should come from all regions and should include representatives of developing countries to ensure that the documents incorporated information relevant to such countries.

174. Another representative said that documents prepared by the secretariat should include input from United Nations and other bodies, such as WHO, on areas within their expertise. Furthermore, the documents should be made available as soon as possible and consideration of any subject for which documents were not ready by the committee's second session should be put off to a later session. Lastly, given the central role of financial considerations, the secretariat should draw on all necessary support to ensure the timely preparation of a document on financial and technical assistance for the committee's second session.

175. Concluding the sub-item, the Chair indicated that in preparing the documents listed in annex II to the present report the secretariat would take the above comments into account.

### **C. Future sessions of the intergovernmental negotiating committee**

176. Under the sub-item the representative of the secretariat reviewed the dates and locations of the remaining sessions of the intergovernmental negotiating committee and the conference of plenipotentiaries at which any mercury instrument would be adopted, taking into account the offers to host those sessions that had been announced during the general discussion of the future mercury instrument. The dates and venues were as follows:

Second session: 24–28 January 2011, Chiba, Japan

Third session: October or November 2011, Burkina Faso (to be confirmed)

Fourth session: June 2012, Punta del Este, Uruguay

Fifth session: 4–8 February 2013, Geneva or Brazil

Diplomatic conference: 2013, Japan

177. The dates and venue of the committee's second session were confirmed but those of the remaining sessions and the conference of plenipotentiaries were tentative, subject to further consultations with the offering Governments and confirmation by the Executive Director of UNEP as the committee's convener.

178. Also under the sub-item, the representative of Japan outlined his Government's proposal to host the committee's second session and the conference of plenipotentiaries.

179. One representative, speaking on behalf of the Latin American and Caribbean countries, expressed thanks to the Government of Spain for providing financial support for English and Spanish simultaneous interpretation during the group's consultations at the current session. Another representative, speaking on behalf of the African countries, likewise thanked the Government of Switzerland for defraying the cost of English and French simultaneous interpretation for the African regional consultations. Both representatives requested the secretariat to examine the potential for convening two days of regional coordination meetings prior to each future session of the committee, and urged donor countries to consider providing support for such meetings.

### **D. Update on the Global Mercury Partnership**

180. The representative of the secretariat provided an update on work under the Global Mercury Partnership and related initiatives, recalling that the Governing Council in decision 25/5 had called for the continuation of existing work on mercury and for countries to enhance their support for the Partnership. She reported that since the inception of the Partnership in 2005 an overarching framework had been adopted to govern its operations, seven partnership areas had been established (in respect of artisanal and small-scale gold mining, mercury cell chlor-alkali production, mercury air transport and fate research, mercury in products, mercury releases from coal combustion, mercury waste management and mercury supply and storage), a partnership advisory group had been established and the number of partners had grown steadily to 69, including a number of associations representing numerous other entities. Detailed information on partnership activities was available in a report covering the period 2007–2008 (UNEP(DTIE)/Hg/WG.Pre/1/8) and a draft report on the period 2009–2010 (UNEP(DTIE)/Hg/INC.1/INF/12).

181. Responding to a question, she explained that many partnership activities were funded either bilaterally or through programmes other than UNEP and that activities directly funded through UNEP in the period 2009–2010 totalled approximately \$3.6 million. Contributions to UNEP to support partnership activities were encouraged.

182. The committee took note of the information provided.

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

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

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

184. Following the customary exchange of courtesies the Chair declared the session closed at 7.05 p.m. on Friday, 11 June 2010.



## Annex I

### **Rules of procedure of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury**

#### **I. Purposes**

These rules of procedure shall govern the negotiation of a global legally binding instrument on mercury.

#### **II. Definitions**

##### **Rule 1**

1. “Party” means a State, or a regional economic integration organization that is a member of a specialized agency of the United Nations, participating in the work of the intergovernmental negotiating committee for a global legally binding instrument on mercury (hereinafter referred to as the committee). “Regional economic integration organization” means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters covered by the committee’s work. Participation of such a regional economic integration organization shall in no case entail an increase in the representation to which the member States of that organization would otherwise be entitled.

2. “Chair” means the Chair elected in accordance with rule 8, paragraph 1, of these rules of procedure.

3. “Secretariat” means the secretariat provided by the Executive Director required to service the negotiations.

4. “Executive Director” means the Executive Director of the United Nations Environment Programme.

5. “Session” means any series of meetings convened in accordance with the present rules of procedure.

6. “Representatives present and voting” means representatives of Parties present and casting an affirmative or negative vote. Representatives who abstain from voting are considered as not voting.

#### **III. Place and dates of sessions**

##### **Rule 2**

The venue and dates of the sessions shall be decided by the committee in consultation with the secretariat.

#### **IV. Agenda**

##### **Drawing up of the provisional agenda for a session**

##### **Rule 3**

The Executive Director shall, after approval by the Bureau referred to in paragraph 1 of rule 8 below, submit to the committee at each session the provisional agenda for the following session. The provisional agenda shall include all items proposed by the committee.

## **Adoption of the agenda**

### **Rule 4**

At the beginning of each session, the committee shall adopt its agenda for the session based on the provisional agenda.

## **Revision of the agenda**

### **Rule 5**

During a session, the committee may revise the agenda for the session by adding, deleting or amending items. Only items that the committee considers to be urgent and important may be added to its agenda during the session.

## **V. Representation**

### **Composition of delegations**

#### **Rule 6**

The delegation of each Party participating in any session shall consist of a head of delegation and such alternate representatives and advisers as may be required.

### **Alternates and advisers**

#### **Rule 7**

The head of delegation may designate an alternate representative or an adviser to act as a representative.

## **VI. Officers**

### **Elections**

#### **Rule 8**

1. The committee shall elect from among the representatives of the Parties a Bureau comprising one Chair and nine Vice-Chairs, one of whom shall act as Rapporteur.
2. In electing the officers referred to in the previous paragraph, the committee shall have due regard to the principle of equitable geographical representation. Each of the five regional groups shall be represented by two members of the Bureau.

### **Acting Chair**

#### **Rule 9**

If the Chair finds it necessary to be absent from a session or any part thereof, he or she shall call upon a Vice-Chair to take his or her place.

### **Replacement of the Chair**

#### **Rule 10**

If the Chair is unable to continue to perform his or her functions, a new Chair shall be elected for the unexpired term, with due regard to rule 8, paragraph 2.

## **Substitute members**

### **Rule 11**

If a Vice-Chair finds it necessary to be absent from a session or any part thereof, a new Vice-Chair shall be designated by the same regional group. Such substitution shall not exceed the period of one session.

## **Replacement of a Vice-Chair**

### **Rule 12**

If a Vice-Chair resigns or is otherwise unable to complete his or her term of office, a new Vice-Chair shall be elected for the unexpired term, with due regard to rule 8, paragraph 2.

## **VII. Secretariat**

### **Rule 13**

The Executive Director may designate his or her representative during the sessions.

### **Rule 14**

The Executive Director shall provide and direct the staff of the secretariat required to service the negotiations, including any subsidiary organs that the committee may establish.

### **Rule 15**

The Executive Director, or his or her designated representative, may, subject to rule 19, make oral and written statements to the committee and its subsidiary organs concerning any matter under consideration.

### **Rule 16**

The Executive Director shall be responsible for convening sessions in accordance with rules 2 and 3 and for making all the necessary arrangements for sessions, including the preparation and distribution of documents at least six weeks in advance of the sessions.

### **Rule 17**

The secretariat shall, in accordance with these rules, interpret speeches made at sessions; receive, translate and circulate the documents of the sessions; publish and circulate reports and relevant documentation to the Parties; have the custody of the documents in the committee's archives; and generally perform all other work that the committee may require.

## **VIII. Conduct of business**

### **Quorum**

#### **Rule 18**

1. The Chair may declare a session open and permit the debate to proceed when at least one third of the Parties participating in the session are present. The presence of a majority of Parties so participating shall be required for any decision to be taken.
2. For the purposes of determining a quorum for a decision to be taken on a matter within the competence of a regional economic integration organization, that organization shall be counted to the extent of the number of votes it is entitled to cast.

## **Powers of the Chair**

### **Rule 19**

In addition to exercising the powers conferred upon him or her elsewhere by the present rules, the Chair shall declare the opening and closing of each session; direct the discussion; ensure observance of the present rules; accord the right to speak; put questions to the vote; and announce decisions. The Chair shall rule on points of order and, subject to the present rules, shall have control over the proceedings of the sessions and over the maintenance of order at sessions. The Chair may propose to the session the limitation of the time to be allowed to speakers, the limitation of the number of times each Party may speak on any subject, the closure of the list of speakers or the closure of the debate. The Chair may also propose the suspension or the adjournment of the session or of the debate on the question under discussion.

### **Rule 20**

The Chair, in the exercise of his or her functions, remains under the committee's authority.

## **Powers of the acting Chair**

### **Rule 21**

A Vice-Chair acting as Chair shall have the same powers and duties as the Chair.

## **The Chair shall not vote**

### **Rule 22**

The Chair shall not vote, but may designate another member of his or her delegation to vote in his or her place.

## **Speeches**

### **Rule 23**

No one may address a session without having previously obtained the Chair's permission. Subject to these rules, the Chair shall call upon speakers in the order in which they signify their desire to speak. The Chair shall call a speaker to order if his or her remarks are irrelevant to the subject under discussion.

## **Precedence**

### **Rule 24**

The Chair, the Vice-Chair or a designated representative of any subsidiary organ that may be established pursuant to rule 48 may be accorded precedence in speaking for the purpose of explaining the conclusion arrived at by the subsidiary organ concerned and for the purpose of replying to questions.

## **Points of order**

### **Rule 25**

1. During the discussion of any matter, a representative of a Party may at any time raise a point of order and the point of order shall be immediately decided upon by the Chair in accordance with these rules. A representative of a Party may appeal against the Chair's ruling. The appeal shall be put to the vote immediately and the Chair's ruling shall stand unless overruled by a majority vote of the representatives present and voting.

2. A representative of a Party raising a point of order may not speak on the substance of the matter under discussion.

## **Time limit on speeches**

### **Rule 26**

The committee may limit the time allowed to each speaker and the number of times that each person may speak on any question, except on procedural questions, in respect of which the Chair shall limit each intervention to a maximum of five minutes. When debate is limited and a speaker has spoken for his or her allotted time, the Chair shall call him or her to order without delay.

## **Closing of list of speakers**

### **Rule 27**

During the course of a debate, the Chair may announce the list of speakers and, with the committee's consent, declare the list closed. The Chair may, however, accord the right of reply to any Party if, in his or her opinion, a speech delivered after he or she has declared the list closed renders this justified. When the debate on an item is concluded because there are no other speakers, the Chair shall, with the committee's consent, declare the debate closed.

## **Adjournment of debate**

### **Rule 28**

During the discussion of any matter, a representative of a Party may move the adjournment of the debate on the subject under discussion. In addition to the proponent of the motion, one representative of a Party may speak in favour of the motion and one against it, after which the motion shall be immediately put to the vote.

## **Closure of debate**

### **Rule 29**

A representative of a Party may at any time move the closure of the debate on the subject under discussion, whether or not any other representative of a Party has signified his or her wish to speak. Permission to speak on the closure of the debate shall be accorded only to two representatives of Parties opposing the closure, after which the motion shall be immediately put to the vote. If the committee is in favour of the closure, the Chair shall declare the closure of the debate.

## **Suspension or adjournment of a session**

### **Rule 30**

During the discussion of any matter, a representative of a Party may move the suspension or the adjournment of any session. Such motion shall not be debated, but shall immediately be put to the vote.

## **Order of procedural motions**

### **Rule 31**

Subject to rule 25, and regardless of the order in which they are submitted, the following motions shall have precedence, in the following order, over all other proposals or motions before the session:

- (a) To suspend the session;
- (b) To adjourn the session;
- (c) To adjourn the debate on the subject under discussion;
- (d) To close the debate on the subject under discussion.

## **Proposals and amendments**

### **Rule 32**

Proposals and amendments shall normally be introduced in writing and submitted to the secretariat, which shall circulate copies to all representatives of Parties. As a general rule, no proposal shall be discussed or put to the vote at any session of the committee unless copies of it have been circulated in the official languages of the session to all representatives of Parties not later than the day preceding the session. Subject to the committee's consent, the Chair may, however, permit the discussion and consideration of proposals or amendments that have not been circulated or have only been circulated the same day.

## **Decisions on competence**

### **Rule 33**

Subject to rule 31, any motion calling for a decision on the committee's competence to adopt any proposal or any amendment submitted to it shall be put to the vote before a vote is taken on the proposal or amendment in question.

## **Withdrawal of proposals or motions**

### **Rule 34**

A proposal or a motion may be withdrawn by its proponent at any time before voting on it has commenced, provided that the proposal or the motion has not been amended. A proposal or motion that has thus been withdrawn may be reintroduced by another representative of a Party.

## **Reconsideration of proposals**

### **Rule 35**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the committee, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded to only two representatives of Parties opposing the motion, after which the motion shall immediately be put to the vote.

## **Voting rights**

### **Rule 36**

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

## **Adoption of decisions**

### **Rule 37**

1. The committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the decision shall, as a last resort, be taken by a two-thirds majority of the representatives present and voting.
2. Decisions of the committee on procedural matters shall be taken by a majority of the representatives present and voting.
3. Where there is disagreement as to whether a matter to be voted on is a substantive or procedural matter, that issue shall be decided by a two-thirds majority of the representatives present and voting.

## **Method of voting**

### **Rule 38**

Subject to rule 44, the committee shall normally vote by show of hands, but any representative of a Party may request a roll-call, which shall then be taken in the English alphabetical order of the names of the Parties, beginning with the Party whose name is drawn by lot by the Chair. If, however, at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question.

## **Recording of roll-call**

### **Rule 39**

The vote of each Party participating in a roll-call shall be recorded in the relevant documents of the session.

## **Conduct during voting**

### **Rule 40**

After the Chair has announced the beginning of voting, no representative of a Party shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Chair may permit representatives of Parties to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The Chair may limit the time to be allowed for such explanation. The Chair shall not permit the proponent of a proposal or of an amendment to explain his or her vote on his or her own proposal or amendment.

## **Division of proposals or amendments**

### **Rule 41**

A representative of a Party may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given to only two representatives of Parties in favour and two against. If the motion for division is carried, those parts of the proposal or of the amendment that are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

## **Voting on amendments**

### **Rule 42**

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the committee shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest therefrom and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. If no amendments are adopted, the proposal shall be put to the vote in its original form.

2. A motion is considered an amendment to a proposal if it adds to, deletes from or revises part of that proposal.

## **Voting on proposals**

### **Rule 43**

1. If two or more proposals are related to the same question, the committee shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The committee may, after each vote on a proposal, decide whether to vote on the next proposal.
2. Any proposals or motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

## **Elections**

### **Rule 44**

All elections shall be held by secret ballot unless, in the absence of any objection, the committee decides to proceed without taking a ballot when there is an agreed candidate.

### **Rule 45**

1. If, when only one person or Party is to be elected, no candidate obtains, in the first ballot, the majority required, a second ballot shall be taken, restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, the Chair shall decide between the candidates by drawing lots.
2. In the case of a tie in the first ballot among the candidates obtaining the second largest number of votes, a special ballot shall be held for the purpose of reducing the number of candidates to two. In the case of a tie among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

### **Rule 46**

1. When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining the required majority on the first ballot shall be elected.
2. If the number of candidates obtaining such a majority is more than the number of places to be filled, those candidates obtaining the largest number of votes shall be elected.
3. If the number of candidates obtaining such majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places, the voting being restricted to the candidates having obtained the greatest number of votes in the previous ballot, who shall number not more than twice the places remaining to be filled. In the case of a tie between a greater number of unsuccessful candidates, however, a special ballot shall be held for the purpose of reducing the number of candidates to the required number.
4. If three restricted ballots are inconclusive, unrestricted ballots shall follow in which votes may be cast for any eligible person or member. If three such unrestricted ballots are inconclusive, the next three ballots (subject to exception in a case similar to that of the tie mentioned at the end of the previous paragraph of this rule) shall be restricted to the candidates obtaining the greatest number of votes in the third of the unrestricted ballots. The number of such candidates shall be not more than twice the number of places remaining to be filled.
5. The following three ballots thereafter shall be unrestricted and so on, until all the places are filled.

## **Equally divided votes**

### **Rule 47**

If a vote is divided equally on matters other than elections, the proposal shall be regarded as rejected.



## **IX. Subsidiary organs**

### **Subsidiary organs of the sessions, such as working groups and expert groups**

#### **Rule 48**

1. The committee may establish such subsidiary organs as may be necessary for the effective discharge of its functions.
2. Each subsidiary organ shall elect its own officers, having due regard for the principle of equitable geographical representation. The number of such officers shall be no more than five.
3. The rules of procedure of subsidiary organs shall be those of the committee, as appropriate, subject to such modifications as the committee may decide upon in the light of proposals made by the subsidiary organs concerned.

## **X. Languages and records**

### **Languages of the sessions**

#### **Rule 49**

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the sessions.

#### **Interpretation**

#### **Rule 50**

1. Speeches made in a language of the sessions shall be interpreted into the other languages.
2. A representative may speak in a language other than a language of the sessions. In this case he or she shall himself or herself provide for interpretation into one of the languages of the session, and interpretation into the other languages by the interpreters of the secretariat may be based on the interpretation given in the first language.

### **Languages of official documents**

#### **Rule 51**

Official documents shall be made available in the languages of the session.

## **XI. Public and private meetings**

### **Plenary meetings**

#### **Rule 52**

The plenary meetings during any session shall be held in public unless the committee decides otherwise. All decisions taken at any non-public meeting shall be announced at an early public meeting.

### **Other meetings**

#### **Rule 53**

Meetings of subsidiary organs, other than any drafting group that may be set up, shall be held in public unless the organ concerned decides otherwise.

## **XII. Observers**

### **Participation of observers**

#### **Rule 54**

Observers may participate in the work of the session in accordance with the established practice of the United Nations General Assembly.

### **Observers from non-governmental organizations**

#### **Rule 55**

Relevant non-governmental organizations participating in the session as observers may make their contributions to the negotiating process, as appropriate, on the understanding that these organizations shall not have any negotiating role during the process and taking into account decisions 1/1 and 2/1, adopted by the Preparatory Committee for the United Nations Conference on Environment and Development at its first and second sessions, concerning the participation of non-governmental organizations.

## **XIII. Suspension and amendment of the rules of procedure**

#### **Rule 56**

A rule of procedure may be amended or suspended by a decision of the committee taken by consensus provided that 24 hours' notice of the proposal has been given.

## Annex II

### Information to be prepared by the secretariat for the second session of the intergovernmental negotiating committee and beyond

#### A. Information to be provided to the intergovernmental negotiating committee for its second session

- (a) Report on indicators to evaluate and track the health impacts of mercury and identify vulnerable populations, including the design of a sustainable awareness-raising and sensitization programme, to be developed in the context of pilot projects;<sup>2</sup>
- (b) Information on harmonized systems for measuring mercury body burden, starting on a pilot scale for the second session of the committee with the possibility for expansion during the remainder of the negotiation process;<sup>1</sup>
- (c) Report on existing country-specific or regional monitoring efforts relating to fish and marine mammals in the food supply, including information on the scope of testing (for example, geographic scope, whether marine or freshwater species are involved, and the number of species and specimens tested) and the frequency of testing (for example, one-time or continuing, monthly or annual);
- (d) Inventory of projects completed or under way in each country relating to artisanal and small-scale gold mining, including awareness-raising, technical assistance, formalization and financial assistance projects;<sup>1</sup>
- (e) Report on methodologies for determining exposure in people involved in artisanal and small-scale gold mining;
- (f) Collation and analysis of available data in relevant sectors (mercury source categories) at the national level using the “Initial Mercury Profile – Guidance Document” developed under the UNEP Mercury Programme;
- (g) Information on all known mercury-containing products and all known processes and technologies that use mercury; and information on alternatives to those products, processes and technologies, as well as on the costs and availability of such alternatives;
- (h) Cost-benefit analysis of existing alternatives to mercury-based products, processes and technologies;
- (i) Report exploring the advantages and disadvantages of two approaches to regulating mercury in products: first, a total ban with time-limited exemptions; and second, a list of product-specific bans. The report would include possible guidelines for identifying allowable time-limited uses and take into account how to categorize products, potential environmental impacts and social and economic issues;
- (j) Analysis of possible funding sources and what they might cover, including an analysis of the role of the private sector;
- (k) Analysis of possible options for using partnerships to help achieve the goals of the future instrument on mercury, including the option of integrating partnerships into the instrument;
- (l) Options paper that examines possible gaps and overlaps in relation to the future mercury instrument and the Basel Convention, including additional information and clarification regarding the applicability of the Basel Convention to the sound management of mercury waste;<sup>1</sup>
- (m) Global inventory of mercury cell chlor-alkali facilities, including information on capacity, locations, and any plans for conversion or closure, drawing on information developed by the UNEP Global Mercury Partnership;
- (n) Report on issues arising from the implementation of the options for control measures listed in paragraph 27 of Governing Council decision 25/5, with a focus on their interlinkages;

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<sup>2</sup> Relevant partners will be invited by the secretariat to provide information as needed.

**B. Information to be provided at a later stage of the negotiation process**

- (a) Analysis of possible options for addressing the issue of administrative and substantive synergies between a legally binding instrument on mercury and existing instruments in the chemicals and wastes cluster, including the Basel and Rotterdam conventions;
  - (b) Assessment of capacity-building needs;
  - (c) Report on options for financial and technology transfer mechanisms for the implementation of the obligations of developing countries and countries with economies in transition that may be developed in the mercury instrument.
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